TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule
LSA Document #02-44

DIGEST

Amends 170 IAC 4-1-26 concerning electrical line construction and variances. Effective 30 days after filing with the secretary of the state.

170 IAC 4-1-26

SECTION 1. 170 IAC 4-1-26 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-1-26 Line construction; variances
Authority: IC 8-1-1-3; IC 8-1-2-4
Affected: IC 8-1-2

Sec. 26. (a) In all cases not covered by specific statutes in effect, Part 2, "Safety Rules for the Installation and Maintenance of Overhead Electric Supply and Communication Lines", and Part 3, "Safety Rules for the Installation and Maintenance of Underground Electric Supply and Communication Lines", of the ~~1997~~ **2002** edition of the National Electrical Safety Code as approved by the American National Standards Institute June ~~6, 1996,~~ **14, 2001,** as ANSI Standard C2, are prescribed for overhead and underground construction practice commenced after the date of promulgation of this section.

(b) **The commission incorporates by reference the 2002 National Electrical Safety Code.** Copies ~~of the 1997 edition of the National Electrical Safety Code are available for purchase~~ **may be obtained** from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, Piscataway, New Jersey 08855-1331 **or are available for copying at the Indiana Utility Regulatory Commission, Indiana Government Center-South, 302 West Washington Street, Room E306, Indianapolis, Indiana 46204.**

(c) Any public utility wishing to depart from the National Electrical Safety Code:

(1) for the purpose of experimentation or the development of improved methods of construction;

(2) because it works an injustice or expense not justified by the protection secured or is shown to be impractical; or

(3) where equivalent or safer construction can be more readily provided in other ways;

may informally petition for authorization to construct, install, or use materials, equipment, or methods other than specified in this rule, directing such petition to the engineering department of the commission. The petition shall be accompanied by the consent of any other utility whose facilities will be directly affected by the proposed departure from this rule. The engineering department shall forthwith make an investigation and, if satisfied that such petition falls within one (1) or more of the three (3) categories set forth in this subsection and is justified from an engineering standpoint, shall so advise the commission. The petitioning utility and any consenting utility shall thereupon be notified, in writing, that the proposed departure from this rule has been authorized. *(Indiana Utility Regulatory Commission; No. 33629: Standards of Service For Electrical Utilities Rule 24; filed Mar 10, 1976, 9:10 a.m.: Rules and Regs. 1977, p. 356; filed Feb 28, 1986, 9:30 a.m.: 9 IR 1564; filed Oct 7, 1987, 12:30 p.m.: 11 IR 565; filed Oct 15, 1990, 3:28 p.m.: 14 IR 418; filed Jan 28, 1993, 9:00 a.m.: 16 IR 1510; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2325; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 2, 2002 at 9:30 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room TC10, Indianapolis, Indiana the Indiana Utility Regulatory Commission will hold a public hearing on proposed amendments on electrical line construction and variances. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E306 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

William D. McCarty
Commission Chairman
Indiana Utility Regulatory Commission

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #02-68

DIGEST

Amends 312 IAC 9-2-13 to allow scientific collectors to administer drugs and vaccines to animals held under a scientific collector's license. Amends 312 IAC 9-10-6 that governs scientific collector licenses by adding scientific collector qualifications and requiring additional information on collection reports. Effective 30 days after filing with the secretary of state.

312 IAC 9-2-13
312 IAC 9-10-6

SECTION 1. 312 IAC 9-2-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-2-13 Administration of chemical to nondomestic animals, to animals held on a game breeder license, to animals held on a wild animal possession permit, or to animals held under a rehabilitation permit
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 13. (a) A person may not administer any drug, vaccine, steroid, micro-organism, or other chemical to any:

(1) noncaptive wild bird or mammal;

~~(2) animal held under a scientific collector license;~~

~~(3)~~ **(2)** animal held under a game breeder license;

~~(4)~~ **(3)** animal held under a wild animal possession permit; or

~~(5)~~ **(4)** animal held under a rehabilitation permit;

without a permit for such administration issued by the director of the division of fish and wildlife.

(b) Notwithstanding subsection (a), an animal held under a:

~~(1) scientific collector license;~~

~~(2)~~ **(1)** game breeder license;

~~(3)~~ **(2)** wild animal possession permit; or

~~(4)~~ **(3)** rehabilitation permit;

may be administered a pharmaceutical product approved by a state or federal agency for the purpose of prevention or treatment of malnutrition, illness, disease, injury, or stress. Normal reproductive functions and the potential for pregnancy do not qualify under this subsection.

(c) Notwithstanding subsection (a), a licensed veterinarian, county animal control agent, municipal animal control agent, ~~or~~ holder of a nuisance wild animal control permit, **or holder of a scientific collector's license** may administer to an animal an immobilizing agent, tranquilizer, or drug for euthanasia. *(Natural Resources Commission; 312 IAC 9-2-13; filed May 28, 1998, 5:14 p.m.: 21 IR 3713; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125)*

SECTION 2. 312 IAC 9-10-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-6 Scientific collector licenses

Authority: IC 14-22-2-6; IC 14-22-22
Affected: IC 4-21.5; IC 14-22-22-2; IC 20-1-1-6; IC 20-1-1-6.2

Sec. 6. (a) An application for a scientific collector license shall be made on a departmental form **and include the following information:**

(1) The purpose for collection.

(2) The species and number of the species to be collected.

(3) The location and any method of collection.

(4) The intended administration of any drug, vaccine, steroid, micro-organism, or other chemical to the wild animal to be collected.

(5) The intended treatment of the wild animal collected, including the use of bacterial or other markers and any proposed genetic modification.

(6) The disposition of any wild animal or nest or egg of a wild bird to be collected.

(b) A license issued under this section is subject to the specifications set forth in the application and to terms, ~~or~~ conditions, ~~set by the division.~~ **and restrictions on the license. The director may condition the license according to any of the following terms:**

(1) The kind and number of specimens that may be taken.

(2) The type of methods used.

(3) The time and seasons for take.

(4) The areas where take may occur.

(5) The use and disposition of wild animal or nest or egg of a wild bird held, treated, or taken under this rule.

(6) Contingent upon the applicant receiving and possessing a valid license from the United States Fish and Wildlife Service under 50 CFR 17 for any of the following:

(A) A migratory bird.

(B) The nest or egg of a migratory bird.

(C) A federally endangered or threatened species of wild animal.

(c) The license holder must carry the license and any amendments to the license when conducting any activity authorized by the license.

(d) The director may amend the conditions of a license at any time upon written notification to the license holder. A notice under this subsection is subject to IC 4-21.5.

(e) The director may issue a license only to a properly accredited person who will collect the wild animal or nest or egg of a wild bird for a scientific purpose, including scientific education. The applicant must hold at least a bachelor's degree in the biological sciences or be currently pursuing a bachelor's degree in the biological sciences. An applicant currently pursuing a bachelor's degree must obtain the signature of a faculty biologist for that taxonomic group. The original application form submitted for the taxonomic group indicated on the application must be signed by two (2) scientists that have a degree in the biological sciences attesting to the character, academic and scientific accomplishments, and fitness of the applicant.

(f) An applicant must be affiliated with one (1) of the following institutions:

(1) A public school accredited under IC 20-1-1-6, a nonpublic school accredited under IC 20-1-1-6 or IC 20-1-1-6.2, or a college or university.

(2) A federal, state, city, county, or similar government agency associated with a biological or scientific area of study or research.

(3) A nonprofit educational organization with an exemption from federal income tax under 26 U.S.C. 501(c)(3). The educational organization must be associated with a biological or scientific area of study or research. The applicant must provide written documentation to the department certifying that tax exemption status has been achieved under 26 U.S.C. 501(c)(3).

(4) A scientific research organization, consulting firms, or individuals working in cooperation with a college, university, government agency, or private company under a contract for scientific or educational purposes.

(g) The applicant must ensure compliance with monitoring, tagging, and reporting requirements for all extra-label drug use as required in 21 CFR 530, et seq. (1998). Documentation in the form of written approval from a licensed veterinarian or approval from a university animal care and use committee to use the drug or chemical for the purposes intended must be submitted with the application form.

(h) The sale or transport for sale and offer to sell or transport to sell an animal or a part of an animal held under the authority of this license is prohibited. As used in this subsection, "sale" includes barter, purchase, or trade or the offer to sell, barter, purchase, or trade.

(i) A license issued under this section is not transferable. A person may assist the license holder if the license holder is present and oversees the activities of the person.

(j) If an endangered or threatened species is encountered while conducting activities authorized under this license, the Indiana department of natural resources state endangered species coordinator must be notified within five (5) working days at the following address:

Endangered Species Coordinator
Division of Fish and Wildlife
402 West Washington Street, Room W273
Indianapolis, Indiana 46204
(317) 232-4080

(k) The license holder must obtain the written permission from the landowner or public land property manager to conduct an activity authorized by a license issued under this section. For an activity to be conducted on lands owned or operated by a federal, state, or local agency, the license holder must also comply with the conditions imposed by the property manager or the designee of the property manager.

~~(c)~~ **(l) A license expires on December 31 of the year the license is issued.** A report of the collection ~~by species, number, and location of the collection~~ must be supplied within ~~fifteen (15)~~ **sixty (60)** days after the expiration of the license **and contain the following information:**

(1) Any species collected.
(2) The date on which a wild animal or nest or egg of a wild bird was collected.
(3) A description of the location of the collection site.
(4) The number of each species collected.
(5) The treatments and markings, if any, of any wild animal collected.
(6) The disposition of any wild animal or nest or egg of a wild bird collected.

The department shall not renew a license unless a properly completed report is received in a timely fashion.

(m) A license may be suspended, denied, or revoked under IC 4-21.5 if the license holder:

(1) fails to comply with a provision of a license issued under this section;
(2) fails to comply with IC 14-22-22-2;
(3) provides false information on the license application and report;
(4) fails to establish that the collection or release of a wild animal would not threaten the welfare of the wild animal population or the people;
(5) collects or releases a specimen that is likely to threaten the welfare of the wild animal population; or
(6) collects or releases a specimen that is likely to threaten the welfare of the people.

(Natural Resources Commission; 312 IAC 9-10-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2729)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 2002 at 2:00 p.m., at the Pike Township Public Library, 6525 Zionsville Road, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments to allow scientific collectors to administer drugs and vaccines to animals held under a scientific collector's license and amendments that govern scientific collector licenses by adding scientific collector qualifications and requiring additional information on collection reports. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #01-251

DIGEST

Amends 326 IAC 8-1-2 to provide compliance methods applicable to dip or flow operations at miscellaneous metal coating operations regulated at 326 IAC 8-2-9. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: August 1, 2001, Indiana Register (24 IR 3826).

Second Notice of Comment Period and Notice of First Hearing: November 1, 2001, Indiana Register (25 IR 556).

Date of First Hearing: February 6, 2002.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under

IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

Because this proposed rule is not substantively different from the draft rule published on November 1, 2001, at 25 IR 556, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from November 1, 2001, through December 3, 2001, on IDEM's draft rule language. No comments were received during the comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On February 6, 2002, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to compliance methods at 326 IAC 8-1-2 applicable to dip or flow operations at miscellaneous metal coating operations regulated at 326 IAC 8-2-9. Comments were made by the following parties:

Monaco Coach (MC)

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

Comment: With the way the rule is currently drafted a source wishing to use a dip tank would have to find a coating that is significantly below the limitations that EPA and IDEM's rules specify for metal coatings, which is 3.5 pounds of VOC per gallon of material. For example, a source would have to use a coating that is 3 to 2.8 pounds of VOC per gallon of coating. The technology does not support finding a lower VOC containing coating easily or cheaply. (MC)

Response: The requirement to use a coating containing less than the allowable VOC content only applies if a source adds thinner to the tank. Averaging always requires that the use of solvents or coatings that would result in a violation be offset by coatings that are better than compliant. The extent that a coating must exceed the limit is case specific and depends on a number of factors. IDEM is considering two alternative averaging methods that would allow sources to more readily confirm compliance using averaging. These two options are 30-day rolling average and determination of the tank VOC content each time solvent is added.

IDEM disagrees that the technology does not exist to support finding a lower VOC containing coating easily or cheaply. In a Connecticut case study, cited at dep.state.ct.us/west/p2/p2casest/okay.html. OKAY Industries of New Britain, Connecticut worked with a supplier to create a new water-borne formula and dip process coating line to replace high VOC containing coatings applied with a standard air powered spray gun. The new water-borne formula and dip process coating had to give consistent coverage, dry quickly with under 2.0 pounds of VOCs per gallon, meet military performance requirements and be approvable by the military. OKAY reported that the investment to change over to the new process had a payback period of approximately six (6) months. IDEM believes that similar opportunities to use lower VOC content coatings or water-borne coatings in dip operations exist in Indiana.

Comment: The baseline transfer efficiencies under 326 IAC 8-1-2(a)(9)(C) specify sixty percent (60%) transfer efficiency. The baseline transfer efficiencies should be changed to reflect a realistic value. For example, parts that would typically be coated in a dip tank and that don't easily lend themselves to spray operations may have only a fifteen percent (15%) transfer efficiency using a spray operation. We request that the baseline transfer efficiencies be fixed to reflect the reality of what the transfer efficiencies would be and in only the very best cases are those transfer efficiencies at sixty percent (60%). (MC)

Response: In the original model VOC rules, U.S. EPA used a sixty percent (60%) baseline transfer efficiency to establish reasonably available control technology (RACT) limits. The limits in this rule are RACT limits. In 326 IAC 8-1, the baseline transfer efficiency is used only for calculating the equivalent emissions limitations specified in the rule. It cannot be changed. Additionally, modifying the baseline transfer efficiency would not help companies to achieve compliance because the rule requires compliance with the equivalent emissions limitations based on an actual measured transfer efficiency. The actual measured baseline transfer efficiency is source specific and must be determined using a method that is either specified by U.S. EPA or is submitted to and approved by U.S. EPA as a revision to the state implementation plan (SIP).

Comment: The technology that we're using is at 3.5 pounds of VOC per gallon of material and meets the existing rule. We certified compliance based on viscosity reading. As long as the paint viscosity does not go above the original formulated viscosity, you are in compliance. EPA has since disagreed with viscosity as a compliance method. Now in order to demonstrate compliance we must start out with something that is significantly lower than 3.5 pounds of VOC per gallon of material. This causes a couple of issues. First, acetone, which is a common non-VOC product, does not work because it evaporates too quickly and is noneffective for dip coating. Second, adding chlorinated solvents to the dip tank creates a lot of hazardous waste issues, along with higher costs. (MC)

Response: The commenter is correct that to certify compliance under the averaging method in the draft rule you have to start out with a coating that is better than compliance (lower than 3.5). However, offsetting thinner additions with lower VOC content coatings is the standard acceptable compliance option for any coating applications system, not just dip coating. IDEM understands that solvents that have lower VOC contents may cause quality control problems, hazardous waste disposal issues, evaporation problems or higher costs. However coatings and solvents may exist that do not pose these problems and the greater transfer efficiency obtained by dip or flow coating can often offset these problems. IDEM agrees that viscosity is an acceptable way to determine compliance, however, U.S. EPA has raised concerns about viscosity as a compliance option because solvent evaporation losses from the tank are not included in determining compliance.

At the first public hearing, the Air Pollution Control Board directed IDEM staff to further pursue using viscosity as an alternative compliance method. IDEM staff will work with U.S. EPA to attempt to provide sources a viscosity compliance option that is acceptable to U.S. EPA.

326 IAC 8-1-2

SECTION 1. 326 IAC 8-1-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-1-2 Compliance methods

Authority: IC 13-14-8
Affected: IC 13-17

Sec. 2. (a) The emission limitations specified in this article shall be achieved through one (1) or any combination of the following:

(1) Carbon adsorption.

(2) Thermal or catalytic incineration. The owner or operator of a source using a natural gas afterburner incineration method may petition the commissioner for permission to not operate the natural gas afterburner during the months of

November, December, January, February, and March. The commissioner may allow such exemption if the owner or operator adequately demonstrates that the operation of the natural gas afterburner is not required for control of toxic substances or odor.

(3) Higher solids (low solvent) ~~coating~~ **coatings, including powder, ultraviolet, and electron beam coatings.**

(4) Water borne coatings.

(5) Equivalent emission limitations based on an actual measured transfer efficiency higher than the specified baseline transfer efficiency **as follows:**

(A) This subdivision is applicable only to 326 IAC 8-2-2(b)(2), automobiles and light duty truck assembly; 326 IAC 8-2-6, metal furniture coating; and 326 IAC 8-2-7, large appliance coating.

(B) For metal furniture or large appliance coating operations, this subdivision and the equivalent emission limits it contains may not be used to determine compliance unless a test method for determining actual measured transfer efficiency has been specified by U.S. EPA or submitted to U.S. EPA and approved as a SIP revision.

(C) The equivalent emission limitations in units of kilograms of volatile organic compounds (VOC) per liter solids deposited (pounds of VOC per gallon solids deposited), baseline transfer efficiencies, and baseline volume percent solids content of the coating are specified below:

Category	Equivalent Emission Limit	Baseline Transfer Efficiency	Baseline Percent Solids
Automobiles and light duty trucks assembly (topcoat)	1.83 (15.1)	30	62.0
Metal furniture	1.01 (8.4)	60	59.2
Large appliances	0.91 (7.4)	60	62.0

(D) Compliance with an equivalent emission limit shall be determined as follows:

(i) For automobile and light duty topcoating operations, ~~compliance with the equivalent emission limit shall be determined using:~~ **use** procedures found in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations"; EPA-450/3-88-018; December 1988*. ~~or~~

~~(B) another procedure approved by the commissioner~~. **(ii)** For metal furniture or large appliance coating operations, ~~compliance with the equivalent emission limit shall be determined using the procedures approved by the commissioner. Unless the method for determining actual measured transfer efficiency has been approved or specified by the United States Environmental Protection Agency (U.S. EPA), the equivalent emission limitation shall be submitted to the U.S. EPA as a state implementation plan (SIP) revision.~~ **use the following equation:**

$$E = \frac{L}{[(1-(L/D)) \times (T)]}$$

Where: E = Actual emissions in pounds of VOC per gallon of coating solids deposited.

L = Actual VOC content in pounds of VOC per gallon of coating, as applied, excluding water and nonphotochemically reactive hydrocarbons.

D = Actual density of VOC in coating in pounds per gallon of VOC.

T = Actual measured transfer efficiency.

(6) The use of nonphotochemically reactive hydrocarbons as defined in 326 IAC 1-2-48.

(7) A daily volume-weighted average of all coatings applied in a coating line or printing line subject to the requirements in 326 IAC 8-2 or 326 IAC 8-5-5. Records of daily usage of gallons solids coating and VOC content of each coating, ~~or~~ ink, **and** solvent shall be maintained and made available upon request. Also, records of daily emissions in pounds VOC shall be maintained and made available upon request. If daily records sufficient to determine an accurate daily weighted average are not available, each coating, ~~or~~ ink, **and** solvent shall meet the requirements of the applicable section.

(8) The use of an emission control device specifically allowed under provisions of any rule in this article to meet the emission limitations specified in the rule.

(9) Equivalent emissions limitations based on an actual measured transfer efficiency ~~higher~~ **greater** than the specified baseline transfer efficiency.

(A) This subdivision is applicable only to miscellaneous metal coating operations subject to 326 IAC 8-2-9.

(B) This subdivision and the equivalent emission limits it contains may not be used to determine compliance unless a test method for determining actual measured transfer efficiency has been specified by U.S. EPA or submitted to U.S. EPA and approved as a SIP revision.

~~(A)~~ **(C)** Equivalent emission limits in units of kilograms of VOC per liter solids deposited (pounds of VOC per gallon solids deposited), baseline transfer efficiencies, and baseline volume percent solids content of coatings are as follows:

Miscellaneous Metal Coating Category	Equivalent Emission Limit kg/l (lbs/gal) of Solids Deposited	Baseline Transfer Efficiency	Baseline Volume Percent Solids
Clear coatings	2.08 (17.3)	60	41.6
Air dried up to 90°C	1.34 (11.2)	60	52.4
Extreme performance coatings	1.34 (11.2)	60	52.4
All other coatings and coating systems	1.01 (8.4)	60	59.2

~~(B)~~ **(D)** Compliance with the equivalent emission limit shall be determined according to the following equation:

$$E = \frac{L}{[(1-(L/D)) \times (T)]}$$

Where: E = ~~Equivalent emission limit~~ **Actual emissions** in pounds of VOC per gallon of coating solids deposited.

L = Actual VOC content in pounds of VOC per gallon of coating, as applied, **excluding water and nonphotochemically reactive hydrocarbons.**

D = Actual density of **the** VOC in **the** coating in pounds per gallon of VOC.

T = Actual measured transfer efficiency.

~~Unless the method for determining actual measured transfer efficiency has been approved or specified by the U.S. EPA, the equivalent emission limitation shall be submitted to the U.S. EPA as an SIP revision.~~

(10) For dip **coating** or flow coating operations only, miscellaneous metal coating operations subject to the requirements of 326 IAC 8-2-9 ~~may determine compliance by~~ **and** using ~~one (1) of the following methods:~~

~~(A) A monthly volume-weighted average of all coatings applied in a coating tank, flow coater, or flow coating line. For each coating, thinner, or solvent, the following records shall be maintained:~~

~~(i) Monthly usage.~~

~~(ii) VOC content as supplied by the manufacturer for coatings, thinners, and solvents.~~

~~(iii) Monthly emissions in pounds of VOC.~~

~~(iv) Calculated monthly volume-weighted average VOC content of the coating as applied.~~

~~If monthly records sufficient to determine an accurate monthly weighted average are not available, then a compliance method specified in this subsection or subsection (b) must be used to confirm compliance. Records necessary for determining compliance shall be maintained at the source for a minimum of three (3) years and shall be made available upon request.~~

~~(B) Using coatings in compliance with 326 IAC 8-2-9(d), in the tank or reservoir, and maintaining a viscosity of the coatings that is no less than the viscosity of the initial coating. During the first year of operation using this compliance method the source must demonstrate, by means of viscosity readings and a minimum of two (2) U.S. EPA approved VOC content tests, performed at a minimum four (4) month interval, that the VOC content of the coating as applied does not exceed the VOC content stipulated in 326 IAC 8-2-9(d). Such testing must comply with the provisions of 326 IAC 3-2.1. After the first year of operation and providing that the VOC content tests have confirmed compliance using viscosity readings, the source may use viscosity readings to confirm compliance. Sources may monitor the viscosity of the coating with a viscosity meter or an equivalent method approved by the department. The viscosity shall be measured weekly or after each time solvent is added to the tank or reservoir, whichever is more frequent. The viscosity measurement must be corrected for the temperature of the coating in the tank or reservoir and the solvent density of the thinner. Records of viscosity and temperature, sufficient to confirm compliance, shall be maintained at the source for a minimum of three (3) years and shall be made available upon request. Equipment necessary to demonstrate compliance based on viscosity must be properly maintained and available at all reasonable times. If viscosity is not monitored, then another compliance method specified in this subsection must be used to confirm compliance. For determining compliance based on this clause, an actual test, using approved methods such as a U.S. EPA Method 24 test and sampling procedures, of the VOC content of the coating in the tank or reservoir shall take precedence over viscosity.~~

coatings that contain less VOC than the VOC content limits in 326 IAC 8-2-9 may determine compliance as-applied based on the interval between VOC-containing solvent additions using the following equation:

$$E_{ave} = \frac{VOC_a + VOC_s}{G_a + G_s}$$

Where: E_{ave} = Volume-weighted average VOC emissions from VOC-containing coatings applied by the dip tank or flow coater for a given interval.

VOC_a = Total weight of VOC (in pounds) from all VOC-containing coatings added to the tank or the reservoir during the interval between VOC-containing solvent additions.

VOC_s = Total weight of VOC (in pounds) contained in the VOC-containing solvent added to the tank or the reservoir that started the averaging period.

G_a = Total gallons of VOC-containing coating, minus water and nonphotochemically reactive hydrocarbons added to the tank or the reservoir during the interval between VOC-containing solvent additions.

G_s = Total gallons of VOC-containing solvent, minus water and nonphotochemically reactive hydrocarbons added to the tank or the reservoir that started the averaging period.

(A) Each interval shall start the calendar day any VOC-containing solvent is added to the tank or reservoir. The last day of the interval is the calendar day preceding the next VOC-containing solvent addition, not to exceed thirty (30) days. All of the additions of VOC-containing solvents and coatings to the tank that occur during the first calendar day and the additions of VOC-containing coatings to the tank each subsequent day of the interval shall be included in calculating the volume-weighted average for the interval. A new averaging interval must begin each day that a VOC-containing solvent is added to the tank or reservoir.

(B) If the interval between VOC-containing solvent additions exceeds thirty (30) days, then the daily volume-weighted average VOC emissions (E_{ave}) shall be determined using an averaging time of thirty (30) days.

(C) For compliance with this subdivision, the following records shall be maintained for each VOC-containing coating and solvent:

(i) The calculated volume-weighted average VOC emissions (E_{ave}) for every interval.

(ii) Actual VOC content of the coatings and solvents determined by the applicable testing procedures specified in section 4 of this rule or as supplied by the manufacturer.

(iii) Records of the amounts of VOC-containing coatings and solvents added to the tank or the reservoir, including the dates of the additions.

Records, sufficient to confirm compliance, shall be maintained at the source for a minimum of three (3) years and shall be made available upon request.

(D) If records sufficient to determine an accurate volume-weighted average for each interval are not available, then another compliance method specified in this rule must be used to confirm compliance.

(b) VOC emissions shall be limited to no greater than the equivalent emissions, expressed as pounds of VOC per gallon of coating solids, allowed under the applicable emission limitation contained in this article for any surface coating operation using the compliance methods contained in subsection (a) or section 5 of this rule.

(1) Equivalency shall be determined by the following equation:

$$E = \frac{L}{1 - \frac{L}{D}}$$

Where: **E = Equivalent emission limit in pounds of VOC per gallon of coating solids, as applied.**

L = Applicable emission limit from this article in pounds of VOC per gallon of coating.

D = **Baseline solvent** density of VOC in **the** coating ~~in~~ **and shall be equal to seven and thirty-six hundredths (7.36)** pounds **of VOC** per gallon of ~~VOC.~~ **solvent.**

~~E = Equivalent emission limit in pounds of VOC per gallon of coating solids as applied.~~

~~A solvent density of seven and thirty-six hundredths (7.36) pounds of VOC per gallon of coating shall be used to determine equivalent pounds of VOC per gallon of solids for the applicable emission limit contained in this article. Actual solvent density shall be used to determine compliance of surface coating operations using the compliance methods contained in subsection (a) or section 5 of this rule.~~

(2) Compliance with an equivalent emission limit established in subdivision (1) shall be determined according to the following equation:

$$E_a = \frac{L_a}{1 - \frac{L_a}{D_a}}$$

Where: E_a = Actual emissions in pounds of VOC per gallon of coating solids, as applied.

L_a = Actual VOC content in pounds of VOC per gallon of coating, as applied.

D_a = Actual density of the VOC in the coating, as applied, in pounds per gallon of VOC.

(c) The overall efficiency of any capture system and control device determined by the test methods and procedures specified in section 4 of this rule shall be no less than the equivalent overall efficiency, which shall be calculated by the following equation:

$$O = \frac{V - E}{V} \times 100$$

Where: V = The actual VOC content of the coating or, if multiple coatings are used, the daily weighted average VOC content of all coatings, as applied to the subject coating line as determined by the applicable test methods and procedures specified in section 4 of this rule in units of pounds of VOC per gallon of coating solids as applied.

E = Equivalent emission limit in pounds of VOC per gallon of coating solids as applied.

O = Equivalent overall efficiency of the capture system and control device as a percentage.

(d) Any **other** equivalent method ~~which is allowed to be used to determine or achieve compliance with any provision of this article shall~~ **must** be submitted ~~to the U.S. EPA~~ **and approved** as a SIP revision **by U.S. EPA before it can be used to determine or achieve compliance with any provision of this article.**

*This document ~~has been~~ **is** incorporated by reference. ~~and is~~ **Copies 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, Tenth Floor, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 8-1-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2527; errata, 11 IR 2632; filed Sep 23, 1988, 11:59 a.m.: 12 IR 256; filed Jan 16, 1990, 4:00 p.m.: 13 IR 1016; filed Apr 18, 1990, 4:55 p.m.: 13 IR 1676; filed May 9, 1990, 5:00 p.m.: 13 IR 1845; filed May 6, 1991, 4:45 p.m.: 14 IR 1713; filed Aug 21, 1996, 2:00 p.m.: 20 IR 6)*

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 7, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 8-1-2.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Pat Troth, Rule Development section, (317) 233-5681 or (800) 451-6027, press 0, and ask for 3-5681(in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, IN 46206-6015

or call (317) 233-0855. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Management

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #01-392

DIGEST

Amends 345 IAC 8 for the production, transportation, and processing of milk and milk products, including updating matters incorporated by reference. Amends 345 IAC 8-3-2 to add a requirement that Grade A farm bulk milk tanks be equipped with automatic start-up equipment for cooling and agitation. Makes other substantive and technical changes in the law of milk and milk products inspection. Effective 30 days after filing with the secretary of state.

345 IAC 8-2-1.1
345 IAC 8-2-1.5
345 IAC 8-2-1.7
345 IAC 8-2-1.9
345 IAC 8-2-2
345 IAC 8-2-3
345 IAC 8-2-3.5
345 IAC 8-2-4
345 IAC 8-3-1
345 IAC 8-3-2
345 IAC 8-3-3
345 IAC 8-3-4
345 IAC 8-4-1

SECTION 1. 345 IAC 8-2-1.1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 8-2-1.1 Definitions
Authority: IC 15-2.1-3-19; 15-2.1-23-6
Affected: IC 15-2.1-2-3.6; IC 15-2.1-4; IC 15-2.1-23; IC 16-42

Sec. 1.1. (a) In the interpretation and enforcement of this ~~rule,~~ **article,** unless the context otherwise requires, the definitions in ~~the Pasteurized Milk Ordinance and Dry Milk Ordinance adopted by reference in 345 IAC 8-3-1, the definitions in~~ IC 15-2.1-2, and the following definitions apply:

(1) "Approved grader of raw milk or raw cream" or "approved grader" has the meaning set forth in IC 15-2.1-2-3.6.

(2) "Bacterial counts" means bacterial plate counts, direct microscopic counts, and plate loop counts that, whenever mentioned in dairy product standards of identity, are made according to the methods outlined in the current edition of "Standard Methods for the Examination of Dairy Products", published by the American Public Health Association, and the current edition of Official Methods of Analysis of the Association of Official Analytical Chemists, or such methods that are approved by the board.

(3) "Butter" means the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than eighty percent (80%) by weight of milk fat, all tolerances having been allowed for.

(4) "Buttermilk" means a fluid product resulting from the manufacture of butter from milk or cream. It contains not less than eight and one-fourth percent (8¼%) of milk solids not fat.

~~(4)~~ **(5)** "Buyer of raw milk" means any milk producer marketing organization, milk plant, receiving station, transfer station, or bulk hauler that takes delivery of raw milk or raw cream and manages the sale of the raw milk or raw cream.

~~(5)~~ **(6)** "Cheese" means natural cheeses, processed cheeses, cheese foods, cheese spreads, and related foods described in the matters incorporated by reference in 345 IAC 8-3-1(e).

(7) "Concentrated milk" means fluid product that is unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from the milk, which, when combined with potable water in accordance with instructions printed on the container, results in a product conforming with the milkfat and the milk solids not fat levels of milk defined in this rule.

(8) "Concentrated milk products" means homogenized concentrated milk, concentrated nonfat milk, concentrated reduced fat or low fat milk, and similar concentrated products made from concentrated milk or concentrate nonfat milk, and which, when combined with potable water in accordance with instructions printed on the container, conform with the definitions of the corresponding milk products in this section.

(9) "Cottage cheese" means the product defined in 21 CFR 133.128.

(10) "Dry curd cottage cheese" means the product defined in 21 CFR 133.129.

(11) "Eggnog or boiled custard" means the product defined in 21 CFR 131.170.

~~(6)~~ **(12)** "Farm bulk tank" or "bulk tank" means the refrigerated tank located on a dairy farm in which raw milk is stored prior to collection by a milk hauler.

(13) "Food allergens" means proteins in foods that are capable of inducing an allergic reaction or response in some individuals. There is scientific consensus that the following foods account for more than ninety percent (90%) of all food allergies:

(A) Peanuts.
(B) Soybeans.
(C) Milk.
(D) Eggs.
(E) Fish.
(F) Crustacea.
(G) Tree nuts.
(H) Wheat.

~~(7)~~ **(14)** "Frozen desserts" means ice cream, frozen custard, ice milk, goat's milk ice cream, sherbets, mellorine, and related foods described in the matters incorporated by reference in 345 IAC 8-3-1(g).

(15) "Frozen milk concentrate" means a frozen milk product with a composition of milkfat and milk solids that are not fat in such proportions that when a given volume of concentrate is mixed with a given volume of water the reconstituted product conforms to the milkfat and the milk solids not fat requirements of whole milk.

(16) "Goat milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one (1) or more healthy goats.

(17) "Grade A dry milk and whey products" means products that have been:

(A) produced for use in Grade A pasteurized or aseptically processed milk products; and

(B) manufactured under the provisions of the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey–Supplement I to the Grade A Pasteurized Milk Ordinance" incorporated by reference in 345 IAC 8-3.

~~(8)~~ **(18)** "Grade A milk plant" means any place, premises, or establishment where Grade A milk products are collected, handled, processed, stored, pasteurized, bottled, prepared, or stored for distribution.

~~(9)~~ **(19)** "Grade A producer" means a milk producer that is producing and selling Grade A raw milk under a Grade A permit issued by the board.

~~(10)~~ **(20)** "Grade A raw milk" means milk ~~which~~ **that** has been produced:

(A) for use in Grade A pasteurized milk products; and

(B) under the provisions of the "Grade A Pasteurized Milk Ordinance–Current Recommendations of the United States Public Health Service".

~~(11)~~ **(21)** "Health authority", "board", or "state board" means the Indiana state board of animal health or its authorized representative.

~~(12)~~ **(22)** "Manufacturing grade milk plant" means any place, premises, or establishment where manufacturing grade milk products are collected, handled, processed, stored, pasteurized, prepared, or stored for distribution.

~~(13)~~ **(23)** "Manufacturing grade milk products" means dairy products not considered Grade A under this rule including cheese, frozen desserts and frozen desserts mixes, and butter.

~~(14)~~ **(24)** "Manufacturing grade producer" means a milk producer that is producing and selling manufacturing grade raw milk.

~~(15)~~ **(25)** "Manufacturing grade raw milk" means raw milk produced on a dairy farm which does not have a currently valid permit issued by the board to sell Grade A raw milk for pasteurization.

~~(16)~~ **(26)** "Milk" ~~has the meaning as set forth in~~ **means** the ~~matters incorporated by reference in 345 IAC 8-3-1(a).~~ **normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows, sheep, or goats.**

~~(17)~~ **(27)** "Milk plant" means a Grade A milk plant or a manufacturing grade milk plant. But, for the purposes of the matters incorporated by reference at 345 IAC 8-3-1(a) and 345 IAC 8-3-1(b), "milk plant" means a Grade A milk plant only.

~~(18) "Milk products", for the purpose of IC 15-2.1-23, has the meaning as set forth in the matters incorporated by reference in 345 IAC 8-3-1(a). But, milk products, for the purpose of IC 15-2.1-22, IC 15-2.1-23-1, and sections 2 through 5 of this rule, has the meaning as set forth in the matters incorporated by reference in 345 IAC 8-3-1(a) but shall include manufacturing grade milk products.~~

(28) "Milk tank truck driver" means a person who transports raw or pasteurized milk products to or from a milk plant, receiving station, or transfer station.

~~(19)~~ **(29)** "New producer" means any milk producer who has not sold raw milk within a period of ninety (90) days prior to the delivery in question.

~~(20)~~ **(30)** "Producer" means milk producer.

~~(21)~~ **(31)** "Producers marketing organization" means a milk producer organization which manages the marketing of a milk producer's raw milk.

(32) "Reconstituted or recombined milk and milk products" means milk or milk products defined in this rule that result from reconstituting or recombining or milk constituents with potable water when appropriate.

(33) "Regulatory agency" means the board.

(34) "Sheep milk" means the normal lacteal secretion practically free of colostrum, obtained by the complete milking of one (1) or more healthy sheep.

~~(22)~~ **(35)** "Standard methods" means the "Standard Methods for the Examination of Dairy Products" published by the American Public Health Association.

~~(23)~~ **(36)** "State veterinarian" means the state veterinarian appointed under IC 15-2.1-4 or an official designee.

~~(24)~~ **(37)** "Uniform Indiana Food, Drug and Cosmetic Act" means the Uniform Food, Drug and Cosmetic Act at IC 16-42-1 through IC 16-42-4.

(b) Where a definition in a matter incorporated by reference conflicts with a definition in this section, the express provisions of this section shall control. *(Indiana State Board of Animal Health; 345 IAC 8-2-1.1; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3343; errata filed Aug 13, 1998, 1:16 p.m.: 22 IR 125; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

SECTION 2. 345 IAC 8-2-1.5 IS ADDED TO READ AS FOLLOWS:

345 IAC 8-2-1.5 "Milk products" defined

Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-2; IC 15-2.1-23

Sec. 1.5. As used in this article, "milk products" means the following:

(1) Cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, and whipped light cream.

(2) Sour cream, acidified sour cream, and cultured cream.

(3) Half-and-half, sour half-and-half, acidified sour half-and-half, and cultured sour half-and-half.

(4) Reconstituted or recombined milk and milk products.

(5) Concentrated milk and concentrated milk products.

(6) Nonfat (skim) milk and reduced fat or low fat milk.

(7) Frozen milk concentrate.

(8) Eggnog.

(9) Buttermilk.

(10) Cultured milk, cultured reduced fat or low fat milk, and cultured nonfat (skim) milk.

(11) Yogurt, low fat yogurt, and nonfat yogurt.

(12) Acidified milk, acidified reduced fat or low fat milk, and acidified nonfat (skim) milk.

(13) Low-sodium milk, low-sodium reduced fat or low fat milk, and low-sodium nonfat (skim) milk.

(14) Lactose-reduced milk, lactose-reduced reduced fat or low fat milk, and lactose-reduced nonfat (skim) milk.

(15) Aseptically processed and packaged milk and milk products.

(16) Milk.

(17) Milk, reduced fat milk, low fat milk, and nonfat (skim) milk that have added microbial organisms.

(18) Any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification of milk products defined herein.

(19) Dairy foods made by modifying the federally standardized product listed in this section in accordance with 21 CFR 130.10.

(20) Milk and milk products that have been retort processed after packaging or that have been concentrated, condensed, or dried if they are used as an ingredient to produce any milk or milk product defined in this section, or are labeled as Grade A.

(21) Manufacturing grade milk products unless the context indicates Grade A milk products.

(Indiana State Board of Animal Health; 345 IAC 8-2-1.5)

SECTION 3. 345 IAC 8-2-1.7 IS ADDED TO READ AS FOLLOWS:

345 IAC 8-2-1.7 "Pasteurization"; "ultra pasteurization"; "aseptic processing" defined

Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-2; IC 15-2.1-23

Sec. 1.7. (a) As used in this article, "pasteurization" and "pasteurized" means the process of heating every particle of milk or milk product, in properly designed and operated equipment, to a temperature designated in the following tables, and held continuously at or above that temperature for at least the time that corresponds with the temperature in the following tables:

(1) Table 1 as follows:

Temperature	Time
63 degrees Celsius (145 degrees Fahrenheit)	30 minutes
72 degrees Celsius (161 degrees Fahrenheit)	15 seconds

But, if the fat content of the milk product is ten percent (10%) or more, or if it contains added sweeteners, the specified temperature in the preceding table shall be increased by three (3) degrees Celsius (five (5) degrees Fahrenheit).

(2) Table 2 as follows:

Temperature	Time
89 degrees Celsius (191 degrees Fahrenheit)	1 second
90 degrees Celsius (194 degrees Fahrenheit)	0.5 second
94 degrees Celsius (201 degrees Fahrenheit)	.1 second
96 degrees Celsius (204 degrees Fahrenheit)	.05 second
100 degrees Celsius (212 degrees Fahrenheit)	.01 second

(3) Notwithstanding the preceding tables, eggnog shall be heated to at least the following temperature and time specifications:

Temperature	Time
69 degrees Celsius (155 degrees Fahrenheit)	30 minutes
80 degrees Celsius (175 degrees Fahrenheit)	25 seconds
83 degrees Celsius (180 degrees Fahrenheit)	15 seconds

(b) A pasteurization process that is different than those described in subsection (a) may be used if the following requirements are met:

(1) The process has been officially recognized by the United States Food and Drug Administration to be equally effective.

(2) The state veterinarian approves the procedure as being equally effective.

(c) As used in this article, "ultra pasteurized" means dairy products that have been thermally processed at or above two hundred eighty (280) degrees Fahrenheit for at least two (2) seconds, either before or after packaging, so as to extend shelf life under refrigerated conditions.

(d) As used in this article, "aseptic processing" means the filling of a commercially sterilized cooled product into presterilized containers, followed by hermetical sealing with a presterilized closure, in an atmosphere free of microorganisms. Aseptic processing shall be performed in accordance with the requirements 21 CFR 113 and the applicable provisions of the Pasteurized Milk Ordinance incorporated by reference in 345 IAC 8-3. *(Indiana State Board of Animal Health; 345 IAC 8-2-1.7)*

SECTION 4. 345 IAC 8-2-1.9 IS ADDED TO READ AS FOLLOWS:

345 IAC 8-2-1.9 General requirements; permits

Authority: IC 15-2.1-3-19; IC 15-2.1-23-2
Affected: IC 15-2.1-23-3

Sec. 1.9. (a) Milk and milk products must be produced, transported, processed, handled, sampled, examined, graded, labeled, and sold in accordance with IC 15-2.1-23 and this article.

(b) Only Grade A pasteurized, ultra pasteurized, or aseptically processed milk and milk products shall be sold to final consumers, restaurants, or retail establishments. A person may not sell pasteurized milk or milk products that have not been maintained at the temperature set forth in Section 7 of the Pasteurized Milk Ordinance adopted by reference in 345 IAC 8-3.

(c) A person shall obtain a permit from the state veterinarian before operating a dairy farm in Indiana. The state veterinarian shall issue the following dairy farm permits:

(1) A Grade A farm permit shall be issued for farms that meet the standards for a Grade A farm in IC 15-2.1-23 and this article.

(2) A manufacturing grade farm permit shall be issued for farms that do not meet the standards for a Grade A farm but do meet the standards for a manufacturing grade farm in IC 15-2.1-23 and this article.

A person may not hold a Grade A farm permit and a manufacturing grade farm permit for the same operation.

(d) A person shall obtain a permit from the state veterinarian before operating a milk plant in Indiana. The state veterinarian shall issue the following milk plant permits:

(1) A Grade A milk plant permit shall be issued for those operations that meet the standards for a Grade A milk plant in IC 15-2.1-23 and this article.

(2) A manufacturing grade milk plant permit shall be issued for those operations that meet the standards for a manufacturing grade milk plant in IC 15-2.1-23 and this article.

(3) A receiving station permit shall be issued for those operations that meet the standards for a receiving station in IC 15-2.1-23 and this article.

(4) A transfer station permit shall be issued for those operations that meet the standards for a transfer station in IC 15-2.1-23 and this article.

(e) The state veterinarian shall issue the following permits to persons meeting the appropriate requirements in IC 15-2.1-23 and this article:

(1) A milk distributor permit for persons acting as a milk distributor.
(2) A bulk milk hauler/sampler permit to persons acting as a bulk milk hauler/sampler.
(3) Milk tank truck operator for persons operating milk tank trucks.
(4) A permit to operate a milk tank truck cleaning facility.
(5) A permit to manufacture containers for milk or milk products.

(f) All permits issued under this article are subject to the provisions in IC 15-2.1-23-2 and IC 15-2.1-23-3. The state veterinarian may take any action with respect to permits the board is authorized to take under IC 15-2.1-23. *(Indiana State Board of Animal Health; 345 IAC 8-2-1.9)*

SECTION 5. 345 IAC 8-2-2 IS AMENDED TO READ AS FOLLOWS:

345 IAC 8-2-2 Manufactured grade milk products plants; construction; operation; sanitation
Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-23

Sec. 2. (a) ~~Any building used as~~ A **manufacturing grade** milk plant shall meet the requirements ~~of~~ **in** this section. ~~A receiving station or transfer station shall comply with this subsection and subsections (b) through (p), (r), (t), (u), and (w). Where the provisions of the Pasteurized Milk Ordinance (PMO) and Dry Milk Ordinance (DMO) that relate to facility requirements for a plant producing Grade A milk, Grade A milk products, and Grade A dry milk products differ from the requirements of this section, the requirements of the PMO and DMO shall control with respect to those Grade A facilities.~~

(b) The floors of all rooms in which milk or milk products are handled or processed, or in which milk or milk products utensils are washed or sanitized shall be:
(1) constructed of concrete or other equally impervious and easily cleaned material;
(2) smooth;
(3) properly drained;
(4) provided with trapped drains; and
(5) kept clean;
provided that cold storage rooms **and storage rooms for storing dry ingredients or packaging materials** need not ~~necessarily~~ be provided with drains; however, if no drain is provided, they shall be kept dry at all times.

(c) Walls and ceilings of rooms in which milk or milk products are handled or processed, or in which milk or milk products utensils are washed or sanitized shall:
(1) have smooth, washable, and light-colored surfaces; and
(2) be kept clean.

(d) Unless other effective means are provided to prevent the access of flies and other insects, all openings into the outer air shall be effectively screened and doors shall be self-closing. All screen doors to the outer air, if not of the sliding type, shall open outward. All inner doors opening into processing and packaging areas shall be self-closing. All self-closing doors shall be kept closed.

(e) All rooms shall be provided with natural lighting, artificial lighting, or a combination of both that will furnish at least twenty (20) foot-candles of light in all working areas. Ventilation shall be such that excessive condensation on walls, ceilings, containers, and equipment is prevented. Steam from bottle and can washers, sterilizers, and driers shall be conducted through ducts to the outside of the building.

(f) Milk plants must meet the following requirements:
(1) Operations shall be so located and conducted as to prevent any contamination of clean equipment, milk, or milk products.
(2) All means necessary for the elimination of flies and other insects shall be used, and the plant shall be free from flies and insects.
(3) Pasteurized milk or milk products shall not be permitted to come in contact with unpasteurized milk and equipment with which unpasteurized milk or milk products have been in contact unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment.
(4) Rooms in which milk, milk products, cleaned utensils, or containers are handled or stored shall not open directly into living quarters.
(5) A covered and enclosed area complying with this rule relating to floors, walls, ceilings, lighting, and ventilation shall be provided to adequately wash and sanitize milk tank trucks.
(6) The processing rooms of a milk plant shall be used for no other purposes than the processing of milk and milk products and the operations incident thereto. However, the preceding sentence shall not in any way be construed as prohibiting the operation of frozen desserts freezers in any room if the premises otherwise comply with the provisions of this section. Steam boilers shall not be located in the pasteurizing, processing, mixing, freezing, drying, cooling, bottling, packaging, or sterilizing room. Refrigerated rooms shall be free from contaminating odors and be kept clean, sanitary, and in good repair.
(7) Raw milk shall not be strained through woven wire cloth. Pasteurized milk, frozen desserts mix, and frozen desserts shall not be strained or filtered except through a metal strainer constructed of not readily corrodible material other than woven wire.
(8) There shall be no raw milk or raw milk product bypass around the pasteurization holding tube or vat.
(9) Receiving tanks, dump vats, and weigh tanks shall be constructed so as to prevent the entrance of dust, dirt, or other

contamination. All openings into tanks, vats, and mix reservoirs shall be protected by raised edges or otherwise protected to prevent drainage into the opening from the surface of the tank, vat, or mix reservoir. A milk plant must provide condensation-diverting aprons that are as close to the tank, vat, or mix reservoir as possible on all pipes, thermometers, and other equipment extending into the tank unless a watertight joint with the tank is provided.

(g) All vehicles, conveyances, and containers transporting raw milk and those that are clean and empty intended for raw milk shall be tightly enclosed. Milk **products** or empty containers used for milk **products** shall not be hauled in any unclean vehicle and shall not be hauled in vehicles that are also used for hauling livestock, manure, garbage, or coal.

(h) Every milk plant shall provide toilet facilities for employees. Toilet rooms shall not open directly into any room in which milk, frozen desserts mix, frozen desserts, milk products, equipment, or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, kept in good repair, and be well ventilated. In case privies are used, they shall be:

(1) separate from the building;

(2) sanitary; and

(3) located and properly constructed and maintained so that the waste:

(A) is inaccessible to flies; and

(B) does not pollute the surface soil or contaminate any water supply.

(i) The water supply for a milk plant shall:

(1) be adequate, accessible, and under pressure; and

(2) meet the standards of quality for drinking purposes of the Indiana department of environmental management.

(j) A milk plant shall provide convenient handwashing facilities for employees, including warm running water, soap, and sanitary towels. The use of a common towel is prohibited.

(k) All milk ~~or~~ **and** liquid milk products shall be moved from one (1) piece of equipment to another through sanitary milk piping of a type that can be easily cleaned with a brush, through approved clean-in-place sanitary milk piping, or by other means approved by the ~~board.~~ **state veterinarian.**

(l) Multi-use containers and equipment that come into contact with milk or milk products shall be:

(1) constructed to be smooth and easily cleanable; and

(2) kept in good repair.

All surfaces with which milk or milk products come in contact shall be noncorrodible metal or an unbroken vitreous material free from broken seams, breaks, corrosion, and threaded surfaces. Equipment shall be self-draining, easily accessible, and easily disassembled for cleaning.

(m) Wastes from sinks, drains, toilets, or equipment shall be connected with a disposal system or otherwise disposed of in a manner that complies with the rules of the board, the Indiana state department of health, the local health department, and the Indiana department of environmental management. Covered receptacles shall be provided for waste materials, and such waste materials shall be removed and emptied daily from the work rooms.

(n) Requirements for cleaning and bactericidal treatment of containers and equipment shall be as follows:

(1) Every milk plant shall be equipped with equipment that is capable of producing sufficient hot water or steam for cleaning and sanitizing.

(2) Except as provided in section 2.5 of this rule, all milk or milk products equipment shall be disassembled and the parts thoroughly cleaned after it is used, but at least once every twenty-four (24) hours. Storage tanks must be cleaned when emptied, but at least once every seventy-two (72) hours. The equipment must be cleaned using clean hot water containing a dairy cleanser that is safe for use on dairy equipment according to the manufacturer's recommendation. Soap may not be used. Multi-use containers shall be cleaned before refilling.

(3) This section does not prohibit the cleaning of dairy equipment by a clean-in-place method, provided the individual clean-in-place system and method used and the results obtained comply with the 3-A Sanitary Standards and are approved by the board. Cleaned-in-place systems that are welded or otherwise constructed so as to make daily visual inspection impractical shall be equipped with a temperature recording device installed in the return solution line to record the temperature and time during which the line or equipment is exposed to cleaning and sanitizing. Recording devices and charts shall comply and conform with 3-A Sanitary Standards and be approved by the board prior to installation and operation.

(o) All multi-use milk and milk products containers and equipment shall be sanitized with an effective bactericidal process before they are used. After bactericidal treatment, all bottles, cans, and other multi-use milk and milk products containers and equipment shall be stored, while not in use, in such manner as to be protected from contamination. Between bactericidal treatment and usage, and during usage, containers and equipment shall not be handled, used, or operated in such manner as to permit contamination of the milk or milk products.

(p) Single-service containers shall be:

(1) purchased and stored only in sanitary tubes and cartons; and

(2) kept therein in a clean, dry place.

Single-service articles shall be stored in a sanitary manner between the time that they are removed from the original container and used.

(q) All milk and milk products received for pasteurization or processing shall immediately be cooled in approved equipment to forty-five (45) degrees Fahrenheit or less and maintained at that temperature until pasteurized unless they are to be pasteurized within two (2) hours after receipt. All pasteurized milk and milk products shall be immediately cooled in approved equipment to an average temperature of forty-five (45) degrees Fahrenheit or less, except when recognized standard processing practices dictate higher temperatures for cultured products and related byproducts.

(r) A milk plant must use approved mechanical equipment for packaging. No multi-use container shall be filled or refilled until it is empty and has been cleaned and sanitized.

(s) All persons coming in contact with milk, milk products, containers, or equipment shall:

(1) wear clean outer garments;

(2) wear hair nets, facial hair restraints, caps, or other effective hair restraints; and

(3) keep their hands clean;

at all times they are engaged in activity where they come into contact with milk, milk products, containers, or equipment.

(t) Miscellaneous provisions shall be as follows:

(1) Overflow milk or milk products that have become machine contaminated shall not be sold for human food.

(2) Milk products shall not be returned to the manufacturer for resale after the original package has been opened. Milk products that have been returned to the manufacturer after the original package has been opened must be destroyed.

(u) Frozen desserts in the manufacturer's unbroken package shall have a bacterial plate count of not more than thirty thousand (30,000) per gram and a coliform count of not more than ten (10) per gram. The bacterial plate count shall be considered satisfactory when the results of not more than two (2) of the last four (4) consecutive samples taken on separate days exceed thirty thousand (30,000) per gram. The coliform count shall be considered satisfactory when the results of not more than one (1) of four (4) consecutive samples taken upon separate days exceed ten (10) per gram.

(v) Before **milk plants, including** transfer stations **and** receiving stations, ~~and milk plants~~ regulated under this rule are constructed, reconstructed, or extensively altered, construction plans shall be submitted to the board for written approval before work is begun. (*Indiana State Board of Animal Health; HDP 86 Rule 13, Sec 2; filed Apr 26, 1979, 12:00 p.m.: 2 IR 690, eff one hundred twenty (120) days after filing with secretary of state; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3344; errata filed Aug 13, 1998, 1:16 p.m.: 22 IR 126; filed Mar 23, 2000, 4:49 p.m.: 23 IR 1914; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895) NOTE: Transferred from the Indiana State Department of Health (410 IAC 8-13-2) to the Indiana State Board of Animal Health (345 IAC 8-2-2) by P.L.138-1996, SECTION 76, effective July 1, 1996.*

SECTION 6. 345 IAC 8-2-3 IS AMENDED TO READ AS FOLLOWS:

345 IAC 8-2-3 Manufacturing grade dairy farms; construction; operation; sanitation

Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-23

Sec. 3. (a) Manufacturing grade dairy farms must meet the following requirements:

(1) All dairy cattle and goats must comply with IC 15-2.1-23-7 and current board laws relating to the control and eradication of tuberculosis and brucellosis.

(2) Cows, sheep, or goats that show evidence of the secretion of abnormal milk in any quarter shall be milked last or in separate equipment and the milk shall be discarded. Cows, sheep, or goats that have been treated with or that have consumed chemical, medicinal, or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the state veterinarian, may be deleterious to human health shall be milked last or with separate equipment and the milk disposed of as the state veterinarian may direct.

(b) The area where milking is conducted must meet the following requirements:

(1) A separate milking area of adequate size shall be provided.

(2) The milking area shall be provided with the following:

(A) Natural lighting or artificial lighting, or a combination of both to furnish at least ten (10) footcandles of light in work areas.

(B) Ventilation.

(C) Impervious floors and floor gutters.

(3) Floors, walls, and ceilings shall be constructed of a smooth, easily cleanable material that is light-colored or painted a light color and kept clean and in good repair. The outside of any milking equipment located in the milking area shall be kept clean. Surcingles, antikickers, and milk stools shall be kept clean and stored above the floor.

(4) No swine or fowl shall be allowed in the milking area.

(c) Any person who is milking shall have clean hands and clothing. Cows' flanks, udders, and tails shall be clean at time of milking. Udders shall be washed clean, sanitized, and dried immediately prior to milking. All milk shall be strained in the milkhouse unless a straining receptacle, protected from splash, raised above the floor, and provided with a self-closing lid, is provided. Milk being strained or carried to the milkhouse must be protected from contamination.

(d) A milkhouse of adequate size and conveniently located shall be provided for the handling, straining, and cooling of milk, and for the washing, handling, and storing of utensils and

equipment. The milkhouse must meet the following requirements:

(1) A minimum of twenty (20) footcandles of light from natural or artificial lighting, or a combination of both, shall be provided at all work areas.

(2) Ventilation shall be provided to minimize odors and condensation.

(3) Floors shall be impervious and graded to drain.

(4) Walls and ceilings shall be constructed of a smooth, easily cleanable material that is light-colored or painted a light color.

(5) Vats shall be provided for washing and rinsing of utensils and equipment. Hot water shall be available and water must be readily accessible.

(6) The construction of the milkhouse shall be sufficiently tight to prevent the entrance of rodents and flies. Flies shall be kept out of the milkhouse. Outer doors shall be self-closing.

(7) Liquid milkhouse wastes shall be disposed of in a manner that will preclude insect breeding or contamination of surface or underground water.

(8) The milk product contact surfaces of all multi-use containers, equipment, and utensils shall be cleaned after each usage and shall be sanitized before each usage.

(9) Equipment and utensils shall be stored and drained completely so as to prevent contamination.

(10) Strainer pads, sock filters, and similar single-service articles are stored in a clean, tight cabinet or container.

(11) Multi-use milk contact equipment must be made of smooth, nonabsorbent, and nontoxic materials and shall be so constructed and maintained so as to be easily cleaned. Single-service articles shall not be reused.

(e) Only pesticides approved by the board are to be used in the milkhouse. Pesticides not approved for use in the milkhouse shall not be stored in the milkhouse.

(f) Medicinals, antibiotics, and approved pesticides may be kept in the milkhouse only in separate tight cabinets or containers provided exclusively for their use. Pesticides must be stored in separate cabinets from animal drugs. Animal drugs must be properly labeled, and lactating drugs must be segregated from nonlactating drugs. Drugs not approved for use in dairy animals must not be used except in compliance with state and federal law.

(g) The floors, walls, ceilings, and surfaces of all milkhouse equipment and appurtenances shall be clean. The milkhouse shall be used for milking operations only, and only those articles directly related to milkhouse activities shall be permitted in the milkhouse. Trash, animals, and fowl shall be kept out of the milkhouse.

(h) Farms with bulk milk coolers shall provide a suitable hose port opening with a tight self-closing cover. The area under the outside of the hose port shall be surfaced with a material that will prevent soiling of the milk transfer hose.

(i) Manure shall be handled in a manner that controls insect breeding. Manure piles or storage areas shall be inaccessible to cows. Cowyards, free stalls, and loafing areas shall be kept clean. Surroundings shall be neat, clean, and free of conditions that could result in rodent harborages or insect attractants and breeding areas. Dead livestock shall be properly disposed of promptly in accordance with requirements of the board.

(j) The water supply for the milkhouse and for washing and sanitizing of utensils shall be:

(1) properly located, constructed, and operated;

(2) adequate;

(3) easily accessible; and

(4) of a safe, sanitary quality.

(k) Every dairy farm shall be provided with a sanitary toilet conveniently located and accessible to those persons performing the milking operation. The toilet shall be constructed and maintained so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply.

(l) Raw milk from dairy farms that do not have a valid permit from the board to sell Grade A raw milk for pasteurization shall not be stored on such dairy farms in cans for more than forty-eight (48) hours or in a farm bulk tank for more than seventy-two (72) hours. The milk must be cooled to sixty (60) degrees Fahrenheit and maintained at that temperature at the point of origin unless delivered to a milk plant, receiving station, or transfer station within two (2) hours after milking. Auxiliary can milk storage shall not be permitted on dairy farms equipped for bulk milk cooling and storage.

(m) Manufacturing grade raw milk must undergo the following tests and meet the following requirements:

(1) At least four (4) times in any six (6) month period at irregular intervals, a commingled sample of each producer's milk shall be tested for drug residues. When a producer's milk shows a positive test, he or she shall be excluded from all markets immediately and shall not be reinstated until a subsequent test of the producer's milk is negative for drug residues.

(2) Bacteriological, **somatic cell, and drug residue** standards shall be as follows:

(A) Manufacturing grade milk shall ~~be classified in accordance with the values in~~ **meet** the following ~~table:~~ **standards:**

~~Bacterial Estimate Classification~~	~~Standard Plate Count, Direct Microscopic, or Plate Loop Count~~
~~Acceptable~~	~~Not over 1,000,000~~

(i) The bacterial estimate classification shall be "acceptable".

(ii) The bacteria count using the standard plate count, direct microscopic count, or plate loop count methods shall be not more than one million (1,000,000) bacteria per milliliter.

(iii) The somatic cell count shall be not more than one million (1,000,000) cells per milliliter.

(iv) The milk shall not contain drug residues.

(B) Milk not meeting the ~~acceptable standard~~ **standards** in clause (A) shall be designated as undergrade. Undergrade milk may not be sold for human consumption or processing into products for human consumption.

(C) After a producer's milk sample is designated undergrade the following shall apply:

(i) The producer of milk designated undergrade, shall be notified immediately by the buyer.

(ii) Additional samples of the producer's milk shall be tested and classified by the buyer at least weekly with the buyer immediately notifying the producer of the results.

(iii) A buyer may continue to accept milk from a producer whose milk has been designated undergrade as long as the testing requirements set forth in this clause are complied with, and all undergrade milk is excluded from market.

(3) Plants receiving manufacturing grade milk shall run a direct microscopic somatic cell count, or other approved test, for the detection of abnormal milk four (4) times in any six month period. Confirmatory tests by means of the direct microscopic cell count or the electronic method shall be performed as necessary. Warning letters of excessive somatic cell counts shall be sent to a producer when a test shows somatic cell counts in excess of the legal limit.

(4) After running a screening test outlined in subdivision (3), a confirmatory test must be conducted on any sample with a count exceeding one million (1,000,000) per milliliter. Whenever the somatic cell count indicates the presence of more than one million (1,000,000) per milliliter, the following procedure shall be applied:

(A) A notice shall be sent to the producer notifying him or her of the excessive somatic cell count.

(B) Whenever two (2) of the last four (4) consecutive somatic cell counts exceed one million (1,000,000) per milliliter, a warning notice shall be sent to the producer. The notice shall remain in effect as long as two (2) of the last four (4) consecutive samples exceed one million (1,000,000) per milliliter. In addition to the written notice an inspection shall be made of the farm facility by a representative of the buyer. A check sample shall be taken after a lapse of three (3) days and within fourteen (14) days of the inspection. If this sample also indicates a high somatic cell count, that milk shall be excluded from the market.

All milk quality tests shall be made in accordance with methods described in the latest edition of "Standard Methods for the Examination of Dairy Products". Samples shall be analyzed at a laboratory approved by the ~~board.~~ **state veterinarian.**

(5) An examination shall be made on the first shipment of milk from producers shipping milk to a plant for the first time, or from a producer who has not shipped milk for a period of ninety (90) days. The milk shall meet all quality standards defined by this rule. Thereafter, the milk shall be tested in accordance with the procedure established for regular shippers.

(6) The milk of a producer which has been excluded due to failure to meet quality standards shall not be accepted by another plant until quality standards are met. The buyer of raw milk shall report to the board, by telephone, the producer(s) excluded or reinstated.

(n) Before milkhouses, milking barns, stables, or parlors regulated under this rule are constructed or extensively altered, construction plans shall be submitted to the board for written approval before work is begun. *(Indiana State Board of Animal Health; HDP 86 Rule 13, Sec 3; filed Apr 26, 1979, 12:00 p.m.: 2 IR 693, eff one hundred twenty (120) days after filing with secretary of state; filed Jan 29, 1986, 3:10 p.m.: 9 IR 1315; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3347; errata filed Aug 13, 1998, 1:13 p.m.: 22 IR 125; errata filed Aug 13, 1998, 1:16 p.m.: 22 IR 126; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895) NOTE: Transferred from the Indiana State Department of Health (410 IAC 8-13-3) to the Indiana State Board of Animal Health (345 IAC 8-2-3) by P.L.138-1996, SECTION 76, effective July 1, 1996.*

SECTION 7. 345 IAC 8-2-3.5 IS ADDED TO READ AS FOLLOWS:

345 IAC 8-2-3.5 Milk transportation

Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-23

Sec. 3.5. (a) Raw milk that is picked up from a farm for delivery to a milk plant shall be collected at the farm only by a person holding a valid bulk milk hauler/sampler permit issued by the state veterinarian. Bulk milk hauler/samplers shall collect milk at dairy farms using the procedures set forth in IC 15-2.1-23, this rule, and the Pasteurized Milk Ordinance (PMO) incorporated by reference 345 IAC 8-3. The state veterinarian may evaluate the equipment and procedures used by a bulk milk hauler/sampler to determine compliance.

(b) Bulk milk hauler/samplers shall attend a training session approved by the state veterinarian as a condition of obtaining a bulk milk hauler/sampler permit. The state veterinarian may issue a conditional bulk milk hauler/sampler permit to an applicant that meets all of the other requirements for obtaining a permit but has not attended an approved training session. The conditional permit may be conditioned on the applicant attending the next available approved training session. The state veterinarian may require additional training to renew a license or

to keep a license if a licensee violates the provisions of IC 15-2.1-23 or this article.

(c) Milk plants may accept raw milk from dairy farms only if it is collected by a permitted bulk milk hauler/sampler. After collection from a dairy farm, milk may be transported by a person holding a valid milk tank truck operator permit or a bulk milk hauler/sampler permit issued by the state veterinarian.

(d) Bulk shipments of milk shall be in milk tank trucks that have been inspected by board personnel and meet the standards for design, construction, maintenance, and operation of milk tank trucks in IC 15-2.1-23 and this article, including Appendix B of the PMO incorporated by reference in 345 IAC 8-3. Milk tank trucks that have been inspected as a part of another state's milk inspection program and hold a current valid permit from that state do not need an Indiana permit. *(Indiana State Board of Animal Health; 345 IAC 8-2-3.5)*

SECTION 8. 345 IAC 8-2-4 IS AMENDED TO READ AS FOLLOWS:

345 IAC 8-2-4 Bulk milk collection; pick-up tankers; samples

Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-23-4

Sec. 4. (a) Every bulk milk pickup tanker used to collect raw milk on a bulk milk route shall be of sanitary design and construction. The owner of a tank truck shall be responsible for maintaining it and its milk contact equipment in good repair. The bulk milk pickup tanker owner is responsible for making certain the truck and equipment have been cleaned and sanitized at least once every twenty-four (24) hours in a manner and at a location approved by the board. A cleaning and sanitizing tag approved by the board shall be completed and affixed in the rear compartment of the bulk milk pickup tanker each day after cleaning and sanitizing. The bulk milk pickup tanker and its milk contact equipment shall be protected from contamination after being cleaned and sanitized.

(b) Milk in a bulk milk pickup tanker shall be maintained at a temperature of forty-five (45) degrees Fahrenheit or less from the time of collection until delivered to a milk plant, receiving station, or transfer station. If the milk being delivered is manufacturing grade raw milk, the raw milk shall be maintained at a temperature of sixty (60) degrees Fahrenheit or less from the time of collection until delivered to a manufacturing grade milk plant, receiving station, or transfer station.

(c) Tank trucks used to transport milk shall not be used to transport other products unless they have been thoroughly washed and sanitized after having been used to transport such other products. Only products fit for human consumption are authorized to be stored or transported in tank trucks used to transport milk or milk products.

(d) The name and address of the owner of a bulk milk pickup tanker shall be legibly marked on both sides or on the rear of the vehicle. The name of the owner shall be in letters not less than three (3) inches in height provided that markings in use prior to March 1, 1998, may be the same height as the address, and the address shall be in letters not less than one and one-half (1½) inches in height.

(e) Every bulk milk pickup tanker used to collect raw milk on a bulk milk route shall be equipped with the following:

(1) A sample dipper or other sampling device of sanitary construction approved by the board.

(2) Sampling devices protected from contamination.

(3) A sample carrying case constructed of such material and in such a way as to maintain producer raw milk samples at a temperature of thirty-two (32) to forty (40) degrees Fahrenheit from the time such samples are collected until they are delivered to the milk plant, receiving station, or transfer station.

(4) A sample rack approved by the board and of sufficient size to hold at least one (1) sample of raw milk in an upright position from each bulk milk tank of each milk producer represented on the load of raw milk being transported to a milk plant, receiving station, or transfer station, plus one (1) sample to be used for temperature determination.

(f) Each milk hauler shall be equipped with an accurate pocket-type thermometer with an unbreakable stem when collecting milk from dairy farms and shall observe the following sanitary practices in collecting milk:

(1) The hauler's hands and outer clothing shall be clean during all pick-up operations.

(2) The milk shall be smelled through the port opening in the cover of the bulk tank for off-odors prior to raising the lid for a visual examination of the raw milk.

(3) The hauler must visually examine the raw milk in the bulk tank. Milk that is visibly unfit for human consumption in accordance with the provisions of the Uniform Indiana Food, Drug, and Cosmetic Act shall be rejected and not collected. The lid shall be closed immediately after making the visual examination whenever possible.

(4) The milk transfer hose used to withdraw raw milk from the farm bulk tank shall enter the milkhouse only through the port hole provided for that purpose.

(5) Prior to connecting the transfer hose to the outlet port of the farm bulk tank, the outlet port shall be sanitized. If milk has leaked past the core of the outlet valve of the farm bulk tank, the outlet port of the valve shall be washed and sanitized prior to withdrawing the milk.

(6) When the cap from the end of the transfer hose is being removed, it shall be handled in a sanitary manner and stored so as to prevent it from being contaminated while milk is

being pumped from the farm bulk tank into the bulk milk pickup tanker.
(7) After the milk has been removed from the farm bulk tank, the bottom of the tank shall be observed for sediment and milk abnormalities.
(8) Conditions of abnormality or sediment shall be noted on the producer's copy of the weight ticket.
(9) The date and time of milk collection, the temperature of the raw milk, and the milk hauler's signature and permit number shall be legibly entered on the weight ticket.
(10) After the milk has been removed from the farm bulk tank, the transfer hose shall be removed and recapped before the farm bulk tank is rinsed with water. After recapping, the transfer hose shall be rinsed free of exterior soil.
(11) A milk hauler shall not collect milk from any dairy farm for delivery to a milk plant, receiving station, or transfer station for use in Grade A milk or milk products unless the farm holds a valid permit from the board authorizing the sale of Grade A raw milk for pasteurization.
(12) At the time of collection of milk from each dairy farm, the milk hauler shall collect only that raw milk that has been stored continuously in the farm bulk tank from the time of milking until the time of milk collection and shall collect the entire volume of milk being stored in the farm bulk tank at the time of collection. All precautions shall be taken to prevent the entrance of flies into the milkhouse.
(13) At least once each month, the milk hauler shall check the accuracy of the thermometer on each of his milk producer's bulk milk tank against his pocket-type thermometer. The temperature obtained from both thermometers shall be entered on the weight ticket. If there is a difference between the readings on the two (2) thermometers, the reading of the bulk milk hauler's thermometer shall be reported as the official temperature on that day and on each succeeding day until the thermometer on the bulk milk tank is adjusted or repaired to be accurate.

(g) Every time a milk hauler collects milk from a dairy farm, he or she shall collect a sample of milk from each farm bulk tank after the milk has been thoroughly agitated and before opening the outlet valve. Such sample shall be collected in the following manner:
(1) If a sample dipper is used, it shall be clean and transported between farms on the bulk milk route in a sanitizing solution equivalent to one hundred (100) parts per million chlorine. Other sampling devices shall be kept free of contamination.
(2) After removal from the sanitizing solution, all of the sanitizing solution shall be drained from the sample dipper.
(3) The sample dipper shall then be rinsed twice in the milk in the farm bulk tank and then drained.
(4) A sample of not less than four (4) fluid ounces in volume or other sample sizes approved by the state board shall then be collected through the port opening in the cover of the bulk tank and placed in a sterile container.
(5) The sample container shall then be closed and immediately placed in melting ice water in the sample carrying case on the bulk milk pickup tanker in such a way that the top of the sample container is not submerged in the refrigerant. Producer raw milk samples shall be maintained at a temperature of thirty-two (32) to forty (40) degrees Fahrenheit until delivered to the milk plant, receiving station, or transfer station. Such samples shall not be frozen.
(6) Each sample container shall be legibly marked with the date the sample was collected, the temperature of the milk in the farm bulk tank, the route and patron number of the milk producer, and, in the case of Grade A milk producers, the Indiana Grade A permit number of the dairy farm from which the sample was collected.
(7) Prior to or at the time of collecting raw milk from the first milk producer on the bulk milk route, the milk hauler shall collect a sample of milk for temperature determination. Such sample shall be refrigerated in the sample carrying case on the bulk milk pickup tanker until it arrives at the milk plant, receiving station, or transfer station.
(8) Sampling equipment shall be rinsed in clean water immediately after each usage.
(9) If one (1) pint samples are used to conduct sediment tests of each milk producer's raw milk, the milk hauler shall collect and legibly identify such full one (1) pint samples as requested by the milk plant, receiving station, transfer station, or board. A sample dipper of not less than one-half (½) pint capacity, which shall be cleaned and sanitized prior to the collection of each sample, shall be used. Such one (1) pint samples shall be collected and transported in such a manner as to not interfere with the proper conduct of sediment tests.

(h) All manufacturing grade milk bulk tank raw milk shall be collected at least every seventy-two (72) hours, and all manufacturing grade raw milk shipped in cans shall be collected at least every forty-eight (48) hours. These milk collection frequencies may be waived in the case of emergencies. All Grade A bulk tank raw milk shall be collected at least every forty-eight (48) hours, and all Grade A milk shipped in cans shall be collected every twenty-four (24) hours, except in the case of emergencies.

(i) It shall be the responsibility of the milk plant, receiving station, or transfer station to provide competent personnel to receive producer raw milk samples from each bulk milk pickup tanker, to ascertain and record the temperature of the temperature sample, and to see that the samples are properly identified and stored prior to delivery to the laboratory. The milk plant, receiving station, or transfer station shall also be responsible for providing facilities for the storage of producer raw milk samples at a temperature of thirty-two (32) to forty (40) degrees Fahrenheit at which temperature they shall be maintained until they are received by an official or officially designated laboratory for analysis. Producer raw milk samples shall not be frozen, and samples to be used for bacteriological determinations shall not

be transferred to another sample container after they have been collected by the milk hauler except under conditions and by personnel approved by the board. Required laboratory analysis should begin within forty-eight (48) hours after the time of sample collection. Results of such analysis on the milk of Grade A producers shall be submitted to the board on forms and in a manner approved by the board. Milk producers and milk haulers shall not receive notice of which samples are to be used for bacteriological analysis.

(j) Any truck transporting raw, heat-treated, or pasteurized milk and milk products to a milk plant from another milk plant, receiving station, or transfer station must meet the identification and shipping requirements in IC 15-2.1-23-4(c). A shipping manifest must also indicate the bulk tank unit(s) or plant identification number. *(Indiana State Board of Animal Health; HDP 86 Rule 13, Sec 4; filed Apr 26, 1979, 12:00 p.m.: 2 IR 696, eff one hundred twenty (120) days after filing with secretary of state; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3349; errata filed Aug 13, 1998, 1:13 p.m.: 22 IR 125; errata filed Aug 13, 1998, 1:16 p.m.: 22 IR 126; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895) NOTE: Transferred from the Indiana State Department of Health (410 IAC 8-13-4) to the Indiana State Board of Animal Health (345 IAC 8-2-4) by P.L.138-1996, SECTION 76, effective July 1, 1996.*

SECTION 9. 345 IAC 8-3-1 IS AMENDED TO READ AS FOLLOWS:

Rule 3. Standards for Milk and Milk Products and Grade A Standards

345 IAC 8-3-1 Incorporation by reference; standards

Authority: IC 15-2.1-3-18; IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-2; IC 15-2.1-23

Sec. 1. (a) ~~Part H of~~ The Grade A Pasteurized Milk Ordinance, **United States Department of Health and Human Services,** Public Health Service, Food and Drug Administration, Publication No. 229 ~~(1995~~ **(2001** revision), referred to as the PMO, including all footnoted language regarding cottage cheese and the appendixes, is hereby incorporated by reference as a rule of the board for regulation of the production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all Grade A milk and milk products ~~within Indiana~~ **in the state** provided, however, the following parts of the PMO are not incorporated:

(1) Section (16) on penalties.
(2) Section (17) on repeal and date of effect.
(3) Appendix K.

(b) Part II of the Grade A Condensed and Dry Milk Products and Condensed and Dry Whey–Supplement I to the Grade A Pasteurized Milk Ordinance (1995 version), known as the dry milk ordinance or DMO, including the appendixes, is hereby incorporated by reference as a rule of the board for the regulation of the production, manufacture, packaging, labeling, and sale of all Grade A condensed milk and Grade A dry milk products and Grade A condensed whey and Grade A dry whey for use in the preparation of Grade A milk products, provided however, the following parts of the DMO are not incorporated:

(1) Section (13) on penalties.
(2) Section (14) on repeal and date of effect.
(3) Appendix ~~I~~ **P, "Performance-Based Dairy Farm Inspection System".**

(c) References in the PMO and the DMO to the regulatory agency shall mean and refer to the board.

(d) The board adopts by reference the general provisions relating to food standards set forth by the United States Food and Drug Administration in 21 CFR 130.8, 21 CFR 130.9, 21 CFR 130.10, and 21 CFR 130.11, in effect on April 1, ~~1997.~~ **2001.**

(e) The board adopts by reference the definitions and standards of identity for milk and milk products set forth by the United States Food and Drug Administration in 21 ~~U.S.C.~~ **CFR** 131.3 et seq., titled "Part 131–Milk and Cream", in effect on April 1, ~~1997.~~ **2001.** Milk and milk products must conform to these standards.

(f) The board adopts by reference the definitions and standards of identity for cheeses and related cheese products set forth by the United States Food and Drug Administration in 21 ~~U.S.C.~~ **CFR** 133.3 et seq., titled "Part 133–Cheeses and Related Cheese Products", in effect on April 1, ~~1997.~~ **2001.** Cheese and cheese products must conform to these standards.

(g) The board adopts by reference the definitions and standards of identity for frozen desserts set forth by the United States Food and Drug Administration in 21 ~~U.S.C.~~ **CFR** 135.3 et seq., titled "Part 135–Frozen Desserts", in effect on April 1, ~~1997.~~ **2001.** Frozen desserts must conform to these standards.

(h) The board adopts by reference the current good manufacturing practices for manufacturing, packing, or holding human food set forth by the United States Food and Drug Administration in 21 CFR 110 and 21 CFR 113, in effect on April 1, 2001. The criteria and definitions in 21 CFR 110, 21 CFR 113, and this rule shall apply in determining whether a food is adulterated under IC 15-2.1-23 in that the food has been manufactured under such conditions that it is unfit for human food or the food has been prepared, packed, or held under insanitary conditions under which the product may become contaminated with filth or under which the product may have been made injurious to health.

(i) The board adopts by reference as a rule of the board the food labeling requirements set forth by the United States Food and Drug Administration in 21 CFR 101, but not including Subpart C, in effect on June 1, 2001.

~~(h)~~ **(j)** The board incorporates by reference into this rule the definitions set forth in IC 15-2.1-2 and the matters set forth in ~~IC 15-2.1-22 and~~ IC 15-2.1-23.

~~(i)~~ **(k)** Where the matters incorporated by reference in this section conflict with provisions of this article, **IC 15-2.1-2, or** IC 15-2.1-23, ~~or IC 15-2.1-24,~~ the express provisions of this article and the Indiana Code shall control.

~~(j)~~ **(l)** Incorporated documents are available for public inspection at the board. *(Indiana State Board of Animal Health; 345 IAC 8-3-1; emergency rule filed Jan 27, 1994, 5:00 p.m.: 17 IR 1223, eff Feb 1, 1994; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3354; errata filed Aug 13, 1998, 1:16 p.m.: 22 IR 126; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895) NOTE: Transferred from the Indiana State Department of Health (410 IAC 8-14-8.1) to the Indiana State Board of Animal Health (345 IAC 8-3-1) by P.L.138-1996, SECTION 76, effective July 1, 1996.*

SECTION 10. 345 IAC 8-3-2 IS AMENDED TO READ AS FOLLOWS:

345 IAC 8-3-2 Grade A milk production and storage
Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-23-7

Sec. 2. The following are required to hold a Grade A dairy farm permit:

(1) Milk that is produced or processed must meet the chemical, bacteriological, and temperature standards in Section 7 and Table 1 of the PMO adopted by reference in section 1 of this rule.

(2) The farm must meet the sanitation, construction, operation, and other standards in the provisions of the Pasteurized Milk Ordinance adopted by reference in section 1 of this rule, including the following:

(A) Section 7, "Standards for Grade "A" Raw Milk For Pasteurization, Ultra-Pasteurization, or Aseptic Processing", Items 1r through 19r.

(B) Appendix C, "Dairy Farm Construction Standards; Milk Production".

(C) Appendix D, "Standards for Water Sources".

(D) Appendix F, "Sanitization".

(3) The animals on the farm must meet the animal health requirements in IC 15-2.1-23-7 and Section 8 of the Pasteurized Milk Ordinance adopted by reference in section 1 of this rule.

(4) The "administrative procedures" set forth in the Pasteurized Milk Ordinance adopted by reference in section 1 of this rule shall be followed in implementing the standards required in this section.

(5) Before milkhouses, milking barns, stables, or parlors regulated under this rule are constructed or extensively altered, construction plans shall be submitted to the state veterinarian for written approval before work is begun.

(6) Raw milk for pasteurization shall not be stored:

(A) on a dairy farm for more than forty-eight (48) hours; and ~~shall not be stored~~

(B) outside a farm bulk milk tank.

(7) Agitation and refrigeration of all farm bulk milk cooling and holding tanks shall be automatically controlled with automatic controls that will maintain mixed milk temperature between thirty-two (32) degrees Fahrenheit and forty-five (45) degrees Fahrenheit and an interval timer that will activate agitation of the milk for a minimum period of two (2) minutes in every sixty (60) minute interval. Persons holding Grade A permits issued under this article on January 1, 2003, must meet the automatic refrigeration and interval timer requirements in this subsection not later than January 1, 2005. But, all plans for new construction or extensive alteration that are submitted for approval under this section shall meet the refrigeration and interval timer requirements in this subsection. All applicants for a new Grade A permit shall meet the refrigeration and interval timer requirements of this subsection as a condition of receiving the permit.

(*Indiana State Board of Animal Health; 345 IAC 8-3-2; emergency rule filed Jan 27, 1994, 5:00 p.m.: 17 IR 1224, eff Feb 1, 1994; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3355; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895) NOTE: Transferred from the Indiana State Department of Health (410 IAC 8-14-8.2) to the Indiana State Board of Animal Health (345 IAC 8-3-2) by P.L.138-1996, SECTION 76, effective July 1, 1996.*

SECTION 11. 345 IAC 8-3-3 IS ADDED TO READ AS FOLLOWS:

345 IAC 8-3-3 Grade A Milk plants standards
Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-23

Sec. 3. A person operating a Grade A milk plant shall meet the following requirements:

(1) Milk that is processed must meet the chemical, bacteriological, and temperature standards in Section 7 and Table 1 of the Pasteurized Milk Ordinance adopted by reference in section 1 of this rule. Milk from manufacturing grade dairy farms may not be used.

(2) The milk plant must meet the sanitation, construction, operation, and other standards set forth in the Pasteurized Milk Ordinance adopted by reference in section 1 of this rule, including the following:

(A) Section 6, "The Examination of Milk and Milk Products".

(B) Section 7, "Standards for Grade "A" Pasteurized, Ultra-Pasteurized and Aseptically Processed Milk and Milk Products", Items 1p through 19p.

(C) The personnel health standards and procedures set forth in Sections 13 and 14.

(D) Appendix D, "Standards for Water Sources".

(E) Appendix F, "Sanitization".
(F) Appendix G, "Chemical and Bacteriological Tests".
(G) Appendix H, "Pasteurization Equipment and Procedures".
(H) Appendix I, "Pasteurization Equipment and Controls–Tests".
(I) If a plant fabricates containers, Appendix J, "Standards for the Fabrication of Single-Service Containers and Closures for Milk and Milk Products".
(J) Appendix N, "Drug Residue Testing and Farm Surveillance".
(K) Appendix O, "Vitamin Fortification of Fluid Milk Products".

(3) Milk for pasteurization, ultra-pasteurization, or aseptic processing may be obtained only from dairy farms that hold a valid Grade A dairy farm permit issued under this article, or in the case of milk from outside the state, is a source that is listed on the National Conference of Interstate Milk Shipments interstate milk shippers list as meeting standards equal to or greater than the Grade A standards in the Pasteurized Milk Ordinance incorporated by reference in section 1 of this rule.

(4) The "administrative procedures" set forth in the Pasteurized Milk Ordinance adopted by reference in section 1 of this rule shall be used in implementing the standards required in this section.

(Indiana State Board of Animal Health; 345 IAC 8-3-3)

SECTION 12. 345 IAC 8-3-4 IS ADDED TO READ AS FOLLOWS:

345 IAC 8-3-4 Labeling
Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-23

Sec. 4. (a) All packages and containers enclosing milk or milk products shall be labeled in accordance with the applicable requirements of the following:

(1) IC 15-2.1-23 and this article.
(2) The federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).
(3) 21 CFR, Chapter I, Subchapter B.

(b) The following shall be marked as set forth in Section 4 of the Pasteurized Milk Ordinance adopted by reference in section 1 of this rule:

(1) Bottles, containers, and packages enclosing milk or milk products.
(2) Milk tank trucks.
(3) Storage tanks.
(4) Cans of raw milk from individual dairy farms.

(c) Labels shall not contain any misleading marks, words, or endorsements. Super grade designations are misleading and are prohibited. Super grade designations are words or symbols that give the consumer the impression that such a grade is significantly safer than "Grade A". Super grade designations include, without limitation, the following terms:

(1) Grade AA Pasteurized.
(2) Selected Grade A Pasteurized.
(3) Special Grade A Pasteurized.

Descriptive labeling terms must not be used in conjunction with the Grade A designation or name of the milk or milk product and must not be false or misleading. *(Indiana State Board of Animal Health; 345 IAC 8-3-4)*

SECTION 13. 345 IAC 8-4-1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 8-4-1 Drug residues
Authority: IC 15-2.1-3-19; IC 15-2.1-23-6
Affected: IC 15-2.1-2-2.3; IC 15-2.1-23-6.5; IC 15-2.1-23-17

Sec. 1. (a) Milk shall be screened for **the presence of** drug ~~residue violations~~ **residues** as follows:

(1) ~~Except as provided in subdivision (2),~~ **Any milk plant that accepts raw** milk shall ~~be screened for drug residues pursuant to Appendix N of the Pasteurized Milk Ordinance (345 IAC 8-3-1).~~ **test each bulk milk pick-up tanker for beta lactam drug residues. Each bulk milk pick-up tanker shall be sampled after the last producer has been picked up and before any additional commingling of milk using a representative sample from the truck. Samples shall be tested using a test that has been approved by the United States Food and Drug Administration for screening milk for drug residues. Samples shall be tested in a laboratory that is certified by the state veterinarian by an analyst that is certified by the state veterinarian. When a drug residue test is positive, another test shall be run to confirm the positive. When a drug residue test is confirmed positive, samples collected from each producer on the load shall be tested to determine the farm of origin.**

(2) The state veterinarian may implement a testing program to test milk from ~~manufacturing grade dairy farms shall be tested~~ **bulk milk pick-up tankers** for **other** drug residues. ~~pursuant to 345 IAC 8-2-3.~~

(3) The state veterinarian may implement a testing program to test milk from any source for drug residues. Such testing programs may include samples from farm bulk tanks, milk plants, or finished products as part of a monthly quality program or other surveillance program. Samples that test positive for drug residues are subject to the provisions of this section.

(4) Milk plants shall keep records of all drug residue tests that are conducted on bulk milk pick-up tankers and farm bulk milk tanks and their results. The records shall be kept for not less than six (6) months.

(b) All **tests completed under this section must meet the following requirements:**

(1) The test must be a test approved by the United States Food and Drug Administration for screening milk samples for drug residues.

(2) The test must be conducted by an analyst approved by the state veterinarian.

(3) The test must be conducted in a laboratory approved by the state veterinarian.

(4) A test that is being run to confirm a positive drug residue test result must be the same test that was used to obtain the initial positive drug residue result. But, a person may use a different confirmatory test if the state veterinarian approves the use of that confirmatory test. The state veterinarian may approve the use of a confirmatory test that is different from a prior test after evaluating the circumstances surrounding the request and determining that the use of the proposed confirmatory test is consistent with the purposes of this section.

(c) Milk tests positive for drug residues if a test meeting the requirements in subsection (b) indicates the presence of drug residues in the milk at any level.

(d) Whenever milk tests positive for drug residues and is confirmed the following apply:

(1) The milk that tests positive for drug residues **is adulterated under IC 15-2.1-2-2.3 and** must be disposed of in a manner that removes it from the human and animal food chain or that acceptably reconditions the milk under United States Health and Human Services–Food and Drug Administration compliance policy guidelines. ~~In all cases of drug residue violations, a producer may not resume shipping milk until~~

(2) The state veterinarian shall determine the origin of the contaminated milk. Milk from the farm of origin creates an imminent hazard to the public health. The state veterinarian shall suspend the Grade A farm permit or manufacturing grade farm permit as the case may be and no milk may be removed from the farm until the permit is reinstated.

(3) When a drug test ~~conducted by a certified laboratory~~ shows the producer's milk is negative for drug residues, ~~and~~ the ~~test results are reported to the office of the~~ state veterinarian **may reinstate the farm permit.**

~~(c)~~ **(e)** All positive drug residue test results must be called into the office of the state veterinarian immediately, and a written report of the test results must be faxed or delivered to the office of the state veterinarian within twenty-four (24) hours of the test. The producer whose milk tested positive must be notified of the positive drug residue test immediately. The company that conducted the test is responsible for the reporting requirements in this subsection.

~~(d)~~ **(f)** A producer whose milk tests positive for drug residues shall pay a fine and participate in drug residue education activities as follows:

(1) The following is imposed on a producer for the first positive test for drug residues within a twelve (12) month period:

(A) The positive producer must pay a fine to the board equal to the result of the following equation:

(DP) (2 days) ($3) - (PR)

However, if the result is less than five dollars ($5), then the fine is five dollars ($5).

(B) The positive producer must, in conjunction with his or her veterinarian and an official of the board, complete the "Milk and Dairy Beef Residue Prevention Protocol" and provide proof of completion to the board, office of the state veterinarian within thirty (30) days of the drug residue violation. Failure to complete the protocol and submit proof of completion within thirty (30) days will result in action to suspend the producer's permit.

(2) The following is imposed for a second positive test for drug residues within a twelve (12) month period:

(A) The positive producer must pay a fine to the board equal to the result of the following equation:

(DP) (4 days) ($3)

However, if the result is less than five dollars ($5), then the fine is five dollars ($5).

(B) The positive producer must, in conjunction with his or her veterinarian and an official of the board, complete the "Milk and Dairy Beef Residue Prevention Protocol" and provide proof of completion to the board, office of the state veterinarian within thirty (30) days of the drug residue violation. Failure to complete the protocol and provide proof of completion will result in action to suspend the producer's permit.

(C) The producer must attend a producer education program or meeting designated by the state veterinarian. The producer is responsible for paying registration and material fees and other costs associated with attending the education program or meeting. The producer must provide proof of attendance to the state veterinarian within ten (10) days of completion of the program or meeting.

(3) The third positive test result for drug residues within a twelve (12) month period shall result in the following:

(A) The board revoking a producer's Grade A permit if the producer has one.

(B) The sanctions for a second offense set forth in subdivision (2) are imposed.

(C) The producer must submit to the state veterinarian a set of written procedures that he or she will follow to prevent future drug residue violations. The procedures must be submitted with the proof of completion required in subdivision (2)(B) and must be specific, practical, and reasonably likely to lessen the possibility of a drug residue violation when followed by the producer.

(D) After a producer's Grade A permit is revoked for a third offense violation under this rule, he or she shall not receive a new Grade A permit for a revocation period of thirty (30) days from the date of the revocation. After the

revocation period, the state veterinarian must issue a conditional Grade A permit to a producer that has applied for a permit if the following requirements are met:

(i) The producer has met all of the requirements of this rule at the time of application.

(ii) The producer meets all other requirements of the board for obtaining a Grade A permit.

The permit will be issued on the condition that all of the requirements of this rule must be completed within the time frames set forth in this rule. A permit issued under this subdivision automatically becomes unconditional after the producer fully complies with all of the provisions of this rule.

(4) For each drug residue violation in a twelve (12) month period in excess of three (3), the producer is subject to the penalties for a third offense in subdivision (3), ~~are imposed~~ but for Grade A producers the revocation period will begin on the date his or her permit is revoked and run for a period equal to the length of the revocation period imposed after the producer's last drug residue violation times two (2). For example, the revocation period for a fourth offense in a twelve (12) month period is sixty (60) days, and for a fifth offense the revocation period is one hundred twenty (120) days.

~~(e)~~ **(g)** The following definitions apply throughout this section:

(1) "DP" or "daily production" means the amount of milk, measured by hundred weight, produced by the positive producer in one (1) day, measured on the day in which the drug residue violation occurred.

(2) "PR" or "producer reimbursement" means an amount assessed against the positive producer to reimburse others for milk contaminated by the positive producer's contaminated milk, not including the value of the positive producer's contaminated milk for which he or she was not paid.

(3) "Revocation period" means the period after a Grade A producer's permit is revoked under this rule that he or she may not apply for a Grade A permit.

~~(f)~~ **(h)** The following shall apply to penalties imposed by this section:

(1) In cases where the positive producer holds a Grade A permit from the board, the provisions in this section shall operate in place of and as an equivalent to the penalties in Part II(B) of Appendix N of the Pasteurized Milk Ordinance.

(2) All monetary penalties must be paid by the producer and must be received by the office of the state veterinarian within sixty (60) days of notice of the drug residue violation.

(3) The state veterinarian may, by special permit, allow a producer that objects to the imposition of a fine to dump two (2) days of milk production on a first offense and four (4) days of milk production on the second or third offense instead of paying a monetary fine where payment of a fine would impose undue hardship on a producer. The state veterinarian may set the conditions under which the milk is to be dumped and may require documentation from the producer showing the circumstances under which the milk was dumped.

(4) ~~The producer reimbursement must not be deducted from the producer's fine on the first offense unless the producer provides to the office of the state veterinarian~~ Proof that ~~the~~ **a** producer reimbursement was in fact ~~paid. Proof that the producer reimbursement was paid~~ **assessed** must be submitted to the office of the state veterinarian within sixty (60) days of notice of the drug residue violation along with any monetary penalty due.

(5) No penalty may exceed one thousand dollars ($1,000) for a first offense or two thousand dollars ($2,000) for a subsequent offense. Civil penalties collected under this section must be deposited in the dairy drug residue abatement fund established under IC 15-2.1-23-17.

~~(g)~~ **(i)** The ~~board will~~ **state veterinarian may** suspend the permit of a producer that does not comply with the requirements of this rule within the designated time periods allowed under this rule **until such time as** the ~~state veterinarian shall assess producers that do not provide proof of producer reimbursement payments, if an option after a first offense, or pay the required penalty within sixty (60) days of notice of the drug residue~~ violation ~~an additional penalty of ten dollars ($10) per day until such time as the required information or money, including any additional penalties imposed under this section,~~ is ~~received in the office of the state veterinarian. The state veterinarian may waive the imposition of additional penalties under this section if the producer can show that the failure to produce the required documentation or money was due to unforeseen circumstances beyond the control of the producer and that imposition of additional penalties would be unreasonable under the circumstances.~~ **remedied.**

~~(h)~~ **(j)** The following are examples that illustrate the calculation of the fine imposed by this rule:

(1) First offense:

(A) total positive truck load CWT: 500

(B) positive producer's CWT on positive tanker (two (2) days' production): 100

(C) producer's daily production CWT: 50

(D) co-op requires producer to pay for other producers' milk that is contaminated at fifteen dollars ($15) per CWT.

Penalty = (DP) (2 days) ($3) - (PR).
= [50 (2) ($3)] - [(500 - 100) ($15)].
= [$300 fine] - [$6,000 reimbursement paid to other producers].

Because the reimbursement to other producers exceeded the fine, no money is payable to the state as long as **proof of** the reimbursement **assessment** is ~~actually paid and proof of the payment is~~ provided to the board.

(2) First offense:

(A) total positive truck load CWT: 500

(B) positive producer's CWT on positive tanker (two (2) days' production): 400

(C) producer's daily production CWT: 200
(D) co-op requires producer to pay for other producers' milk that is contaminated at fifteen dollars ($15) per CWT.
Penalty = (DP) (2 days) ($3) - (PR).
= [200 (2) ($3)] - [(500 - 400) ($15)].
= [$1,200 fine] - [$1,500 reimbursement paid to other producers].
Because the reimbursement to other producers exceeded the fine, no money is payable to the state as long as **proof of** the reimbursement **assessment** is ~~actually paid and proof of the payment is~~ provided to the board.

(3) First offense:
(A) total positive truck load CWT: 500
(B) positive producer's CWT on positive tanker (two (2) days' production): 500
(C) producer's daily production CWT: 250
(D) co-op requires producer to pay for other producers' milk that is contaminated at fifteen dollars ($15) per CWT.
Penalty = (DP) (2 days) ($3) - (PR).
= [250 (2) ($3)] - [(500 - 500) ($15)].
= [$1,500 fine] - [$0 reimbursement paid to other producers].
Because there was no reimbursement to other producers, all of the ~~one thousand five hundred dollar ($1500)~~ fine is payable to the state, **but the fine is limited by this section to one thousand dollars ($1,000).**

(4) First offense:
(A) Positive bulk tank on monthly quality check or otherwise.
(B) Producer's daily production (CWT): 50
Penalty = (DP) (2 days) ($3) - (PR).
= [50 (2) ($3)] - 0.
Because there was no reimbursement to other producers, all of the three hundred dollar ($300) fine is payable to the state.

(5) Second offense:
(A) total positive truck load CWT: 500
(B) positive producer's CWT on positive tanker (two (2) days' production): 100
(C) producer's daily production (CWT): 50
(D) co-op requires producer to pay for other producers' milk that is contaminated at fifteen dollars ($15) per CWT.
Penalty = (DP) (4 days) ($3).
= 50 (4) ($3).
Because this is a second offense, no reimbursement is recognized and all of the six hundred dollar ($600) fine is paid to the state.

(6) Fourth offense:
(A) total positive truck load CWT: 500
(B) positive producer's CWT on positive tanker (two (2) days' production): 100
(C) producer's daily production (CWT): 50
(D) co-op requires producer to pay for other producers' milk that is contaminated at fifteen dollars ($15) per CWT.
Penalty = (DP) (4 days) ($3).
= 50 (4) ($3).
Because this is a fourth offense, no reimbursement is recognized and all of the six hundred dollar ($600) fine is paid to the state. A Grade A producer's permit will be revoked for a period of one hundred twenty (120) days after which time he or she may reapply for a Grade A permit.

(Indiana State Board of Animal Health; 345 IAC 8-4-1; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3355; errata filed Aug 13, 1998, 1:16 p.m.: 22 IR 126; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 2, 2002 at 10:00 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on proposed amendments to rules concerning requirements for the production, transportation, and processing of milk and milk products, updating matters incorporated by reference, and requiring Grade A farm bulk milk tanks be equipped with automatic start-up equipment for cooling and agitation. Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #01-413

DIGEST

Amends 345 IAC 1-3 to impose restrictions on the movement of cervids into Indiana. Amends 345 IAC 2-7 to require cervid owners to register locations housing cervids with the state veterinarian and participate in a chronic wasting disease certification program that includes record keeping, identification, death loss reporting, and perimeter fencing requirements. Amends 345 IAC 2-7 to establish requirements for chronic wasting disease positive, suspect, and exposed herds. Makes other changes in the law of animal disease control. *NOTE: This document was previously printed at 25 IR 1996 and has been revised.* Effective 30 days after filing with the secretary of state.

345 IAC 1-3-30 **345 IAC 2-7-4**
345 IAC 2-7-1 **345 IAC 2-7-5**
345 IAC 2-7-3

SECTION 1. 345 IAC 1-3-30 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-3-30 Chronic wasting disease
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-21-6

Sec. 30. **(a) Chronic wasting disease (CWD) is not known to exist in the state. CWD has been diagnosed in captive and wild cervids in other states and Canadian provinces. CWD presents a health hazard to the animals of the state that could result in substantial damage to the domestic cervid industry in the state and the state's wild cervid population. Preventing the spread of CWD from cervids in other states is the best currently available method for addressing the CWD threat to animals in the state. The state veterinarian shall continue to evaluate the risks associated with CWD and the available methods for protecting animals in the state from CWD. The state veterinarian shall update the board on his findings. In the interim, because of the current CWD threat, the following provisions apply until May 1, 2003:**

(1) Notwithstanding any other provision of this rule, a person may not move a cervid into the state. A person may not move cervid semen or cervid embryos into the state.

(2) Notwithstanding subdivision (1), the following apply:

(A) A person may transport a cervid, cervid semen, and cervid embryos directly through the state without stopping and unloading the animal, semen, or embryos in the state.

(B) Cervid semen and cervid embryos sent out of the state for processing and storage may be brought back into the state if the following conditions are met:

(i) The person must first apply to the state veterinarian for a pre-entry permit to bring the cervid semen or embryos into the state. The state veterinarian may require from the applicant any information that is relevant to evaluating the disease risk associated with the movement. The state veterinarian may require that the application for a permit be in writing and be submitted not less than forty-eight (48) hours prior to the movement date.

(ii) The cervid semen or embryos may not be moved into the state unless the state veterinarian issues a pre-entry permit for the movement.

(iii) The state veterinarian may issue a pre-entry permit to move cervid semen and cervid embryos into the state if the epidemiology as it relates to CWD indicates that the proposed movement is consistent with reasonable animal health precautions.

(C) The state veterinarian may permit the movement of any animal, semen, or embryo into the state for the purpose of research or to facilitate the diagnosis, treatment, prevention, or control of disease.

(b) After May 1, 2003, a person may not transport into Indiana a cervid that originates from a herd that is located in a state where ~~chronic wasting disease~~ **CWD** has been diagnosed within the sixty (60) months immediately prior to the date of transportation into Indiana unless one (1) of the following sets of conditions are met:

(1) The animal originates from a herd that meets the following criteria:

(A) No animal in the herd and no animal that originated from the herd has tested positive for ~~chronic wasting disease~~ **CWD** within the sixty (60) months immediately prior to the date of transportation into Indiana.

(B) The herd has been enrolled in or subject to an official state or federal surveillance program whereby the herd has been monitored for ~~chronic wasting disease~~ **CWD** for not less than sixty (60) consecutive months and the owner of the herd is in compliance with the surveillance program requirements.

(2) The state veterinarian issues a permit to transport the animal into Indiana for the purpose of slaughter, research, or to facilitate the diagnosis, treatment, prevention, or control of disease.

The state veterinarian shall maintain a list of states where ~~chronic wasting disease~~ **CWD** has been diagnosed. *(Indiana State Board of Animal Health; 345 IAC 1-3-30; filed Jan 4, 2001, 1:59 p.m.: 24 IR 1338; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

SECTION 2. 345 IAC 2-7-1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 2-7-1 Definitions
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-4

Sec. 1. 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 appointed under IC 15-2.1-3.

(2) "Certification program" means the CWD certification program in sections 3 and 4 of this rule.

~~(2)~~ **(3)** "Cervidae" or "cervid" means all members of the cervidae family **and hybrids,** including deer, elk, moose, caribou, reindeer, and related species. ~~and hybrids thereof.~~

~~(3)~~ **(4)** "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

~~(4)~~ **(5)** "CWD ~~affected" and "affected"~~ **exposed animal"** means ~~a cervid~~ **an animal** that **is, or** has been, ~~diagnosed as having chronic wasting disease based on laboratory test results, clinical signs,~~ **in the last five (5) years, part of a CWD positive or CWD exposed herd.**

(6) "CWD exposed herd" means a herd in which a CWD positive or exposed animal has resided within sixty (60) months prior to the diagnosis of CWD.

(7) "CWD negative animal" means an animal that has been subjected to an official CWD test that resulted in a negative classification.

(8) "CWD positive animal" means an animal that has been diagnosed as having CWD based on official laboratory test results.

(9) "CWD positive herd" means a herd in which a CWD positive animal resided at the time it was diagnosed and ~~epidemiologic investigation.~~ **that has not been released from quarantine.**

~~(5)~~ **(10)** "CWD ~~affected herd"~~ **suspect"** and ~~"affected herd"~~ **"suspect"** means **laboratory evidence or clinical signs suggest** a ~~herd from which any animal has been diagnosed with~~ **diagnosis of** CWD, **but laboratory results are not yet available or have been inconclusive.**

~~(6) "CWD exposed" and "exposed"~~ **(11) "Herd"** means **an animal or** a ~~designation applied to cervids~~ **group of animals** that ~~have had contact with CWD affected animals~~ **are under common ownership** or **supervision and that are grouped on one (1) or more parts of a single premises, or on two (2) or more separate premises but on which animals have been interchanged or had direct or indirect contact** with ~~animals from a CWD affected herd.~~ **one another.**

(12) "Herd plan" means a written herd management agreement developed by the herd owner, the herd owner's veterinarian, and the state veterinarian, and approved by the state veterinarian, that states the steps that will be taken to eradicate CWD from a CWD positive, CWD exposed, or CWD suspect herd.

~~(7)~~ **(13)** "High risk animal" means a cervid that may have been exposed to CWD. The state veterinarian shall determine which animals are high risk animals based on an epidemiological investigation that includes evaluation of animal movements, housing, location, and probable contacts with ~~affected~~ **CWD positive, CWD exposed, or CWD suspect** animals.

~~(8) "Monitoring program" means the CWD monitoring program created in sections 3 and 4 of this rule.~~

~~(9)~~ **(14)** "Official test" means a ~~disease~~ **CWD** detection test approved by the state veterinarian conducted in a laboratory approved by the state veterinarian.

(15) "Owner" means a person who legally owns an animal. The state veterinarian may include as an owner a person who possesses an animal under a permit issued by the United States government or the Indiana department of natural resources, whether or not the permit holder actually has ownership rights in the animal, if it furthers the purposes of this rule.

~~(10)~~ **(16)** "Quarantine" means an order restricting the movement of animals onto or off of a premises.

~~(11)~~ **(17)** "State veterinarian" means the state veterinarian appointed under IC 15-2.1-4 or his authorized agent.

(Indiana State Board of Animal Health; 345 IAC 2-7-1; filed Jan 4, 2001, 1:59 p.m.: 24 IR 1339; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

SECTION 3. 345 IAC 2-7-3 IS AMENDED TO READ AS FOLLOWS:

345 IAC 2-7-3 Herd registration

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-18-11

Sec. 3. (a) The owner of ~~an elk~~ **a cervid** located in Indiana must meet the following requirements:

(1) ~~Each elk herd must be registered~~ **The owner shall register** with the state veterinarian **each location where his or her cervids are kept.**

(2) Every animal in the herd must be uniquely identified. ~~in a manner prescribed by~~ The state veterinarian **shall prescribe the methods by which cervids shall be identified.**

(3) The owner must keep a **complete, accurate, and current herd inventory. A herd inventory shall include the following:**

(A) A record of each animal that is part of the herd ~~including~~ **and its identification.**

(B) A record of each animal that is added to the herd, **including the date the animal is added** and **the source of the animal. If the source of the animal is from outside the owner's herd, the name and address of the source.**

(C) A record of each animal that is removed from the herd, **including the date removed and the name and address of the animal's destination.**

(4) Upon request of the state veterinarian, the owner **or custodian of the animals** must **do the following:**

(A) Provide the state veterinarian **access to or** a **copy of the** written herd inventory. ~~including each animal's identification.~~

~~(4) The owner must~~ **(B)** Present each animal in the herd to the state veterinarian for inspection and verification of identification. ~~upon registration and annually thereafter. The herd inventory provided to the state veterinarian shall be updated not less than annually.~~

(C) Provide access to any animal in the herd for testing, identification, or evaluation.

(5) Upon the death of any animal in the herd for any reason the owner shall immediately notify the state veterinarian. The state veterinarian ~~will~~ **may** inspect any dead cervid ~~that is eighteen (18) months of age or older~~ and take tissues **or other material** necessary **or helpful** for ~~a laboratory test for chronic wasting disease.~~ **detecting CWD.** The owner shall dispose of the remaining carcass as directed by the state veterinarian.

(6) The herd must be enclosed in a perimeter fence that is made from materials that will prevent cervids from entering or leaving through the structure, has no openings that will allow ingress or egress, and measures at least eight (8) feet from the ground to the top of the fence at all parts of the structure. The state veterinarian may approve a perimeter fence enclosing smaller cervids that is lower than eight (8) feet if the fence is likely to contain the animals.

(b) The state veterinarian may ~~grant a waiver from the~~

~~requirement in subsection (a)(5) if~~ **conduct** an epidemiologic evaluation of ~~the~~ **any cervid** herd, ~~indicates that~~ **including** testing ~~the deceased~~ **any** animal ~~would not further~~ **if it furthers** the goal of ~~chronic wasting~~ **animal** disease surveillance and control. The state veterinarian ~~shall~~ **may** consider **all relevant factors, including** the length of time the herd has been under a CWD surveillance program, the herd's health history, the potential effects of any additions to the herd, and the potential effect of wild cervids on the herd when ~~considering waivers~~ **evaluating herds** under this subsection.

(c) The requirements in this section do not apply to a person possessing a dead wild cervid taken pursuant to a hunting permit issued by the Indiana department of natural resources. *(Indiana State Board of Animal Health; 345 IAC 2-7-3; filed Jan 4, 2001, 1:59 p.m.: 24 IR 1339; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

SECTION 4. 345 IAC 2-7-4 IS AMENDED TO READ AS FOLLOWS:

345 IAC 2-7-4 Chronic wasting disease certified herd status

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

Sec. 4. (a) An owner of a cervid herd located in Indiana ~~may~~ **shall** obtain a ~~chronic wasting disease monitored~~ **CWD certified** status for the herd from the ~~board~~ **state veterinarian** by complying with the ~~following~~ requirements **in this section and section 3 of this rule.**

~~(1) The owner of the herd must submit an application for participation in the monitoring program to the state veterinarian.~~

~~(2) Every animal in the applicant's herd must be uniquely identified in a manner prescribed by the state veterinarian.~~

~~(3) The owner must keep a record of each animal that is part of the herd, including a record of each animal that is added to the herd and each animal that is removed from the herd. The owner must provide the state veterinarian a written herd inventory including each animal's identification.~~

~~(4) The owner must present each animal in the herd to the state veterinarian for inspection and verification of identification upon beginning the monitoring program and annually thereafter. The herd inventory provided to the state veterinarian shall be updated not less than annually.~~

~~(5) Upon the death of any animal in the herd for any reason, the owner shall immediately notify the state veterinarian. The state veterinarian will inspect any dead cervid that is eighteen (18) months of age or older and take tissues necessary for a laboratory test for chronic wasting disease. The owner shall dispose of the remaining carcass as directed by the state veterinarian.~~

~~(6) The owner shall pay for any fees associated with testing an animal other than elk from his or her herd for chronic wasting disease, including any fees necessary for tissue collection and laboratory diagnostic costs. The state veterinarian may allow the owner to utilize state or federal funds, if available, to pay for the costs of testing for CWD in lieu of the herd owner paying for testing.~~

~~(b) The state veterinarian may grant a waiver from the requirement in subsection (a)(5) if an epidemiologic evaluation of the herd indicates that testing the deceased animal would not further the goal of chronic wasting disease surveillance and control. When considering waivers under this subsection, the state veterinarian shall consider the following:~~

~~(1) The length of time the herd has been in the surveillance program.~~

~~(2) The herd's health history.~~

~~(3) The potential effects of any additions to the herd.~~

~~(4) The potential effect of wild cervids on the herd.~~

~~(c)~~ **(b) The state veterinarian may award** a cervid owner ~~may receive~~ the following ~~chronic wasting disease~~ **CWD** herd statuses ~~while participating~~ in the ~~chronic wasting disease monitoring~~ **CWD certification** program: ~~described in this section:~~

(1) Level One status after one (1) year of ~~participation.~~ **compliance.**

(2) Level Two status after two (2) years of ~~participation.~~ **compliance.**

(3) Level Three status after three (3) years of ~~participation.~~ **compliance.**

(4) Level Four status after four (4) years of ~~participation.~~ **compliance.**

(5) Level Five **or "certified"** status after five (5) or more years of ~~participation.~~ **compliance.**

(6) Unknown status prior to the first complete year of ~~participation.~~ **compliance or if a herd is not in compliance.**

(7) ~~Status pending status if the herd has been identified as a~~ CWD ~~affected~~ **positive, CWD suspect,** or CWD exposed herd.

~~(d)~~ **(c)** If an animal is added to a herd, the ~~chronic wasting disease monitored~~ **CWD certification** status of a herd will be altered as follows:

(1) The ~~chronic wasting disease~~ **CWD** status will not change if the animal that is added to the herd originated from a herd that has ~~a chronic wasting disease monitored status equal to or greater than~~ **been in an equivalent CWD certification program for at least as long as** the recipient herd.

(2) If the animal that is added to the herd originated from a herd that has **been in** a ~~chronic wasting disease monitored status lower~~ **CWD certification program for less time** than the recipient herd, the recipient herd's **certification** status will be lowered to the status of the lowest status cervid added.

(3) A new herd that is assembled on a premises where ~~chronic wasting disease~~ **CWD** has never been diagnosed retains the **certification** status of the lowest status animal brought into the new herd.

~~(c)~~ **(d)** The state veterinarian may suspend, revoke, or lower the ~~monitoring~~ **certification** program status of a herd ~~if:~~ **for the following reasons:**

(1) A herd is found to be CWD positive, CWD suspect, or CWD exposed.

(2) The herd owner does not meet the requirements under this section. ~~or~~

(3) The herd owner violates **the requirements for moving cervids into Indiana in 345 IAC 1-3 or** any provision of this rule.

(Indiana State Board of Animal Health; 345 IAC 2-7-4; filed Jan 4, 2001, 1:59 p.m.: 24 IR 1340; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

SECTION 5. 345 IAC 2-7-5 IS AMENDED TO READ AS FOLLOWS:

345 IAC 2-7-5 CWD positive, CWD suspect, and CWD exposed animals

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-18

Sec. 5. (a) Whenever an animal is determined to be CWD ~~affected,~~ **positive,** the state veterinarian shall **take steps to prevent, detect, contain, and eradicate CWD and may do the following:**

(1) Quarantine animals, carcasses, and feed or other material.

(2) Condemn animals, carcasses, and feed or other material.

(3) Specify the means of disposal for condemned items.

(4) Conduct a complete epidemiologic investigation to determine the specific cause and source of the disease and to determine the population infected with and exposed to the disease.

(5) Take steps that are necessary or helpful to prevent, detect, contain, and eradicate CWD.

(b) Whenever a cervid is determined to be ~~affected with chronic wasting disease~~ **CWD positive, a herd plan shall be developed. The herd plan shall include** the following: ~~apply:~~

(1) The ~~affected animal or its carcass shall be condemned~~ **specific conditions of the quarantine imposed** by the state veterinarian **under subsection (a).**

(2) The ~~affected herd shall be quarantined by~~ **specific conditions for** the ~~state veterinarian~~ **disposal of condemned items and death loss from the herd.**

(3) ~~The affected~~ **A plan for cleaning and disinfecting the CWD positive** herd premises ~~shall be cleaned and disinfected~~ according to directions prescribed by the state veterinarian. ~~that are~~ **The plan shall be** designed to minimize the likelihood that ~~chronic wasting disease~~ **CWD** is spread.

(4) ~~The affected herd owner shall enroll in~~ **A plan for assessing** the ~~monitoring program in section 4 of this rule.~~ **health of animals in** the ~~affected~~ herd. ~~owner~~ **The plan** shall ~~participate in the monitoring program until such time as Level Five status is achieved.~~

~~(5) The state veterinarian may release the affected herd from quarantine upon the owner completing one (1)~~ **address each** of the following: ~~requirements:~~

~~(A) Obtaining Level Five status in the monitoring program.~~

~~(B) Isolating all high risk~~ **(A) Testing some or all of the** animals ~~from any other animal and testing the high risk animals~~ for CWD. ~~If all animals test negative for CWD, the quarantine may be released upon completion of Level Three status in the monitoring program.~~

~~(C)~~ **(B)** Depopulating **some or** all **of the** animals in the herd.

(C) Inspections by state or federal officials and other surveillance measures.

(D) Animal identification requirements.

(E) Herd inventory requirements.

(5) If necessary, parameters for separation of animals, captive and wild.

(6) Parameters for restocking or adding to the herd.

(7) Any other measures necessary to prevent, detect, and eradicate CWD.

(c) The **following apply to CWD exposed and CWD suspect herds:**

(1) The state veterinarian may quarantine a CWD exposed **or CWD suspect** herd.

(2) The state veterinarian may: ~~order a premises that contains or that contained exposed animals cleaned and disinfected according to directions prescribed by~~

(A) condemn animals in the ~~state veterinarian that are designed to minimize the likelihood that chronic wasting disease is spread. The owner of a CWD exposed~~ herd; **and**

(B) order testing of any animal in the herd.

(3) A herd plan shall ~~enter~~ **be developed for** the herd. ~~in~~ The ~~monitoring program until such time as Level Three status in~~ **herd plan shall meet** the ~~monitoring program is obtained. The state veterinarian may allow an owner of an exposed herd to leave the monitoring program prior to achieving Level Three status if an epidemiological investigation indicates that the likelihood of CWD transmission to, within, or from the herd is remote.~~ **requirements in subsection (b).**

(d) A cervid owner shall follow and implement the provisions of a herd plan developed for the owner's herd under this section.

(e) The state veterinarian may release a quarantine imposed on a CWD positive, CWD suspect, or CWD exposed herd after the provisions of the herd plan developed under this section have been completed. *(Indiana State Board of Animal Health; 345 IAC 2-7-5; filed Jan 4, 2001, 1:59 p.m.: 24 IR 1340; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 2, 2002 at 9:50 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis,, Indiana the Indiana State Board of Animal Health will hold a public hearing on proposed amendments to rules concerning restrictions on the movement of cervids into Indiana and regulation of cervids in Indiana to control chronic wasting disease. Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #02-13

DIGEST

Amends 405 IAC 1-14.6-2, 405 IAC 1-14.6-4, 405 IAC 1-14.6-6, 405 IAC 1-14.6-7, 405 IAC 1-14.6-9, 405 IAC 1-14.6-12, 405 IAC 1-14.6-16, and 405 IAC 1-14.6-22 to revise the case mix reimbursement methodology that the Medicaid program utilizes to reimburse nursing facilities to remove from consideration as allowable cost indirect costs associated with ancillary services provided to non-Medicaid residents; establish a children's nursing facility designation for Medicaid reimbursement purposes and remove the profit add-on portion of the direct care component for nursing facilities not designated as children's nursing facilities; establish a minimum occupancy parameter for the direct care, indirect care, and administrative rate components; provide for rebasing of Medicaid payment rates every other year, rather than annually; and update mortgage interest rate parameter used to establish Medicaid reimbursement for capital costs of nursing facilities. Effective 30 days after filing with the secretary of state.

405 IAC 1-14.6-2	**405 IAC 1-14.6-9**
405 IAC 1-14.6-4	**405 IAC 1-14.6-12**
405 IAC 1-14.6-6	**405 IAC 1-14.6-16**
405 IAC 1-14.6-7	**405 IAC 1-14.6-22**

SECTION 1. 405 IAC 1-14.6-2, AS AMENDED AT 25 IR 2462, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-2 Definitions
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; IC 16-10-1

Sec. 2. (a) As used in this rule, "administrative component" means the portion of the Medicaid rate that shall reimburse providers for allowable administrative services and supplies, including prorated employee benefits based on salaries and wages. Administrative services and supplies include the following:

(1) Administrator and co-administrators, owners' compensation (including directors fees) for patient-related services.
(2) Services and supplies of a home office that are allowable and patient related and are appropriately allocated to the nursing facility.
(3) Office and clerical staff.
(4) Legal and accounting fees.
(5) Advertising.
(6) Travel.
(7) Telephone.
(8) License dues and subscriptions.
(9) Office supplies.
(10) Working capital interest.
(11) State gross receipts taxes.
(12) Utilization review costs.
(13) Liability insurance.
(14) Management and other consultant fees.
(15) Qualified mental retardation professional (QMRP).

(b) As used in this rule, "allowable cost determination" means a computation performed by the office or its contractor to determine a nursing facility's per patient day cost based on a review of an annual financial report and supporting information by applying this rule.

~~(b)~~ **(c)** As used in this rule, "allowable per patient day cost" means a ratio between allowable cost and patient days.

~~(c)~~ **(d)** As used in this rule, "annual financial report" refers to a presentation of financial data, including appropriate supplemental data, and accompanying notes, derived from accounting records and intended to communicate the provider's economic resources or obligations at a point in time, or changes therein for a period of time in compliance with the reporting requirements of this rule.

~~(d)~~ **(e)** As used in this rule, "average allowable cost of the median patient day **applicable to providers with an actual occupancy rate of at least sixty-five percent (65%)"** means the allowable per patient day cost (including any applicable inflation adjustment) of the median patient day from all providers when ranked in numerical order based on average allowable cost. The average allowable cost (including any applicable inflation adjustment) shall be computed on a statewide basis **using each provider's actual occupancy from the most recently completed annual financial report,** and shall be maintained by the office with revisions made four (4) times per year effective January 1, April 1, July 1, and October 1.

(f) As used in this rule, "average allowable cost of the median patient day applicable to providers with an actual occupancy rate of less than sixty-five percent (65%)" means the allowable per patient day cost (including any applicable inflation adjustment) of the median patient day from all providers when ranked in numerical order based on average allowable cost. The average allowable cost (including any applicable inflation adjustment) shall be computed on a statewide basis using an occupancy rate equal to the greater of sixty-five percent (65%), or each provider's actual occupancy rate from the most recently completed annual financial report, and shall be maintained by the office with revisions made four (4) times per year effective January 1, April 1, July 1, and October 1.

~~(e)~~ **(g)** As used in this rule, "average historical cost of property of the median bed" means the allowable patient-related property per bed for facilities that are not acquired through an operating lease arrangement, when ranked in numerical order based on the allowable patient-related historical property cost per bed that shall be updated each calendar quarter. Property shall be considered allowable if it satisfies the conditions of section 14(a) of this rule.

~~(f)~~ **(h)** As used in this rule, "calendar quarter" means a three (3) month period beginning January 1, April 1, July 1, or October 1.

~~(g)~~ **(i)** As used in this rule, "capital component" means the portion of the Medicaid rate that shall reimburse providers for the use of allowable capital-related items. Such capital-related items include the following:

(1) The fair rental value allowance.
(2) Property taxes.
(3) Property insurance.

~~(h)~~ **(j)** As used in this rule, "case mix index" (CMI) means a numerical value score that describes the relative resource use for each resident within the groups under the Resource Utilization Group (RUG-III) classification system prescribed by the office based on an assessment of each resident. The facility CMI shall be based on the resident CMI, calculated on a facility-average, time-weighted basis for the following:

(1) Medicaid residents.
(2) All residents.

(k) As used in this rule, "children's nursing facility" means a nursing facility that has:

(1) twenty-five percent (25%) or more of its residents who are under the chronological age of twenty-one (21) years; and

(2) received written approval from the office to be designated as a children's nursing facility.

~~(i)~~ **(l)** As used in this rule, "cost center" means a cost category delineated by cost reporting forms prescribed by the office.

~~(j)~~ **(m)** As used in this rule, "delinquent MDS resident assessment" means an assessment that is ~~not electronically transmitted by the fifteenth day of the second month following the end of a calendar quarter, or an assessment that is~~ greater than one hundred thirteen (113) days old, as measured by the R2b date field on the MDS. **This determination is made on the fifteenth day of the second month following the end of a calendar quarter.**

~~(k)~~ **(n)** As used in this rule, "desk ~~audit"~~ **review"** means a review ~~of a written audit report~~ and ~~its supporting documents by a qualified auditor, together with the auditor's written findings and recommendations.~~ **application of these regulations to a provider submitted annual financial report, including accompanying notes and supplemental information.**

~~(l)~~ **(o)** As used in this rule, "direct care component" means the portion of the Medicaid rate that shall reimburse providers for allowable direct patient care services and supplies, including prorated employee benefits based on salaries and wages. Direct care services and supplies include all:

(1) nursing and nursing aide services;
(2) nurse consulting services;
(3) pharmacy consultants;
(4) medical director services;
(5) nurse aide training;
(6) medical supplies;
(7) oxygen; and
(8) medical records costs.

~~(m)~~ **(p)** As used in this rule,"fair rental value allowance" means a methodology for reimbursing nursing facilities for the use of allowable facilities and equipment, based on establishing a rental valuation on a per bed basis of such facilities and equipment, and a rental rate.

~~(n)~~ **(q)** As used in this rule, "field audit" means a formal official verification and methodical examination and review, including the final written report of the examination of original books of accounts and resident assessment data and its supporting documentation by auditors.

~~(o)~~ **(r)** As used in this rule, "forms prescribed by the office" means cost reporting forms provided by the office or substitute forms that have received prior written approval by the office.

~~(p)~~ **(s)** As used in this rule, "general line personnel" means management personnel above the department head level who perform a policymaking or supervisory function impacting directly on the operation of the facility.

~~(q)~~ **(t)** As used in this rule, "generally accepted accounting principles" or "GAAP" means those accounting principles as established by the American Institute of Certified Public Accountants.

~~(r)~~ **(u)** As used in this rule, "incomplete MDS resident assessment" means an assessment that ~~does not contain all data items that are required to classify a resident pursuant to the RUG-III resident classification system, for example, MDS RUG fields that include blanks, out-of-range, or inconsistent responses, or an assessment that~~ is not printed by the nursing facility provider upon request by the office or its contractor.

~~(s)~~ **(v)** As used in this rule, "indirect care component" means the portion of the Medicaid rate that shall reimburse providers for allowable indirect patient care services and supplies, including prorated employee benefits based on salaries and wages. Indirect care services and supplies include the following:

(1) Allowable dietary services and supplies.
(2) Raw food.
(3) Patient laundry services and supplies.
(4) Patient housekeeping services and supplies.
(5) Plant operations services and supplies.
(6) Utilities.
(7) Social services.
(8) Activities supplies and services.
(9) Recreational supplies and services.
(10) Repairs and maintenance.

(w) As used in this rule, "medical and nonmedical supplies and equipment" include those items generally required to assure adequate medical care and personal hygiene of patients.

~~(t)~~ **(x)** As used in this rule, "minimum data set (MDS)" means a core set of screening and assessment elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in the Medicaid program. The items in the MDS standardize communication about resident problems, strengths, and conditions within facilities, between facilities, and between facilities and outside agencies. Version 2.0 (1/30/98) is the most current form to the minimum data set (MDS 2.0). The Indiana system will employ the MDS 2.0 or subsequent revisions as approved by the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration.

~~(u) As used in this rule, "medical and nonmedical supplies and equipment" include those items generally required to assure adequate medical care and personal hygiene of patients.~~

(y) As used in this rule, "nonrebasing year" means the year during which a nursing facility's annual Medicaid rate is not established based on a review of its annual financial report covering its most recently completed historical period. The annual Medicaid rate effective during a nonrebasing year shall be determined by adjusting the Medicaid rate components from the previous year by an inflation adjustment. July 1, 2003, through June 30, 2004, shall be a nonrebasing year.

~~(v)~~ **(z)** As used in this rule, "normalized allowable cost" means total allowable direct patient care costs for each facility divided by that facility's average case mix index (CMI) for all residents.

~~(w)~~ **(aa)** As used in this rule, "office" means the office of Medicaid policy and planning.

~~(x)~~ **(bb)** As used in this rule, "ordinary patient-related costs" means costs of allowable services and supplies that are necessary in delivery of patient care by similar providers within the state.

~~(y)~~ **(cc)** As used in this rule, "patient/recipient care" means those Medicaid program services delivered to a Medicaid enrolled recipient by a certified Medicaid provider.

~~(z)~~ **(dd)** As used in this rule, "reasonable allowable costs" means the price a prudent, cost conscious buyer would pay a willing seller for goods or services in an arm's-length transaction, not to exceed the limitations set out in this rule.

(ee) As used in this rule, "rebasing year" means the year during which a nursing facility's Medicaid rate is based on a review of its annual financial report covering its most recently completed historical period. Rebasing years shall be:

(1) July 1, 2002, through June 30, 2003;
(2) July 1, 2004, through June 30, 2005; and
(3) every year thereafter.

~~(aa)~~ **(ff)** As used in this rule, "related party/organization" means that the provider is associated or affiliated with, or has the ability to control, or be controlled by, the organization furnishing the service, facilities, or supplies, whether or not such control is actually exercised.

~~(bb)~~ **(gg)** As used in this rule, "RUG-III resident classification system" means the resource utilization group used to classify residents. When a resident classifies into more than one (1) RUG III group, the RUG III group with the greatest CMI will be utilized to calculate the facility-average CMI and facility-average CMI for Medicaid residents.

~~(cc)~~ **(hh)** As used in this rule, "therapy component" means the portion of each facility's direct costs for therapy services, including any employee benefits prorated based on total salaries and wages, rendered to Medicaid residents that are not reimbursed by other payors, as determined by this rule.

~~(dd)~~ **(ii)** As used in this rule, "unit of service" means all patient care included in the established per diem rate required for the care of an inpatient for one (1) day (twenty-four (24) hours).

~~(ee)~~ **(jj)** As used in this rule, "unsupported MDS resident assessment" means an assessment where one (1) or more data

items that are required to classify a resident pursuant to the RUG-III resident classification system ~~is~~ **are** not supported according to the MDS supporting documentation guidelines as set forth in 405 IAC 1-15, **and such data items result in the assessment being classified into a different RUG-III category.**

~~(ff)~~ **(kk)** As used in this rule, "untimely MDS resident assessment" means a significant change MDS assessment, as defined by CMS' Resident Assessment Instrument (RAI) Manual, that is not completed within fourteen (14) days of determining that a nursing facility resident's condition has changed significantly; or a full or quarterly MDS assessment that is not completed as required by 405 IAC 1-15-6(a) following the conclusion of all physical therapy, speech therapy, and occupational therapy. *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-2; filed Aug 12, 1998, 2:27 p.m.: 22 IR 69, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2238; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2462)*

SECTION 2. 405 IAC 1-14.6-4, AS AMENDED AT 25 IR 2465, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-4 Financial report to office; annual schedule; prescribed form; extensions; penalty for untimely filing

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

Sec. 4. (a) Each provider shall submit an annual financial report to the office not later than ~~ninety (90) days~~ **the last day of the fifth calendar month** after the close of the provider's reporting year. The annual financial report shall coincide with the fiscal year used by the provider to report federal income taxes for the operation unless the provider requests in writing that a different reporting period be used. Such a request shall be submitted within sixty (60) days after the initial certification of a provider. This option may be exercised only one (1) time by a provider, **and must coincide with the fiscal year end for Medicare cost reporting purposes**. If a reporting period other than the tax year is established, audit trails between the periods are required, including reconciliation statements between the provider's records and the annual financial report. **Nursing facilities that are certified to provide Medicare-covered skilled nursing facility services are required to submit a written and electronic cost report (ECR) file copy of their Medicare cost report that covers their most recently completed historical reporting period. Nursing facilities that have been granted an exemption to the Medicare filing requirement to submit the ECR file by the Medicare fiscal intermediary shall not be required to submit the ECR file to the office.**

(b) The first annual Financial Report for Nursing Facilities for a provider that has undergone a change of provider ownership or control through an arm's-length transaction between unrelated parties shall coincide with that provider's first fiscal year end in which the provider has a minimum of six (6) full calendar months of actual historical financial data. The provider shall submit their first annual financial report to the office not later than ~~ninety (90) days~~ **the last day of the fifth calendar month** after the close of the provider's reporting year or thirty (30) days following notification that the change of provider ownership has been reviewed by the office or its contractor. ~~Any extension granted under this section may not exceed an additional ninety (90) days, for a total of one hundred eighty (180) days after the close of the provider's reporting year.~~ **Nursing facilities that are certified to provide Medicare-covered skilled nursing facility services are required to submit a written and electronic ECR file copy of their Medicare cost report that covers their most recently completed historical reporting period.**

(c) The provider's annual financial report shall be submitted using forms prescribed by the office. All data elements and required attachments shall be completed so as to provide full financial disclosure and shall include the following as a minimum:

(1) Patient census data.
(2) Statistical data.
(3) Ownership and related party information.
(4) Statement of all expenses and all income, excluding non-Medicaid routine income.
(5) Detail of fixed assets and patient-related interest bearing debt.
(6) Complete balance sheet data.
(7) Schedule of Medicaid and private pay charges in effect on the last day of the reporting period. Private pay charges shall be the lowest usual and ordinary charge.
(8) Certification by the provider that:
  (A) the data are true, accurate, related to patient care; and
  (B) expenses not related to patient care have been clearly identified.
(9) Certification by the preparer, if different from the provider, that the data were compiled from all information provided to the preparer by the provider, and as such are true and accurate to the best of the preparer's knowledge.
(10) Copy of the working trial balance that was used in the preparation of their submitted Medicare cost report.

(d) Extension of the ~~ninety (90) day~~ **five (5) month** filing period shall not be granted. ~~unless the provider substantiates to the office circumstances that preclude a timely filing. Requests for extensions shall be submitted to the office, prior to the date due, with full and complete explanation of the reasons an extension is necessary. The office shall review the request for extension and notify the provider of approval or disapproval within ten (10) days of receipt. If the request for extension is disapproved, the report shall be due twenty (20) days from the date of receipt of the disapproval from the office. Any extension~~

~~granted under this section may not exceed an additional ninety (90) days, for a total of one hundred eighty (180) days after the close of the provider's reporting year.~~

(e) Failure to submit an annual financial report **or Medicare cost report by nursing facilities that are certified to provide Medicare-covered skilled nursing facility services** within the time limit required shall result in the following actions:

(1) No rate review shall be accepted or acted upon by the office until the delinquent ~~report is~~ **reports are** received.

(2) When an annual financial report **or Medicare cost report by nursing facilities that are certified to provide Medicare-covered skilled nursing facility services** is ~~thirty (30) days~~ **more than one (1) calendar month** past due, ~~and an extension has not been granted,~~ the rate then currently being paid to the provider shall be reduced by ten percent (10%), effective on the first day of the **seventh** month following the ~~thirtieth day the annual financial report is past due,~~ **provider's fiscal year end,** and shall so remain until the first day of the month after the delinquent annual financial report **or Medicare cost report (if required)** is received by the office. No rate adjustments will be allowed until the first day of the calendar quarter following receipt of the delinquent annual financial report. Reimbursement lost because of the penalty cannot be recovered by the provider. **If the Medicare filing deadline for submitting the Medicare cost report is delayed by the Medicare fiscal intermediary, and the provider fails to submit their Medicare cost report to the office on or before the due date as extended by the Medicare fiscal intermediary, then the ten percent (10%) rate reduction for untimely filing to the office as referenced herein shall become effective on the first day of the month following the due date as extended by the Medicare fiscal intermediary.**

(f) Nursing facilities are required to electronically transmit MDS resident assessment information in a complete, accurate, and timely manner. MDS resident assessment information for a calendar quarter must be transmitted by the fifteenth day of the second month following the end of that calendar quarter. Extension of the electronic MDS assessment transmission due date may be granted by the office to a new operation attempting to submit MDS assessments for the first time if the new operation is not currently enrolled or submitting MDS assessments under the Medicare program and the provider can substantiate to the office circumstances that preclude timely electronic transmission.

(g) Residents discharged prior to completing an initial assessment that is not preceded by a Medicare assessment, or a regularly scheduled assessment will be classified in one (1) of the following RUG-III classifications:

(1) SSB classification for residents discharged before completing an initial assessment where the reason for discharge was death or transfer to hospital.

(2) CC1 classification for residents discharged before completing an initial assessment where the reason for discharge was other than death or transfer to hospital.

(3) The classification from their immediately preceding assessment for residents discharged before completing a regularly scheduled assessment.

(h) If the office or its contractor determines that a nursing facility has ~~transmitted~~ incomplete MDS resident assessments, then, for purposes of determining the facility's CMI, such assessment(s) shall be assigned the case mix index associated with the RUG-III group "BC1 - Unclassifiable".

(i) If the office or its contractor determines that a nursing facility has delinquent MDS resident assessments, then, for purposes of determining the facility's CMI, such assessment(s) shall be assigned the case mix index associated with the RUG-III group "BC2 - Delinquent".

(j) If the office or its contractor determines due to an MDS field audit that a nursing facility has untimely MDS resident assessments, then such assessment(s) shall be counted as an unsupported assessment for purposes of determining whether a corrective remedy shall be applied under subsection (k).

(k) If the office or its contractor determines due to an MDS field audit that a nursing facility has unsupported MDS resident assessments, then the following procedures shall be followed in applying any corrective remedy:

(1) The office or its contractor shall audit a sample of MDS resident assessments and will determine the percent of assessments in the sample that are unsupported.

(2) If the percent of assessments in the sample that are unsupported is greater than the threshold percent as shown in column (B) of the table below, the office or its contractor shall expand the scope of the MDS audit to all residents. If the percent of assessments in the sample that are unsupported is equal to or less than the threshold percent as shown in column (B) of the table below, the office or its contractor shall conclude the **field portion of the** MDS audit and no corrective remedy shall be applied.

(3) For nursing facilities with MDS audits performed on all residents, the office or its contractor will determine the percent of assessments audited that are unsupported.

(4) If the percent of assessments of all residents that are unsupported is greater than the threshold percent as shown in column (B) of the table below, a corrective remedy shall apply, which shall be calculated as follows. The administrative component portion of the Medicaid rate in effect for the calendar quarter following completion of the MDS audit shall be reduced by the percentage as shown in column (C) of the table below. In the event a corrective remedy is imposed, for purposes of determining the average allowable cost of the median patient day for the administrative component, there shall be no adjustment made by the office or its contractor to

the provider's allowable administrative costs. Reimbursement lost as a result of any corrective remedies shall not be recoverable by the provider.

(5) If the percent of assessments of all residents that are unsupported is equal to or less than the threshold percent as shown in column (B) of the table below, the office or its contractor shall conclude the **MDS** audit and no corrective remedy shall apply.

(6) The threshold percent and the administrative component corrective remedy percent in columns (B) and (C) of the table in this subdivision**,** respectively, shall be applied to audits begun by the office or its contractor on or after the effective date as stated in column (A) as follows:

Effective Date	Threshold Percent	Administrative Component Corrective Remedy Percent
(A)	(B)	(C)
October 1, 2002	40%	5%
January 1, 2004	30%	10%
April 1, 2005	20%	15%

(l) Based on findings from the MDS audit, beginning on the effective date of this rule, the office or its contractor shall make adjustments or revisions to all MDS data items that are required to classify a resident pursuant to the RUG-III resident classification system that are not supported according to the MDS supporting documentation guidelines as set forth in 405 IAC 1-15. Such adjustments or revisions to MDS data transmitted by the nursing facility will be made in order to reflect the resident's highest functioning level that is supported according to the MDS supporting documentation guidelines as set forth in 405 IAC 1-15. The resident assessment will then be used to reclassify the resident pursuant to the RUG-III resident classification system by incorporating any adjustments or revisions made by the office or its contractor.

(m) Beginning on the effective date of this rule, upon conclusion of an MDS audit, the office or its contractor shall recalculate the facility's CMI. If the recalculated CMI results in a change to the established Medicaid rate, the rate shall be recalculated and any payment adjustment shall be made. *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-4; filed Aug 12, 1998, 2:27 p.m.: 22 IR 72, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2240; errata filed Jun 21, 1999, 12:25 p.m.: 22 IR 3419; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2465)*

SECTION 3. 405 IAC 1-14.6-6, AS AMENDED AT 25 IR 2468, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-6 Active providers; rate review

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

Sec. 6. (a) The normalized average allowable cost of the median patient day for the direct care component, and the average allowable cost of the median patient day for the indirect, administrative and capital components, **which are applicable to the facility based on their actual occupancy rate from the most recently completed historical period,** shall **only** be determined ~~once per~~ **during a rebasing** year for each provider for the purpose of performing the provider's annual rate review.

(b) The **annual rate review that shall become effective during a rebasing year shall be established by determining** the normalized allowable per patient day cost for **the** direct care **component,** and the allowable per patient day costs for the therapy, indirect care, administrative, and capital components ~~shall be established once per year shall be established once per year~~ for each provider based on the annual financial report.

(c) The annual rate review that shall become effective during a nonrebasing year shall be established by applying an inflation adjustment to the previous year's indirect care, administrative, capital, and therapy Medicaid rate components. The direct care component of the annual rate review during a nonrebasing year shall be established by applying an inflation adjustment to the previous year's normalized allowable cost, and applying the Medicaid case mix adjustment as prescribed by this rule. The inflation adjustment prescribed by this subsection shall be applied by using the CMS Nursing Home without Capital Market Basket index as published by DRI/WEFA. The inflation adjustment shall apply from the midpoint of the previous year's annual Medicaid rate period to the midpoint of the current year annual Medicaid rate period prescribed as follows:

Rate Effective Date	Midpoint Quarter
January 1, Year 1	**July 1, Year 1**
April 1, Year 1	**October 1, Year 1**
July 1, Year 1	**January 1, Year 2**
October 1, Year 1	**April 1, Year 2**

~~(c)~~ **(d)** The rate effective date of the annual rate review **during rebasing years and nonrebasing years** shall be the first day of the second calendar quarter following the provider's reporting year end.

~~(d)~~ **(e)** Subsequent to the annual rate review **established during rebasing years and nonrebasing years,** the direct care component of the Medicaid rate will be adjusted quarterly to reflect changes in the provider's case mix index for Medicaid residents. If the facility has no Medicaid residents during a quarter, the facility's average case mix index for all residents will be used in lieu of the case mix index for Medicaid residents. This adjustment will be effective on the first day of each of the following three (3) calendar quarters beginning after the effective date of the annual rate review.

~~(e)~~ **(f)** The case mix index for Medicaid residents in each facility shall be updated each calendar quarter and shall be used

to adjust the direct care component that becomes effective on the second calendar quarter following the updated case mix index for Medicaid residents.

~~(f)~~ **(g)** All rate-setting parameters and components used to calculate the annual rate review, except for the case mix index for Medicaid residents in that facility, shall apply to the calculation of any change in Medicaid rate that is authorized under subsection ~~(d).~~ **(e).**

~~(g) The office may consider changes in federal or state law or regulation during a calendar year to determine whether a significant rate increase is mandated. This review will be considered separately by the office.~~ *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-6; filed Aug 12, 1998, 2:27 p.m.: 22 IR 73, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2243; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2468)*

SECTION 4. 405 IAC 1-14.6-7, AS AMENDED AT 25 IR 2468, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-7 Inflation adjustment; minimum occupancy level; case mix indices

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

Sec. 7. (a) For purposes of determining the average allowable cost of the median patient day and a provider's annual rate review **during a rebasing year,** each provider's cost from the most recent completed year will be adjusted for inflation by the office using the methodology in this subsection. All allowable costs of the provider, except for mortgage interest on facilities and equipment, depreciation on facilities and equipment, rent or lease costs for facilities and equipment, and working capital interest shall be adjusted for inflation using the ~~Health Care Financing Administration/Skilled Nursing Facility (HCFA/SNF) index as published by DRI/McGraw-Hill.~~ **CMS Nursing Home without Capital Market Basket index as published by DRI/WEFA.** The inflation adjustment shall apply from the midpoint of the annual financial report period to the midpoint prescribed as follows:

Effective Date	Midpoint Quarter
January 1, Year 1	July 1, Year 1
April 1, Year 1	October 1, Year 1
July 1, Year 1	January 1, Year 2
October 1, Year 1	April 1, Year 2

(b) Notwithstanding subsection (a), beginning on the effective date of this rule through September 30, 2003, the inflation adjustment determined as prescribed in subsection (a) shall be reduced by an inflation reduction factor equal to three and three-tenths percent (3.3%). The resulting inflation adjustment shall not be less than zero (0). Prior to September 30, 2003, the office may reduce or eliminate the inflation reduction factor to increase aggregate expenditures up to levels appropriated by the Indiana general assembly. Any reduction or elimination of the inflation reduction factor shall be made effective no earlier than permitted under IC 12-15-13-6(a).

(c) In determining prospective allowable costs for a new provider that has undergone a change of provider ownership or control through an arm's-length transaction between unrelated parties, when the first fiscal year end following the change of provider ownership or control is less than six (6) full calendar months **for use in establishing the annual rebasing year rate review,** the previous provider's most recently completed annual financial report ~~for which a rate has been established~~ shall be utilized to calculate the new provider's first annual **rebasing year** rate review. The inflation adjustment for the new provider's first annual **rebasing year** rate review shall be applied from the midpoint of the previous provider's most recently completed annual financial report period to the midpoint prescribed under subsection (a).

~~(d) The normalized average allowable cost of the median patient day for direct care costs and the average allowable cost of the median patient day for indirect care, administrative and capital-related costs shall not be less than the average allowable cost of the median patient day effective October 1, 1998.~~

(d) Allowable costs per patient day for direct care, indirect care, and administrative costs shall be computed based on an occupancy rate equal to the greater of sixty-five percent (65%), or the provider's actual occupancy rate from the most recently completed historical period.

(e) Notwithstanding subsection (d), the office or its contractor shall reestablish a provider's Medicaid rate effective on the first day of the month following the date that the conditions specified in this subsection are met, by applying all provisions of this rule, except for the sixty-five percent (65%) minimum occupancy requirement, if the following conditions can be established to the satisfaction of the office:

(1) The provider demonstrates that its current resident census has increased to sixty-five percent (65%) or greater since the facility's fiscal year end of the cost report used to establish its Medicaid rate during the most recent rebasing year, and has remained at such level for no less than ninety (90) days.

(2) The provider demonstrates that its resident census has increased by a minimum of fifteen percent (15%) since the facility's fiscal year end of the cost report used to establish its Medicaid rate during the most recent rebasing year.

~~(e)~~ **(f)** Allowable costs per patient day for capital-related costs shall be computed based on an occupancy ~~level~~ **rate** equal to the greater of ninety-five percent (95%), or the provider's actual

occupancy **rate** from the most recently completed historical period.

~~(f)~~ **(g)** The case mix indices (CMIs) contained in this subsection shall be used for purposes of determining each resident's CMI used to calculate the facility-average CMI for all residents, and the facility-average CMI for Medicaid residents.

	~~RUG-II~~ **RUG-III** Code	CMI Table
RUG-III Group		
~~Special~~ Rehabilitation	RAD	2.02
~~Special~~ Rehabilitation	RAC	1.69
~~Special~~ Rehabilitation	RAB	1.50
~~Special~~ Rehabilitation	RAA	1.24
Extensive Services	SE3	2.69
Extensive Services	SE2	2.23
Extensive Services	SE1	1.85
Special Care	SSC	1.75
Special Care	SSB	1.60
Special Care	SSA	1.51
Clinically Complex	CC2	1.33
Clinically Complex	CC1	1.27
Clinically Complex	CB2	1.14
Clinically Complex	CB1	1.07
Clinically Complex	CA2	0.95
Clinically Complex	CA1	0.87
Impaired Cognition	IB2	0.93
Impaired Cognition	IB1	0.82
Impaired Cognition	IA2	0.68
Impaired Cognition	IA1	0.62
Behavior Problems	BB2	0.89
Behavior Problems	BB1	0.77
Behavior Problems	BA2	0.67
Behavior Problems	BA1	0.54
Reduced Physical Functions	PE2	1.06
Reduced Physical Functions	PE1	0.96
Reduced Physical Functions	PD2	0.97
Reduced Physical Functions	PD1	0.87
Reduced Physical Functions	PC2	0.83
Reduced Physical Functions	PC1	0.76
Reduced Physical Functions	PB2	0.73
Reduced Physical Functions	PB1	0.66
Reduced Physical Functions	PA2	0.56
Reduced Physical Functions	PA1	0.50
Unclassifiable	BC1	0.48
Delinquent	BC2	0.48

~~(g)~~ **(h)** The office or its contractor shall provide each nursing facility with the following:

(1) Two (2) preliminary CMI reports. These preliminary CMI reports serve as confirmation of the MDS assessments transmitted by the nursing facility, and provide an opportunity for the nursing facility to correct and transmit any missing or incorrect MDS assessments. The first preliminary report will be provided by the seventh day of the first month following the end of a calendar quarter. The second preliminary report will be provided by the seventh day of the second month following the end of a calendar quarter.

(2) Final CMI reports utilizing MDS assessments received by the fifteenth day of the second month following the end of a calendar quarter. These assessments received by the fifteenth day of the second month following the end of a calendar quarter will be utilized to establish the facility-average CMI and facility-average CMI for Medicaid residents utilized in establishing the nursing facility's Medicaid rate.

~~(h)~~ **(i)** The office may increase Medicaid reimbursement to nursing facilities that provide inpatient services to more than eight (8) ventilator-dependent residents. Additional reimbursement shall be made to such facilities at a rate of eight dollars and seventy-nine cents ($8.79) per Medicaid resident day. **Such additional reimbursement shall be effective on the day the nursing facility provides inpatient services to more than eight (8) ventilator-dependent residents, and shall remain in effect until the first day of the calendar quarter following the date the nursing facility provides inpatient services to eight (8) or fewer ventilator-dependent residents.** *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-7; filed Aug 12, 1998, 2:27 p.m.: 22 IR 74, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2243; readopted filed Jun 27, 2001, 9:40 a.m.:24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2468)*

SECTION 5. 405 IAC 1-14.6-9, AS AMENDED AT 25 IR 2470, SECTION 7, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-9 Rate components; rate limitations; profit add-on

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

Sec. 9. (a) The Medicaid reimbursement system is based on recognition of the provider's allowable costs for the direct care, therapy, indirect care, administrative and capital components, plus a potential profit add-on payment. The direct care, therapy, indirect care, administrative, and capital rate components are calculated as follows:

(1) The indirect care, administrative, and capital components, are equal to the provider's allowable per patient day costs for each component, plus the allowed profit add-on payment as determined by the methodology in subsection (b).

(2) The therapy component is equal to the provider's allowable per patient day **direct therapy** costs.

(3) The direct care component is equal to the provider's normalized allowable per patient day **direct care** costs times the facility-average case mix index for Medicaid residents,

plus the allowed profit add-on payment as determined by the methodology in subsection (b).

(b) The profit add-on payment will be calculated as follows:
(1) For **nursing facilities designated by the office as children's nursing facilities,** the direct care component ~~the~~ profit add-on is equal to fifty-two percent (52%) of the difference (if greater than zero (0)) of:

(A) the normalized average allowable cost of the median patient day for direct care costs **applicable to the facility based on its actual occupancy rate from the most recently completed historical period,** times the facility average case mix index for Medicaid residents times one hundred five percent (105%); minus

(B) ~~a~~ **the** provider's normalized allowable per patient day costs times the facility average case mix index for Medicaid residents.

(2) Beginning on the effective date of this rule, and continuing for eight (8) full calendar quarters thereafter, for nursing facilities that are not designated by the office as children's nursing facilities, the direct care component profit add-on is equal to zero (0). Beginning on the first day of the ninth full calendar quarter after the effective date of this rule, the direct care component profit add-on is equal to fifty-two percent (52%) of the difference (if greater than zero (0)) of:

(A) the normalized average allowable cost of the median patient day for direct care costs applicable to the facility based on its actual occupancy rate from the most recently completed historical period, times the facility average case mix index for Medicaid residents times one hundred five percent (105%); minus

(B) the provider's normalized allowable per patient day costs times the facility average case mix index for Medicaid residents.

~~(2) For~~ **(3)** The indirect care component ~~the~~ profit add-on is equal to fifty-two percent (52%) of the difference (if greater than zero (0)) of:

(A) the average allowable cost of the median patient day **applicable to the facility based on its actual occupancy rate from the most recently completed historical period,** times one hundred percent (100%); minus

(B) a provider's allowable per patient day cost.

~~(3) For~~ **(4)** The administrative component ~~the~~ profit add-on is equal to sixty percent (60%) of the difference (if greater than zero (0)) of:

(A) the average allowable cost of the median patient day **applicable to the facility based on its actual occupancy rate from the most recently completed historical period,** times one hundred percent (100%); minus

(B) a provider's allowable per patient day cost.

~~(4) For~~ **(5)** The capital component ~~the~~ profit add-on is equal to sixty percent (60%) of the difference (if greater than zero (0)) of:

(A) the average allowable cost of the median patient day times eighty percent (80%); minus

(B) a provider's allowable per patient day cost.

~~(5) For~~ **(6)** The therapy component ~~the~~ profit add-on is equal to zero (0).

(c) Notwithstanding subsections (a) and (b), in no instance shall a rate component exceed the overall rate component limit defined as follows:

(1) The normalized average allowable cost of the median patient day for direct care costs **applicable to the facility based on its actual occupancy rate from the most recently completed historical period,** times the facility-average case mix index for Medicaid residents times one hundred ten percent (110%).

(2) The average allowable cost of the median patient day for indirect care costs **applicable to the facility based on its actual occupancy rate from the most recently completed historical period,** times one hundred percent (100%).

(3) The average allowable cost of the median patient day for administrative costs **applicable to the facility based on its actual occupancy rate from the most recently completed historical period,** times one hundred percent (100%).

(4) The average allowable cost of the median patient day for capital-related costs times eighty percent (80%).

(5) For the therapy component, no overall rate component limit shall apply.

(d) In order to determine the normalized allowable direct care costs from each facility's Financial Report for Nursing Facilities, the office or its contractor shall determine each facility's CMI for all residents on a time-weighted basis.

(e) The office shall publish guidelines for use in determining the time-weighted CMI. These guidelines shall be published as a provider bulletin and may be updated by the office as needed. Any such updates 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 1-14.6-9; filed Aug 12, 1998, 2:27 p.m.: 22 IR 75, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2244; readopted filed Jun 27, 2001, 9:40 a.m.:24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2470)*

SECTION 6. 405 IAC 1-14.6-12 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-12 Allowable costs; fair rental value allowance

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

Sec. 12. Providers shall be reimbursed for the use of allowable patient-related facilities and equipment, regardless of whether they are owned or leased, by means of a fair rental value allowance. The fair rental value allowance shall be in lieu of the costs of all depreciation, interest, lease, rent, or other

consideration paid for the use of property. This includes all central office facilities and equipment whose patient care-related depreciation, interest, or lease expense is appropriately allocated to the facility.

(1) The fair rental value allowance is calculated by determining, on a per bed basis, the historical cost of allowable patient-related property for facilities that are not acquired through an operating lease arrangement, including:

(A) land, building, improvements, vehicles, and equipment; and

(B) costs;

required to be capitalized in accordance with generally accepted accounting principles. Land, buildings, and improvements shall be adjusted for changes in valuation by inflating the reported allowable patient-related historical cost of property from the later of July 1, 1976, or the date of facility acquisition to the present based on the change in the R. S. Means Construction Index.

(2) The inflation-adjusted historical cost of property per bed as determined above is arrayed to arrive at the average historical cost of property of the median bed.

(3) The average historical cost of property of the median bed as determined above is extended times the number of beds for each facility that are used to provide nursing facility services, to arrive at the fair rental value amount.

(4) The fair rental value amount is extended by a rental rate to arrive at the fair rental allowance. The rental rate shall be a simple average of the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate plus three percent (3%), in effect on the first day of the month that the index is published for each of the twelve (12) months immediately preceding the rate effective date as determined in section 6(a) of this rule. The rental rate shall be updated quarterly on January 1, April 1, July 1, and October 1.

(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-12; filed Aug 12, 1998, 2:27 p.m.: 22 IR 77, eff Oct 1, 1998; filed Sep 1, 2000, 2:10 p.m.: 24 IR 21; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 7. 405 IAC 1-14.6-16 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-16 Unallowable costs; cost adjustments; charity and courtesy allowances; discounts; rebates; refunds of expenses

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

Sec. 16. (a) Charity, courtesy allowances, discounts, refunds, rebates, and other similar items granted by a provider shall not be included in allowable costs. Bad debts incurred by a provider shall not be an allowable cost.

(b) Payments that must be reported on the annual financial report form that are received by a provider, an owner, or other official of a provider in any form from a vendor shall be considered a reduction of the provider's costs for the goods or services from that vendor.

(c) The cost of goods or services sold to nonpatients shall be offset against the total cost of such service to determine the allowable patient-related expenses. If the provider has not determined the cost of such items, the revenue generated from such sales shall be used to offset the total cost of such services.

(d) For nursing facilities that are certified to provide Medicare-covered skilled nursing facility services and are required by the Medicare fiscal intermediary to submit a full Medicare cost report, the office or its contractor shall remove from allowable indirect care and administrative costs the portion of those costs that are allocable to therapy services reimbursed by other payers and nonallowable ancillary services. In determining the amount of indirect care costs and administrative costs that shall be removed from allowable costs, the office or its contractor shall apply cost allocation principles established by the federal Medicare cost report methodology based on each facility's Medicare cost report.

(e) For nursing facilities that are certified to provide Medicare-covered skilled nursing facility services that are not required by the Medicare fiscal intermediary to submit a full Medicare cost report, the office or its contractor shall remove from allowable indirect care and administrative costs the portion of those costs that are allocable to therapy services reimbursed by other payers and nonallowable ancillary services. In determining the amount of indirect care costs and administrative costs that shall be removed from allowable costs, the office or its contractor shall apply cost allocation principles established by the federal Medicare cost report methodology based on a statewide average ratio of indirect costs to direct costs for such therapy and ancillary services, as determined from full Medicare cost reports. *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-16; filed Aug 12, 1998, 2:27 p.m.: 22 IR 79, eff Oct 1, 1998; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 8. 405 IAC 1-14.6-22 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-22 Administrative reconsideration; appeal

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-3
Affected: IC 4-21.5-3; IC 12-13-7-3; IC 12-15

Sec. 22. (a) The Medicaid rate-setting contractor shall notify each provider of the provider's rate ~~determination~~ **and allowable cost determinations** after ~~such rate has~~ **they have** been computed. If the provider disagrees with the rate **or allowable cost** determinations, the provider must request an administrative

reconsideration by the Medicaid rate-setting contractor. Such reconsideration request shall be in writing and shall contain specific issues to be reconsidered and the rationale for the provider's position. The request shall be signed by the provider or the authorized representative of the provider and must be received by the contractor within forty-five (45) days after release of the rate **or allowable cost determinations as** computed by the Medicaid rate-setting contractor. Upon receipt of the request for reconsideration, the Medicaid rate-setting contractor shall evaluate the data. After review, the Medicaid rate-setting contractor may amend the rate, amend the challenged procedure or **allowable cost** determination, or affirm the original decision. The Medicaid rate-setting contractor shall thereafter notify the provider of its final decision in writing, within forty-five (45) days of the Medicaid rate-setting contractor's receipt of the request for reconsideration. In the event that a timely response is not made by the rate-setting contractor to the provider's reconsideration request, the request shall be deemed denied and the provider may pursue its administrative remedies as set out in subsection (d).

(b) If the provider disagrees with a rate **or allowable cost** redetermination resulting from a financial audit adjustment or reportable condition affecting a rate **or allowable cost redetermination,** the provider must request an administrative reconsideration from the Medicaid financial audit contractor. Such reconsideration request shall be in writing and shall contain specific issues to be considered and the rationale for the provider's position. The request shall be signed by the provider or authorized representative of the provider and must be received by the Medicaid audit contractor within forty-five (45) days after release of the rate **or allowable cost redeterminations** computed by the Medicaid rate-setting contractor. Upon receipt of the request for reconsideration, the Medicaid audit contractor shall evaluate the data. After review, the Medicaid audit contractor may amend the audit adjustment or reportable condition or affirm the original adjustment. The Medicaid audit contractor shall thereafter notify the provider of its final decision in writing within forty-five (45) days of the Medicaid audit contractor's receipt of the request for reconsideration. In the event that a timely response is not made by the audit contractor to the provider's reconsideration request, the request shall be deemed denied and the provider may pursue its administrative remedies under subsection (d).

(c) If the provider disagrees with a rate redetermination resulting from a recalculation of its CMI due to an MDS audit affecting the established Medicaid rate, the provider must request an administrative reconsideration from the MDS audit contractor. Such reconsideration request shall be in writing and shall contain specific issues to be considered and the rationale for the provider's position. The request shall be signed by the provider or authorized representative of the provider and must be received by the MDS audit contractor within forty-five (45) days after release of the rate computed by the Medicaid rate-setting contractor. Upon receipt of the request for reconsideration, the MDS audit contractor shall evaluate the data. After review, the MDS audit contractor may amend the audit adjustment or affirm the original adjustment. The MDS audit contractor shall thereafter notify the provider of its final decision in writing within forty-five (45) days of the MDS audit contractor's receipt of the request for reconsideration. In the event that a timely response is not made by the audit contractor to the provider's reconsideration request, the request shall be deemed denied and the provider may pursue its administrative remedies under subsection (d).

(d) After completion of the reconsideration procedure under subsection (a), (b), or (c), the provider may initiate an appeal under IC 4-21.5-3. *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-22; filed Aug 12, 1998, 2:27 p.m.: 22 IR 81, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2247; errata filed Jul 28, 1999, 3:10 p.m.: 22 IR 3937; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 9. **If the provisions in this document are not already in effect under an emergency rulemaking action, then the following shall apply. For purposes of implementing the revisions to 405 IAC 1-14.6 contained in this document, the following shall apply:**

(1) Reimbursement rates for all Medicaid certified nursing facilities shall be calculated effective on the effective date of this document. The office or its designee shall calculate a new rate for each nursing facility under this document based on the most recent submitted and completed cost report filed under 405 IAC 1-14.6. Subsequent quarterly changes to a nursing facility's rate will be made as prescribed by this document and 405 IAC 1-14.6.

(2) The average inflated allowable cost of the median patient day and the historical cost of property of the median bed used to calculate reimbursement rates shall be established on the effective date of this document using the most recent cost report data for which a Medicaid rate is established as of the effective date of this document. Subsequent revisions to these parameters shall be made as prescribed by this document.

(3) The case mix indices (CMIs) shall be recalculated using the 5.12, 34-grouper version of the Resource Utilization Group, version III (RUG-III) based on the same MDS data that was previously used to establish the CMIs using the 5.01, 44-grouper version of the RUG-III.

(4) For purposes of implementing SECTION 7 of this document, the office or its contractor shall use the most recent Medicare cost report that has been submitted to the Medicare fiscal intermediary. For nursing facilities that are certified to provide Medicare-covered skilled nursing facility services that fail to timely submit their Medicare cost report upon request, the office or its contractor shall determine the portion of such facility's costs that are allocable to therapy services reimbursed by

other payers and nonallowable ancillary services based on a statewide average ratio of indirect costs to direct costs for such therapy and ancillary services, as determined from Medicare cost reports of nursing facilities that timely submit their Medicare cost report.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 25, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Auditorium, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to revise the reimbursement methodology for Medicaid-enrolled nursing facilities.

In accordance with the public notice requirements of 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning publishes this notice of proposed changes to the reimbursement methodology ("case mix") for Medicaid-enrolled nursing facilities.

The Office of Medicaid Policy and Planning (OMPP) proposes to modify the case mix reimbursement formula as follows:

•Impose a 65% minimum occupancy standard when computing allowable per diem direct care, indirect care and administrative costs.

•Establish a children's nursing facility designation for Medicaid reimbursement purposes.

•Remove the profit add-on portion of the direct care rate component for nursing facilities not designated as children's nursing facilities.

•Remove indirect care and administrative costs allocable to certain ancillary services reimbursed by other payers.

•Provide for re-basing of nursing facility Medicaid rates every other year.

These changes are necessary to help ensure that (1) Medicaid reimbursement for costs incurred by facilities that are not economically and efficiently operated are minimized; (2) the OMPP can implement cost containment initiatives to assist in covering the increasing costs of the Indiana Medicaid program; (3) that Medicaid payments to nursing facilities designated as children's nursing facilities will promote access to services; (4) indirect and administrative costs allocable to ancillary services that are reimbursed by other payers are not also reimbursed by Medicaid.

It is estimated that the fiscal impact for this rule will be approximately $59.7 million per year (state and federal dollars) reduction in expenditures.

Correspondence should be identified in the following manner: "COMMENTS RE: LSA DOCUMENT #02-13 PROPOSED CHANGES TO THE NURSING FACILITY CASE MIX REIMBURSEMENT SYSTEM." Written comments received will be made available for public display at the address below of the Office of Medicaid Policy and Planning.

The proposed effective date for these changes is July 1, 2002.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection. Also, copies of proposed amendments to the rule (405 IAC 1-14.6) are now available (along with copies of this public notice) and may be inspected by contacting the Director of the local County Division of Family and Children office, except in Marion County where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana. Copies of the proposed rates are available on the internet at www.mslcindy.com. Interested parties without internet access should contact Myers and Stauffer LC at (800) 877-6927 to obtain copies of proposed rates. Written comments may be directed to IFSSA, Attention: Karen S. Filler, 402 West Washington Street, Room W382, P.O. Box 7083, Indianapolis, Indiana 46207-7083.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #02-16

DIGEST

Amends 405 IAC 1-12 to revise the reimbursement methodology that the Medicaid program utilizes to reimburse nonstate-owned intermediate care facilities for the mentally retarded (ICFs/MR) and community residential facilities for the developmentally disabled (CRFs/DD) such that rebasing of Medicaid payment rates will occur every other year, rather than annually. Makes other technical changes to remove outdated language and references to repealed provisions and to conform with federal and state statutes and regulations. Effective 30 days after filing with the secretary of state.

405 IAC 1-12-1
405 IAC 1-12-2
405 IAC 1-12-4
405 IAC 1-12-5
405 IAC 1-12-6
405 IAC 1-12-7
405 IAC 1-12-8
405 IAC 1-12-9
405 IAC 1-12-12
405 IAC 1-12-13
405 IAC 1-12-14
405 IAC 1-12-15
405 IAC 1-12-16
405 IAC 1-12-17
405 IAC 1-12-19
405 IAC 1-12-24
405 IAC 1-12-26

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

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

Sec. 1. (a) This rule sets forth procedures for payment for services rendered to Medicaid recipients by duly certified intermediate care facilities for the mentally retarded (ICF/MR), with the exception of those facilities operated by the state, and community residential facilities for the developmentally disabled (CRF/DD). Reimbursement for facilities operated by the state is governed by ~~405 IAC 1-4.~~ **405 IAC 1-17.** All payments referred to within this rule for the provider groups and levels of care are contingent upon the following:

(1) Proper and current certification.

(2) Compliance with applicable state and federal statutes and regulations.

(b) The procedures described in this rule set forth methods of reimbursement that promote quality of care, efficiency, economy, and consistency. These procedures recognize level and quality of care, establish effective accountability over Medicaid expenditures, provide for a regular review mechanism for rate changes, and compensate providers for reasonable, allowable costs. ~~which must be incurred by efficiently and economically operated facilities.~~ The system of payment outlined in this rule is a prospective system. Cost limitations are contained in this rule which establish parameters regarding the allowability of costs and define reasonable allowable costs.

(c) Retroactive repayment will be required by providers when an audit verifies overpayment due to discounting, intentional misrepresentation, billing or payment errors, or misstatement of historical financial or historical statistical data which caused a higher rate than would have been allowed had the data been true and accurate. Upon discovery that a provider has received overpayment of a Medicaid claim from the office, the provider must complete the appropriate Medicaid billing adjustment form and reimburse the office for the amount of the overpayment, or the office shall make a retroactive payment adjustment, as appropriate.

(d) The office may implement Medicaid rates and recover overpayments from previous rate reimbursements, either through deductions of future payments or otherwise, without awaiting the outcome of the administrative appeal process.

(e) Providers must pay interest on all overpayments. The interest charge shall not exceed the percentage set out in ~~IC 24-4.6-1-101.~~ **IC 12-15-13-3(f)(1).** The interest shall accrue from the date of the overpayment to the provider and shall apply to the net outstanding overpayment during the periods in which such overpayment exists. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-1; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2314; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 2. 405 IAC 1-12-2, PROPOSED TO BE AMENDED AT 25 IR 1690, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

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

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "All-inclusive rate" means a per diem rate, which, at a minimum, reimburses for all nursing or resident care, room and board, supplies, and all ancillary services within a single, comprehensive amount.

(c) "Allowable cost determination" means a computation performed by the office or its contractor to determine the per patient day cost based on a review of an annual financial report and supporting information by applying this rule.

~~(c)~~ **(d)** "Allowable per patient or per resident day cost" means a ratio between total allowable costs and patient or resident days.

~~(d)~~ **(e)** "Annual or historical financial report" refers to a presentation of financial data, including appropriate supplemental data and accompanying notes derived from accounting records and intended to communicate the provider's economic resources or obligations at a point in time, or changes therein for a period of time in compliance with the reporting requirements of this rule, which shall constitute a comprehensive basis of accounting.

(f) "Annualized" means restating an amount to an annual value. This computation is performed by multiplying an amount applicable to a period of less or greater than three hundred sixty-five (365) days, by a ratio determined by dividing the number of days in the reporting period by three hundred sixty-five (365) days, except in leap years, in which case the divisor shall be three-hundred sixty-six (366) days.

~~(e)~~ **(g)** "Average inflated allowable cost of the median patient day" means the inflated allowable per patient day cost of the median patient day from all providers when ranked in numerical order based on average inflated allowable cost. The average inflated allowable cost shall be computed on a statewide basis for like levels of care, with the exception noted in this subsection, and shall be maintained by the office and revised four (4) times per year effective April 1, July 1, October 1, and January 1. If there are fewer than six (6) homes with rates established that are licensed as developmental training homes, the average inflated allowable cost for developmental training homes shall be computed on a statewide basis utilizing all basic develop-

mental homes with eight and one-half ~~(1½)~~ **(8½)** or fewer hours per patient day of actual staffing. If there are fewer than six (6) homes with rates established that are licensed as small behavior management residences for children, the average inflated allowable cost for small behavior management residences for children shall be the average inflated allowable cost for child rearing residences with specialized programs increased by two hundred forty percent (240%) of the average staffing cost per hour for child rearing residences with specialized programs. If there are fewer than six (6) homes with rates established that are licensed as small extensive medical needs residences for adults, the average inflated allowable cost of the median patient day for small extensive medical needs residences for adults shall be the average inflated allowable cost of the median patient day for basic developmental increased by one hundred fifty-nine percent (159%).

~~(f)~~ **(h)** "Change of provider status" means a bona fide sale, ~~or capital~~ lease, **or termination of an existing lease** that for reimbursement purposes is recognized as creating a new provider status that permits the establishment of an initial interim rate. Except as provided under section 17(f) of this rule, the term includes only those transactions negotiated at arm's length between unrelated parties. ~~The term does not include a facility lease transaction that does not constitute a capital lease under Financial Accounting Standards Board Statement 13 as issued by the American Institute of Certified Public Accountants in November 1976.~~

~~(g)~~ **(i)** "Cost center" means a cost category delineated by cost reporting forms prescribed by the office.

~~(h)~~ **(j)** "CRF/DD" means a community residential facility for the developmentally disabled.

~~(i)~~ **(k)** "DDARS" means the Indiana division of disability, aging, and rehabilitative services.

~~(j)~~ **(l)** "Debt" means the lesser of the original loan balance at the time of acquisition and original balances of other allowable loans or eighty percent (80%) of the allowable historical cost of facilities and equipment.

~~(k)~~ **(m)** "Desk audit" means a review of a written audit report and its supporting documents by a qualified auditor, together with the auditor's written findings and recommendations.

~~(l)~~ **(n)** "Equity" means allowable historical costs of facilities and equipment, less the unpaid balance of allowable debt at the provider's reporting year end.

~~(m)~~ **(o)** "Field audit" means a formal official verification and methodical examination and review, including the final written report of the examination of original books of accounts by auditors.

~~(n)~~ **(p)** "Forms prescribed by the office" means forms provided by the office or substitute forms which have received prior written approval by the office.

~~(o)~~ **(q)** "General line personnel" means management personnel above the department head level who perform a policy making or supervisory function impacting directly on the operation of the facility.

~~(p)~~ **(r)** "Generally accepted accounting principles" or "GAAP" means those accounting principles as established by the American Institute of Certified Public Accountants.

~~(q)~~ **(s)** "ICF/MR" means an intermediate care facility for the mentally retarded.

~~(r)~~ **(t)** "Like levels of care" means:
(1) care within the same level of licensure provided in a CRF/DD; or
(2) care provided in a nonstate-operated ICF/MR.

(u) "Nonrebasing year" means the year during which nonstate operated ICFs/MR and CRFs/DD annual Medicaid rate is not established based on a review of their annual financial report covering their most recently completed historical period. The annual Medicaid rate effective during a nonrebasing year shall be determined by adjusting the Medicaid rate from the previous year by an inflation adjustment. Nonrebasing years shall be:
(1) October 1, 2003 through September 30, 2004;
(2) October 1, 2005 through September 30, 2006;
(3) October 1, 2007 through September 30, 2008;
(4) October 1, 2009 through September 30, 2010; and
(5) every second year thereafter.

~~(s)~~ **(v)** "Office" means the Indiana office of Medicaid policy and planning.

~~(t)~~ **(w)** "Ordinary patient or resident related costs" means costs of services and supplies that are necessary in delivery of patient or resident care by similar providers within the state.

~~(u)~~ **(x)** "Patient or resident/recipient care" means those Medicaid program services delivered to a Medicaid enrolled recipient by a certified Medicaid provider.

~~(v)~~ **(y)** "Profit add-on" means an additional payment to providers in addition to allowable costs as an incentive for efficient and economical operation.

~~(w)~~ **(z)** "Reasonable allowable costs" means the price a prudent, cost conscious buyer would pay a willing seller for goods or services in an arm's-length transaction, not to exceed the limitations set out in this rule.

(aa) "Rebasing year" means the year during which

nonstate operated ICFs/MR and CRFs/DD Medicaid rate is based on a review of their annual financial report covering their most recently completed historical period. Rebasing years shall be:

(1) October 1, 2002 through September 30, 2003;
(2) October 1, 2004 through September 30, 2005;
(3) October 1, 2006 through September 30, 2007;
(4) October 1, 2008 through September 30, 2009; and
(5) every second year thereafter.

~~(x)~~ **(bb)** "Related party/organization" means that the provider is associated or affiliated with, or has the ability to control, or be controlled by, the organization furnishing the service, facilities, or supplies.

~~(y)~~ **(cc)** "Routine medical and nonmedical supplies and equipment" includes those items generally required to assure adequate medical care and personal hygiene of patients or residents by providers of like levels of care.

~~(z)~~ **(dd)** "Unit of service" means all patient or resident care at the appropriate level of care included in the established per diem rate required for the care of a patient or resident for one (1) day (twenty-four (24) hours).

~~(aa)~~ **(ee)** "Use fee" means the reimbursement provided to fully amortize both principal and interest of allowable debt under the terms and conditions specified in this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-2; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2314; filed Aug 15, 1997, 8:47 a.m.: 21 IR 76; filed Oct 31, 1997, 8:45 a.m.: 21 IR 949; filed Aug 14, 1998, 4:27 p.m.: 22 IR 63; errata filed Dec 14, 1998, 11:37 a.m.: 22 IR 1526; filed Sep 3, 1999, 4:35 p.m.: 23 IR 19; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 3. 405 IAC 1-12-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-4 Financial report to office; annual schedule; prescribed form; extensions; penalty for untimely filing

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

Sec. 4. (a) Each provider shall submit an annual financial report to the office not later than ninety (90) days after the close of the provider's reporting year. The annual financial report shall coincide with the fiscal year used by the provider to report federal income taxes for the operation unless the provider requests in writing that a different reporting period be used. Such a request shall be submitted within sixty (60) days after the initial certification of a provider. This option may be exercised only one (1) time by a provider. If a reporting period other than the tax year is established, audit trails between the periods are required, including reconciliation statements between the provider's records and the annual financial report.

(b) The provider's annual financial report shall be submitted using forms prescribed by the office. All data elements and required attachments shall be completed so as to provide full financial disclosure and shall include the following as a minimum:

(1) Patient or resident census data.
(2) Statistical data.
(3) Ownership and related party information.
(4) Statement of all expenses and all income.
(5) Detail of fixed assets and patient or resident related interest bearing debt.
(6) Complete balance sheet data.
(7) Schedule of Medicaid and private pay charges in effect on the last day of the reporting period, and on the rate effective date as defined by this rule; private pay charges shall be the lowest usual and ordinary charge.
(8) Certification by the provider that the data are true, accurate, related to patient or resident care, and that expenses not related to patient or resident care have been clearly identified.
(9) Certification by the preparer, if different from the provider, that the data were compiled from all information provided to the preparer by the provider, and as such are true and accurate to the best of the preparer's knowledge.

(c) Extension of the ninety (90) day filing period shall not be granted unless the provider substantiates to the office or its representatives circumstances that preclude a timely filing. Requests for extensions shall be submitted to the office or its representatives prior to the date due, with full and complete explanation of the reasons an extension is necessary. The office or its representatives shall review the request for extension and notify the provider of approval or disapproval within ten (10) days of receipt. If the request for extension is disapproved, the report shall be due twenty (20) days from the date of receipt of the disapproval from the office or its representatives.

(d) Failure to submit an annual financial report within the time limit required shall result in the following actions:

(1) No rate review requests shall be accepted or acted upon by the office until the delinquent report is received, **and the effective date of the Medicaid rate calculated utilizing the delinquent annual financial report shall be the first day of the month after the delinquent annual financial report is received by the office. All limitations in effect at the time of the original effective date of the annual rate review shall apply.**
(2) When an annual financial report is thirty (30) days past due and an extension has not been granted, the rate then currently being paid to the provider shall be reduced by ten percent (10%), effective on the first day of the month following the thirtieth day the annual financial report is past due and shall so remain until the first day of the month after the delinquent annual financial report is received by the office. Reimbursement lost as a result of this penalty cannot be recovered by the provider.

(Office of the Secretary of Family and Social Services; 405 IAC 1-12-4; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2316; filed Aug 14, 1998, 4:27 p.m.: 22 IR 64; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 4. 405 IAC 1-12-5, PROPOSED TO BE AMENDED AT 25 IR 1691, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-5 New provider; initial financial report to office; criteria for establishing initial interim rates; supplemental report; base rate setting

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

Sec. 5. (a) Rate requests to establish initial interim rates for a new operation, a new type of certified service, a new type of licensure for an existing group home, or a change of provider status shall be filed by submitting an initial rate request to the office on or before thirty (30) days after notification of the certification date or establishment of a new service or type of licensure. Initial interim rates will be set at the greater of:

(1) the prior provider's then current rate, **including any changes due to a field audit,** if applicable; or

(2) the fiftieth percentile rates as computed in this subsection.

Initial interim rates shall be effective upon the later of the certification date, the effective date of a licensure change, or the date that a service is established. The fiftieth percentile rates shall be computed on a statewide basis for like levels of care, except as provided in subsection (b), using current rates of all CRF/DD and ICF/MR providers. The fiftieth percentile rates shall be maintained by the office, and a revision shall be made to these rates four (4) times per year effective on April 1, July 1, October 1, and January 1.

(b) If there are fewer than six (6) homes with rates established that are licensed as developmental training homes, the fiftieth percentile rates for developmental training homes shall be computed on a statewide basis using current rates of all basic developmental homes with eight and one-half (8½) or fewer hours per patient day of actual staffing. If there are fewer than six (6) homes with rates established that are licensed as small behavior management residences for children, the fiftieth percentile rate for small behavior management residences for children shall be the fiftieth percentile rate for child rearing residences with specialized programs increased by two hundred forty percent (240%) of the average staffing cost per hour for child rearing residences with specialized programs. If there are fewer than six (6) homes with rates established that are licensed as small extensive medical needs residences for adults, the fiftieth percentile rate for small extensive medical needs residences for adults shall be the fiftieth percentile rate for basic developmental increased by one hundred fifty-nine percent (159%).

(c) The provider shall file a nine (9) month historical financial report within sixty (60) days following the end of the first nine (9) months of operation. The nine (9) months of historical financial data shall be used to determine the provider's base rate. The base rate shall be effective from the first day of the tenth month of certified operation until the next regularly scheduled annual review. An annual financial report need not be submitted until the provider's first fiscal year end that occurs after the rate effective date of a base rate. In determining the base rate, limitations and restrictions otherwise outlined in this rule, except the annual rate limitation, shall apply. For purposes of this subsection, in determining the nine (9) months of the historical financial report, if the first day of certification falls on or before the fifteenth day of a calendar month, then that calendar month shall be considered the provider's first month of operation. If the first day of certification falls after the fifteenth day of a calendar month, then the immediately succeeding calendar month shall be considered the provider's first month of operation.

(d) The provider's historical financial report shall be submitted using forms prescribed by the office. All data elements and required attachments shall be completed so as to provide full financial disclosure and shall include the following at a minimum:

(1) Patient or resident census data.
(2) Statistical data.
(3) Ownership and related party information.
(4) Statement of all expenses and all income.
(5) Detail of fixed assets and patient or resident related interest bearing debt.
(6) Complete balance sheet data.
(7) Schedule of Medicaid and private pay charges in effect on the last day of the reporting period and on the rate effective date as defined in this rule; private pay charges shall be the lowest usual and ordinary charge.
(8) Certification by the provider that:
  (A) the data are true, accurate, and related to patient or resident care; and
  (B) expenses not related to patient or resident care have been clearly identified.
(9) Certification by the preparer, if different from the provider, that the data were compiled from all information provided to the preparer, by the provider, and as such are true and accurate to the best of the preparer's knowledge.

~~(c) The base rate may be in effect for longer or shorter than twelve (12) months. In such cases, the various applicable limitations shall be proportionately increased or decreased to cover the actual time frame, using a twelve month period as the basis for the computation.~~

~~(f) The base rate established from the nine (9) months of historical data shall be the rate used for determining subsequent limitations on annual rate adjustments.~~

~~(g)~~ **(e)** Extension of the sixty (60) day filing period shall not be granted unless the provider substantiates to the office circumstances that preclude a timely filing. Requests for extensions shall be submitted to the office prior to the date due, with full and complete explanation of the reasons an extension is necessary. The office shall review the request and notify the provider of approval or disapproval within ten (10) days of receipt. If the extension is disapproved, the report shall be due twenty (20) days from the date of receipt of the disapproval from the office.

~~(h)~~ **(f)** If the provider fails to submit the nine (9) months of historical financial data within ninety (90) days following the end of the first nine (9) months of operation and an extension has not been granted, the initial interim rate shall be reduced by ten percent (10%), effective on the first day of the tenth month after certification and shall so remain until the first day of the month after the delinquent annual financial report is received by the office. Reimbursement lost because of the penalty cannot be recovered by the provider. **The effective date of the base rate calculated utilizing the delinquent historical financial report shall be the first day of the month after the delinquent historical financial report is received by the office. All limitations in effect at the time of the original effective date of the base rate review shall apply.**

~~(i)~~ **(g)** Except as provided in section 17(f) of this rule, neither an initial interim rate nor a base rate shall be established for a provider whose change of provider status was a related party transaction as established in this rule.

~~(j) The change of provider status shall be rescinded if subsequent transactions by the provider cause a capital lease to be reclassified as an operating lease under the pronouncements adopted in November 1976 by the American Institute of certified Public Accountants.~~ *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-5; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2317; filed Aug 21, 1996, 2:00 p.m.: 20 IR 12; filed Aug 15, 1997, 8:47 a.m.: 21 IR 78; filed Oct 31, 1997, 8:45 a.m.: 21 IR 950; filed Sep 3, 1999, 4:35 p.m.: 23 IR 20; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 5. 405 IAC 1-12-6 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-6 Active providers; rate review; annual request

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

Sec. 6. (a) ~~As a normal practice, rates shall be reviewed once each year using the annual financial report as the basis of the review.~~ The rate effective date **of the annual rate review established during rebasing years and nonrebasing years** shall be the first day of the fourth month following the provider's reporting year end, provided the annual financial report is submitted within ninety (90) days of the end of the provider's reporting period.

(b) ~~A provider shall not be granted an additional rate review until the review indicated in subsection (a) has been completed. A provider may request no more than one (1) additional rate review during its rate effective year when the provider can reasonably demonstrate the need for a change in rate based on more recent historical data. This additional rate review shall be completed in the same manner as the annual rate review, using all other limitations in effect at the time the annual review took place.~~ **The annual rate review that shall become effective during a rebasing year shall be established using the annual financial report as the basis of the review.**

(c) ~~To request the additional review, the provider shall submit, on forms prescribed by the office, a minimum of six (6) months of historical data, of which at least four (4) months must be subsequent to the fiscal year end of the annual financial report. Any new rate resulting from this additional review shall be effective on the first day of the month following the submission of data to the office.~~ **The annual rate review that shall become effective during a nonrebasing year shall be established by applying an inflation adjustment to the previous year's annual or base Medicaid rate. The inflation adjustment prescribed by this subsection shall be applied by using the CMS Nursing Home without Capital Market Basket index as published by DRI/WEFA. The inflation adjustment shall apply from the midpoint of the previous year's annual or base Medicaid rate period to the midpoint of the current year annual Medicaid rate period prescribed as follows:**

Rate Effective Date	Midpoint Quarter
January 1, Year 1	July 1, Year 1
April 1, Year 1	October 1, Year 1
July 1, Year 1	January 1, Year 2
October 1, Year 1	April 1, Year 2

~~(d) The office may consider changes in federal or state law or regulation during a calendar year to determine whether a significant rate increase is mandated. This review will be considered separately by the office and will not be considered as an additional rate review.~~

~~(e) When changes to historical costs meet the requirements of section 5 of this rule, this section, and section 7 of this rule and amount to five percent (5%) or more of the historical cost of the facilities and equipment as reported on the most recent annual or historical report, the provider may request a rate review to establish a new basis for computation of the capital return factor portion of the rate. The change in the capital return factor shall be allowed subject to the maximum allowable annual rate increase limitation, adjusted by the difference between the capital return factor allowed before the change and the capital return factor allowed after the change. The capital return factor~~

~~allowed after the change shall be computed using the actual occupancy level for existing beds, plus, where appropriate, those added census days needed to project the census in the additional beds in the following manner:~~

~~(1) For large ICFs/MR, the greater of:~~

~~(A) ninety-five percent (95%) of total beds available; or~~

~~(B) the occupancy the provider could reasonably anticipate for the additional beds.~~

~~(2) For CRFs/DD, the greater of:~~

~~(A) ninety percent (90%) of total beds available; or~~

~~(B) the occupancy the provider could reasonably anticipate for the additional beds.~~

~~In no event shall the occupancy used to calculate the capital return factor be less than ninety-five percent (95%) of total beds available for large ICFs/MR and ninety percent (90%) for CRFs/DD. Rate reviews completed under this section will not constitute the provider's additional rate review in one (1) reporting year. This review shall be completed in the same manner as the annual rate review, using all limitations in effect at the time the annual review or base rate review took place, whichever is later.~~ *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-6; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2318; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 6. 405 IAC 1-12-7 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-7 Request for rate review; effect of inflation; occupancy level assumptions

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

Sec. 7. (a) Rate setting **during rebasing years** shall be ~~prospective,~~ based on the provider's annual or historical financial report for the most recent completed year. In determining prospective allowable costs **during rebasing years**, each provider's costs from the most recent completed year will be adjusted for inflation by the office using the following methodology. All allowable costs of the provider, except for mortgage interest on facilities and equipment, depreciation on facilities and equipment, rent or lease costs for facilities and equipment, and working capital interest shall be increased for inflation using the ~~Health Care Financing Administration/Skilled Nursing Facility (HCFA/SNF)~~ **CMS Nursing Home without Capital Market Basket** index as published by ~~DRI/McGraw-Hill.~~ **DRI/WEFA.** The inflation adjustment shall apply from the midpoint of the annual or historical financial report period to the midpoint of the expected rate period.

(b) For purposes of determining the average allowable cost of the median patient day **as applicable during rebasing years,** each provider's costs from their most recent completed year will be adjusted for inflation by the office using the following methodology. All allowable costs of the provider, except for mortgage interest on facilities and equipment, depreciation on facilities and equipment, rent or lease costs for facilities and equipment, and working capital interest shall be increased for inflation using the ~~Health Care Financing Administration/Skilled Nursing Facility (HCFA/SNF)~~ **CMS Nursing Home without Capital Market Basket** index as published by ~~DRI/McGraw-Hill.~~ **DRI/WEFA.** The inflation adjustment shall apply from the midpoint of the annual or historical financial report period to the midpoint prescribed as follows:

Median Effective Date	Midpoint Quarter
January 1, Year 1	July 1, Year 1
April 1, Year 1	October 1, Year 1
July 1, Year 1	January 1, Year 2
October 1, Year 1	April 1, Year 2

(c) For ICFs/MR and CRFs/DD, allowable costs per patient or resident day shall be determined based on an occupancy level equal to the greater of actual occupancy, or ninety-five percent (95%) for ICFs/MR and ninety percent (90%) for CRFs/DD, for certain fixed facility costs. The fixed costs subject to this minimum occupancy level standard include the following:

(1) Director of nursing wages.

(2) Administrator wages.

(3) All costs reported in the ownership cost center, except repairs and maintenance.

(4) The capital return factor determined in accordance with sections 12 through 17 of this rule.

(Office of the Secretary of Family and Social Services; 405 IAC 1-12-7; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2319; filed Sep 3, 1999, 4:35 p.m.: 23 IR 21; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 7. 405 IAC 1-12-8 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-8 Limitations or qualifications to Medicaid reimbursement; advertising; vehicle basis

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

Sec. 8. (a) Advertising is not an allowable cost under this rule, except for those advertising costs incurred in the recruitment of facility personnel necessary for compliance with facility certification requirements. Advertising costs are not allowable in connection with public relations or fundraising or to encourage patient or resident utilization.

(b) Each facility and **distinct** home office **location** shall be allowed:

(1) one (1) patient or resident care-related automobile; and

(2) one (1) vehicle that can be utilized for facility maintenance or patient or resident support or for both uses;

to be included in the vehicle basis for purposes of cost reimbursement under this rule. Vehicle basis means the purchase price of the vehicle used for facility or home office operation. If a portion of the use of the vehicle is for personal purposes or for purposes other than operation of the facility or home office,

then such portion of the cost must not be included in the vehicle basis. The facility and home office **location or locations** are responsible for maintaining records to substantiate operational and personal use for all allowable vehicles. This limitation does not apply to vehicles with a gross vehicle weight of more than six thousand (6,000) pounds. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-8; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2319; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 8. 405 IAC 1-12-9, PROPOSED TO BE AMENDED AT 25 IR 1693, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-9 Criteria limiting rate adjustment granted by office

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

Sec. 9. **During rebasing years and for base rate reviews,** the Medicaid reimbursement system is based on recognition of the provider's allowable costs plus a potential profit add-on payment. The payment rate **established during rebasing years and for base rate reviews** is subject to ~~several limitations. Rates will be established at the lowest of~~ the **following** four (4) limitations: ~~listed as follows:~~

(1) In no instance shall the approved Medicaid rate be higher than the rate paid to that provider by the general public for the same type of services. For purposes of this rule, the rates paid by the general public shall not include rates paid by the DDARS.

(2) Should the rate calculations produce a rate higher than the reimbursement rate requested by the provider, the approved rate shall be the rate requested by the provider.

(3) Inflated allowable per patient or per resident day costs plus the allowed profit add-on payment as determined by the methodology in Table I.

(4) In no instance shall the approved Medicaid rate exceed the overall rate limit percent (Column A) in Table II, times the average inflated allowable cost of the median patient or resident day.

TABLE I
Profit Add-On

The profit add-on is equal to the percent (Column A) of the difference (if greater than zero (0)) between a provider's inflated allowable per patient or resident day cost, and the ceiling (Column B) times the average inflated allowable per patient or resident day cost of the median patient or resident day. Under no circumstances shall a provider's per patient or resident day profit add-on exceed the cap (Column C) times the average inflated allowable per patient or resident day cost of the median patient or resident day.

Level of Care	(A) Percent	(B) Ceiling	(C) Cap
Sheltered living	40%	105%	10%
Intensive training	40%	120%	10%
Child rearing	40%	130%	12%
Nonstate-operated ICF/MR	40%	125%	12%
Developmental training	40%	110%	10%
Child rearing with a specialized program	40%	120%	12%
Small behavior management residences for children	40%	120%	12%
Basic developmental	40%	110%	10%
Small extensive medical needs residences for adults	40%	110%	10%

TABLE II
Overall Rate Limit

Level of Care	(A) Percent
Sheltered living	115%
Intensive training	120%
Child rearing	130%
Developmental training	120%
Child rearing with a specialized program	120%
Small behavior management residences for children	120%
Basic developmental	120%
Small extensive medical needs residences for adults	120%
Nonstate-operated ICF/MR	107%

(Office of the Secretary of Family and Social Services; 405 IAC 1-12-9; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2320; filed Aug 15, 1997, 8:47 a.m.: 21 IR 79; filed Oct 31, 1997, 8:45 a.m.: 21 IR 951; filed Aug 14, 1998, 4:27 p.m.: 22 IR 65; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 9. 405 IAC 1-12-12 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-12 Allowable costs; capital return factor

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

Sec. 12. (a) Providers shall be reimbursed for the use of facilities and equipment, regardless of whether they are owned or leased, by means of a capital return factor. The capital return factor shall be composed of a use fee to cover the use of facilities, land and equipment, and a return on equity. Such reimbursement shall be in lieu of the costs of all depreciation, interest, lease, rent, or other consideration paid for the use of property. This includes all central office facilities and equipment whose patient or resident care-related depreciation, interest, or lease expense is allocated to the facility.

(b) The capital return factor portion of the established rate **during rebasing years** is the sum of the allowed use fee, return on equity, and rent payments.

(c) Allowable patient or resident care-related rent, lease payments, and fair rental value of property used through contractual arrangement shall be subjected to limitations of the capital return factor as described in this section. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-12; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2322; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 10. 405 IAC 1-12-13 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-13 Allowable costs; capital return factor; computation of use fee component; interest; allocation of loan to facilities and parties

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

Sec. 13. (a) The use fee limitation is based on the following:
(1) The assumption that facilities and equipment are prudently acquired and financed.
(2) Providers will obtain independent financing in accordance with a sound financial plan.
(3) Owner capital will be used for the balance of capital requirements.

(b) The amortization period to be used in computing the use fee shall be the greater of twenty (20) years or the actual amortization period for the facility and for facilities and equipment where a single lending arrangement covers both. Where equipment is specifically financed by means of a separate lending arrangement, a minimum of seven (7) years shall be the amortization period. Provided, however, that a mortgage existing on April 1, 1983, has a fully amortizing life of less than twenty (20) years, the use fee will be calculated using the actual life of the lending arrangement, but not less than twelve (12) years. **If facility payments toward the principal loan amount are less than the amount derived from a standard loan amortization during the reporting period, the computation of the use fee shall be limited to the principal and interest amounts actually paid during the reporting period, unless the financing arrangement specifically requires that amortized payments to be made to a sinking fund, or its equivalent, for future principal payments and the provider can demonstrate that payments from the sinking fund are actually made.**

(c) The use fee component of the capital return factor shall be limited by the lesser of:
(1) the original loan balance at the time of acquisition;
(2) eighty percent (80%) of historical cost of the facilities and equipment; or
(3) eighty percent (80%) of the maximum allowable property basis at the time of the acquisition plus one-half (½) of the difference between that amount and the maximum property basis per bed on the rate effective date.

(d) The maximum interest rate allowed in computing the use fee shall not exceed one and one-half percent (1.5%) above the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate plus three percent (3%), rounded to the nearest one-half percent (0.5%) or the actual interest rate, whichever is lower. For property financing with a fixed interest rate, the date that the financing commitment was signed by the lender and borrower shall be the date upon which the allowable rate shall be determined. For property financing with a variable interest rate, the allowable interest rate shall be determined each year at the provider's report year end.

(e) The use fee determined under this section shall be subject to the limitations under section 15(b) of this rule.

(f) Refinancing of mortgages shall be amortized over the amortization period of the refinancing; however, the amortization period for the refinanced mortgage shall not be less than twenty (20) years. Refinancing arrangements shall be recognized only when the interest rate is less than the original financing, and the interest rate on the refinancing shall not be allowable in excess of the interest rate limit established on the date the refinancing commitment was signed and the interest rate fixed by the lender and borrower.

(g) Variable interest debt will be recognized for the purpose of calculation of the use fee if the variable rate is a function of an arrangement entered into and incorporated in the lending arrangement at the time of the acquisition of the facility or as part of an allowable refinancing arrangement under subsection (f).

(h) Interest costs on borrowed funds used to construct facilities or enlarge existing facilities which are incurred during the period of construction shall be capitalized as part of the cost of the facility or addition.

(i) Interest costs on operating loans each reporting period shall be limited to interest costs of principal amounts that do not exceed a value equal to two (2) months of actual revenues. Interest on such loans shall be recognized only if the provider can demonstrate that such loans were reasonable and necessary in providing patient or resident related services. Working capital interest must be reduced by investment income. Working capital interest is an operating cost and will not be included in calculating the use fee.

(j) Loans covering more than one (1) facility or asset shall apply to the several facilities or assets acquired in proportion to the cost that each item bears to the total cost. Accordingly, if any building or asset covered by the loan is used for purposes other than patient or resident care, the use fee applicable to such assets will be determined based upon its proportionate share of the total asset cost.

(k) Loans from a related party must be identified and reported separately on the annual or historical financial report. Such

loans shall be allowable if they meet all other requirements, the interest does not exceed the rate available in the open market, and such loans are repaid in accordance with an established repayment schedule.

(l) Use fee for variable interest rate mortgages will be calculated as follows:

(1) Recalculate the use fee for the reporting year based upon the provider's average actual rate of interest paid.

(2) Compare the use fee allowed in the reporting year and the recalculated use fee and determine the variance (amount by which the amount allowed in the prior rate case exceeded or was less than the amount earned under the recalculation in subdivision (1)).

(3) Calculate the prospective use fee based upon the interest rate in effect at the end of the provider's reporting year.

(4) The use fee on the prospective rate is the amount determined in subdivision (3) plus or minus the variance in subdivision (2).

(Office of the Secretary of Family and Social Services; 405 IAC 1-12-13; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2322; filed Sep 1, 2000, 2:10 p.m.: 24 IR 16; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 11. 405 IAC 1-12-14 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-14 Allowable costs; capital return factor; computation of return on equity component

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

Sec. 14. (a) For a provider with an initial interim rate resulting from:

(1) a change of provider status; or

(2) a new operation;

before the effective date of this rule, the return on equity shall be computed on the higher of twenty percent (20%) of the allowable historical cost of facilities and equipment or actual equity in allowable facilities and equipment up to sixty percent (60%) of allowable historical cost of facilities and equipment. Allowable historical cost of facilities and equipment is the lesser of the provider's actual historical costs of facilities and equipment, or the maximum allowable property basis at the time of the acquisition plus one-half (½) of the difference between that amount and the maximum allowable property basis per bed on the rate effective date.

(b) For a provider with an initial interim rate resulting from:

(1) a change of provider status; or

(2) a new operation;

on or after the effective date of this rule, the return on equity shall be computed on the actual equity in allowable facilities and equipment up to a maximum of eighty percent (80%) of allowable historical cost of facilities and equipment.

(c) The return on equity factor shall be equal to the interest rate used in computing the use fee plus one percent (1%), or one percent (1%) below the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate on the last day of the reporting period, plus three percent (3%), whichever is higher.

(d) The return on equity determined under this section shall be subject to the limitations of section 15(b) of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-14; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2323; filed Sep 1, 2000, 2:10 p.m.: 24 IR 17; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 12. 405 IAC 1-12-15 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-15 Allowable costs; capital return factor; use fee; depreciable life; property basis

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

Sec. 15. (a) The following is a schedule of allowable use fee lives by property category:

Property Basis	Use Fee Life
Land	20 years
Land improvements	20 years
Buildings and building components	20 years
Building improvements	20 years
Movable equipment	7 years
Vehicles	7 years

The maximum property basis per bed at the time of acquisition shall be in accordance with the following schedule:

Acquisition Date	Maximum Property Basis Per Bed
7/1/76	$12,650
4/1/77	$13,255
10/1/77	$13,695
4/1/78	$14,080
10/1/78	$14,630
4/1/79	$15,290
10/1/79	$16,115
4/1/80	$16,610
10/1/80	$17,490
4/1/81	$18,370
10/1/81	$19,140
4/1/82	$19,690
9/1/82	$20,000
3/1/83	$20,100
9/1/83	$20,600
3/1/84	$20,600
9/1/84	$21,200
3/1/85	$21,200
9/1/85	$21,200
3/1/86	$21,400

9/1/86	$21,500
3/1/87	$21,900
9/1/87	$22,400
3/1/88	$22,600
9/1/88	$23,000
3/1/89	$23,100
9/1/89	$23,300
3/1/90	$23,600
9/1/90	$23,900
3/1/91	$24,500
9/1/91	$24,700
3/1/92	$24,900
9/1/92	$25,300
3/1/93	$25,400
9/1/93	$25,700

The schedule shall be updated semiannually effective on March 1 and September 1 by the office and rounded to the nearest one hundred dollars ($100) based on the change in the R.S. Means Construction Index.

(b) The capital return factor portion of a rate that becomes effective after the acquisition date of an asset shall be limited to the maximum capital return factor which shall be calculated as follows:

(1) The use fee portion of the maximum capital return factor is calculated based on:

(A) the maximum property basis per bed at the time of acquisition of each bed, plus one-half (½) of the difference between that amount and the maximum property basis per bed at the rate effective date;

(B) the term is determined per bed at the time of acquisition of each bed and is twenty (20) years for beds acquired on or after April 1, 1983, and twelve (12) years for beds acquired before April 1, 1983; and

(C) the allowable interest rate is the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate plus three percent (3%), rounded to the nearest one-half percent (0.5%) plus one and one-half percent (1.5%) at the earlier of the acquisition date of the beds or the commitment date of the attendant permanent financing.

(2) The equity portion of the maximum capital return factor is calculated based on:

(A) the allowable equity as established under section 14 of this rule; and

(B) the rate of return on equity is the greater of the United States Treasury bond, ~~thirty (30)~~ **ten (10)** year amortization, constant maturity rate plus three percent (3%), rounded to the nearest one-half percent (0.5%) on the last day of the reporting period minus one percent (1%), or the weighted average of the United States Treasury bond, thirty (30) year amortization, constant maturity rate plus three percent (3%), rounded to the nearest one-half percent (0.5%) plus one percent (1%) at the earlier of the acquisition date of the beds or the commitment date of the attendant permanent financing.

(c) For facilities with a change of provider status, the allowable capital return factor of the buyer/lessee shall be no greater than the capital return factor that the seller/lessor would have received on the date of the transaction, increased by one-half (½) of the percentage increase (as measured from the date of acquisition/lease commitment date by the seller/lessor to the date of the change in provider status) in the Consumer Price Index for All Urban Consumers (CPI-U) (United States city average). Any additional allowed capital expenditures incurred by the buyer/lessee shall be treated in the same manner as if the seller/lessor had incurred the additional capital expenditures.

(d) The following costs which are attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has been previously made under the Indiana Medicaid program shall not be recognized as an allowable cost:

(1) Legal fees.
(2) Accounting and administrative costs.
(3) Travel costs.
(4) The costs of feasibility studies.

(Office of the Secretary of Family and Social Services; 405 IAC 1-12-15; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2324; filed Sep 1, 2000, 2:10 p.m.: 24 IR 17; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 13. 405 IAC 1-12-16 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-16 Capital return factor; basis; historical cost; mandatory record keeping; valuation

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

Sec. 16. (a) The basis used in computing the capital return factor shall be the historical cost of all assets used to deliver patient or resident related services, provided the following:

(1) They are in use.
(2) They are identifiable to patient or resident care.
(3) They are available for physical inspection.
(4) They are recorded in provider records.

If an asset does not meet all of the requirements prescribed in this section, the cost **and any associated property financing or capital lease** shall not be included in computing the capital return factor.

(b) The provider shall maintain detailed property schedules to provide a permanent record of all historical costs and balances of facilities and equipment. Summaries of such schedules shall be submitted with each annual or historical financial report, and the complete schedule shall be submitted to the office upon request.

(c) Assets used in computing the capital return factor shall include only items currently used in providing services customarily provided to patients or residents.

(d) When an asset is acquired by trading one (1) asset for another, or a betterment or improvement is acquired, the cost of the newly acquired asset, betterment, or improvement shall be added to the appropriate property category. All of the historical cost of the traded asset or replaced betterment or improvement shall be removed from the property category in which it was included.

(e) If a single asset or collection of like assets acquired in quantity, including permanent betterment or improvements, has at the time of acquisition an estimated useful life of at least three (3) years and a historical cost of at least five hundred dollars ($500), the cost shall be included in the property basis for the approved useful life of the asset. Items that do not qualify under this subsection shall be expensed in the year acquired.

(f) The property basis of donated assets, except for donations between providers or related parties, shall be the fair market value defined as the price a prudent buyer would pay a seller in an arm's-length sale or, if over two thousand dollars ($2,000), the appraised value, whichever is lower. An asset is considered donated when the provider acquires the asset without making any payment for it in the form of cash, property, or services. If the provider and the donor are related parties, the net book value of the asset to the donor shall be the basis, not to exceed fair market value. Cash donations shall be treated as revenue items and not as offsets to expense accounts. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-16; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2325; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 14. 405 IAC 1-12-17 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-17 Capital return factor; basis; sale or capital lease of facility; valuation; sale or lease among family members

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

Sec. 17. (a) If a facility is sold or leased within eight (8) years of the seller's or lessor's acquisition date and this transaction is recognized as a change of provider status, the buyer's or lessee's property basis in facilities and equipment shall be the seller's or lessor's historical cost basis plus one percent (1%) of the difference between the purchase price, or appraised value if lower, and the seller's or lessor's historical cost basis, for each month the seller or lessor has owned or leased the property.

(b) Leases shall be subject to the following purchase equivalency test based on the maximum capital return factor. The provider shall supply sufficient information to the office so as to determine the terms and conditions of a purchase that would be equivalent to the lease agreement. Such information shall include the following:

(1) Property basis and fair market value on the initial lease effective date.
(2) Inception date of the initial agreement between lessee and lessor.
(3) Imputed or stated interest rate.
(4) Duration of payments.
(5) Renewal options.

Such purchase equivalency terms and conditions shall be utilized to calculate the capital return factor as if it were a purchase. The provisions of section 15(c) through 15(d) of this rule shall apply. The lease payments determined under this section shall be subject to the limitations under section 15(b) of this rule.

(c) Where the imputed or stated interest rate is a variable rate, it shall be recognized only if the rate is reasonable and only if such arrangement was incorporated into the lease agreement at the time of acquisition.

(d) All leases, rental agreements, and contracts involving the use of property shall be subject to the same limitations as owners of property. The use fee calculation for variable rate leases will be calculated in the same manner as that set forth in section 13(k) of this rule. In no event shall the capital return factor be greater than the actual lease payment.

(e) If a provider rents, leases, or purchases facilities or equipment from a related party, the historical cost to the related party, not to exceed fair market value, shall be utilized in computing the capital return factor except as described in this section for the sale of facilities between family members.

(f) The sale of facilities between family members shall be eligible for consideration as a change of provider status transaction if all of the following requirements are met:
(1) There is no spousal relationship between parties.
(2) The following persons are considered family members:
(A) Natural parents, child, and sibling.
(B) Adopted child and adoptive parent.
(C) Stepparent, stepchild, stepsister, and stepbrother.
(D) Father-in-law, mother-in-law, sister-in-law, brother-in-law, and daughter-in-law.
(E) Grandparent and grandchild.
(3) The provider can demonstrate to the satisfaction of the office that the primary business purpose for the sale is other than increasing the established rate.
(4) The transfer is recognized and reported by all parties as a sale for federal income tax purposes.
(5) The seller ~~is~~ **and all parties with an ownership interest in the previous provider are** not associated with the facility in any way after the sale other than as a passive creditor.
(6) The buyer is actively engaged in the operation of the facility after the sale with earnings from the facility accruing to at least one (1) principal buyer primarily as salaries or self-employment income and not as leases, rents, or other passive income.

(7) This family sale exception has not been utilized during the previous eight (8) years on this facility.
(8) None of the entities involved is a publicly held corporation as defined by the Securities and Exchange Commission.
(9) If any of the entities involved are corporations, they must be family owned corporations, where members of the same family control the corporations through ownership of fifty percent (50%) or more of the voting stock.

(g) In order to establish an historical cost basis in the sale of facilities between family members, the buyer shall obtain a Member Appraiser Institute (MAI) appraisal, which appraisal is subject to the approval of the office. The appraisal shall be done within ninety (90) days of the date of the sale. The historical cost basis shall be the lower of the historical cost basis of the buyer or ninety percent (90%) of the MAI appraisal of facilities and equipment.

(h) If the conditions of this section are met, the cost basis and financing arrangements of the facility shall be recognized for the purpose of computing the capital return factor in accordance with this rule for a bona fide sale arising from an arm's-length transaction.

(i) If a lease of facilities between family members under subsection (f)(2) qualifies as a capitalized lease under guidelines issued in November 1976 by the American Institute of Certified Public Accountants, the transaction shall be treated as a sale of facilities between family members, for purposes of determining the basis, cost, and valuation of the buyer's capital return factor component of the Medicaid rate. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-17; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2325; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 15. 405 IAC 1-12-19 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-19 Allowable costs; wages; costs of employment; record keeping; owner or related party compensation
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 19. (a) Reasonable compensation of individuals employed by a provider is an allowable cost, provided such employees are engaged in patient or resident care-related functions and that compensation amounts are reasonable and allowable under this section and sections 20 through 22 of this rule.

(b) The provider shall report using the forms or in a format prescribed by the office all patient and resident related staff costs and hours incurred to perform the function for which the provider was certified. Both total compensation and total hours worked shall be reported. Staffing limitations to determine Medicaid allowable cost shall be based on hours worked by employees. If a service is performed through a contractual agreement, imputed hours for contracted services are only required when such services obviate the need for staffing of a major function or department that is normally staffed by in-house personnel. Hours for laundry services in CRF/DD or ICF/MR facilities that are properly documented through appropriate time studies, whether paid in-house or contracted, shall not be included in calculating the staffing limitation for the facility. Hours associated with the provision of day services and other ancillary services, **except as specified in subsection (d),** shall be excluded from the staffing limitation.

(c) Payroll records shall be maintained by the provider to substantiate the staffing costs reported to the office. The records shall indicate each employee's classification, hours worked, rate of pay, and the department or functional area to which the employee was assigned and actually worked. If an employee performs duties in more than one (1) department or functional area, the payroll records shall indicate the time allocations to the various assignments.

(d) When an owner or related party work assignment is at or below a department head level, the hours and compensation shall be included in the staffing hours reported using the forms prescribed by the office. Such hours and compensation must be reported separately and so identified. Compensation paid to owners or related parties for performing such duties shall be subject to the total staffing limitations and allowed if the compensation paid to owners or related parties does not exceed the price paid in the open market to obtain such services by nonowners or nonrelated parties. Such compensation to owners or related parties is not subject to the limitation found in section 20 of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-19; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2327; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 16. 405 IAC 1-12-24, AS AMENDED AT 25 IR 381, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-24 Assessment methodology
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15-32-11

Sec. 24. (a) CRF/DD and ICF/MR facilities that are not operated by the state will be assessed an amount not to exceed ten percent (10%) of ~~the gross residential services~~ **total annual facility** revenue. ~~of the facility for the facility's annual reporting period year for annual rate reviews. CRF/DD and ICF/MR facilities that are not operated by the state will be assessed an amount not to exceed ten percent (10%) of the annualized gross residential services.~~ **In determining total annual** revenue ~~of the facility for the facility's preceding nine (9) months for determining the base rate as set out in section 5(d) of this rule.~~ **when the financial report period is other than three hundred, sixty-five (365) days, the total revenue shall be**

annualized based on the number of days in the reporting period. The assessment percentage **applied to total annual revenue** shall ~~be determined annually by the office or its contractor in such a manner that the amount assessed shall, in the aggregate,~~ not exceed **the greater of** six percent (6%) ~~of total facility revenues.~~ **or such percentage determined to be eligible for federal financial participation under federal law.**

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

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

SECTION 17. 405 IAC 1-12-26 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-26 Administrative reconsideration; appeal
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 4-21.5; IC 12-13-7-3

Sec. 26. (a) The Medicaid rate-setting contractor shall notify each provider of the provider's rate ~~determination,~~ **and allowable cost determinations** after ~~such rate~~ **they have** been computed. If the provider disagrees with the rate **or allowable cost** determinations, the provider must request an administrative reconsideration by the Medicaid rate-setting contractor. Such reconsideration request shall be in writing and shall contain specific issues to be reconsidered and the rationale for the provider's position. The request shall be signed by the provider or the authorized representative of the provider and must be received by the contractor within forty-five (45) days after release of the rate **or allowable cost determinations as** computed by the Medicaid rate-setting contractor. Upon receipt of the request for reconsideration, the Medicaid rate-setting contractor shall evaluate the data. After review, the Medicaid rate-setting contractor may amend the rate, amend the challenged procedure **or allowable cost** determination, or affirm the original decision. The Medicaid rate-setting contractor shall thereafter notify the provider of its final decision in writing, within forty-five (45) days of the Medicaid rate-setting contractor's receipt of the request for reconsideration. In the event that a timely response is not made by the rate-setting contractor to the provider's reconsideration request, the request shall be deemed denied and the provider may pursue its administrative remedies as set out in subsection (c).

(b) If the provider disagrees with a rate **or allowable cost** redetermination resulting from an audit adjustment or a reportable condition affecting a rate, the provider must request an administrative reconsideration from the Medicaid audit contractor. Such reconsideration request shall be in writing and shall contain specific issues to be considered and the rationale for the provider's position. The request shall be signed by the provider or the authorized representative of the provider and must be received by the Medicaid audit contractor within forty-five (45) days after release of the rate **or allowable cost determinations as** computed by the Medicaid rate-setting contractor. Upon receipt of the request for reconsideration, the Medicaid audit contractor shall evaluate the data. After review, the Medicaid audit contractor may amend the audit adjustment or reportable condition or affirm the original adjustment or reportable condition. The Medicaid audit contractor shall thereafter notify the provider of its final decision in writing within forty-five (45) days of the Medicaid audit contractor's receipt of the request for reconsideration. In the event that a timely response is not made by the audit contractor to the provider's reconsideration request, the request shall be deemed denied and the provider may pursue its administrative remedies under subsection (c).

(c) After completion of the reconsideration procedure under subsection (a) or (b), the provider may initiate an appeal under IC 4-21.5.

(d) The office may take action to implement Medicaid rates without awaiting the outcome of the administrative process, in accordance with section 1(d) of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-26; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2331; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Auditorium, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to the Medicaid reimbursement methodology for Medicaid-enrolled nonstate owned community residential

facilities for the developmentally disabled (CRFs/DD) and intermediate care facilities for the mentally retarded (ICFs/MR).

Further, in accordance with the public notice requirements of 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning (OMPP) publishes this notice of proposed revisions to the Medicaid reimbursement formula for CRFs/DD and ICFs/MR by providing for rebasing of Medicaid rates established under 405 IAC 1-12 every two years.

This change is necessary to help ensure that Medicaid reimbursement for costs incurred by facilities that are not economically and efficiently operated are minimized, and the OMPP can implement cost containment initiatives to assist in covering the increasing costs of the Indiana Medicaid program.

It is estimated that the first nonrebasing year fiscal impact for this change will be approximately $3.3 million (state and federal dollars) reduction in expenditures.

Prior to October 1, 2003, there will be no change to the methodology for establishing rates for nonstate owned ICFs/MR and CRFs/DD under these proposed amendments. Beginning October 1, 2003, Medicaid rates for nonstate owned ICFs/MR and CRFs/DD will be established by increasing the prior year's Medicaid rate by a factor equal to one plus an inflation adjustment derived from the CMS Nursing Home without Capital Market Basket Index, as described in 405 IAC 1-12-6 of the proposed rule. Copies of the proposed rates are not available at this time and will not be available until 2003. Written comments may be directed to IFSSA, Attention: Karen S. Filler, 402 West Washington Street, Room W382, P.O. Box 7083, Indianapolis, Indiana 46207-7083.

Correspondence should be identified in the following manner: "COMMENTS RE: LSA DOCUMENT #02-16, PROPOSED CHANGES TO THE CRFs/DD AND ICFs/MR REIMBURSEMENT SYSTEM." Written comments received will be made available for public display at the address below of the Office of Medicaid Policy and Planning.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection. Also, copies of these rules and this public notice are now on file and open for public inspection by contacting the Director of the local County Division of Family and Children office, except in Marion County where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #02-87

DIGEST

Amends 405 IAC 2-8-1 to add certain nonprobate assets to the definition of estate for Medicaid estate recovery purposes. Adds 405 IAC 2-8-1.1 to provide an exception for certain nonprobate assets valued at less than $125,000. Effective 30 days after filing with the secretary of state.

405 IAC 2-8-1
405 IAC 2-8-1.1

SECTION 1. 405 IAC 2-8-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-8-1 Claims against estate for benefits paid
Authority: IC 12-8-6-5; IC 12-13-5-3; IC 12-15-1-10
Affected: IC 12-15-9; IC 12-15-39.6-10

Sec. 1. (a) Upon the death of a Medicaid recipient fifty-five (55) years of age or older, the office of Medicaid policy and planning (office) shall seek recovery from the recipient's estate for medical assistance paid on behalf of the recipient after the recipient became fifty-five (55) years of age or older. Recovery shall be made for benefits provided prior to October 1, 1993, only if the recipient was sixty-five (65) years of age or older at the time the benefits were provided.

(b) As used in this section, "estate", with respect to a deceased recipient, shall include **all of the following:**

(1) All real and personal property and other assets included within the recipient's estate as defined for purposes of state probate law.

(2) Any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002.

(3) Any real or personal property conveyed through a nonprobate transfer. As used in this section, "nonprobate transfer" means a valid transfer, effective at death, by a transferor who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

(A) use the property for the benefit of the transferor; or

(B) apply the property to discharge claims against the transferor's probate estate.

The term does not include a transfer of a survivorship interest in a tenancy by the entireties real estate, transfer of a life insurance policy or annuity, or payment of the death proceeds of a life insurance policy or annuity.

(c) If the recipient is survived by a spouse, recovery shall be

made after the death of the surviving spouse. Only those assets that are included in the recipient's estate as defined in subsection (b) are subject to recovery.

(d) If the recipient is survived by a child, no recovery shall be made while the child is either:
(1) under twenty-one (21) years of age; or
(2) blind or disabled as defined in 42 U.S.C. 1382c.

(e) A claim may not be enforced against the following assets:
(1) Personal effects, ornaments, or keepsakes of the deceased.
(2) Assets of an individual who purchases a long term care insurance policy that are disregarded pursuant to ~~IC 12-15-3-6.~~ **IC 12-15-39.6-10.**
(3) Nonprobate assets that were determined exempt or unavailable in the decedent's Medicaid eligibility determination, if the notice of eligibility was issued prior to May 1, 2002.
(4) Assets that the decedent transferred through a nonprobate transfer prior to May 1, 2002.

(f) The office may waive the application of this section in cases of undue hardship pursuant to section 2 of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 2-8-1; filed May 1, 1995, 10:45 a.m.: 18 IR 2226; filed Feb 15, 1996, 11:20 a.m.: 19 IR 1563; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 2. 405 IAC 2-8-1.1 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-8-1.1 Claims against estate; exemption
Authority: IC 12-8-6-5; IC 12-13-5-3; IC 12-15-1-10
Affected: IC 12-15-3-6; IC 12-15-9

Sec. 1.1. (a) This section applies only to real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship.

(b) The office may enforce its claim against property described in subsection (a) only to the extent that the value of the recipient's combined total interest in all real property described in subsection (a) subject to the claim exceeds one hundred twenty-five thousand dollars ($125,000).

(c) This section expires January 1, 2008. *(Office of the Secretary of Family and Social Services; 405 IAC 2-8-1.1)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 2, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to 405 IAC 2-8-1 to add certain nonprobate assets to the definition of estate for Medicaid estate recovery purposes, and to add 405 IAC 2-8-1.1 to provide an exception for certain nonprobate assets valued at less than $125,000. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

Proposed Rule
LSA Document #02-85

DIGEST

Amends 407 IAC 2-2-5 to remove 12 months of consecutive eligibility to conform with state law, Public Law 107-2002, SECTION 25. Amends 407 IAC 2-3 to revise premium payment schedule to remove annual and quarterly payment options. Effective 30 days after filing with the secretary of state.

407 IAC 2-2-5
407 IAC 2-3-1
407 IAC 2-3-2

SECTION 1. 407 IAC 2-2-5 IS AMENDED TO READ AS FOLLOWS:

407 IAC 2-2-5 Eligibility
Authority: IC 12-17.6-2-11
Affected: IC 12-17.6-3-3

Sec. 5. (a) Subject to subsection (b), an individual who is eligible for CHIP shall remain covered under the program until the earlier of the following:
(1) The ~~end of a period of twelve (12) months beginning on the first day of the month following the date of determination of the individual's eligibility for the program. As used in this subdivision, "date of determination" means the date that the application is conditionally approved for CHIP.~~ **child becomes financially ineligible.**
(2) The end of the month in which **the** child becomes nineteen (19) years of age.

(b) Subsection (a) applies only if the individual:
(1) and the individual's parent, guardian, or caretaker comply with enrollment requirements, including, but not limited to, paying required premiums; and
(2) does not become ineligible under section 6(a) of this rule.
(Office of the Children's Health Insurance Program; 407 IAC 2-2-5; filed May 3, 2000, 2:02 p.m.: 23 IR 2232)

SECTION 2. 407 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

407 IAC 2-3-1 Responsibility for premium payment
Authority: IC 12-17.6-2-11
Affected: IC 12-17.6-3-2; IC 12-17.6-4-3

Sec. 1. (a) In order for an individual to receive benefits under CHIP, the individual's family must pay **monthly** premiums as described in the following table:

~~Table 1. Amount of Premium~~

~~Income (as a percentage of federal poverty level)~~	~~Monthly~~		~~Quarterly~~		~~Annually~~	
	~~Number of children enrolled~~					
	~~One~~	~~Two or more~~	~~One~~	~~Two or more~~	~~One~~	~~Two or more~~
~~over 150% to 175%~~	~~$11.00~~	~~$16.50~~	~~$31.50~~	~~$47.25~~	~~$120.00~~	~~$180.00~~
~~over 175% to 200%~~	~~$16.50~~	~~$24.75~~	~~$47.25~~	~~$71.00~~	~~$180.00~~	~~$270.00~~

Income (as a percentage of federal poverty level)	**One child enrolled**	**Two or more children enrolled**
over 150% to 175%	**$11.00**	**$16.50**
over 175% to 200%	**$16.50**	**$24.75**

For purposes of this section, the family's income includes the income considered in 407 IAC 2-2-2.

(b) Premiums ~~may~~ **must** be paid monthly. ~~quarterly, or annually at the family's option.~~ Partial month payments will not be accepted. *(Office of the Children's Health Insurance Program; 407 IAC 2-3-1; filed May 3, 2000, 2:02 p.m.: 23 IR 2233)*

SECTION 3. 407 IAC 2-3-2 IS AMENDED TO READ AS FOLLOWS:

407 IAC 2-3-2 Nonpayment of premium
Authority: IC 12-17.6-2-11
Affected: IC 12-17.6-3-2; IC 12-17.6-4-3

Sec. 2. (a) When an applicant is determined eligible for CHIP, the applicant will be conditionally approved for CHIP pending payment of the premium. Coverage begins when the first premium is received by the office or its designated contractor. After the premium is received, coverage will be retroactive to the first day of the month of application.

(b) The parent or guardian must pay the first premium in order for the applicant to receive coverage under CHIP. If payment is not received by the due date specified in the second premium notice, the CHIP application will be denied.

(c) If any premium after the first premium is not paid by the due date, a maximum of sixty (60) days coverage without premium payment will be permitted before coverage is discontinued. When a member has been discontinued from the program due to nonpayment of premiums, the family may ~~reinstate coverage within one (1) year from the date of the decision granting eligibility by paying~~ **reapply, but must pay** all past due premiums and the premium for the current month ~~The member is not required to reapply~~ in order to ~~reinstate~~ **begin** coverage. ~~during this one-year period.~~ The member is not required to pay premiums for the time period between the date of discontinuance and the date that coverage ~~is reinstated.~~ **resumes.** Any services received by the member during the time period between the date of discontinuance and the date that coverage ~~is reinstated~~ **resumes** are not covered by CHIP.

(d) A payment of less than the full amount due will not be accepted and will be considered nonpayment. *(Office of the Children's Health Insurance Program; 407 IAC 2-3-2; filed May 3, 2000, 2:02 p.m.: 23 IR 2233)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 24, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 2, Indianapolis, Indiana the Office of the Children's Health Insurance Program will hold a public hearing on proposed amendments to eligibility and premium payment rules to conform with Public Law 107-2002, SECTION 25, which removes 12 months of continuous eligibility.

Written comments concerning the proposed rule may be sent to: Comments LSA Document #02-85, Attention: Catherine Rudd, MS27, Indiana Family and Social Services Administration, Office of General Counsel, 402 West Washington Street, Room W451, Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Kathryn Moses
Director
Office of the Children's Health Insurance Program

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #02-67

DIGEST

Amends 511 IAC 5-1 to conform to passing standards set by the General Educational Testing Service of the American Council on Education for the 2002 Series GED tests. Effective 30 days after filing with the secretary of state.

511 IAC 5-1-2 **511 IAC 5-1-5**
511 IAC 5-1-3.5 **511 IAC 5-1-6**

SECTION 1. 511 IAC 5-1-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 5-1-2 Minimum standards
Authority: IC 20-10.1-12.1-3
Affected: IC 20-10.1-12.1

Sec. 2. (a) An applicant for a state of Indiana general educational development (GED) diploma must meet the requirements of this section and qualify within one (1) of the following categories:

(1) Be at least eighteen (18) years of age.

(2) Be at least seventeen (17) years of age and:

(A) not be subject to compulsory attendance;

(B) provide documentation of completing the exit interview process; and

(C) provide documentation of receiving a passing score on the GED practice test.

(b) An applicant for a state of Indiana general educational development (GED) diploma must have resided in Indiana a minimum of thirty (30) days immediately preceding the date of testing.

(c) An applicant for a state of Indiana general educational development (GED) diploma must provide the testing center with identification that includes the applicant's photograph.

(d) An applicant for a state of Indiana general educational development (GED) diploma must provide the testing center with proof of age.

(e) An applicant for a state of Indiana general educational development (GED) diploma must obtain:

(1) a minimum standard score of ~~forty (40)~~ **four hundred ten (410)** on each of the five (5) tests included in the GED test battery;

(2) a minimum average standard score of ~~forty-five (45)~~ **four hundred fifty (450)** on all five (5) tests; and

(3) a minimum of ~~two hundred twenty-five (225)~~ **two thousand two hundred fifty (2,250)** standard score points.

(Indiana State Board of Education; 511 IAC 5-1-2; filed Feb 13, 1980, 11:30 a.m.: 3 IR 329; filed Oct 26, 1983, 9:11 a.m.: 7 IR 46; filed Oct 10, 1997, 10:20 a.m.: 21 IR 382) NOTE: Transferred from the commission on general education (510 IAC 10-1.1-2) to the Indiana state board of education (511 IAC 5-1-2) by P.L.20-1984, SECTION 206, effective July 1, 1984.

SECTION 2. 511 IAC 5-1-3.5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 5-1-3.5 Honors diploma
Authority: IC 20-10.1-12.1-3
Affected: IC 20-10.1-12.1

Sec. 3.5. The department of education will grant the state of Indiana general educational development (GED) honors diploma to an applicant whose overall average standard score is ~~sixty-two (62)~~ **six hundred twenty (620)** or higher, provided the requirements of section 2 of this rule are met. A school corporation or accredited nonpublic school has the option of issuing a GED honors diploma. *(Indiana State Board of Education; 511 IAC 5-1-3.5; filed Oct 10, 1997, 10:20 a.m.: 21 IR 383)*

SECTION 3. 511 IAC 5-1-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 5-1-5 Report of test results
Authority: IC 20-10.1-12.1-3
Affected: IC 20-10.1-12.1

Sec. 5. (a) The department of education shall provide an official report of test results (GEDTS Form 30) to the local chief examiner who shall distribute reports to applicants and to a reasonable number of other persons, institutions, or agencies designated by applicants.

(b) Each official report of test results must state:

(1) the applicant's standard score for each test;

(2) the applicant's average standard score for all five (5) tests; and

(3) the following statement: "Satisfactory achievement on the high school level of the Tests of General Educational Development shall be a standard score of ~~forty (40)~~ **four hundred ten (410)** or more on each of the five (5) tests in the battery and an average standard score of ~~forty-five (45)~~ **four hundred fifty (450)** or more on all five (5) tests of the battery.".

(Indiana State Board of Education; 511 IAC 5-1-5; filed Feb 13, 1980, 11:30 a.m.: 3 IR 329; filed Oct 10, 1997, 10:20 a.m.: 21 IR 384) NOTE: Transferred from the commission on general education (510 IAC 10-1.1-5) to the Indiana state board of education (511 IAC 5-1-5) by P.L.20-1984, SECTION 206, effective July 1, 1984.

SECTION 4. 511 IAC 5-1-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 5-1-6 Retesting
Authority: IC 20-10.1-12.1-3
Affected: IC 20-10.1-12.1

Sec. 6. (a) An applicant who achieves a total standard score of at least ~~two hundred fifteen (215)~~ **two thousand one hundred fifty (2,150)** points but less than ~~two hundred twenty-five (225)~~ **two thousand two hundred fifty (2,250)** points must wait at least thirty (30) days after completion of the last test in the original battery to be eligible for retesting.

(b) An applicant who achieves a total standard score of ~~two hundred fourteen (214)~~ **two thousand one hundred forty (2,140)** points or below must wait at least ninety (90) days after completion of the last test in the original battery to be eligible for retesting.

(c) An applicant who does not achieve the minimum standard score of ~~two hundred twenty-five (225)~~ **two thousand two**

hundred fifty (2,250) points as a result of the first retesting must wait at least one hundred eighty (180) days to be eligible for all subsequent retesting.

(d) An applicant whose scores are determined to be incomplete must wait at least thirty (30) days to be eligible for retesting. *(Indiana State Board of Education; 511 IAC 5-1-6; filed Feb 13, 1980, 11:30 a.m.: 3 IR 330; filed Oct 10, 1997, 10:20 a.m.: 21 IR 384) NOTE: Transferred from the commission on general education (510 IAC 10-1.1-6) to the Indiana state board of education (511 IAC 5-1-6) by P.L.20-1984, SECTION 206, effective July 1, 1984.*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 11, 2002 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on proposed amendments to conform to passing standards set by the General Educational Testing Service of the American Council on Education for the 2002 Series GED tests. Copies of these rules are now on file at the 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 515 PROFESSIONAL STANDARDS BOARD

Proposed Rule
LSA Document #02-80

DIGEST

Adds 515 IAC 5 to establish the process whereby a person obtains a substitute teacher's permit and the process whereby a school district employs a substitute teacher. Effective 30 days after filing with the secretary of state.

515 IAC 5

SECTION 1. 515 IAC 5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 5. SUBSTITUTE TEACHER'S PERMIT

Rule 1. Substitute Permits

515 IAC 5-1-1 Permits
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1-6.5; IC 20-6.1-1-8; IC 20-6.1-3; IC 20-6.1-4

Sec. 1. (a) A substitute permit is a renewable three (3) year permit issued to a teacher upon application from the Indiana school district superintendent as defined by the Indiana school district substitute plan.

(b) As used in this article, "substitute teacher" means a teacher, as defined in IC 20-6.1-1-8, who works in the public schools of Indiana and holds a substitute permit issued by the board. *(Professional Standards Board; 515 IAC 5-1-1)*

515 IAC 5-1-2 Application
Authority: IC 20-1-1.4-7
Affected: IC 20-1-16.6; IC 20-6.1-1-8; IC 20-6.1-3; IC 20-6.1-4

Sec. 2. (a) An application for a substitute permit must contain the following:
(1) A completed application form approved by the professional standards board (board), including the signature of the superintendent or designee.
(2) A limited criminal history check from the Indiana state police, dated no earlier than one (1) year prior to the date the application is received by the board.
(3) A nonrefundable fee in the form of a cashier's check, certified check, or money order in the amount required under 515 IAC 1-2-19, or by electronic payment if the board accepts fees electronically.

(b) An incomplete application may be returned. A new fee may be required as a result of submitting an incomplete application. The applicant and the school district are responsible for any delays in licensing processing caused by the submission of an incomplete application. *(Professional Standards Board; 515 IAC 5-1-2)*

515 IAC 5-1-3 Substitute plan
Authority: IC 20-1-1.4-7
Affected: IC 20-1-1-6.5; IC 20-6.1-8; IC 20-6.1-3; IC 20-6.1-4

Sec. 3. (a) A school district substitute plan must contain the following:
(1) A school district's requirements for a substitute permit.
(2) The minimum of a high school diploma earned from an accredited school.
(3) A plan for reciprocity with other Indiana school districts, if applicable.
(4) Training and mentoring procedures for first-year substitute teachers.
(5) Any additional documentation, as may be required by the professional standards board (board).

(b) A school district must have a current substitute plan on file with the board by June 1, 2002. The school district must submit any changes to the plan thirty (30) days prior to implementation of those changes. *(Professional Standards Board; 515 IAC 5-1-3)*

515 IAC 5-1-4 Substitute teacher

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1-6.5; IC 20-6.1-1-8; IC 20-6.1-3; IC 20-6.1-4

Sec. 4. (a) A school district shall not employ persons holding a substitute permit when licensed teachers are available.

(b) Any person who holds a valid Indiana professional, provisional, standard, initial practitioner, proficient practitioner, accomplished practitioner, reciprocal, limited, or emergency permit may serve as a substitute teacher.

(c) Any person who holds a valid Indiana professional, provisional, standard, initial practitioner, proficient practitioner, accomplished practitioner, reciprocal, limited, or emergency permit and who serves as an occasional substitute teacher, shall be compensated on the regular pay schedule for substitutes of that school district.

(d) Any person who holds a valid Indiana professional, provisional, standard, initial practitioner, proficient practitioner, accomplished practitioner, reciprocal, limited, or emergency permit who serves as a substitute teacher in the same teaching position for more than fifteen (15) consecutive days shall be compensated on the regular pay schedule for teachers of that school district.

(e) A person may not serve as a substitute teacher without a valid permit issued under the authority of the professional standards board unless he or she meets the criteria of subsection (b).

(f) Substitute teaching experience shall not count as regular teaching experience to be used toward converting a standard Indiana teaching license to a professional license or an initial practitioner license to a professional practitioner license, waiving the proficiency test, or waiving the beginning teacher internship or assessment program.

(g) A substitute permit may be renewed upon application for three (3) years.

(h) If a school district fails to submit a substitute plan, substitute teachers for that district will be subject to the requirements of IC 20-1-1.4-7 and 515 IAC 1-2-17.

(i) The substitute permit is valid only for the requesting school district unless the school district has a reciprocity plan with another district as described in section 3 of this rule. *(Professional Standards Board; 515 IAC 5-1-4)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 25, 2002 at 10:00 a.m., at the Professional Standards Board, 101 West Ohio Street, Third Floor, Indianapolis, Indiana the Professional Standards Board will hold a public hearing on a proposed new rule concerning the process whereby a person obtains a substitute teacher's permit and the process whereby a school district employs a substitute teacher. Copies of these rules are now on file at the Professional Standards Board, 101 West Ohio Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Marie Theobald
Executive Director
Professional Standards Board

TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

Proposed Rule
LSA Document #02-91

DIGEST

Amends 836 IAC 1, 836 IAC 2, 836 IAC 3, and 836 IAC 4 to revise, clarify, and correct the certification and training requirements and the definitions applicable to emergency medical service personnel, providers, and air ambulances (rotocraft and fixed wing) and vehicles (transport and nontransport). Also adds 836 IAC 1-1-2, 836 IAC 1-1-3, 836 IAC 1-3-6, 836 IAC 2-7.2, 836 IAC 4-6.1, and 836 IAC 4-7.1 to combine enforcement, waiver, and insurance and establish new certification and training requirements for advanced emergency medical technician intermediate personnel and providers. Repeals 836 IAC 1-2-4, 836 IAC 1-8-1, 836 IAC 1-11-5, 836 IAC 2-12-1, 836 IAC 2-13-1, 836 IAC 3-2-8, 836 IAC 3-3-8, 836 IAC 3-4-1, 836 IAC 4-2-5, and 836 IAC 4-10-1. Effective 30 days after filing with the secretary of state.

836 IAC 1-1-2
836 IAC 1-1-3
836 IAC 1-2-1
836 IAC 1-2-2
836 IAC 1-2-3
836 IAC 1-2-4
836 IAC 1-3-5
836 IAC 1-3-6
836 IAC 1-8-1
836 IAC 1-11-1
836 IAC 1-11-2
836 IAC 1-11-4
836 IAC 1-11-5
836 IAC 2-1-1
836 IAC 2-2-1
836 IAC 2-7.1-1
836 IAC 2-7.2
836 IAC 2-12-1
836 IAC 2-13-1
836 IAC 2-14-5
836 IAC 3-2-4
836 IAC 3-2-5
836 IAC 3-2-8
836 IAC 3-3-4
836 IAC 3-3-5
836 IAC 3-3-8
836 IAC 3-4-1
836 IAC 4-1-1
836 IAC 4-2-1
836 IAC 4-2-2
836 IAC 4-2-5
836 IAC 4-3-2
836 IAC 4-4-1
836 IAC 4-5-2
836 IAC 4-6.1
836 IAC 4-7-2
836 IAC 4-7.1
836 IAC 4-9-3
836 IAC 4-10-1

SECTION 1. 836 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-1-1 Definitions

Authority: IC 16-31-2-7
Affected: IC 16-18; IC 16-31-2-9; IC 16-31-3-1; IC 16-31-3

Sec. 1. The following definitions apply throughout this article unless the context clearly denotes otherwise:

(1) "Ambulance" means any conveyance on land, sea, or air that is used, or is intended to be used, for the purpose of responding to emergency life-threatening situations and providing transportation of an emergency patient.

(2) "Ambulance service provider" means any person certified by the commission who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the transportation and care of emergency patients as a part of a regular course of doing business, either paid or voluntary.

(3) "Auto-injector" means a spring-loaded needle and syringe that:

(A) contains a single dose of medication; and

(B) automatically releases and injects the medication.

(4) "Basic life support" means the following:

(A) Assessment of emergency patients.

(B) Administration of oxygen.

(C) Use of mechanical breathing devices.

(D) Application of antishock trousers.

(E) Performance of cardiopulmonary resuscitation.

(F) Application of dressings and bandage materials.

(G) Application of splinting and immobilization devices.

(H) Use of lifting and moving devices to ensure safe transport.

(I) Use of an automatic or a semiautomatic defibrillator if the defibrillator is used in accordance with training procedures established by the commission.

(J) Administration by an emergency medical technician of epinephrine through an auto-injector.

(K) Other procedures authorized by the commission, including procedures contained in the revised national emergency medical technician-basic training curriculum guide.

The term does not include invasive medical care techniques, except for clause (J) and the training and certification standards established under IC 16-31-2-9(4) and the training and certification standards established under IC 16-31-2-9(5).

(5) "Certificate" or "certification" means authorization in written form issued by the commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as a part of a regular course of doing business, either paid or voluntary.

~~(1)~~ **(6)** "Commission" means the Indiana emergency medical services commission.

~~(2)~~ **(7)** "Director" means the director of the state emergency management agency. ~~or the director's designee of the commission.~~

(8) "Emergency ambulance services" means the transportation of emergency patients by ambulance and the administration of emergency care procedures to emergency patients before or during such transportation.

(9) "Emergency medical service nontransport provider" means an organization, certified by the commission, that provides first response patient care at an emergency that includes defibrillation, but does not supply patient transport from the scene of the emergency.

(10) "Emergency medical services" means the provision of emergency ambulance services or other services utilized in serving an individual's need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

(11) "Emergency medical services driver" means an individual who has a certificate of completion of a commission-approved driver training course.

(12) "Emergency medical services provider" means any person certified by the commission who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the care of emergency patients as part of a regular course of doing business, either paid or voluntary.

(13) "Emergency medical services vehicle" means:

(A) an ambulance;

(B) an emergency medical service nontransport vehicle;

(C) a rescue squad; or

(D) an advanced life support nontransport vehicle.

(14) "Emergency medical technician" means an individual who is certified by the commission to provide basic life support at the scene of an accident, illness, or during transport.

(15) "Emergency patient" means an individual who is acutely ill, injured, or otherwise incapacitated or helpless and who requires emergency care. The term includes an individual who requires transportation on a litter or cot or is transported in a vehicle certified as an ambulance under IC 16-31-3.

(16) "F.A.A." means the Federal Aviation Administration.

(17) "F.A.R." means the federal aviation regulations, including, but not limited to, 14 CFR.

(18) "Nontransporting emergency medical services vehicle" means a motor vehicle, other than an ambulance, used for emergency medical services. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.

~~(3)~~ **(19)** "Person" means any:

(A) natural person or persons;

~~(B) firm;~~

~~(C)~~ **(B)** partnership;

~~(D)~~ **(C)** corporation;

~~(E) company;~~

~~(F)~~ **(D)** association; ~~or~~

~~(G)~~ **(E)** joint stock association; **or**

~~and the legal successors thereof, including any~~

(F) governmental ~~agency or instrumentality,~~ **entity** other than an agency or instrumentality of the United States. ~~except that "an agency or instrumentality of the United States", as that phrase is used in IC 16-31-3-3(b), means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.~~

~~(4) "Emergency patient" means an individual who is acutely ill, injured, or otherwise incapacitated or helpless and who requires emergency care. The term includes an individual who requires transportation on a litter or cot or is transported in a vehicle certified as an ambulance under IC 16-31-3.~~

~~(5) "Ambulance" means any conveyance on land, sea, or air that is used or is intended to be used, for the purpose of responding to emergency life-threatening situations and providing transportation of an emergency patient.~~

~~(6) "Ambulance service provider" means any person who is certified by the commission and who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the transportation and care of emergency patients as a part of a regular course of doing business, either paid or voluntary.~~

~~(7) "Emergency medical technician" means an individual certified by the commission who is:~~

~~(A) responsible for the administration of emergency care procedures to emergency patients and for the handling and transportation of such patients; and~~

~~(B) certified under this article.~~

~~(8) "Certificate" or "certification" means authorization in written form issued by the commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as a part of a regular course of doing business, either paid or voluntary.~~

~~(9) "Emergency ambulance services" means the transportation of emergency patients by ambulance and the administration of emergency care procedures to emergency patients before, or during, such transportation.~~

~~(10) "Emergency medical services" means the provision of emergency ambulance services or other services utilized in serving an individual's need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.~~

~~(11) "ATCO" means air taxi and commercial operators, with reference to air taxi and commercial operators, operations certificate outlined in Federal Aviation Regulations, Part 135.~~

~~(12) "F.A.A." means the Federal Aviation Administration.~~

~~(13) "F.A.R." means the federal aviation regulations, including, but not limited to, the following parts:~~

~~(A) F.A.R. relative to the certification of pilots and instructors.~~

~~(B) F.A.R. relative to medical standards and certification of pilots and other F.A.A. related personnel.~~

~~(C) F.A.R. relative to general operating and flight rules.~~

~~(D) F.A.R. relative to air taxi and commercial operators of small aircraft.~~

~~(14) "A.G.L." means above ground level.~~

~~(15) "Emergency medical services provider" means any person certified by the commission who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the care of emergency patients as part of a regular course of doing business, either paid or voluntary.~~

~~(16) "Rescue squad organization" means an organization that holds a voluntary certification to provide extrication, rescue, or emergency medical services.~~

~~(17) "Emergency medical services driver" means an individual who has a certificate of completion of a commission approved driver training course.~~

~~(18) "Emergency medical service nontransport provider" means an organization, certified by the commission, that provides first response patient care at an emergency that includes defibrillation but does not supply patient transport from the scene of the emergency.~~

~~(19) "Emergency medical service nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, which provides first response patient care at an emergency that includes defibrillation but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.~~

~~(20) "Emergency medical services vehicle" means:~~

~~(A) an ambulance;~~

~~(B) an emergency medical service nontransport vehicle;~~

~~(C) a rescue squad; or~~

~~(D) an advanced life support nontransport vehicle.~~

~~(21) "Basic life support" means the following:~~

~~(A) Assessment of emergency patients.~~

~~(B) Administration of oxygen.~~

~~(C) Use of mechanical breathing devices.~~

~~(D) Application of antishock trousers.~~

~~(E) Performance of cardiopulmonary resuscitation.~~

~~(F) Application of dressings and bandage materials.~~

~~(G) Application of splinting and immobilization devices.~~

~~(H) Use of lifting and moving devices to ensure safe transport.~~

~~(I) Use of an automatic or a semiautomatic defibrillator if the defibrillator is used in accordance with training procedures established by the commission.~~

~~(J) Other procedures authorized by the commission, including procedures contained in the revised national emergency medical technician-basic training curriculum guide.~~

(20) "Rescue squad organization" means an organization that holds a voluntary certification to provide extrication, rescue, or emergency medical services.

(Indiana Emergency Medical Services Commission; Emergency Medical Services Preliminary; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 84; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2191; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1035; filed Aug 18, 1986, 1:00 p.m.: 10 IR 23; filed May 15, 1998, 10:25 a.m.: 21 IR 3865; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2718)

SECTION 2. 836 IAC 1-1-2 IS ADDED TO READ AS FOLLOWS:

836 IAC 1-1-2 Enforcement

Authority: IC 16-31-2-7; IC 16-31-3-14; IC 16-31-3-14.5; IC 16-31-3-15
Affected: IC 4-21.5-3; IC 4-21.5-4; IC 4-22; IC 16-31-2-7; IC 16-31-2-9; IC 16-31-3-17; IC 16-31-10-1

Sec. 2. (a) After notice and hearing, the commission may suspend, revoke, or refuse to issue or reissue any certificate issued under IC 16-31-3 and this title for any of the following reasons:

(1) Demonstrated incompetence or inability to provide adequate services as defined in any Indiana commission approved training curricula for which a person has completed to acquire certification.

(2) Deceptive or fraudulent procurement of certification or recertification credentials and/or documentation.

(3) Willful or negligent practice beyond the scope of practice as defined by any Indiana commission- approved training curricula and this title.

(4) Delegating a skill to a person not qualified.

(5) Abuse or abandonment of a patient.

(6) Rendering of services under the influence of alcohol or drugs.

(7) Operation of an emergency medical services vehicle in a reckless or grossly negligent manner or while under the influence of alcohol or drugs.

(8) Unauthorized disclosure of medical records or other confidential patient information.

(9) Willful preparation or filing of false medical reports, or the inducement of others to do so.

(10) Unauthorized destruction of medical records.

(11) Refusal to respond to a call or to render emergency medical care when operating in an official capacity because of a patient's race, sex, creed, national origin, sexual preference, age, disability, or medical condition.

(12) Failure to comply with any part of IC 16-31-3 or this title.

(13) Conviction of a crime listed under IC 16-31-3-14.5 or IC 16-31-3-15. As used in this section, "conviction" means a finding of guilt by a judge or jury, a guilty plea, a plea of nolo contendere or non-vult, or accepting entry into a pretrial intervention program.

(14) Willful or wanton misuse or theft of any drug, medication, or medical equipment.

(15) Willful obstruction of any official of the commission or other agency empowered to enforce the provisions of this title or Indiana law.

(16) Revocation or suspension of certification or license as a first responder, emergency medical technician, advanced emergency medical technician, advanced emergency medical technician intermediate, paramedic, instructor, or other medical professional by any other state or federal jurisdiction.

(17) Any conduct that poses a threat to public health, safety, or welfare.

(b) After notice and hearing, the director may penalize an ambulance service provider, or a person certified under this title up to five hundred dollars ($500) per occurrence for a violation of a patient care standard, protocol, operating procedure, or rule established by the commission.

(c) The commission or the director may, on finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for not more than ninety (90) days on a notice to the certificate holder pursuant to IC 16-31-3-14(d) and IC 4-21.5-4. *(Indiana Emergency Medical Services Commission; 836 IAC 1-1-2)*

SECTION 3. 836 IAC 1-1-3 IS ADDED TO READ AS FOLLOWS:

836 IAC 1-1-3 Request for waiver

Authority: IC 16-31-2-7
Affected: IC 16-31-2-11; IC 16-31-3-5

Sec. 3. (a) A provider or person certified or contemplating certification under this title may submit to the commission a written request that certain provisions of this title be waived. Such a request shall show that a proposed waiver, if approved, would not jeopardize the quality of patient care.

(b) The commission may approve a request based on one (1) or more of the following:

(1) Circumstances where public health and safety is a factor.

(2) Extenuating or mitigating circumstances that warrant consideration to assure the delivery of emergency medical services.

(3) Substitution of equipment authorized by this article.

(4) Testing of new procedures, techniques, and equipment in a pilot study authorized by the commission and supervised by the commission's designee.

(5) Special staffing and/or equipment requirements for a land ambulance providing interhospital emergency transportation of critical care patients.

(c) Out-of-state provider waiver requirements are as follows:

(1) Pursuant to IC 16-31-3-5, the commission shall waive any rule for:

(A) a person who provides emergency ambulance service;

(B) an emergency medical technician; or
(C) an ambulance;
when operating from a location in an adjoining state by contract with an Indiana unit of government to provide emergency ambulance or medical services to patient who are picked up or treated in Indiana.
(2) To receive such a waiver, an applicant shall submit the following:
(A) An application that shall include the following information:
(i) Organizational structure, including name, address, and phone number for the owner, chief executive officer, chief operations officer, training officer, and medical director.
(ii) A description of the service area.
(iii) Hours of operation.
(iv) Proof of insurance coverage in amounts as specified in section 6 of this rule and shall be submitted with the application.
(v) Other information as required by the commission.
(B) A copy of the contract with the Indiana unit of government. This contract shall describe the emergency medical services that are to be provided.
(C) A list of the rule or rules for which the applicant is requesting a waiver.

(d) The commission may establish time limits and conditions on an approved waiver, an approved waiver will be effective for no more than two (2) years after the date of commission approval.

(e) A person or provider with an approved waiver may request that the commission renew this waiver. Such a request is subject to the requirements of this section. If the commission approves the request for renewal, the renewed waiver will expire two (2) years after the date of commission approval. *(Indiana Emergency Medical Services Commission; 836 IAC 1-1-3)*

SECTION 4. 836 IAC 1-2-1, AS AMENDED AT 25 IR 2506, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-2-1 General certification provisions
Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3

Sec. 1. (a) A person shall not engage in the business or service of providing emergency ambulance services upon any public way of the state unless they hold a valid certificate issued by the commission for engaging in such a business or service as an ambulance service provider.

(b) A certificate is not required for a person who provides emergency ambulance service, an emergency medical technician, or an ambulance when:
(1) rendering assistance to persons certified to provide emergency ambulance service or to emergency medical technicians;
(2) operating from a location or headquarters outside Indiana to provide emergency ambulance services to patients who are picked up outside Indiana for transportation to locations within Indiana **and returned to original state of origin;**
(3) providing emergency medical services during a major catastrophe or disaster with which persons or ambulance services are insufficient or unable to cope;
(4) an agency or instrumentality of the United States and any emergency medical technicians or ambulances of such agency or instrumentality are not required to be certified or to conform to the standards prescribed under 836 IAC 1-1-1(3); or
(5) transportation of a patient from another state into Indiana and returned.

(c) Each ambulance, while transporting a patient, shall be staffed by not less than two (2) persons, one (1) of whom shall be a certified emergency medical technician and who shall be in the patient compartment unless an exemption is approved by the commission through subsection (g).

~~(d) After notice and hearing, the commission may and is authorized to suspend or revoke a certificate issued under IC 16-31 or impose a fine of up to five hundred dollars ($500) in accordance with section 4 of this rule, or both, for:~~
~~(1) fraud or misrepresentation in procuring certification; or~~
~~(2) failure to comply and maintain compliance with, or for violation of, any applicable provisions, standards, or other requirement of IC 16-31 or this title.~~
~~The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.~~

~~(e) Notwithstanding the provision of subsection (d), the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(f) Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.~~

~~(g) An ambulance service provider seeking certification of a land ambulance specially staffed, equipped, or uniquely designed to provide interhospital emergency transportation of critical care patients, for example:~~
~~(1) coronary care;~~
~~(2) high risk infant;~~
~~(3) poisoning;~~
~~(4) psychiatric; and~~
~~(5) alcohol and drug overdose;~~
~~may petition the commission for exemption from one (1) or more of the specifications or requirements listed in this article.~~

~~The ambulance service provider shall submit with the application a description of the medical capability of each person who usually staffs the patient compartment when transporting an emergency patient and a description of radio communications capabilities. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any exemption(s) approved under this article. Exemption(s) requested shall not be approved if, in the opinion of the commission, the exemption(s) would impair the capabilities of the ambulance service provider to provide proper emergency patient care.~~

~~(h)~~ **(d)** An ambulance service provider seeking certification for other than a land or air ambulance may petition the commission for any exemptions from one (1) or more of the requirements set forth in this article and 836 IAC 2.

~~(i)~~ **(e)** Each emergency patient shall be transported in a certified ambulance.

~~(j)~~ **(f) Each ambulance service provider shall do the following:**

(1) Notify the ~~commission~~ **director** in writing within thirty (30) days of any changes in **and** items ~~listed~~ **in the application required** in section 2(a) of this rule.

~~(k)~~ **(2)** Notify the ~~commission~~ **director** in writing immediately of change in medical director, including medical director approval form and protocols.

~~(l)~~ **(g)** Each ambulance service provider shall secure a medical director who shall be a physician with an unlimited license to practice medicine in Indiana and who has an active role in the delivery of emergency care. The duties and responsibilities of the medical director are as follows:

(1) Provide liaison between the local medical community and the emergency medical service provider.

(2) Assure compliance with defibrillation training standards and curriculum established by the commission.

(3) Monitor and evaluate the day-to-day medical operations of the ~~emergency medical~~ **ambulance** service **provider** organization.

(4) Assist in the continuing education programs of the ~~emergency medical~~ **ambulance** service **provider** organization.

(5) Provide technical assistance concerning the delivery of automated defibrillation and other medical issues.

(6) Provide individual consultation to the emergency medical personnel affiliated with the ~~emergency medical~~ **ambulance** service **provider** organization.

(7) Participate in the audit and review of cases treated by the emergency medical personnel of the ~~emergency medical~~ **ambulance** service **provider** organization.

(8) Assure compliance with approved medical standards established by the commission performed by **ambulance service provider** organization.

(9) Establish protocols for automatic defibrillation, airway management, patient-assisted medications, and emergency medical technician-administered medications as approved by the commission.

(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule I, A; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 84; filed Dec 15, 1977: Rules and Regs. 1978, p. 244; filed Dec 15, 1977: Rules and Regs. 1978, p. 245; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2192; errata, 4 IR 531; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2419; filed Dec 2, 1983, 2:43 p.m.: 7 IR 352; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1036; filed Aug 18, 1986, 1:00 p.m.: 10 IR 24; filed May 15, 1998, 10:25 a.m.: 21 IR 3866; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2719; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2506)

SECTION 5. 836 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-2-2 Application for certification; renewal

Authority: IC 16-31-2-7
Affected: IC 16-31-3-8

Sec. 2. (a) Application for ambulance service provider certification shall be made on forms as prescribed by the commission, and the applicant shall comply with the following requirements:

(1) Applicants shall complete the required forms and submit the forms to the director not less than sixty (60) days prior to the requested effective date of the certificate.

(2) Each ambulance, with its equipment as required in this article, shall be made available for inspection by the director or the director's ~~duly~~ authorized representative.

(3) The premises on which ambulances are parked or garaged and on which ambulance supplies are stored shall be open during business hours to the director, or the director's ~~duly~~ authorized representative, for inspection.

(4) A complete listing of affiliated personnel to be utilized as emergency medical technicians, first responders, and drivers shall be submitted to the director. The director shall be notified in writing within thirty (30) days of any change in personnel.

(5) Each application shall include the following information:

(A) A description of the service area.

(B) Hours of operation.

(C) Number and location of ambulances.

(D) Organizational structure, including name, address, and phone number for the owner, chief executive officer, chief operations officer, training officer, and medical director.

(E) Current Federal Communications Commission license or letter of authorization.

(F) Location of ambulance service provider's records.

(G) Proof of insurance coverage in amounts as specified in section 3(g) of this rule shall be submitted with the application and shall be renewed thirty (30) days prior to the expiration of the current insurance.

(H) Other information as required by the commission.

(b) Upon approval, a certificate shall be issued by the director. The certificate shall be:

(1) valid for a period of two (2) years; ~~unless earlier revoked or suspended by the commission~~ and ~~shall be~~

(2) prominently displayed at the place of business.

(c) Application for ambulance service provider certification renewal shall be made not less than sixty (60) days prior to the expiration date of the current certificate to assure continuity of certification. Application for renewal shall be made on forms as prescribed by the commission. ~~and shall indicate compliance with the requirements set forth for original certification.~~

~~(d) Ambulance service providers in states immediately adjacent to Indiana who provide ambulance service within Indiana under a contract with an Indiana local unit of government shall be certified by the commission in accordance with this article or apply for waiver of this article so long as the following requirements are met:~~

~~(1) The Indiana local unit of government shall do the following:~~

~~(A) Notify the commission of the intent to provide emergency medical services to residents of their area of responsibility when such services will be provided by an ambulance service in an adjacent state not certified by the commission and said ambulance service is unable to comply with this article for certification.~~

~~(B) Provide a copy of a legally binding contract for services describing the conditions under which emergency medical services will be provided.~~

~~(C) Show proof of the issuance of public notice describing any and all differences between the state standards in existence for the contracted provider of ambulance service and the standards adopted by the commission.~~

~~(D) The commission may issue certification under this provision for a period of two (2) years.~~

~~(2) The commission may revoke certification of the contracted ambulance service provider immediately upon determining that the contracted ambulance service provider is in violation of existing adjacent state rules and regulations regarding the provision of emergency medical services.~~

~~(3) Violations of Indiana patient care standards or standards existing under the contracted ambulance service providers state rules and regulations are subject to the provision and levying of fines as described in section 4 of this rule at the discretion of the director and shall be the responsibility of the Indiana local unit of government as the contractee.~~

(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule I,B; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 86; filed May 10, 1977, 10:52 a.m.: Rules and Regs. 1978, p. 218; filed Dec 15, 1977: Rules and Regs. 1978, p. 245; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2193; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2420; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1037; filed Aug 18, 1986, 1:00 p.m.: 10 IR 25; filed May 15, 1998, 10:25 a.m.: 21 IR 3867; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2720)

SECTION 6. 836 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-2-3 Ambulance service provider operating procedures

Authority: IC 16-31-2-7
Affected: IC 16-18; IC 16-31-3-2; IC 34-6-2-49

Sec. 3. (a) Each ambulance service provider shall maintain accurate records concerning the transportation of each emergency patient within Indiana, including an ambulance run report form in an electronic or written format as prescribed by the commission as follows:

(1) An ambulance run report form shall be required by all ambulance providers including, at a minimum, the following information about the patient:

(A) Name.
(B) Identification number.
(C) Age.
(D) Sex.
(E) Date of birth.
(F) Race.
(G) Address, including zip code.
(H) Location of incident.
(I) Chief complaint.
(J) History, including the following:
(i) Current medical condition and medications.
(ii) Past pertinent medical conditions and allergies.
(K) Physical examination section.
(L) Treatment given section.
(M) Vital signs, including the following:
(i) Blood pressure.
(ii) Pulse.
(iii) Respirations.
(iv) Level of consciousness.
(v) Skin temperature and color.
(vi) Pupillary reactions.
(vii) Ability to move.
(viii) Presence or absence of breath sounds.
(ix) The time of observation and a notation of the quality for each vital sign should also be included.
(N) Responsible guardian.
(O) Hospital destination.
(P) Radio contact via UHF or VHF.
(Q) Name of patient attendants, including emergency medical service certification numbers.
(R) Vehicle certification number.
(S) Safety equipment used by patient.
(T) Date of service.
(U) Service delivery times, including the following:
(i) Time of receipt of call.
(ii) Time dispatched.
(iii) Time arrived scene.
(iv) Time of departure from scene.
(v) Time arrived hospital.

(vi) Time departed hospital.
(vii) Time vehicle available for next response.
(viii) Time vehicle returned to station.

(2) The report form shall be designed in a manner to provide space for narrative notation of additional medical information. A copy of the form shall be provided to the receiving facility for the purpose of patient information and record.

(3) When a patient has signed a statement for refusal of treatment or transportation services, or both, that signed statement shall be maintained as part of the run documentation.

(b) All ambulance service providers shall participate in the emergency medical service system review by:

(1) collecting all data elements prescribed by the commission; and

(2) reporting that information according to procedures and schedules prescribed by the commission.

(c) An ambulance service provider shall not operate a land ambulance on any public way in Indiana ~~if~~ **unless** the ambulance is ~~not~~ in full compliance with the ambulance certification requirements established and set forth in this article, ~~or exemptions approved by the commission, and which does not have a certificate issued pursuant to IC 16-31,~~ except an ambulance service provider may operate, for a period not to exceed sixty (60) consecutive days, a noncertified ambulance if the noncertified ambulance is used to replace a certified ambulance that has been taken out of service providing the following:

(1) The replacement ambulance shall meet all certification requirements.

(2) The ambulance service provider shall notify the commission in writing within seventy-two (72) hours of the time the replacement ambulance is placed in service. The written notice shall identify the following:

(A) The replacement date.
(B) The certification number of the replaced ambulance.
(C) The vehicle identification number of the replacement ambulance.
(D) The make and type of the replacement ambulance.

Upon receipt of the notification, a temporary certificate shall be issued effective the date the certified ambulance was replaced. Temporary certification shall not exceed sixty (60) days and, upon return to service, the use of the replacement vehicle shall cease and the temporary certificate shall be returned to the commission. ~~If the replaced ambulance is not returned to service within the sixty (60) day period, use of the replacement ambulance shall cease unless certification is approved in accordance with 836 IAC 1-3.~~

(d) The ambulance service provider's premises shall be maintained, suitable to the conduct of the ambulance service, with provision for adequate storage of ambulances and equipment.

(e) Each ambulance service provider shall provide for a periodic maintenance program to assure that all ambulances, including equipment, are maintained in good working condition ~~and that rigid sanitation procedures are in effect~~ at all times.

(f) All ambulance service provider premises, records, garaging facilities, and ambulances shall be made available for inspection by the commission, director, or a duly authorized representative at any time during operating hours.

~~(g) The insurance requirement of IC 16-31-3-2(2) is satisfied if the ambulance service provider:~~

~~(1) has in force and effect public liability insurance in the sum of not less than three hundred thousand dollars ($300,000) combined single limit, issued by an insurance company licensed to do business in Indiana; or~~

~~(2) is a government entity within the meaning of IC 34-6-2-49. Coverage shall be for every ambulance owned or operated by or for the ambulance service provider.~~

~~(h)~~ **(g)** Each ambulance service provider shall provide and maintain a communication system that meets or exceeds the requirements set forth in 836 IAC 1-4.

~~(i)~~ **(h)** Each ambulance service provider shall designate one (1) person as the organization's training officer to assume responsibility for in-service training. This person shall be certified as an emergency medical technician, an advanced emergency medical technician, a paramedic, a registered nurse, a certified physician assistant, or a licensed physician who is actively involved in the delivery of emergency medical services with that organization. The training officer shall be responsible for the following:

(1) Providing and maintaining records of in-service training offered by the provider organization.

(2) Maintaining the following in-service training session information:

(A) Summary of the program content.
(B) The name of the instructor.
(C) The names of those attending.
(D) The date, time, and location of the in-service training sessions.

(3) Signing individual emergency medical technician training records or reports to verify actual time in attendance at ~~a~~ training sessions.

~~(j)~~ **(i)** An ambulance service provider shall not act in a reckless or negligent manner so as to endanger the health or safety of emergency patients or members of the general public while in the course of business as an ambulance service provider.

~~(k)~~ **(j)** Each ambulance service provider shall notify the director within thirty (30) days of the present and past specific location of any ambulance if the location of the ambulance is changed from that specified in the provider's application for ambulance service provider certification or certification renewal.

~~(l)~~ **(k)** Each ambulance service provider shall, within seven (7) consecutive days of the date a certified ambulance is permanently withdrawn from service, return to the director the certificate and window sticker issued by the commission for the ambulance.

~~(m)~~ **(l)** No certified ambulance service provider may operate any noncertified vehicle that displays to the public any word, phrase, or marking that implies in any manner that the vehicle is an ambulance as defined in IC 16-18 unless the vehicle is used solely in another state for patient care.

~~(n)~~ **(m)** Each ambulance service provider shall ensure that rigid sanitation procedures are in effect at all times. The following sanitation standards apply to all ambulances:

(1) The interior and the equipment within the vehicle shall be clean and maintained in good working order at all times.

(2) Freshly laundered linen or disposable linens shall be used on litters and pillows, and linen shall be changed after each patient is transported.

(3) Clean linen storage shall be provided.

(4) Closed compartments shall be provided within the vehicle for medical supplies.

(5) Closed containers shall be provided for soiled supplies.

(6) Blankets shall be kept clean and stored in closed compartments.

(7) Implements inserted into the patient's nose or mouth shall be single-service, wrapped, and properly stored and handled. Multi-use items shall be kept clean and sterile when indicated and properly stored.

(8) When a vehicle has been utilized to transport a patient known to have a communicable disease or suffered exposure to hazardous material or biohazard material, the vehicle and equipment shall be cleansed and all contact surfaces washed in accordance with current decontamination and disinfecting standards. All hazardous and biohazard materials shall be disposed of in accordance with current hazardous and biohazard disposition standards.

~~(o)~~ **(n)** An ambulance service provider shall not engage in the provision of advanced life support as defined in IC 16-18 unless:

(1) the ambulance service provider is certified pursuant to 836 IAC 2 and the vehicle meets the requirements of 836 IAC 2; or

(2) an exemption has been granted or authorized for the ambulance service provider and vehicle(s) pursuant to this article or 836 IAC 2.

~~(p)~~ **(o)** Each emergency medical services provider, under the responsibility of its chief executive officer and medical director, shall conduct audit and review at least quarterly to assess, monitor, and evaluate the quality of patient care as follows:

(1) The audit shall evaluate patient care and personnel performance against established standards of care.

(2) The results of the audit shall be reviewed with the emergency medical service personnel.

(3) Documentation for the audit and review shall include the following:

(A) The criteria used to select audited runs.

(B) Problem identification and resolution.

(C) Date of review.

(D) Attendance at the review.

(E) A summary of the discussion at the review.

(4) The audit and review shall be conducted under the direction of one (1) of the following:

(A) The emergency medical services provider medical director.

(B) An emergency department committee that is supervised by a medical director. An emergency medical services provider representative shall serve as a member on the committee.

(C) A committee established by the emergency medical services provider.

~~(q)~~ **(p)** An ambulance service provider may operate ~~an~~ **a nontransport** emergency medical services vehicle ~~as a an emergency medical service nontransport vehicle~~ in accordance with 836 IAC 1-11-4.

~~(r)~~ **(q)** All records shall be retained for a minimum of three (3) years, except for the following records that shall be retained for a minimum of seven (7) years:

(1) Audit and review records.

(2) Run reports.

(3) Training records.

~~(s)~~ **(r)** An ambulance service provider ~~and any affiliated emergency medical technician possessing~~ **with** approval ~~for intravenous line maintenance training~~ from the **provider organization's** medical director may transport a patient ~~from a medical care facility if the only advanced life support procedure that has been previously initiated for the patient is an intravenous line administering prepackaged solutions that may contain~~ **with** the following: ~~additives and no others~~:

(1) ~~Vitamins.~~ **PCA Pump with any medication or fluid infusing through a peripheral IV.**

(2) ~~Sodium chloride, excluding saline solutions in excess of nine-tenths percent (0.9%) concentration.~~ **Medication infusing through a peripheral IV or continuous subcutaneous catheter via a closed, locked system.**

(3) ~~Potassium chloride (twenty (20) milliequivalent per liter maximum).~~ **A central catheter that is clamped off.**

(4) ~~Crystalloid solution.~~ **A patient with a feeding tube that is clamped off.**

(5) A patient with a Holter monitor.

(6) A patient with a peripheral IV infusing vitamins.

(7) IV fluids infusing through a peripheral IV via gravity or an infusing system that allows the technician to change the rate of infusion are limited to D5W, Lactated Ringers,

Sodium Chloride (0.9% or less), Potassium Chloride (20mEq or less for emergency medical technicians, 40mEq or less for advanced emergency medical technicians).

~~This requirement applies so long as the ambulance meets all certification requirements under IC 16-31 and all staffing and equipment requirements of this article.~~ At no time will piggyback or secondary intravenous line or blood products be transported.

(s) An ambulance service provider who has any certified vehicles involved in any traffic accident investigated by a law enforcement agency must report that accident to the commission within ten (10) working days on a form prescribed by the commission. *(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule I, C; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 86; filed May 10, 1977, 10:52 a.m.: Rules and Regs. 1978, p. 218; filed Dec 15, 1977: Rules and Regs. 1978, p. 245; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2194; errata, 4 IR 531; filed Dec 2, 1983, 2:43 p.m.: 7 IR 353; errata, 7 IR 1254; errata, 7 IR 1551; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1038; filed Aug 18, 1986, 1:00 p.m.: 10 IR 26; filed Oct 11, 1988, 11:05 a.m.: 12 IR 354; filed May 15, 1998, 10:25 a.m.: 21 IR 3868; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2721)*

SECTION 7. 836 IAC 1-3-5, AS AMENDED AT 25 IR 2507, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-3-5 Emergency care equipment

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 5. Each and every ambulance will have the following minimum emergency care equipment, and this equipment shall be assembled and readily accessible:

(1) Respiratory and resuscitation equipment as follows:
  (A) Portable suction apparatus, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.
  (B) On-board suction, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.
  (C) Bag-mask ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:
    (i) Adult.
    (ii) Child.
    (iii) Infant.
    (iv) Neonatal (mask only).
  (D) Oropharyngeal airways, two (2) each of adult, child, and infant.
  (E) One (1) pocket mask with one-way valve.
  (F) Portable oxygen equipment of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.
  (G) On-board oxygen equipment of at least three thousand (3,000) liters capacity (M size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.
  (H) Oxygen delivery devices shall include the following:
    (i) High concentration devices, two (2) each, adult, child, and infant.
    (ii) Low concentration devices, two (2) each, adult.
  (I) Nasopharyngeal airways, two (2) each of the following with water soluble lubricant:
    (i) Small (20-24 french).
    (ii) Medium (26-30 french).
    (iii) Large (31 french or greater).
  (J) Bulb syringe individually packaged in addition to obstetrics kit.
  (K) Nonvisualized airway minimum of two (2) with water soluble lubricant.
  (L) Semiautomatic or automated external defibrillator and a minimum of two (2) sets of pads.
(2) Wound care supplies as follows:
  (A) Multiple trauma dressings, two (2) approximately ten (10) inches by thirty-six (36) inches.
  (B) Fifty (50) sterile gauze pads, three (3) inches by three (3) inches or larger.
  (C) Bandages, four (4) soft roller self-adhering type, two (2) inches by four (4) yards minimum.
  (D) Airtight dressings, four (4), for open chest wounds.
  (E) Adhesive tape, two (2) rolls.
  (F) Burn sheets, two (2), sterile.
  (G) Triangular bandages, four (4).
  (H) Bandage shears, one (1) pair.
(3) Patient stabilization equipment as follows:
  (A) Traction splint, lower extremity, limb-supports, padded ankle hitch, and traction strap, or equivalent, one (1) assembly in adult size.
  (B) Upper and lower extremity splinting devices, two (2) each.
  (C) One (1) splint device intended for the unit-immobilization of head-neck and torso. These items shall include the splint itself and all required accessories to provide secure immobilization.
  (D) One (1) long back board with accessories to provide secure spinal immobilization.
  (E) Rigid extrication collar, two (2) each capable of the following sizes:
    (i) Pediatric.
    (ii) Small.
    (iii) Medium.
    (iv) Large.
  (F) One (1) ambulance litter with side rails, head-end elevating capacity, mattress pad, and a minimum of three (3) adjustable restraints to secure the chest, hip, and knee areas.
(4) Medications ~~limited to, if approved by medical director, the following:~~ **as follows:**

(A) Beginning July 1, 2003, every ambulance shall be required to have epinephrine auto-injectors limited to the following:

(i) Two (2) adult.

(ii) One (1) pediatric.

(B) If approved by medical director, limited to the following:

(~~A~~) **(i)** Baby aspirin, eighty-one (81) milligrams each.

(~~B~~) **(ii)** Activated charcoal.

(~~C~~) **(iii)** Instant glucose.

(5) Personal protection/universal precautions equipment, minimum of two (2) each, including the following:

(A) Gowns.

(B) Face masks and shields.

(C) Gloves.

(D) Biohazard bags.

(E) Antimicrobial hand cleaner.

(6) Miscellaneous items as follows:

(A) Obstetrical kit, sterile, one (1).

(B) Clean linens consisting of the following:

(i) Pillow.

(ii) Pillow case.

(iii) Sheets and blankets.

(C) Blood pressure manometer, one (1) each in the following cuff sizes:

(i) Large adult.

(ii) Adult.

(iii) Pediatric.

(D) Stethoscopes, one (1) each in the following sizes:

(i) Adult.

(ii) Pediatric.

(E) Sharps collector, one (1) being a minimum of seven (7) inches in height.

(F) A current copy of the basic life support protocols.

(Indiana Emergency Medical Services Commission; Emergency Medical Services Rule II, E; filed Jun 5, 1975, 11:57 a.m.: Rules and Regs. 1976, p. 93; filed May 10, 1977, 10:52 a.m.: Rules and Regs. 1978, p. 219; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2200; filed Dec 2, 1983, 2:43 p.m.: 7 IR 355; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1045; filed Aug 18, 1986, 1:00 p.m.: 10 IR 31; filed May 15, 1998, 10:25 a.m.: 21 IR 3875; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2727; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2507)

SECTION 8. 836 IAC 1-3-6 IS ADDED TO READ AS FOLLOWS:

836 IAC 1-3-6 Insurance

Authority: IC 16-31-2-7

Affected: IC 16-31-3; IC 16-31-3-17; IC 34-13-3

Sec. 6. (a) This section does not apply to ambulances owned by a governmental entity covered under IC 34-13-3.

(b) The commission may not issue a certification for an ambulance until the applicant has filed with the commission a certificate of insurance indicating that the applicant has liability insurance:

(1) in effect with an insurer that is authorized to write insurance in Indiana; and

(2) that provides general liability coverage to a limit of at least:

(A) one million dollars ($1,000,000) for the injury or death of any number of persons in any one (1) occurrence; and

(B) five hundred thousand dollars ($500,000) for property damage in any one (1) occurrence.

(c) An insurance policy required under this section may include a deductible clause if the clause provides that any settlement made by the insurance company with an injured person or a personal representative must be paid as though the deductible clause did not apply.

(d) An insurance policy required under this section must provide, by the policy's original terms or an endorsement, that the insurer may not cancel the policy without:

(1) thirty (30) days written notice; and

(2) a complete report of the reasons for the cancellation to the office.

(e) An insurance policy required under this section must provide, by the policy's original terms or an endorsement, that the insurer shall report to the department within twenty-four (24) hours after the insurers pay a claim or reserves any amount to pay an anticipated claim that reduces the liability coverage below the amounts established in this section.

(f) If an insurance policy required under this section:

(1) is canceled during the policy's term;

(2) lapses for any reason; or

(3) has the policy's coverage fall below the required amount;

the owner of the ambulance shall replace the policy with another policy that complies with this section.

(g) If the owner of the ambulance fails to file a certificate of insurance for new or replacement insurance, the owner of the ambulance:

(1) must cease all operations under the certification immediately; and

(2) may not conduct further operations until the owner of the ambulance receives the approval of the commission to resume operations after the owner of the ambulance complies with the requirements of this section.

(Indiana Emergency Medical Services Commission; 836 IAC 1-3-6)

SECTION 9. 836 IAC 1-11-1, AS AMENDED AT 25 IR 2508, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-11-1 General certification provisions

Authority: IC 16-31-2-7

Affected: IC 4-33; IC 5-2-5-1; IC 16-21; IC 16-31; IC 22-12-1-12

Sec. 1. ~~(a)~~ An organization eligible to be a certified emergency medical services nontransport provider shall be an established emergency services organization and shall be one (1) of the following:

(1) Fire department as defined in IC 22-12-1-12.

(2) Law enforcement agency as defined in IC 5-2-5-1.

(3) Hospital as licensed under IC 16-21.

(4) Any provider organization certified under IC 16-31.

(5) Indiana gaming organizations as defined in IC 4-33.

(6) Other organizations approved by the commission.

~~(b) Notwithstanding subsection (a), the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(c) Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.~~

~~(d) After notice and hearing, the commission may, and is authorized to, suspend or revoke a certificate issued under IC 16-31 or impose a fine of up to five hundred dollars ($500) in accordance with section 5 of this rule, or both, for:~~

~~(1) fraud or misrepresentation in procuring certification; or~~

~~(2) failure to comply and maintain compliance with, or for violation of, any applicable provision, standard, or other requirement of IC 16-31 or this title.~~

~~The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.~~ *(Indiana Emergency Medical Services Commission; 836 IAC 1-11-1; filed May 15, 1998, 10:25 a.m.: 21 IR 3887; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2728; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2508)*

SECTION 10. 836 IAC 1-11-2, AS AMENDED AT 25 IR 2509, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-11-2 Application for certification; renewal

Authority: IC 16-31-2-7
Affected: IC 16-31-3-2; IC 16-31-3-8

Sec. 2. (a) Application for emergency medical services nontransport provider certification shall be made on forms as prescribed by the commission, and the applicant shall comply with the following requirements:

(1) Applicants shall complete the required forms and submit the forms to the director not less than sixty (60) days prior to the requested effective date of the certificate.

(2) Each emergency medical services vehicle, with its equipment as required by this article, shall be made available for inspection by the director or the director's duly authorized representative.

(3) The premises on which emergency medical services vehicle supplies are stored shall be open during operating hours to the director or the director's duly authorized representative, for inspection.

(4) A complete listing of affiliated personnel to be utilized as emergency medical technicians, first responders, and emergency medical services vehicle drivers shall be submitted to the director. The director shall be notified in writing within thirty (30) days of any change in personnel.

(5) Each application shall include the following information:

(A) A description of the service area.

(B) Hours of operation.

(C) Number and location of emergency medical services vehicles.

(D) Organizational structure, including names, addresses, and telephone numbers of the owner, chief executive officer, chief operations officer, training officer, and medical director.

(E) Current Federal Communications Commission license or letter of authorization.

(F) Location of emergency medical services nontransport provider's records.

(G) Proof of insurance coverage in adequate amounts as specified in subsection (d) shall be submitted with the application and shall be renewed thirty (30) days prior to the expiration of the current insurance.

(H) Other information as required by the commission.

(b) Upon approval, a certificate shall be issued by the director. The certificate shall be valid for a period of two (2) years unless earlier revoked or suspended by the commission and shall be prominently displayed at the place of business.

(c) Application for emergency medical services nontransport provider certification renewal shall be made not less than sixty (60) days prior to the expiration date of the current certificate to assure continuity of certification. Application for renewal shall be made on forms as prescribed by the commission and shall indicate compliance with the requirements set forth for original certification.

~~(d) Emergency medical services nontransport providers in states immediately adjacent to Indiana who will be providing emergency medical services vehicle service within Indiana under a contract with an Indiana local unit of government shall be certified by the Indiana emergency medical services commission in accordance with this article or apply for waiver of this article so long as the following requirements are met:~~

~~(1) The Indiana local unit of government shall meet the following requirements:~~

~~(A) Notify the Indiana emergency medical services commission of the intent to provide emergency medical services to residents of their area of responsibility when such services will be provided by an emergency medical services vehicle service in an adjacent state not certified by the Indiana emergency medical services commission and said~~

~~emergency medical services vehicle service is unable to comply with this article for certification.~~

~~(B) Provide a copy of a legally binding contract for services that outlines the conditions under which emergency medical services will be provided.~~

~~(C) Show proof of the issuance of public notice that describes any and all differences between the state standards in existence for the contracted provider of emergency medical service and the standards adopted by the commission.~~

~~(D) The commission may issue certification under this provision for a period of two (2) years.~~

~~(2) The commission may revoke certification of the contracted emergency medical services nontransport provider immediately upon determining that the contracted emergency medical services nontransport provider is in violation of existing adjacent state rules and regulations regarding the provision of emergency medical services.~~

~~(3) Violations of Indiana patient care standards or standards existing under the contracted emergency medical services nontransport providers state rules and regulations are subject to the provision and levying of fines as described in 836 IAC 1-2-4 at the discretion of the director and shall be the responsibility of the Indiana local unit of government as the contractee.~~

~~(c)~~ **(d)** Emergency medical services nontransport providers shall submit a copy of an agreement between the nontransporting organization and an ambulance service provider certified pursuant to IC 16-31. The agreement shall ensure that the nontransporting organization can be assured that patients treated shall be transported in a timely and safe manner. The agreement shall not preclude another ambulance service provider, if available, from transporting the patients. *(Indiana Emergency Medical Services Commission; 836 IAC 1-11-2; filed May 15, 1998, 10:25 a.m.: 21 IR 3887; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2509)*

SECTION 11. 836 IAC 1-11-4 IS AMENDED TO READ AS FOLLOWS:

836 IAC 1-11-4 Emergency medical services nontransport provider emergency care equipment

Authority: IC 16-31-2-7
Affected: IC 16-31-3-2

Sec. 4. Every emergency medical services nontransport provider shall have one (1) set of the following assembled and readily accessible emergency care equipment for every vehicle utilized as an emergency medical service nontransport vehicle:

(1) Respiratory and resuscitation equipment as follows:

(A) Portable suction apparatus, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.

(B) Bag-mask ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:

(i) Adult.
(ii) Child.
(iii) Infant.
(iv) Neonatal (mask only).

(C) Portable oxygen equipment of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter. Oxygen delivery devices shall include high concentration devices, one (1) each of the following:

(i) Adult.
(ii) Child.
(iii) Infant.

(D) Oropharyngeal airways, two (2) each of adult, child, and infant.

(E) One (1) pocket mask with one-way valve.

(F) Nasopharyngeal airways, two (2) each of the following:

(i) Small (20-24 french).
(ii) Medium (26-30 french).
(iii) Large (31 french or greater).

(G) Semiautomatic or automated external defibrillator and a minimum of two (2) sets of pads.

(2) Wound care supplies as follows:

(A) Ten (10) sterile gauze pads, three (3) inches by three (3) inches or larger.

(B) Bandages, two (2) soft roller self-adhering type, two (2) inches by four (4) yards minimum.

(C) Adhesive tape, two (2) rolls.

(D) Bandage shears, one (1) pair.

(3) Miscellaneous items as follows:

(A) Water soluble lubricant for airway insertion.
(B) Stethoscope, one (1).
(C) Blood pressure manometer, one (1) adult size.
(D) Diagnostic penlight or portable flashlight, one (1).
(E) Disposable gloves, two (2) pairs.

(F) A current copy of the basic life support protocols.

(4) Medications if approved by organizations medical director for use by emergency medical technicians only are epinephrine auto-injectors, limited to the following:

(A) Two (2) adult.
(B) One (1) pediatric.

(Indiana Emergency Medical Services Commission; 836 IAC 1-11-4; filed May 15, 1998, 10:25 a.m.: 21 IR 3890; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2731)

SECTION 12. 836 IAC 2-1-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 2-1-1 Definitions

Authority: IC 16-31-2-7
Affected: IC 10-4-1-7; IC 10-8-2-1; IC 16-18-2-6; IC 16-21-2; IC 16-31-3-3; IC 25-22.5; IC 35-41-1-26.5

Sec. 1. The following definitions apply throughout this article unless the context clearly denotes otherwise and pertain to all

advanced life support requirements and standards promulgated by the commission:

(1) "Advanced emergency medical technician" means an individual who can perform one (1) or more, but not all, of the procedures of a paramedic and who:

(A) has completed a prescribed course in advanced life support;

(B) has been certified by the commission;

(C) is associated with a single supervising hospital; and

(D) is affiliated with a provider organization.

(2) "Advanced emergency medical technician intermediate" means an individual who can perform one (1) or more, but not all, of the procedures of a paramedic and who:

(A) has completed a prescribed course in advanced life support;

(B) has been certified by the commission;

(C) is associated with a single supervising hospital; and

(D) is affiliated with a provider organization.

(3) "Advanced emergency medical technician intermediate organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technician intermediates in conjunction with a supervising hospital.

(4) "Advanced emergency medical technician organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technicians in conjunction with a supervising hospital.

(5) "Advanced life support", for purposes of IC 16-31, means:

(A) care given:

(i) at the scene of an:

(AA) accident;

(BB) act of terrorism (as defined in IC 35-41-1-26.5), if the governor has declared a disaster emergency under IC 10-4-1-7 in response to the act of terrorism; or

(CC) illness; or

(ii) during transport at a hospital;

by a paramedic, advanced emergency medical technician intermediate, or advanced emergency medical technician and that is more advanced than the care usually provided by an emergency medical technician; and

(B) may include:

(i) defibrillation;

(ii) endotracheal intubation;

(iii) parenteral injection of appropriate medications, including administration of epinephrine through an auto-injector;

(iv) electrocardiogram interpretation; and

(v) emergency management of trauma and illness.

(6) "Advanced life support nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, that provides advanced life support but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.

(7) "An agency or instrumentality of the United States", as that phrase is used in IC 16-31-3-3, means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.

(8) "Anniversary date" means the date on which certification as a paramedic, advanced emergency medical technician intermediate or an advanced emergency medical technician was issued by the commission.

(9) "Auto-injector" means a spring-loaded needle and syringe that:

(A) contains a single dose of medication; and

(B) automatically releases and injects the medication.

(10) "Certificate" or "certification", for the purposes of IC 16-31, means authorization in written form issued by the Indiana emergency medical services commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as part of a regular course of doing business, either paid or voluntary.

~~(1)~~ **(11)** "Commission" means the Indiana emergency medical services commission.

~~(2)~~ **(12)** "Director" means the director of the ~~commission.~~ **state emergency management agency established under IC 10-8-2-1.**

(13) "Emergency management of trauma and illness" means the following:

(A) Those procedures for which the paramedic has been specifically trained that are a part of the curriculum prescribed by the commission.

(B) Those procedures for which the paramedic has been specifically trained as a part of the continuing education program and approved by the supervising hospital and the paramedic organization's medical director.

(C) Those procedures for which the advanced emergency medical technician has been specifically trained in the Indiana basic emergency medical technician and Indiana advanced emergency medical technician curriculums and have been approved by the administrative and medical staff of the supervising hospital, the advanced emergency medical technician organization medical director, and the commission as being within the scope and responsibility of the advanced emergency medical technician.

(D) Those procedures for which the advanced emergency medical technician intermediate has been specifically trained in the Indiana basic emergency medical technician and Indiana advanced emergency medical

technician intermediate curriculums and have been approved by the administrative and medical staff of the supervising hospital, the advanced emergency medical technician intermediate organization medical director, and the commission as being within the scope and responsibility of the advanced emergency medical technician intermediate.

(14) "Emergency medical services vehicle" means an ambulance, an emergency medical service nontransport vehicle, a rescue squad, or an advanced life support nontransport vehicle.

(15) "Paramedic" means an individual who:

(A) is affiliated with a certified paramedic organization or is employed by a supervising hospital;

(B) has completed a prescribed course in advanced life support; and

(C) has been certified by the commission.

(16) "Paramedic organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by paramedics or physicians with an unlimited license to practice medicine in Indiana in conjunction with supervising hospitals.

~~(3)~~ **(17)** "Person" means any:

(A) natural person or persons;

~~(B) firm;~~

~~(C)~~ **(B)** partnership;

~~(D)~~ **(C)** corporation;

~~(E) company;~~

~~(F)~~ **(D)** association; ~~or~~

~~(G)~~ **(E)** joint stock association; **or**

~~and the legal successors thereof, including any~~

(F) governmental ~~agency or instrumentality,~~ **entity** other than an agency or instrumentality of the United States.

~~(4) "An agency or instrumentality of the United States", as that phrase is used in IC 16-31-3-3, means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.~~

~~(5) "Certificate" or "certification" means authorization in written form issued by the commission to a person:~~

~~(A) to operate and maintain advanced life support services;~~

~~(B) to act as an advanced emergency medical technician;~~

~~(C) to act as a paramedic; or~~

~~(D) to exercise the privileges as defined in this article.~~

~~(6) "Anniversary date" means the date on which certification as a paramedic, or an advanced emergency medical technician was issued by the commission.~~

~~(7) "Provider organization operating area" means the geographic area in which an advanced emergency medical technician, affiliated with a specific advanced emergency medical technician organization, is able to maintain two-way voice communication with the provider organization's supervising hospitals.~~

~~(8) "Provider organization" means an ambulance service or other emergency care organization certified by the commission to provide advanced life support in connection with a supervising hospital.~~

~~(9) "Advanced life support" means care given at the scene of an accident or illness, during transport, or at a hospital by a paramedic, or advanced emergency medical technician that is more advanced than that usually rendered by an emergency medical technician and may include, but is not limited to, the following:~~

~~(A) Manual defibrillation.~~

~~(B) Endotracheal intubation.~~

~~(C) Parenteral injection of appropriate medications.~~

~~(D) Electrocardiogram interpretation.~~

~~(E) Emergency management of trauma and illness.~~

~~(10) "Emergency management of trauma and illness" means the following:~~

~~(A) Those procedures for which the paramedic has been specifically trained that are a part of the curriculum prescribed by the commission.~~

~~(B) Those procedures for which the paramedic has been specifically trained as a part of the continuing education program and approved by the supervising hospital and the paramedic organization's medical director.~~

~~(C) Those procedures for which the advanced emergency medical technician has been specifically trained and have been approved by the administrative and medical staff of the supervising hospital, the advanced emergency medical technician organization medical director, and the commission as being within the scope and responsibility of the advanced emergency medical technician.~~

~~(11)~~ **(18)** "Physician" means an individual who currently holds a valid unlimited license to practice medicine issued in Indiana **under IC 25-22.5.**

~~(12) "Supervising hospital" means a hospital licensed under IC 16-21-2 or under the licensing laws of another state that has been certified by the commission to supervise paramedics, advanced emergency medical technicians, and provider organizations in providing advanced life support.~~

~~(13) "Advanced emergency medical technician" means a person who can perform one (1) or more, but not all, of the procedures of a paramedic and who:~~

~~(A) has completed a prescribed course in advanced life support;~~

~~(B) has been certified by the commission;~~

~~(C) is associated with a single supervising hospital; and~~

~~(D) is affiliated with a provider organization.~~

~~(14) "Advanced emergency medical technician organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technicians in conjunction with a supervising hospital.~~

~~(15) "Paramedic" means a person who:~~

~~(A) is affiliated with a certified paramedic organization or is employed by a supervising hospital;~~

~~(B) has completed a prescribed course in advanced life support; and~~

~~(C) has been certified by the commission.~~

~~(16) "Paramedic organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by paramedics or physicians with an unlimited license to practice medicine in Indiana in conjunction with supervising hospitals.~~

~~(17)~~ **(19)** "Program coordinator" means a person employed by a certified training institution that coordinates the advanced life support courses.

~~(18) "Advanced life support nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, that provides advanced life support but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.~~

~~(19) "Emergency medical services vehicle" means an ambulance, an emergency medical service nontransport vehicle, a rescue squad, or an advanced life support nontransport vehicle.~~

(20) "Provider organization" means an ambulance service or other emergency care organization certified by the commission to provide advanced life support in connection with a supervising hospital.

(21) "Provider organization operating area" means the geographic area in which an advanced emergency medical technician or advanced emergency medical technician intermediate, affiliated with a specific advanced emergency medical technician organization or advanced emergency medical technician intermediate organization, is able to maintain two-way voice communication with the provider organization's supervising hospitals.

(22) "Supervising hospital" means a hospital licensed under IC 16-21-2 or under the licensing laws of another state that has been certified by the commission to supervise paramedics, advanced emergency medical technician intermediates, advanced emergency medical technicians, and provider organizations in providing advanced life support.

(Indiana Emergency Medical Services Commission; Advanced Life Support Preliminary; filed Dec 15, 1977: Rules and Regs. 1978, p. 248; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2214; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2433; errata, 5 IR 400; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1061; filed May 15, 1998, 10:25 a.m.: 21 IR 3891; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2732)

SECTION 13. 836 IAC 2-2-1, AS AMENDED AT 25 IR 2512, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

836 IAC 2-2-1 General requirements for paramedic organizations

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 1. (a) Certification by the commission is required for any ambulance service provider who seeks to provide advanced life support services as a paramedic organization unless provisional certification is issued pursuant to subsection ~~(p).~~ **(l).**

(b) If the paramedic organization also provides transportation of emergency patients, the paramedic organization shall be certified as an ambulance service provider in accordance with the requirements specified in 836 IAC 1 pursuant to IC 16-31. The paramedic nontransport organizations shall meet the requirements specified in 836 IAC 1-2-2(a) and 836 IAC 1-11-3(o) through 836 IAC 1-11-3(q).

(c) The paramedic organization shall ensure that:

(1) ambulances used are certified and meet the requirements specified in 836 IAC 1-3; and

(2) all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements in 836 IAC 2-14.

(d) Paramedic organizations shall have a contract, or interdepartmental memo if hospital based, with one (1) or more supervising hospitals ~~for~~ **that agree to provide** the following services:

(1) Continuing education.

(2) Audit and review.

(3) Medical control and direction.

~~(4) Provision of arrangements and the supervision of arrangements for the supply of medications and other items utilized by emergency medical service clinical personnel in the provision of advanced life support service.~~

~~(5)~~ **(4)** Provision to allow the paramedics affiliated with the supervised paramedic organization to function within the appropriate hospital department in order to obtain continuing practice, **remediation, and continuing education** in their clinical skills.

The contract or interdepartmental memo shall include a detailed description of how such services shall be provided to the paramedic organization. In those cases where more than one (1) hospital contracts, or seeks to contract, with a paramedic provider organization as a supervising hospital, an interhospital agreement shall be provided to the commission that shall clearly define the specific duties and responsibilities of each hospital to ensure medical and administrative accountability of system operation.

(e) The paramedic organization shall have a medical director provided by the paramedic organization, or jointly with the supervising hospital, who shall be a physician who holds a currently valid unlimited license to practice medicine in Indiana and has an active role in the delivery of emergency care. The medical director is responsible for providing competent medical direction as established by the medical control committee. Upon establishment of a medical control policy, the paramedic organization medical director and the chief executive officer

have the duty to enact the policy within the paramedic organization and accordingly enforce the policy. The duties and responsibilities of the medical director include, but are not limited to, the following:

(1) Provide liaison with physicians and the medical community.

(2) Assure that the drugs, medications, supplies, and equipment are available to the paramedic organization.

(3) Monitor and evaluate day-to-day medical operations of paramedic organizations.

(4) Assist **the supervising hospital** in the provision and coordination of continuing education.

(5) Provide information concerning the operation of the paramedic organization.

(6) Provide individual consultation to paramedics.

(7) Participate in at least quarterly audit and review of cases treated by paramedics of the provider organization.

(8) Attest to the competency of paramedics affiliated with the paramedic organization to perform skills required of a paramedic under 836 IAC 4-9-5.

(9) Establish protocols for advanced life support **in cooperation with the medical control committee of the supervising hospital.**

(10) Establish and publish a list of medications, including minimum quantities and dosages to be carried on **the emergency medical services** vehicle.

(f) The paramedic organization shall maintain a communications system that shall be available twenty-four (24) hours a day between the paramedic organization and the emergency department, or equivalent, of the supervising hospital using UHF (ultra high frequency) voice communications. The communications system shall be licensed by the Federal Communications Commission.

(g) Each paramedic organization shall do the following:

(1) Maintain an adequate number of trained personnel and emergency response vehicles to provide continuous, twenty-four (24) hour advanced life support services.

(2) Notify the commission in writing within thirty (30) days of assigning any individual to perform the duties and responsibilities required of a paramedic. This notification shall be signed by the provider organization and medical director of the provider organization.

(3) Notify the commission in writing within thirty (30) days of a paramedic's termination of employment or for any reason which prohibits a certified individual from performing the procedures required of a paramedic.

(h) Each ambulance used for the purpose of providing advanced life support services, when dispatched on an emergency run, shall be staffed by not less than two (2) persons, one (1) of whom is certified as a paramedic and the other certified as ~~an emergency medical technician~~ **a first responder** pursuant to IC 16-31 **and 836 IAC 4-3,** except, if the ambulance is used in conjunction with a nonambulance vehicle certified by the commission for the provision of advanced life support, it shall be staffed by at least one (1) emergency medical technician certified pursuant to IC 16-31. However, each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified paramedic.

(i) When advanced life support services administered by paramedics at the scene of an accident or illness are continued en route to an emergency facility, as a minimum, the patient compartment of the ambulance shall be staffed by not less than one (1) person who is certified as a paramedic.

(j) The paramedic organization shall notify the commission in writing within thirty (30) days of any change in the services provided.

(k) No certification is required for the following:

(1) A person who provides advanced life support while assisting in the case of a major catastrophe or disaster, whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.

(2) An agency or instrumentality of the United States and any paramedics of such agency or instrumentality is not required to be certified nor to conform to the standards prescribed in this article.

~~(l) After proper notice and hearing, the commission may:~~

~~(1) levy penalties up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1; or~~

~~(2) suspend or revoke a certificate issued under this article for:~~

~~(A) fraud or misrepresentation in procuring certification;~~

~~(B) failure to comply and maintain compliance; or~~

~~(C) violation of any applicable provisions, standards, or other requirements of this article.~~

~~(m) The commission may initiate proceedings to levy fines up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1 or suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5.~~

~~(n) Notwithstanding the provisions of this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(o) Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease.~~

~~(p)~~ **(l)** The director may issue a provisional certification for the provision of advanced life support as a paramedic organiza-

tion **for the purpose of prehospital training of paramedic students when in the presence of a preceptor or preceptors approved by the commission in accordance with the following procedures:**

(1) The provisional certification may be issued to the following:

(A) To an ambulance service provider certified pursuant to IC 16-31 only. ~~or~~

(B) To an advanced emergency medical technician organization certified pursuant to IC 16-31. ~~for the purpose of prehospital training of paramedic students when in the presence of a preceptor or preceptors approved by the commission,~~

(2) The provisional certification may be issued when the following are met:

(A) When, upon demonstration by the applicant to the satisfaction of the director, ~~that~~ the ambulance to be used for such training is certified pursuant to IC 16-31. ~~and~~

(B) Meets the requirements of subsection (f) and section 3 of this rule. ~~and~~

(C) That the ambulance service provider or advanced emergency medical technician organization has and shall maintain an adequate number of paramedic students, preceptors, and ambulances to provide continuous twenty-four (24) hour advanced life support service.

(3) Application for provisional certification shall be made on such forms as prescribed by the commission, which shall be fully completed.

(4) The director may issue a provisional certificate for a period not to exceed sixty (60) days beyond the date of the paramedic course completion as identified on the approved course application. However, the director shall not issue a provisional certificate for a period exceeding twenty-four (24) consecutive months from the starting date of the course as identified on the approved course application.

(5) The issuance of a temporary or full certification invalidates any provisional certification.

~~(q)~~ **(m)** The paramedic organization shall, with medical director and chief executive officer approval, allow a graduate of an Indiana approved paramedic course to perform advanced life support under the direction of a preceptor. This person shall be actively pursuing certification as an Indiana certified paramedic. This provision shall be limited from one (1) year from date of course completion as indicated on course report.

~~(r)~~ **(n)** Provide for a periodic maintenance program to assure that emergency response vehicles, including equipment, are maintained in good working condition and that strict sanitation procedures are in effect at all times.

~~(s)~~ **(o)** Paramedic organization premises, records, parking, or garaging facilities and response vehicles shall be available for inspection by the director, or the director's duly authorized representative, at any time during operating hours.

~~(t)~~ **(p)** Each paramedic organization shall have in force and effect public liability insurance in the sum as described in 836 IAC 1-2-3(g) pursuant to IC 16-31. Such proof of insurance shall be made on a form prescribed by the commission.

~~(u) Each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified paramedic.~~ *(Indiana Emergency Medical Services Commission; Advanced Life Support Rule I, A; filed Jan 21, 1977, 11:30 a.m.: Rules and Regs. 1978, p. 200; filed Dec 15, 1977: Rules and Regs. 1978, p. 250; filed Nov 3, 1980, 3:55 p.m.: 3 IR 2216; filed Oct 13, 1981, 10:05 a.m.: 4 IR 2434; errata, 5 IR 400; filed Dec 2, 1983, 2:43 p.m.: 7 IR 364; errata, 7 IR 1254; filed Dec 13, 1985, 9:13 a.m.: 9 IR 1062; filed Aug 18, 1986, 1:00 p.m.: 10 IR 41; filed Oct 11, 1988, 11:05 a.m.: 12 IR 358; filed May 15, 1998, 10:25 a.m.: 21 IR 3892; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2733; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2512)*

SECTION 14. 836 IAC 2-7.1-1, AS AMENDED AT 25 IR 2515, SECTION 8, IS AMENDED TO READ AS FOLLOWS:

836 IAC 2-7.1-1 General requirements for advanced emergency medical technician organizations

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 1. (a) The advanced emergency medical technician provider organization certification provides authority to perform skills set forth and approved by the commission for which certification is granted. The medical director may limit the skills according to local protocols.

(b) Certification by the commission is required for any ambulance service provider who seeks to provide advanced life support services as an advanced emergency medical technician organization unless provisional certification is issued pursuant to subsection ~~(o).~~ **(k).**

(c) If the advanced emergency medical technician organization also provides transportation of emergency patients, the advanced emergency medical technician organization shall be certified as an ambulance service provider in accordance with the requirements specified in 836 IAC 1. The advanced emergency medical technician nontransport organization shall meet the requirements specified in 836 IAC 1-2-2(a), and 836 IAC 1-11-3(o) through 836 IAC 1-11-3(q).

(d) The advanced emergency medical technician organization shall ensure that:

(1) the ambulances used are certified and meet the requirements specified in 836 IAC 1-3; and

(2) all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements required in 836 IAC 2-14.

(e) The advanced emergency medical technician organization shall have agreed by contract or interdepartmental memo if it is a hospital based organization with one (1) or more supervising hospitals for the following services:

(1) Continuing education.

(2) Audit and review.

(3) Medical control and direction.

(4) Liaison and direction for supply of intravenous fluids and other items utilized by advanced emergency medical technicians.

(5) Provision to allow the advanced emergency medical technicians affiliated with the supervised advanced emergency medical technician organization to function within appropriate hospital departments in order to obtain continuing practice in their clinical skills.

The contract shall include a detailed description of how such services shall be provided to the advanced emergency technician organization. In those cases where more than one (1) hospital contracts, or seeks to contract with, an advanced emergency medical technician organization as a supervising hospital, an interhospital agreement shall be provided to the commission that shall clearly define the specific duties and responsibilities of each hospital to ensure medical and administrative accountability of system operation.

(f) The advanced emergency medical technician organization shall have a medical director provided by the advanced emergency medical technician organization, or jointly with the supervising hospital, who is a physician who holds a currently valid unlimited license to practice medicine in Indiana and has an active role in the delivery of emergency care. The medical director is responsible for providing competent medical direction as established by the medical control committee and overall supervision of the medical aspect of the advanced emergency medical technician organization. Upon establishment of a medical control policy, the advanced emergency medical technician organization medical director and the chief executive officer have the duty to enact the policy within the advanced emergency medical technician organization and accordingly enforce the policy. The duties and responsibilities of the medical director include, but are not limited to, the following:

(1) Providing liaison with physicians.

(2) Assuring that appropriate intravenous solutions, supplies, and equipment are available to the advanced emergency medical technician organization.

(3) Monitor and evaluate day-to-day medical operation.

(4) Assist the supervising hospital in the coordination of in-service training programs.

(5) Provide information concerning the operation of the advanced emergency medical technician organization.

(6) Provide individual consultation to advanced emergency medical technicians.

(7) Assure continued competence of advanced emergency medical technicians affiliated with, or employed by, the advanced emergency medical technician organization.

(8) Participate in the quarterly audit and review of cases treated by advanced emergency medical technicians of the provider organization.

(9) Establish protocols for advanced life support.

(10) Establish and publish a list of intravenous fluids and administration supplies, including minimum quantities to be carried on the vehicle.

(g) Each advanced emergency medical technician organization shall **notify the commission in writing within thirty (30) days:**

~~(1) maintain an adequate number of trained personnel and emergency response vehicles to provide continuous twenty-four (24) hour advanced life support services;~~

~~(2) notify the commission in writing within thirty (30) days~~ **(1)** of assigning any individual to perform the duties and responsibilities required of an advanced emergency medical technician, and this notification shall be signed by the provider organization and medical director of the provider organization; and

~~(3) notify the commission in writing within thirty (30) days~~ **(2)** if an advanced emergency medical technician:

(A) terminates employment;

(B) terminates affiliation; or

(C) for any reason is prohibited from performing the procedures for which certification was granted.

(h) When advanced life support services administered by advanced emergency medical technicians at the scene of an accident or illness are continued en route to an emergency facility, as a minimum, the patient compartment of the ambulance shall be staffed by not less than one (1) person certified as an advanced emergency medical technician.

(i) The advanced emergency medical technician organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided for which certification was granted.

(j) No certification is required for the following:

(1) A person who provides advanced life support while assisting in the case of a major catastrophe disaster whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.

(2) An agency or instrumentality of the United States and any advanced emergency medical technicians of such agency or instrumentality are not required to be certified nor to conform to the standards prescribed in this article unless the agency or instrumentality seeks to provide service to citizens of Indiana off of the federal area.

~~(k) After proper notice and hearing, the commission may:~~

~~(1) levy penalties up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 and 836 IAC 2-13-1; or~~

~~(2) suspend or revoke a certificate issued under this article for:~~

~~(A) fraud or misrepresentation in procuring certification;~~
~~(B) failure to comply and maintain compliance with; or~~
~~(C) violation of any applicable provisions, standards, or other requirements of this article.~~

~~(l) The commission may initiate proceedings to suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.~~

~~(m) Notwithstanding the provisions of this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed thirty (30) days upon notice to the certificate holder.~~

~~(n) Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease.~~

~~(o)~~ **(k)** The director may issue a provisional certification for the provision of advanced life support as an advanced emergency medical technician organization **for the purpose of prehospital training of advanced emergency medical technician students when in the presence of a preceptor approved by the commission in accordance with the following procedures:**

(1) The provisional certification may be issued to an ambulance service provider certified pursuant to IC 16-31. ~~for the purpose of prehospital training of advanced emergency medical technician students when in the presence of a preceptor approved by the commission~~

(2) The provisional certification may be issued when the following are met:

(A) When, upon demonstration by the applicant to the satisfaction of the director, ~~that:~~ ~~(1)~~ the ambulance to be used for such training is certified pursuant to IC 16-31 and meets the requirements of this article. ~~and~~

~~(2)~~ **(B)** The ambulance service provider has and will maintain an adequate number of advanced emergency medical technician students, preceptors, and ambulances to provide continuous twenty-four (24) hour advanced life support service.

(3) Application for provisional certification shall be made on forms as prescribed by the commission, which shall be fully completed.

(4) The director may issue a provisional certificate for a period not to exceed sixty (60) days beyond the date the advanced emergency medical technician course completion as identified on the approved course application. However, the director shall not issue a provisional certificate for a period exceeding six (6) consecutive months from the starting date of the course as identified on the approved course application.

(5) The issuance of certification invalidates any provisional certification.

~~(p)~~ **(l)** Provide for a periodic maintenance program to assure that:

(1) emergency response vehicles, including equipment, are maintained in good working condition; and

(2) applicable sanitation procedures are in effect at all times.

~~(q)~~ **(m)** Advanced emergency medical technician organization premises, records, parking, or garaging facilities and response vehicles shall be available for inspection by the director, or the director's duly authorized representative, at any time during operating hours.

~~(r)~~ **(n)** Each advanced emergency medical technician organization shall have in force and effect public liability insurance in the sum as described in 836 IAC 1-2-3(g) pursuant to IC 16-31. Such proof of insurance shall be made on a form prescribed by the commission.

~~(s)~~ **(o)** The advanced emergency medical technician organization shall maintain a communications system that shall be available twenty-four (24) hours a day between the advanced emergency medical technician organization and the emergency department, or equivalent, of the supervising hospital using voice communications. The communications system shall be licensed by the Federal Communications Commission.

~~(t)~~ **(p)** Each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run need only to be staffed, as a minimum, by a certified advanced emergency medical technician. *(Indiana Emergency Medical Services Commission; 836 IAC 2-7.1-1; filed Apr 6, 1988, 9:55 a.m.: 11 IR 2875; filed May 15, 1998, 10:25 a.m.: 21 IR 3904; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2738; filed Apr 4, 2002, 9:15 a.m.: 25 IR 2515)*

SECTION 15. 836 IAC 2-7.2 IS ADDED TO READ AS FOLLOWS:

Rule 7.2. Requirements and Standards for Advanced Emergency Medical Technician Intermediate Organizations

836 IAC 2-7.2-1 General requirements for advanced emergency medical technician intermediate organizations

Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3

Sec. 1. (a) Certification by the commission is required for any ambulance service provider who seeks to provide advanced life support services as an advanced emergency medical technician intermediate organization unless provisional certification is issued pursuant to subsection (p).

(b) If the advanced emergency medical technician intermediate organization also provides transportation of emergency patients, the advanced emergency medical

technician intermediate organization shall be certified as an ambulance service provider in accordance with the requirements specified in 836 IAC 1 pursuant to IC 16-31. The advanced emergency medical technician intermediate nontransport organizations shall meet the requirements specified in 836 IAC 1-2-2(a) and 836 IAC 1-11-3(o) through 836 IAC 1-11-3(q).

(c) The advanced emergency medical technician intermediate organization shall ensure that:

(1) ambulances used are certified and meet the requirements specified in 836 IAC 1-3; and

(2) all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements in 836 IAC 2-14.

(d) Advanced emergency medical technician intermediate organizations shall have a contract, or interdepartmental memo if hospital based, with one (1) or more supervising hospitals for the following services:

(1) Continuing education.

(2) Audit and review.

(3) Medical control and direction.

(4) Provision of arrangements and the supervision of arrangements for the supply of medications and other items utilized by emergency medical service clinical personnel in the provision of advanced life support service.

(5) Provision to allow the advanced emergency medical technician intermediates affiliated with the supervised advanced emergency medical technician intermediate organization to function within the appropriate hospital department in order to obtain continuing practice in their clinical skills.

The contract or interdepartmental memo shall include a detailed description of how such services shall be provided to the advanced emergency medical technician intermediate organization. In those cases where more than one (1) hospital contracts, or seeks to contract, with an advanced emergency medical technician intermediate provider organization as a supervising hospital, an interhospital agreement shall be provided to the commission that shall clearly define the specific duties and responsibilities of each hospital to ensure medical and administrative accountability of system operation.

(e) The advanced emergency medical technician intermediate organization shall have a medical director provided by the advanced emergency medical technician intermediate organization, or jointly with the supervising hospital, who shall be a physician who holds a currently valid unlimited license to practice medicine in Indiana and has an active role in the delivery of emergency care. The medical director is responsible for providing competent medical direction as established by the medical control committee. Upon establishment of a medical control policy, the advanced emergency medical technician intermediate organization medical director and the chief executive officer have the duty to enact the policy within the advanced emergency medical technician intermediate organization and accordingly enforce the policy. The duties and responsibilities of the medical director include, but are not limited to, the following:

(1) Provide liaison with physicians and the medical community.

(2) Assure that the drugs, medications, supplies, and equipment are available to the advanced emergency medical technician intermediate organization.

(3) Monitor and evaluate day-to-day medical operations of advanced emergency medical technician intermediate organizations.

(4) Assist in the provision and coordination of continuing education.

(5) Provide information concerning the operation of the advanced emergency medical technician intermediate organization.

(6) Provide individual consultation to advanced emergency medical technician intermediates.

(7) Participate in at least quarterly audit and review of cases treated by advanced emergency medical technician intermediates of the supervising hospital.

(8) Attest to the competency of advanced emergency medical technician intermediates affiliated with the advanced emergency medical technician intermediate organization to perform skills required of an advanced emergency medical technician intermediate under 836 IAC 4-7.1.

(9) Establish protocols for advanced life support.

(10) Establish and publish a list of medications, including minimum quantities and dosages to be carried on the vehicle.

(f) The advanced emergency medical technician intermediate organization shall maintain a communications system that shall be available twenty-four (24) hours a day between the advanced emergency medical technician intermediate organization and the emergency department, or equivalent, of the supervising hospital using UHF (ultra high frequency) voice communications. The communications system shall be licensed by the Federal Communications Commission.

(g) Each advanced emergency medical technician intermediate organization shall do the following:

(1) Maintain an adequate number of trained personnel and emergency response vehicles to provide continuous, twenty-four (24) hour advanced life support services.

(2) Notify the commission in writing within thirty (30) days of assigning any individual to perform the duties and responsibilities required of an advanced emergency medical technician intermediate. This notification shall be

signed by the provider organization and medical director of the provider organization.

(3) Notify the commission in writing within thirty (30) days of an advanced emergency medical technician intermediate's termination of employment or for any reason that prohibits a certified individual from performing the procedures required of an advanced emergency medical technician intermediate.

(h) Each ambulance used for the purpose of providing advanced life support services, when dispatched on an emergency run, shall be staffed by not less than one (1) person who is certified as a first responder pursuant to 836 IAC 4-3. However, each nontransport vehicle used for the purpose of providing advanced life support services when dispatched on an emergency run needs to be staffed, as a minimum, by a certified advanced emergency medical technician intermediate.

(i) When advanced life support services administered by advanced emergency medical technician intermediates at the scene of an accident or illness are continued en route to an emergency facility, as a minimum, the patient compartment of the ambulance shall be staffed by not less than one (1) person who is certified as an advanced emergency medical technician intermediate.

(j) The advanced emergency medical technician intermediate organization shall notify the commission in writing within thirty (30) days of any change in the services provided.

(k) No certification is required for the following:

(1) A person who provides advanced life support while assisting in the case of a major catastrophe or disaster, whereby persons who are certified to provide emergency medical services or advanced life support are insufficient or are unable to cope with the situation.

(2) An agency or instrumentality of the United States and any advanced emergency medical technician intermediate of such agency or instrumentality is not required to be certified nor to conform to the standards prescribed in this article.

(3) Rendering assistance to persons certified to provide emergency ambulance service or to advanced emergency medical technician intermediates.

(4) Operating from a location or headquarters outside Indiana to provide emergency ambulance services to patients who are picked up outside Indiana for transportation to location within Indiana.

(l) The director may issue a provisional certification for the provision of advanced life support as an advanced emergency medical technician intermediate organization for the purpose of prehospital training of advanced emergency medical technician intermediate students when in the presence of a preceptor or preceptors approved by the commission in accordance with the following procedures:

(1) The provisional certification may be issued to either of the following:

(A) An ambulance service provider certified pursuant to IC 16-31 only.

(B) An advanced emergency medical technician organization certified pursuant to IC 16-31.

(2) The provisional certification may be issued when the following are met:

(A) When, upon demonstration by the applicant to the satisfaction of the director, the ambulance to be used for such training is certified pursuant to IC 16-31.

(B) Meets the requirements of subsection (f) and section 3 of this rule.

(C) That the ambulance service provider or advanced emergency medical technician organization has and shall maintain an adequate number of advanced emergency medical technician intermediate students, preceptors, and ambulances to provide continuous twenty-four (24) hour advanced life support service.

(3) Application for provisional certification shall be made on such forms as prescribed by the commission, which shall be fully completed.

(4) The director may issue a provisional certificate for a period not to exceed sixty (60) days beyond the date of the advanced emergency medical technician intermediate course completion as identified on the approved course application. However, the director shall not issue a provisional certificate for a period exceeding twenty-four (24) consecutive months from the starting date of the course as identified on the approved course application.

(5) The issuance of a temporary or full certification invalidates any provisional certification.

(m) The advanced emergency medical technician intermediate organization shall, with medical director and chief executive officer approval, allow a graduate of an Indiana approved advanced emergency medical technician intermediate course to perform advanced life support under the direction of a preceptor. This person shall be actively pursuing certification as an Indiana certified advanced emergency medical technician intermediate. This provision shall be limited from one (1) year from date of course completion as indicated on course report.

(n) Provide for a periodic maintenance program to assure that emergency response vehicles, including equipment, are maintained in good working condition and that strict sanitation procedures are in effect at all times.

(o) Advanced emergency medical technician intermediate organization premises, records, parking, or garaging facilities and response vehicles shall be available for

inspection by the director, or the director's duly authorized representative, at any time during operating hours.

(p) Each advanced emergency medical technician intermediate organization shall have in force and effect public liability insurance in the sum as described in 836 IAC 1-2-3(g) pursuant to IC 16-31. Such proof of insurance shall be made on a form prescribed by the commission. *(Indiana Emergency Medical Services Commission; 836 IAC 2-7.2-1)*

836 IAC 2-7.2-2 Application for certification; renewal
Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 2. (a) Application for certification as an advanced emergency medical technician intermediate organization shall be made on forms prescribed by the commission and shall include, but not be limited to, the following:

(1) A narrative summary of plans for providing advanced life support services, including the following:

(A) Defined primary area of response, including location of advanced life support response vehicles.

(B) A listing of advanced emergency medical technician intermediates to be affiliated by the advanced emergency medical technician intermediate organization.

(C) The staffing pattern of personnel.

(D) Base of operations.

(2) Plans and methodologies to ensure that the trained personnel are provided with supervised continuing education to maintain proficiency. Continuing education is under the direct supervision of the advanced emergency medical technician intermediate organization medical director with the cooperation of the supervising hospital.

(3) A listing of medications and special on-board life support equipment, to be carried on board each vehicle as approved by the medical director.

(4) All scheduled medications shall be stored in a locked container within a locked compartment. Medications storage shall be approved in writing by medical director or issuing pharmacy.

(5) Letter of approval from the supervising hospital stating acceptance of the advanced emergency medical technician intermediates, compatibility of the UHF communications with the advanced emergency medical technician intermediate organization's vehicles, and agreement to fulfill the responsibilities of the supervising hospital.

(b) Advanced emergency medical technician intermediate organizations that do not also provide transportation of emergency patients shall submit a copy of a current written agreement between the nontransporting advanced emergency medical technician intermediate organization and an ambulance service provider certified pursuant to IC 16-31. The agreement shall ensure that the nontransporting advanced emergency medical technician intermediate provider can be assured that patients treated shall be transported in a timely and safe manner. The agreement shall not preclude another ambulance service provider, if available, from transporting the patients.

(c) Upon approval, an advanced emergency medical technician intermediate organization shall be issued certification for the provisions of advanced life support certification. The certificate issued is valid for a period of two (2) years and shall be prominently displayed at the place of business.

(d) Application for advanced emergency medical technician intermediate organization certification renewal should be made not less than sixty (60) days prior to the expiration date of the current certification. Application for renewal shall be made on forms prescribed by the commission and shall show evidence of compliance with the requirements as set forth for original certification.

(e) Upon approval, a certificate shall be issued by the director to the advanced emergency medical technician intermediate organization for each vehicle. The certificate shall be valid for two (2) years unless earlier revoked or suspended by the commission. The vehicle certificate shall be prominently displayed within the vehicle. *(Indiana Emergency Medical Services Commission; 836 IAC 2-7.2-2)*

836 IAC 2-7.2-3 Advanced emergency medical technician intermediate organization operating procedures
Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 3. (a) Each advanced emergency medical technician intermediate organization shall comply with the ambulance service provider operating procedures of 836 IAC 1-2-3.

(b) Each advanced emergency medical technician intermediate organization shall establish daily equipment checklist procedures to ensure the following:

(1) Electronic and mechanical equipment are in proper operating condition.

(2) Emergency response vehicles are maintained in a safe operating condition at all times.

(3) All required medications and intravenous fluids approved by the medical director of the advanced emergency medical technician intermediate organization and the supervising hospital are on-board all nontransport emergency medical services vehicles and ambulances when used for the provision of advanced life support and available to the advanced emergency medical technician intermediate.

(c) A copy of the medication list and protocols shall be maintained by the advanced emergency medical technician

intermediate organization and the supervising hospital emergency department. Any changes to the medications list shall be forwarded to the commission within thirty (30) days.

(d) All medications and advanced life support supplies are to be supplied by order of the medical director. Accountability for distribution, storage, ownership, and security of medications is subject to applicable requirements as determined by the Indiana board of pharmacy and the Drug Enforcement Administration.

(e) The advanced emergency medical technician intermediate organization shall ensure that stocking and administration of supplies and medications are limited to the Indiana advanced emergency medical technician intermediate curriculum. Procedures performed by the advanced emergency medical technician intermediate are also limited to the Indiana advanced emergency medical technician intermediate curriculum.

(f) The advanced emergency medical technician intermediate organization shall ensure that all ambulances used for the provision of advanced life support contain the emergency care equipment required in 836 IAC 1-3-5, the rescue equipment required in 836 IAC 1-3-4, and communication equipment required in 836 IAC 1-4-2. The advanced life support emergency medical services vehicles shall also carry the following equipment:

(1) Portable defibrillator with self-contained cardiac monitor and ECG strip writer and equipped with defibrillation pads or paddles appropriate for both adult and pediatric defibrillation. This may be the defibrillator listed in 836 IAC 1-3-5(1)(L).

(2) Tracheal suction catheters (adult #14 and #18, child #10).

(3) Endotracheal intubation devices, including the following:

(A) Laryngoscope with extra batteries and bulbs.

(B) Laryngoscope blades (adult and pediatric, curved and straight).

(C) Disposable endotracheal tubes, a minimum of two (2) each, sterile packaged, in sizes 3, 4, 5, 6, 7, 8, and 9 millimeters inside diameter.

(4) Intravenous fluids and administration supplies approved by the medical director.

(5) Medications limited to, if approved by the medical director, the following:

(A) Acetylsalicylic acid (aspirin).

(B) Adenosine.

(C) Atropine sulfate.

(D) Bronchodilator (beta 2 agonists):

(i) suggested commonly administered medications:

(AA) albuterol;

(BB) ipratropium;

(CC) isoetharine;

(DD) metaproterenol;

(EE) salmeterol;

(FF) terbutaline; and

(GG) triamcinolone; and

(ii) commonly administered adjunctive medications to bronchodilator therapy:

(AA) dexamethasone; and

(BB) methylprednisolone.

(E) Dextrose, fifty percent (50%).

(F) Diazepam.

(G) Epinephrine (1:1,000).

(H) Epinephrine (1:10,000).

(I) Vasopressin.

(J) Furosemide.

(K) Lidocaine hydrochloride, two percent (2%).

(L) Amiodarone hydrochloride.

(M) Morphine Sulfate

(N) Naloxone.

(O) Nitroglycerin.

(6) A current copy of advanced life support protocols shall be maintained on board the emergency medical services vehicle at all times.

(7) A copy of the medication list, including quantities and concentrations approved by the medical director.

(g) The advanced emergency medical technician intermediate organization shall ensure that all nontransport emergency medical services vehicles used for the provision of advanced life support meet all of the requirements in 836 IAC 2-14.

(h) Each advanced emergency medical technician intermediate organization shall ensure that rigid sanitation procedures are in effect at all times. The following sanitation standards apply to all vehicles used for the purpose of providing advanced life support services:

(1) The interior and the equipment within the vehicle shall be clean and maintained in good working order at all times.

(2) Freshly laundered linen or disposable linens shall be used on litters and pillows, and linen changed after each patient is transported.

(3) Clean linen storage shall be provided.

(4) Closed compartments shall be provided within the vehicle for medical supplies.

(5) Closed containers shall be provided for soiled supplies.

(6) Blankets shall be kept clean and stored in closed compartments.

(7) Single service implements inserted into the patient's nose or mouth shall be wrapped and properly stored and handled. Multi-use items are to be kept clean and sterile when indicated and properly stored.

(8) When a vehicle has been utilized to transport a patient known to have a communicable disease, the vehicle shall

be cleansed and all contact surfaces washed with soap and water and disinfected.

(9) All scheduled medications shall be stored in a locked container within a locked compartment. Medications storage shall be approved in writing by medical director or issuing pharmacy.

(i) An advanced emergency medical technician intermediate organization shall not operate an ambulance or other vehicle used for the provision of advanced life support unless the ambulance or vehicle is in full compliance with this article unless the vehicle is a nontransport emergency medical services vehicle returning from the site of the provision of advanced life support by the equipment, supplies, and personnel previously on board the nontransport emergency medical services vehicle, nor shall an advanced emergency medical technician intermediate organization transport any emergency patient or patient receiving advanced life support in any vehicle except an ambulance certified pursuant to IC 16-31.

(j) Provisions for temporary vehicle certification are addressed in 836 IAC 1-2-3.

(k) Advanced emergency medical technician intermediates are prohibited from having in their possession, or maintained on board emergency response vehicles, any advanced life support equipment or supplies that have not been approved by advanced emergency medical technician intermediate organization medical director. *(Indiana Emergency Medical Services Commission; 836 IAC 2-7.2-3)*

SECTION 16. 836 IAC 2-14-5 IS AMENDED TO READ AS FOLLOWS:

836 IAC 2-14-5 Advanced life support nontransport vehicle emergency care equipment

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 5. Each advanced life support nontransport vehicle shall wrap, properly store, and handle all the single service implements inserted into the patient's nose or mouth. Multi-use items are to be kept clean and sterile when indicated and properly stored. The vehicle shall carry the following assembled and readily accessible minimum equipment:

(1) Respiratory and resuscitation equipment as follows:

(A) Portable suction apparatus, capable of a minimum vacuum of three hundred (300) millimeters mercury, equipped with wide-bore tubing and both rigid and soft pharyngeal suction tips.

(B) Bag-mask ventilation units, hand operated, one (1) unit in each of the following sizes, each equipped with clear face masks and oxygen reservoirs with oxygen tubing:

(i) Adult.

(ii) Child.

(iii) Infant.

(iv) Neonatal (mask only).

(C) Oropharyngeal airways, two (2) each of adult, child, and infant.

(D) One (1) pocket mask with one-way valve.

(E) Portable oxygen equipment of at least three hundred (300) liters capacity (D size cylinder) with yoke, medical regulator, pressure gauge, and nondependent flowmeter.

(F) Oxygen delivery devices shall include the following:

(i) High concentration devices, two (2) each, adult, child, and infant.

(ii) Low concentration devices, two (2) each, adult.

(G) Nasopharyngeal airways, two (2) each of the following with water soluble lubricant:

(i) Small (20-24 french).

(ii) Medium (26-30 french).

(iii) Large (31 french or greater).

(H) Bulb syringe individually packaged in addition to obstetrics kit.

(I) Nonvisualized airway minimum of two (2) with water soluble lubricant.

(J) Portable defibrillator with self-contained cardiac monitor and ECG strip writer and equipped with defibrillation pads or paddles appropriate for adult defibrillation.

(2) Wound care supplies as follows:

~~(A) Multiple trauma dressings, two (2) approximately ten (10) inches by thirty-six (36) inches.~~

~~(B) Fifty (50) sterile gauze pads, three (3) inches by three (3) inches or larger.~~

~~(C) Bandages, four (4) soft roller self-adhering type, two (2) inches by four (4) yards minimum.~~

~~(D)~~ **(A)** Airtight dressings, four (4), for open chest wounds.

~~(E) Adhesive tape, two (2) rolls.~~

~~(F) Burn sheets, two (2), sterile.~~

~~(G) Triangular bandages, four (4).~~

~~(H) Bandage shears, one (1) pair.~~

(B) Assorted bandaging supplies for the care of soft tissue injuries.

(3) Patient stabilization equipment as follows:

~~(A) Traction splint, lower extremity, limb-supports, padded ankle hitch, and traction strap, or equivalent, one (1) assembly in adult size.~~

~~(B)~~ **(A)** Upper and lower extremity splinting devices, two (2) each.

~~(C) One (1) splint device intended for the unit immobilization of head-neck and torso. These items shall include the splint itself and all required accessories to provide secure immobilization.~~

~~(D)~~ **(B)** One (1) long back board with accessories to provide secure spinal immobilization.

~~(E)~~ **(C)** Rigid extrication collar, two (2) each capable of the following sizes:

(i) Pediatric.

(ii) Small.

(iii) Medium.
(iv) Large.

(4) Personal protection/universal precautions equipment, minimum of one (1) each, including the following:
(A) Gowns.
(B) Face masks and shields.
(C) Gloves.
(D) Biohazard bags.
(E) Antimicrobial hand cleaner.

(5) Miscellaneous items as follows:
(A) Obstetrical kit, sterile, one (1).
(B) Blood pressure manometer, one (1) each in the following cuff sizes:
(i) Large adult.
(ii) Adult.
(iii) Pediatric.
(C) Stethoscopes, one (1) each in the following sizes:
(i) Adult.
(ii) Pediatric.
(D) Sharps collector, one (1) being a minimum of seven (7) inches in height.
(E) Intravenous fluids, medication, and administration supplies approved by the medical director.
(F) A current copy of advanced life support protocols shall be maintained on board the advanced life support nontransport vehicle at all times.
(G) A copy of the medication list, including quantities and concentrations approved by the medical director.

(6) Medications for advanced emergency medical technician organizations only as epinephrine auto-injectors limited to the following:
(A) Two (2) adult.
(B) One (1) pediatric.

~~(6)~~ **(7)** Paramedic services shall also carry the following equipment:
(A) Tracheal suction catheters (adult #14 and #18, child #10).
(B) Endotracheal intubation devices, including the following:
(i) Laryngoscope with extra batteries and bulbs.
(ii) Laryngoscope blades (adult and pediatric, curved and straight).
(iii) Disposable endotracheal tubes, a minimum of two (2) each, sterile packaged, in sizes 3, 4, 5, 6, 7, 8, and 9 millimeters inside diameter.
(C) Defibrillation pads or paddles appropriate for pediatric defibrillation.

(Indiana Emergency Medical Services Commission; 836 IAC 2-14-5; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2744)

SECTION 17. 836 IAC 3-2-4, AS AMENDED AT 25 IR 2494, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

836 IAC 3-2-4 Operating procedures; flight and medical
Authority: IC 16-31-2-7; IC 16-31-3-20
Affected: IC 4-21.5-1

Sec. 4. (a) Each organization shall maintain accurate records concerning the emergency care provided to each patient within the state as well as the following:
(1) All advanced life support rotorcraft ambulance service providers shall utilize a patient care transport record.
(2) All advanced life support rotorcraft ambulance service providers shall participate in the emergency medical service system review by:
(A) collecting all data elements prescribed by the commission; and
(B) reporting that information according to the procedure and schedules prescribed by the commission.

(b) Premises will be maintained, suitable to the conduct of a rotorcraft ambulance service, with provision for adequate storage and/or maintenance of rotorcraft ambulances and the on-board equipment.

(c) Each rotorcraft ambulance service provider shall have a periodic maintenance program as outlined for each specific aircraft certified by the commission in compliance with F.A.A. guidelines and manufacturer's service recommendations (MSR) as a minimum to assure that each rotorcraft ambulance, including equipment, is maintained in good, safe working condition and that rigid sanitation conditions and procedures are in effect at all times.

(d) All rotorcraft ambulance service provider premises, records, hangars, padding, and tie-down facilities, and rotorcraft ambulances will be made available for inspection by the director or the director's authorized representative at any time during regularly scheduled business hours.

(e) A determination of noncompliance with F.A.R. may result in immediate suspension of commission certification as a rotorcraft ambulance service provider.

(f) Each rotorcraft ambulance service provider shall make available to the commission for inspection at place of operation during regular business hours any manual of operations required under F.A.R.

(g) Commission certification as a rotorcraft ambulance service provider may be terminated upon the date specified in the notice.

(h) Each rotorcraft ambulance service provider shall establish equipment checklist procedures to ensure the following:
(1) Electronic and mechanical equipment are in proper operating condition.
(2) Rotorcraft ambulances shall be maintained in safe operating conditions at all times.
(3) Emergency patient care equipment required for rotorcraft ambulance certification is maintained in minimum quantities either directly on board the rotorcraft ambulance or available at the time of patient transport.

(i) Each rotorcraft ambulance service provider shall ensure that rigid sanitation conditions and procedures are in effect at all times. The following sanitation standards apply to all rotorcraft ambulances:

(1) The interior and the equipment within the aircraft are clean and maintained in good working order at all times.

(2) Freshly laundered linens are used on all litters, and pillows and linens shall be changed after each patient is transported.

(3) When the aircraft has been utilized to transport a patient known to have a communicable disease, the aircraft shall be cleansed and all contact surfaces be disinfected.

(j) A rotorcraft ambulance service provider shall not operate a rotorcraft ambulance in Indiana if the aircraft does not meet the certification requirements of this article and does not have a certificate issued pursuant to this article; however, a rotorcraft ambulance service provider may operate, for a period not to exceed one hundred eighty (180) consecutive days, a noncertified rotorcraft ambulance if the noncertified rotorcraft ambulance is used to replace a certified rotorcraft ambulance that has been temporarily taken out of service providing the following:

(1) The replacement rotorcraft ambulance meets all certification requirements of this article.

(2) The rotorcraft ambulance service provider shall notify the commission, in writing, within seventy-two (72) hours of the time the replacement rotorcraft is placed in service. The written notice shall identify the following:

(A) The replacement date.

(B) The certification number of the replaced rotorcraft ambulance.

(C) The aircraft identification number of the replacement rotorcraft.

(D) The make and type of the replacement rotorcraft ambulance.

Upon receipt of the notification, a temporary certificate shall be issued effective the date the certified rotorcraft ambulance was replaced. Temporary certification will not exceed one hundred eighty (180) days, and, upon return to service, the use of the replacement rotorcraft ambulance shall cease. If the replaced rotorcraft ambulance is not returned to service within the one hundred eighty (180) day period, use of the replacement rotorcraft ambulance shall cease unless certification is approved in accordance with this article.

~~(k) After proper notice and hearing, the commission may suspend or revoke a rotorcraft ambulance service provider certificate issued under this article and/or impose a penalty of up to five hundred dollars ($500) in accordance with 836 IAC 1 and 836 IAC 2 for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, or this article pursuant to IC 4-21.5-1.~~

~~(l) The commission may initiate proceedings to suspend or revoke a rotorcraft ambulance service provider certificate upon its own motion, or on the verified written complaint of any interested person. All such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5-1.~~

~~(m) Notwithstanding this section, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a rotorcraft ambulance service provider certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder. Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.~~

~~(n) A rotorcraft ambulance service provider organization owner or lessee seeking certification of a rotorcraft ambulance may petition the commission for exemption from one (1) or more of the specifications or requirements listed in this article. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any exemption or exemptions approved under this article. Exemptions requested will not be approved if, in the opinion of the commission, the exemption or exemptions would impair the capabilities of the rotorcraft ambulance service provider to provide proper emergency patient care.~~ *(Indiana Emergency Medical Services Commission; 836 IAC 3-2-4; filed Oct 11, 1988, 11:05 a.m.: 12 IR 370; filed May 15, 1998, 10:25 a.m.: 21 IR 3920; filed Apr 4, 2002, 9:08 a.m.: 25 IR 2494)*

SECTION 18. 836 IAC 3-2-5, AS AMENDED AT 25 IR 2496, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

836 IAC 3-2-5 Staffing

Authority: IC 16-31-2-7; IC 16-31-3-20
Affected: IC 4-21.5-1

Sec. 5. (a) Each certified rotorcraft ambulance, while transporting an emergency patient, will be staffed by no less than three (3) people that have completed air-medical oriented training as prescribed by the air-medical director. Staffing will include the following requirements:

(1) The first person shall be a properly certified pilot who shall complete an orientation program covering flight and air-medical operations as prescribed by the air-medical director.

(2) The second person shall be currently certified, registered, or licensed as one (1) of the following:

(A) a paramedic;

(B) a registered nurse; or

(C) a physician with a valid unlimited license to practice medicine;

within the state the air-ambulance is stationed and operating.

(3) The third person shall be any appropriate personnel required to properly care for the medical needs of the patient at the discretion of the air-medical director. The air-medical personnel on board the aircraft shall be trained in air transport problems and flight physiology.

(b) The advanced life support rotorcraft ambulance service provider organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided.

~~(c) After proper notice and hearing, the commission may levy penalties up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 or 836 IAC 2-13-1 or suspend or revoke a certificate issued under 836 IAC 1, 836 IAC 2, and this article for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, and this article.~~

~~(d) The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings will be held in and conducted in accordance with the provisions of IC 4-21.5-1.~~

~~(e) Notwithstanding 836 IAC 1, 836 IAC 2, or this article, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without a hearing for a period not to exceed thirty (30) days upon notice to the certificate holder.~~

~~(f)~~ **(c)** Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease. *(Indiana Emergency Medical Services Commission; 836 IAC 3-2-5; filed Oct 11, 1988, 11:05 a.m.: 12 IR 372; filed May 15, 1998, 10:25 a.m.: 21 IR 3922; filed Apr 4, 2002, 9:08 a.m.: 25 IR 2496)*

SECTION 19. 836 IAC 3-3-4, AS AMENDED AT 25 IR 2506, SECTION 13, IS AMENDED TO READ AS FOLLOWS:

836 IAC 3-3-4 Operating procedures; flight and medical
Authority: IC 16-31-2-7; IC 16-31-3-20
Affected: IC 4-21.5-1

Sec. 4. (a) Each organization shall maintain accurate records concerning the emergency care provided to each patient within the state as well as the following:

(1) All advanced life support fixed-wing ambulance service providers shall utilize a patient care transport record.

(2) All advanced life support fixed-wing ambulance providers shall participate in the emergency medical service system review by:

(A) collecting all data elements prescribed by the commission; and

(B) reporting that information according to the procedures and schedules prescribed by the commission.

(b) Premises shall be maintained, suitable to the conduct of a fixed-wing air ambulance service, with provision for adequate storage and/or maintenance of fixed-wing ambulances and the on-board equipment.

(c) Each fixed-wing air ambulance service provider shall have a periodic maintenance program as outlined for each specific aircraft certified by the commission in compliance with F.A.A. and manufacturer's service recommendations (MSR) guidelines as a minimum to assure that each fixed-wing ambulance, including equipment, is maintained in good, safe working condition.

(d) All fixed-wing air ambulance service provider premises, records, and fixed-wing ambulances shall be made available for inspection by the director or his authorized representative at any time during regularly scheduled business hours.

(e) A determination of noncompliance with F.A.R. may result in immediate suspension of commission certification as a fixed-wing air ambulance service provider.

(f) Each fixed-wing air ambulance service provider shall make available to the commission for inspection at place of operation during regular business hours any manual of operations required under F.A.R.

(g) Commission certification as a fixed-wing air ambulance service provider may be terminated upon the date specified in the notice.

(h) Each fixed-wing air ambulance service provider shall establish equipment checklist procedures to ensure the following:

(1) Electronic and mechanical equipment are in proper operating condition.

(2) Fixed-wing ambulances shall be maintained in safe operating conditions at all times.

(3) Emergency patient care equipment required for fixed-wing ambulance certification is maintained in minimum quantities either directly on board the fixed-wing ambulance or available at the time of patient transport.

(i) Each fixed-wing air ambulance service provider shall ensure that rigid sanitation conditions and procedures are in effect at all times. The following sanitation standards apply to all fixed-wing ambulances:

(1) The interior and the equipment within the aircraft are clean and maintained in good working order at all times.

(2) Freshly laundered linens are used on all litters, and pillows and linens shall be changed after each patient is transported.

(3) When an aircraft has been utilized to transport a patient known to have a communicable disease, the aircraft shall be cleansed and all contact surfaces be washed with soap and water and disinfected.

(j) A fixed-wing air ambulance service provider shall not operate a fixed-wing ambulance in Indiana if the fixed-wing ambulance does not meet the certification requirements of this article and does not have a certificate issued pursuant to this article; however, a fixed-wing air ambulance service provider

may operate, for a period not to exceed one hundred eighty (180) consecutive days, a temporary replacement fixed-wing ambulance if the temporary replacement fixed-wing ambulance is used to replace a certified fixed-wing ambulance that has been temporarily taken out of service providing the following:

(1) The replacement fixed-wing ambulance shall meet all certification requirements of this article.

(2) The fixed-wing air ambulance service provider shall notify the commission, in writing, within seventy-two (72) hours of the time the replacement fixed-wing ambulance is placed in service. The written notice shall identify the following:

(A) The replacement date.

(B) The certification number of the replaced fixed-wing ambulance.

(C) The aircraft identification number of the replacement fixed-wing ambulance.

(D) The make and type of the replacement fixed-wing ambulance.

Upon receipt of the notification, a temporary certificate shall be issued effective the date the certified rotorcraft ambulance was replaced. Temporary certification will not exceed one hundred eighty (180) days, and, upon return to service, the use of the replacement fixed-wing ambulance shall cease. If the replaced fixed-wing ambulance is not returned to service within the one hundred eighty (180) day period, use of the replacement fixed-wing ambulance shall cease unless certification is approved in accordance with this article.

~~(k) After proper notice and hearing, the commission may suspend or revoke a fixed-wing air ambulance service provider certificate issued under this article and/or impose a penalty of up to five hundred dollars ($500) in accordance with 836 IAC 1 and 836 IAC 2 for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1, 836 IAC 2, or this article pursuant to IC 4-21.5-1.~~

~~(l) The commission may initiate proceedings to suspend or revoke a fixed-wing air ambulance service provider certificate upon its own motion or on the verified written complaint of any interested person. All such proceedings shall be held and conducted in accordance with the provisions of IC 4-21.5-1.~~

~~(m) Notwithstanding this section, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a fixed-wing air ambulance service provider certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder. Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease.~~

~~(n) A fixed-wing air ambulance service provider owner or lessee seeking certification of a fixed-wing ambulance may petition the commission for exemption from one (1) or more of the specifications or requirements listed in this article. The commission may approve one (1) or more of the requested exemptions and grant certification. However, the commission may restrict any exemption or exemptions approved under this article. Exemptions requested will not be approved if, in the opinion of the commission, the exemption or exemptions would impair the capabilities of the fixed-wing air ambulance service provider to provide proper patient care.~~ *(Indiana Emergency Medical Services Commission; 836 IAC 3-3-4; filed Oct 11, 1988, 11:05 a.m.: 12 IR 376; filed May 15, 1998, 10:25 a.m.: 21 IR 3926; filed Apr 4, 2002, 9:08 a.m.: 25 IR 2501)*

SECTION 20. 836 IAC 3-3-5, AS AMENDED AT 25 IR 2503, SECTION 14, IS AMENDED TO READ AS FOLLOWS:

836 IAC 3-3-5 Staffing

Authority: IC 16-31-2-7; IC 16-31-3-20
Affected: IC 4-21.5-1; IC 16-31-3-14

Sec. 5. (a) Each certified fixed-wing ambulance while transporting an emergency patient shall be staffed by no less than three (3) people and include the following requirements:

(1) The first person shall be a properly certified pilot who shall complete an orientation program covering flight, and air-medical operations as prescribed by the air-medical director.

(2) The second person shall be an Indiana certified paramedic or registered nurse or a physician with a valid unlimited license to practice medicine.

(3) The third person shall be any appropriate personnel to properly care for the medical needs of the patient as required on board the fixed-wing aircraft in the patient compartment.

(4) All medical personnel on board the aircraft must be trained in air transport problems and principles of flight physiology.

(b) The advanced life support fixed-wing air ambulance service provider organization shall notify the commission in writing within thirty (30) days of any change in the advanced life support services provided.

~~(c) After proper notice and hearing, the commission may levy penalties up to five hundred dollars ($500) in accordance with 836 IAC 1-2-4 or 836 IAC 2-13-1 or suspend or revoke a certificate issued under 836 IAC 1, 836 IAC 2, and this article for failure to comply and maintain compliance with, or for violation of any applicable provisions, standards, or other requirements of 836 IAC 1 and 836 IAC 2.~~

~~(d) The commission may initiate proceedings to suspend or revoke a certificate upon its own motion or on the verified written complaint of any interested person, and all such proceedings will be held in and conducted in accordance with the provisions of IC 4-21.5-1.~~

~~(c) Notwithstanding 836 IAC 1 and 836 IAC 2, the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without a hearing for a period not to exceed thirty (30) days upon notice to the certificate holder.~~

~~(f)~~ **(c)** Upon suspension, revocation, or termination of a certificate, the provision of advanced life support services shall cease. *(Indiana Emergency Medical Services Commission; 836 IAC 3-3-5; filed Oct 11, 1988, 11:05 a.m.: 12 IR 378; filed May 15, 1998, 10:25 a.m.: 21 IR 3928; filed Apr 4, 2002, 9:08 a.m.: 25 IR 2503)*

SECTION 21. 836 IAC 4-1-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-1-1 Definitions

Authority: IC 16-31-2-7
Affected: IC 10-4-1-7; IC 16-18; IC 16-21-2; IC 16-31-3-1; IC 16-31-3-3; IC 25-22.5; IC 35-41-1-26.5

Sec. 1. The following definitions apply throughout this article unless the context clearly denotes otherwise:

(1) "Advanced emergency medical technician" means ~~a person~~ **an individual** who can perform one (1) or more, but not all, of the procedures of a paramedic and who:

(A) has completed a prescribed course in advanced life support;

(B) has been certified by the commission;

(C) is associated with a single supervising hospital; and

(D) is affiliated with a provider organization.

(2) "Advanced emergency medical technician intermediate" means an individual who can perform one (1) or more, but not all, of the procedures of a paramedic and who:

(A) has completed a prescribed course in advanced life support;

(B) has been certified by the commission;

(C) is associated with a single supervising hospital; and

(D) is affiliated with a provider organization.

(3) "Advanced emergency medical technician intermediate organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technician intermediates in conjunction with a supervising hospital.

~~(2)~~ **(4)** "Advanced emergency medical technician organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by advanced emergency medical technicians in conjunction with a supervising hospital.

~~(3)~~ **(5)** "Advanced life support", **for purposes of IC 16-31,** means:

(A) care given:

(i) at the scene of an:

(AA) accident; ~~or~~

(BB) act of terrorism (as defined in IC 35-41-1-26.5), if the governor has declared a disaster emergency under IC 10-4-1-7 in response to the act of terrorism; or

(CC) illness; **or**

(ii) during transport ~~or~~ at a hospital;

by a paramedic, **advanced emergency medical technician intermediate,** or advanced emergency medical technician **and** that is more advanced than ~~that~~ **the care** usually ~~rendered~~ **provided** by an emergency medical technician; and

(B) may include: ~~but is not limited to, the following~~:

~~(A) Manual~~ **(i)** defibrillation;

~~(B)~~ **(ii)** endotracheal intubation;

~~(C)~~ **(iii)** parenteral injection of appropriate medications, **including administration of epinephrine through an auto-injector;**

~~(D)~~ **(iv)** electrocardiogram interpretation; **and**

~~(E)~~ **(v)** emergency management of trauma and illness.

~~(4)~~ **(6)** "Advanced life support nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, that provides advanced life support but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.

~~(5)~~ **(7)** "Ambulance" means any conveyance on land, sea, or air that is used or is intended to be used, for the purpose of responding to emergency life-threatening situations and providing transportation for an emergency patient.

~~(6)~~ **(8)** "Ambulance service provider" means any person who is certified by the commission and who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the transportation and care of emergency patients as a part of a regular course of doing business, either paid or voluntary.

~~(7)~~ **(9)** "An agency or instrumentality of the United States", as that phrase is used in IC 16-31-3-3, means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.

~~(8)~~ **(10)** "Anniversary date" means the date on which certification as a paramedic or an advanced emergency medical technician was issued by the commission.

~~(9)~~ **(11)** "Basic life support", for purposes of IC 16-31, means the following:

(A) Assessment of emergency patients.

(B) Administration of oxygen.

(C) Use of mechanical breathing devices.

(D) Application of anti-shock trousers.

(E) Performance of cardiopulmonary resuscitation.

(F) Application of dressing and bandage materials.

(G) Application of splinting and immobilization devices.

(H) Use of lifting and moving devices to ensure safe transport.

(I) Use of an automatic or a semiautomatic defibrillator if

the defibrillator is used in accordance with training procedures established by the commission.

(J) Other procedures authorized by the commission, including procedures contained in the revised national emergency medical technician-basic training curriculum guide.

~~(10)~~ **(12)** "Certificate" or "certification" means authorization in written form issued by the commission to a person to furnish, operate, conduct, maintain, advertise, or otherwise engage in providing emergency medical services as a part of a regular course of doing business, either paid or voluntary.

~~(11)~~ **(13)** "Commission" means the Indiana emergency medical services commission.

~~(12)~~ **(14)** "Director" means the director of the state emergency management agency. ~~or the director's designee of the commission.~~

~~(13)~~ **(15)** "Emergency ambulance services" means the transportation of emergency patients by ambulance and the administration of emergency care procedures to emergency patients before, or during, such transportation.

~~(14)~~ **(16)** "Emergency management of trauma and illness" means the following:

(A) Those procedures for which the paramedic has been specifically trained that are a part of the curriculum prescribed by the commission.

(B) Those procedures for which the paramedic has been specifically trained as a part of the continuing education program and approved by the supervising hospital and the paramedic organization's medical director.

(C) Those procedures for which the advanced emergency medical technician has been specifically trained and have been approved by the administrative and medical staff of the supervising hospital, the advanced emergency medical technician organization medical director, and the commission as being within the scope and responsibility of the advanced emergency medical technician.

~~(15)~~ **(17)** "Emergency patient" means an individual who is acutely ill, injured, or otherwise incapacitated or helpless and who requires emergency care. The term includes an individual who requires transportation on a litter or cot or is transported in a vehicle certified as an ambulance under IC 16-31-3.

~~(16)~~ **(18)** "Emergency medical service nontransport provider" means an organization, certified by the commission, that provides first response patient care at an emergency that includes defibrillation but does not supply patient transport from the scene of the emergency.

~~(17)~~ **(19)** "Emergency medical service nontransport vehicle" means a motor vehicle other than an ambulance, owned or leased by a certified emergency medical service provider, that provides first response patient care at an emergency that includes defibrillation but does not supply patient transport from the scene of the emergency. The term does not include an employer-owned or employer-operated vehicle used for first aid purposes within or upon the employer's premises.

~~(18)~~ **(20)** "Emergency medical services" means the provision of emergency ambulance services or other services utilized in serving an individual's need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

~~(19)~~ **(21)** "Emergency medical services driver" means an individual who has a certificate of completion of a commission-approved driver training course.

~~(20)~~ **(22)** "Emergency medical services provider" means any person certified by the commission who engages in or seeks to furnish, operate, conduct, maintain, advertise, or otherwise engage in services for the care of emergency patients as part of a regular course of doing business, either paid or voluntary.

~~(21)~~ **(23)** "Emergency medical services vehicle" means any of the following:

(A) An ambulance.

(B) An emergency medical services nontransport vehicle.

(C) A rescue squad.

(D) An advanced life support nontransport vehicle.

~~(22)~~ **(24)** "Emergency medical technician" means an individual certified by the commission who is:

(A) responsible for:

(i) the administration of emergency care procedures to emergency patients; and

(ii) the handling and transportation of such patients; and

(B) certified under this article.

~~(23)~~ **(25)** "First responder", for purposes of IC 16-31, means an individual who is:

(A) certified under IC 16-31 and meets the commission's standards for first responder certification; and

(B) the first individual to respond to an incident requiring emergency medical services.

~~(24)~~ **(26)** "Paramedic" means ~~a person~~ **an individual** who:

(A) is affiliated with a certified paramedic organization or is employed by a supervising hospital;

(B) has completed a prescribed course in advanced life support; and

(C) has been certified by the commission.

~~(25)~~ **(27)** "Paramedic organization" means an ambulance service provider or other emergency care organization certified by the commission to provide advanced life support services administered by paramedics or physicians with an unlimited license to practice medicine in Indiana in conjunction with supervising hospitals.

~~(26)~~ **(28)** "Person" means any:

(A) natural person or persons;

~~(B) firm;~~

~~(C)~~ **(B)** partnership;

~~(D)~~ **(C)** corporation;

~~(E) company;~~

~~(F)~~ **(D)** association; ~~or~~

~~(G)~~ **(E)** joint stock association; ~~and~~ **or**

~~the legal successors thereof, including any~~

(F) governmental ~~agency or instrumentality,~~ **entity** other than an agency or instrumentality of the United States. ~~except an agency or instrumentality of the United States, as~~

~~that phrase is used in IC 16-31-3-3(b), means to exclude all nongovernmental entities that have a contract with the government of the United States or any bureau, board, commission, or statutorily created entity thereof.~~

~~(27)~~ **(29)** "Physician" means an individual who currently holds a valid unlimited license to practice medicine ~~issued~~ in Indiana **under IC 25-22.5.**

~~(28)~~ **(30)** "Program coordinator" means a person employed by a certified training institution that coordinates the advanced life support courses.

~~(29)~~ **(31)** "Provider organization" means an ambulance service or other emergency care organization certified by the commission to provide advanced life support in connection with a supervising hospital.

~~(30)~~ **(32)** "Provider organization operating area" means the geographic area in which an advanced emergency medical technician, affiliated with a specific advanced emergency medical technician organization, is able to maintain two-way voice communication with the provider organization's supervising hospitals.

~~(31)~~ **(33)** "Rescue squad organization" means an organization that holds a voluntary certification to provide extrication, rescue, or emergency medical services.

~~(32)~~ **(34)** "Supervising hospital" means a hospital licensed under IC 16-21-2 or under the licensing laws of another state that has been certified by the commission to supervise paramedics, advanced emergency medical technicians, and provider organizations in providing advanced life support.

(Indiana Emergency Medical Services Commission; 836 IAC 4-1-1; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2745)

SECTION 22. 836 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-2-1 General requirements for training institutions; staff

Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-21; IC 16-31-3-2; IC 20-10.1-1-16; IC 20-12-62-3; IC 20-12-71-8

Sec. 1. (a) All institutions administering or seeking to administer emergency medical services training programs shall be certified by the commission. Any multiple campus institution administering or seeking to administer such programs shall have its training institution certified by the commission on a campus-by-campus basis.

(b) Each Indiana emergency medical services training institution of emergency medical technician programs shall be:

(1) a postsecondary institution as defined in ~~20-12-71-8;~~ **IC 20-12-71-8;**

(2) a private technical, vocational, or trade school as defined in ~~20-12-62-3;~~ **IC 20-12-62-3;**

(3) a high school as defined in ~~20-10.1-1-16;~~ **IC 20-10.1-1-16;**

(4) a provider organization as defined in ~~16-31;~~ **IC 16-31;** or

(5) an appropriately accredited hospital licensed under IC 16-21; that has adequate resources and dedication to educational endeavors. Educational institutions shall be appropriately accredited by a regional accrediting association for higher education or have state licensure that assures comparable educational standards.

(c) Such an institution shall submit an application to the commission not less than ninety (90) days prior to the date for which certification is requested in a manner prescribed by the commission. Certification as an emergency medical services training institution is valid for a period of three (3) years from the date of certification.

(d) Certified emergency medical services training institutions shall be certified according to the institution's intent and ability to teach various levels of emergency medical services curricula as follows:

(1) Basic life support training institution, an institution that presents Indiana basic emergency medical technician or the Indiana emergency medical first responder training courses, or both.

(2) Advanced life support training institution, an institution that presents the Indiana advanced emergency medical technician, **Indiana advanced emergency medical technician intermediate,** or Indiana paramedic training courses, or ~~both.~~ **all levels of courses.**

(e) A certified training institution shall submit an application for recertification to the commission sixty (60) days prior to the date of certification expiration. The application for recertification shall indicate compliance with the requirements currently in effect at the time of the application for renewal.

~~(f) After notice and hearing, the commission may and is authorized to suspend or revoke a certificate issued under IC 16-31 or impose a fine of up to five hundred dollars ($500) in accordance with section 5 of this rule, or both, for fraud or misrepresentation in procuring certification, failure to comply and maintain compliance with, or for violation of, any applicable provisions, standards, or other requirement of IC 16-31 or this title. The commission may initiate proceedings to suspend or revoke a certificate upon its own motion, or on the verified written complaint of any interested person, and all such proceedings shall be held and conducted in accordance with IC 4-21.5.~~

~~(g) Notwithstanding the provision of subsection (f), the commission, upon finding that the public health or safety is in imminent danger, may temporarily suspend a certificate without hearing for a period not to exceed ninety (90) days upon notice to the certificate holder.~~

~~(h)~~ **(f)** Upon suspension, revocation, or termination of a certificate, the provision of such service shall cease. *(Indiana Emergency Medical Services Commission; 836 IAC 4-2-1; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2747)*

SECTION 23. 836 IAC 4-2-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-2-2 Institutional responsibilities
Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 2. A certified training institution seeking commission approval for administering emergency medical services training courses shall meet the following minimum requirements:

(1) Designate one (1) person as a training institution official responsible for administering all of the activities of the emergency medical services training institution and for communicating with the commission.

(2) Submit to an inspection of training facilities and equipment.

(3) Provide a list of educational staff to meet staffing-student ratio requirements outlined in approved curricula.

(4) Have the necessary clinical facilities, or affiliations with clinical facilities, to conduct the required clinical phases of emergency medical technician training programs.

(5) Under conditions where didactic and clinical training are to be conducted by separate institutions, program responsibility will rest with the institution that is certified by the commission. In cases where two (2) or more certified training institutions are cooperating in the presentation of an emergency medical services training program, both institutions will be held jointly responsible for the training programs.

(6) Provide evidence that the training institution has liability insurance on the students.

(7) Provide classroom space to effectively present the various requirements in the curricula.

(8) The curriculum requirements for all certified training programs shall be approved by the commission. Course applications will be made in a manner prescribed by the commission. The commission may disapprove a course application when it has been determined that the training institution or primary instructor has been found in noncompliance with rules and regulations.

(9) Have the training equipment and training aids (including the emergency care equipment) required by the curriculum of the courses that the training institution offers. The training institution shall have an adequate amount of the training equipment to be utilized by students to meet any equipment-to-student ratios prescribed by the curriculum being presented.

(10) Make available a minimum of twelve (12) hours, over a two (2) year period, of continuing education in educational principles and techniques for each of its affiliated primary instructors. A training institution may offer this continuing education or advise its faculty members of such continuing education at other sites. The training institution official may accept educational programs conducted at other facilities.

(11) Evaluate each course and affiliated primary instructor once during every year and retain a record of the evaluation in its files.

(12) Provide educational personnel for each approved training course, consisting of the following:

(A) Medical director.

(B) Program coordinator (advanced emergency medical technician, **advanced emergency medical technician intermediate,** and paramedic courses only).

(C) Primary instructor.

(D) Instructional staff.

(13) Be responsible for in-course standards and criteria by which it determines a student's successful completion of the didactic and clinical portions of the course. The criteria include, but are not limited to, the following:

(A) Attendance requirements and absentee policies.

(B) In-course testing procedures.

(C) Number and scope of in-course tests.

(D) Didactic pass/fail grade average and criteria.

(E) Provision for make-up classes and tests.

(F) Minimum age for enrollment.

(G) Policies for providing reasonable accommodation pursuant to the Americans with Disabilities Act.

(14) Be responsible for the screening and evaluation criteria for admission into any certified training program.

(15) Assure a certified primary instructor, affiliated with the training institution, is present in each Indiana basic emergency medical technician class session.

(16) Have a retention schedule of seven (7) years for all training and course records.

(Indiana Emergency Medical Services Commission; 836 IAC 4-2-2; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2748)

SECTION 24. 836 IAC 4-3-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-3-2 Certification standards
Authority: IC 16-31-2-7
Affected: IC 16-31-2-8; IC 16-31-3

Sec. 2. (a) Applicants for original certification as a first responder shall meet the following requirements:

(1) Be a minimum of eighteen (18) years of age.

(2) Have successfully completed a commission-approved first responder course.

(3) Have successfully completed a state written and practical skills examinations as approved by the commission.

(b) Certification as a first responder shall be valid for a period of two (2) years and shall remain valid as long as compliance with the continuing education requirements of subsection (c) are maintained and reported to the commission prior to the certification expiration date.

(c) To remain certified as a first responder, each certified first responder shall submit a report of continuing education every two (2) years that meets or exceeds the minimum requirement to take and report twenty (20) hours of continuing education according to the following:

(1) Participate in a minimum of sixteen (16) hours of any combination of lectures, critiques, skills proficiency examination, or audit and review, which reviews subject matter presented in the Indiana first responder curriculum.

(2) Participate in a minimum of four (4) hours in defibrillation and airway management as presented in the Indianan first responder curriculum.

(d) An individual who fails to comply with the continuing education requirements described in this article forfeits all rights and privileges of a certified first responder and shall cease from providing the services authorized by a first responder certification as of the date of expiration of the current certificate.

~~(c) The commission shall penalize a first responder or the certificate of any first responder, or both, shall be suspended or revoked by the commission under this article for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently an indicated procedure for which training has been received in the first responder training course as approved by the commission.~~

~~(3) Performing a procedure for which training:~~

~~(A) has not been received in the first responder training course as approved by the commission; or~~

~~(B) is not within the scope and responsibility of a first responder as determined by the commission.~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as a first responder.~~

~~(5) Has been convicted of an offense, if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as a first responder.~~

~~(6) Failure to comply with this title.~~

(Indiana Emergency Medical Services Commission; 836 IAC 4-3-2; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2751)

SECTION 25. 836 IAC 4-4-1 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-4-1 General certification provisions

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 1. (a) Applicants for original certification as an emergency medical technician shall meet the following requirements:

(1) Be a minimum of eighteen (18) years of age.

(2) Successfully complete the Indiana basic emergency medical technician training course as approved by the commission and administered by a certified training institution.

(3) Pass the emergency medical technician written and practical skills examinations as set forth and approved by the commission.

(b) The applicant shall apply for certification on forms prescribed by the commission postmarked within one (1) year of the date that the course was concluded as shown on the course report.

(c) The minimum requirement for basic emergency medical technicians training shall be as follows:

(1) The current version of the Indiana basic emergency medical technician training course as amended and approved by the commission.

(2) Each Indiana basic emergency medical technician course shall be supervised by a commission-certified primary instructor who is affiliated with the course sponsoring training institution as described in this article.

(d) No course shall be approved as equivalent to subsection (c) unless the course meets the training standards currently in effect.

~~(e) Under IC 16-31-3, the commission may penalize an emergency medical technician or the certificate of any emergency medical technician, or both may be suspended or revoked by the commission under the provision of 836 IAC 1-2-4 for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently an indicated procedure for which training has been received in the basic emergency medical technician training course as approved by the commission.~~

~~(3) Performing a procedure for which training has not been received in the basic emergency medical technician training course as approved by the commission or which is not within the scope and responsibility of an emergency medical technician as determined by the commission.~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as an emergency medical technician.~~

~~(5) Conviction of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as an emergency medical technician.~~

~~(6) Delegating to a person less qualified any skill that requires the professional competence of an emergency medical technician.~~

~~(7) Failure to comply with this title.~~

~~(f)~~ **(e)** Emergency medical technicians shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Perform quality patient care based on the content of approved training or the orders of the provider medical director.

(3) Uphold and respect the patient's right to privacy, dignity, and safety by keeping confidential patient information.

(4) Abiding by the legal responsibilities and limitations imposed upon the emergency medical technician by training and state law.

(Indiana Emergency Medical Services Commission; 836 IAC 4-4-1; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2752)

SECTION 26. 836 IAC 4-5-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-5-2 Certification and recertification; general

Authority: IC 16-31-2-7
Affected: IC 16-31-3-14

Sec. 2. (a) Application for certification will be made on forms and according to procedures prescribed by the commission. In order to be certified as an emergency medical services primary instructor, the applicant shall meet the following requirements:

(1) Successfully complete a commission-approved Indiana emergency medical services primary instructor training course.

(2) Successfully complete the primary instructor internship.

(3) Successfully complete the primary instructor written examination.

(4) Be currently certified as an Indiana emergency medical technician.

(b) Certification as an emergency medical services primary instructor is valid for two (2) years.

(c) In order to retain certification as a primary instructor, a person shall meet the following requirements:

(1) Retain affiliation with at least one (1) Indiana certified training institution.

(2) Conduct a minimum of eighty (80) hours of educational sessions based upon the emergency medical service curricula, which in content are either less than or equal to the primary instructor's level of clinical certification.

(3) Complete a minimum of twelve (12) hours of continuing education that specifically addresses the topic of educational philosophy and techniques, offered or approved by the affiliating training institution.

(4) Be evaluated by the training institution in regard to instructional skills and compliance with existing standards of the training institution and the commission at least once per course.

(5) Every two (2) years present, to the commission, evidence of compliance with this subsection during the period of certification as prescribed by the commission.

(d) The minimum requirements for emergency medical services primary instructor training is the current version of the Indiana primary instructor course, based upon the current national standard curriculum as amended and approved by the commission.

~~(c) Under IC 16-31-3-14, the commission may penalize a primary instructor or the certificate of any primary instructor, or both, may be suspended or revoked by the commission under the provision of 836 IAC 1-2-4 for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently procedures that are within the patient care standards or the scope and responsibility of the primary instructor.~~

~~(3) Failure to perform the responsibilities of a primary instructor as listed in 836 IAC 4-2-3(b)(3).~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of an emergency medical services student, a member of the training institution staff, or a member of the general public.~~

~~(5) Has been convicted of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person shall be entrusted to serve the public as a primary instructor.~~

~~(6) Failure to comply with this title.~~

~~(f)~~ **(e)** A primary instructor shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Uphold and respect the student's right to privacy, dignity, and safety by keeping student information confidential.

(3) Abiding by the legal responsibilities and limitations imposed upon the primary instructor.

(Indiana Emergency Medical Services Commission; 836 IAC 4-5-2; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2754)

SECTION 27. 836 IAC 4-6.1 IS ADDED TO READ AS FOLLOWS:

Rule 6.1. Advanced Emergency Medical Technician Intermediate Training

836 IAC 4-6.1-1 Advanced emergency medical technician intermediate training

Authority: IC 16-31-2-7
Affected: IC 16-31-3-20

Sec. 1. (a) All institutions administering or seeking to administer training programs for advanced emergency medical technician intermediates who engage in the provision of advanced life support services are required to be certified by the commission.

(b) An institution certified by the commission to conduct training programs for advanced emergency medical technician intermediates must:

(1) be a training institution certified under 836 IAC 4-2; and

(2) operate according to the procedures described therein.

(c) The minimum curriculum requirements for advanced emergency medical technician intermediate training shall

be the Indiana advanced emergency medical technician intermediate training curriculum based upon the current national standard curriculum as amended and approved by the commission.

(d) The program coordinator shall be a physician, a registered nurse, a paramedic, or an advanced emergency medical technician intermediate responsible for the duties of 836 IAC 4-2. *(Indiana Emergency Medical Services Commission; 836 IAC 4-6.1-1)*

SECTION 28. 836 IAC 4-7-2 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-7-2 Certification provisions; general
Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3-14

Sec. 2. (a) ~~Applicants~~ **An applicant** for certification as an advanced emergency medical technician shall meet the following requirements:

(1) Be an Indiana certified emergency medical technician.

(2) Be affiliated with a certified advanced emergency medical technician organization or a supervising hospital.

(3) Successfully complete the Indiana advanced emergency medical technician training course as approved by the commission and administered by a certified training institution.

(4) Pass the advanced emergency medical technician written and practical skills examinations as approved by the commission.

(b) The applicant shall apply for certification on forms prescribed by the commission postmarked within one (1) year of the date that the course was concluded as shown on the course report.

(c) The applicant shall submit verification of all affiliated providers and supervising hospitals.

(d) Certification exemptions identified under 836 IAC 2-7.1-1(j) shall apply to the certification of advanced emergency medical technicians.

(e) Advanced emergency medical technicians are prohibited from having in their possession, or maintained on-board emergency response vehicles, any advanced life support equipment or supplies that have not been approved by advanced emergency medical technician organization medical director.

(f) Advanced emergency medical technicians shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Perform quality patient care based on the content of approved training or the orders of the provider medical director.

(3) Uphold and respect the patient's right to privacy, dignity, and safety by keeping confidential patient information.

(4) Abide by the legal responsibilities and limitations imposed upon the advanced emergency medical technician by training and applicable laws.

~~(g) Under IC 16-31-3-14, the commission may penalize an advanced emergency medical technician or the certificate of any advanced emergency medical technician, or both, may be suspended or revoked by the commission under 836 IAC 1-2-4 and 836 IAC 2-13-1 for any of the following:~~

~~(1) Fraud or misrepresentation in procuring certification.~~

~~(2) Failure to perform or failure to perform competently an indicated procedure for which training has been received in the basic emergency medical technician training course as approved by the commission.~~

~~(3) Performing a procedure for which training:~~

~~(A) has not been received in the basic emergency medical technician training course or advanced emergency medical technician training course as approved by the commission; or~~

~~(B) is not within the scope and responsibility of an advanced emergency medical technician as determined by the commission.~~

~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as an advanced emergency medical technician.~~

~~(5) Conviction of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as an advanced emergency medical technician.~~

~~(6) Delegating to a person less qualified any skill that requires the professional competence of an advanced emergency medical technician.~~

~~(7) Failure to comply with this title.~~

~~(h) Procedures for suspension, revocation, or termination of certification pursuant to IC 16-31 apply to advanced emergency medical technician certification.~~ *(Indiana Emergency Medical Services Commission; 836 IAC 4-7-2; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2755)*

SECTION 29. 836 IAC 4-7.1 IS ADDED TO READ AS FOLLOWS:

Rule 7.1. Advanced Emergency Medical Technician Intermediate; Certification

836 IAC 4-7.1-1 Student qualification to enter training
Authority: IC 16-31-2-7
Affected: IC 16-31-3-2

Sec. 1. An applicant for Indiana advanced emergency

medical technician intermediate training shall meet the following requirements:

(1) Hold a valid certificate as an emergency medical technician.

(2) Be at a minimum of eighteen (18) years of age.

(3) Have a high school diploma or general education diploma.

(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-1)

836 IAC 4-7.1-2 Registered nurses; qualification to enter training

Authority: IC 16-31-2-7
Affected: IC 16-31-3-2

Sec. 2. (a) A registered nurse can challenge the advanced emergency medical technician intermediate course if he or she meets the following requirements:

(1) Be a registered nurse in Indiana.

(2) Be an Indiana certified emergency medical technician.

(3) Be able to document one (1) year of experience in an emergency department or as a flight nurse with an air ambulance service.

(4) Hold an advanced cardiac life support certification.

(5) Hold either an American Heart Association or American Red Cross health care provider card.

(6) Be able to meet prerequisites required by the commission, the advanced emergency medical technician intermediate curriculum, and the local training institution course.

(b) For successful completion of the advanced emergency medical technician intermediate training course, a registered nurse must meet all of the requirements set forth by the training institution for all students or meet the prerequisites as described in subsection (a) and the following:

(1) May earn credit by written examination for individual modules of the advanced emergency medical technician intermediate course.

(2) Test out of a module to be completed prior to the beginning of that module by completing:

(A) the written examination with a passing score; and

(B) the practical skills examination with a passing score.

Failure of any module exam will require the students to participate in the entire module.

(3) Successfully complete the advanced emergency medical technician intermediate program comprehensive final examination.

(4) Demonstrate skill proficiency by completing the advanced emergency medical technician intermediate level skills with course proficiency.

(5) May earn credit of clinical hours by review of the student's past experience in the clinical areas.

(6) Complete all field internship and required hospital clinical hours.

(7) Pass the advanced emergency medical technician intermediate written and practical skills examinations as approved by the commission.

(8) Meet general certification requirements in section 3 of this rule.

(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-2)

836 IAC 4-7.1-3 General certification

Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3-14

Sec. 3. (a) An applicant for certification as an advanced emergency medical technician intermediate shall meet the following requirements:

(1) Be a certified emergency medical technician.

(2) Be affiliated with a certified advanced emergency medical technician intermediate organization or a supervising hospital.

(3) Successfully complete the Indiana advanced emergency medical technician intermediate training course as approved by the commission and administered by an Indiana certified training institution.

(4) Pass the advanced emergency medical technician intermediate written and practical skills examinations as approved by the commission.

(b) The applicant shall apply for certification on forms prescribed by the commission postmarked within one (1) year of the date of successful completion of the required certification examinations.

(c) The applicant shall submit verification of all affiliated providers and supervising hospitals.

(d) Certification exemptions identified under 836 IAC 2-2-1(k) apply to the certification of advanced emergency medical technician intermediates.

(e) Advanced emergency medical technician intermediates are prohibited from having in their possession, or maintained on-board emergency response vehicles, any advanced life support equipment or supplies that have not been approved by the advanced emergency medical technician intermediate organization medical director.

(f) Under IC 16-31-3-14, the commission may penalize a advanced emergency medical technician intermediate or the certificate of any advanced emergency medical technician intermediate, or both, may be suspended or revoked by the commission under 836 IAC 1-2-4 and 836 IAC 2-13-1 for any of the following:

(1) Fraud or misrepresentation in procuring certification.

(2) Failure to perform or failure to perform competently procedures that are within the patient care standards or scope and responsibility of advanced emergency medical

technician intermediates for which training has been received in the advanced emergency medical technician intermediate training course as approved by the commission.

(3) Performing a procedure for which training:

(A) has not been received in the basic emergency medical technician course or advanced emergency medical technician intermediate training course as approved by the commission; or

(B) is not within the scope and responsibility of an advanced emergency medical technician intermediate as determined by the commission.

(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as a advanced emergency medical technician intermediate.

(5) Conviction of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person should be entrusted to serve the public as a advanced emergency medical technician intermediate.

(6) Delegating to a person less qualified any skill that requires the professional competence of a advanced emergency medical technician intermediate.

(7) Failure to comply with this title.

(g) Advanced emergency medical technician intermediates shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Perform quality patient care based on the content of approved training or the orders of the provider medical director.

(3) Uphold and respect the patient's right to privacy, dignity, and safety by keeping confidential patient information.

(4) Abide by the legal responsibilities and limitations imposed upon the advanced emergency medical technician intermediate by training and applicable laws.

(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-3)

836 IAC 4-7.1-4 Application for certification; renewal

Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 4. (a) Application for certification as an advanced emergency medical technician intermediate shall be made on forms prescribed by the commission. An applicant shall complete the required forms and shall submit the forms to the director.

(b) All applicants for original certification shall provide evidence of compliance with the requirements for certification.

(c) Certification as an advanced emergency medical technician intermediate shall be valid for two (2) years and remain valid as long as compliance with the continuing education requirements are maintained and reported every two (2) years to the commission prior to the certification expiration date.

(d) Individuals who have failed to comply with the continuing education requirements shall not exercise any of the rights and privileges nor administer advanced life support services to emergency patients.

(e) An individual wanting to reacquire a certification shall complete an advanced emergency medical technician intermediate recertification training course and successful completion of state written and practical skills examinations as set forth and approved by the commission. If the individual fails the certification examinations, the person shall retake an entire advanced emergency medical technician intermediate training course. *(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-4)*

836 IAC 4-7.1-5 Continuing education requirements

Authority: IC 16-31-2-7
Affected: IC 16-31-3-8; IC 16-31-3-20

Sec. 5. (a) Any applicant making application for certification or certification renewal shall meet the qualifications in this section to maintain their certification. Concurrent emergency medical technician certification shall be maintained if the requirements in this section are fulfilled.

(b) An applicant shall report a minimum of seventy-two (72) hours of continuing education consisting of the following:

(1) Section Ia, thirty-six (36) hours of continuing education adhering to and including the content of the Indiana emergency medical technician intermediate course.

(2) Section Ib, attach a current copy of advanced cardiac life support certification.

(3) Section Ic, attach a current copy of cardiopulmonary resuscitation certification.

(4) Section II, thirty-six (36) hours of continuing education with twelve (12) hours audit and review. No more than eighteen (18) hours may be taken in any one (1) topic.

(5) Section III, skill maintenance (with no specified hour requirement), all skills shall be directly observed by the emergency medical service medical director or emergency medical service educational staff of the supervising hospital, either at an inservice or in an actual clinical setting. The observed skills include, but are not limited to, the following:

(A) Patient assessment and management; medical and trauma.

(B) Ventilatory management skills/knowledge.

(C) Cardiac arrest management.
(D) Hemorrhage control and splinting procedures.
(E) IV therapy skills.
(F) Spinal immobilization; seated and lying patients.
(G) Obstetrics and gynecologic skills/knowledge.
(H) Other related skills/knowledge:
(i) radio communications; and
(ii) report writing and documentation.
(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-5)

836 IAC 4-7.1-6 Advanced emergency medical technician intermediate certification based upon reciprocity
Authority: IC 16-31-2-7
Affected: IC 16-31-3

Sec. 6. (a) An applicant for advanced emergency medical technician intermediate certification based upon reciprocity shall be affiliated with a certified advanced emergency medical technician intermediate provider organization and meet one (1) of the following requirements:
(1) Be a person who, at the time of applying for reciprocity, possesses a valid certificate or license as an advanced emergency medical technician intermediate from another state and who successfully passes the advanced emergency medical technician intermediate practical and written certification examinations as set forth and approved by the commission. Application for certification shall be postmarked or delivered to the commission office within six (6) months of the request for reciprocity.
(2) Be a person who, at the time of applying for reciprocity, has successfully completed a course of training and study equivalent to the material contained in the Indiana advanced emergency medical technician intermediate training course and successfully completes the written and practical skills certification examinations prescribed by the commission.
(3) Be a person who, at the time of applying for reciprocity, possesses a valid National Registry intermediate certification based on the advanced emergency medical technician intermediate curriculum approved by the commission.

(b) Notwithstanding subsection (a), any nonresident of Indiana who possesses a certificate or license as an advanced emergency medical technician intermediate that is valid in another state, may apply to the director for temporary certification as an advanced emergency medical technician intermediate. Upon receipt of a valid application and verification of valid status by the director, the director may issue temporary certification that shall be valid for the duration of the applicant's current certificate or license, or for a period not to exceed six (6) months from the date that the reciprocity request is approved by the director, whichever period of time is shorter. A person receiving temporary certification may apply for full certification using the procedure required in section 1 of this rule. *(Indiana Emergency Medical Services Commission; 836 IAC 4-7.1-6)*

SECTION 30. 836 IAC 4-9-3 IS AMENDED TO READ AS FOLLOWS:

836 IAC 4-9-3 General certification
Authority: IC 16-31-2-7
Affected: IC 4-21.5; IC 16-31-3-14

Sec. 3. (a) An applicant for certification as a paramedic shall meet the following requirements:
(1) Be ~~an~~ **a** certified emergency medical technician.
(2) Be affiliated with a certified paramedic organization or a supervising hospital.
(3) Successfully complete the Indiana paramedic training course as approved by the commission and administered by an Indiana certified training institution.
(4) Pass the paramedic written and practical skills examinations as approved by the commission.

(b) The applicant shall apply for certification on forms prescribed by the commission postmarked within one (1) year of the date ~~that the course was concluded as shown on the course report.~~ **of successful completion of the required certification examinations.**

(c) The applicant shall submit verification of all affiliated providers and supervising hospitals.

(d) Certification exemptions identified under 836 IAC 2-2-1(k) apply to the certification of paramedics.

(e) Paramedics are prohibited from having in their possession, or maintained on-board emergency response vehicles, any advanced life support equipment or supplies that have not been approved by the paramedic organization medical director.

~~(f) Under IC 16-31-3-14, the commission may penalize a paramedic or the certificate of any paramedic, or both, may be suspended or revoked by the commission under 836 IAC 1-2-4 and 836 IAC 2-13-1 for any of the following:~~
~~(1) Fraud or misrepresentation in procuring certification.~~
~~(2) Failure to perform or failure to perform competently procedures that are within the patient care standards or scope and responsibility of paramedics for which training has been received in the paramedic training course as approved by the commission.~~
~~(3) Performing a procedure for which training has not been received or has not been approved by the medical director.~~
~~(4) Negligent, reckless, or dangerous conduct that endangers the health or safety of emergency patients or the members of the general public while functioning as a paramedic.~~
~~(5) Conviction of an offense if the acts that resulted in the conviction have a direct bearing on whether or not the person~~

~~should be entrusted to serve the public as a paramedic.~~
~~(6) Delegating to a person less qualified any skill that requires the professional competence of a paramedic.~~
~~(7) Failure to comply with this title.~~

~~(g)~~ **(f)** Paramedics shall comply with the following standards of professional ethical conduct:

(1) Improve medical knowledge and skills through the completion of at least the prescribed regimen of continuing education described in this article.

(2) Perform quality patient care based on the content of approved training or the orders of the provider medical director.

(3) Uphold and respect the patient's right to privacy, dignity, and safety by keeping confidential patient information.

(4) Abide by the legal responsibilities and limitations imposed upon the paramedic by training and applicable laws.

(Indiana Emergency Medical Services Commission; 836 IAC 4-9-3; filed Jun 30, 2000, 4:18 p.m.: 23 IR 2757)

SECTION 31. THE FOLLOWING ARE REPEALED: 836 IAC 1-2-4; 836 IAC 1-8-1; 836 IAC 1-11-5; 836 IAC 2-12-1; 836 IAC 2-13-1; 836 IAC 3-2-8; 836 IAC 3-3-8; 836 IAC 3-4-1; 836 IAC 4-2-5; 836 IAC 4-10-1.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 26, 2002 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Training Room 6, Indianapolis, Indiana the Indiana Emergency Medical Services Commission will hold a public hearing on proposed amendments to 836 IAC 1, 836 IAC 2, 836 IAC 3 and 836 IAC 4. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E208 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Rodney Coats
Chairman
Indiana Emergency Medical Services Commission

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

Proposed Rule
LSA Document #01-405

DIGEST

Amends 864 IAC 1.1-2-2 to establish the types of topics that qualify as advanced calculus based mathematics. Amends 864 IAC 1.1-2-4 to change one of the minimum education requirements for engineering interns from a bachelor of science degree to a baccalaureate degree and to specify that a senior in an engineering curriculum in a college or university in Indiana may take the last EI examination prior to graduation. Amends 864 IAC 1.1-12-1 to revise the fee schedule charged by the board. Effective 30 days after filing with the secretary of state.

864 IAC 1.1-2-2
864 IAC 1.1-2-4
864 IAC 1.1-12-1

SECTION 1. 864 IAC 1.1-2-2 IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-2-2 Engineers; education and work experience
Authority: IC 25-31-1-7; IC 25-31-1-8
Affected: IC 25-31-1-12

Sec. 2. (a) This section establishes the minimum education and experience requirements under IC 25-31-1-12 for admission to the professional engineer examination.

(b) The following table establishes provisions for evaluating combined education and experience to determine if it is sufficient to satisfy minimum registration requirements under IC 25-31-1-12 for professional engineer registration applicants holding the stated degrees:

Education (Qualifying Degree)	Minimum Years of Progressive Work Experience Following Baccalaureate Degree
Doctorate in an engineering discipline following a baccalaureate degree in an approved engineering curriculum	2
Master of science degree in an engineering discipline following a baccalaureate degree in an approved engineering curriculum	3
Doctorate in an engineering discipline following a baccalaureate degree which is not in an approved engineering curriculum	4
Master of science degree in an engineering discipline following a baccalaureate degree which is not in an approved engineering curriculum	5
Baccalaureate degree in an approved engineering curriculum	4
Baccalaureate degree and completion of specific educational courses as required in subsection (c)	6

(c) The education of all applicants, except those who have obtained a baccalaureate degree in an approved engineering curriculum, must include the following:

(1) At least twelve (12) semester credit hours in college level

mathematics, excluding college algebra and trigonometry, which must include a minimum of nine (9) semester credit hours of calculus and a minimum of three (3) semester credit hours of advanced calculus based mathematics, **such as differential equations, linear algebra, or numerical analysis.**

(2) At least eight (8) semester credit hours in college level courses in the physical sciences, which must include a minimum of three (3) semester credit hours of calculus based physics and a minimum of three (3) semester credit hours of chemistry.

(3) At least twelve (12) semester credit hours of engineering sciences that require calculus as a prerequisite or corequisite.

(4) Effective January 3, 2003, at least twelve (12) semester credit hours in engineering design.

(d) For a course to qualify as an engineering design course, the course must instruct on the decision making process in which the basic sciences and mathematics and engineering sciences are applied to convert resources optimally to meet a stated objective. Among the fundamental elements of the design process are the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. The content of an engineering design course must include some of the following features:

(1) Development of student creativity.

(2) Use of open ended problems.

(3) Development and use of modern design theory and methodology.

(4) Formulation of design problems statements and specifications.

(5) Consideration of alternative solutions, feasibility considerations, production processes, concurrent engineering design, and detailed system descriptions.

Further, it is essential that a variety of realistic constraints, such as economic factors, safety, reliability, aesthetics, ethics, and social impact, be included.

(e) An applicant for admission for the examination must:

(1) include on the application, or a document attached to the application, which courses meet the requirements of subsection (c) by stating the course names and numbers; and

(2) submit all college transcripts that show that college credit was awarded for the claimed courses.

(f) No degree requirement under this section may be achieved by obtaining an honorary degree or a degree obtained entirely by correspondence.

(g) College courses with substantial duplication of content may be counted only one (1) time toward the requirements of subsection (c).

(h) Progressive experience of sufficient quality when used relative to the requirement for experience on engineering projects as provided for in IC 25-31-1-12(a) means the applicant has demonstrated the ability to assume continuously increasing levels of responsibility for engineering projects.

(i) No experience obtained prior to a baccalaureate degree shall qualify.

(j) Part-time experience acquired while the applicant was a full-time student shall not qualify. All other part-time experience shall be converted to its full-time equivalent in evaluating an application.

(k) Notwithstanding other provisions of this section, applicants who hold either a valid certificate as an EI or an engineer-in-training (EIT) do not need any additional education beyond that which was required for admission to the EI or EIT examination in Indiana, so long as they apply for admission to the professional engineer examination no later than the first examination application deadline (as provided for in 864 IAC 1.1-3-4), which is subsequent to seven (7) years after the date the applicant took and passed the engineering intern examination. *(State Board of Registration for Professional Engineers; Rule 2, Sec 2; filed Feb 29, 1980, 3:40 p.m.: 3 IR 627; filed Oct 17, 1986, 2:20 p.m.: 10 IR 435; filed Sep 24, 1992, 9:00 a.m.: 16 IR 726, eff Jan 1, 1993; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2103, eff Jul 4, 1995; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2112, eff Jan 3, 1997; filed Mar 27, 2000, 8:58 a.m.: 23 IR 2002; filed May 4, 2001, 11:13 a.m.: 24 IR 2694, eff Jul 3, 2001; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824)*

SECTION 2. 864 IAC 1.1-2-4 IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-2-4 Engineering intern; education and work experience

Authority: IC 25-31-1-7; IC 25-31-1-8
Affected: IC 25-31-1-12

Sec. 4. (a) The education and experience requirements of section 2 of this rule for professional engineer applicants apply for engineering intern applicants except that:

(1) individuals with a ~~bachelor of science~~ **baccalaureate** degree meeting the course requirements of section 2(c) of this rule shall only be required to obtain two (2) years of work experience;

(2) individuals with a master of science degree in an engineering discipline following a baccalaureate which is not in an approved engineering curriculum shall only be required to obtain one (1) year of work experience; and

(3) individuals with the other degrees listed in section 2(b) of this rule shall not be required to obtain any work experience.

(b) An individual who is enrolled as a senior in an engineering curriculum in a college or university **in Indiana,** which has at least one (1) approved engineering curriculum may take the last EI examination offered on the individual's campus prior to

the individual's scheduled graduation. This subsection does not apply to any individual enrolled in any other ~~bachelor of science~~ **baccalaureate** degree program. *(State Board of Registration for Professional Engineers; Rule 2, Sec 4; filed Feb 29, 1980, 3:40 p.m.: 3 IR 628; filed Oct 17, 1986, 2:20 p.m.: 10 IR 438; errata filed Mar 8, 1990, 5:00 p.m.: 13 IR 1189 voided by the attorney general filed Apr 18, 1990: 13 IR 1863; errata filed Dec 20, 1990, 5:00 p.m.: 14 IR 1071; filed Sep 24, 1992, 9:00 a.m.: 16 IR 726, eff Jan 1, 1993; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2105, eff Jul 4, 1995; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824)*

SECTION 3. 864 IAC 1.1-12-1 IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-12-1 Fees charged by board

Authority: IC 25-31-1-7; IC 25-31-1-8
Affected: IC 25-31-1

Sec. 1. The board shall charge and collect the following fees, which shall all be nonrefundable and nontransferable:

(1) For review of an application for examination for ~~registration~~ **certification** as ~~a professional engineer other than comity;~~ ~~ten~~ **an engineering intern, one hundred** dollars ~~($10).~~ **($100).**

(2) For review of an application for examination for registration as a professional engineer, three hundred dollars ($300).

~~(2)~~ **(3)** For the examination or reexamination of any applicant under the Act: ~~fifty dollars ($50).~~

(A) fundamental of engineering examination, one hundred dollars ($100); and

(B) principles and practice of engineering examination, one hundred fifty dollars ($150).

~~(3)~~ **(4)** For the processing and review of qualifications for registration as a professional engineer by comity, ~~fifty~~ **five hundred** dollars ~~($50).~~ **($500).**

~~(4)~~ **(5)** For issuance of the original certificate to practice as a professional engineer following passage of the examination or approval for registration on the basis of comity:

(A) when the certificate is dated between August 1 of an odd-numbered year and July 31 of the following even-numbered year, inclusive, ~~ten~~ **fifty** dollars ~~($10);~~ **($50);** and

(B) when the certificate is dated between August 1 of an even-numbered year and July 31 of the following odd-numbered year, inclusive, ~~twenty~~ **one hundred** dollars ~~($20).~~ **($100).**

~~(5)~~ **(6)** For biennial renewal of the certificate to practice as a professional engineer, ~~twenty~~ **one hundred** dollars ~~($20)~~ **($100)** payable prior to July 31 of each even-numbered year.

~~(6)~~ **(7)** For renewal of an expired certificate to practice as a professional engineer, ~~ten~~ **fifty** dollars ~~($10),~~ **($50),** plus all unpaid renewal fees for the four (4) years of delinquency. A certificate may not be renewed after four (4) years of delinquency.

~~(7)~~ **(8)** For a duplicate or replacement certificate to practice as a professional engineer, ten dollars ($10).

~~(8)~~ **(9)** For **an applicant for engineering intern under 864 IAC 1.1-2-4(b) for review of the application,** examination, and enrollment as an ~~EI,~~ ~~twenty~~ **engineering intern, fifty** dollars ~~($20).~~ **($50).**

~~(9)~~ **(10)** The fee shall be ~~fifty~~ **one hundred** dollars ~~($50)~~ **($100)** for the proctoring of examinations taken in this state for purposes of registration in other states. This fee shall be in addition to the examination fee.

(State Board of Registration for Professional Engineers; Rule 12, Sec 1; filed Feb 29, 1980, 3:40 p.m.: 3 IR 637; filed Oct 14, 1981, 1:30 p.m.: 4 IR 2459; filed Oct 17, 1986, 2:20 p.m.: 10 IR 442; errata, 10 IR 445; filed Sep 24, 1992, 9:00 a.m.: 16 IR 735; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2111; filed Jun 14, 1996, 3:00 p.m.: 19 IR 3109; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 18, 2002 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 12, Indianapolis, Indiana the State Board of Registration for Professional Engineers will hold a public hearing on proposed amendments to establish the types of topics that qualify as advanced calculus based mathematics, to change one of the minimum education requirements for engineering interns from a Bachelor of Science degree to baccalaureate degree, to specify that a senior in an engineering curriculum in a college or university in Indiana may take the last EI examination prior to graduation, and to revise the fees charged by the board. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Indiana Professional Licensing Agency