TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #01-282(F)

DIGEST

Adds 312 IAC 5-9-4, concerning rules that govern the operation of watercraft on public waters in Indiana, to establish restrictions on Prairie Creek Reservoir in Delaware County. A speed limit of 20 miles per hour would be established for all watercraft. Motorboats would be prohibited from towing water skis and similar objects north of a line extending westerly from the bridge over Huffman Creek on County Road 560 East (also known as Gates Road). Effective 30 days after filing with the secretary of state.

312 IAC 5-9-4

SECTION 1. 312 IAC 5-9-4 IS ADDED TO READ AS FOLLOWS:

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

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

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

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

(c) A person operating a motorboat must not tow a water ski, a water sled, an aquaplane, or a similar object north of a line extending westerly from the bridge over Huffman Creek on County Road 560 East (also known as Gates Road). *(Natural Resources Commission; 312 IAC 5-9-4; filed May 16, 2002, 12:23 p.m.: 25 IR 3044)*

LSA Document #01-282(F)
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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #01-283(F)

DIGEST

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

312 IAC 5-9-2

SECTION 1. 312 IAC 5-9-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-9-2 Geist Reservoir

Authority: IC 14-15-7-3
Affected: IC 14-15

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

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

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

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

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

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

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

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

(5) In an area known as the Indianapolis Sailing Club Harbor, within the southeast quarter of section 10, township 17 north, range 5 east, and being more particularly described as commencing at the southeast corner of section 10, thence west along the south line of the section a distance of three thousand five hundred (3,500) feet, thence north at right angles to the south section line a distance of three hundred eighty (380) feet to the point of beginning of the description in this subdivision (assumed bearing of north twenty-three (23) degrees, thirty-seven (37) minutes west), thence a distance of seven hundred forty-six and four-tenths (746.4) feet to the north end of a retaining wall along the shoreline of the reservoir, thence following the meanders of the shoreline of the reservoir northeasterly, southerly, and southwesterly to the point of beginning.

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

(7) In an area known as Cocktail Cove.

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

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

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

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

(2) Create a safety hazard to any person.

(Natural Resources Commission; 312 IAC 5-9-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2380, eff Jan 1, 2002; filed May 16, 2002, 10:03 a.m.: 25 IR 3044)

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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #01-295(F)

DIGEST

Adds 312 IAC 2-4-9.5 to establish reporting requirements for fishing tournament license holders. Effective 30 days after filing with the secretary of state.

312 IAC 2-4-9.5

SECTION 1. 312 IAC 2-4-9.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 2-4-9.5 Reporting
Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14

Sec. 9.5. In addition to the terms of the license and the requirements otherwise set forth in this rule, the department may require a fishing tournament license holder to keep and report, on a department form, legible and accurate records of the following:

(1) Tournament name.

(2) Name, address, and telephone number of the license holder.

(3) Tournament date or dates, including starting time and ending time.

(4) Target fish species.

(5) Name of any waterway fished.

(6) Number of boats and number of participants.

(7) Individual or team catch statistics for each species of fish taken, including the following:

(A) The numbers and lengths of fish weighed-in.

(B) The numbers and lengths of fish caught and released.

(Natural Resources Commission; 312 IAC 2-4-9.5; filed May 16, 2002, 10:00 a.m.: 25 IR 3045)

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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #01-359(F)

DIGEST

Amends 312 IAC 2-4-3 that governs petitions to establish site-specific rules for the licensing of fishing tournaments and

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

312 IAC 2-4-3	**312 IAC 9-5-4**
312 IAC 9-2-7	**312 IAC 9-6-1**
312 IAC 9-3-19	**312 IAC 9-6-9**
312 IAC 9-4-14	**312 IAC 9-9-4**

SECTION 1. 312 IAC 2-4-3 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14-33-1-1

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

(1) The county executive for the county where the public water is located. A petition under this subdivision applies only to the portion of the public water located in that county. The county executives for adjoining counties may enter a joint petition.

(2) If a portion of a public water is located within a municipality, the executive for the municipality. A petition under this subsection applies only to the portion of the public water located in the municipality.

(3) A deputy director of the department.

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

(1) The name and location of the public water to be regulated.

(2) The name, address, and telephone number of the petitioner.

(3) The periods when the public water would be regulated. These periods may be expressed in terms of months or beginning and ending days. Restrictions on activities regulated under this rule may be seasonally adjusted.

(4) Whether regulation would apply to fishing tournaments, other organized activities, or both fishing tournaments and other organized activities. If the regulation would apply to other organized activities, a description of the type of these activities that would be regulated.

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

(Natural Resources Commission; 312 IAC 2-4-3; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3930, eff Jan 1, 2002; filed May 16, 2002, 12:25 p.m.: 25 IR 3046)

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

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

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

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

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

(Natural Resources Commission; 312 IAC 9-3-19; filed May 12, 1997, 10:00 a.m.: 20 IR 2708; filed May 16, 2002, 12:25 p.m.: 25 IR 3046)

SECTION 3. 312 IAC 9-4-14, AS AMENDED AT 25 IR 1535, SECTION 8, IS AMENDED TO READ AS FOLLOWS:

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

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

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

(1) American bittern (Botaurus lentiginosus).
(2) Least bittern (Ixobrychus exilis).
(3) Black-crowned night-heron (Nycticorax nycticorax).
(4) Yellow-crowned night-heron (Nyctanassa violacea).
(5) Trumpeter swan (Sygnus buccinator).
(6) Osprey (Pandion haliaetus).
(7) Bald eagle (Haliaeetus leucocephalus).
(8) Northern harrier (Circus cyaneus).
(9) Peregrine falcon (Falco peregrinus).
(10) Black rail (Laterallus jamaicensis).
(11) King rail (Rallus elegans).
(12) Virginia rail (Rallus limicola).
(13) ~~Whooping~~ **Sandhill** crane (Grus ~~americana).~~ **canadensis).**
(14) Piping plover (Charadrius melodus).
(15) Upland sandpiper (Bartramia longicauda).
(16) Least tern (Sterna antillarum).

(17) Black tern (Chlidonias niger).
(18) Barn owl (Tyto alba).
(19) Short-eared owl (Asio flammeus).
(20) Bewick's wren (Thryomanes bewickii).
(21) Sedge wren (Cisothorus platensis).
(22) Marsh wren (Cisothorus palustris).
(23) Loggerhead shrike (Lanius ludovicianus).
(24) Golden-winged warbler (Vermivora chrysoptera).
(25) Kirtland's warbler (Dendroica kirtlandii).
(26) Bachman's sparrow (Aimophila aestivalis).
(27) Henslow's sparrow (Ammodramus henslowii).
(28) Yellow-headed blackbird (Xanthocephalus xanthocephalus).

(Natural Resources Commission; 312 IAC 9-4-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; filed May 28, 1998, 5:14 p.m.: 21 IR 3717; filed Dec 26, 2001, 2:40 p.m.: 25 IR 2535; filed May 16, 2002, 12:25 p.m.: 25 IR 3046)

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

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

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

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

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

(Natural Resources Commission; 312 IAC 9-5-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed May 16, 2002, 12:25 p.m.: 25 IR 3047)

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

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

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

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

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

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

(Natural Resources Commission; 312 IAC 9-6-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed May 28, 1998, 5:14 p.m.: 21 IR 3717; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; filed May 16, 2002, 12:25 p.m.: 25 IR 3047)

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

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

Sec. 9. The following species of fish are threatened or

endangered and are subject to the protections provided under ~~312 IAC 9-2-7.~~ **IC 14-22-34-12:**

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

(Natural Resources Commission; 312 IAC 9-6-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 16, 2002, 12:25 p.m.: 25 IR 3048)

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

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

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

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

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

(Natural Resources Commission; 312 IAC 9-9-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2727; filed May 16, 2002, 12:25 p.m.: 25 IR 3049)

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

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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #01-360(F)

DIGEST

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

312 IAC 18-3-12

SECTION 1. 312 IAC 18-3-12 IS AMENDED TO READ AS FOLLOWS:

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

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

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

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

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

(1) ~~Adams.~~ **Bartholomew.**
(2) ~~Allen.~~ **Clark.**
(3) ~~Benton.~~ **Clay.**
(4) ~~Blackford.~~ **Crawford.**
(5) ~~Boone.~~ **Daviess.**
(6) ~~Carroll.~~ **Dearborn.**
(7) ~~Cass.~~ **Decatur.**
(8) ~~Clinton.~~ **Dubois.**
(9) ~~Dekalb.~~ **Floyd.**
(10) ~~Delaware.~~ **Franklin.**
(11) ~~Elkhart.~~ **Gibson.**
(12) ~~Fountain.~~ **Greene.**
(13) ~~Fulton.~~ **Harrison.**
(14) ~~Grant.~~ **Jackson.**
(15) ~~Hamilton.~~ **Jefferson.**
(16) ~~Hancock.~~ **Jennings.**
(17) ~~Henry.~~ **Knox.**
(18) ~~Howard.~~ **Lawrence.**
(19) ~~Huntington.~~ **Martin.**
(20) ~~Jasper.~~ **Monroe.**

(21) ~~Jay.~~ **Morgan.**
(22) ~~Johnson.~~ **Ohio.**
(23) ~~Kosciusko.~~ **Orange.**
(24) ~~LaGrange.~~ **Perry.**
(25) ~~Lake.~~ **Pike.**
(26) ~~LaPorte.~~ **Posey.**
(27) ~~Madison.~~ **Putnam.**
(28) ~~Marion.~~ **Ripley.**
(29) ~~Marshall.~~ **Scott.**
(30) ~~Miami.~~ **Spencer.**
(31) ~~Montgomery.~~ **Sullivan.**
(32) ~~Newton.~~ **Switzerland.**
(33) ~~Noble.~~ **Union.**
(34) ~~Parke.~~ **Vanderburgh.**
(35) ~~Porter.~~ **Vigo.**
(36) ~~Pulaski.~~ **Warrick.**
(37) ~~Randolph.~~ **Washington.**
~~(38) Rush.~~
~~(39) St. Joseph.~~
~~(40) Shelby.~~
~~(41) Starke.~~
~~(42) Steuben.~~
~~(43) Tippecanoe.~~
~~(44) Tipton.~~
~~(45) Vermillion.~~
~~(46) Wabash.~~
~~(47) Warren.~~
~~(48) Wayne.~~
~~(49) Wells.~~
~~(50) White.~~
~~(51) Whitley.~~

~~(c)~~ **(d)** The following items are regulated articles:

(1) The larger pine shoot beetle in any life stage.

(2) Entire plants or parts of the genus pine (Pinus spp.). Exempted from this subdivision are plants that conform to each of the following:

(A) Are less than thirty-six (36) inches high.

(B) Are one (1) inch in basal diameter or less.

(3) Logs and lumber of pine with bark attached. Exempted from this subdivision are logs of pine and pine lumber with bark attached if:

(A) the source tree was felled during the period of July through October; and

(B) the logs and lumber are shipped from the quarantined area during the period of July through October.

(4) Any other article, product, or means of conveyance if determined by the division director to present the risk of spread of the larger pine shoot beetle.

~~(d)~~ **(e)** The following actions are ordered within the infested area:

(1) The movement by a person of a regulated article to a destination outside the infested area is prohibited, except under the following conditions:

(A) A thorough examination of all nursery stock takes place on a piece by piece basis.

(B) A statistically based examination of Christmas trees is made according to the following schedules:

TABLE 1. PAINTED (COLOR-ENHANCED) PINE CHRISTMAS TREES[1]

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

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

TABLE 2. NATURAL (UNPAINTED) CHRISTMAS TREES[1]

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

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

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

(i) A certificate of inspection approved by the division.

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

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

attached to the shipping document and the regulated article is adequately described on the shipping document of the certificate.

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

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

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

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

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

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

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

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

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

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

(Natural Resources Commission; 312 IAC 18-3-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1273; filed Feb 9, 1999, 4:16 p.m.: 22 IR 1945; filed Apr 4, 2001, 3:02 p.m.: 24 IR 2404; filed May 16, 2002, 12:28 p.m.: 25 IR 3049)

LSA Document #01-360(F)
Notice of Intent Published: 25 IR 406
Proposed Rule Published: January 1, 2002; 25 IR 1217
Hearing Held: January 28, 2002
Approved by Attorney General: April 30, 2002
Approved by Governor: May 15, 2002
Filed with Secretary of State: May 16, 2002, 12:28 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #99-265(F)

DIGEST

Amends 326 IAC 6-3 concerning process weight rates. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: January 1, 2000, Indiana Register (23 IR 926).

Second Notice of Comment Period and Notice of First Hearing: February 1, 2001, Indiana Register (24 IR 1472).

Date of First Hearing: April 12, 2001.

Proposed Rule, Third Notice of Comment Period, and Notice of Second Hearing: June 1, 2001, Indiana Register (24 IR 2742).

Date of Second Hearing: August 1, 2001.

Notice of Third Hearing: January 1, 2002, Indiana Register (25 IR 1195).

Change of Notice of Third Hearing: February 1, 2002, Indiana Register.

Date of Third Hearing: February 6, 2002.

326 IAC 6-3-1
326 IAC 6-3-1.5
326 IAC 6-3-2

SECTION 1. 326 IAC 6-3-1 IS AMENDED TO READ AS FOLLOWS:

Rule 3. Particulate Emission Limitations for Manufacturing Processes

326 IAC 6-3-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule establishes emission limitations for particulate emissions from ~~process operations~~ **manufacturing processes** located anywhere in the state.

(b) The following **manufacturing** processes ~~and their attendant emissions~~ are exempt from this rule:

(1) Combustion for indirect heating.

(2) ~~Incinerators.~~ **Incineration.**

(3) Open burning.

(4) Existing foundry ~~cupolas~~ **cupolas' manufacturing**

processes that are subject to the requirements of 326 IAC 11-1.
(5) Surface coating using dip coating.
(6) Surface coating using roll coating.
(7) Surface coating using flow coating.
(8) Surface coating using brush coating.
(9) Welding, provided that less than six hundred twenty-five (625) pounds of rod or wire is consumed per day.
(10) Torch cutting, provided that less than three thousand four hundred (3,400) inches per hour of stock one (1) inch thickness or less is cut.
(11) Noncontact cooling tower systems.
(12) Applications of aerosol coating products to repair minor surface damage and imperfections.
(13) Trivial activities as defined at 326 IAC 2-7-1(40).
(14) Manufacturing processes with potential emissions less than five hundred fifty-one thousandths (0.551) pound per hour.
(15) Surface coating manufacturing processes, not otherwise exempt in subdivisions (5) through (8), that use less than five (5) gallons per day.

~~(b) If any limitation established:~~
~~(1) by this rule is inconsistent with applicable limitations contained in 326 IAC 6-1;~~
~~(2) by 326 IAC 12 concerning new source performance standards; or~~
~~(3) in a Part 70 permit in accordance with 326 IAC 2-7-24;~~
~~then the limitation contained in this rule shall not apply, but the limit in such sections or Part 70 permit, shall apply.~~

(c) This rule shall not apply if a particulate matter limitation established in:
(1) 326 IAC 2-2-3, concerning prevention of significant deterioration (PSD) best available control technology (BACT) determinations contained in a permit;
(2) 326 IAC 2-3-3, concerning lowest achievable emission rate (LAER) determinations contained in a permit;
(3) 326 IAC 6-1, concerning nonattainment area particulate emissions;
(4) 326 IAC 11, concerning existing emission limitations for specific operations;
(5) 326 IAC 12, concerning new source performance standards; or
(6) 326 IAC 20, concerning national emission standards for hazardous air pollutants;
is more stringent than the particulate limitation established in this rule. *(Air Pollution Control Board; 326 IAC 6-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2499; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2367; filed May 13, 2002, 11:30 a.m.: 25 IR 3051)*

SECTION 2. 326 IAC 6-3-1.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 6-3-1.5 Definitions
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1.5. For purposes of this rule, the following definitions shall govern if there is a conflict between this rule and 326 IAC 1-2:
(1) "Aerosol coating products" means a mixture of resins, pigments, liquid solvents, and gaseous propellants packaged in a disposable can for hand-held application.
(2) "Manufacturing process" means any single or series of actions, operations, or treatments in which a mechanical, physical, or chemical transformation of material occurs that emits, or has the potential to emit, particulate in the production of the product. The term includes transference, conveyance, or repair of a product.
(3) "Particulate" means any finely divided solid or liquid material, other than uncombined water.
(4) "Particulate matter" has the meaning defined in 40 CFR 60.2*.
(5) "Surface coating" means the application of a solvent or waterbased coating to a surface that imparts protective, functional, or decorative films in which the application emits, or has the potential to emit, particulate. "Surface coating" does not include galvanizing.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 6-3-1.5; filed May 13, 2002, 11:30 a.m.: 25 IR 3052)*

SECTION 3. 326 IAC 6-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-3-2 Particulate emission limitations, work practices, and control technologies
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 2. **(a) Any manufacturing process listed in subsections (b) through (d) shall follow the work practices and control technologies contained therein. All other manufacturing processes subject to this rule shall calculate emission limitations according to requirements in subsection (e).**

~~(a) Cement Kilns: No owner or operator of a~~ **(b)** Cement manufacturing ~~operation~~ **kilns** commencing operation prior to December 6, 1968, ~~equipped with electrostatic precipitators, bag filters or equivalent gas-cleaning devices~~ shall **not** cause, allow, or permit any discharge to the atmosphere any gases containing particulate ~~matter~~ in excess of **the following:**
(1) $E = 8.6\ P^{0.67}$, **equal to or** below thirty (30) tons per hour of process weight.
(2) $E = 15.0\ P^{0.50}$, over thirty (30) tons per hour of process weight.

Where: E = Emission rate in pounds **per** hour. ~~and~~
P = Process weight **rate** in tons per hour.

~~(b)~~ **(c)** Catalytic cracking units ~~The owner or operator of a catalytic cracking unit~~ commencing operation prior to December 6, 1968, and ~~which is~~ equipped with cyclone separators, electrostatic precipitators, or other gas-cleaning systems shall recover **ninety-nine and ninety-seven hundredths percent** (99.97%) or more of the circulating catalyst or total gas-borne particulate.

(d) Surface coating, reinforced plastics composites fabricating manufacturing processes, and graphic arts manufacturing processes shall be controlled by a dry particulate filter, waterwash, or an equivalent control device, subject to the following:

(1) The source shall operate the control device in accordance with manufacturer's specifications.

(2) If overspray is visibly detected at the exhaust or accumulates on the ground, the source shall inspect the control device and do either of the following no later than four (4) hours after such observation:

(A) Repair control device so that no overspray is visibly detectable at the exhaust or accumulates on the ground.

(B) Operate equipment so that no overspray is visibly detectable at the exhaust or accumulates on the ground.

If overspray is visibly detected, the source shall maintain a record of the action taken as a result of the inspection, any repairs of the control device, or change in operations, so that overspray is not visibly detected at the exhaust or accumulates on the ground. These records must be maintained for five (5) years.

(3) Sources that operate according to a valid permit pursuant to any of:

(A) 326 IAC 2-7;

(B) 326 IAC 2-8; or

(C) 326 IAC 2-9;

are exempt from subdivision (2).

(4) Surface coating manufacturing processes that use less than five (5) gallons of coating per day are exempted as defined in section 1(b)(15) of this rule. At any time the coating application rate increases to greater than five (5) gallons per day, control devices must be in place. A manufacturing process that is subject to this subsection shall remain subject to it notwithstanding any subsequent decrease in gallons of coating used.

~~(c) Process operations~~ **(e) Manufacturing processes to which control methods in subsections (b) through (d) do not apply shall calculate allowable emissions as follows:**

(1) No person shall operate any **manufacturing** process so as to produce, cause, suffer, or allow particulate ~~matter~~ to be emitted in excess of the amount shown in the ~~following~~ table **in this subsection. The allowable rate of emission shall be based on the process weight rate for a manufacturing process.**

(2) When the process weight rate is less than one hundred (100) pounds per hour, the allowable rate of emission is five hundred fifty-one thousandths (0.551) pound per hour.

(3) When the process weight rate exceeds two hundred (200) tons per hour, the allowable emission may exceed that shown in the following table, provided the concentration of particulate in the discharge gases to the atmosphere is less than one-tenth (0.10) pound per one thousand (1,000) pounds of gases:

Allowable Rate of Emission Based on Process Weight Rate[1]

Process Weight Rate		Rate of Emission	Process Weight Rate		Rate of Emission
~~Lbs/Hr~~ **Pounds Per Hour**	~~Tons/Hr~~ **Tons Per Hour**	~~Lbs/Hr~~ **Pounds Per Hour**	~~Lbs/Hr~~ **Pounds Per Hour**	~~Tons/Hr~~ **Tons Per Hour**	~~Lbs/Hr~~ **Pounds Per Hour**
100	0.05	0.551	16,000	8.00	16.5
200	0.10	0.877	18,000	9.00	17.9
		~~1.40~~			
400	0.20	**1.39**	20,000	10.00	19.2
600	0.30	1.83	30,000	15.00	25.2
800	0.40	2.22	40,000	20.00	30.5
1,000	0.50	2.58	50,000	25.00	35.4
1,500	0.75	3.38	60,000	30.00	40.0
2,000	1.00	4.10	70,000	35.00	41.3
2,500	1.25	4.76	80,000	40.00	42.5
3,000	1.50	5.38	90,000	45.00	43.6
		~~5.96~~			
3,500	1.75	**5.97**	100,000	50.00	44.6
4,000	2.00	6.52	120,000	60.00	46.3
5,000	2.50	7.58	140,000	70.00	47.8
					~~49.0~~
6,000	3.00	8.56	160,000	80.00	**49.1**
					~~51.2~~
7,000	3.50	9.49	200,000	100.00	**51.3**
		~~10.40~~			
8,000	4.00	**10.4**	1,000,000	500.00	69.0
		~~11.20~~			
9,000	4.50	**11.2**	2,000,000	1,000.00	77.6
		~~12.00~~			
10,000	5.00	**12.0**	6,000,000	3,000.00	92.7
		~~13.60~~			
12,000	6.00	**13.6**			

~~(3) When the process weight exceeds two hundred (200) tons/hour, the maximum allowable emission may exceed that shown in the table, provided the concentration of particulate matter in the discharge gases to the atmosphere is less than 0.10 pounds per one thousand (1,000) pounds of gases.~~

*[1]Interpolation of the data in this table for process weight rates up to sixty thousand (60,000) ~~lbs/hr~~ **pounds per hour** shall be accomplished by use of the equation:

$$E = 4.10\ P^{0.67}$$

and interpolation and extrapolation of the data for process

weight rates in excess of sixty thousand (60,000) ~~lbs/hr~~ **pounds per hour** shall be accomplished by use of the equation:

$$E = 55.0\ P^{0.11} - 40$$

Where: E = Rate of emission in ~~lbs/hr and~~ **pounds per hour.**

P = Process weight **rate** in ~~tons/hr.~~ **tons per hour.**

(Air Pollution Control Board; 326 IAC 6-3-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2499; filed May 13, 2002, 11:30 a.m.: 25 IR 3052)

LSA Document #99-265(F)
Proposed Rule Published: June 1, 2001; 24 IR 2742
Hearing Held: February 6, 2002
Approved by Attorney General: April 25, 2002
Approved by Governor: May 10, 2002
Filed with Secretary of State: May 13, 2002, 11:30 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #01-215(F)

DIGEST

Amends 326 IAC to change any incorporation by reference of the Federal Register to its CFR citation published in the July 1, 2000, edition of the Code of Federal Regulations (CFR). Amends 326 IAC 1-1-3 concerning references to the CFR to update any references to the CFR in Title 326 to mean the July 1, 2000, edition. Adds 326 IAC 1-1-3.5 and 326 IAC 1-2-20.5 to establish references to and definition of the Compilation of Air Pollution Emission Factors AP-42 and Supplements. Effective 30 days after filing with the secretary of state.

HISTORY

Section 8 Notice and Notice of First Hearing: July 1, 2001, Indiana Register (24 IR 3240).

Date of First Hearing: August 1, 2001.

Notice of Second Hearing: September 1, 2001, Indiana Register (24 IR 4064).

Date of Second Hearing: October 3, 2001.

326 IAC 1-1-3
326 IAC 1-1-3.5
326 IAC 1-2-20.5
326 IAC 1-2-48
326 IAC 1-3-4
326 IAC 1-4-1
326 IAC 2-1.1-7
326 IAC 2-4.1-1
326 IAC 2-5.1-3
326 IAC 2-6.1-3
326 IAC 2-6.1-6
326 IAC 2-7-10.5
326 IAC 2-7-19
326 IAC 2-8-10
326 IAC 2-8-11.1
326 IAC 2-9-4
326 IAC 8-8-2
326 IAC 8-8-3
326 IAC 8-8.1-2
326 IAC 8-8.1-3
326 IAC 11-6-1
326 IAC 11-6-2
326 IAC 11-6-4
326 IAC 11-6-5
326 IAC 11-6-6
326 IAC 11-6-7
326 IAC 11-6-8
326 IAC 11-7-2
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326 IAC 11-7-6
326 IAC 11-7-7
326 IAC 11-7-8
326 IAC 11-7-9
326 IAC 12-1-2
326 IAC 12-1-3
326 IAC 13-1.1-17.1
326 IAC 14-2-1
326 IAC 17.1-1-2
326 IAC 19-2-1
326 IAC 19-3-2
326 IAC 19-3-3
326 IAC 19-3-5
326 IAC 20-1-1
326 IAC 20-1-3
326 IAC 20-2-1
326 IAC 20-3-1
326 IAC 20-4-1
326 IAC 20-5-1
326 IAC 20-6-1
326 IAC 20-7-1
326 IAC 20-8-1
326 IAC 20-9-1
326 IAC 20-10-1
326 IAC 20-11-1
326 IAC 20-12-1
326 IAC 20-13-1
326 IAC 20-13-2
326 IAC 20-13-4
326 IAC 20-13-5
326 IAC 20-13-6
326 IAC 20-13-7
326 IAC 20-13-8
326 IAC 20-14-1
326 IAC 20-15-1
326 IAC 20-16-1
326 IAC 20-17-1
326 IAC 20-18-1
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326 IAC 20-40-1
326 IAC 20-41-1
326 IAC 20-42-1
326 IAC 20-43-1
326 IAC 20-44-1
326 IAC 20-45-1
326 IAC 20-46-1
326 IAC 20-47-1
326 IAC 21-1-1
326 IAC 23-2-4
326 IAC 23-2-7

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

326 IAC 1-1-3 References to the Code of Federal Regulations

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

Sec. 3. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) shall mean the July 1, ~~1998,~~ **2000,** edition*.

***This body of documents is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of

Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-1-3; filed Mar 10, 1988, 1:20 p.m.:11 IR 2369; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Dec 14, 1989, 9:35 a.m.: 13 IR 868; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed May 25, 1994, 11:00 a.m.: 17 IR 2237; filed Jul 25, 1995, 5:00 p.m.: 18 IR 3381; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3298; filed Oct 30, 2000, 2:13 p.m.: 24 IR 667; filed May 21, 2002, 10:20 a.m.: 25 IR 3054)*

SECTION 2. 326 IAC 1-1-3.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 1-1-3.5 References to the Compilation of Air Pollution Emission Factors AP-42 and Supplements

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

Sec. 3.5. Unless otherwise indicated, any reference to the Compilation of Air Pollution Emission Factors AP-42 (AP-42) means the January 1995, Fifth Edition, Volume I*, including the following AP-42, Fifth Edition, Volume I supplements:

(1) Supplement A, February 1996*.
(2) Supplement B, November 1996*.
(3) Supplement C, November 1997*.
(4) Supplement D, August 1998*.
(5) Supplement E, September 1999*.
(6) Supplement F, September 2000*.
(7) Supplement G, the version available as of December 2000*.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 1-1-3.5; filed May 21, 2002, 10:20 a.m.: 25 IR 3055)*

SECTION 3. 326 IAC 1-2-20.5 IS ADDED TO READ AS FOLLOWS:

326 IAC 1-2-20.5 "Compilation of Air Pollution Emission Factors AP-42" definition

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

Sec. 20.5. Unless otherwise provided, references to the Compilation of Air Pollution Emission Factors AP-42 (AP-42) means the version indicated in 326 IAC 1-1-3.5. *(Air Pollution Control Board; 326 IAC 1-2-20.5; filed May 21, 2002, 10:20 a.m.: 25 IR 3055)*

SECTION 4. 326 IAC 1-2-48 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-48 "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" definition

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 48. (a) "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" refers to the list of organic compounds that have been determined to have negligible photochemical reactivity and are thereby excluded from the definition of volatile organic compounds (VOC) in 40 CFR 51.100(s)(1)*. The air pollution control board incorporates by reference 40 CFR 51.100(s)(1)*. ~~62 FR 44900* (August 25, 1997), and 63 FR 17331* (April 9, 1998).~~

(b) Compliance calculations for coatings expressed as pounds VOC/gallon coating (less water) should treat nonphotochemically reactive compounds or negligibly photochemically reactive compounds as water for purposes of calculating the less water portion of the coating composition.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR)~~ referenced in this section may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-2-48; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2373; filed Sep 23, 1988, 11:59 a.m.: 12 IR 255; filed Jan 16, 1990, 4:00 p.m.: 13 IR 1016; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2827; filed Sep 5, 1995, 12:00 p.m.: 19 IR 29; filed May 13, 1996, 5:00 p.m.: 19 IR 2855; errata filed Mar 21, 1997, 9:50 a.m.: 20 IR 2116; filed Jun 9, 2000, 10:01 a.m.: 23 IR 2704; filed May 21, 2002, 10:20 a.m.: 25 IR 3055)*

SECTION 5. 326 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-3-4 Ambient air quality standards

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

Sec. 4. The following ambient air quality standards, corrected to a reference temperature of 25° C. and to a reference pressure of **seven hundred sixty** (760) millimeters of mercury **(one thousand thirteen and two-tenths** (1,013.2 millibars)), as micrograms per cubic meter ($\mu g/m^3$), shall apply:

(1) Sulfur Oxides as Sulfur Dioxide (SO_2):

(A) **For** primary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) **Eighty** (80) µg/m^3 **(three-hundredth** (0.03) ppm) annual arithmetic mean.

(ii) **Three hundred sixty-five** (365) µg/m^3 **(fourteen-hundredth** (0.14) ppm) maximum **twenty-four** (24) hour average concentration not to be exceeded more than one **(1)** day per year.

(B) **For** secondary standards, the following value shall represent the maximum permissible ambient air quality levels: **one thousand three hundred** (1,300) µg/m^3 **(five-tenth** (0.5) ppm) maximum **three** (3) hour concentration not to be exceeded more than once per year.

(C) Sulfur dioxide values may be converted to **parts per million** (ppm) using the conversion factor **two thousand six hundred twenty** (2,620) µg/m^3 = **one** (1) ppm.

(2) Total Suspended Particulate (TSP):

(A) **For** primary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) **Seventy-five** (75) µg/m^3 annual geometric mean.

(ii) **Two hundred sixty** (260) µg/m^3 **maximum twenty-four** (24) hour average concentration not to be exceeded more than one **(1)** day per year.

(B) **For** secondary standards, the following value shall represent maximum permissible ambient air quality levels: **one hundred fifty** (150) µg/m^3 maximum **twenty-four** (24) hour average concentration not to be exceeded more than one **(1)** day per year.

(3) Carbon Monoxide (CO):

(A) **For** primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) **Ten** (10) milligrams per cubic meter **(ten thousand** (10,000) ug/m^3) **(nine** (9) ppm) maximum **eight** (8) hour average concentration not to be exceeded more than once per year.

(ii) **Forty** (40) milligrams per cubic meter **(forty thousand** (40,000) ug/m^3) **(thirty-five** (35) ppm) maximum one **(1)** hour average concentration not to be exceeded more than once per year.

(B) Carbon monoxide values may be converted to **parts per million** (ppm) using the conversion factor **one thousand one hundred forty-five** (1,145) µg/m^3 = **one** (1) ppm.

(4) Ozone (O_3):

(A) **For** primary and secondary standards, the following values shall represent the maximum permissible ambient air quality level: the expected number of days with maximum hourly ozone concentrations above **two hundred thirty-five** (235) µg/m^3 **(twelve-hundredths** (0.12) ppm) shall not exceed one (1) per calendar year.

(B) Ozone (O_3) values may be converted to **parts per million** (ppm) using the conversion factor **one thousand nine hundred sixty-five** (1,965) µg/m^3 = **one** (1) ppm.

(5) Nitrogen Dioxide (NO_2):

(A) **For** primary and secondary standard *[sic., standards]*, the following value shall represent the maximum permissible ambient air quality level: **one hundred** (100) µg/m^3 **(five-hundredth** (0.05) ppm) annual arithmetic mean.

(B) Nitrogen dioxide values may be converted to **parts per million** (ppm) using the conversion factor **one thousand eight hundred eighty** (1,880) µg/m^3 = **one** (1) ppm.

(6) Lead (Pb): (A) **For** primary and secondary standard, the following value shall represent the maximum permissible ambient air quality level: **one and five-tenth** (1.5) micrograms lead per cubic meter of air (µg of Pb/m^3), averaged over a calendar quarter and measured as elemental lead.

(7) PM_{10}: (A) **For** primary and secondary standards, the following values shall represent the maximum permissible ambient air quality levels:

(i) **Fifty** (50) µg/m^3 annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR ~~Part~~ 50, Appendix K*****, ~~(per July 1, 1987, 52 FR 24663*),~~ is less than or equal to **fifty** (50) µg/m^3.

(ii) **One hundred fifty** (150) µg/m^3 maximum **twenty-four** (24) hour average concentration. The standards are attained when the expected number of days per calendar year with a **twenty-four** (24) hour average concentration above **one hundred fifty** (150) µg/m^3, as determined in accordance with 40 CFR ~~Part~~ 50, Appendix K,***** ~~(per July 1, 1987, 52 FR 24663*),~~ is equal to or less than one **(1).**

***This document is incorporated by reference.** Copies ~~of July 1, 1987 Federal Register Notice (52 FR 24663)~~ **may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or** are available ~~from~~ **for review and copying at** the Indiana Department of Environmental Management, Office of Air ~~Management, 105 South Meridian Street,~~ **Quality**, **Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue,** Indianapolis, Indiana ~~46225.~~ **46204.** *(Air Pollution Control Board; 326 IAC 1-3-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2378; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3020; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3055)*

SECTION 6. 326 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-1 Designations

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

Sec. 1. The air pollution control board incorporates by reference 40 CFR 81.315***** ~~59 FR 54391 (October 31, 1994)*, 61 FR 58482 (November 15, 1996)*, 62 FR 18521 (April 16, 1997)*, and 62 FR 64725 (December 9, 1997)*~~ concerning attainment status designations.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and the Federal Register~~

~~(FR) referenced~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality**, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-6015.~~ **46204.** *(Air Pollution Control Board; 326 IAC 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056)*

SECTION 7. 326 IAC 2-1.1-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-1.1-7 Fees

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-8
Affected: IC 13-15; IC 13-16-2; IC 13-17

Sec. 7. The applicant shall pay a fee based upon the cost to the commissioner of processing and reviewing the applicable registration, permit, or operating permit revision application and the cost of determining compliance with the terms and conditions of a permit. Except for sources identified in subdivision (5)(A), (5)(B), or (5)(E), sources subject to 326 IAC 2-7-19 are exempt from the fees established by subdivisions (1) and (4) through (6). Sources that have received a permit pursuant to 326 IAC 2-8 are exempt from the fees established by subdivisions (1) and (4) through (6), except to the extent provided in 326 IAC 2-8-16. Sources subject to 326 IAC 2-9 are exempt from the fees established by subdivision (1). The fees are established as follows:

(1) A basic filing fee of one hundred dollars ($100) shall be submitted with any application submitted to the commissioner for review in accordance with this article.

(2) A fee of five hundred dollars ($500) shall be submitted upon billing for:

(A) a registration under 326 IAC 2-5.1-2;

(B) a minor permit revision under 326 IAC 2-6.1-6(g) or 326 IAC 2-8-11.1(d); or

(C) a modification under 326 IAC 2-7-10.5(d).

(3) At the time the notice of a proposed permit, modification approval, or permit revision is published under 326 IAC 2-5.1-3, 326 IAC 2-6.1-6(i), 326 IAC 2-8-11.1(f), or a modification under 326 IAC 2-7-10.5(f), permit or significant permit revision fees shall be assessed as follows:

(A) A construction permit, modification approval, or significant permit revision approval fee of three thousand five hundred dollars ($3,500) shall be submitted upon billing for those sources subject to 326 IAC 2-5.1-3, 326 IAC 2-6.1-6(i), 326 IAC 2-7-10.5(f), or 326 IAC 2-8-11.1(f). The fee assessed under subdivision (1) shall be credited toward this fee.

(B) A construction permit fee of six thousand dollars ($6,000) shall be submitted upon billing for those applications requiring review for PSD requirements under 326 IAC 2-2 or emission offset under 326 IAC 2-3. The fees assessed under subdivision (1) and clause (A) shall be credited toward this fee.

(C) Air quality analyses fees shall be assessed as follows:

(i) A fee of three thousand five hundred dollars ($3,500) shall be submitted upon billing if an air quality analysis is required under 326 IAC 2-2-4 or 326 IAC 2-3-3.

(ii) In lieu of the fee under item (i), a fee of six thousand dollars ($6,000) shall be submitted upon billing for an air quality analysis, per pollutant performed by the commissioner upon request of the source owner or operator. The commissioner may deny a request to perform an air quality analysis.

(D) Fees for control technology analyses for best available control technology (BACT) under 326 IAC 2-2-3, or lowest achievable emission rate (LAER) under 326 IAC 2-3-3 shall be assessed as follows per emissions unit or group of identical emissions units, for which a control technology analysis is required:

(i) A fee of three thousand dollars ($3,000) shall be submitted upon billing if two (2) to five (5) control technology analyses are required.

(ii) A fee of six thousand dollars ($6,000) shall be submitted upon billing if six (6) to ten (10) control technology analyses are required.

(iii) A fee of ten thousand dollars ($10,000) shall be submitted upon billing if more than ten (10) control technology analyses are required.

(E) Miscellaneous fees to cover technical and administrative costs shall be assessed as follows:

(i) A fee of five hundred dollars ($500) shall be submitted upon billing for each review for an applicable national emission standard for hazardous air pollutants under 326 IAC 14 or 326 IAC 20 or an applicable new source performance standard under 326 IAC 12.

(ii) A fee of five hundred dollars ($500) shall be submitted upon billing for each public hearing conducted prior to issuance of the permit or modification approval.

(iii) A fee of six hundred dollars ($600) shall be submitted upon billing for each control technology analysis for BACT for volatile organic compounds under 326 IAC 8-1-6 and for maximum achievable control technology under 326 IAC 2-4.1.

(4) Annual operating permit fees shall be assessed as follows:

(A) A basic permit fee of two hundred dollars ($200) shall be submitted upon billing for each operating permit required under 326 IAC 2-6.1.

(B) A fee of six hundred dollars ($600) shall be submitted upon billing for each source with a potential to emit greater than five (5) tons per year of lead.

(C) A fee of one hundred dollars ($100) shall be submitted upon billing for a relocation approval for a portable source.

(5) In lieu of fees assessed under subdivision (4), annual operating permit fees shall be assessed for identified source categories as follows:

(A) During the years 1995 through 1999 inclusive, a fee of fifty thousand dollars ($50,000), less any amount credited under this clause, shall be charged to an electric power plant for a Phase I affected unit, as identified in Table A of Section 404 of the CAA, or for a substitution unit as determined by the U.S. EPA in accordance with Section 404 of the CAA. Any fees paid by that plant for non-Phase I units under 326 IAC 2-7-19 shall be credited toward this fee. Prior to 1995, a fee of three thousand dollars ($3,000) shall be submitted upon billing by the sources described in this clause. The existence of a Phase I unit at an electric power plant does not affect the plant's duty to pay fees for non-Phase I units at the plant.

(B) A fee for each coke plant equal to the costs to the commissioner associated with conducting the surveillance activities required to determine compliance with 40 CFR 63, Subpart L* ~~and 57 FR 57898* (National Emission Standards for Coke Oven Batteries) and 57 FR 57898*~~ shall be submitted upon billing. Any fee collected under this clause shall not exceed one hundred twenty-five thousand dollars ($125,000).

(C) A fee of six hundred dollars ($600) shall be submitted upon billing for each surface coal mining operation per mining area or pit.

(D) A fee of two hundred dollars ($200) shall be submitted upon billing for each grain terminal elevator as defined in 326 IAC 1-2-33.2.

(E) A fee of twenty-five thousand dollars ($25,000) shall be submitted upon billing for a municipal solid waste incinerator with capacity greater than two hundred fifty (250) tons per day.

(6) In addition to the fees assessed under subdivisions (1) through (5), miscellaneous fees to cover technical and administrative costs shall be assessed to sources subject to this section, except for sources subject to fees established in subdivision (5)(A), (5)(B), or (5)(E) as follows:

(A) A fee of one thousand four hundred dollars ($1,400) shall be submitted upon billing for any air quality network required by permit.

(B) A fee of seven hundred dollars ($700) shall be paid for review under 326 IAC 3 of any source sampling test required by permit, per emissions unit. This fee shall be paid upon submittal of a protocol for the stack test as required by 326 IAC 3.

(C) A fee of two hundred dollars ($200) shall be submitted upon billing for each opacity or pollutant continuous emission monitor required by permit.

(7) Fees shall be paid by mail or in person and shall be paid upon billing by check or money order, payable to "Cashier, Indiana Department of Environmental Management" no later than thirty (30) days after receipt of billing. Nonpayment may result in denial of a permit application or revocation of the permit.

(8) If an annual fee is being paid under a fee payment schedule established under IC 13-16-2, the fee shall be paid in accordance with that schedule. Establishment of a fee payment schedule must be consistent with IC 13-16-2, including the determination that a single payment of the entire fee is an undue hardship on the person and that the commissioner is not required to assess installments separately. Failure to pay in accordance with the fee payment schedule that results in substantial nonpayment of the fee may result in revocation of the permit.

(9) Fees are nonrefundable. If the permit is denied or revoked or the source or emissions unit is shut down, the fees shall neither be refunded nor applied to any subsequent application or reapplication.

(10) If a permit becomes lost or damaged, a replacement may be requested.

(11) The commissioner may adjust all fees on January 1 of each calendar year by the Consumer Price Index (CPI) using revision of the CPI that is most consistent with the CPI for the calendar year 1995.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-1.1-7; filed Nov 25, 1998, 12:13 p.m.: 22 IR 991; filed May 21, 2002, 10:20 a.m.: 25 IR 3057)*

SECTION 8. 326 IAC 2-4.1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-4.1-1 New source toxics control

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

Sec. 1. (a) Any owner or operator who constructs or reconstructs a major source of hazardous air pollutants (HAP), as defined in 40 CFR 63.41*, after July 27, 1997, including owners or operators with permit applications pending with the department on the effective date of this section, shall comply with the requirements of this section, except as specifically specified in this rule. This section does not apply to an owner or operator that has received all necessary permits for the construction or reconstruction before July 27, 1997. On and after June 29, 1998, this section is intended to implement Section 112(g)(2)(B) of the Clean Air Act (CAA). Subsection (c)(3)(E) and (c)(3)(I) shall not apply to an owner or operator that has received all necessary permits for the construction or reconstruction before June 29, 1998.

(b) This section does not apply to the following exclusions set forth in 40 CFR 63.40*:

(1) Electric utility steam generating units until such time as these units are added to the source category list under Section 112(c)(5) of the CAA. ~~*.~~

(2) A major source specifically regulated, or exempted from regulation, by a standard issued pursuant to Section 112(d), 112(h), or 112(j) of the CAA. ~~*.~~

(3) Stationary sources that are within a source category that has been deleted from the source category list under Section 112(c)(9) of the CAA. ~~*.~~

(4) Research and development activities, as defined in 40 CFR 63.41*.

(c) The air pollution control board incorporates by reference the following provisions of 40 CFR 63, Subpart B, ~~61 FR 68384, December 27, 1996,~~ Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*:

(1) **40 CFR** 63.41 Definitions*.

(2) **40 CFR** 63.42* Program requirements governing construction or reconstruction of major sources.

(3) The following subsections of 63.43 Maximum achievable control technology (MACT) determinations for constructed and reconstructed major sources:

(A) **40 CFR** 63.43(a) Applicability*.

(B) **40 CFR** 63.43(b) Requirements for constructed and reconstructed major sources*.

(C) **40 CFR** 63.43(d) Principles of MACT determinations*.

(D) **40 CFR** 63.43(e) Application requirements for a case-by-case MACT determination*.

(E) **40 CFR** 63.43(i) EPA notification*.

(F) **40 CFR** 63.43(j) Effective date*.

(G) **40 CFR** 63.43(k) Compliance date*.

(H) **40 CFR** 63.43(l) Compliance with MACT determinations*.

(I) **40 CFR** 63.43(m) Reporting to the Administrator*.

(4) **40 CFR** 63.44 Requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirement*.

(d) The administrative procedures, public notice, and issuance of MACT approvals under this section are set forth in 326 IAC 2-1.1 and 326 IAC 2-5.1. In addition, permits issued to sources subject to this section shall conform to the provisions of 40 CFR 63.43(g) Notice of MACT approval*.

(e) This subsection sets forth provisions for a transition period from July 27, 1997, through June 28, 1998, for those sources who have construction permit applications pending with the department on July 27, 1997 (transition applicants). Transition applicants are not required to comply with subsection (c)(3)(D). The department shall notify transition applicants that this section applies to its pending application and provide for an opportunity for the applicant to submit information that may be used by the department to complete the determination of MACT under this section. The department may request additional information regarding the transition applicant's project necessary to determine the proposed control technology and air emissions for purposes of making the determination required by this section. The department may not exceed the applicable permit timeline for completion of review of a transition applicant's application in order to comply with this section. The department's determination of MACT under this section may be based on information about similar sources and hazardous air pollutant emissions that is reasonably available to the department within the applicable time frame for permit review and shall not be construed to be a MACT determination under Section 112(g) of the CAA.

(f) Subsection (c)(4), except 40 CFR 63.44(a)*, does not apply to a source issued a MACT determination pursuant to the transition program set forth in subsection (e).

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-4.1-1; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1007; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed May 21, 2002, 10:20 a.m.: 25 IR 3058)*

SECTION 9. 326 IAC 2-5.1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-5.1-3 Permits

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-4-9; IC 13-17

Sec. 3. (a) On and after the effective date of this rule, a new source must obtain a construction permit prior to beginning construction of an emissions unit under either of the following conditions:

(1) The potential to emit is equal to or greater than the following:

(A) One (1) ton or more per year of lead or lead compounds measured as elemental lead and the source is one (1) of the following:

(i) A primary lead smelter.

(ii) A secondary lead smelter.

(iii) A primary copper smelter.

(iv) A lead gasoline additive plant.

(v) A lead-acid storage battery manufacturing plant that produces two thousand (2,000) or more batteries per day.

(B) Five (5) tons or more per year of lead or lead compounds measured as elemental lead and the source is not listed in clause (A).

(C) One hundred (100) tons per year of carbon monoxide (CO).

(D) Ten (10) tons per year of any single hazardous air pollutant or twenty-five (25) tons per year of any combination of hazardous air pollutants listed pursuant to Section 112(b) of the CAA.

(E) Twenty-five (25) tons per year of the following regulated air pollutants:

(i) Particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).

(ii) Sulfur dioxide (SO_2).

(iii) Nitrogen oxides (NO_x).

(iv) Volatile organic compounds (VOC).

(v) Hydrogen sulfide (H_2S).

(vi) Total reduced sulfur (TRS).

(vii) Reduced sulfur compounds.

(viii) Fluorides.

(2) The source belongs to any of the following source categories:

(A) A source consisting of a chromium electroplating tank, chromium anodizing tank, or an operation subject to 326 IAC 20-8. Sources consisting only of decorative chromium electroplating tanks that use a trivalent chromium process that incorporates a wetting agent that are subject to section 2 of this rule are not included.

(B) A source that includes medical waste incinerators subject to 40 CFR 60, Subpart Ec*. ~~62 FR 48382 (September 15, 1997)*.~~

(C) Area or minor sources that include an emission unit or units that require a Part 70 operating permit under 326 IAC 2-7.

(b) Any person proposing the construction of a new source and required to obtain a construction permit under subsection (a), including any source or emissions unit that is subject to 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1, shall prepare and submit a permit application to the commissioner in accordance with subsection (c).

(c) At a minimum, an application shall include the following information:

(1) The company name and address.

(2) The following descriptive information:

(A) A description of the nature and location of the proposed construction or modification.

(B) The design capacity and typical operating schedule of the proposed construction or modification.

(C) A description of the source and the emissions unit or units comprising the source.

(D) A description of any emission control equipment, including design specifications.

(3) A schedule for construction or modification of the source.

(4) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA, the ambient air quality standards set forth in 326 IAC 1-3, or the prevention of significant deterioration maximum allowable increase under 326 IAC 2-2:

(A) Information on the nature and amount of the pollutants to be emitted, including an estimate of the potential to emit any regulated air pollutants.

(B) Estimates of offset credits as required under 326 IAC 2-3, for sources to be constructed in nonattainment areas.

(C) Monitoring, testing, reporting, and record keeping requirements.

(D) Any other information (including, but not limited to, the air quality impact) determined by the commissioner to be necessary to demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.

(5) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. Such signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(d) If the commissioner finds an application submitted in accordance with this rule to be incomplete, the commissioner shall mail a notice of deficiency to the applicant that specifies the portions of the application that:

(1) do not contain adequate information for the commissioner to process the application; or

(2) are not consistent with applicable law or rules.

The applicant shall forward the required additional information to the commissioner, or request additional time for providing the information, within sixty (60) calendar days of receipt of the notice of deficiency. If the additional information is not submitted within sixty (60) calendar days, or the additional time provided by the commissioner, the application may be denied in accordance with IC 13-15-4-9.

(e) Permits issued under this article shall contain the following:

(1) Emission limitations for any source or emissions unit that assure:

(A) the ambient air quality standards set forth in 326 IAC 1-3 will be attained or maintained, or both;

(B) the applicable prevention of significant deterioration maximum allowable increases set forth in 326 IAC 2-2 will be maintained;

(C) the public health will be protected; and

(D) compliance with the requirements of this title and the requirements of the CAA will be maintained.

(2) Monitoring, testing, reporting, and record keeping requirements that assure reasonable information is provided

to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the CAA. Such requirements shall be in accordance with 326 IAC 3 and other applicable regulations.

(3) A requirement that any revision of an emission limitation, monitoring, testing, reporting, and record keeping requirements shall be made consistent with the permit revision requirements under 326 IAC 2-6.1-6, 326 IAC 2-7-12, or 326 IAC 2-8-11.1.

(4) The following requirements with respect to compliance:

(A) The commissioner may require stack testing, monitoring, or reporting at any time to assure compliance with all applicable requirements. Any monitoring or testing shall be performed in accordance with 326 IAC 3 or other methods approved by the commissioner.

(B) Upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the commissioner, an authorized representative of the commissioner, or the U.S. EPA to perform the following:

(i) Enter upon the premises where a permitted source is located or emissions related activity is conducted, or where records required by a permit term or condition are kept.

(ii) Have access to and copy any records that must be kept under this title or the conditions of a permit or permit revision.

(iii) Inspect any operations, processes, emissions units (including monitoring and air pollution control equipment), or practices regulated or required under a permit or permit revision.

(iv) Sample or monitor substances or parameters for the purpose of assuring compliance with a permit, permit revision, or applicable requirement, as authorized by the CAA and this title.

(v) Document alleged violations using cameras or video equipment. Such documentation may be subject to a claim of confidentiality under 326 IAC 17.

(5) For sources that will operate pursuant to an operating permit under 326 IAC 2-6.1, a requirement that an authorized individual provide an annual notice to the department that the source is in operation and in compliance with the permit. The commissioner may request that the source provide an identification of all emissions units that have been installed that are described under 326 IAC 2-1.1-3(d)(1) through 326 IAC 2-1.1-3(d)(31) with the annual notification.

(f) Any permit issued under this section shall conform to the permit content requirements under subsection (e), except for the following:

(1) Any permit that includes limitations on the potential to emit of a source must conform with the federally enforceable state operating permit (FESOP) permit content and compliance requirements under 326 IAC 2-8-4 and 326 IAC 2-8-5.

(2) An applicant may request that the permit content and compliance requirements conform with the Part 70 requirements under 326 IAC 2-7-5 and 326 IAC 2-7-6 if the applicant is also requesting that the Part 70 permit issuance requirements under 326 IAC 2-7 apply.

(g) The commissioner shall provide for public notice and comment in accordance with 326 IAC 2-1.1-6 prior to issuing a construction permit.

(h) After receiving an approval to construct and prior to receiving approval to operate, a source shall prepare an affidavit of construction as follows:

(1) The affidavit shall include the following:

(A) Name and title of the authorized individual.

(B) Company name.

(C) An affirmation that the source was constructed in conformance with the requirements and intent of the construction permit application.

(D) Identification of any changes to the source not included in the construction permit application or any amendment thereof.

(E) Signature of the authorized individual.

(2) The affidavit shall be notarized.

(3) A source shall submit the affidavit to the commissioner after construction has been completed.

(i) A source may not operate any air pollutant emitting source or emissions unit prior to receiving a validation letter issued by the commissioner, except as provided in the following:

(1) A source may operate upon submission of an affidavit of construction that affirms that the source is described by, and will comply with, the construction permit as issued or previously amended.

(2) The commissioner shall issue a validation letter within five (5) working days of receipt of the affidavit of construction.

(3) The validation letter may authorize the operation of all or part of the source.

(4) The validation letter may include amendments to the permit if the amendments are requested by the source and if such amendment does not constitute a modification and require public notice and comment under 326 IAC 2-1.1-6.

(5) A validation letter may not approve the operation of any emissions unit if an amendment requested by the source would constitute a modification and require public notice and comment under 326 IAC 2-1.1-6.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-5.1-3; filed Nov 25, 1998,*

12:13 p.m.: 22 IR 1009; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed May 21, 2002, 10:20 a.m.: 25 IR 3059)

SECTION 10. 326 IAC 2-6.1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6.1-3 Compliance schedule
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 3. (a) Any chrome electroplating source that meets the applicability criteria under 326 IAC 2-5.1-3 or medical waste incinerator subject to 40 CFR 60, Subpart Ce*, ~~62 FR 48379 (September 15, 1997)*~~ shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule.

(b) Any existing source not described by subsection (a) that has a valid air operating permit must apply for approval under this rule no later than ninety (90) days prior to the expiration date of that permit, except for the following:
(1) A source subject to the Part 70 Operating Permit Program under 326 IAC 2-7.
(2) A source subject to the FESOP program under 326 IAC 2-8.
(3) A source subject to source specific operating agreement requirements under 326 IAC 2-9.
(4) A source subject to the requirements under 326 IAC 2-10 or 326 IAC 2-11.

(c) Any existing source not described by subsection (a) that does not have a valid air operating permit shall apply for approval under this rule no later than twelve (12) months from the effective date of this rule.

(d) Submittal of a complete Part 70 operating permit application under 326 IAC 2-7-3 and 326 IAC 2-7-4, whether before or after the effective date of this rule, shall satisfy the requirements of this rule.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-6.1-3; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1015; filed May 21, 2002, 10:20 a.m.: 25 IR 3062)*

SECTION 11. 326 IAC 2-6.1-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6.1-6 Permit revisions
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-5; IC 13-17

Sec. 6. (a) Any person proposing to construct new emission units, modify existing emission units, or otherwise modify the source as described in this section shall submit an application or notification for a permit revision in accordance with this rule.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof if the repair or replacement:
(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;
(2) is not a major modification under 326 IAC 2-2-1, 326 IAC 2-3-1, or 326 IAC 2-4.1; and
(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.
If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a permit or operating permit revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) An application or notification required under this section shall contain the following information:
(1) The company name and address.
(2) A description of the change and the emissions resulting from the change.
(3) An identification of the applicable requirements to which the source is newly subject as a result of the change, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.
(4) A schedule of compliance, if applicable.
(5) Each application or notification shall be signed by an authorized individual whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be modified and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. Such signature shall also constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(d) Notwithstanding the public participation requirements under 326 IAC 2-1.1-6, the following changes shall be designated as notice-only changes and shall not require public notice or prior approval by the commissioner:
(1) Changes correcting typographical errors.
(2) Minor administrative changes such as a change in the

name, address, or telephone number of any person identified in a permit or a change in descriptive information concerning the source or emissions unit or units.
(3) Changes in ownership or operational control of a source.
(4) Modifications that would require more frequent monitoring or reporting.
(5) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not result in an increase in the potential to emit any regulated pollutant greater than the thresholds in 326 IAC 2-1.1-3(d)(1) or a significant change in the method or methods to demonstrate or monitor compliance.
(6) Incorporation of newly applicable requirements as a result of a change in applicability.
(7) Incorporation of alternative testing or compliance monitoring requirements that have received U.S. EPA approval under 40 CFR 60*, 40 CFR 61*, or 40 CFR 63*.
(8) Incorporation of newly-applicable monitoring or testing requirements specified in 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* that apply as the result of a change in applicability of those requirements to the source, including removal from the permit of monitoring or testing requirements that no longer apply as a result of the change in applicability.
(9) Incorporation of test methods or monitoring requirements specified in an applicable requirement that the source may use under the applicable requirement as an alternative to the testing or monitoring requirements contained in the permit.
(10) Modifications that have the potential to emit greater than or equal to one (1) ton per year but less than ten (10) tons per year of a single hazardous air pollutant (HAP) as defined under Section 112(b) of the CAA or greater than or equal to two and one-half (2.5) tons per year but less than twenty-five (25) tons per year of any combination of HAPs.
(11) A modification that meets the applicability criteria and can meet and will comply with the operational limitations for a source specific operating agreement under 326 IAC 2-9 or a general permit under 326 IAC 2-12.
(12) A modification of an existing source if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:
(A) results in the replacement or repair of an entire process;
(B) qualifies as a reconstruction of an entire process; or
(C) may result in an increase of actual emissions.
(13) A modification that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in 326 IAC 2-2 or 326 IAC 2-3.
(14) A modification that is subject to the following reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B ~~(61 FR 68384, December 27, 1996)~~ Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*:
(A) 40 CFR 60.40c*, except for modifications to a source located in Lake County.
(B) 40 CFR 60.110b*.
(C) 40 CFR 60.250*, except for modifications that include thermal dryers.
(D) 40 CFR 60.330* for modifications that only include emergency generators.
(E) 40 CFR 60.670*.
(F) 40 CFR 61.110*.
As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP. For modifications under clauses (A) through (D), the source must use the monitoring specified in the relevant RACT, NSPS, or NESHAP.
(15) A modification that is subject to the following new source performance standards (NSPSs), except for modifications that would be subject to 326 IAC 8-1-6:
(A) 40 CFR 60.310*.
(B) 40 CFR 60.390*.
(C) 40 CFR 60.430*.
(D) 40 CFR 60.440*.
(E) 40 CFR 60.450*.
(F) 40 CFR 60.460*.
(G) 40 CFR 60.490*.
(H) 40 CFR 60.540*.
(I) 40 CFR 60.560*.
(J) 40 CFR 60.580*.
(K) 40 CFR 60.600*.
(L) 40 CFR 60.660*.
(M) 40 CFR 60.720*.
As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the NSPS. For modifications under clauses (A) through (H), the source must use the monitoring specified in the NSPS.

(e) Any person proposing to make a change or modification described in subsection (d) shall submit a notification concerning the change or modification within thirty (30) calendar days of making the change or modification and shall include the information required under subsection (c). The notification shall be sent by one (1) of the following means:
(1) Certified mail.
(2) Delivery by hand or express service.
(3) Transmission by other equally reliable means of notification by the source to the commissioner.

(f) The commissioner shall revise the permit within thirty (30) days of receipt of the notification. The commissioner shall provide the permittee with a copy of the revised permit. Notwithstanding IC 13-15-5, the permit revision shall be effective immediately.

(g) The following modifications shall require minor permit

revisions and shall require approval prior to construction and operation:

(1) Modifications that would reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.

(2) The addition of a portable source or relocation of a portable source to an existing source, if the addition or relocation would require a change to any permit terms or conditions.

(3) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not increase the potential to emit any regulated pollutant greater than the thresholds under subdivision (4), but requires a significant change in the method or methods to demonstrate or monitor compliance.

(4) Modifications that would have a potential to emit within the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:

(i) Sulfur dioxide (SO_2).

(ii) Nitrogen oxides (NO_x).

(iii) Volatile organic compounds (VOC) for modifications that are not described in clause (C).

(C) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for modifications that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(D) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(E) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(F) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H_2S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

(5) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than hazardous air pollutants, ten (10) tons per year of any single hazardous air pollutant as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of hazardous air pollutants by complying with one (1) of the following constraints:

(A) Limiting total annual solvent usage or maximum volatile organic compound content, or both.

(B) Limiting annual hours of operation of the process or business.

(C) Using a particulate air pollution control device as follows:

(i) Achieving and maintaining ninety-nine percent (99%) efficiency.

(ii) Complying with a no visible emission standard.

(iii) The potential to emit before air pollution controls does not exceed major source thresholds for federal permitting programs.

(iv) Certifying to the commissioner that the air pollution control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of particulate matter (PM) or fifteen (15) tons per year of particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(D) Limiting individual fuel usage and fuel type for a combustion source.

(E) Limiting raw material throughput or sulfur content of raw materials, or both.

(6) A modification that is not described under subsection (d)(14) or (d)(15) and is subject to a RACT, a NSPS, or a NESHAP, and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B ~~(61 FR 68384, December 27, 1996)~~ Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (c), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.

(7) A change for which a source requests an emission limit to avoid 326 IAC 8-1-6.

(h) Minor permit revision procedures are as follows:

(1) Any person proposing to make a modification described in subsection (g) shall submit an application concerning the modification and shall include the information under subsection (c).

(2) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has revised the permit.

(3) Within forty-five (45) calendar days from receipt of an application for a minor permit revision, the commissioner shall do one (1) of the following:

(A) Approve the minor permit revision request.

(B) Deny the minor permit revision request.

(C) Determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards, would allow for an increase in emissions greater than the thresholds in subsection (i), or would not provide for compliance monitoring consistent with this rule and should be processed as a significant permit revision.

(4) The permit shall be revised by incorporating the minor

permit revision into the permit. The commissioner shall make all changes necessary to assure compliance with this title and the CAA prior to attaching the amendment to the permit. The commissioner shall notify the source upon attachment of the minor permit revision to the permit. Notwithstanding IC 13-15-5, the permit revision shall be effective immediately.

(i) Significant permit revision procedures are as follows:
(1) Significant permit revisions are those changes that are not subject to subsection (d) or (g) and include the following:
(A) Any modification that would be subject to 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1.
(B) Any modification that results in the source needing to obtain a FESOP under 326 IAC 2-8 or a Part 70 permit under 326 IAC 2-7.
(C) A modification that is subject to 326 IAC 8-1-6.
(D) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.
(E) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of the following pollutants:
(i) Particulate matter (PM) or particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).
(ii) Sulfur dioxide (SO_2).
(iii) Nitrogen oxides (NO_x).
(iv) Volatile organic compounds (VOC).
(v) Hydrogen sulfide (H_2S).
(vi) Total reduced sulfur (TRS).
(vii) Reduced sulfur compounds.
(viii) Fluorides.
(F) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.
(G) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single hazardous air pollutant as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of hazardous air pollutants.
(H) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).
(I) Modifications involving a pollution control project as defined in 326 IAC 2-1.1-1 that result in an increase in the potential to emit any regulated pollutant greater than the thresholds under this section and require a significant change in the method or methods to demonstrate or monitor compliance.
(J) Modifications involving a pollution prevention project as defined in 326 IAC 2-1.1-1 that increase the potential to emit any regulated pollutant greater than the thresholds under this section.
(2) The following shall apply to significant permit revisions:
(A) Any person proposing to make a modification described in subdivision (1) shall submit an application concerning the modification and shall include the information under subsection (c).
(B) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has revised the permit.
(C) The commissioner shall provide for public notice and comment in accordance with 326 IAC 2-1.1-6.
(D) The commissioner shall approve or deny the significant permit revision as follows:
(i) Within one hundred twenty (120) calendar days from receipt of an application for a significant permit revision, except for a significant permit revision under subdivision (1)(A).
(ii) Within two hundred seventy (270) calendar days from receipt of an application for a significant permit revision under subdivision (1)(A).
(E) The permit shall be revised by incorporating the significant permit revision into the permit. The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the significant permit revision to the permit.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-6.1-6; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1017; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3106; filed May 21, 2002, 10:20 a.m.: 25 IR 3062)*

SECTION 12. 326 IAC 2-7-10.5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-10.5 Part 70 permits; source modifications
Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-5; IC 13-17

Sec. 10.5. (a) An owner or operator of a Part 70 source proposing to construct new emission units, modify existing emission units, or otherwise modify the source as described in this section shall submit a request for a modification approval in accordance with this section.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof without prior approval if the repair or replacement:
(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment or the affected emissions unit that was repaired or replaced;

(2) is not a major modification under 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1; and

(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a modification approval or operating permit revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) Any person proposing to make a modification described in subsection (d) or (f) shall submit an application to the commissioner concerning the modification as follows:

(1) If only preconstruction approval is requested, the application shall contain the following information:

(A) The company name and address.

(B) The following descriptive information:

(i) A description of the nature and location of the proposed construction or modification.

(ii) The design capacity and typical operating schedule of the proposed construction or modification.

(iii) A description of the source and the emissions unit or units comprising the source.

(iv) A description of any proposed emission control equipment, including design specifications.

(C) A schedule for proposed construction or modification of the source.

(D) The following information as needed to assure all reasonable information is provided to evaluate compliance consistent with the permit terms and conditions, the underlying requirements of this title and the Clean Air Act (CAA), the ambient air quality standards set forth in 326 IAC 1-3, or the prevention of significant deterioration maximum allowable increase under 326 IAC 2-2:

(i) Information on the nature and amount of the pollutant to be emitted, including an estimate of the potential to emit any regulated air pollutants.

(ii) Estimates of offset credits, as required under 326 IAC 2-3, for sources to be constructed in nonattainment areas.

(iii) Any other information (including, but not limited to, the air quality impact) determined by the commissioner to be necessary to reasonably demonstrate compliance with the requirements of this title and the requirements of the CAA, whichever are applicable.

(E) Each application shall be signed by an authorized individual, unless otherwise noted, whose signature constitutes an acknowledgement that the applicant assumes the responsibility of assuring that the source, emissions unit or units, or emission control equipment will be constructed and will operate in compliance with all applicable Indiana air pollution control rules and the requirements of the CAA. Such signature shall constitute affirmation that the statements in the application are true and complete, as known at the time of completion of the application, and shall subject the applicant to liability under state laws forbidding false or misleading statements.

(2) If the source requests that the preconstruction approval and operating permit revision be combined, the application shall contain the information in subdivision (1) and the following information consistent with section 4(c) of this rule:

(A) An identification of the applicable requirements to which the source will be subject as a result of the modification, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.

(B) A description of the Part 70 permit terms and conditions that will apply to the modification and that are consistent with sections 5 and 6 of this rule.

(C) A schedule of compliance, if applicable.

(D) A statement describing what the compliance status of the modification will be after construction has been completed consistent with section 4(c)(10) of this rule.

(E) A certification consistent with section 4(f) of this rule.

(d) The following modifications shall be processed in accordance with subsection (e):

(1) Modifications that would reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.

(2) The addition of a portable source or relocation of a portable source to an existing source, if the addition or relocation would require a change to any permit terms or conditions.

(3) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1(13) that do not increase the potential to emit PM_{10} greater than or equal to fifteen (15) tons per year or any other regulated pollutant greater than the thresholds under subdivision (4), but require a significant change in the method or methods to demonstrate or monitor compliance.

(4) Modifications that would have a potential to emit within any of the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of the following pollutants:

(i) Sulfur dioxide (SO_2).

(ii) Nitrogen oxides (NO_x).

(iii) Volatile organic compounds (VOC) for modifications that are not described in clause (C).

(C) Less than twenty-five (25) tons per year and equal to or

greater than five (5) tons per year of volatile organic compounds (VOC) for modifications that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(D) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(E) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(F) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H_2S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

(5) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than hazardous air pollutants, ten (10) tons per year of any single hazardous air pollutant as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of hazardous air pollutants by complying with one (1) of the following constraints:

(A) Limiting total annual solvent usage or maximum volatile organic compound content, or both.

(B) Limiting annual hours of operation of the process or business.

(C) Using a particulate air pollution control device as follows:

(i) Achieving and maintaining ninety-nine percent (99%) efficiency.

(ii) Complying with a no visible emission standard.

(iii) The potential to emit before controls does not exceed major source thresholds for federal permitting programs.

(iv) Certifying to the commissioner that the control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of particulate matter (PM) or fifteen (15) tons per year of particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(D) Limiting individual fuel usage and fuel type for a combustion source.

(E) Limiting raw material throughput or sulfur content of raw materials, or both.

(6) A modification that is subject to a reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B ~~(61 FR 68384) December 27, 1996,~~ Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (b), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.

(7) A change for which a source requests an emission limit to avoid 326 IAC 8-1-6.

(8) A modification of an existing source that has a potential to emit greater than the thresholds under subdivision (4) if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:

(A) results in the replacement or repair of an entire process;

(B) qualifies as a reconstruction of an entire process;

(C) may result in an increase of actual emissions; or

(D) would result in a net emissions increase greater than the significant levels in 326 IAC 2-2 or 326 IAC 2-3.

(9) A modification that has a potential to emit greater than the thresholds under subdivision (4) that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in 326 IAC 2-2 or 326 IAC 2-3.

(10) For a source in Lake or Porter County with the potential to emit twenty-five (25) tons per year of either VOC or NO_x, any modification that would result in an increase of either emissions as follows:

(A) Greater than or equal to fifteen (15) pounds per day of VOCs.

(B) Greater than or equal to twenty-five (25) pounds per day of NO_x.

(e) Modification approval procedures for modifications described under subsection (d) are as follows:

(1) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has approved the modification request.

(2) Within forty-five (45) calendar days from receipt of an application for a modification described under subsection (d), the commissioner shall do one (1) of the following:

(A) Approve the modification request.

(B) Deny the modification request.

(C) Determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards would allow for an increase in emissions greater than the thresholds in subsection (f), or would not provide for compliance monitoring consistent with this rule and should be processed under subsection (g).

(3) The source may begin construction as follows:

(A) If the source has a final Part 70 permit and only requests preconstruction approval or if the source does not have a final Part 70 permit, the source may begin construction upon approval by the commissioner. Notwithstanding IC 13-15-5, the commissioner's approval shall become effective immediately. Operation of the modification shall be as follows:

(i) For a source that has a final Part 70 permit, operation of the modification may commence in accordance with section 12 of this rule.

(ii) For a source without a final Part 70 permit, operation may begin after construction is completed.

(B) If the source requests that the preconstruction approval and operating permit revision be combined, the source may begin construction upon approval and operation may begin in accordance with section 11 of this rule.

(f) The following modifications shall be processed in accordance with subsection (g):

(1) Any modification that would be subject to 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1.

(2) A modification that is subject to 326 IAC 8-1-6.

(3) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.

(4) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of any of the following pollutants:

(A) Particulate matter (PM) or particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(B) Sulfur dioxide (SO_2).

(C) Nitrogen oxides (NO_x).

(D) Volatile organic compounds (VOC).

(E) Hydrogen sulfide (H_2S).

(F) Total reduced sulfur (TRS).

(G) Reduced sulfur compounds.

(H) Fluorides.

(5) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(6) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single hazardous air pollutant as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of hazardous air pollutants.

(7) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).

(8) The addition, replacement, or use of a pollution control project as defined in 326 IAC 2-1.1-1(13) that is exempt under 326 IAC 2-2-1(o)(2)(H). The requirement to process such modifications in accordance with subsection (g) does not apply to pollution control projects that the department approved as an environmentally beneficial pollution control project through a permit issued prior to July 1, 2000.

(9) Modifications involving a pollution prevention project as defined in 326 IAC 2-1.1-1(13) that increase the potential to emit any regulated pollutant greater than the applicable thresholds under subdivisions (3) through (7). The requirement to process such modifications in accordance with subsection (g) does not apply to pollution prevention projects that the department approved as an environmentally beneficial pollution prevention project through a permit issued prior to July 1, 2000.

(g) The following shall apply to the modifications described in subsection (f):

(1) Any person proposing to make a modification described in subsection (f) shall submit an application concerning the modification and shall include the information under subsection (c).

(2) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the modification until the commissioner has issued a modification approval.

(3) The commissioner shall approve or deny the modification as follows:

(A) Within one hundred twenty (120) calendar days from receipt of an application for a modification in subsection (f), except subsection (f)(1).

(B) Within two hundred seventy (270) calendar days from receipt of an application for a modification under subsection (f)(1).

(4) A modification approval under this subsection may be issued only if all of the following conditions have been met:

(A) The commissioner has received a complete application for a modification.

(B) The commissioner has complied with the requirements for public notice as follows:

(i) For modifications for which a source is only requesting preconstruction approval, the commissioner has complied with the requirements under 326 IAC 2-1.1-6.

(ii) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the commissioner has complied with the requirements under section 17 of this rule.

(C) The conditions of the modification approval provide for compliance with all applicable requirements and the requirements of this rule.

(D) For modifications for which a source is requesting a combined preconstruction approval and operating permit revision, the U.S. EPA has received a copy of the proposed modification approval and any notices required and has not objected to the issuance of the modification approval within the time period specified in section 18 of this rule.

(5) The commissioner shall provide a technical support document that sets forth the legal and factual basis for draft modification approval conditions (including references to the applicable statutory and regulatory provisions). The commissioner shall send this technical support document to the U.S. EPA, the applicant, and any other person who requests it.

(h) The following shall apply to a modification approval described in subsection (f) for a source that has not received a final Part 70 permit:

(1) After receiving an approval to construct and prior to

receiving approval to operate, a source shall prepare an affidavit of construction as follows:

(A) The affidavit shall include the following:

(i) Name and title of the authorized individual.

(ii) Company name.

(iii) Subject to item (iv), an affirmation that the emissions units described in the modification approval were constructed in conformance with the request for modification approval and that such emissions units will comply with the modification approval.

(iv) Identification of any changes to emissions units not included in the request for modification approval, but which should have been included under subsection (a).

(v) Signature of the authorized individual.

(B) The affidavit shall be notarized.

(C) A source shall submit the affidavit to the commissioner either after construction of all the emission units described in the modification approval or after each phase of construction of the emission units described in the modification approval, as applicable, has been completed.

(2) A source may not operate any emissions units described in the modification approval prior to receiving a validation letter issued by the commissioner, except as provided in the following:

(A) A source may operate the emissions units covered by the affirmation in the affidavit of construction upon submission of the affidavit of construction.

(B) The commissioner shall issue a validation letter within five (5) working days of receipt of the affidavit of construction.

(C) The validation letter shall authorize the operation of all or part of each emissions unit covered by the affirmation in the affidavit of construction.

(D) Subject to clause (E), the validation letter shall include any amendments to the modification approval if such amendment is requested by the source and if such amendment does not constitute a modification and require public notice and comment under 326 IAC 2-1.1-6.

(E) A validation letter shall not approve the operation of any emissions unit if an amendment to the modification approval requested by the source would constitute a modification and require public notice and comment under 326 IAC 2-1.1-6.

(i) Each modification approval issued under this rule shall provide that construction must commence within eighteen (18) months of the issuance of the modification approval.

(j) All modification approval proceedings under this section shall provide adequate procedures for public notice, including offering an opportunity for public comment and a hearing on the draft modification approval as established in 326 IAC 2-1.1-6 or section 17 of this rule.

(k) The commissioner shall provide for review by the U.S. EPA and affected states of each modification application, draft modification approval, proposed modification approval, and final modification approval in accordance with the procedures established in section 18 of this rule for modifications that a source is requesting a combined preconstruction approval and operating permit revision.

(l) A modification approval issued in accordance with this section shall be incorporated into the source's Part 70 permit or permit application as follows:

(1) For a source that has a final Part 70 permit and requested that the preconstruction approval and permit revision be combined, the modification approval shall be incorporated into the Part 70 permit as an administrative amendment in accordance with section 11 of this rule.

(2) For a source that has a final Part 70 permit and requested only a preconstruction approval, the source may begin operation in accordance with section 12 of this rule.

(3) For a source that has a complete Part 70 permit application on file, but does not have a final Part 70 permit and requested only preconstruction approval, the modification approval shall be deemed incorporated in the Part 70 permit application and will be included in the Part 70 permit when issued.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-7-10.5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1039; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Oct 23, 2000, 9:47 a.m.: 24 IR 672; filed May 21, 2002, 10:20 a.m.: 25 IR 3065)*

SECTION 13. 326 IAC 2-7-19 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-19 Fees

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-8
Affected: IC 4-21.5; IC 13-15; IC 13-16-2-1; IC 13-17

Sec. 19. (a) Owners or operators of Part 70 sources are required to pay annual fees as established by this rule. However, the commissioner shall reduce the fee established by this rule by the following:

(1) Fifty percent (50%) for fees assessed in calendar year 1994.

(2) Twenty-five percent (25%) for fees assessed in calendar year 1995. Prior to issuance of a Part 70 permit or a FESOP permit, the source is subject to the fees established in this rule unless notification is provided under 326 IAC 2-8-16(d).

(b) A source shall pay the annual fee within thirty (30) calendar days of receipt of a billing by the department. The

department shall bill each source no later than July 31, 1994, and no later than February 1 in subsequent years. A source which begins operation for the first time in a given year shall be billed on a prorated basis by determining the number of complete months remaining in the calendar year and dividing by twelve (12) to determine the percent of the annual fee due to the department. If a source subject to this rule or 326 IAC 2-8 does not receive a bill from the department, the applicable fee must be submitted to the department prior to September 1 in 1994, and April 1 of any subsequent year. If an annual fee is being paid under a fee schedule established under IC 13-16-2-1, the fee shall be paid in accordance with that schedule. Establishment of a fee payment schedule must be consistent with the provisions of IC 13-16-2-1, including the determination that a single payment of the entire fee is an undue hardship on the person and that the department is not required to assess installments separately.

(c) Each Part 70 source shall pay a base fee of one thousand five hundred dollars ($1,500) and shall pay an additional fee of thirty-three dollars ($33) per ton for each ton of regulated air pollutant emitted, provided that no source shall pay more than one hundred fifty thousand dollars ($150,000) or, if a source emits more than one hundred (100) tons per year of NO_x and more than one hundred (100) tons per year of VOC and is located in an area designated as serious or severe nonattainment for ozone in accordance with the CAA, the source shall pay no more than two hundred thousand dollars ($200,000). During the years of 1994 through 1999 inclusive, any affected unit under Section 404 of the CAA shall be exempted from the fees established under this section. Municipal solid waste incinerators subject to 326 IAC 2-1.1-7(5)(E) shall be exempt from the fees established under this section. The annual emission statement submitted during the previous calendar year required by 326 IAC 2-6 or section 5(3)(C)(iii) of this rule and other available information shall be the basis for determining total tons of actual emissions of each regulated pollutant. If an annual emission report is not required or if more information is needed to accurately determine a source's emissions for a regulated pollutant, the commissioner may require that the source report annual emissions using procedures acceptable to the commissioner prior to billing.

(d) The commissioner shall exclude from the fee calculation the following:

(1) The amount of a Part 70 source's actual emission of each regulated pollutant that the source emits in excess of four thousand (4,000) tons per year.

(2) Emissions for which a fee is due in accordance with 326 IAC 2-1.1-7, except for emissions from coke plants subject to 40 CFR 63, Subpart L*. ~~57 FR 57898*.~~

(e) After review of the source's annual emission statement and all other available information, the commissioner shall calculate the total emissions to be included in the determination of the annual fee. No source shall be required to pay more than a single dollar-per-ton fee during any billing period for any one (1) ton of pollutant emitted. If the source disputes the calculation of total emissions at the time of the billing, the source shall remit the total fee minus the amount attributable to the disputed emissions total within thirty (30) days of the receipt of a billing. The source shall provide supporting emissions calculations for the commissioner's review no later than thirty (30) days from receipt of the initial billing. The commissioner shall review the information and make a final determination of the total annual fee. The source shall pay any remaining fee within fifteen (15) days of receipt of a second billing. The commissioner's determination of a final fee amount is a final action for purposes of IC 4-21.5.

(f) The commissioner shall adjust the base fee, the cost per ton of emissions fee, and the maximum fee annually by the Consumer Price Index (CPI) using the revision of the CPI which is most consistent with the CPI for the calendar year 1995. Beginning in 1996, in the event that the revenues collected in a given calendar year are insufficient to support the direct and indirect costs of the Title V operating permit program, the commissioner may adjust the fee schedule as necessary to assure adequate revenues, not to exceed thirteen million seven hundred thousand dollars ($13,700,000) (adjusted by CPI), are collected. The commissioner shall include the full balance of the Title V operating permit program trust fund in determining whether the available funds for the billing year total thirteen million seven hundred thousand dollars ($13,700,000) (adjusted by CPI). Prior to making any such fee adjustment, the commissioner shall prepare a report demonstrating the revenue shortfall, the need for additional resources to effectively implement the Part 70 permit program, and any proposed adjustment to the fee schedule, and shall make the report available to the public at least sixty (60) days in advance of a regularly scheduled meeting of the air pollution control board, at which the report shall be discussed and affirmed by a majority vote of the board members present. Upon a determination by the commissioner that a fee adjustment is necessary, Part 70 sources shall be billed for the adjustment during the billing cycle following such determination.

(g) Beginning in 1996, the commissioner shall review the monies in the Title V operating permit trust fund prior to billing Part 70 and FESOP sources. If the balance of the fund, once obligated expenditures are subtracted from the balance, exceeds three million dollars ($3,000,000) as of July 1 of the billing year, the commissioner shall adjust the annual fee schedule to bill an amount, in the aggregate, equivalent to the fee schedule amount, less the excess over three million dollars ($3,000,000). Adjustments to individual bills shall be proportional to the applicable fee divided by the total amount required by all the applicable fees.

(h) The commissioner shall present a report to the air pollution control board by October 15 of each calendar year,

beginning in 1995. The report shall include the following information regarding the permit program required by this rule:

(1) The number of sources subject to the requirements of this rule.

(2) The number of permit applications received by the department.

(3) The number and timeliness of final permit actions taken the previous year.

(4) A summary of expenditures and revenues to the Title V operating permit program trust fund for the previous year.

(5) The adequacy of the fees collected by the department to fund the Part 70 permit program.

(6) A description of any monies deposited into the Title V operating permit program trust fund that were obtained by means other than fees paid under this section or 326 IAC 2-8-16. The description shall document that such revenues were not used to cover any direct or indirect costs of the Title V operating permit program.

Based on the report, the board may recommend that the commissioner prepare revisions to the annual fee schedule such that the annual aggregate amount of fees collected under the operating permit program is sufficient to cover only the direct and indirect costs of the permit program.

(i) A fee schedule established in subsection (c) may be billed in whole or in part by a local air pollution control agency per terms of an enforceable written agreement or contract between the local air agency and the commissioner. Any Part 70 fee paid to a local air agency shall be considered as revenue to the Title V operating permit trust fund and may, after U.S. EPA approval of the Part 70 permit program, only be expended for purposes consistent with IC 13-17-8-2 through IC 13-17-8-9. A local air agency billing to a Part 70 source shall specify the amount being assessed under this section and shall distinguish any other amount billed as not pursuant to the purposes of IC 13-17-8-2 through IC 13-17-8-9 under an enforceable agreement with the commissioner. The commissioner or local air agency may direct the source to make payment of fees established under this section in part to both the department and the local air agency such that the total Part 70 permit program fee does not exceed the amount in subsection (c). During 1994, the commissioner may defer to billing of a local air agency if the total billing for all Part 70 sources exceeds the total amount due under this section if specified in an enforceable agreement between the local air agency and the commissioner. During 1994, the commissioner may assess a fee not to exceed twenty-five percent (25%) of the local agency fee in order to recover costs associated with development and preparation of a complete statewide Part 70 operating permit program for activities that will not be duplicated by the local air agency if it is determined that the local air agency fees collected from Part 70 and FESOP permittees do not provide adequate revenue for the local agency to develop and prepare the Title V operating permit program at a pace comparable to state development and preparation.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and the Federal Register (FR) referenced~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-7-19; filed May 25, 1994, 11:00 a.m.: 17 IR 2267; errata filed May 25, 1994, 11:10 a.m.: 17 IR 2358; errata filed Dec 21, 1994, 9:37 a.m.: 18 IR 1290; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2349; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1045; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed May 21, 2002, 10:20 a.m.: 25 IR 3069)*

SECTION 14. 326 IAC 2-8-10 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-8-10 Administrative permit amendments

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

Sec. 10. (a) An administrative permit amendment is a FESOP revision that does any of the following:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address, or telephone number of any person identified in the FESOP, or provides a similar minor administrative change at the source.

(3) Requires more frequent monitoring or reporting by the permittee.

(4) Allows for a change in ownership or operational control of a source where the commissioner determines that no other change in a FESOP is necessary, provided that a written agreement containing a specific date for transfer of a FESOP responsibility, coverage, and liability between the current and new permittee has been submitted to the commissioner.

(5) Makes a change to a monitoring, maintenance, or record keeping requirement that is not environmentally significant. Such change shall not be an administrative amendment if the monitoring, maintenance, or record keeping is required by an applicable requirement.

(6) Revises descriptive information where the revision will not trigger a new applicable requirement or violate a permit term.

(7) Incorporates alternative testing or compliance monitoring requirements that have received U.S. EPA approval under 40 CFR 60*, 40 CFR 61*, or 40 CFR 63*.

(8) Incorporates newly-applicable monitoring or testing requirements specified in 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* that apply as the result of a change in applicability of those requirements to the source, including removal from the permit of monitoring or testing requirements that no longer apply as a result of the change in applicability.

(9) Incorporates test methods or monitoring requirements

specified in an applicable requirement that the source may use under the applicable requirement as an alternative to the testing or monitoring requirements contained in the permit.
(10) Allows for the construction and operation of a modification that has received advance approval under this rule.
(11) Allows for changes or modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not result in an increase in the potential to emit any regulated pollutant greater than the thresholds in 326 IAC 2-1.1-3(d)(1) or a significant change in the method or methods to demonstrate or monitor compliance.
(12) Allows for a change or modification that meets the applicability criteria and can meet and will comply with the operational limitations for a source specific operating agreement under 326 IAC 2-9 or a general permit under 326 IAC 2-12 or section 18 of this rule and does not require an adjustment to the potential to emit of the source.
(13) Incorporates a modification of an existing source if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:
(A) results in the replacement or repair of an entire process;
(B) qualifies as a reconstruction of an entire process; or
(C) may result in an increase of actual emissions.
(14) Incorporates a modification that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in 326 IAC 2-2 or 326 IAC 2-3.
(15) Incorporates a modification that is subject to the following reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B, ~~(61 FR 68384, December 27, 1996)~~ Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*:
(A) 40 CFR 60.40c*, except for modifications to a source located in Lake County.
(B) 40 CFR 60.110b*.
(C) 40 CFR 60.250*, except for modifications that include thermal dryers.
(D) 40 CFR 60.330* for modifications that only include emergency generators.
(E) 40 CFR 60.670*.
(F) 40 CFR 61.110*.
As part of the request under subsection (b)(1), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP. For modifications under clauses (A) through (D), the source must use the monitoring specified in the relevant RACT, NSPS, or NESHAP.
(16) Incorporates a modification that is subject to one (1) of the following NSPSs, except for modifications that would be subject to 326 IAC 8-1-6:
(A) 40 CFR 60.310*.
(B) 40 CFR 60.390*.
(C) 40 CFR 60.430*.
(D) 40 CFR 60.440*.
(E) 40 CFR 60.450*.
(F) 40 CFR 60.460*.
(G) 40 CFR 60.490*.
(H) 40 CFR 60.540*.
(I) 40 CFR 60.560*.
(J) 40 CFR 60.580*.
(K) 40 CFR 60.600*.
(L) 40 CFR 60.660*.
(M) 40 CFR 60.720*.
As part of the request under subsection (b)(1), the applicant shall acknowledge the requirement to comply with the NSPS. For modifications under clauses (A) through (H), the source must use the monitoring specified in the NSPS.

(b) An administrative permit amendment may be made by the commissioner consistent with the following:
(1) The commissioner shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on such request and may incorporate such changes without providing prior notice to the public or affected states provided that it designates any such permit revisions as having been made under this subsection.
(2) The commissioner shall submit a copy of a revised FESOP to the U.S. EPA.
(3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-8-10; filed May 25, 1994, 11:00 a.m.: 17 IR 2275; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2358; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1054; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed May 21, 2002, 10:20 a.m.: 25 IR 3071)*

SECTION 15. 326 IAC 2-8-11.1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-8-11.1 Permit revisions
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-5; IC 13-17

Sec. 11.1. (a) Any person proposing to add additional

emission units, modify existing emission units, or otherwise modify a FESOP source as described in this section shall submit a permit revision request in accordance with this section.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment, or components thereof, if the repair or replacement:

(1) results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit for the equipment or the affected emissions unit that was repaired or replaced;

(2) is not a major modification under 326 IAC 2-2-1, 326 IAC 2-3-1, or 326 IAC 2-4.1; and

(3) returns the emissions unit, process, or control equipment to normal operation after an upset, malfunction, or mechanical failure or prevents impending and imminent failure of the emissions unit, process, or control equipment.

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution control equipment and would require a permit or operating permit revision under a provision of this rule, the owner or operator of the source must submit an application for a permit or permit revision to the commissioner no later than thirty (30) calendar days after initiating the repair or replacement.

(c) An application required under this section shall meet the requirements of section 3(c) of this rule and include the following information:

(1) Company name and address.

(2) A description of the change and the emissions resulting from the change.

(3) An identification of the applicable requirements to which the source is newly subject as a result of the change, including the applicable emission limits and standards, applicable monitoring and test methods, and applicable record keeping and reporting requirements.

(4) Proposed permit terms and conditions required to implement the change, including limitations and methods to be used to comply with such limitations for modifications described in subsection (d)(5).

(5) A schedule of compliance, if applicable.

(6) A certification consistent with section 3(d) of this rule.

(d) The following modifications shall require minor permit revisions and shall require approval prior to construction and operation:

(1) Modifications that reduce the frequency of any monitoring or reporting required by a permit condition or applicable requirement.

(2) The addition of a portable source or relocation of a portable source to an existing source, if the addition or relocation would require a change to any permit terms or conditions.

(3) Modifications involving a pollution control project or pollution prevention project as defined in 326 IAC 2-1.1-1 that do not increase the potential to emit any regulated pollutant greater than the thresholds under subsection (e)(1), but requires a significant change in the method or methods to demonstrate or monitor compliance.

(4) Modifications that would have a potential to emit within the following ranges:

(A) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of either particulate matter (PM) or particulate matter less than ten (10) microns (PM_{10}).

(B) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of sulfur dioxide (SO_2).

(C) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of nitrogen oxides (NO_x).

(D) Less than twenty-five (25) tons per year and equal to or greater than ten (10) tons per year of volatile organic compounds (VOC) for modifications that are not described in clause (E).

(E) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of volatile organic compounds (VOC) for modifications that require the use of air pollution control equipment to comply with the applicable provisions of 326 IAC 8.

(F) Less than one hundred (100) tons per year and equal to or greater than twenty-five (25) tons per year of carbon monoxide (CO).

(G) Less than five (5) tons per year and equal to or greater than two-tenths (0.2) ton per year of lead (Pb).

(H) Less than twenty-five (25) tons per year and equal to or greater than five (5) tons per year of the following regulated air pollutants:

(i) Hydrogen sulfide (H_2S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

(5) Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than hazardous air pollutants, ten (10) tons per year of any single hazardous air pollutant as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of hazardous air pollutants by complying with one (1) of the following constraints:

(A) Limiting total annual solvent usage or maximum volatile organic compound content, or both.

(B) Limiting annual hours of operation of the process or business.

(C) Using a particulate air pollution control device as follows:

(i) Achieving and maintaining ninety-nine percent (99%) efficiency.

(ii) Complying with a no visible emission standard.

(iii) The potential to emit before air pollution controls does not exceed major source thresholds for federal permitting programs.

(iv) Certifying to the commissioner that the air pollution control device supplier guarantees that a specific outlet concentration, in conjunction with design air flow, will result in actual emissions less than twenty-five (25) tons of particulate matter (PM) or fifteen (15) tons per year of particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(D) Limiting individual fuel usage and fuel type for a combustion source.

(E) Limiting raw material throughput or sulfur content of raw materials, or both.

(6) A change that is not described under section 10(a)(15) or 10(a)(16) of this rule and is subject to a reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR 63, Subpart B ~~(61 FR 68384, December 27, 1996)~~ Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (b), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.

(7) A modification for which a source requests an emission limit to avoid 326 IAC 8-1-6.

(e) Minor permit revision procedures shall be as follows:

(1) Any person proposing to make a change described in subsection (d) shall submit an application concerning the change and shall include the information under subsection (c).

(2) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the change until the commissioner has revised the permit.

(3) Within forty-five (45) calendar days from receipt of an application for a minor permit revision, the commissioner shall either:

(A) approve the minor permit revision request;

(B) deny the minor permit revision; or

(C) determine that the minor permit revision request would cause or contribute to a violation of the National Ambient Air Quality Standard (NAAQS) or prevention of significant deterioration (PSD) standards, would allow for an increase in emissions greater than the thresholds in subsection (f), or would not provide for compliance monitoring consistent with this rule and should be processed as a significant permit revision.

(4) If approved, the permit shall be revised by incorporating the minor permit revision into the permit. The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the minor permit revision to the permit. The commissioner shall notify the permittee upon incorporation of the minor permit revision to the permit and provide a copy of the minor permit revision to the permittee. Notwithstanding IC 13-15-5, the commissioner's decision shall become effective immediately.

(f) Significant permit revision procedures are as follows:

(1) A significant permit revision is a modification that is not an administrative amendment under section 10 of this rule or subject to subsection (d) and includes the following:

(A) Any modification that would be subject to 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1.

(B) Any modification that results in the source needing to obtain a Part 70 permit under 326 IAC 2-7.

(C) A modification that is subject to 326 IAC 8-1-6.

(D) Any modification with a potential to emit lead at greater than or equal to one (1) ton per year.

(E) Any modification with a potential to emit greater than or equal to twenty-five (25) tons per year of the following pollutants:

(i) Particulate matter (PM) or particulate matter with an aerodynamic diameter less than or equal to ten (10) micrometers (PM_{10}).

(ii) Sulfur dioxide (SO_2).

(iii) Nitrogen oxides (NO_x).

(iv) Volatile organic compounds (VOC).

(v) Hydrogen sulfide (H_2S).

(vi) Total reduced sulfur (TRS).

(vii) Reduced sulfur compounds.

(viii) Fluorides.

(F) For a source of lead with a potential to emit greater than or equal to five (5) tons per year, a modification that would increase the potential to emit greater than or equal to six-tenths (0.6) ton per year.

(G) Any modification with a potential to emit greater than or equal to ten (10) tons per year of a single hazardous air pollutant as defined under Section 112(b) of the CAA or twenty-five (25) tons per year of any combination of hazardous air pollutants.

(H) Any modification with a potential to emit greater than or equal to one hundred (100) tons per year of carbon monoxide (CO).

(I) Any modification involving a pollution control project as defined in 326 IAC 2-1.1-1 that results in an increase in the potential to emit any regulated pollutant greater than the thresholds under this section and requires a change in the method or methods to demonstrate or monitor compliance.

(J) Any modification involving a pollution prevention project as defined in 326 IAC 2-1.1-1 that increases the potential to emit any regulated pollutant greater than the thresholds under this section or that results in emissions of any regulated pollutant not previously emitted.

(2) The following conditions shall apply to significant permit revisions:

(A) Any person proposing to make a modification described in this subsection shall submit an application concerning the modification and shall include the information under subsection (c).

(B) The commissioner shall provide a copy of the significant permit revision application and draft and final operating permit revision to the U.S. EPA.

(C) Except as provided in 326 IAC 2-13, the source may not begin construction on any emissions unit that is necessary to implement the change until the commissioner has revised the permit.

(D) The commissioner shall provide for public notice and comment in accordance with section 13 of this rule.

(E) The commissioner shall approve or deny the significant permit revision as follows:

(i) Within one hundred twenty (120) calendar days from receipt of an application for a significant permit revision, except for a significant permit revision under subdivision (1)(A).

(ii) Within two hundred seventy (270) calendar days from receipt of an application for a significant permit revision under subdivision (1)(A).

(F) If approved, the permit shall be revised by incorporating the significant permit revision into the permit. The commissioner shall make any changes necessary to assure compliance with this title and the CAA prior to attaching the significant permit revision to the permit.

(g) Notwithstanding the existence of an emissions cap, the following changes shall be required to be reviewed in accordance with the procedures in subsection (f):

(1) Any modifications that trigger any new applicable requirements for the units or processes under the cap.

(2) Any modifications that require an adjustment to the emissions cap limitations.

(3) Any modifications that change any existing requirements for the units or processes under the cap.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-8-11.1; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1055; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed May 21, 2002, 10:20 a.m.: 25 IR 3072)*

SECTION 16. 326 IAC 2-9-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-9-4 Woodworking operations

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

Sec. 4. (a) Any woodworking operation subject to 326 IAC 6-1 or 326 IAC 6-3 may elect to be subject to this section by complying with the requirements of section 1 of this rule and meeting the conditions under subsection (b), (c), (d), (e), or (f).

(b) Unless the operations meet the conditions of subsection (c), (d), (e), or (f), woodworking operations shall meet the following conditions:

(1) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).

(2) The source shall not emit particulate matter with a diameter less than ten (10) microns (PM_{10}) in excess of one-thousandth (0.001) grain per actual cubic foot.

(3) The source shall discharge no visible emissions to the outside air from the woodworking operation.

(4) The source shall not at any time exhaust to the atmosphere greater than four hundred thousand (400,000) actual cubic feet per minute.

(5) The source shall maintain records on the types of air pollution control devices used at the source and the operation and maintenance manuals for those devices.

(c) Unless the operations meet the conditions of subsection (b), (d), (e), or (f), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.

(2) The baghouse does not exhaust to the atmosphere greater than one hundred twenty-five thousand (125,000) cubic feet per minute.

(3) The baghouse does not emit particulate matter with a diameter less than ten (10) microns in excess of three-thousandths (0.003) grain per dry standard cubic feet of outlet air.

(4) Opacity from the baghouse does not exceed ten percent (10%) opacity.

(5) The baghouse is in operation at all times that the woodworking equipment is in use.

(6) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:

(A) The baghouse shall be inspected.

(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.

(7) The baghouse is inspected quarterly when vented to the atmosphere.

(8) The owner or operator keeps the following records:

(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.

(B) Quarterly inspection reports when vented to the atmosphere.

(C) Visible observation reports.

(D) Records of corrective actions.

(d) Unless the operations meet the conditions of subsection (b), (c), (e), or (f), woodworking operations shall meet the following conditions:

(1) The woodworking operations shall be controlled by a baghouse.
(2) The baghouse does not exhaust to the atmosphere greater than forty thousand (40,000) cubic feet per minute.
(3) The baghouse does not emit particulate matter with a diameter less than ten (10) microns in excess of one-hundredth (0.01) grain per dry standard cubic feet of outlet air.
(4) Opacity from the baghouse does not exceed ten percent (10%).
(5) The baghouse is in operation at all times that the woodworking equipment is in use.
(6) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:
(A) The baghouse shall be inspected.
(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.
(7) The baghouse is inspected quarterly when vented to the atmosphere.
(8) The owner or operator keeps the following records:
(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.
(B) Quarterly inspection reports when vented to the atmosphere.
(C) Visible observation reports.
(D) Records of corrective actions.

(e) Unless the operations meet the conditions of subsection (b), (c), (d), or (f), woodworking operations shall meet the following conditions:
(1) The woodworking operations shall be controlled by a baghouse.
(2) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).
(3) The baghouse shall not exhaust greater than one hundred twenty-five thousand (125,000) cubic feet per minute to the atmosphere.
(4) The baghouse shall not emit particulate matter with a diameter less than ten (10) microns (PM_{10}) greater than one-hundredth (0.01) grain per dry standard cubic feet of outlet air.
(5) Opacity from the baghouse does not exceed ten percent (10%).
(6) The baghouse is in operation at all times that the woodworking equipment is in use.
(7) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:
(A) The baghouse shall be inspected.
(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.
(8) The baghouse is inspected quarterly when vented to the atmosphere.
(9) The owner or operator keeps the following records:
(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.
(B) Quarterly inspection reports when vented to the atmosphere.
(C) Visible observation reports.
(D) Records of corrective actions.

(f) Unless the operations meet the conditions of subsection (b), (c), (d), or (e), woodworking operations shall meet the following conditions:
(1) The woodworking operations shall be controlled by a baghouse.
(2) Request a source specific operating agreement under this section, which shall be accompanied by a one-time application fee of five hundred dollars ($500).
(3) The baghouse shall not exhaust greater than sixty-five thousand (65,000) cubic feet per minute to the atmosphere.
(4) The baghouse shall not emit particulate matter with a diameter less than ten (10) microns (PM_{10}) greater than one-hundredth (0.01) grain per dry standard cubic feet of outlet air.
(5) Opacity from the baghouse does not exceed ten percent (10%).
(6) The baghouse is in operation at all times that the woodworking equipment is in use.
(7) Visible emissions from the baghouse are observed daily using procedures in accordance with 40 CFR 60, Appendix A, Method 22* and normal or abnormal emissions are recorded. In the event abnormal emissions are observed for greater than six (6) minutes in duration, the following shall occur:
(A) The baghouse shall be inspected.
(B) Corrective actions, such as replacing or reseating bags, are initiated when necessary.
(8) The baghouse is inspected quarterly when vented to the atmosphere.
(9) The owner or operator keeps the following records:
(A) Records documenting the date when the baghouse redirected indoors or to the atmosphere.
(B) Quarterly inspection reports when vented to the atmosphere.
(C) Visible observation reports.
(D) Records of corrective actions.

(g) The requirement to submit the five hundred dollar ($500) application fee shall not apply to a source that has been issued an operating agreement under this section.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review**

and copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 2-9-4; filed May 7, 1997, 4:00 p.m.: 20 IR 2306; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1060; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108; filed May 21, 2002, 10:20 a.m.: 25 IR 3075)*

SECTION 17. 326 IAC 8-8-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-8-2 Definitions

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

Sec. 2. (a) For purposes of this rule, the definitions listed in 40 CFR 60, Subpart WWW*, Sec. 60.751 Standards of Performance for Municipal Solid Waste Landfills, ~~61 FR 9905 (March 12, 1996)*,~~ and in this section shall apply.

(b) "Existing municipal solid waste (MSW) landfill" means an MSW landfill that has accepted waste since November 8, 1987, or that has capacity available for future use and for which construction commenced prior to May 30, 1991. It may be active, either currently accepting waste, or having additional capacity to accept waste, or may be closed, neither any longer accepting waste, nor having available capacity for future waste deposition.

(c) "New MSW landfill" means a landfill for which construction, modification, or reconstruction commences on or after the effective date of this rule.

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 8-8-2; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1050; filed Sep 8, 1997, 9:40 a.m.: 21 IR 31; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3077)*

SECTION 18. 326 IAC 8-8-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-8-3 Requirements; incorporation by reference of federal standards

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

Sec. 3. (a) The air pollution control board incorporates by reference the following provisions of 40 CFR 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills: ~~61 FR 9905 (March 12, 1996)*:~~

(1) **40 CFR** 60.751 Definitions*.
(2) **40 CFR** 60.752 Standards for air emissions from MSW landfills*.
(3) **40 CFR** 60.753 Operational standards for collection and control systems*.
(4) **40 CFR** 60.754 Test methods and procedures*.
(5) **40 CFR** 60.755 Compliance provisions*.
(6) **40 CFR** 60.756 Monitoring operations*.
(7) **40 CFR** 60.757 Reporting requirements*.
(8) **40 CFR** 60.758 Record keeping requirements*.
(9) **40 CFR** 60.759 Specifications for active collection systems*.

(b) An MSW landfill subject to the requirements of this rule may be subject to permit requirements under 326 IAC 2. An MSW landfill that makes modifications to comply with the requirements of this rule may be subject to permit requirements contained in 329 IAC 10.

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 8-8-3; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1050; filed Sep 8, 1997, 9:40 a.m.: 21 IR 31; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3077)*

SECTION 19. 326 IAC 8-8.1-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-8.1-2 Definitions

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

Sec. 2. (a) The definitions listed in 40 CFR 60, Subpart WWW, Sec. 60.751 Standards of Performance for Municipal Solid Waste Landfills*, ~~61 FR 9905 (March 12, 1996)*~~ and this section shall apply throughout this rule.

(b) "Existing municipal solid waste (MSW) landfill" means an MSW landfill that has accepted waste since November 8, 1987, or that has capacity available for future use and for which construction commenced prior to May 30, 1991. It may be active, either currently accepting waste, or having additional capacity to accept waste, or may be closed, neither any longer accepting waste, nor having available capacity for future waste deposition.

***This document is incorporated by reference.** Copies ~~of~~

~~the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 8-8.1-2; filed Sep 8, 1997, 9:40 a.m.: 21 IR 32; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3077)*

SECTION 20. 326 IAC 8-8.1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 8-8.1-3 Requirements; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17; IC 13-20-21

Sec. 3. (a) The air pollution control board incorporates by reference the following provisions of 40 CFR 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills*: ~~61 FR 9905 (March 12, 1996)*:~~

(1) **40 CFR** 60.751 Definitions*.

(2) **40 CFR** 60.752 Standards for air emissions from MSW landfills*.

(3) **40 CFR** 60.753 Operational standards for collection and control systems*.

(4) **40 CFR** 60.754 Test methods and procedures*.

(5) **40 CFR** 60.755 Compliance provisions*.

(6) **40 CFR** 60.756 Monitoring of operations*.

(7) **40 CFR** 60.757 Reporting requirements*.

(8) **40 CFR** 60.758 Record keeping requirements*.

(9) **40 CFR** 60.759 Specifications for active collection systems*.

(b) An MSW landfill subject to the requirements of this rule may be subject to permit requirements contained in 326 IAC 2. An MSW landfill that makes modifications to comply with the requirements of this rule may be subject to permit requirements contained in 329 IAC 10.

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 8-8.1-3; filed Sep 8, 1997, 9:40 a.m.: 21 IR 32; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3078)*

SECTION 21. 326 IAC 11-6-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-6-1 Applicability

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

Sec. 1. (a) Except as provided in subsections (b) and (c), this rule applies to each hospital/medical/infectious waste incinerator for which construction was commenced on or before June 20, 1996, hereafter referred to as "designated facility".

(b) The following are exempt from this rule:

(1) Any combustor during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste, or any combination of these wastes, is burned, regardless of whether the waste meets the definition of hospital waste or medical/infectious waste, provided the owner or operator of the combustor does the following:

(A) Notifies the department and U.S. EPA of an exemption claim.

(B) Maintains records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste, or any combination of these wastes, is burned.

(2) Any cofired combustor if the owner or operator of the cofired combustor does the following:

(A) Notifies the department and U.S. EPA of an exemption claim.

(B) Provides the department and U.S. EPA with an estimate of the relative weight of hospital waste, medical/infectious waste, and other fuels or wastes to be combusted.

(C) Maintains records on a calendar quarter basis of the weight of hospital waste and medical/infectious waste combusted, and the weight of all other fuels and wastes combusted at the cofired combustor.

(3) Any combustor required to have a permit under Section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925)*.

(4) Any combustor that meets the applicability requirements under 40 CFR 60, Subpart Cb*, Ea*, or Eb* (standards or guidelines for certain municipal waste combustors).

(5) Any pyrolysis unit.

(6) Cement kilns firing hospital waste or medical/infectious waste, or any combination of these wastes.

(c) Physical or operational changes made to an existing hospital/medical/infectious waste incinerator solely for the purpose of complying with emission limits under this rule are not considered modifications and do not result in an existing hospital/medical/infectious waste incinerator becoming subject to 40 CFR 60, Subpart Ec***.** ~~60 FR 48348 (September 15, 1997)*.~~

(d) The provisions in 40 CFR Part 60.24(f)* shall not apply to designated facilities.

***These documents are incorporated by reference.** Copies ~~of the Solid Waste Disposal Act, Code of Federal Regulation (CFR), and Federal Register (FR) referenced in this rule~~ may be

obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-6-1; filed Feb 9, 1999, 4:28 p.m.: 22 IR 1964; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3078)*

SECTION 22. 326 IAC 11-6-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-6-2 Definitions

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

Sec. 2. **(a)** Terms used in this rule have the meaning ~~that is~~ given in the **following** definition sections: ~~of:~~

(1) 40 CFR 60, Subpart Ce, Section 60.31e*. ~~and~~

(2) Subpart Ec, Section 60.51c*. ~~60 FR 48348 (September 15, 1997)*, and, if not defined in Subparts Ce and Ec, have the same meaning defined in the Clean Air Act and 40 CFR 60, Subparts A and B*.~~

(b) If a term is not defined in subdivision (1) or subdivision (2), then the term has the meaning defined in the CAA and 40 CFR 60, Subpart A* and 40 CFR 60, Subpart B*.

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) and Code of Federal Regulations (CFR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-6-2; filed Feb 9, 1999, 4:28 p.m.: 22 IR 1964; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3078)*

SECTION 23. 326 IAC 11-6-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-6-4 Emission limits

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

Sec. 4. **(a)** The designated facility shall not exceed the emission limits specified in **the following:**

(1) 40 CFR 60, Subpart Ce, Section 60.33e(a)*. ~~and~~

(2) 40 CFR 60, Subpart Ec, Section 60.52c(b)*. ~~60 FR 48348 (September 15, 1997)*. In addition, the emission limit for cadmium for large sources is sixteen-hundredths (0.16) milligrams per dry standard cubic meter (seven-hundredths (0.07) grains per one thousand (1,000) dry standard cubic feet) or sixty-five percent (65%) reduction.~~

(b) The emission limit for cadmium for large sources is sixteen-hundreths *[sic., hundredths]* **(0.16) milligram per dry standard cubic meter (seven-hundredths (0.07) grain per thousand (1,000) dry standard cubic feet) or sixty-five percent (65%) reduction.**

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, Washington, D.C. ~~20402~~ **20401** and are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-6-4; filed Feb 9, 1999, 4:28 p.m.: 22 IR 1965; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3079)*

SECTION 24. 326 IAC 11-6-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-6-5 Operator training and qualification requirements

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

Sec. 5. (a) The owner or operator of a designated facility shall comply with the operator training requirements specified in 40 CFR 60, Subpart Ec, Section 60.53c*. ~~60 FR 48348 (September 15, 1997)*.~~

(b) Compliance with operator training and qualification requirements shall be achieved within one (1) year after the effective date of this rule.

***This document is incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-6-5; filed Feb 9, 1999, 4:28 p.m.: 22 IR 1965; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3079)*

SECTION 25. 326 IAC 11-6-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-6-6 Waste management plans

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

Sec. 6. (a) The owner or operator of a designated facility shall prepare a waste management plan as specified in 40 CFR 60, Subpart Ec, Section 60.55c*. ~~60 FR 48348 (September 15, 1997)*.~~

(b) The waste management plan shall be submitted to the department by the date specified in 40 CFR 60, Subpart Ec, Section 60.58c(c)*. ~~60 FR 48348 (September 15, 1997)*.~~

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-6-6; filed Feb 9, 1999, 4:28 p.m.: 22 IR 1965; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3079)*

SECTION 26. 326 IAC 11-6-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-6-7 Compliance, performance testing, and monitoring

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

Sec. 7. (a) Performance tests shall be conducted and compliance shall be determined in accordance with the test methods and procedures found in 40 CFR 60, Subpart Ec, Section 60.56c*, excluding the fugitive emissions testing requirements under Section 60.56c(b)(12)* and 60.56c(c)(3)*. ~~60 FR 48348 (September 15, 1997)*.~~

(b) The performance testing shall also meet the requirements of 326 IAC 3-6, source sampling procedures, including the submittal of a test protocol no later than thirty-five (35) days prior to the intended test date. The test methods in 40 CFR 60, Subpart Ec, Section 60.56c*, shall not be modified unless approved by the EPA administrator.

(c) The owner or operator of a designated facility shall comply with the monitoring requirements specified in 40 CFR 60, Subpart Ec, Section 60.57c*. ~~60 FR 48348 (September 15, 1997)*.~~

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-6-7; filed Feb 9, 1999, 4:28 p.m.: 22 IR 1965; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3080)*

SECTION 27. 326 IAC 11-6-8 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-6-8 Reporting and record keeping requirements

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

Sec. 8. (a) The owner or operator of a designated facility shall comply with the **following** reporting and record keeping requirements: ~~listed in~~

(1) 40 CFR 60, Subpart Ec, Section 60.58c(b)*, ~~through 60.58c(f)*, except for Section~~ **excluding 40 CFR 60, Subpart Ec,** 60.58c(b)(2)(ii) (fugitive emissions)*, and **40 CFR 60, Subpart Ec,** 60.58c(b)(7) (siting)*. ~~60 FR 48348 (September 15, 1997)*.~~

(2) 40 CFR 60, Subpart Ec, Section 60.58c(c)*.

(3) 40 CFR 60, Subpart Ec, Section 60.58c(d)*.

(4) 40 CFR 60, Subpart Ec, Section 60.58c(e)*

(5) 40 CFR 60, Subpart Ec, Section 60.58c(f)*.

(b) The owner or operator of a designated facility shall comply with information requests made by the department in order to develop the emissions inventory to be included in the state plan required by 40 CFR 60, Subpart B, Section 60.25(a)*. The owner or operator shall submit the information to the department within sixty (60) days of receipt of request.

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) and Code of Federal Regulation (CFR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-6-8; filed Feb 9, 1999, 4:28 p.m.: 22 IR 1966; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3080)*

SECTION 28. 326 IAC 11-7-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-7-2 Definitions

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

Sec. 2. Terms used in this rule have the meaning that is given in the definition section of 40 CFR 60, Subpart Cb, Section 60.31b*. ~~as amended by 60 FR 45116 and 60 FR 45124 (August 25, 1997)*.~~

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-7-2; filed Jan 18, 1999, 1:20 p.m.: 22 IR 1968; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3080)*

SECTION 29. 326 IAC 11-7-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-7-4 Operating practices
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 4. The owner or operator of a designated facility shall comply with the **following** operating practices: ~~contained in~~

(1) 40 CFR 60, Subpart Eb, Section 60.53b(b). ~~and~~

(2) 40 CFR 60, Subpart Eb, Section 60.53b(c)*. ~~as amended by 60 FR 45124 (August 25, 1997)*.~~

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-7-4; filed Jan 18, 1999, 1:20 p.m.: 22 IR 1968; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3081)*

SECTION 30. 326 IAC 11-7-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-7-5 Municipal waste combustor operator training and certification requirements
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 5. The owner or operator of a designated facility shall comply with the municipal waste combustor operator training and certification requirements specified in 40 CFR 60, Subpart Eb, Section 60.54b*. ~~as amended by 60 FR 45124 (August 25, 1997)*.~~

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-7-5; filed Jan 18, 1999, 1:20 p.m.: 22 IR 1968; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3081)*

SECTION 31. 326 IAC 11-7-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-7-6 Standards for municipal waste combustor fugitive ash emissions
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 6. The owner or operator of a designated facility shall meet the fugitive ash emission standards specified in 40 CFR 60, Subpart Eb, Section 60.55b*. ~~as amended by 60 FR 45124 (August 25, 1997)*.~~

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-7-6; filed Jan 18, 1999, 1:20 p.m.: 22 IR 1969; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3081)*

SECTION 32. 326 IAC 11-7-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-7-7 Compliance and performance testing
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 7. (a) The owner or operator of a designated facility shall comply with the compliance and performance testing methods and procedures specified in 40 CFR 60, Subpart Eb, Section 60.58b*, ~~as amended by 60 FR 45124 (August 25, 1997)*,~~ except as provided in subsections (b) through (c). All tests shall meet the requirements of 326 IAC 3-6.

(b) If all of the dioxin/furan compliance tests for all designated facilities over a two (2) year period indicate that the dioxin/furan emissions are less than or equal to fifteen (15) nanograms per dry standard cubic meter corrected to seven percent (7%) oxygen, the owner or operator of the plant may elect to conduct an annual dioxin/furan performance test for one (1) designated facility (unit) per year at the plant. At a mini-

mum, a performance test for dioxin/furan emissions shall be conducted annually (no more than twelve (12) months following the previous performance test) for one (1) designated facility at the plant. Each year a different designated facility shall be tested. The designated facilities at the plant shall be tested in sequence, such as Unit 1 the first year, followed by Unit 2 the next year.

(c) If an annual performance test indicates an emission level for dioxin/furan greater than fifteen (15) nanograms per dry standard cubic meter corrected to seven percent (7%) oxygen, then performance tests shall be conducted annually on all designated facilities at the plant until all annual performance tests for all designated facilities at the plant over a two (2) year period indicate a dioxin and furan emission level less than or equal to fifteen (15) nanograms per dry standard cubic meter corrected to seven percent (7%) oxygen.

(d) The owner or operator of a designated facility who elects to follow the performance testing schedule specified in subsection (b) shall follow the procedures specified in 40 CFR 60, Subpart Eb, Section 60.59b(g)(4)*, ~~as amended by 60 FR 45124 (August 25, 1997)*~~, for reporting the election of this schedule to the department.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-7-7; filed Jan 18, 1999, 1:20 p.m.: 22 IR 1969; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3081)*

SECTION 33. 326 IAC 11-7-8 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-7-8 Reporting and record keeping requirements

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

Sec. 8. **(a)** The owner or operator of a designated facility shall comply with the reporting and record keeping provisions of 40 CFR 60, Subpart Eb, Section 60.59b*. ~~except for the siting requirements under Section 60.59b(a)*, 60.59b(b)(5)*, and 60.59b(d)(11)* as amended by 60 FR 45116 and 60 FR 45124 (August 25, 1997)*. All reporting and record keeping shall meet the requirements of 326 IAC 3 when applicable.~~

(b) The following sitting requirements are not required under subsection (a):

(1) 40 CFR 60, Subpart Eb, Section 60.59b(a)*.
(2) 40 CFR 60, Subpart Eb, Section 60.59b(b)(5)*.
(3) 40 CFR 60, Subpart Eb, Section 60.59b(d)(11)*.

(c) All report and record keeping shall meet the requirements of 326 IAC 3 when applicable.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-7-8; filed Jan 18, 1999, 1:20 p.m.: 22 IR 1969; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3082)*

SECTION 34. 326 IAC 11-7-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 11-7-9 Compliance schedule

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

Sec. 9. (a) Designated facilities shall be in compliance with this rule, except section 5 of this rule, according to one (1) of the following compliance schedules:

(1) Within one (1) year from the effective date of this rule, but not later than December 19, 2000.

(2) By December 19, 2000, provided the following:

(A) Installation of air pollution control equipment is necessary to achieve compliance.

(B) The designated facility complies with the measurable and enforceable incremental steps of progress listed as follows:

(i) Submit a final control plan to the department no later than thirty (30) days after the effective date of this rule. This date does not affect the date that a final control plan is required to be submitted to the U.S. EPA.

(ii) Award contracts for emission control systems or for process modifications, or issuance of orders for the purchase of component parts to accomplish emission control or process modifications by May 18, 1999.

(iii) Initiate on-site construction or installation of emission control equipment or process change by November 16, 1999.

(iv) Complete on-site construction or installation of emission control equipment or process change by November 19, 2000.

(C) Designated facilities that are not in compliance within one (1) year from the effective date of this rule must submit performance test results for dioxin/furan emissions that have been conducted during or after 1990.

(D) The performance test shall be conducted according to the procedures in 40 CFR 60, Subpart Cb, Section 60.38b*. ~~as amended by 60 FR 45116 (August 25, 1997)*.~~

(b) All designated facilities shall be in compliance with the training and certification requirements of section 5 of this rule by September 1, 1999. The initial training requirements specified in 40 CFR 60, Subpart Eb, Section 60.54b(f)(1)* ~~as amended by 60 FR 45124 (August 25, 1997)*,~~ shall be completed by whichever date comes later:

(1) September 1, 1999; or

(2) the date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.

(c) Designated facilities not in compliance by December 19, 2000, shall cease operation.

(d) Notwithstanding the requirements of this section, the designated facility shall comply with the compliance schedule in the federal plan until the state plan is approved by the U.S. EPA.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 11-7-9; filed Jan 18, 1999, 1:20 p.m.: 22 IR 1970; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3082)*

SECTION 35. 326 IAC 12-1-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 12-1-2 Definitions

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

Sec. 2. (a) ~~For the purposes of this article, the definitions,~~ Except ~~for the substitutions listed~~ **as provided** in subsection (b), **the definitions,** abbreviations, and units ~~listed~~ in **the following shall apply for purposes of this article:**

(1) 40 CFR 60, Subpart A, ~~Sections~~ **Section** 60.2*. ~~and 60.3*, 54 FR 34008, 54 FR 37534, 55 FR 5211, 55 FR 26912, 55 FR 26931, 55 FR 36932, 55 FR 37674, and 55 FR 40171, shall apply.~~

(2) 40 CFR 60, Subpart A, Section 60.3*.

(b) For the purposes of this article, the following substitutions shall be made for terms used in the portions of 40 CFR 60* ~~54 FR 34008, 54 FR 37534, 55 FR 5211, 55 FR 26912, 55 FR 26931, 55 FR 36932, 55 FR 37674, and 55 FR 40171~~ adopted by reference:

(1) "Administrator" means the commissioner of the department of environmental management.

(2) "U.S. Environmental Protection Agency" or "U.S. EPA" shall mean the department of environmental management.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 12-1-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2554; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed May 21, 2002, 10:20 a.m.: 25 IR 3083)*

SECTION 36. 326 IAC 12-1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 12-1-3 Availability of regulations

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

Sec. 3. ~~(a)~~ The federal regulations ~~adopted~~ **incorporated** by reference appear in 40 CFR 60*. ~~54 FR 34008, 54 FR 37534, 55 FR 5211, 55 FR 26912, 55 FR 26931, 55 FR 36932, 55 FR 37674, and 55 FR 40171.~~

~~(b)~~ ***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and the Federal Register (FR) referenced in this article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or ~~from~~ **are available for review and copying at** the Department of Environmental Management, Office of Air ~~Management, 105 South Meridian Street,~~ **Quality, Tenth Floor, 100 North Senate Avenue,** Indianapolis, Indiana ~~46225.~~ **46204.** *(Air Pollution Control Board; 326 IAC 12-1-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2554; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2219; filed May 21, 2002, 10:20 a.m.: 25 IR 3083)*

SECTION 37. 326 IAC 13-1.1-17.1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 13-1.1-17.1 On-board diagnostic check

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

Sec. 17.1. (a) A certified inspector shall check second generation on-board diagnostic (OBDII) systems to determine if the self-diagnostic system is functioning properly and within the parameters specified at 40 CFR 85.2207*. Beginning January 1, 2001, failure of the OBDII test shall be a basis for failure of the I/M emission test. For vehicles that are 1996 model year or newer, reasons for failure of the OBDII test include any of the following conditions:

(1) The vehicle's OBDII connector is missing, has been tampered with, or is otherwise inoperable.

(2) The malfunction indicator light (MIL) does not illuminate upon vehicle startup.
(3) The MIL is commanded to be illuminated and it is not illuminated based on visual inspection.
(4) The MIL is commanded to be illuminated by any of the OBDII codes specified at 40 CFR 85.2207(c)*.

(b) The test sequence for the inspection of OBDII systems shall consist of the steps described at 40 CFR 85.2222*.

(c) Motorists whose vehicles fail the OBDII test described in subsection (b) shall be provided with the OBDII test result as specified at 40 CFR 85.2223*, including the following information:
(1) The various OBDII codes retrieved.
(2) The status of the MIL illumination command.
(3) The customer alert statement.
Any retrieved codes listed at 40 CFR 85.2223(b)* shall be listed on the test report as specified in that paragraph.

(d) The air pollution control board incorporates by reference the following:
(1) 40 CFR 51, Subpart S, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans"*. ~~as amended at 61 FR 40945 (August 6, 1996)*.~~
(2) 40 CFR 85, Subpart W, "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines"*. ~~as amended at 61 FR 40946 (August 6, 1996)*.~~

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Office of Air Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 13-1.1-17.1; filed Dec 23, 1998, 4:44 p.m.: 22 IR 1471; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3083)*

SECTION 38. 326 IAC 14-2-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 14-2-1 Applicability; incorporation by reference of federal standards
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule shall apply to the following sources:
(1) Asbestos mills.
(2) Surfacing of roadways with asbestos-containing materials.
(3) Manufacturing operations using commercial asbestos.
(4) Spray-on application of materials containing asbestos.
(5) Fabricating operations using commercial asbestos.
(6) Insulating materials that contain commercial asbestos.
(7) Waste disposal for asbestos mills.
(8) Waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.
(9) Inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.
(10) Air cleaning.
(11) Reporting.
(12) Active waste disposal sites.
(13) Operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

(b) The board hereby adopts by reference and incorporates herein 40 CFR 61, Subpart M, Emission Standard for Asbestos*. ~~as amended in 55 FR 48406, November 20, 1990, and 56 FR 1669, January 16, 1991*).~~

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR)~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or ~~from~~ **are available for review and copying at** the Department of Environmental Management, Office of Air ~~Management, Post Office Box 6015,~~ **Quality**, **Indiana Government Center-North, Tenth Floor,** Indianapolis, Indiana ~~46206-6015.~~ **46204.** *(Air Pollution Control Board; 326 IAC 14-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2563; filed Dec 5, 1990, 3:40 p.m.: 14 IR 607; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2011; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3084)*

SECTION 39. 326 IAC 17.1-1-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 17.1-1-2 Applicability
Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3
Affected: IC 13-14-11

Sec. 2. This article applies to the following:
(1) Information received on or after the effective date of this article from a person requesting confidential treatment of that information. The information may be either:
(A) treated as a single unit of information even if the information is comprised of a collection of individual items of information; or
(B) separated into two (2) or more categories to afford different treatment to the information in each category because the claim covers only a portion of the information.
(2) Employees of the department and contractors who:
(A) make the confidentiality determination;
(B) handle the confidential information; or
(C) maintain the file of confidential information.
(3) Public records, except for the following:
(A) In the event of a conflict between this article and 40 CFR 2.301* (Confidentiality of Business Information),

both of which are applicable to the information or document, 40 CFR 2.301* shall govern over this article.

(B) In the event that two (2) or more sections contained in 40 CFR 2.301* apply to the information, the section that provides greater or wider access to the public of the information shall govern.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are also available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 17.1-1-2; filed Jan 26, 2000, 2:03 p.m.: 23 IR 1368; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3084)*

SECTION 40. 326 IAC 19-2-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 19-2-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule, unless specifically exempted in the applicability section of 40 CFR 93, Subpart A*, applies to transportation plans, programs, and projects in nonattainment or maintenance areas for transportation-related criteria pollutants that are developed, funded, or approved by the United States Department of Transportation (DOT) and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 United States Code (U.S.C.) or the Federal Transit Laws.

(b) This rule applies to regionally significant projects, regardless of funding source, located in nonattainment or maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(c) The air pollution control board incorporates by reference the following:

(1) 40 CFR 51, Subpart T, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Laws"*. ~~as amended at 62 FR 43780 (August 15, 1997).~~

(2) 40 CFR 93, Subpart A, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Laws"*, ~~as amended at 62 FR 43780 (August 15, 1997),~~ with the exception of Section 93.102(d)*.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are also available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 19-2-1; filed Apr 28, 1997, 4:00 p.m.: 20 IR 2298; filed Oct 20, 1998, 4:45 p.m.: 22 IR 751; filed May 21, 2002, 10:20 a.m.: 25 IR 3085)*

SECTION 41. 326 IAC 19-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 19-3-2 Definitions

Authority: IC 13-14-8-7; IC 13-17-3-4; IC 13-17-3-14; IC 13-17-5-1
Affected: IC 13-12-3-1

Sec. 2. The following definitions apply throughout this rule unless expressly stated:

(1) "Adjusted loaded vehicle weight" or "ALVW" means the numerical average of the vehicle curb weight and the GVWR.

(2) "Can be centrally fueled" means vehicles that are centrally fueled or capable of being centrally fueled.

(3) "Capable of being centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that could be refueled one hundred percent (100%) of the time at a location that is owned, operated, or controlled by the covered fleet operator or is under contract with the covered fleet operator. The fact that a portion of the vehicles is not capable of being centrally fueled does not exempt an entire fleet from the program. The fact that a vehicle is not centrally fueled does not mean that it could not be centrally fueled. Determination of whether a vehicle is capable of being centrally fueled shall be made in accordance with the guidance as ~~amended at 58 FR 64679, December 9, 1993, and 59 FR 50042, September 30, 1994*.~~ **stated in 40 CFR 88*.**

(4) "Centrally fueled" means a fleet, or that portion of a fleet, consisting of vehicles that are fueled one hundred percent (100%) of the time at a location that is owned, operated, or controlled by the covered fleet operator or is under contract with the covered fleet operator. Any vehicle that is, under normal operations, garaged at a personal residence at night but that is, in fact, centrally fueled one hundred percent (100%) of the time shall be considered to be centrally fueled for purposes of this rule. The fact that a portion of the vehicles in a fleet is not centrally fueled does not exempt an entire fleet from the program. The fact that a vehicle is not centrally fueled does not mean it could not be centrally fueled in accordance with the definition of capable of being centrally fueled.

(5) "Chicago severe nonattainment area" means the Chicago-Gary-Lake County Area, Severe-17 ozone nonattainment area

as defined in ~~56 FR 56694, November 6, 1991*.~~ **40 CFR 81.315*.**

(6) "Clean alternative fuel" means:

(A) any fuel, including:

(i) methanol;

(ii) ethanol; or

(iii) other alcohols;

including any mixture thereof containing eighty-five percent (85%) or more by volume of such alcohol with gasoline or other fuels;

(B) reformulated gasoline;

(C) diesel;

(D) natural gas;

(E) liquified petroleum gas; and

(F) hydrogen or other power source, including electricity;

used in a clean fuel vehicle that complies with the standards and requirements applicable to such vehicle under this rule when using such fuel or power source. In the case of any flexible fuel vehicle or dual fuel vehicle, that means only a fuel with respect to which such vehicle was certified as a clean fuel vehicle.

(7) "Clean fuel vehicle" means a vehicle certified as an LEV, a ULEV, or a ZEV when it is operating on the clean fuel for which the vehicle was certified as a clean fuel vehicle, meeting the emission standards applicable to such a vehicle under 40 CFR 88, Subpart A, 88.104-94 and 88.105-94*.

(8) "Combination heavy-duty vehicle" means a motor vehicle with a GVWR greater than eight thousand five hundred (8,500) pounds that is comprised of a truck-tractor and one (1) or more pieces of trailered equipment.

(9) "Control" means the following:

(A) When used to join all entities under common management, means:

(i) a third person or firm has equity ownership of at least fifty-one percent (51%) in each of two (2) or more firms;

(ii) two (2) or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies; or

(iii) one (1) firm leases, operates, supervises, or owns at least fifty-one percent (51%) of the equipment or facilities used by another person or firm, or has equity ownership of at least fifty-one percent (51%) of another firm.

(B) When used to refer to the management of vehicles, a person has the authority to decide who can operate a particular vehicle and the purposes for which the vehicle can be operated.

(C) When used to refer to the management of people, a person has the authority to direct the activities of another person or employee in a precise situation such as at the work place.

(10) "Converted clean fuel vehicle" means a vehicle that has been adapted to operate on clean fuel using a conversion configuration that has been certified by U.S. EPA as meeting clean fuel emission standards and converted in accordance with the requirements for clean fuel conversions under 40 CFR 88 Subpart C, 88.306-94*.

(11) "Covered fleet" means ten (10) or more motor vehicles that are owned or operated by a single person. In determining the number of vehicles owned or operated by a single person for purposes of this subdivision, all motor vehicles owned or operated, leased, or otherwise controlled by such person, by any person who controls such person, or by any person under common control with such person shall be treated as owned by such person. The term shall not include any vehicle that is exempt from this rule in accordance with section 1(b) of this rule.

(12) "Covered fleet operator" means a person who operates a fleet of at least ten (10) covered fleet vehicles that is operated in Lake or Porter County. This includes covered fleet vehicles garaged outside of Lake or Porter County.

(13) "Covered fleet vehicle" means a motor vehicle that is:

(A) in a vehicle class for which standards are applicable under this rule; and

(B) in a covered fleet that can be centrally fueled.

(14) "Dealer demonstration vehicle" means any vehicle that is:

(A) operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions; or

(B) used for allowing potential purchasers to drive the vehicle for prepurchase or prelease evaluation.

(15) "Department" means the Indiana department of environmental management.

(16) "Dispenser" means a device through which a motor fuel is transferred from storage at a refueling source to a motor vehicle.

(17) "Dual fuel vehicle" means a vehicle capable of operating on either of two (2) fuels. A dual fuel vehicle qualifies as a clean fuel vehicle when certified in accordance with 40 CFR 88, Subpart A, 88.104-94*, as meeting the standards applicable to dual fuel vehicles on either fuel and is eligible to meet purchase requirements and earn credits when operating on the fuel on which it was certified as a dual fuel clean fuel vehicle while operating in Lake or Porter County.

(18) "Emergency vehicle" means any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people or equipment to and from situations in which speed is required to save lives or property, for example, a rescue vehicle, a fire truck, or an ambulance.

(19) "Flexible fuel vehicle" means a vehicle capable of operating on either or any combination of two (2) fuels. A flexible fuel vehicle qualifies as a clean fuel vehicle when certified in accordance with 40 CFR 88, Subpart A, 88.104-94*, as meeting the standards applicable to flexible fuel vehicles on either fuel and is eligible to meet purchase requirements and earn credits when operating on the fuel on which it was certified as a flexible fuel clean fuel vehicle while operating in Lake or Porter County.

(20) "Fuel provider" means either of the following:

(A) A person who supplies clean alternative fuel in Lake or Porter County.

(B) A person who refines, imports, distributes, sells, or

trades gasoline to Indiana for use in motor vehicles in Lake or Porter County.

(21) "g/mi" means grams per mile.

(22) "Gasoline" means any fuel that is sold for use in motor vehicles or motor vehicle engines and is commonly or commercially known or sold as gasoline.

(23) "GVWR" means gross vehicle weight rating which is the total vehicle weight, including load, as designated by the vehicle manufacturer.

(24) "HDV" means a heavy-duty vehicle weighing more than eight thousand five hundred (8,500) pounds and less than twenty-six thousand (26,000) pounds GVWR.

(25) "ILEV" means an inherently low emissions vehicle that is a light-duty vehicle or light-duty truck conforming to the applicable ILEV standard as defined in 40 CFR 88, Subpart C, 88.311-93*. No dual fuel vehicles may be considered ILEVs unless they are certified to the applicable standards on all fuel types for which they are designed to operate.

(26) "Law enforcement vehicle" means any vehicle that is primarily operated by:

(A) a civilian or military police officer or sheriff;

(B) personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the federal government; or

(C) state highway patrols, municipal law enforcement, or other similar law enforcement agencies;

and which is used for the purpose of law enforcement activities, including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. For federal law enforcement vehicles, the definition contained in ~~58 FR 64688, December 9, 1993*,~~ **40 CFR 88*** applies.

(27) "LDT" means light-duty truck, a vehicle weighing less than eight thousand five hundred (8,500) pounds GVWR.

(28) "LDV" means light-duty vehicle, a vehicle weighing less than eight thousand five hundred (8,500) pounds GVWR.

(29) "LEV" means a low emission vehicle that meets the applicable LEV standards as defined in 40 CFR 88, Subpart A, 88.104-94*.

(30) "Loaded vehicle weight" or "LVW" means the vehicle curb weight plus three hundred (300) pounds.

(31) "Location" means any building, structure, facility, or installation that:

(A) is owned or operated by a person or is under the control of a person; or

(B) is located on one (1) or more contiguous properties and contains or could contain a fueling pump or pumps for the use of the vehicles owned or controlled by that person.

(32) "Model year" or "MY", as it applies to the clean fuel vehicle fleet purchase requirements, means September 1 through August 31. For example, the 1998 model year begins September 1, 1997, and ends August 31, 1998.

(33) "Motor vehicle dealer" means any person who is engaged in the sale or distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(34) "Motor vehicle manufacturer" means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles, or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles, or new nonroad engines, but does not include a motor vehicle dealer as defined in subdivision (33).

(35) "Motor vehicles held for lease or rental to the general public" means a vehicle that is owned or controlled primarily for the purpose of short term rental or extended term leasing (with or without maintenance), without a driver, under a contract.

(36) "NMOG" means nonmethane organic gases.

(37) "New covered fleet vehicle" means a vehicle that has not been previously controlled by the current purchaser, regardless of the model year, except any of the following:

(A) Vehicles that were manufactured before the 1999 model year for such vehicle's weight class.

(B) Vehicles transferred due to the purchase of a company not previously controlled by the purchaser or due to a consolidation of business operations.

(C) Vehicles transferred as part of an employee transfer.

(D) Vehicles transferred for seasonal requirements, that is, for less than one hundred twenty (120) days.

This definition of new covered fleet vehicle is distinct from the definition of new vehicle as it applies to manufacturer certification, including the certification of vehicles to clean fuel standards.

(38) "New motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.

(39) "Noncovered fleet" means a fleet that operates ten (10) or more motor vehicles in Lake or Porter County that are not centrally fueled or capable of central fueling or are exempt under section 1(b) of this rule.

(40) "Owned or operated, leased, or otherwise controlled by" means either of the following:

(A) Such person holds the beneficial title to such vehicle.

(B) Such person uses the vehicle for transportation purposes under a contract or similar arrangement, the term of the contract or similar arrangement is for a period of one hundred twenty (120) days or more, and such person has control over the vehicle as defined in ~~subdivision (8).~~ **(9).**

(41) "Partially covered fleet" means a fleet in a covered area that contains both covered and noncovered fleet vehicles.

(42) "Person" means an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(43) "ULEV" means an ultra low emissions vehicle that meets the applicable ULEV standards as defined in 40 CFR 88, Subpart A, 88.104-94*.

(44) "Under normal circumstances garaged at personal

residence" means a vehicle that, when it is not in use, is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, or business location. Such a vehicle is not considered to be capable of being centrally fueled and is exempt from this rule unless it is, in fact, centrally fueled.
(45) "Vehicle curb weight" means the actual weight or the manufacturer's estimated weight.
(46) "Vehicle used for motor vehicle manufacturer product evaluations and tests" means a vehicle that is:
(A) owned and operated by a:
(i) motor vehicle manufacturer; or
(ii) motor vehicle component manufacturer; or
(B) owned or held by:
(i) a university research department;
(ii) an independent testing laboratory; or
(iii) other such evaluation facility;
solely for the purpose of evaluating the performance of such vehicle for engineering, research and development, or quality control reasons.
(47) "ZEV" means a zero (0) emissions vehicle that meets the applicable ZEV standards as defined in 40 CFR 88, Subpart A, 88.104-94*.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) or Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 19-3-2; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1043; errata filed Apr 9, 1996, 2:30 p.m.: 19 IR 2044; filed Jun 1, 1998, 3:36 p.m.: 21 IR 3771; filed May 21, 2002, 10:20 a.m.: 25 IR 3085)*

SECTION 42. 326 IAC 19-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 19-3-3 General purchase requirements
Authority: IC 13-14-8-7; IC 13-17-3-4; IC 13-17-3-14; IC 13-17-5-1
Affected: IC 13-12-3-1

Sec. 3. (a) Beginning in model year 1999 and in each year thereafter, a percentage of new covered fleet vehicles purchased by each fleet owner or operator subject to this rule shall be clean fuel vehicles. The new vehicle purchase percentages for each vehicle type shall be:

Vehicle Type	MY 1999	MY 2000	MY 2001 and after
LDV	30%	50%	70%
LDT	30%	50%	70%
HDV	50%	50%	50%

(b) The requirements of subsection (a) may be met through the conversion of existing or new gasoline or diesel powered vehicles to clean fuel vehicles in accordance with the requirements for clean fuel vehicle conversions contained in 40 CFR 88, Subpart C, 88.306-94*.

(c) Purchase requirements may be met by purchasing vehicles that meet or exceed the LEV standard or through the purchase of credits from another fleet in the Chicago severe nonattainment area so that the total equals the minimum requirement.

(d) The fleet owner or operator shall decide which vehicles and fuels to use to comply with the requirements of this rule.

(e) A fleet owner or operator who purchases vehicles certified as LEVs, ULEVs, and ZEVs beyond the percentage required in subsection (a) shall receive credits as described in section 4(e) of this rule.

(f) Vehicles purchased to satisfy the requirements of this section shall be operated on the clean alternative fuel on which they were certified to meet the clean fuel vehicle emissions standards when operating in Lake or Porter County.

***This document is incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 19-3-3; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1045; errata filed Apr 9, 1996, 2:30 p.m.: 19 IR 2044; filed Jun 1, 1998, 3:36 p.m.: 21 IR 3774; filed May 21, 2002, 10:20 a.m.: 25 IR 3088)*

SECTION 43. 326 IAC 19-3-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 19-3-5 Registration and record keeping requirements
Authority: IC 13-14-8-7; IC 13-17-3-4; IC 13-17-3-14; IC 13-17-5-1
Affected: IC 13-12-3-1

Sec. 5. Registration and record keeping requirements are as follows:
(1) Fleet operators who control and operate ten (10) or more vehicles in Lake or Porter County shall register their fleet with the department by July 1, 1996, regardless of where the fleet is located.
(2) Covered fleet operators who desire to obtain early purchase credits before the 1999 purchase requirements shall register their fleet at least thirty (30) days before the purchase of clean fuel vehicles.

(3) The owner or operator of a fleet which meets the applicability requirements after the effective date of this rule, because of an increase in fleet size or because of newly obtained central fueling capability, shall register with the department within sixty (60) days after attaining covered fleet status.

(4) On or before November 1 of each year beginning in 1999, each covered fleet operator shall submit an annual report to the department. The report shall include the following:

(A) Name, address, and telephone number of fleet owner or operator.

(B) Signature of responsible official as defined in 326 IAC 2-7-1(34).

(C) The total number of vehicles in the fleet, including both covered and exempt vehicles.

(D) Identification of the covered vehicles to include flexible fuel and dual fuel vehicles shall provide the following information:

(i) Vehicle identification number.

(ii) Type.

(iii) Whether flexible fuel or dual fuel.

(iv) Yearly mileage per vehicle.

(v) Miles operated in covered area.

(vi) Yearly fuel usage and type per vehicle.

(E) Identification of covered dedicated vehicles shall provide the following information:

(i) Vehicle identification number.

(ii) Type.

(F) Identification of exempt vehicles by type of vehicle that is exempt with documentation of exempt status.

(G) The report shall include the total number of vehicles purchased with a description of the type of vehicle, model year, and the number of vehicles purchased or converted that are certified as clean fuel vehicles for the previous and current model years.

(H) Clean fuel certification for all clean fuel vehicles purchased or converted as follows:

(i) The number of credits that have been accumulated.

(ii) The credit market activities from the previous year.

(I) Number and type of vehicles that are garaged at a personal residence.

(5) Determination of covered fleet status shall be submitted to the department by covered and noncovered fleets by November 1, 1999, and every odd-numbered year thereafter to determine if the fleet is covered. This report shall include the number of vehicles that are centrally fueled, or capable of being centrally fueled, and supporting documentation showing how the numbers were determined in accordance with ~~58 FR 64679, December 9, 1993, and 59 FR 50042, September 30, 1994*.~~ **40 CFR 88*.**

(6) The following records shall be maintained for compliance audit purposes:

(A) Information required in the annual report.

(B) Routine maintenance records of all vehicles.

(C) Fuel economy information, and fuel usage for dual fuel or flexible fuel vehicles.

(D) Copies of converted vehicle certification for all converted clean fuel vehicles.

(E) Clean fuel vehicles shall at all times be accompanied by certification that they are clean fuel vehicles.

(7) The department may request other information as necessary to determine compliance with this rule.

***This documents** *[sic., document]* **is incorporated by reference.** Copies ~~of the Federal Register (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 19-3-5; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1048; filed Jun 1, 1998, 3:36 p.m.: 21 IR 3774; filed May 21, 2002, 10:20 a.m.: 25 IR 3088)*

SECTION 44. 326 IAC 20-1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-1-1 Incorporation of federal regulations

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. The air pollution control board incorporates by reference 40 CFR 63, Subpart A* ~~59 FR 12408*,~~ concerning general provisions for emission standards for hazardous air pollutants.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this article~~ **section** *[sic.]* may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or **are available for review and copying at** the Indiana Department of Environmental Management, **Office of Air Quality, Indiana Government Center-North, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-1-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2282; errata filed May 25, 1994, 11:10 a.m.: 17 IR 2358; filed Nov 1, 1995, 8:30 a.m.: 19 IR 340; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3089)*

SECTION 45. 326 IAC 20-1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-1-3 Definitions

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 3. (a) For the purposes of this article, the definitions listed in 40 CFR 63.2* ~~59 FR 12408*~~ shall apply with the exception of subsection (b).

(b) The following definitions shall be substituted for the terms from 40 CFR 63.2*:

(1) "Administrator" means the commissioner of the department of environmental management.
(2) "Permitting authority" means the commissioner of the department of environmental management.
(3) "U.S. Environmental Protection Agency" or "U.S. EPA" means the department of environmental management.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or **are available for review and copying at** the Indiana Department of Environmental Management, **Office of Air Quality, Indiana Government Center-North, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-1-3; filed Nov 1, 1995, 8:30 a.m.: 19 IR 340; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3089)*

SECTION 46. 326 IAC 20-2-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-2-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to stationary sources that have more than a threshold quantity of a regulated substance in a process as determined under subsection (b).

(b) The air pollution control board incorporates by reference ~~(1)~~ 40 CFR 68, Subparts A through H*,
~~(2) 40 CFR 68, 62 FR 45130 (August 25, 1997)*;~~
~~(3) 40 CFR 68, 63 FR 640 (January 6, 1998)*;~~
~~(4) 40 CFR 68, 64 FR 964 (January 6, 1999)*;~~
~~(5) 40 CFR 68, 64 FR 28696 (May 26, 1999)*; and~~
~~(6) 40 CFR 68, 65 FR 13243 (March 13, 2000);~~
that ~~establish~~ **establishes** a list of regulated substances and thresholds, and the requirements for owners or operators of stationary sources concerning the prevention of accidental releases, with the exception of Section 68.120 concerning administrator discretion to add or delete listed regulated substances.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-2-1; filed Nov 1, 1995, 8:30 a.m.: 19 IR 341; filed Nov 20, 2000, 3:25 p.m.: 24 IR 953; filed May 21, 2002, 10:20 a.m.: 25 IR 3090)*

SECTION 47. 326 IAC 20-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-3-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. (a) The provisions of this rule apply to existing and new byproduct coke oven batteries and to existing nonrecovery coke oven batteries used to manufacture coke, including those located at a coke plant, an integrated steel mill, or a foundry.

(b) The air pollution control board incorporates by reference 40 CFR 63**,** Subpart L*, ~~58 FR 57898*,~~ Emission Standards for Hazardous Air Pollutants for Coke Oven Batteries, with the exception of the following sections:
(1) **40 CFR** 63.302(d)*, concerning alternative standards for byproduct coke oven batteries.
(2) **40 CFR** 63.304(b)(6)*, concerning administrator approval of idle batteries.
(3) **40 CFR** 63.305(b)*, 63.305(d)*, and 63.305(e)*, concerning alternative standards for coke oven doors.
(4) **40 CFR** 63.307(d)*, concerning alternative standards for bypass/bleeder stacks*.
(5) Section 2 of Method 303 in Appendix A of Subpart L*, concerning observer certification.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20204~~ **20401** or **are available for review and copying at** the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Office of Air Quality**, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-3-1; filed Nov 1, 1995, 8:30 a.m.: 19 IR 341; filed May 21, 2002, 10:20 a.m.: 25 IR 3090)*

SECTION 48. 326 IAC 20-4-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-4-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. (a) The provisions of this rule apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals which are either major sources or are integral parts of facilities that are major sources as defined in 326 IAC 2-7-1(21)(A).

(b) The air pollution control board incorporates by reference 40 CFR 63**,** Subpart Q*, ~~59 FR 46339*,~~ National Emission

Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

***This document is incorporated by reference.** Copies ~~of~~ ~~the~~ ~~Code~~ ~~of~~ ~~Federal~~ ~~Regulations~~ ~~(CFR)~~ ~~and~~ ~~Federal~~ ~~Register~~ ~~(FR)~~ ~~referenced~~ ~~in~~ ~~this~~ ~~article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20204~~ **20401** or **are available for review and copying at** the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Office of Air Quality, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-4-1; filed Sep 14, 1995, 9:00 a.m.: 19 IR 206; filed May 21, 2002, 10:20 a.m.: 25 IR 3090)*

SECTION 49. 326 IAC 20-5-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-5-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to commercial sterilization and fumigation operations using ethylene oxide as provided in 40 CFR 63.360*.

(b) As provided in 40 CFR 63.360*, this rule does not apply to the following:

(1) Beehive fumigators.

(2) Research or laboratory facilities as defined in Section 112(c)(7) of the Clean Air Act Amendments of 1990.

(3) Ethylene oxide sterilization operations, as defined in 40 CFR 63.361*, at stationary sources, such as hospitals, doctors' offices, clinics, or other facilities whose primary purpose is to provide medical services to humans or animals.

(c) The air pollution control board incorporates by reference 40 CFR 63, Subpart O*, Ethylene Oxide Emissions Standards for Sterilization Facilities**.** ~~59 FR 62589* (December 6, 1994) as amended at 61 FR 27785* (June 3, 1996).~~

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Office of Air Quality,** Indiana Government Center-North, ~~Room 1001,~~ **Tenth Floor,** 100 North Senate Avenue, ~~P.O. Box 6015,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-5-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2759; filed May 21, 2002, 10:20 a.m.: 25 IR 3091)*

SECTION 50. 326 IAC 20-6-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-6-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. (a) The provisions of this rule apply to each new and existing batch vapor, in-line vapor, and in-line cold and batch cold solvent cleaning machine that uses any solvent containing:

(1) methylene chloride (CAS No. 75-09-2);

(2) perchloroethylene (CAS No. 127-18-4);

(3) trichloroethylene (CAS No. 79-01-6);

(4) 1,1,1-trichloroethane (CAS No. 71-55-6);

(5) carbon tetrachloride (CAS No. 56-23-5);

(6) chloroform (CAS No. 67-66-3); or

(7) any combination of these halogenated HAP solvents;

in a total concentration greater than five percent (5%) by weight as a cleaning or drying agent. The provisions of this rule do not apply to wipe cleaning activities, such as using a rag containing halogenated solvent or a spray cleaner containing halogenated solvent.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart T*, ~~59 FR 61801* (December 2, 1994), 59 FR 67750* (December 30, 1994), and 60 FR 29484 (June 5, 1995)*,~~ National Emission Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning, with the exception of the following sections:

(1) **40 CFR** 63.463(d)(9)*, Alternative maintenance practices; and

(2) **40 CFR** 63.469*, Equivalent methods of control.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402, the Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204,~~ **20401** or **are available for review and copying at** the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-6-1; filed Jan 25, 1996, 5:00 p.m.: 19 IR 1324; errata filed Feb 8, 1996, 5:30 p.m.: 19 IR 1373; errata filed Mar 11, 1996, 4:10 p.m.: 19 IR 1568; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3091)*

SECTION 51. 326 IAC 20-7-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-7-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to the owner or operator of each

dry cleaning facility, as defined in 40 CFR 63.321*, that uses perchloroethylene (PCE) chemicals in the dry cleaning process.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart M*, National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities. ~~as amended at 61 FR 27785* (June 3, 1996).~~

(c) Major sources, as defined in ~~326 IAC 2-7-1(21),~~ **326 IAC 2-7-1(22),** subject to the provisions of this rule are also subject to the requirements of 326 IAC 2-7.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and the Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, ~~Room 1001,~~ **Tenth Floor,** 100 North Senate Avenue, ~~P.O. Box 6015,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-7-1; filed Nov 1, 1995, 8:30 a.m.: 19 IR 342; filed May 12, 1997, 10:00 a.m.: 20 IR 2759; filed May 21, 2002, 10:20 a.m.: 25 IR 3091)*

SECTION 52. 326 IAC 20-8-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-8-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. (a) The provisions of this rule apply to each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart N*, ~~60 FR 4948* (January 25, 1995); 60 FR 27598* (May 24, 1995); 60 FR 33122* (June 27, 1995); and 61 FR 27785* (June 3, 1996),~~ National Emission Standards for Chromium Emissions from Hard and Decorative Electroplating and Anodizing Tanks.

(c) Notwithstanding 326 IAC 2-7-2, nonmajor sources that have been exempted under ~~61 FR 27785*~~ **40 CFR 63, Subpart N*** are not required to obtain a Part 70 permit from the department.

(d) Notwithstanding 326 IAC 2-7-4(a), nonmajor sources that have been deferred under ~~61 FR 27785*~~ **40 CFR 63, Subpart N*** shall submit Part 70 permit applications to the department by December 9, 2000.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~P.O. Box 6015,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-8-1; filed December 1, 1995, 10:00 a.m.: 19 IR 659; filed Jul 23, 1998, 4:41 p.m.: 21 IR 4521; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3092)*

SECTION 53. 326 IAC 20-9-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-9-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. (a) This rule establishes emission limitations for operations involved in the manufacture of any flexible base substrate that is covered with a coating containing magnetic particles and that is used for any type of information storage such as audio and video recording.

(b) These provisions apply to each new and existing magnetic tape manufacturing operation located at a major source of hazardous air pollutant emissions. Research or laboratory facilities, as defined in ~~59 FR 64580* (December 15, 1994),~~ **40 CFR 63.702*,** are exempt from these emission standards.

(c) Applicable operations include, but are not limited to, the following:

(1) Solvent storage tanks.
(2) Mix preparation equipment.
(3) Coating operations.
(4) Waste handling devices.
(5) Particulate transfer operations.
(6) Wash sinks for cleaning removable parts.
(7) Cleaning involving the flushing of fixed lines.
(8) Wastewater treatment systems.
(9) Condenser vents associated with distillation and stripping columns in the solvent recovery area, but not including the vent on a condenser that is used as the add-on air pollution control device.

(d) The air pollution control board incorporates by reference 40 CFR 63**,** Subpart EE, National Emission Standards For Magnetic Tape Manufacturing Operations*. ~~59 FR 64580* (December 15, 1994).~~

(e) Major sources, as defined in ~~326 IAC 2-7-1(21),~~ **326 IAC 2-7-1(22),** subject to the provisions of this rule are also subject to the requirements of 326 IAC 2-7.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referred to in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402, the Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204,~~ **20401** or **are available for review and copying at** the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality**, **Tenth Floor,** 100 North Senate Avenue, ~~P.O. Box 6015,~~ Indianapolis, Indiana ~~46206.~~ **46204.** *(Air Pollution Control Board; 326 IAC 20-9-1; filed Jan 9, 1996, 5:00 p.m.: 19 IR 1325; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3092)*

SECTION 54. 326 IAC 20-10-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-10-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.420*.

(b) The air pollution control board incorporates by reference ~~(1)~~ 40 CFR 63, Subpart R*, ~~and~~
~~(2) 62 FR 9087 (February 28, 1997)*;~~
National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-10-1; filed Oct 5, 1999, 3:46 p.m.: 23 IR 300; filed May 21, 2002, 10:20 a.m.: 25 IR 3093)*

SECTION 55. 326 IAC 20-11-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-11-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to chemical manufacturing process units as that term is defined in 40 CFR 63.101*, as provided in 40 CFR 63.100*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subparts F, G, and H, Sections 63.100 through 63.182*, ~~61 FR 64572 (December 5, 1996), and 62 FR 2722 (January 17, 1997)*,~~ national emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-11-1; filed Oct 19, 1998, 10:17 a.m.: 22 IR 752; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3093)*

SECTION 56. 326 IAC 20-12-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-12-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to emissions of certain hazardous air pollutants from certain specified processes as provided in 40 CFR 63.190*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subparts H and I, Sections 63.160 through 63.193*, ~~as amended by 62 FR 2722 (January 17, 1997)*,~~ national emission standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-12-1; filed Oct 19, 1998, 10:17 a.m.: 22 IR 752; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3093)*

SECTION 57. 326 IAC 20-13-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-13-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to the following affected sources, as defined in 40 CFR 63.542*, at all secondary lead smelters:

(1) Blast, reverberatory, rotary, and electric melting furnaces.
(2) Refining kettles.
(3) Agglomerating furnaces.
(4) Dryers.
(5) Process fugitive sources.
(6) Fugitive dust sources.

(b) This rule does not apply to primary lead smelters, lead refiners, or lead remelters.

(c) The air pollution control board incorporates by reference 40 CFR 63, Subpart X*, National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting, ~~62 FR 32216* (June 13, 1997),~~ with the exception of the following sections:

(1) **40 CFR** 63.543(a)* and **40 CFR** 63.543(j)* concerning lead standards for process sources.

(2) **40 CFR** 63.544(c)*, **40 CFR** 63.544(d)*, and **40 CFR** 63.544(g)* concerning lead standards for process fugitive sources.

(3) **40 CFR** 63.545(e)* concerning lead standards for fugitive dust emissions.

(4) **40 CFR** 63.543(h)* and **40 CFR** 63.543(i)* concerning compliance demonstrations for process sources.

(5) **40 CFR** 63.544(e)* and **40 CFR** 63.544(f)* concerning compliance demonstrations for process fugitive sources.

(6) **40 CFR** 63.548(e)* concerning bag leak detection system requirements.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Registers (FR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-13-1; filed Dec 1, 2000, 2:22 p.m.: 24 IR 958; filed May 21, 2002, 10:20 a.m.: 25 IR 3093)*

SECTION 58. 326 IAC 20-13-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-13-2 Emission limitations; lead standards for Quemetco, Incorporated

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

Sec. 2. (a) In addition to the requirements under section 1 of this rule, Quemetco, Inc., Indianapolis shall comply with the following emission limitations and operating provisions:

Facility Description	Emission Limitation mg/dscm
Stack 100	1.0
Stack 101	0.5
Stack 102	0.5
Stack 103	0.5
Stack 104	0.5
Stack 105	0.5
Stack 106	0.5
Stack 107	0.5
Stack 108	0.5
Stack 109	0.5
Stack 111	1.0

Process fugitive and fugitive dust emissions from stacks 101 through 109 shall be vented to the atmosphere through high efficiency particulate air (HEPA) filters as defined in 40 CFR 63.542*.

(b) New or reconstructed affected sources, as defined in 40 CFR 63.542*, not described in subsection (a), shall comply with the emission limitations under section 4 of this rule.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-13-2; filed Dec 1, 2000, 2:22 p.m.: 24 IR 958; filed May 21, 2002, 10:20 a.m.: 25 IR 3094)*

SECTION 59. 326 IAC 20-13-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-13-4 Emission limitations; other secondary lead smelters

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

Sec. 4. In addition to the requirements under section 1 of this rule, the owner or operator of any secondary lead smelter not described under section 2 or 3 of this rule shall comply with the following emission limitations and operating provisions:

Facility Description	Emission Limitation mg/dscm
Process stacks	1.0
Process fugitive stacks	0.5
Stacks venting fugitive dust sources	0.5

Process fugitive emissions and stacks venting fugitive dust sources shall be vented to the atmosphere through high efficiency particulate air (HEPA) filters as defined in 40 CFR 63.542*.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) referenced in this rule~~ may be obtained from the Government Printing Office, **732**

North Capitol Street NW, Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-13-4; filed Dec 1, 2000, 2:22 p.m.: 24 IR 959; filed May 21, 2002, 10:20 a.m.: 25 IR 3094)*

SECTION 60. 326 IAC 20-13-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-13-5 Operational and work practice standards

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

Sec. 5. The owner or operator of a secondary lead smelter must install and continuously operate a bag leak detection system for all baghouses controlling process and process fugitive sources. In accordance with 40 CFR 63.548(g)* and 40 CFR 63.548(h)*, baghouses equipped with HEPA filters or used exclusively for the control of fugitive dust emissions are exempt from this requirement. The owner or operator must maintain and operate each baghouse controlling process and process fugitive sources such that the following conditions are met:

(1) The alarm on the system does not activate for more than five percent (5%) of the total operating time in a six (6) month reporting period.

(2) Procedures to determine the cause of the alarm are initiated within one (1) hour of the alarm according to the standard operating procedures manual for corrective action required under 40 CFR 63.548*.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-13-5; filed Dec 1, 2000, 2:22 p.m.: 24 IR 959; filed May 21, 2002, 10:20 a.m.: 25 IR 3095)*

SECTION 61. 326 IAC 20-13-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-13-6 Compliance testing

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

Sec. 6. (a) Except as provided in subsection (b), the owner or operator of a secondary lead smelter shall conduct a compliance test for lead compounds from process stacks on an annual basis, no later than twelve (12) calendar months following the previous compliance test.

(b) If a compliance test demonstrates a source emitted lead compounds from process stacks less than or equal to fifty percent (50%) of the applicable limit under this rule during the compliance test, the owner or operator of a secondary lead smelter shall be allowed up to twenty-four (24) calendar months from the previous compliance test to conduct the next compliance test for lead compounds.

(c) The owner or operator of a secondary lead smelter shall conduct a compliance test for lead compounds from process fugitive stacks and fugitive dust stacks on the following schedule:

(1) Process fugitive stacks shall be tested on a biennial basis, no later than twenty-four (24) months following the previous compliance test.

(2) Fugitive dust stacks shall conduct an initial compliance test only and shall not be required to conduct testing on an annual or biennial basis.

Nothing in this subsection shall prohibit the department from requesting a compliance test in accordance with 326 IAC 2-1.1-11.

(d) The following shall apply to tests conducted to demonstrate compliance with the emission limitations under ~~sections~~ **section** 2, 3, or 4 of this rule:

(1) The owner or operator shall use the appropriate test methods under 40 CFR 63.547*.

(2) Test notification and reporting shall comply with 326 IAC 3-6.

(e) Performance testing of process sources conducted prior to the effective date of this rule shall be subject to the testing schedule of 40 CFR 63.543(i)*. Performance testing of sources conducted within twenty-four (24) months prior to the effective date of this rule that demonstrates compliance with the emission limitations in sections 2 through 4 of this rule shall be considered valid compliance tests for purposes of this rule.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-13-6; filed Dec 1, 2000, 2:22 p.m.: 24 IR 960; filed May 21, 2002, 10:20 a.m.: 25 IR 3095)*

SECTION 62. 326 IAC 20-13-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-13-7 Compliance requirements

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

Sec. 7. (a) Owners and operators of secondary lead smelters shall maintain purchasing records and manufacturer's specifications of all high efficiency particulate air (HEPA) filters installed on process fugitive and fugitive dust stacks demonstrating the filters have been certified by the manufacturer to meet the definition of HEPA filters in 40 CFR 63.542*. The records and manufacturer's specifications shall be maintained on site for three (3) years and shall be available for an additional two (2) years.

(b) The owner or operator of any secondary lead smelter shall comply with the following opacity limitations:

(1) Stacks exhausting process, process fugitive emissions, or fugitive dust emissions shall not exceed five percent (5%) opacity from particulate matter emissions for any one (1) six (6) minute averaging period as measured by 40 CFR 60, Appendix A, Reference Method 9*.

(2) Exterior dust handling systems of dry collectors of lead emitting processes (augers, hoppers, transfer points) shall not discharge to the atmosphere visible emissions in excess of five percent (5%) of an observation period consisting of three (3) twenty (20) minute periods, as determined by 40 CFR 60, Appendix A, Reference Method 22*. The provisions under this subdivision for dust handling systems shall not apply during maintenance and repair of the dust handling systems. During maintenance and repair of the dust handling system, the owner or operator shall take reasonable measures to prevent or minimize fugitive dust emissions.

(3) The opacity limitations in this subsection shall only apply to particulate matter emissions.

(c) In addition to the requirements of 40 CFR 63.8*, 40 CFR 63.10*, and 40 CFR 63.547(e)*, an owner or operator of any secondary lead smelter using a total enclosure shall do the following:

(1) Submit a plan describing the installation and operation of a continuous monitoring system that meets the requirements of 40 CFR 63.547(e)(2)*. The plan shall be postmarked or hand delivered to the department one hundred twenty (120) days prior to installation of the continuous monitoring system.

(2)Within one hundred eighty (180) days after written approval of the monitoring system plan by the department, install and operate a continuous monitoring system to measure and record pressure differential. The continuous monitoring system shall consist of the following:

(A) A differential pressure sensor capable of measuring pressure within a range of two-hundredths (0.02) to two-tenths (0.2) millimeter of mercury (one-hundredth (0.01) to one-tenth (0.1) inch water).

(B) A processor.

(C) An alarm.

(D) A continuous recording device.

Any changes to the location or operation of the system shall require prior written approval by the department.

(3) Initiate corrective actions within thirty (30) minutes of a monitoring system alarm.

(4) Request, if desired, to cease monitoring pressure differential under this subsection twelve (12) months from the commencement date of approved monitoring or the effective date of this rule, whichever is later.

(5) Notify the department of any physical changes including, but not limited to, ventilation capacity and building size. If the department determines the net ~~affect~~ **effect** of any such changes may potentially affect air pressure readings of the building, then the owner or operator shall resume monitoring for an additional twelve (12) months. Monitoring may be discontinued in accordance with the procedures under subdivision (4).

(6) Maintain the following on site for a period of three (3) years and have available for an additional two (2) years:

(A) Records of the pressure differential.

(B) Logs of monitoring system alarms, including date and time.

(C) Logs of corrective actions, including date and time.

(d) The owner or operator shall demonstrate compliance with the bag leak detection system requirements under section 5 of this rule, if applicable, by submitting reports showing that the alarm on the system does not activate for more than five percent (5%) of the total operating time in a six (6) month period or two hundred nineteen (219) hours, if operated for four thousand three hundred eighty (4,380) hours in the six (6) month period, whichever is less. The percentage of total operating time the alarm on the bag leak detection system activates shall be calculated as follows:

(1) Do not include alarms that occur due solely to a malfunction of the bag leak detection system in the calculation.

(2) Do not include alarms that occur during startup, shutdown, and malfunction in the calculation if:

(A) the condition is described in the startup, shutdown, and malfunction plan; and

(B) the owner or operator follows all the procedures in the plan defined for this condition.

(3) Count the actual time it takes the owner or operator to identify and correct the cause of the alarm, excluding any time that the process is shut down for repair.

(4) Calculate the percentage of time the alarm on the bag leak detection system activates as the ratio of the sum of alarm times to the total operating time multiplied by one hundred (100).

(e) The owner or operator of any secondary lead smelter shall install and maintain an ambient air quality monitoring network for lead as follows:

(1) Unless the owner or operator has received approval prior to the effective date of this rule to operate an ambient air quality monitoring network, the owner or operator shall

submit a proposed ambient monitoring and quality assurance plan to the department within ninety (90) days after the effective date of this rule. The plan does not need to be submitted by the owner or operator if an authorized air pollution control agency operates the monitoring network. The owner or operator may submit a plan for an existing monitoring network that predates the effective date of this rule.

(2) An owner or operator that has not received approval prior to the effective date of this rule shall commence ambient monitoring within thirty (30) days after the department's approval of the proposed ambient monitoring and quality assurance plan. An owner or operator that has received approval prior to the effective date of this rule shall commence monitoring under this rule within thirty (30) days after such date.

(3) The ambient monitoring shall be:

(A) performed using U.S. EPA-approved methods, procedures, and quality assurance programs, and in accordance with the ambient monitoring and quality assurance plan as approved by the department; or

(B) performed by an authorized air pollution control agency having jurisdiction to operate the network.

(4) The owner or operator shall submit a quarterly report to the department within forty-five (45) days after the end of the quarter in which the data was collected. The report shall include the following:

(A) Ambient air quality monitoring network data.

(B) If a violation of the quarterly NAAQS for lead occurred, identification of the cause of the violation and corrective actions taken to address the violation.

(5) After twenty-four (24) months from the commencement date of monitoring pursuant to the approved monitoring plan, an owner or operator may submit a request to discontinue ambient monitoring. The commissioner may deny the request if a determination is made that continued monitoring is in the interest of public health and the environment.

(f) Ventilation air from the following shall be conveyed or ventilated to a control device:

(1) All enclosure hoods and total enclosures.

(2) All dryer emission vents.

(3) Agglomerating furnace emission vents.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-13-7; filed Dec 1, 2000, 2:22 p.m.: 24 IR 960; filed May 21, 2002, 10:20 a.m.: 25 IR 3096)*

SECTION 63. 326 IAC 20-13-8 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-13-8 Bag leak detection system requirements

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

Sec. 8. (a) The bag leak detection system required by 40 CFR 63.548(c)(9)* and section 5 of this rule shall meet the following requirements:

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of ten (10) milligrams per actual cubic meter (forty-four ten thousandths (0.0044) grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings, and the owner or operator must continuously record the output from the bag leak detection system.

(3) The bag leak detection system must be equipped with an alarm system that will alert appropriate plant personnel when an increase in relative particulate loadings is detected over a preset level. The alarm must be located where it can be heard by the appropriate plant personnel.

(4) Each bag leak detection system that works based on the triboelectric effect must be installed, calibrated, operated, and maintained consistent with the U.S. Environmental Protection Agency guidance document "Fabric Filter Bag Leak Detection Guidance" (EPA-454/R-98-015, September 1997)*. Other bag leak detection systems must be installed, calibrated, and maintained consistent with the manufacturer's written specifications and recommendations.

(5) The initial adjustment of the system must, at a minimum, consist of establishing:

(A) the baseline output by adjusting the sensitivity (range);

(B) the averaging period of the device;

(C) the alarm set points; and

(D) the alarm delay time.

(6) Following initial adjustment, the owner or operator must not adjust the:

(A) sensitivity or range;

(B) averaging period;

(C) alarm set points; or

(D) alarm delay time;

except as detailed in the maintenance plan required under 40 CFR 63.548(a)*. In no event must the sensitivity be increased by more than one hundred percent (100%) or decreased more than fifty percent (50%) over a three hundred sixty-five (365) day period unless a responsible official certifies the baghouse has been inspected and found to be in good operating condition.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(8) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere

through a stack, the bag leak detector must be installed downstream of the baghouse and upstream of any wet acid gas scrubber.

(b) In addition to the record keeping and reporting requirements under 40 CFR 63.550*, the owner or operator shall comply with the following:

(1) Submit a report within thirty (30) days after the end of each preceding six (6) month period ending June 30 and December 31 of each year that includes the following:

(A) A description of the actions taken following each bag leak detection system alarm pursuant to 40 CFR 63.548(f)(1)* and 40 CFR 63.548(f)(2)*.

(B) Calculations of the percentage of time the alarm on the bag leak detection system was activated during the reporting period.

(2) Records for bag leak detection systems shall be maintained on site for a period of three (3) years and be available for an additional two (2) years and shall include the following information:

(A) Records of bag leak detection system output.

(B) Identification of the date and time of all bag leak detection system alarms.

(C) The time that procedures to determine the cause of the alarm were initiated.

(D) The cause of the alarm.

(E) An explanation of the actions taken.

(F) The date and time the alarm was corrected.

(G) Records of total operating time of an affected source during smelting operations for each six (6) month period.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and the U.S. Environmental Protection Agency guidance document "Fabric Filter Bag Leak Detection Guidance" (EPA-454/R-98-015) referenced in this rule~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-13-8; filed Dec 1, 2000, 2:22 p.m.: 24 IR 962; filed May 21, 2002, 10:20 a.m.: 25 IR 3097)*

SECTION 64. 326 IAC 20-14-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-14-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) The provisions of this rule apply to each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source as defined in Section 112 of the 1990 Clean Air Act Amendments.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart JJ*, ~~60 FR 62930* (December 7, 1995),~~ National Emission Standards for Wood Furniture Manufacturing Operations, with the exception of the following sections:

(1) **40 CFR** 63.804(f)(4)(iv)(D) and (E)*, establishing alternative operating parameters for carbon adsorbers and control devices not listed in the rule.

(2) **40 CFR** 63.804(g)(4)(iii)(C)*, establishing alternative monitoring parameters for carbon adsorbers.

(3) **40 CFR** 63.804(g)(4)(vi) and 63.804(g)(6)(vi)*, establishing alternative monitoring parameters for control devices not listed in the rule.

(4) **40 CFR** 63.805(a)*, establishing alternative methods for determining volatile hazardous air pollutant content of coatings.

(5) **40 CFR** 63.805(d)(2)(V)*, establishing alternative methods for performance tests.

(6) **40 CFR** 63.805(e)(1)*, establishing case by case approval for permanent total enclosures.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR)~~ referenced in this section may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for ~~coping~~ **review and copying** at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-14-1; filed Apr 14, 1997, 10:40 a.m.: 20 IR 2297; filed May 21, 2002, 10:20 a.m.: 25 IR 3098)*

SECTION 65. 326 IAC 20-15-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-15-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) The provisions of this rule apply to each facility that is engaged, either in part or in whole, in the manufacture or rework of commercial, civil, or military aerospace vehicles or components and that is located at a plant site that is a major source as defined in Section 112 of the 1990 Clean Air Act Amendments.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart GG*, ~~60 FR 45948* (September 1, 1995) and 61 FR 4902* (February 9, 1996),~~ National Emission Standards for Aerospace Manufacturing and Rework Facilities.

***This document is incorporated by reference.** Copies ~~of~~

~~the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-15-1-1; filed Apr 14, 1997, 10:40 a.m.: 20 IR 2298; filed May 21, 2002, 10:20 a.m.: 25 IR 3098)*

SECTION 66. 326 IAC 20-16-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-16-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to all petroleum refining process units and to related emission points as defined in 40 CFR 63.641***** as provided in 40 CFR 63.640*****.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart CC*****, ~~60 FR 43244 (August 18, 1995) and 61 FR 29876 (June 12, 1996)*~~, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and the Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-16-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2760; filed May 21, 2002, 10:20 a.m.: 25 IR 3099)*

SECTION 67. 326 IAC 20-17-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-17-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.560*****.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart Y*****, ~~60 FR 48388 (September 19, 1995)*~~, National Emission Standards for Marine Tank Vessel Loading Operations.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and the Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-17-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2760; filed May 21, 2002, 10:20 a.m.: 25 IR 3099)*

SECTION 68. 326 IAC 20-18-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-18-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to affected sources as defined in 40 CFR 63.820*****.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart KK*****, ~~61 FR 27132* (May 30, 1996),~~ National Emission Standards for the Printing and Publishing Industry, with the exception of the following Sections:

(1) 63.827(b)*****, approval of alternate test methods for organic hazardous air pollutant content determinations.

(2) 63.827(c)*****, approval of alternate test methods for volatile matter determination.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this section~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-18-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2761; filed May 21, 2002, 10:20 a.m.: 25 IR 3099)*

SECTION 69. 326 IAC 20-19-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-19-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to manufacturers of the following products, as provided in 40 CFR 63.480***** of Subpart U, that are

major sources of hazardous air pollutants (HAPs) as defined in Section 112(a) of the Clean Air Act:

(1) Butyl rubber.
(2) Halobutyl rubber.
(3) Epichlorohydrin elastomers.
(4) Ethylene propylene rubber.
(5) Hypalon (TM).
(6) Neoprene.
(7) Nitrile butadiene rubber.
(8) Nitrile butadiene latex.
(9) Polysulfide rubber.
(10) Polybutadiene rubber/styrene butadiene rubber produced using a solution process.
(11) Styrene butadiene latex.
(12) Styrene butadiene rubber produced using an emulsion process.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart U*, National Emission Standards for Hazardous Air Pollutant Emissions, Group I Polymers and Resins. ~~61 FR 46924, September 5, 1996*.~~

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referred in this article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and the Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality, Tenth Floor,** 100 North Senate Avenue, Indianapolis, ~~IN~~ **Indiana** 46204. *(Air Pollution Control Board; 326 IAC 20-19-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2761; filed May 21, 2002, 10:20 a.m.: 25 IR 3099)*

SECTION 70. 326 IAC 20-20-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-20-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to manufacturers of the following products, as provided in 40 CFR 63.520* of Subpart W, that are major sources of hazardous air pollutants (HAPs) as defined in Section 112(a) of the Clean Air Act:

(1) Basic liquid epoxy resins.
(2) Non-nylon polyamides (also known as wet strength resins).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart W*, National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production. ~~60 FR 12676, March 8, 1995*.~~

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referred in this article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and the Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-20-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2761; filed May 21, 2002, 10:20 a.m.: 25 IR 3100)*

SECTION 71. 326 IAC 20-21-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-21-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to manufacturers of the following products, as provided in 40 CFR **Subpart JJJ, Section** 63.1310*, ~~of Subpart JJJ,~~ that are major sources of hazardous air pollutants (HAPs) as defined in Section 112(a) of the Clean Air Act:

(1) Acrylonitrile butadiene styrene resin (ABS) latex.
(2) ABS using a batch emulsion process.
(3) ABS using a batch suspension process.
(4) ABS using a continuous emulsion process.
(5) ABS using a continuous mass process.
(6) Acrylonitrile styrene acrylate resin/alpha methyl styrene acrylonitrile resin (ASA/AMSAN).
(7) Expandable polystyrene resin (EPS).
(8) Methyl methacrylate acrylonitrile butadiene styrene resin (MABS).
(9) Methyl methacrylate butadiene styrene resin (MBS).
(10) Nitrile resin.
(11) Poly(ethylene terephthalate) resin (PET) using a batch dimethyl terephthalate process.
(12) PET using a batch terephthalic acid process.
(13) PET using a continuous dimethyl terephthalate process.
(14) PET using a continuous terephthalic acid process.
(15) PET using a continuous terephthalic acid high viscosity multiple end finisher process.
(16) Polystyrene resin using a batch process.
(17) Polystyrene resin using a continuous process.
(18) Styrene acrylonitrile resin (SAN) using a batch process.
(19) SAN using a continuous process.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart JJJ*, National Emission Standards for Hazardous Air Pollutant Emissions, Group IV Polymers and Resins. ~~61 FR 48229, September 12, 1996*.~~

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register~~

~~(FR) referred in this article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and the Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-21-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2762; filed May 21, 2002, 10:20 a.m.: 25 IR 3100)*

SECTION 72. 326 IAC 20-22-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-22-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. (a) This rule applies to each new and existing flexible polyurethane foam or rebond foam process as provided in 40 CFR 63.1290*. ~~63 FR 53996 (October 7, 1998)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart III*, ~~63 FR 53996* (October 7, 1998),~~ Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulation (CFR) and Federal Register (FR) referenced in this article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20204~~ **20401** or **are available for review and copying at** the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-22-1; filed May 26, 2000, 8:39 a.m.: 23 IR 2424; filed May 21, 2002, 10:20 a.m.: 25 IR 3101)*

SECTION 73. 326 IAC 20-23-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-23-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to owners or operators of plant sites as provided in 40 CFR 63.680*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart DD*, ~~61 FR 34140* (July 1, 1996), 64 FR 38963 (July 20, 1999), and 66 FR 1263 (January 8, 2001)*,~~ National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North**, Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-23-1; filed Apr 23, 1998, 9:30 a.m.: 21 IR 3341; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3940; filed May 21, 2002, 10:20 a.m.: 25 IR 3101)*

SECTION 74. 326 IAC 20-24-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-24-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) Except as provided in subsection (b), this rule applies to the owner or operator of each new pitch storage tank and new or existing potline, paste production plant, or anode bake furnace associated with primary aluminum production that is located at a major source as defined in 40 CFR 63.2*.

(b) An owner or operator of an affected facility (potroom group or anode bake furnace) under 40 CFR 60.190* may elect to comply with either the requirements of 40 CFR 63.845 or 40 CFR 60, Subpart S*.

(c) The air pollution control board incorporates by reference 40 CFR 63, Subpart LL*, ~~(62 FR 52383)* (October 7, 1997),~~ national emission standards for hazardous air pollutants for primary aluminum reduction plants.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this article~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, **Office of Air Quality, Indiana Government Center-North, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-24-1; filed Oct 9, 1998, 3:54 p.m.: 22 IR 423; filed May 21, 2002, 10:20 a.m.: 25 IR 3101)*

SECTION 75. 326 IAC 20-26-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-26-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4
Affected: IC 13-12-3-1

Sec. 1. (a) This rule applies to affected sources as defined in 40 CFR 63.781*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart II*, National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Surface Coating Operations.

(c) Sources, as defined in 326 IAC 8-12-1, that are subject to this rule, may be subject to 326 IAC 8-12. Sources subject to this rule and 326 IAC 8-12-5 through 326 IAC 8-12-7 shall comply with the requirements of 40 CFR 63.784 through 40 CFR 63.788* in lieu of 326 IAC 8-12-5 through 326 IAC 8-12-7.

***These documents are incorporated by reference.** Copies of *[sic.]* ~~40 CFR 63, Subpart H,~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402. Copies of pertinent sections of the referenced materials~~ **20401 or** are available ~~from~~ **for review and copying at** the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~46204-2220.~~ **46204.** *(Air Pollution Control Board; 326 IAC 20-26-1; filed Jun 15, 2001, 12:08 p.m.: 24 IR 3617; filed May 21, 2002, 10:20 a.m.: 25 IR 3101)*

SECTION 76. 326 IAC 20-30-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-30-1 Oil and natural gas production; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to owners and operators of emission points that are located at oil and natural gas production facilities as provided in 40 CFR 63.760*. ~~64 FR 32628 (June 17, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HH*, ~~64 FR 32628 (June 17, 1999)*,~~ national emission standards for hazardous air pollutants from oil and natural gas production facilities.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.** *(Air Pollution Control Board; 326 IAC 20-30-1; filed Aug 3, 2001, 11:04 a.m.: 24 IR 3945; filed May 21, 2002, 10:20 a.m.: 25 IR 3102)*

SECTION 77. 326 IAC 20-31-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-31-1 Natural gas transmission and storage; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to owners and operators of natural gas transmission and storage facilities as provided in 40 CFR 63.1270*. ~~64 FR 32648 (June 17, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HHH*, ~~64 FR 32648 (June 17, 1999)*,~~ national emission standards for hazardous air pollutants from natural gas transmission and storage facilities.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.** *(Air Pollution Control Board; 326 IAC 20-31-1; filed Aug 3, 2001, 11:04 a.m.: 24 IR 3945; filed May 21, 2002, 10:20 a.m.: 25 IR 3102)*

SECTION 78. 326 IAC 20-32-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-32-1 Publicly owned treatment works; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to the owner or operator of publicly owned treatment works as provided in 40 CFR 63.1580*. ~~64 FR 57572 (October 26, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart VVV*, ~~64 FR 57572 (October 26, 1999),~~ national emission standards for hazardous air pollutants: publicly owned treatment works.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.** *(Air Pollution Control Board; 326 IAC 20-32-1;filed Aug 3, 2001, 11:04 a.m.: 24 IR 3945; filed May 21, 2002, 10:20 a.m.: 25 IR 3102)*

SECTION 79. 326 IAC 20-33-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-33-1 Pulp and paper production, noncombustion; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of processes that produce pulp, paper, or paperboard, as provided in 40 CFR 63.440*, ~~63 FR 18503 (April 15, 1998)*, and~~ **65 FR 80755 (December 22, 2000)*,** and that use any of the following processes and materials:

(1) Kraft, soda, sulfite, or semichemical pulping processes.

(2) Mechanical pulping processes.

(3) Any process using secondary or nonwood fibers.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart S*, ~~63 FR 18503 (April 15, 1998)*, and 65 FR 80755 (December 22, 2000)*,~~ national emission standards for hazardous air pollutants from the pulp and paper industry.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.** *(Air Pollution Control Board; 326 IAC 20-33-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3940; filed May 21, 2002, 10:20 a.m.: 25 IR 3103)*

SECTION 80. 326 IAC 20-34-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-34-1 Phosphoric acid manufacturing and phosphate fertilizers production; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of each:

(1) phosphoric acid manufacturing plant as provided in 40 CFR 63.600*; ~~64 FR 31357 (June 10, 1999)*;~~ and

(2) phosphate fertilizers production plant as provided in 40 CFR 63.620*. ~~64 FR 31357 (June 10, 1999)*.~~

(b) The air pollution control board incorporates by reference the following:

(1) 40 CFR 63, Subpart AA*, ~~64 FR 31376 (June 10, 1999)*,~~ national emission standards for hazardous air pollutants from phosphoric acid manufacturing plants.

(2) 40 CFR 63, Subpart BB*, ~~64 FR 31382 (June 10, 1999)*,~~ national emission standards for hazardous air pollutants from phosphate fertilizers production plants.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204**. *(Air Pollution Control Board; 326 IAC 20-34-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3940; filed May 21, 2002, 10:20 a.m.: 25 IR 3103)*

SECTION 81. 326 IAC 20-35-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-35-1 Tanks–level 1; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to the control of air emissions from tanks for which another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart OO for such air emission control as provided in 40 CFR 63.900*. ~~61 FR 34184 (July 1, 1996), and 64 FR 38985 (July 20, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart OO**, ~~61 FR 34184 (July 1, 1996), and 64 FR 38985 (July 20, 1999)*,~~ national emission standards for tanks–level 1.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.**

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-35-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3941; filed May 21, 2002, 10:20 a.m.: 25 IR 3103)*

SECTION 82. 326 IAC 20-36-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-36-1 Containers; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to the control of air emissions

from containers for which another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart PP for such air emission control as provided in 40 CFR 63.920*. ~~61 FR 34186 (July 1, 1996), and 64 FR 38987 (July 20, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart PP**, ~~61 FR 34186 (July 1, 1996), 64 FR 38987 (July 20, 1999), and 65 FR 1263 (January 8, 2001)*,~~ national emission standards for containers.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.**

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-36-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3941; filed May 21, 2002, 10:20 a.m.: 25 IR 3103)*

SECTION 83. 326 IAC 20-37-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-37-1 Surface impoundments; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to the control of air emissions from surface impoundments for which another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart QQ for such air emission control as provided in 40 CFR 63.940*. ~~61 FR 34190 (July 1, 1996), and 64 FR 38988 (July 20, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart QQ**, ~~61 FR 34190 (July 1, 1996), and 64 FR 38988 (July 20, 1999)*,~~ national emission standards for surface impoundments.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204**.

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-37-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3941; filed May 21, 2002, 10:20 a.m.: 25 IR 3104)*

SECTION 84. 326 IAC 20-38-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-38-1 Individual drain systems; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to the control of air emissions from individual drain systems for which another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart RR for such air emission control as provided in 40 CFR 63.960*. ~~61 FR 34193 (July 1, 1996), and 64 FR 38989 (July 20, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart RR**, ~~61 FR 34193 (July 1, 1996), 64 FR 38989 (July 20, 1999), and 65 FR 1263 (January 8, 2001)*,~~ national emission standards for individual drain systems.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.**

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-38-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3942; filed May 21, 2002, 10:20 a.m.: 25 IR 3104)*

SECTION 85. 326 IAC 20-39-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-39-1 Closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule include requirements for closed vent systems, control devices, and routing of air emissions to a fuel gas system or process. These provisions apply when another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart SS for such air emission control as provided in 40 CFR 63.980*. ~~64 FR 34866 (June 29, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart SS**, ~~64 FR 34866 (June 29, 1999)*,~~ national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.**

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-39-1; filed Aug 3, 2001, 10:59 a.m.:24 IR 3942; filed May 21, 2002, 10:20 a.m.: 25 IR 3105)*

SECTION 86. 326 IAC 20-40-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-40-1 Equipment leaks–control level 1; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from equipment leaks for which another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart TT for such air emission control as provided in 40 CFR 63.1000*. ~~64 FR 34886 (June 29, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart TT**, ~~64 FR 34886 (June 29, 1999)*,~~ national emission standards for equipment leaks–control level 1.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 N. Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.**

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-40-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3942; filed May 21, 2002, 10:20 a.m.: 25 IR 3105)*

SECTION 87. 326 IAC 20-41-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-41-1 Equipment leaks–control level 2 standards; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from equipment leaks for which another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart UU for such air emission control as provided in 40 CFR 63.1019*. ~~64 FR 34899 (June 29, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart UU**, ~~64 FR 34899 (June 29, 1999)*,~~ national emission standards for equipment leaks–control level 2 standards.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204**.

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution*

Control Board; 326 IAC 20-41-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3943; filed May 21, 2002, 10:20 a.m.: 25 IR 3105)

SECTION 88. 326 IAC 20-42-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-42-1 Oil-water separators and organic-water separators; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to the control of air emissions from oil-water separators and organic-water separators for which another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart VV for such air emission control as provided in 40 CFR 63.1040*. ~~61 FR 34195 (July 1, 1996) and 64 FR 38991 (July 20, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart VV*, ~~61 FR 34195 (July 1, 1996), 64 FR 38991 (July 20, 1999), and 66 FR 1263 (January 8, 2001)*,~~ national emission standards for oil-water separators and organic–water separators.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.**

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-42-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3943; filed May 21, 2002, 10:20 a.m.: 25 IR 3106)*

SECTION 89. 326 IAC 20-43-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-43-1 Storage vessels (tanks)–control level 2; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) The provisions of this rule apply to the control of air emissions from storage vessels for which another subpart of 40 CFR 60*, 40 CFR 61*, or 40 CFR 63* references the use of Subpart WW for such air emission control as provided in 40 CFR 63.1060*. ~~64 FR 34918 (June 29, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart WW**, ~~64 FR 34918 (June 29, 1999)*,~~ national emission standards for storage vessels (tanks)–control level 2.

~~*These documents are incorporated by reference.~~ *Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.**

****This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-43-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3943; filed May 21, 2002, 10:20 a.m.: 25 IR 3106)*

SECTION 90. 326 IAC 20-44-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-44-1 Generic maximum achievable control technology standards; applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to source categories and affected sources specified in 40 CFR 63.1100*. ~~64 FR 34921 (June 29, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart YY*, ~~64 FR 34921 (June 29, 1999)*,~~ national emission standards for hazardous air pollutants for source categories; generic maximum achievable control technology standards.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.** *(Air Pollution Control Board; 326 IAC 20-44-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3943; filed May 21, 2002, 10:20 a.m.: 25 IR 3106)*

SECTION 91. 326 IAC 20-45-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-45-1 Pesticide active ingredient production; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to affected sources as provided in 40 CFR 63.1360*. ~~64 FR 33549 (June 23, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart MMM*, ~~64 FR 33549 (June 23, 1999)*,~~ national emission standards for hazardous air pollutants for pesticide active ingredient production.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.** *(Air Pollution Control Board; 326 IAC 20-45-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3944; filed May 21, 2002, 10:20 a.m.: 25 IR 3107)*

SECTION 92. 326 IAC 20-46-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-46-1 Mineral wool production; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to mineral wool production facilities as provided in 40 CFR 63.1177*. ~~64 FR 29503 (June 1, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart DDD*, ~~64 FR 29503 (June 1, 1999)*,~~ national emission standards for hazardous air pollutants from mineral wool production.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204.** *(Air Pollution Control Board; 326 IAC 20-46-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3944; filed May 21, 2002, 10:20 a.m.: 25 IR 3107)*

SECTION 93. 326 IAC 20-47-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-47-1 Wool fiberglass manufacturing; applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to the owner or operator of each wool fiberglass manufacturing facility as provided in 40 CFR 63.1380*. ~~64 FR 31695 (June 14, 1999)*.~~

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart NNN*, ~~64 FR 31695 (June 14, 1999)*,~~ national emission standards for hazardous air pollutants for wool fiberglass manufacturing.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402~~ **20401** or are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor,~~ Indianapolis, Indiana **46204**. *(Air Pollution Control Board; 326 IAC 20-47-1; filed Aug 3, 2001, 10:59 a.m.: 24 IR 3944; filed May 21, 2002, 10:20 a.m.: 25 IR 3107)*

SECTION 94. 326 IAC 21-1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 21-1-1 Incorporation of federal regulations

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

Sec. 1. (a) The air pollution control board incorporates by reference the provisions of

~~(1)~~ 40 CFR 72 through 40 CFR 78*
~~(2) 61 FR 59142;~~
~~(3) 61 FR 67111;~~
~~(4) 61 FR 68821;~~
~~(5) 62 FR 3463;~~
~~(6) 62 FR 55460 (October 24, 1997);~~
~~(7) 63 FR 18837 (April 16, 1998);~~
~~(8) 63 FR 57498 through 63 FR 57514 (October 27, 1998);~~
~~(9) 63 FR 68400 (December 11, 1998); and~~
~~(10) 64 FR 28564 through 64 FR 28672 (May 26, 1999)*;~~

for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act and to incorporate monitoring, record keeping, and reporting requirements for nitrogen oxide emissions to demonstrate compliance with nitrogen oxides emission reduction requirements.

(b) The following definitions apply throughout this section:
(1) "Administrator" means the administrator of the U.S. EPA.

(2) "Permitting authority" means the commissioner of the department of environmental management.

(c) If the provisions or requirements established in subsection (a) conflict with or are not included in the provisions of 326 IAC 2-7 and 326 IAC 2-8, the provisions and requirements of ~~(1)~~ 40 CFR 72 through 40 CFR 78*
~~(2) 61 FR 59142;~~
~~(3) 61 FR 67111;~~
~~(4) 61 FR 68821;~~
~~(5) 62 FR 3463;~~
~~(6) 62 FR 55460 (October 24, 1997);~~
~~(7) 63 FR 18837 (April 16, 1998);~~
~~(8) 63 FR 57498 through 63 FR 57514 (October 27, 1998);~~
~~(9) 63 FR 68400 (December 11, 1998); and~~
~~(10) 64 FR 28564 through 64 FR 28672 (May 26, 1999)*;~~
apply and take precedence.

***These documents are incorporated by reference.** Copies ~~of the Code of Federal Regulations (CFR) and the Federal Register (FR) referenced~~ may be obtained from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402 and~~ **20401 or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, ~~Tenth Floor East,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 21-1-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2283; filed Dec 1, 1997, 4:30 p.m.: 21 IR 1285; filed Mar 23, 2001, 3:06 p.m.: 24 IR 2429; filed May 21, 2002, 10:20 a.m.: 25 IR 3107)*

SECTION 95. 326 IAC 23-2-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-4 License; application
Authority: IC 13-17-14-5
Affected: IC 13-17-14

Sec. 4. (a) Any person applying for an initial lead-based paint license from the department as a lead-based paint inspector, a risk assessor, a project designer, a supervisor, a worker, or a contractor shall do the following:

(1) Submit a completed application on forms provided by the department.

(2) Submit a copy of all required documents, as provided in section 3(d) of this rule, that the person meets the experience, education, and training requirements in section 3 of this rule, including that the applicant successfully completed the approved initial and any requisite refresher training courses.

(3) Receive passing scores on all written examinations for the courses.

(4) Pay the license application fee specified in section 8 of this rule.

(5) For persons applying for inspector, risk assessor, or supervisor licenses, provide proof of passing the third-party examination.

(b) Any person applying for an initial license from the department to conduct lead-based paint activities as a contractor shall do the following:

(1) Submit a completed application on forms provided by the department, which shall include a signed statement that the person has read and understands this rule and 40 CFR 745 "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule"*. ~~(61 FR 45777, August 29, 1996)*.~~

(2) Submit a copy of all required documents, as provided in section 3(d) of this rule, indicating that the applicant or the applicant's designated representative meets the experience, education, and training requirements in section 3 of this rule, including having successfully completed the approved initial and any requisite refresher training courses for lead-based paint project supervisor and received passing scores on all written examinations for such courses, including third-party examinations.

(3) Submit a complete list of contracts for the prior twelve (12) months for lead-based paint projects, including names, addresses, and telephone numbers of persons for whom projects were performed.

(4) Submit an up-to-date copy of the contractor's written standard operating procedures that include current compliance procedures.

(5) Submit a description of any lead-based paint projects that the contractor conducted that were prematurely terminated or not completed, including the circumstances surrounding the termination or failure to complete.

(6) Submit a list of any contractual penalties that the contractor has paid for noncompliance with contract specifications.

(7) Submit copies of any and all:
(A) warning letters;
(B) notices and orders of the commissioner;
(C) agreed orders;
(D) citations;
(E) notices of violation; or
(F) findings of violation;
levied against the contractor by any federal, state, or local government agency for violations of regulations or other laws pertaining to lead-based paint activities, including names and locations of the projects, the dates, and a description of how the allegations were resolved.

(8) Submit a description detailing all legal proceedings, lawsuits, warning letters to supervisors from the department, or claims that have been filed or levied against the contractor or any of the contractor's past or present employees, while employed by the contractor, for lead-based paint related activities.

(9) Submit documentation of the contractor's financial responsibility with a current certificate of insurance with at least five hundred thousand dollars ($500,000) of liability insurance. The company offering the insurance coverage must be recognized or licensed by the Indiana department of insurance.

(10) Pay the license application fee specified in section 8 of this rule.

(c) If the department determines the information on the application to be incomplete, the department shall request in writing that the applicant submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable.

(d) In addition to the requirements of subsections (a) through (b), the department may require an applicant or a designated representative of a contractor, in the case of subsection (b), to take an examination administered by the department. The examination shall cover only the discipline for which the applicant is seeking a license. The commissioner shall deny the application if the applicant does not receive a passing score of seventy percent (70%). If the department denies the application, the certificate of training is invalid and the applicant must retake and pass the initial training course for the discipline for which the applicant is seeking a license, and any subsequent third-party examination.

(e) The applicant shall provide two (2) copies of a clear and recent one and one-half (1½) inch by one and one-half (1½) inch identifying color photograph at the time of application to be attached to the face of the lead-based paint license prior to issuance of the license by the department.

(f) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue a lead-based paint program license to any person who fulfills the requirements established by this rule. The department may deny an application for a lead-based paint program license based on any of the applicable criteria listed in section 6 of this rule or for failure to comply with any other provision of this rule.

(g) Individuals who have received lead-based paint activities training between October 1, 1990, and March 1, 1999, shall be eligible for licensing under the following alternative procedures:

(1) Applicants for license as an inspector, risk assessor, or supervisor shall:

(A) demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity;

(B) demonstrate that the applicant meets or exceeds the education and experience requirements in section 3 of this rule;

(C) successfully complete an Indiana-approved refresher training course for the appropriate discipline;

(D) pass a third-party examination administered by the department or its designated representative for the appropriate discipline;

(E) submit a completed application on forms provided by the department; and

(F) pay the license application fee specified in section 8 of this rule.

(2) Applicants for licensure as an abatement worker or project designer shall:

(A) demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity;

(B) demonstrate that the applicant meets the education and experience requirements in section 3 of this rule;

(C) successfully complete an Indiana-approved refresher training course for the appropriate discipline;

(D) submit a completed application on forms provided by the department; and

(E) pay the license application fee specified in section 8 of this rule.

(3) This subsection remains in effect for twelve (12) months from the date that this rule becomes effective. After that date, all applicants under this rule must comply with all other provisions of this rule.

(h) Applications must be completed in writing and submitted for processing. The department shall not process applications on a walk-in basis or process applications over the telephone. If the license is approved, the license will be sent to the applicant via the U.S. Postal Service to the address listed on the application.

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) and the Code of Federal Regulations (CFR) are available~~ **may be obtained** from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402. Copies of pertinent sections~~ **20401 or** are available for **review and** copying ~~from~~ **at the** Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality**, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 23-2-4; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1442; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3108)*

SECTION 96. 326 IAC 23-2-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 23-2-7 Lead-based paint license revocation; denial

Authority: IC 13-17-14-5
Affected: IC 4-21.5; IC 13-17-14

Sec. 7. (a) The department may, under IC 4-21.5, deny an application for a license, reprimand a license, or suspend or revoke a license for any of the following reasons:

(1) Violating any requirement of the following:

(A) This title.

(B) 40 CFR 745 (Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities*. ~~(61 FR 45777), August 29, 1996)*.~~

(C) IC 13-17-14.

(2) Falsifying information on an application for a lead-based paint license, including but not limited to, approval records, instructor qualifications, or other approval information.
(3) Violating or failing to meet any requirement specified in this article.
(4) Conducting a lead-based paint project, or related activity, in a manner that is hazardous to the public health.
(5) Performing work requiring a lead paint license at a job site without being in physical possession of initial and current certificates of training or license.
(6) Permitting the duplication or use of one's own lead-based paint license by another person.
(7) Performing work for which a lead-based paint license has not been received.
(8) Obtaining training from a training course provider who does not have the approval to offer training for the particular discipline for which the license was received.
(9) Obtaining training documentation through fraudulent means.
(10) Gaining admission to and completing an approved training curriculum through misrepresentation of admission requirements.
(11) Fraudulently or deceptively obtaining a license or attempts to obtain a license through misrepresentation of certificate of training requirements, third-party examination, or related documents dealing with education, training, professional registration, or experience.
(12) Misrepresenting the extent of a training courses's approval.
(13) Failing to submit required information or notifications in a timely manner.

(b) In addition to the causes in subsection (a), the department may, under IC 4-21.5, reprimand a lead-based paint contractor or suspend or revoke a lead-based paint license if the contractor:
(1) performs work requiring licensure at a jobsite with individuals who are not licensed;
(2) fails to comply with the work practice standards established in 326 IAC 23-4;
(3) misrepresents facts in the contractor's letter of application for a license;
(4) fails to maintain required records; or
(5) fails to comply with federal, state, or local lead-based paint rules, regulations, or statutes.

(c) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(d) If the department finds that a lead-based paint activities project is not being performed in accordance with air pollution control laws or rules adopted by the board, the department may enjoin further work on the lead-based paint project without prior notice or hearing by completing the following procedures:
(1) A notice shall be delivered to:
(A) the lead-based paint activities contractor engaged in the lead-based paint activities project; or
(B) an agent or representative of the lead-based paint activities contractor.
(2) A notice issued under this section must:
(A) specify the violations of law that are occurring on the lead-based paint activities project; and
(B) prohibit further work on the lead-based paint activities project until the specified violations cease and the notice is rescinded by the commissioner.
(3) The contractor shall have fourteen (14) days in which to provide written notification to the department that violations have been corrected.
(4) Not later than ten (10) days after receiving written notification from a contractor that violations specified in a notice issued under this section have been corrected, the commissioner shall issue a determination regarding recission of the notice.

***These documents are incorporated by reference.** Copies ~~of the Federal Register (FR) and the Code of Federal Regulations (CFR) are available~~ **may be obtained** from the Government Printing Office, **732 North Capitol Street NW,** Washington, D.C. ~~20402. Copies of pertinent sections~~ **20401 or** are available for **review and** copying ~~from~~ **at the** Indiana Department of Environmental Management, Office of Air ~~Management,~~ **Quality, Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 23-2-7; filed Jan 6, 1999, 4:28 p.m.: 22 IR 1445; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed May 21, 2002, 10:20 a.m.: 25 IR 3109)*

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Incorporated Documents Filed with Secretary of State: (1) Section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925); (2) Office of Air Quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance, September 1997, EPA-454/R-98-015; (3) 2000 Code of Federal Regulations: 40 CFR 1 through 40 CFR 49; 40 CFR 50 through 40 CFR 51; 40 CFR 52 (Sections 52.01 through 52.1018); 40 CFR 52 (Sections 52.1019 through the end); 40 CFR 53 through 40 CFR 59; 40 CFR 60; 40 CFR 61 through 40 CFR 62; 40 CFR 63 (Sections 63.1 through 63.1199); 40 CFR 63 (Sections 1200 through the end); 40 CFR 64 through 40 CFR 71; 40 CFR 72 through 40 CFR 80; 40 CFR 81 through 40 CFR 85; 40 CFR 86; 40 CFR 88; 40 CFR 93; 40 CFR 260 through 40 CFR 265; 40 CFR 266 through 40 CFR 299; 40 CFR 700 through 40 CFR 789; 29 CFR 1900 through 40 CFR 1910; and 29 CFR 1926.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #01-289(F)

DIGEST

Amends 329 IAC 3.1-1-7 to achieve consistency with federal hazardous waste management regulations by incorporating by reference changes to the federal hazardous waste management regulations at 40 CFR 260 through 40 CFR 270, published in the Federal Register from July 10, 2000, through May 16, 2001. Amends 329 IAC 3.1-7-2 to be consistent with IC 13-22-4-3.1 by removing a provision that requires generators to enter waste handling codes on the Uniform Hazardous Waste Manifest. Amends 329 IAC 3.1-9-2 and 329 IAC 3.1-10-2 to be consistent with Public Law 143-2000 by removing provisions that require permitted treatment, storage, and disposal facilities to send copies of hazardous waste manifests to IDEM. Repeals 329 IAC 3.1-4-9.1 and 329 IAC 3.1-4-17.1. Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-8, Draft Rule, and Notice of First Public Hearing: September 1, 2001, Indiana Register (24 IR 4266).

Date of First Hearing: October 16, 2001.

Proposed Rule and Notice of Second Public Hearing: December 1, 2001, Indiana Register (25 IR 842).

Date of Second Hearing: February 19, 2002.

329 IAC 3.1-1-7 **329 IAC 3.1-7-2**
329 IAC 3.1-4-9.1 **329 IAC 3.1-9-2**
329 IAC 3.1-4-17.1 **329 IAC 3.1-10-2**

SECTION 1. 329 IAC 3.1-1-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-7 Incorporation by reference

Authority: IC 13-19-3-1; IC 13-22-4
Affected: IC 13-14-8; 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, ~~1999.~~ **2001.** When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11. The following publications are also incorporated by reference:

(1) 40 CFR 146 (1995).

(2) 40 CFR 60, Appendix A (1995).

~~(3) Amendments to 40 CFR 260, 40 CFR 261, 40 CFR 264, 40 CFR 265, 40 CFR 268, 40 CFR 270, and 40 CFR 273 published in the Federal Register on July 6, 1999, at 64 FR 36487 through 64 FR 36490.~~

~~(4) Amendments to 40 CFR 260, 40 CFR 261, 40 CFR 264, 40 CFR 265, 40 CFR 266, 40 CFR 270, and 40 CFR 271 published in the Federal Register on September 30, 1999, at 64 FR 53070 through 64 FR 53077.~~

~~(5) Amendments to 40 CFR 261, 40 CFR 262, and 40 CFR 268 published in the Federal Register on October 20, 1999, at 64 FR 56470 through 64 FR 56472.~~

~~(6) Amendments to 40 CFR 261 and 40 CFR 266 published in the Federal Register on November 19, 2000, at 64 FR 63212 through 64 FR 63213.~~

~~(7) Amendments to 40 CFR 262 published in the Federal Register on March 8, 2000, at 65 FR 12397 through 12398.~~

~~(8) Amendments to 40 CFR 261 and 40 CFR 268 published in the Federal Register on March 17, 2000, at 65 FR 14474 through 14475.~~

~~(9) Amendments to 40 CFR 270 published in the Federal Register on May 15, 2000, at 65 FR 30913.~~

~~(10) Amendments to 40 CFR 261 and 40 CFR 268 published in the Federal Register on June 8, 2000, at 65 FR 36366 through 36367.~~

(b) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsection (a). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(c) Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

(d) Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

(e) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions which may be effective in Indiana which are not incorporated in this article or are retained as federal authority. *(Solid Waste Management Board; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111)*

SECTION 2. 329 IAC 3.1-7-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-7-2 Exceptions and additions; generator standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-22-2; 40 CFR 262

Sec. 2. Exceptions and additions to federal standards for generators are as follows:

(1) Delete 40 CFR 262.12(a) and substitute "A generator who has not received an EPA identification number may obtain one by applying on forms provided by the commissioner. Upon receipt of the completed forms, an EPA identification number will be assigned.".

(2) In addition to the requirements of 40 CFR 262, Subpart B and the appendix to 40 CFR 262, the generator shall enter the EPA hazardous waste number ~~and handling code~~ for each waste on the Uniform Hazardous Waste Manifest **(EPA Form 8700-22)** as follows:

(A) ~~The EPA hazardous waste number for each waste must be entered on the manifest as follows:~~

~~(i) For characteristic hazardous waste,~~ Enter the four (4) digit EPA hazardous waste number from 40 CFR 261 ~~Subpart C,~~ that identifies the waste in item "I" of the manifest form **or item "R" of the continuation sheet (EPA Form 8700-22A).**

~~(ii) For listed hazardous waste, enter the four (4) digit EPA hazardous waste number from 40 CFR 261, Subpart D, that identifies the waste in item "I" of the manifest form.~~

~~(iii) Where a hazardous waste contains more than one (1) listed waste, or where more than one (1) hazardous waste characteristic applies to the waste, enter each of the applicable EPA waste numbers that identify the waste. When entering multiple EPA hazardous waste numbers, enter the EPA hazardous waste number that identifies the most distinctive or hazardous property of the waste in item "I". Enter the remaining EPA hazardous waste numbers, up to four (4) for each waste, in item "J".~~

~~(iv)~~ **(B)** If ~~a waste has more than four (4) additional~~ **multiple** EPA hazardous waste numbers ~~associated with it, enter the words "multiple coded" or "multi-coded" instead of the additional codes for that waste~~ **apply, enter the hazardous waste numbers as follows:**

(i) Enter the one (1) EPA hazardous waste number that identifies the most distinctive or most hazardous property of the waste in item "I" of the manifest form or item "R" of the continuation sheet.

(ii) The remaining EPA hazardous waste numbers may be entered in item "J" **of the manifest form or item "S" of the continuation sheet**.

~~(v)~~ **(C)** For nonhazardous or unregulated waste that may be included in the shipment, enter "NONE" in item "I".

~~(B) The handling code for each waste must be entered in item "K" of the manifest form as follows:~~

~~(i) Enter the three (3) character handling code from 40 CFR 264, Appendix I, Table 2 that most closely represents the method used at the facility designated in accordance with 40 CFR 262.20(b) to treat, store, dispose, or recover each hazardous waste identified on the manifest.~~

~~(ii) If multiple methods are used, the code that most closely reflects the ultimate disposition of the waste at the facility must be entered.~~

~~(iii) If clarification is necessary, enter this information in item 15 or item 32 on the continuation sheet, EPA Form 8700-22A.~~

(3) Delete 40 CFR 262.41 dealing with biennial reporting and substitute section 14 of this rule.

(4) In 40 CFR 262.42(a)(2), delete "in the Region in which the generator is located".

(5) Delete 40 CFR 262.43 dealing with additional reporting and substitute section 15 of this rule.

(6) In 40 CFR 262.53 and 40 CFR 262.54, references to the "EPA" are retained. A copy of the notification of intent to export, which must be submitted to the EPA, must also be submitted to the Office of Land Quality, Indiana Department of Environmental Management, P.O. Box 7035, Indianapolis, Indiana 46207-7035.

(7) Exception reports required from primary exporters pursuant to 40 CFR 262.55 must be filed with the Regional Administrator of the EPA and the commissioner.

(8) Delete 40 CFR 262.56 dealing with annual reports for exports and substitute section 16 of this rule.

(9) In 40 CFR 262.57(b), the reference to the "administrator" is retained. The commissioner may also request extensions of record retention times for hazardous waste export records.

(Solid Waste Management Board; 329 IAC 3.1-7-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 925; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1098; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112)

SECTION 3. 329 IAC 3.1-9-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-9-2 Exceptions and additions; final permit standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-14-10; IC 13-22-2; IC 13-30-3; 40 CFR 264

Sec. 2. Exceptions and additions to federal final permit standards are as follows:

(1) Delete 40 CFR 264.1(a) dealing with scope of the permit program and substitute the following: The purpose of this rule is to establish minimum standards which define the acceptable management of hazardous waste at final state permitted facilities.

(2) In 40 CFR 264.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".

(3) Reports to the state required at 40 CFR 264.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North

Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.

(4) The written spill report required by 40 CFR 264.56(j) must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6.1.

~~(5) In addition to the requirements at 40 CFR 264.71 dealing with use of the manifest system, the owner or operator, or the owner's or operator's agent, must send one (1) copy of each manifest received with a hazardous waste shipment to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015 within five (5) working days after receiving the manifest.~~

~~(6)~~ **(5)** In 40 CFR 264.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "forms provided by the commissioner".

~~(7)~~ **(6)** In 40 CFR 264.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".

~~(8)~~ **(7)** In 40 CFR 264.77 regarding additional reports, insert after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:

(A) Two (2) paper copies on the most current form prescribed by the ~~department.~~ **commissioner.**

(B) In addition to the paper copies required in **clause** (A), an electronic report in a format prescribed by the ~~department.~~ **commissioner.**

(d) The commissioner may request other information, as required by Subparts F, K through N, and AA through CC of this part, be submitted in an electronic format as prescribed by the commissioner.".

~~(9)~~ **(8)** Delete 40 CFR 264, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-15.

~~(10)~~ **(9)** Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J are under section 3 of this rule.

~~(11)~~ **(10)** In 40 CFR 264.221(e)(2)(i)(C), delete "permits under RCRA Section 3005(c)" and insert "with final state permits".

~~(12)~~ **(11)** Delete 40 CFR 264.301(l).

~~(13)~~ **(12)** Delete 40 CFR 264, Appendix VI.

~~(14)~~ **(13)** In 40 CFR 264.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

~~(15)~~ **(14)** In 40 CFR 264.316(f), delete "fiber drums" and substitute "nonmetal containers".

(Solid Waste Management Board; 329 IAC 3.1-9-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3356; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2433; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112)

SECTION 4. 329 IAC 3.1-10-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-10-2 Exceptions and additions; interim status standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-14-10; IC 13-22-2; IC 13-30-3; 40 CFR 265

Sec. 2. Exceptions and additions to federal interim status standards are as follows:

(1) In 40 CFR 265.1(a) dealing with scope of the permit, delete "national" and insert "state".

(2) In 40 CFR 265.1(b), delete "section 3005 of RCRA" and insert "329 IAC 3.1-13" in both places where it occurs.

(3) Delete 40 CFR 265.1(c)(4).

(4) In 40 CFR 265.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".

(5) Reports to the state required at 40 CFR 265.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.

(6) The written spill report required by 40 CFR 265.56(j) must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6.1.

~~(7) In addition to the requirements at 40 CFR 265.71 dealing with use of the manifest system, the owner or operator, or the owner's or operator's agent, must send one (1) copy of each manifest received with a hazardous waste shipment to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015 within five (5) working days after receiving the manifest.~~

~~(8)~~ **(7)** In 40 CFR 265.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "form provided by the commissioner".

~~(9)~~ **(8)** In 40 CFR 265.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".

~~(10)~~ **(9)** In 40 CFR 265.77 regarding additional reports, insert, after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:

(A) Two (2) paper copies on the most current form prescribed by the department.

(B) In addition to the paper copies required in (A), an electronic report in a format prescribed by the department.".

~~(11)~~ **(10)** In 40 CFR 265.77 regarding additional reports, insert, after the first sentence in (d), "The commissioner may request other information as required by Subparts AA through CC of this part be submitted in an electronic format as prescribed by the commissioner.".

~~(12)~~ **(11)** In 40 CFR 265.90 dealing with ground water monitoring requirements, delete all references to effective date.

~~(13)~~ **(12)** Delete 40 CFR 265.112(d)(3)(ii) and substitute: "Issuance of a judicial decree or final order under section 3008 of RCRA, judiciary decree under IC 13-30-3, or final administrative order under IC 4-21.5 to cease receiving hazardous waste or close".

(13) Delete 40 CFR 265.118(e)(2) and substitute the language in subdivision (11).

(14) Delete 40 CFR 265, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-14.

(15) In 40 CFR 265.191(a), the January 12, 1988, deadline date for integrity assessments shall only apply to existing interim status or permitted tank systems that are underground and cannot be entered for inspection. Integrity assessments shall be completed on all remaining tank systems by December 20, 1989.

(16) In 40 CFR 265.191(c), delete "July 14, 1986" and insert "June 20, 1988".

(17) In 40 CFR 265.193(a), delete all references to deadline dates for secondary containment for existing systems and substitute the dates specified in 329 IAC 3.1-9-3(c)(1) through 329 IAC 3.1-9-3(c)(8).

(18) In 40 CFR 265.301(d)(2)(i)(B) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".

(19) In 40 CFR 265.301(d)(2)(i)(C), delete "RCRA Section 3005(c)" and insert "329 IAC 3.1-13".

(20) In 40 CFR 265.314(g)(2) dealing with the definition of the term "underground source of drinking water", delete "144.3 of this chapter" and insert "40 CFR 270.2".

(21) In 40 CFR 265.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

~~(21)~~ **(22)** In 40 CFR 265.316(f), delete "fiber drums" and substitute "nonmetal containers".

~~(22)~~ **(23)** Delete 40 CFR 265.430(b) and substitute the following: "The requirements of this subpart apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I and Class IV in section 3 of this rule.".

(Solid Waste Management Board; 329 IAC 3.1-10-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 937; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3357; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1113; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2742; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2434; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3113)

SECTION 5. THE FOLLOWING ARE REPEALED: 329 IAC 3.1-4-9.1; 329 IAC 3.1-4-17.1.

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TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #01-393(F)

DIGEST

Amends 405 IAC 2-3-3 to exclude impairment-related work expenses in calculating income for Medicaid eligibility for the aged, blind, and disabled. Adds 405 IAC 2-9 to set out eligibility requirements for Medicaid for employees with disabilities (MED Works). Effective 30 days after filing with the secretary of state.

405 IAC 2-3-3
405 IAC 2-9

SECTION 1. 405 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-3-3 Income of applicant or recipient (calculation)

Authority: IC 12-13-5-3; IC 12-13-7-3; IC 12-15-1-10
Affected: IC 12-15-4; IC 12-15-5

Sec. 3. Countable income is gross monthly income less the deductions and exclusions required to be excluded by federal and state statute or regulation and the deductions and exclusions as follows:

(1) Determination of net earned income as follows:

(A) All of the earned income of a child under fourteen (14) years of age is excluded.

(B) Up to ten dollars ($10) of earned income is disregarded if the income is received only once during the calendar quarter from a single source (infrequent) or could not be reasonably to expected (irregular). If the total amount of infrequent or irregular earned income received in a month exceeds ten dollars ($10), this disregard cannot be applied.

(C) Expenses allowed by the Internal Revenue Service shall be deducted from gross income from self-employment to determined net self-employment earnings.

(D) Sixty-five dollars ($65) of earned income per month, **plus impairment-related work expenses described in 405 IAC 2-9-2(b),** plus one-half (½) of remaining earned income is excluded.

(2) Funds from a grant, scholarship, or fellowship, other than that excluded by federal regulations, which are designated for tuition and mandatory books and fees at an educational institution or for vocational rehabilitation or technical training purposes shall be deducted from the total of such funds.

(3) Tax refunds are excluded from income.

(4) Home energy assistance is disregarded.

(5) Up to twenty dollars ($20) of unearned income is disregarded if the income is received only once during the calendar quarter from a single source (infrequent) or could not reasonably be expected (irregular). If the total amount of infrequent or irregular unearned income received in a month exceeds twenty dollars ($20), this disregard cannot be applied.

(6) A general income disregard of fifteen dollars and fifty cents ($15.50) is deducted per month.

(7) Payments made to foster parents or licensed child caring institutions from county funds or reimbursed under Title IV-B of the Social Security Act on behalf of an applicant or recipient who is a ward of the county department shall be excluded.

(8) For an applicant or recipient of medical assistance under the blind category, an amount of his or her income, as specified in an approved plan for achieving self-support, is disregarded for a period of time not to exceed twelve (12) months. Such a plan will be approved by the family and social services administration, if the plan is in writing and fully documents that the income to be disregarded will be used by the applicant or recipient in pursuing a bona fide activity aimed at achieving self-support.

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-3; filed Mar 1, 1984, 2:31 p.m.: 7 IR 1018, eff Apr 1, 1984; filed Jul 16, 1987, 2:00 p.m.: 10 IR 2669; errata, 11 IR 799; filed Feb 16, 1993, 5:00 p.m.: 16 IR 1783; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3114) NOTE: Transferred from the Division of Family and Children (470 IAC 9.1-3-5) to the Office of the Secretary of Family and Social Services (405 IAC 2-3-3) by P.L.9-1991, SECTION 131, effective January 1, 1992.

SECTION 2. 405 IAC 2-9 IS ADDED TO READ AS FOLLOWS:

Rule 9. Medicaid for Employees with Disabilities

405 IAC 2-9-1 Purpose and general eligibility requirements

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15
Affected: IC 12-15-2-6.5; IC 12-15-3-1; IC 12-15-3-2; IC 12-15-41

Sec. 1. (a) This rule establishes the eligibility requirements for the two (2) optional Medicaid categories for Employees with Disabilities identified in 42 U.S.C. 1396a(a)(10)(A)(ii)(XV) and 42 U.S.C. 1396a(a)(10)(A)(ii)(XVI), and in accordance with the provisions of IC 12-15-41.

(b) As used in this rule, "applicant or recipient" means an individual whose Medicaid eligibility is being determined under one (1) of the above referenced Medicaid categories and in accordance with the requirements of this rule.

(c) A person who is less than sixteen (16) years of age, or age sixty-five (65) or older is not eligible for Medicaid for employees with disabilities.

(d) A recipient must report any change in income, resources, employment status, or marital status within ten (10) days of the date of the change. An additional ten (10) days is allowed to provide any necessary verification.

(e) A disabled individual will be considered for eligibility under this rule if the individual is ineligible for Medicaid under the disability category for any of the following reasons:

(1) The individual's income exceeds the applicable standard specified in IAC 2-3-18 *[sic., 405 IAC 2-3-18]***.**

(2) The individual's resources exceed the limit in IC 12-15-3-1 or IC 12-15-3-2.

(3) The individual's gross earnings exceed the substantial gainful activity amount established by the Social Security Administration in 20 CFR 416.974.

(f) In addition to the requirements in this rule, the requirements in the following rules apply to applicants and recipients of Medicaid for employees with disabilities:

(1) 405 IAC 2-1-2.
(2) 405 IAC 2-1-3.
(3) 405 IAC 2-2-4.
(4) 405 IAC 2-3-1.1.
(5) 405 IAC 2-3-2.
(6) 405 IAC 2-3-11.
(7) 405 IAC 2-3-12.
(8) 405 IAC 2-3-13.
(9) 405 IAC 2-3-14.
(10) 405 IAC 2-3-22.

(11) 405 IAC 2-4-1.
(12) 405 IAC 2-5-1.
(13) 405 IAC 2-8-1.
(14) 405 IAC 2-8-2.

(Office of the Secretary of Family and Social Services; 405 IAC 2-9-1; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3115)

405 IAC 2-9-2 Income of applicant or recipient

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15
Affected: IC 12-15-2-6.5; IC 12-15-41

Sec. 2. (a) Countable income is gross monthly income less the deductions and exclusions required by federal or state statute or regulation and the deductions and exclusions in this section.

(b) The following are disregarded or deducted in determining net earned income:

(1) Up to ten dollars ($10) of earned income is disregarded if the income is either infrequent or irregular. Infrequent income is income received only once during the calendar quarter from a single source. Irregular income is income that could not reasonably be expected. If the total amount of infrequent or irregular earned income received in a month exceeds ten dollars ($10), this disregard cannot be applied.

(2) Expenses allowed by the Internal Revenue Service shall be deducted from gross income from self-employment to determine net self-employment earnings.

(3) Sixty-five dollars ($65) of earned income per month, plus impairment-related work expenses described in *[subdivision]* **(4) below, plus one-half (½) of remaining earned income is excluded.**

(4) Impairment-related work expenses are expenses that are paid by the applicant or recipient for the purchase or rental of certain items and services that are necessary, due to the severity of his or her impairment, in order for the applicant or recipient to work. No deduction is allowed if the expense has been, could be, or will be paid by another source or if the applicant or recipient will be reimbursed by another source, including, but not limited to, Medicaid, Medicare, private health insurance, or another agency. Allowable impairment-related expenses are listed below:

(A) Payments for attendant care services in the following circumstances:

(i) Because of the applicant's or recipient's impairment, he or she needs assistance in traveling to and from work, or while at work needs assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating).

(ii) Because of the applicant's or recipient's impairment, assistance is needed at home with personal functions (e.g., dressing, administering medications) in preparation for going to and returning from work.

(iii) Payments made to a family member for attendant care services will be allowed only if the family member suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked in order to perform the services.

(iv) A family member is anyone who is related to the applicant or recipient by blood, marriage, or adoption, whether or not that person lives with the applicant or recipient.

(v) If only part of the payment to a person is for services that come under the provisions of items (i) and (ii), only the portion attributable to those services will be allowed.

(B) Payments for medical devices. If the impairment requires the applicant or recipient to utilize medical devices in order to work, the payments made for those devices may be deducted. As used in this subparagraph *[clause]***, medical devices include durable medical equipment that can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators, and pacemakers.**

(C) Payments for prosthetic devices. If the impairment requires the applicant or recipient to utilize a prosthetic device in order to work, the payments made for that device may be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs, and other parts of the body.

(D) Payments for work-related equipment. If the impairment requires the applicant or recipient to utilize special equipment in order to do his or her job, the payments made for that equipment may be deducted.

(E) Payments for residential modifications. If the impairment requires the applicant or recipient to make modifications to his or her place of residence, the location of the workplace will determine if the cost of these modifications will be deducted. If the applicant or recipient is employed away from home, only the cost of changes made outside of the home to permit the applicant or recipient to get to his or her means of transportation (e.g., the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of the home will not be deducted if the person works away from home. If the applicant or recipient works at home, the costs of modifying the inside of the home in order to create a working space to accommodate his or her impairment will be deducted to the extent that the changes pertain specifically to the space in which he or she works. Examples of such changes are the enlargement of a doorway leading into the work space or modification of the work space to accommodate prob-

lems in dexterity. However, if the applicant or recipient is self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(F) Payments for transportation costs in the following circumstances are allowed:

(i) The impairment requires that in order for the applicant or recipient to get to work, a vehicle that has structural or operational modifications is required. The modifications must be critical to the applicant's or recipient's operation or use of the vehicle and directly related to his or her impairment. The costs of the modifications will be deducted, but not the cost of the vehicle. A mileage allowance for the trip to and from work will be allowed in the same amount as allowed by the Supplemental Security Income program for this purpose.

(ii) The impairment requires the applicant or recipient to use driver assistance, taxicabs or other hired vehicles in order to work. Amounts paid to the driver and, if the applicant's or recipient's own vehicle is used, a mileage allowance will be deducted for the trip to and from work.

(iii) The impairment prevents the applicant or recipient from taking available public transportation to and from work and he or she must drive his or her (unmodified) vehicle to work. A mileage allowance for the trip to and from work will be deducted if verification is obtained through the applicant's or recipient's physician or other sources that the need to drive is caused by the impairment, and not due to the unavailability of public transportation.

(G) All other impairment-related expenses allowed by the Supplemental Security Income program.

(c) Funds from a grant, scholarship, or fellowship that are designated for tuition and mandatory books and fees at an educational institution or for vocational rehabilitation or technical training purposes shall be deducted from the total of such funds except as prohibited by federal regulations.

(d) Tax refunds are excluded from income.

(e) Home energy assistance is disregarded.

(f) Up to twenty dollars ($20) of unearned income is disregarded if the income is either infrequent or irregular. Infrequent income is income received only once during the calendar quarter from a single source. Irregular income is income that could not reasonably be expected. If the total amount of infrequent or irregular unearned income received in a month exceeds twenty dollars ($20), this disregard cannot be applied.

(g) A general income disregard of fifteen dollars and fifty cents ($15.50) is deducted per month.

(h) Payments made to foster parents or licensed child caring institutions from county funds or reimbursed under Title IV-B of the Social Security Act on behalf of an applicant or recipient who is a ward of the county department are excluded.

(i) Income of the spouse of the applicant or recipient is excluded.

(j) Income of the parents of the applicant or recipient is excluded. *(Office of the Secretary of Family and Social Services; 405 IAC 2-9-2; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3116)*

405 IAC 2-9-3 Income eligibility and posteligibility determinations of applicant or recipient

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15
Affected: IC 12-15-2-6.5; IC 12-15-7-2; IC 12-15-41

Sec. 3. (a) An applicant's or recipient's income eligibility shall be determined by the following procedures:

(1) Determine the applicant's or recipient's unearned income which is not excluded by state or federal statute or regulation.

(2) Subtract the general income disregard specified in section 2 of this rule. The resulting amount is countable unearned income.

(3) Determine the earned income of the applicant or recipient.

(4) Subtract any remaining general income disregard.

(5) Subtract the earned income disregard(s) specified in section 2 of this rule. The resulting amount is countable earned income.

(6) Combine countable unearned and countable earned income.

(7) Subtract the monthly income standard that is equal to three hundred fifty percent (350%) of the federal poverty guideline for a family size of one (1), divided by twelve (12) and rounded up to the next whole dollar.

(8) If the resulting amount in *[subdivision]* **(7) is zero dollars ($0) or less than zero dollars ($0), the applicant or recipient is eligible for Medicaid for employees with disabilities. If the resulting amount is greater than zero dollars ($0), the applicant or recipient is not eligible.**

(b) The income standard referenced in *[subsection]* **(a)(8) shall be increased annually beginning the second month following the month in which the federal poverty guidelines are published in the Federal Register.**

(c) The following procedures are used to determine the amount of income to be paid to an institution for an applicant or recipient who has been determined eligible under subsection (a) of this rule and who is residing in a Title XIX certified health care facility:

(1) Determine the applicant's or recipient's total income

which is not excluded by federal statute. Total income includes amounts deducted in the eligibility determination under subsection (a).

(2) Subtract the minimum personal needs allowance specified in IC 12-15-7-2.

(3) Subtract an amount for increased personal needs as allowed under Indiana's approved Medicaid state plan. The increased personal needs allowance includes, but is not limited to, court ordered guardianship fees paid to an institutionalized applicant's or recipient's legal guardian, not to exceed thirty-five dollars ($35) per month. Guardianship fees include all services and expenses required to perform the duties of a guardian, as well as any attorney fees for which the guardian is liable.

(4) Subtract the amount of health insurance premiums.

(5) Subtract an amount for expenses incurred for necessary medical or remedial care recognized by state law but not covered under the state plan, subject to any reasonable limits set forth in Indiana's approved Medicaid state plan.

(6) The resulting amount is the amount by which the Medicaid payment to the facility shall be reduced.

(Office of the Secretary of Family and Social Services; 405 IAC 2-9-3; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3117)

405 IAC 2-9-4 Resource eligibility of applicant or recipient

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15
Affected: IC 12-15-2-6.5; IC 12-15-41-2

Sec. 4. (a) An applicant or recipient is ineligible for Medicaid for employees with disabilities for any month in which the total equity value of all nonexempt personal property owned by the applicant and his or her spouse exceeds the applicable limitation for a single individual or married couple as prescribed by the Supplemental Security Income program.

(b) The resources of the applicant's or recipient's parents are excluded.

(c) In addition to that property required to be excluded by federal statute or regulation, the following property is exempt from consideration:

(1) All household goods and personal effects.

(2) Personal property required by an individual's employer while the individual is employed.

(3) The equity value of personal property used to produce food for home consumption or used in the production of income.

(4) The value of life insurance with a total face value of ten thousand dollars ($10,000) or less if provision has been made for payment of the applicant's or recipient's funeral expenses from the proceeds of such insurance. However, the ten thousand dollar ($10,000) limitation shall be reduced by any amount in an irrevocable burial trust or irrevocable prepaid funeral agreement.

(5) For a period of no more than nine (9) months from the date of receipt, the proceeds or any interest earned on the proceeds of casualty insurance received as a result of damage, destruction, loss, or theft of exempt real or personal property if the applicant or recipient demonstrates that the proceeds are being used to repair or replace the damaged, destroyed, lost, or stolen exempt property.

(6) One (1) motor vehicle according to the following provisions:

(A) One (1) motor vehicle is excluded, regardless of value, if, for the applicant or recipient or other member of his or her household, the motor vehicle is:

(i) necessary for employment;

(ii) necessary for the medical treatment of a specific or regular medical problem; or

(iii) modified for operation by or transportation of a handicapped person.

(B) If no motor vehicle is excluded under clause (A), four thousand five hundred dollars ($4,500) of the current market value of one (1) motor vehicle is excluded.

(7) Burial spaces.

(8) Subject to the requirements in subsection (d), the home which is the principal place of residence of:

(A) the applicant or recipient;

(B) the spouse of the applicant or recipient;

(C) the parent of the applicant or recipient who is under age 18;

(D) the applicant's or recipient's biological or adoptive child under eighteen (18) years of age; or

(E) the applicant's or recipient's blind or disabled biological or adoptive child eighteen (18) years of age or older.

(9) Income producing real property if the income is greater than the expenses of ownership.

(10) Up to twenty thousand dollars ($20,000), as approved by the central office of the family and social services administration, for an independence and self-sufficiency account defined in IC 12-15-41-2(3). A resource disregard for this purpose will be approved if the applicant or recipient submits a plan in writing to the local office of family and children caseworker that describes specifically the goods and or services that he or she intends to purchase that will increase, maintain, or retain his or her employability or independence. The items must be reasonable in terms of the applicant's or recipient's ability to achieve a stated goal which is focused on the individual's employability by removing barriers. Items for personal recreational use will not be approved. A request to save money without specifying goods or services to be purchased within an achievable period of time will not be approved. An approved account will be reviewed by the local office of family and children caseworker at each annual redetermination. If the terms

of the original approved account have not been met, the recipient will be required to submit an updated request to the caseworker within thirty (30) days of receiving written notification from the caseworker that such an update is required. If the recipient fails to submit the update, the disregard will be disapproved and resource eligibility will be redetermined without it. The caseworker will forward updates to the central office for approval. At any time during the period of eligibility under the Medicaid for employees with disabilities program, the recipient may submit an update requesting an adjustment in the approved amount. Approval will not be given for any services that are available to the recipient under Medicaid or any other publicly funded program.

(11) Retirement accounts held by the applicant or recipient or his or her spouse are exempt. This includes Individual Retirement Accounts, Keogh Plans, 401(k), 403(b), and 457 plans, and any employer-related retirement account.

(d) The home exempted by subsection (c)(8) is exempt until such time as it is verified that none of the persons listed in subsection (c)(8) intends to reside there. The home is the shelter in which the person resides, the land on which the shelter is located, and related outbuildings.

(e) As a condition of eligibility for Medicaid for employees with disabilities, an applicant or recipient and his or her spouse must sign an agreement to offer for sale or for rent all nonexempt real property that he or she or his or her spouse own.

(f) If nonexempt real property is not offered for sale or for rent at current market value within thirty (30) days of written notification of medical assistance or within thirty (30) days after the agreement referenced in subsection (e) is signed, whichever is later, the recipient shall be ineligible.

(Office of the Secretary of Family and Social Services; 405 IAC 2-9-4; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3118)

405 IAC 2-9-5 Employment requirements; continuing eligibility when employment ends

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15
Affected: IC 12-15-2-6.5; IC 12-15-41

Sec. 5. (a) In order for an individual to be eligible for Medicaid for employees with disabilities, the individual must be engaged in a substantial and reasonable work effort. This means that the person must be either employed or self-employed, with the intent of such work activity being ongoing. Employment must be verifiable by pay stubs or other verification from an employer documenting that the income is subject to income tax and FICA withholding. Self-employment must be verified by the individual's income tax return, or in the case of a new business for which a tax return has not yet been filed, the personal business records of the individual.

(b) In order for a recipient of Medicaid for employees with disabilities to remain eligible when the definition of medically improved disability in 405 IAC 2-9-7 *[section 7 of this rule]* is met, the recipient must be employed as defined in *[subsection]* (a) and must have monthly earnings as calculated under 405 IAC 2-5-1 that are equal to or greater than the federal minimum wage times forty (40), unless the provisions in *[subsection]* (c) are met.

(c) A recipient who is involuntarily not working can remain eligible for the Medicaid for employees with disabilities program for up to twelve (12) months if he or she meets all other program requirements and is either:

(1) on temporary medical leave from his or her employment as defined in *[subsection]* (d); or

(2) maintains a connection to the workforce by participating in at least one (1) of the following activities below:

(A) Enrollment in a vocational rehabilitation program.

(B) Enrollment or registration with the department of workforce development.

(C) Participation in a transition from school to work program.

(D) Participation with an approved provider of employment services.

(d) As used in this section, "temporary medical leave" means a leave from the place of employment due to health reasons when the employer is keeping a position open for the individual to return. If the employer is no longer holding a position open, the recipient must maintain a connection to the workforce as defined in subdivision *[subsection]* (c)(2) in order for coverage to continue under Medicaid for employees with disabilities.

(e) In order to remain eligible upon becoming unemployed, the recipient or his or her authorized representative must submit a written request for continued coverage to the local office of family and children no later than sixty (60) days after termination of employment. Attached to this written request must be verification that the recipient meets the requirements in subsection (c). On a quarterly basis thereafter, as long as the recipient continues to be unemployed and wishes coverage to continue, verification of his or her medical leave or workforce connection status must be provided to the local office of family and children. The quarterly verification must consist of a statement from the agency or service provider that documents the recipient's continued participation in an activity that constitutes connection to the workforce, or from the recipient's employer stating he or she remains on a temporary involuntarily medical leave.

(f) A recipient who voluntarily terminates his or her employment for any reason is not eligible for Medicaid for employees with disabilities. Eligibility for the other Medicaid categories will be pursued.

(g) A recipient who fails to submit the initial request for coverage continuation within the required sixty (60) day period, or who fails to submit the quarterly verification report is no longer eligible for Medicaid for employees with disabilities. Eligibility for other Medicaid categories will be pursued. *(Office of the Secretary of Family and Social Services; 405 IAC 2-9-5; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3119)*

405 IAC 2-9-6 Medical disability determination

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15
Affected: IC 12-14-15-1; IC 12-15-2-6.5; IC 12-15-41

Sec. 6. (a) In order to qualify for Medicaid for employees with disabilities, an applicant must meet the definition of disability in IC 12-14-15-1(2). If not for earned income, the applicant or recipient would medically qualify for Medicaid under the traditional disability category according to statute.

(b) The determination of disability is made by the Medicaid medical review team (MMRT) based upon the principles found in 405 IAC 2-2-3, except that the determination of whether an impairment is substantial enough to meet the definition of disability is made without considering work activity, earnings, and substantial gainful activity (SGA). If not for the fact that the applicant or recipient is working, the condition would otherwise be substantial enough to prevent the person from participating in gainful activity.

(c) A redetermination of disability is required annually of each recipient at the time the county office does its complete redetermination of all factors of eligibility. A redetermination of disability may be required more frequently or may be waived at the discretion of the MMRT based upon the condition of the recipient. *(Office of the Secretary of Family and Social Services; 405 IAC 2-9-6; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3120)*

405 IAC 2-9-7 Medically improved disability

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15
Affected: IC 12-14-15-1; IC 12-15-2-6.5; IC 12-15-41

Sec. 7. (a) In order to qualify for the Medicaid for employees with disabilities program after improvement of a medical condition, a recipient must meet the requirements in this section.

(b) The person must be a recipient of Medicaid under the Medicaid for employees with disabilities group described in section 6 of this rule who no longer qualifies for coverage under that category due to a medical improvement in his or her condition. The improvement of the condition must be verifiable by acceptable clinical standards; however, the disease, illness, or process must be of a type that, due to the nature and course of the illness, will continue to be a disabling impairment. A condition that has been resolved or a person who is completely recovered does not medically qualify for this program.

(c) The determination of whether a recipient meets the medical eligibility requirements for this category will be made at the time of the regularly scheduled annual redetermination for Medicaid by the county office. Determination of medical eligibility under this section is made by the Medicaid medical review team (MMRT).
(Office of the Secretary of Family and Social Services; 405 IAC 2-9-7; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3120)

405 IAC 2-9-8 Premiums

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-41-15
Affected: IC 12-14-15-1; IC 12-15-2-6.5; IC 12-15-41

Sec. 8. (a) To be eligible for Medicaid for employees with disabilities, an individual must pay monthly premiums in accordance with the requirements specified in this section, unless the gross income of the individual and the individual's spouse is less than one hundred fifty percent (150%) of the federal poverty level. The amount of the premium is based on the gross income of the recipient and the recipient's spouse as a percentage of the federal poverty level for the applicable family size as determined in subsection (b). The amount of the premium will be adjusted by the premium amount of other creditable private health insurance as defined in 42 U.S.C. §300gg-91 that covers the applicant or recipient and is paid by the applicant or recipient or his or her spouse or parent. The amount of the premium is calculated as described in the following Table:

Income as a Percent of the Federal Poverty Level	Amount of Premium	
Less than 150% – No Premium is Required	Individual	Married Couple
150% to 175%	$ 48	$ 65
More than 175% to 200%	$ 69	$ 93
More than 200% to 250%	$ 107	$ 145
More than 250% to 300%	$ 134	$ 182
More than 300% to 350%	$ 161	$ 218
More than 350%	$ 187	$ 254

(b) The individual premium amount is used when the individual, regardless of age, is not married or not living with his or her spouse. When the individual premium amount is used, only the individual's income is considered in calculating the premium, and the income is compared to the federal poverty level for a family size of one (1).

(c) The married couple premium amount is used when the individual is legally married and living with his or her spouse. When the couple premium amount is used, the income of both spouses is considered in calculating the

premium, and the income is compared to the federal poverty level for a family size of two (2).

(d) When an applicant is determined eligible, the applicant will be conditionally approved pending payment of the premium. The first month for which a premium is required is the month following the month in which an applicant is approved as conditional. After the premium is received, coverage will be retroactive to the first day of the third month prior to the month of application if all eligibility requirements were met in the prior months.

(e) The individual must pay the first premium in order to receive coverage. If payment is not received by the due date specified in the second premium notice, the Medicaid application will be denied. A payment of less than the full amount due will be considered nonpayment.

(f) If any premium after the first premium is not paid by the due date, coverage will continue for a maximum of sixty (60) days before being discontinued. When an individual or couple have been discontinued from the program due to nonpayment of premiums, an application must be filed in order to be considered for eligibility. To be reenrolled based on an application filed after such a discontinuance, the individual must pay all past due premiums in addition to premiums owed for the current application. Past due premiums remain the obligation of the individual as a condition of eligibility for two (2) years after the date of discontinuance.

(g) When both spouses are recipients of Medicaid for employees with disabilities, the enrollment and continued eligibility of the couple is based on the payment of the married couple premium amount. Failure to pay the required premium amount in accordance with this section will result in the discontinuance of Medicaid coverage for both spouses.

(h) When a recipient reports a change in income or marital status as required by section 1(d) of this rule, and the change results in a lower premium, the new premium amount will be effective the first month following the date in which verification of the change is received.

(i) When a recipient who is eligible for Medicaid in the blind or disabled categories obtains employment, the change must be reported within ten (10) days as required by 470 IAC 2.1-1-2. An additional ten (10) days is allowed to provide verification of the employment. If the recipient is eligible for Medicaid for employees with disabilities, eligibility begins the first month following the date on which verification is received, subject to the timely notice requirements in 42 CFR 431.211. *(Office of the Secretary of Family and Social Services; 405 IAC 2-9-8; filed Jun 10, 2002, 2:21 p.m.: 25 IR 3120)*

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TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #01-420(F)

DIGEST

Amends 405 IAC 1-12 to establish Medicaid reimbursement criteria for certain community residential facilities for the developmentally disabled (CRFs/DD) licensed as small extensive medical needs residence for adults. Sets a limit of 12 hours per resident day for staffing costs for a facility that is exclusively for adults with extensive medical needs. Effective 30 days after filing with the secretary of state.

405 IAC 1-12-2 **405 IAC 1-12-9**
405 IAC 1-12-5 **405 IAC 1-12-22**

SECTION 1. 405 IAC 1-12-2 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 per patient or per resident day cost" means a ratio between total allowable costs and patient or resident days.

(d) "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.

(e) "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 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 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) "Change of provider status" means a bona fide sale or capital 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) "Cost center" means a cost category delineated by cost reporting forms prescribed by the office.

(h) "CRF/DD" means a community residential facility for the developmentally disabled.

(i) "DDARS" means the Indiana division of disability, aging, and rehabilitative services.

(j) "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) "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) "Equity" means allowable historical costs of facilities and equipment, less the unpaid balance of allowable debt at the provider's reporting year end.

(m) "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) "Forms prescribed by the office" means forms provided by the office or substitute forms which have received prior written approval by the office.

(o) "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) "Generally accepted accounting principles" or "GAAP" means those accounting principles as established by the American Institute of Certified Public Accountants.

(q) "ICF/MR" means an intermediate care facility for the mentally retarded.

(r) "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.

(s) "Office" means the Indiana office of Medicaid policy and planning.

(t) "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) "Patient or resident/recipient care" means those Medicaid program services delivered to a Medicaid enrolled recipient by a certified Medicaid provider.

(v) "Profit add-on" means an additional payment to providers in addition to allowable costs as an incentive for efficient and economical operation.

(w) "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.

(x) "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) "Routine medical and nonmedical supplies and equipment" includes those items generally required to assure ade-

quate medical care and personal hygiene of patients or residents by providers of like levels of care.

(z) "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) "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; filed Jun 10, 2002, 2:24 p.m.: 25 IR 3121)*

SECTION 2. 405 IAC 1-12-5 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, 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.

(e) 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 (12) 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) 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) 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.

(i) 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; filed Jun 10, 2002, 2:24 p.m.: 25 IR 3123)*

SECTION 3. 405 IAC 1-12-9 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. The Medicaid reimbursement system is based on recognition of the provider's allowable costs plus a potential profit add-on payment. The payment rate is subject to several limitations. Rates will be established at the lowest of the 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; Aug 14, 1998, 4:27 p.m.: 22 IR 65; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Jun 10, 2002, 2:24 p.m.: 25 IR 3124)

SECTION 4. 405 IAC 1-12-22 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-12-22 Community residential facilities for the developmentally disabled; allowable costs; compensation; per diem rate

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. 22. (a) Notwithstanding the application of standards and procedures set forth in sections 1 through 20 of this rule, the procedures described in this section apply to intermediate care facilities for the mentally retarded with eight (8) or fewer beds (community residential facilities for the developmentally disabled), except for intermediate care facilities for the mentally retarded licensed as:

(1) small behavior management residences for children for which the procedures described in this section apply to facilities with six (6) or fewer beds; **and**

(2) small extensive medical needs residences for adults for which the procedures described in this section apply to facilities with four (4) beds.

(b) Costs related to staffing shall be limited to the following:

Type of License	Staff Hours Per Resident Day
Sheltered living	4.5
Intensive training	6.0
Developmental training	8.0
Child rearing	8.0
Child rearing residences with specialized programs	10.0
Basic developmental	10.0
Small behavior management residences for children	12.0
Small extensive medical needs residences for adults	**12.0**

(c) Any change in staffing that exceeds the current limitations of four and one-half (4.5) hours per resident day for adults and eight (8) hours per resident day for children will require approval on a case-by-case basis, upon application by the facility. This approval will be determined in the following manner:

(1) A new or current provider of service which seeks staffing above four and one-half (4.5) hours per resident day for adults or eight (8) hours per resident day for children must first obtain approval from the DDARS, based upon the DDARS assessment of the program needs of the residents. The DDARS will establish the maximum number of staff hours per resident day for each facility, which may be less than but may not be more than the ceiling for each type of license. If a change in type of license is required to permit the staffing limitation determined by the DDARS, then the DDARS will make its recommendation to the licensing authority and convey to the office of Medicaid policy and planning the decision of the licensing authority. The office shall conduct a complete and independent review of a request for increased staffing and shall retain final authority to determine whether a rate change will be granted as a result of a change in licensure type.

(2) If a provider of services holds a current license which would permit staffing above the limitation of four and one-half (4.5) hours per resident day for adults and eight (8) hours per resident day for children, but the provider does not seek approval of staffing beyond those limitations, then the DDARS may investigate whether the provider holds the appropriate type of license.

(d) The per diem rate shall be an all-inclusive rate. The established rate includes all services provided to residents by a facility. The office shall not set a rate for more than one (1) level of care for each community residential facility for the developmentally disabled provider. *(Office of the Secretary of Family and Social Services; 405 IAC 1-12-22; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2328; filed Aug 15, 1997, 8:47 a.m.: 21 IR 81; filed Oct 31, 1997, 8:45 a.m.: 21 IR 953; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Jun 10, 2002, 2:24 p.m.: 25 IR 3124)*

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TITLE 431 COMMUNITY RESIDENTIAL FACILITIES COUNCIL

LSA Document #01-422(F)

DIGEST

Amends 431 IAC 1.1-1-2 concerning the definition of "community residential facility for persons with developmental

disabilities" to add a new category for types of services to include small residence for adults with extensive medical needs. Effective 30 days after filing with the secretary of state.

431 IAC 1.1-1-2

SECTION 1. 431 IAC 1.1-1-2 IS AMENDED TO READ AS FOLLOWS:

431 IAC 1.1-1-2 Types of facilities defined

Authority: IC 12-28-5-10; IC 12-28-5-19
Affected: IC 12-7-2; IC 12-28-5

Sec. 2. "Community residential facility for persons with developmental disabilities" means a residential facility, as defined by IC 12-7-2, which is operated for the purpose of providing one (1) of the following types of services to four (4) to eight (8) persons with developmental disabilities:

(1) "Adult support residence" means a home or an apartment staffed by personnel, which provides assistance with activities of daily living, transportation, and other assistance to residents with developmental disabilities other than mental retardation, to enable them to function in the community and within the home. The residence shall include specialized equipment, communication devices, and environmental controls as needed for the residents to enhance their ability to participate in activities of life.

(2) "Basic developmental residence" means a home or apartment setting for adults, staffed and supervised by personnel, to provide training for those individuals functioning at severe and profound levels of developmental disabilities in one (1) or more of the following areas:

(A) Activities of daily living.
(B) Communication.
(C) Behavioral training.
(D) Behavior management.

(3) "Child rearing residence" means a home for children only, staffed by personnel, which provides developmental training and support in specific areas for residents who function on a similar behavioral level.

(4) "Child rearing residence with a specialized program" means a home for children only, which provides developmental training and support in specific areas. The home must be:

(A) staffed by personnel and/or behavior management consultants who develop and monitor behavioral training; and/or

(B) staffed by personnel trained to provide intense personal assistance with activities of daily living due to physical limitations.

(5) "Intensive training residence" means a home or apartment for adults, staffed by personnel, which provides a system of structured, individualized supports and comprehensive training for residents to progress to a less restrictive setting in one (1) or more of the following areas:

(A) Activities of daily living.
(B) Behavioral training.
(C) Behavior management.
(D) Communication.
(E) Leisure time.

(6) "Developmental training residence" means a home or apartment for adults, staffed and supervised by personnel, to provide assistance and training for residents to promote their developmental growth in one (1) or more of the following areas:

(A) Activities of daily living.
(B) Behavioral training.
(C) Behavioral management.
(D) Communication.
(E) Personal adjustment.
(F) Leisure time.
(G) Use of community resources.

(7) "Sheltered living residence" means a home or apartment for adults, staffed by personnel, which provides training for residents to achieve an independent lifestyle in one (1) or more of the following areas:

(A) Activities of daily living.
(B) Behavioral training.
(C) Behavior management.
(D) Communication.
(E) Use of community resources.

(8) "Small behavior management residence for children" means a home exclusively for children which:

(A) has a behavior management program staffed by a behavior management consultant or personnel to develop and monitor behavioral training, developmental training, and support in specific areas for all residents who function on a similar level; and

(B) does not have more than six (6) beds.

(9) "Small residence for adults with extensive medical needs" means a residence, which is exclusively for adults with extensive medical needs and meets the following requirements:

(A) A residence for adults with extensive medical needs must provide:

(i) a medical management program to address the extensive medical needs of the residents; and

(ii) training for residents to address deficits in basic skills, including training in one (1) or more of the following areas:

(AA) Activities of daily living.
(BB) Communication.
(CC) Personal adjustment.
(DD) Behavior management.
(EE) Behavior training.
(FF) Leisure time.
(GG) Use of community resources.

(B) A residence under this subdivision (9) shall have four (4) beds.

(Community Residential Facilities Council; 431 IAC 1.1-1-2; filed Sep 30, 1991, 1:40 p.m.: 15 IR 96; filed Nov 2, 1992, 5:00 p.m.: 16 IR 850; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2373; filed Nov 13, 1997, 12:05 p.m.: 21 IR 1342; readopted filed Oct 1, 2001, 3:40 p.m.: 25 IR 528; filed Jun 10, 2002, 2:30 p.m.: 25 IR 3126)

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TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

LSA Document #01-299(F)

DIGEST

Adds 440 IAC 7.5 concerning residential living facilities which are certified by the division of mental health and addiction for individuals with a psychiatric disorder or an addiction. Repeals 431 IAC 2.1, 431 IAC 5, 431 IAC 6, and 440 IAC 7. Effective 30 days after filing with the secretary of state.

431 IAC 2.1
431 IAC 5
431 IAC 6
440 IAC 7
440 IAC 7.5

SECTION 1. 440 IAC 7.5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 7.5. RESIDENTIAL LIVING FACILITIES FOR INDIVIDUALS WITH PSYCHIATRIC DISORDERS OR ADDICTIONS

Rule 1. Definitions

440 IAC 7.5-1-1 Definitions

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-7-2-40.6; IC 12-17.4; IC 12-21-2-3; IC 12-21-2-7; IC 12-22-2-3; IC 12-23-17; IC 12-24-12-2; IC 12-24-12-10; IC 12-24-19-2; IC 12-26; IC 16-36-1; IC 23-17; IC 30-5-5-16; 42 U.S.C. 300x-2(c)

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

(1) "Addiction" means alcoholism or addiction to narcotic or other drugs, or addiction to gambling.

(2) "Addiction services provider" means an organization certified by the division to provide a structured facility designed for the treatment, care, and rehabilitation of individuals addicted to alcohol or drugs.

(3) "Agency" means:

(A) a community mental health center certified by the division under 440 IAC 4.1;

(B) a managed care provider certified by the division under 440 IAC 4.3;

(C) a residential care provider certified by the division under 440 IAC 6; or

(D) an addiction services provider with regular certification certified by the division under 440 IAC 4.4-2-3 that administers a residential living facility.

(4) "Alternative family for adults program" means a program that serves six (6) or fewer individuals who have a psychiatric disorder or addiction, or both, and who reside with an unrelated householder.

(5) "Apartment house" means any building or portion thereof that contains three (3) or more dwelling units and includes condominiums.

(6) "Case management" means goal oriented activities that locate, facilitate, provide access to, coordinate, or monitor the full range of basic human needs, treatment, and service resources for individual consumers. The term includes, where necessary and appropriate for the consumer, the following:

(A) Assessment of the consumer.

(B) Treatment planning.

(C) Crisis assistance.

(D) Providing access to and training the consumers to utilize basic community resources.

(E) Assistance in daily living.

(F) Assistance for the consumer to obtain services necessary for meeting basic human needs.

(G) Monitoring of the overall delivery of services.

(H) Assistance in obtaining the following:

(i) Rehabilitation services and vocational opportunities.

(ii) Respite care.

(iii) Transportation.

(iv) Education services.

(v) Health supplies and prescriptions.

(7) "Case manager" means an individual who provides case management activities.

(8) "Community mental health center" means a mental health facility that the division has certified as fulfilling the statutory and regulatory requirements to be a community mental health center.

(9) "Congregate living facility" means a supervised group living facility, a sub-acute living facility, a transitional living facility, or a semi-independent living facility for up to fifteen (15) individuals that is located in any building or portion thereof that contains facilities for living, sleeping, and sanitation, and includes facilities for eating and cooking, for occupancy by other than a family.

(10) "Consumer" is an individual with a psychiatric disorder or addiction, or both.

(11) "Continuum of care" means a range of required services provided by a community mental health center or a managed care provider. The term includes the following:

(A) Individualized treatment planning to increase consumer coping skills and symptom management, which may include any combination of services listed under this section.

(B) Twenty-four (24) hour a day crisis intervention.

(C) Case management to fulfill individual consumer needs, including assertive case management when indicated.

(D) Outpatient services, including the following:

(i) Intensive outpatient services.

(ii) Substance abuse services.

(iii) Counseling.

(iv) Treatment.

(E) Acute stabilization services, including detoxification services.

(F) Residential services.

(G) Day treatment.

(H) Family support services.

(I) Medication evaluation and monitoring.

(J) Services to prevent unnecessary and inappropriate treatment and hospitalization and the deprivation of a person's liberty.

(12) "Crisis intervention" means services in response to a psychiatric disorder or addiction emergency, either provided directly by the provider or made available by arrangement with a medical facility or an individual physician licensed under Indiana law.

(13) "Division" means the Indiana division of mental health and addiction or its duly authorized agent.

(14) "Dwelling unit" means any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation for not more than one (1) family.

(15) "Evacuation capability" means the ability of the occupants, residents, and staff, as a group, to evacuate the building. Evacuation capability is classified as follows:

(A) Prompt evacuation capability is equivalent to the capability of the general population when applying the requirements of this article.

(B) Slow evacuation is the capability of the group to evacuate the building in a timely manner, with some of the residents requiring assistance from the staff.

(C) Impractical evacuation capability occurs when the group, even with staff assistance, cannot reliably evacuate the building in a timely manner.

The evacuation capability of the residents and staff is a function of both the ability of the residents to evacuate and the assistance provided by the staff. Evacuation capability in all cases is based on the time of day or night when evacuation would be most difficult, that is, sleeping residents, loss of power, severe weather or fewer staff present.

(16) "Family" means an individual or two (2) or more persons related by blood or marriage or a group of ten (10) or less persons who need not be related by blood or marriage living together in a single dwelling unit.

(17) "Gatekeeper" means an agency identified in IC 12-24-12-2 or IC 12-24-12-10 that is actively involved in the evaluation and planning of treatment for an individual committed to a state institution beginning after the commitment through the planning of the individual's transition back into the community, including case management services for the individual in the community.

(18) "Household member" means any person living in the same physical residence as a consumer living in a residential living facility licensed or certified under this rule.

(19) "Householder" means the occupant owner or leaseholder of the residence used in the alternative family program.

(20) "Individualized treatment plan" means a written plan of care and intervention developed for an individual by a treatment team in collaboration with the individual and, when appropriate, the individual's family or guardian.

(21) "Legal representative" means:

(A) a health care representative appointed under IC 16-36-1;

(B) an attorney-in-fact for health care who was appointed by the resident when the resident was competent under IC 30-5-5-16;

(C) a court appointed guardian for health care decisions; or

(D) the resident's parent, adult sibling, adult child, or spouse who is acting as the resident's health care representative under IC 16-36-1 when no formal appointment of a health care representative has been made and the resident is unable to make health care decisions.

(22) "Managed care provider" means an organization:

(A) that:

(i) for mental health services, is defined under 42 U.S.C. 300x-2(c);

(ii) provides addiction services; or

(iii) provides children's mental health services;

(B) that has entered into a provider agreement with the division under IC 12-21-2-7 to provide a continuum of care as defined in IC 12-7-2-40.6 in the least restrictive, most appropriate setting; and

(C) that is operated by at least one (1) of the following:

(i) A city, town, county, or other political subdivision of Indiana.

(ii) An agency of Indiana or of the United States.

(iii) A political subdivision of another state.

(iv) A hospital owned or operated by:

(AA) a unit of government; or

(BB) a building authority that is organized for the purpose of constructing facilities to be leased to units of government.

(v) A corporation incorporated under IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.

(vi) An organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(vii) A university or college.

(23) "Psychiatric disorder" means a mental disorder or disease. The term does not include the following:

(A) Mental retardation.

(B) A developmental disability.

(C) Alcoholism.

(D) Addiction to narcotic or other drugs.

(E) Addiction to gambling.

(24) "Representative payee" means a person appointed by:

(A) the United States Social Security Administration;

(B) the United States Office of Personnel Management;

(C) the United States Department of Veterans Affairs; or

(D) the United States Railroad Retirement Board;

to provide one (1) or more financial management services, in order to assist an individual who is receiving government benefits and is medically incapable of making responsible financial decisions.

(25) "Resident" means an individual who is living in a residential living facility.

(26) "Resident living allowance" is a sum of money paid to a consumer when that consumer's personal resources are not adequate to maintain the consumer in a therapeutic living environment.

(27) "Residential care provider" means a provider of residential care that has been certified by the division as one (1) of the following:

(A) A community mental health center.

(B) A managed care provider.

(C) A residential care provider.

(D) An addiction services provider with regular certification.

(28) "Residential director" means an individual whose primary responsibility is to administer and operate the residential facility.

(29) "Residential living facility" means:

(A) sub-acute stabilization facility;

(B) supervised group living facility;

(C) transitional residential services facility;

(D) semi-independent living facility defined under IC 12-22-2-3; and

(E) alternative family homes operated solely by resident householders under this rule.

(30) "Residential staff" or "staff" means all individuals who the agency employs or with whom the agency contracts to provide direct services to the residents in the residential living facility.

(31) "Respite care" means temporary residential care to provide:

(A) relief for a caregiver; or

(B) transition during a stressful situation.

(32) "Semi-independent living facility" means a facility:

(A) that is not licensed by another state agency and serves six (6) or fewer individuals with a psychiatric disorder or an addiction, or both, per residence who require only limited supervision; and

(B) in which the agency or its subcontractor:

(i) provides a resident living allowance to the resident; or

(ii) owns, leases, or manages the residence.

(33) "Sub-acute stabilization facility" means a twenty-four (24) hour facility for the treatment of psychiatric disorders or addictions, and which is more restrictive than a supervised group living facility and less restrictive than an inpatient facility.

(34) "Supervised group living facility" means a residential facility that provides a therapeutic environment in a home-like setting to persons with a psychiatric disorder or addiction who need the benefits of a group living arrangement as post-psychiatric hospitalization intervention or as an alternative to hospitalization.

(35) "Therapeutic living environment" means a living environment:

(A) in which the staff and other residents contribute to the habilitation and rehabilitation of the resident; and

(B) that presents no physical or social impediments to the habilitation and rehabilitation of the resident.

(36) "Transitional residential facility" means a twenty-four (24) hour per day service that provides food, shelter, and other support services to individuals with a psychiatric disorder or addiction who are in need of a short term supportive residential environment.

(37) "Treatment team" minimally consists of the following:

(A) The resident.

(B) The resident's case manager.

(C) The appropriate staff of the residential facility.

(D) Persons from other agencies who design and provide a direct treatment service for the resident.

(E) If the resident has a legal representative, the team shall include the legal representative.

(Division of Mental Health and Addiction; 440 IAC 7.5-1-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3127)

Rule 2. Requirements for All Residential Living Facilities in This Article

440 IAC 7.5-2-1 General overview

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-7-2-70; IC 12-17.4-3; IC 12-20-17-2; IC 12-22-2-3; IC 12-22-2-11; IC 12-30-3; IC 16-28

Sec. 1. The following is a general overview of the requirements for residential facilities under this article:

CMHCs and MCPs ONLY			ALL AGENCIES		
ISSUE	SILP	AFA	TRS	SGL	SUB-ACUTE
Covers/affects	MCP/CMHC	MCP/CMHC	All	All	All
Licensed/cert. by	Agency	Agency	Agency	DMH	DMH
Certification time	24 months	24 months	24 mos.	3 years	3 years
Site accredited	No	No	15/less No–16+ Yes	Yes	Yes
Beds	Maximum 6 Per residence	Max. 6 per house-holder	Max. 15 (can be waived)	10 single family 15 apt./congregate	Minimum 4 Maximum 15 (can be waived)
Locked egress allowed	No	No	No	No	Yes
Floor plan	No	No	No	Yes	Yes
Space per consumer	80' single 60' multiple	80' single 60' multiple/2	80' single 60' multiple	80' single 60' multiple	80' single 60' multiple
Children of residents allowed?	Yes	Yes	Yes	Yes	No
Plumbing	4 per toilet 6 per tub/shower	4 per toilet 6 per tub/shower	4 per toilet 6 per tub/shower	4 per toilet 6 per tub/shower	4 per toilet 6 per tub/shower
Setting–House	Yes	Yes	Yes	Yes	Yes
Apartment	Yes	Yes	Yes	Yes	No
Congregate	Yes	No	Yes	Yes	Yes
Mobile Home	No unless waiver	No unless waiver	No	No	No
Fire/safety Inspections by	Local	Local, 4+, SFM	15/less Local with waiver, 16+ SFM	State Fire Marshal	State Fire Marshal
PROGRAM					
Minimum oversight	1 hour per week	2 hours per month	Less than 24 hours	24 hours	24 hours
Residential living Allowance allowed	Yes	Yes	Yes	Yes	No
Length of stay limit	No	No	No	No	Up to 1 year
Medication rules	Yes	Yes	Yes	Yes	Yes
TB test–resident	Yes	Yes	Yes	Yes	Yes
Seclusion	No	No	No	No	Yes
Restraint–Chemical	No	No	No	No	No
Physical	No	No	No	No	Yes

Applies to both seriously mentally ill adults and persons with chronic addiction. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3129)*

440 IAC 7.5-2-2 Application of article

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-7-2-70; IC 12-17.4-3; IC 12-20-17-2; IC 12-22-2-3; IC 12-22-2-11; IC 12-30-3; IC 16-28

Sec. 2. (a) This rule applies to the following:

(1) Providers of residential living facilities, including:

(A) agencies; and

(B) alternative family householders.

(2) Residents of residential living facilities for individuals with psychiatric disorders or addictions.

(3) Children living with a resident in a residential facility.

(b) Residential living facilities include the following:

(1) The sub-acute stabilization facility.

(2) The supervised group living facility.

(3) The transitional residential facility.

(4) The semi-independent living facility.

(5) The alternative family for adults program.

(c) Certification under this article is not required if the facility is certified or licensed as one (1) of the following:

(1) A health facility licensed under IC 16-28.

(2) A county home established under IC 12-30.

(3) A residential child care establishment licensed under IC 12-17.4.
(4) Residential care facility licensed under IC 16-28.
(5) Shelters for homeless people established under IC 12-20-17-2.
(6) Domestic violence prevention and treatment centers as defined at IC 12-7-2-70.

(d) Residential living facilities must do the following:
(1) Provide appropriate supervision and activities that assist the resident in maintaining or acquiring skills necessary to live in the community.
(2) Assist the resident in identifying and applying for all benefits and public assistance for which the resident may be determined eligible.
(Division of Mental Health and Addiction; 440 IAC 7.5-2-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3130)

440 IAC 7.5-2-3 Administration
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 16-39; 42 CFR 2

Sec. 3. (a) Residential living facilities under this article must be administered by an agency certified by the division as a community mental health center, a managed care provider, a residential care provider, or an addiction services provider with a regular certification.

(b) The agency shall have a written facility description that must be available to staff, residents, and members of the public. The description must include the following:
(1) Services offered by the facility.
(2) The resident populations to be served.
(3) Admissions, transfer, and discharge criteria.
(4) Facility goals, including staffing positions to accomplish these goals, and community resources that will be utilized to meet the residents' needs.
(5) Facility philosophy and treatment orientation.

(c) The agency is responsible for maintaining the administrative and supervisory structure required to provide and oversee residential living facilities.

(d) When an agency subcontracts with another entity to operate a facility, the subcontractor must meet the requirements of this article.

(e) A managed care provider or community mental health center must notify the division prior to the implementation of the contract when it subcontracts with another entity.

(f) Resident records are confidential under IC 16-39 and 42 CFR 2 and are the property of the agency or entity responsible for a resident's care.

(g) The division has the right to conduct an on-site inspection of any of the residential facilities described in this article. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3131)*

440 IAC 7.5-2-4 Reporting
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3

Sec. 4. (a) The agency must notify the division prior to operating, building, or purchasing a facility that must be licensed or certified by the division under this article.

(b) The agency must notify the division regarding the following changes prior to making such changes:
(1) Proposed change in ownership.
(2) Proposed major changes in services offered, including the proposed closing of a facility.

(c) The agency shall report any of the following incidents to the division within one (1) working day:
(1) Any fire requiring a local fire department response.
(2) Any emergency rendering the residence temporarily or permanently uninhabitable.
(3) Any serious injury of a resident or household member requiring professional medical attention.
(4) A suicide attempt by a resident or household member.
(5) Any incident involving the resident or a household member requiring local police response.
(6) Suspected or alleged exploitation, neglect, or abuse of a resident or household member.
(7) The death of a resident or household member.

(d) If the division determines the reported allegations warrant an investigation, the division may conduct an investigation. The agency must fully cooperate with any investigation by the division or its agents.

(e) The division may make an on-site inspection of any residential facility certified or licensed under this article, including those facilities of subcontractors, at any time.

(f) The division may suspend the agency's license or certification for up to ninety (90) days if an agency fails to report one (1) of the events listed in subsection (c). Consequences of license suspension include the prohibition of new resident placement during the suspension. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-4; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3131)*

440 IAC 7.5-2-5 Admissions
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3

Sec. 5. (a) The agency must have written policies and procedures that govern admissions in a residential living facility.

(b) The agency must assure that the services required by the individual's treatment plan can be appropriately provided by the facility or by contractual agreement.

(c) There shall be an orientation procedure for the resident that:
(1) specifies the arrangements and charges for housing, food, and professional services; and
(2) includes a written copy of the facility's statement of rules, resident rights and responsibilities, confidentiality, grievance procedures, and termination policy.

(d) Written documentation must be maintained in the resident's file that an explanation of the resident rights and responsibilities have been presented to the individual resident and that the resident understands these rights. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-5; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3131)*

440 IAC 7.5-2-6 Resident rights and responsibilities
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-27; IC 16-39-2; 42 CFR 2

Sec. 6. (a) The agency shall have and enforce written policies regarding the rights and responsibilities of residents under IC 12-27 and this article.

(b) In addition to the rights and responsibilities listed in IC 12-27, the agency shall ensure that each resident:
(1) is in a safe environment and is free from abuse and neglect;
(2) is treated with consideration, respect, and full recognition of the resident's dignity and individuality;
(3) is free to communicate, associate, and meet privately with persons of the resident's choice unless:
(A) it infringes on the rights of another resident; or
(B) the restriction of this right is a part of the resident's individual treatment plan;
(4) has the right to confidentiality concerning personal information under IC 16-39-2 and 42 CFR 2;
(5) is free to voice grievances and to recommend changes in the policies and services offered by the agency;
(6) is not required to participate in research projects;
(7) has the right to manage personal financial affairs or to seek assistance in managing them unless the resident has a representative payee or a court appointed guardian for financial matters;
(8) shall be informed about available legal and advocacy services, and may contact or consult legal counsel at the resident's own expense; and
(9) shall be informed of the division's toll free consumer service number.

(c) The division's toll free consumer service number shall be posted in a room used by all consumers in all supervised group living facilities, sub-acute facilities, and transitional residential facilities.

(d) The resident rights and responsibilities shall be reviewed with the consumer annually.

(e) The privacy of each resident shall be respected to the maximum extent feasible and shall, at a minimum, meet the following:
(1) Private space is available for conducting:
(A) intakes;
(B) assessments;
(C) individual, family, and, when provided, group counseling; and
(D) resident meetings.
(2) The agency shall establish written policies and procedures that specify how consumer privacy is maintained with regard to visitors and other nonfacility personnel.

(f) The agency shall assure that residents are paid in accordance with federal and state laws and regulations for all work that is of consequential economic benefit to the agency, except the following:
(1) Personal housekeeping tasks related directly to the resident's personal space and possessions.
(2) Shared responsibilities for regular household chores among a group of residents.

(g) Each resident is expected to do the following:
(1) Make every effort to respect and care for themselves, their clothing, and personal belongings.
(2) Respect the rights of the other residents and residential staff.
(3) Respect the personal belongings of other residents, as well as the property of the facility.
(4) Contribute to and participate in the formulation of their own treatment plans and work toward attaining treatment goals.
(5) Respect the privacy and confidentiality of other consumers.
(6) Adhere to the facility's rules presented to the resident in the resident orientation procedure.
(7) An adult consumer shall apply for all benefits and public assistance for which the consumer may be determined eligible as a condition of participation in a residential living facility.
(Division of Mental Health and Addiction; 440 IAC 7.5-2-6; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3132)

440 IAC 7.5-2-7 Resident finances
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 7. Each agency shall develop and implement written policies and procedures to protect the financial interests of

the residents. These policies and procedures shall:

(1) provide financial counseling and training to all residents as needed;

(2) allow a resident's personal funds to be used to secure incidentals and personal and special need items;

(3) encourage residents to maintain savings and checking accounts in community financial institutions;

(4) enable residents to have their own money in their possession, unless the resident has a representative payee, a guardian for financial purposes, or the resident requests assistance in writing from the residential staff;

(5) establish specific policies regarding the agency acting as representative payee for the resident, including meeting the fiduciary duty owed to a resident by a representative payee;

(6) establish an accounting system and maintain a complete record of the disbursements and items purchased for the resident when a resident's funds are disbursed by the agency on behalf of the resident;

(7) provide that the financial record shall be available to the resident or to the resident's legal representative; and

(8) provide that staff persons shall not borrow or accept money or any thing of value from a resident.

(Division of Mental Health and Addiction; 440 IAC 7.5-2-7; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3132)

440 IAC 7.5-2-8 Resident health and treatment

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2

Sec. 8. (a) An individualized treatment plan shall be developed and followed for each resident.

(1) The treatment team, with the active participation of the resident, shall design and implement a written, comprehensive individualized treatment plan in collaboration with the case manager and under the direction of the agency.

(A) A preliminary plan or a referral application indicating the desired treatment objectives must be completed prior to placement.

(B) A fully developed individual treatment plan shall be completed within the first thirty (30) days of enrollment.

(2) The individual treatment plan shall be reviewed at least every ninety (90) days.

(b) Each person admitted to a residential facility shall have written evidence of the following:

(1) The resident has had a physical examination:

(A) not more than six (6) months prior to admission; or

(B) within three (3) months after admission.

(2) A tuberculin skin test shall be completed and read within three (3) months prior to admission. If the individual has not had the tuberculin skin test within three (3) months prior to admission, the person may be admitted to the facility, but must have the test upon admission and it must be read within seventy-two (72) hours after the administration of the test.

(c) The agency must assist the resident to obtain medical and dental care.

(1) The facility shall have a written plan that outlines the procedures used to access and treat dental, pharmacological, optometric, audiological, psychiatric, and general medical care needs of residents, including at least an annual physical and dental exam.

(2) The plan shall include the following:

(A) Procedures for evaluating the resident's needs.

(B) Referral to appropriate health care providers, including choice of private practitioners.

(C) Assistance in obtaining insurance or other aid for the payment of fees for medical and dental services.

(D) Methods of training each resident to monitor the resident's own personal health, hygiene, and dental conditions.

(d) The agency shall have a written plan outlining procedures in cases of emergency or illness of staff, residents, or household member.

(e) Each resident shall be instructed in how to access physical emergency services and the agency's clinical emergency services. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-8; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3133)*

440 IAC 7.5-2-9 Medication

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 9. (a) Agencies having residential living facilities shall establish and enforce written policies and procedures for the self-administration and monitoring of medication for residents.

(b) The written medication policies shall include the following:

(1) How the goal of self-medication for residents is to be achieved.

(2) For residents who are totally self-medicating, the agency must have a procedure for:

(A) monitoring the resident's use of medication;

(B) ensuring adequate supplies; and

(C) providing safe storage of medication.

(3) When assistance is required by the resident:

(A) how residents who need assistance with medication will receive it;

(B) how the agency will store medications for the residents; and

(C) how the agency will dispose of medications no longer needed or remaining after any expiration date.

(4) How monitoring will be implemented.

(5) What documentation is required regarding medication.

(c) The policies and procedures established in this section shall be:

(1) developed in consultation with a nurse, pharmacist, or physician; and

(2) approved by the agency.

(d) Each residential facility shall administer or monitor prescription medications with the direction of a physician. Nonprescription drugs as needed may be used by an adult resident unless the resident's physician specifies otherwise.

(e) Only staff who are authorized to administer medication under state law and in accordance with the requirements of the accrediting body may administer medication.

(f) The facility shall train all staff and householders about the following:

(1) Medications used by their residents.

(2) The purposes and functions of the medications.

(3) Major side effects and contraindications.

(4) Recognition of signs that medication is:

(A) not being taken;

(B) being misused; or

(C) ineffective.

(Division of Mental Health and Addiction; 440 IAC 7.5-2-9; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3133)

440 IAC 7.5-2-10 Nutrition

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 10. (a) The agency or its subcontractor shall develop and implement written policies and procedures for staff and for residents who require training regarding more independence for the resident in the following:

(1) Basic nutrition.

(2) Meal planning.

(3) Food purchasing and preparation.

(4) Food storage.

(5) Dish washing.

(6) Sanitation.

(7) Safety.

(b) In supervised group living facilities, transitional residential facilities, sub-acute facilities, and alternative families for adults, at least three (3) well-balanced meals shall be available for each day, with the exception that residents shall be encouraged to dine out occasionally, or to carry sack lunches for the periods of time when they are away from the facility.

(c) Deprivation of a meal or snack shall not be used as punishment for the infraction of a house rule or failure of the resident to carry out an aspect of the resident's treatment plan. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-10; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3134)*

440 IAC 7.5-2-11 Environment

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 11. (a) The location of the residence shall provide opportunities for the resident to participate in community activities and have independent access to community services. The residence shall be:

(1) reasonably accessible to the agency as well as to medical, recreational, and shopping areas, by public or agency-arranged transportation; and

(2) located in a suitable residential setting, and the location, design, construction, and furnishings of each residence shall be:

(A) appropriate to the type of facility;

(B) as homelike as possible; and

(C) conducive to the achievement of optimal development by the residents.

(b) Except for sub-acute facilities, the residential facility shall not erect any sign that might set the facility apart from other residences in the area.

(c) The agency shall avoid the creation of nontherapeutic concentrations of residential facilities in any given area, including residential facilities not administered by this agency.

(d) Each facility shall have a policy concerning pets. Pets may be permitted in a facility but shall not be allowed to create a nuisance or safety hazard. Any pet housed in a facility shall have periodic veterinary examinations and required immunizations in accordance with state and local health regulations. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-11; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3134)*

440 IAC 7.5-2-12 Physical requirements

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 12. (a) The living area shall meet the following requirements:

(1) The residence must be in good repair and free of hazards, such as the following:

(A) Loose or broken window glass.

(B) Loose or cracked floor coverings or ceilings.

(C) Holes in the walls.

(2) The residence must be kept free from flying insects by screens on all functional outside windows and doors or by other effective means.

(3) The resident's bedroom shall have at least one (1)

window capable of being fully opened for escape and rescue purposes, and proper ventilation.

(b) The residence shall be clean, neat and orderly. The agency or its subcontractor shall ensure that the resident maintains cleanliness of the residence.

(c) The agency or its subcontractor shall provide for the comfort and safety of all occupants.

(d) All rooms used for eating, sleeping, and living shall be provided with adequate light and ventilation by means of windows as needed for safety purposes.

(e) The following shall not be used as a residence unless the division grants a waiver:
(1) Basement rooms or rooms below grade level.
(2) Attics and other areas originally intended for storage.
(3) Sleeping rooms in resident hotels or motels.

(f) The division shall not grant a waiver unless the illumination, ventilation, temperature, and humidity control provide the same level of comfort as rooms not requiring a waiver, and if the room is below grade, or an attic or other area originally intended for storage, at least one (1) direct exit to the outside must be provided.

(g) Bedrooms shall not be located in such a manner as to require the passage of a resident through the bedroom of another resident.

(h) A single occupancy bedroom for an adult must have eighty (80) square feet or more of floor space.

(i) A multiple occupancy bedroom must have sixty (60) square feet or more of floor space for each adult occupant.

(j) There must be at least one (1) toilet and lavatory for every four (4) residents, and one (1) tub or shower for every six (6) residents.

(k) The per person requirements of square footage and bathroom facilities do not apply to the following:
(1) A consumer with his or her children living with him or her in the facility.
(2) A sub-acute facility or a transitional residential facility that was given a waiver regarding the maximum number of residents prior to January 1, 2002, and is accredited by an accrediting agency approved by the division. This waiver is not transferable.

(l) Ceiling heights in bedrooms shall be a minimum of seven (7) feet, six (6) inches. If the bedroom has a suspended or sloping ceiling, the specified ceiling heights must be met in all areas used in computation of floor space.

(m) If a private water supply or sewage system is used, the residence shall comply with local regulations regarding sanitation. Evidence of compliance shall be provided by the landlord to the agency, or if the residence is a sub-acute facility or a supervised group living facility, to the division.

(n) There shall be cooking facilities and food storage areas.

(o) The food preparation and serving areas, including the structure, construction, and installation of equipment, shall be in sanitary condition and operating properly. Food storage areas shall be properly refrigerated and protected from contamination. Storage areas for nonfood supplies shall be separate from food storage areas. Appliances, fixtures, and equipment shall be adequate for sanitary washing and drying of dishes.

(p) The facility shall ensure that arrangements are made to allow residents to launder personal items and linens at least weekly. If laundry is done on the premises, equipment must be kept in working order. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-12; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3134)*

440 IAC 7.5-2-13 Safety requirements
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 13. (a) The agency shall have written policies and procedures to ensure resident and staff safety.

(b) The policies and procedures regarding resident and staff safety must be given to all personnel and residents and be made available to others on request.

(c) The agency or its subcontractor shall demonstrate that it has provided each resident, householder, and staff member with life safety equipment as follows:
(1) There shall be an Underwriter's Laboratories approved battery operated smoke detector in good working order on each floor of a residence and in each bedroom unless another type of alarm or detector has been installed by the landlord to comply with a local ordinance.
(2) In the case of the visually impaired resident, the residence shall be equipped with audible life safety devices.
(3) In the case of the hearing impaired resident, the residence shall be equipped with visual life safety devices.
(4) A five (5) pound ABC multipurpose type extinguisher, or the equivalent, shall be located on each floor of the facility.
(5) In a sub-acute facility, a supervised group living facility, or a transitional residential facility, at least one (1) ten (10) pound ABC multipurpose type extinguisher shall be located in the kitchen.

(d) All sprinkler systems, fire hydrants, standpipe systems,

fire alarm systems, portable fire extinguishers, smoke and heat detectors, and other fire protective or extinguishing systems or appliances shall be maintained in an operative condition at all times and shall be replaced or repaired where defective.

(e) Each resident, householder, and staff member shall be trained in procedures to be followed in the event of tornado, fire, gas leak, and other threats to life safety.

(f) Use of space heaters and unventilated fuel heaters is prohibited.

(g) Residential living facilities and operations shall conform to all applicable federal, state, or local health and safety codes, including the following:
(1) Fire protection.
(2) Building construction and safety.
(3) Sanitation.

(h) Residential living facilities shall maintain current documentation of compliance with all applicable codes.

(i) Every closet door latch shall be such that it can be opened from the inside in case of emergency.

(j) Every bathroom door shall be designed to permit the opening of the locked door from the outside in an emergency.

(k) For all facilities, except sub-acute facilities, no door in the required path of egress shall be locked, latched, chained, bolted, barred, or otherwise rendered unusable.

(l) A sub-acute facility may be a locked or secure facility, if the facility meets the following requirements:
(1) All locking devices and other fire safety devices shall comply with the rules of the fire prevention and building safety commission.
(2) Exit doors shall be openable from the inside without the use of a key or any special knowledge or effort.
(3) All locking devices shall be of a type approved by the fire prevention and building safety commission.

(m) The administration of the facility shall have a written posted plan for evacuation in case of fire and other emergencies.

(n) For all facilities, except semi-independent living facilities, fire evacuation drills shall be conducted monthly. The shift conducting the drill shall be alternated to include each shift once a quarter. At least one (1) drill each year shall be conducted during sleeping hours. A tornado drill shall be conducted each spring for all staff and residents.

(o) Residents of semi-independent living facilities shall be trained to handle emergency evacuation situations.

(p) Where smoking is permitted, noncombustible safety-type ash trays or receptacles, for example, glass, ceramic, or metal, shall be provided.

(q) All combustible rubbish, oily rags, or waste material, when kept within a building or adjacent to a building, shall be securely stored in metal or metal-lined receptacles equipped with tight fitting covers or in rooms or vaults constructed of noncombustible materials. Dust and grease shall be removed from hoods above stoves and other equipment at least every six (6) months.

(r) No combustibles shall be stored within three (3) feet of furnaces or water heaters.

(s) The facility shall not use any type of solid fuel-burning appliance, except fireplaces.

(t) Fireplace safety requirements shall be as follows:
(1) If the fireplace is used, the chimney flue shall be cleaned annually and a written record of the cleaning retained.
(2) Glass doors, a noncombustible hearth, and grates shall be provided for each fireplace in use.
(3) Ashes from the fireplace shall be disposed of in a noncombustible covered receptacle. The receptacle shall then be placed on the ground and away from any building or combustibles.
(4) Proper fireplace tools shall be provided for each fireplace in use.

(u) The facility shall maintain all fuel-burning appliances in a safe operating condition. There shall be an annual inspection by a qualified inspector of all fuel-burning appliances.

(v) The gas and electric shutoffs shall be labeled and easily accessible in case of emergency. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-13; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3135)*

440 IAC 7.5-2-14 Furnishings
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2

Sec. 14. (a) The agency shall furnish and maintain the furnishings in a residence, or they shall assist the resident in acquiring and maintaining furnishings for the residence. The intent is to assure a private residence that is homelike, comfortable, sanitary, and promotes the dignity of the resident.
(1) If the agency elects to furnish the residence, the resident may be required to make a security deposit, sign an inventory, and agree to replace lost or damaged furnishings.

(2) Furnishings shall be in good repair and attractive.
(3) Residents shall be encouraged to purchase and display personal possessions and to enhance a homelike environment with items of their choice.
(4) The facility may not require residents to provide their own furniture. Furniture provided by the residents remains the property of the residents.

(b) Basic furnishings shall include, but are not limited to, the following:
(1) A dresser.
(2) Clothing storage.
(3) Bath towels.
(4) An individual bed that shall be furnished adequately with a clean mattress and clean bedding.
(5) A table and chairs for meals.
(6) A chair or couch.
(7) Lamps as needed.
(8) Adequate dishes, utensils, and cookware.

(c) In a sub-acute facility, a transitional residential facility, or a supervised group living facility, a television and radio shall be provided for the use of the residents who have expressed an interest. Television viewing must not be a substitute for other activities. *(Division of Mental Health and Addiction; 440 IAC 7.5-2-14; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3136)*

Rule 3. Requirements Specific for Managed Care Providers and Community Mental Health Centers

440 IAC 7.5-3-1 Continuum of care
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 1. A managed care provider or community mental health center that contracts with the division must assure that residential living facilities will function as part of the continuum of care. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3137)*

440 IAC 7.5-3-2 Case management
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 2. At the time of admission to the facility and throughout the service period, each resident shall be assigned to a case manager who is employed by the managed care provider or community mental health center. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3137)*

440 IAC 7.5-3-3 Resident living allowance
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 3. (a) Agencies that contract with the division may choose to provide a resident living allowance.

(b) An agency that provides a resident living allowance shall comply with the following:
(1) The resident living allowance shall not exceed five hundred twenty dollars ($520) per month, except in the first month in which the resident receives the resident living allowance.
(2) A resident is eligible to receive a resident living allowance if:
(A) the resident's income, less the income incentive, is less than two hundred percent (200%) of the federal poverty guideline;
(B) the resident has no more than one thousand five hundred dollars ($1,500) in liquid assets;
(C) the resident's other personal resources are inadequate to maintain the resident in a therapeutic living environment; and
(D) the allowance is authorized by the individual treatment plan.

(c) The agency may disburse a resident living allowance on behalf of the resident, in compliance with requirements of a representative payee. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3137)*

440 IAC 7.5-3-4 Calculation of resident living allowance
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 4. Residents who are eligible to receive a resident living allowance shall have the amount computed by the following method:
(1) Subtract the income incentive from the resident's income and benefits.
(2) Subtract this difference from the resident's allowable expenses. This is the amount of the resident's living allowance, up to the cost of the resident's allowable expenses or the maximum of five hundred twenty dollars ($520) per month.
(Division of Mental Health and Addiction; 440 IAC 7.5-3-4; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3137)

440 IAC 7.5-3-5 Components of the resident's income and assets
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 5. (a) The following are considered the resident's income for purposes of the resident living allowance:
(1) Wages.
(2) Interest paid on accounts.
(3) Rental income.

(4) Interest or dividends paid on certificates, bonds, or securities.
(5) Cash benefits, including the following:
(A) Insurance payments.
(B) All entitlement programs from state or federal sources.
(C) Pensions from union or other employment.
(D) Routine cash gifts from family or others.

(b) The following are requirements concerning trusts:
(1) Routine distributions from a trust for the use of an individual or on behalf of the individual by the administrator of the trust shall be considered income to the individual.
(2) Lump sum distributions from a trust may be considered liquid assets.
(A) The conditions and terms of trusts shall be disclosed in full by providing a copy of the trust instrument to the agency in order to determine if the assets of the trust shall be available to meet the individual's obligation to pay for the cost of residential services.
(B) All distributions from the trust shall be reported to the agency by the trustee to determine if the distributions have created income or assets for purposes of this rule.

(c) The following are considered liquid assets for purposes of the resident living allowance program:
(1) The excess of life insurance policies with a cash surrender value of more than three thousand dollars ($3,000).
(2) Savings accounts.
(3) Checking accounts.
(4) Certificates of deposit.
(5) Securities.
(6) Bonds.
(7) The contents of safety deposit boxes held in the name of the individual, or in common, or jointly with others.

(d) Assets shall be valued at their current market value.

(e) Unless otherwise demonstrated, jointly held assets shall be equally prorated among all named owners. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-5; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3137)*

440 IAC 7.5-3-6 Income incentive
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 6. Under the income incentive, the first sixteen dollars ($16) plus fifty percent (50%) of all wages over sixteen dollars ($16) earned during the month is not counted as income for purposes of figuring the resident living allowance. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-6; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3138)*

440 IAC 7.5-3-7 Allowable expenses
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 7. (a) Allowable expenses for purposes of figuring the resident living allowance include the following:
(1) Rent for the certified residence.
(2) Utilities.
(3) Telephone; long distance charges related to the individual's treatment plan shall be included as an allowable expense.
(4) Household expenses, including the following:
(A) Food.
(B) Meals eaten out.
(C) Household cleaning supplies.
(D) Laundry supplies.
(5) Transportation to and from programs and activities specified in the individual's treatment plan.
(6) Medical insurance for non-Medicaid eligible individuals.
(7) Insurance as required by court order or state statute.
(8) Medical, dental, pharmacological, optometric, and audiological expenses that:
(A) are essential to maintain or increase the level of independent functioning of the resident; and
(B) cannot be paid for through:
(i) Medicaid;
(ii) Medicare;
(iii) private health insurance; or
(iv) other resources.
(9) Personal care expenses, including:
(A) clothing;
(B) hair care;
(C) personal hygiene supplies; and
(D) other items that are essential to the resident's participation in the program.
(10) Current psychiatric, rehabilitative, or habilitative services, including residential supervision and case management, specified in the individualized treatment plan.
(11) Start up costs, including residence and utility deposits or purchase of basic furnishings specified in this article.
(12) Court ordered child support payments may be included upon demonstration to the agency of the nature and amount of the payment.
(13) Monthly deposit in an emergency fund.

(b) For rent, utilities, and telephone, the individual's share shall be determined by equitably prorating monthly rent among all occupants, excluding the minor dependents of those occupants who are also living in the residence. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-7; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3138)*

440 IAC 7.5-3-8 Emergency fund
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2-3

Sec. 8. (a) In addition to the one thousand five hundred dollars ($1,500) in liquid assets allowed the resident receiving a resident living allowance, the agency may establish an emergency fund of not more than one thousand five hundred dollars ($1,500) for each individual to provide money for unexpected or unusual costs associated with assuring the maintenance of the person in the program.

(b) The individual's use of this fund must be for a specific item or service, and the purpose shall be reviewed and approved by the individual's treatment team. *(Division of Mental Health and Addiction; 440 IAC 7.5-3-8; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3138)*

Rule 4. Sub-Acute and Supervised Group Living Facilities

440 IAC 7.5-4-1 Application
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 12-22-2-11; IC 12-28-4

Sec. 1. All agencies that operate a facility or that holds itself out as operating a sub-acute stabilization facility described in IC 12-22-2-3(1) or a supervised group living facility described in IC 12-22-2-3(2) shall be subject to this rule. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3139)*

440 IAC 7.5-4-2 Certification required
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 12-22-2-11; IC 12-28-4

Sec. 2. A sub-acute facility or a supervised group living facility must be certified by the division in order to operate. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3139)*

440 IAC 7.5-4-3 Transfer of certification
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 12-22-2-11; IC 12-28-4

Sec. 3. A facility certified under this article may not transfer its certification to another facility site or to another legal entity. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3139)*

440 IAC 7.5-4-4 Certification procedure
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 12-22-2-11; IC 12-28-4

Sec. 4. (a) An application for the certification of a sub-acute facility or a supervised group living facility shall be submitted to the division in the following circumstances:
(1) The agency intends to operate a facility.
(2) The agency with an existing certification proposes to change the type of service or type of facility.
(3) A facility has changed ownership or management.

(b) The applicant shall file the following:
(1) A statement that the agency is applying to be a residential care provider.
(2) A residential care provider application.
(3) A statement that the agency applying for certification is a community mental health center, a managed care provider, or an addiction services provider with regular certification.
(4) A certificate from the local zoning authority to occupy and operate a sub-acute facility or supervised group living facility on the site.
(5) A plan of operation, which shall include the following:
(A) A description of the facility and its location, including floor plans.
(B) Corporate or partnership structure of the agency.
(C) The provision of the following:
(i) Twenty-four (24) hour supervision.
(ii) Services provided under the supervision of a physician licensed to practice medicine in Indiana.
(iii) Sufficient staffing to carry out treatment plans and provide consumer and staff safety.
(D) A facility description, as required at 440 IAC 7.5-2-3.
(6) Information verified by the state fire marshal indicating whether the facility's operation is in compliance with the applicable fire and life safety standards set forth in 440 IAC 7.5-8, 440 IAC 7.5-9, or 440 IAC 7.5-10.
(7) The complete accreditation report by an accrediting body approved by the division.

(c) The division shall approve the certification of a facility under this rule if the division determines that the facility meets the requirements in this article.

(d) The certification shall expire ninety (90) days after the expiration of the agency's accreditation. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-4; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3139)*

440 IAC 7.5-4-5 Facility closure
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3; IC 12-22-2

Sec. 5. (a) The agency must initiate a new application for certification in the following circumstances:
(1) Relocation of the residents to a new facility.
(2) Reopening a closed sub-acute or supervised group living facility.

(b) The applicant shall notify the division and any agency with the responsibility to place residents, in writing, ninety (90) days in advance of closure, except where the sub-acute facility is closed or no longer able to house the residents due to an emergency or due to final action by the division revoking or denying renewal of the certificate.

(c) When there is an emergency so severe as to render a sub-acute facility or supervised group living facility uninhabitable, evacuation of the residents shall take place immediately and notice shall be given by telephone to any agency responsible for the placement of residents immediately and to the division no later than the first business day following the day of the emergency. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-5; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3139)*

440 IAC 7.5-4-6 Revocation of certification
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 12-22-2-11; IC 12-28-4

Sec. 6. (a) The division shall revoke certification issued under this rule if the division's investigation finds any of the following conditions:
(1) Failure to comply with this rule.
(2) A condition that, under the standards for accreditation, would cause the accrediting agency to revoke the accreditation.
(3) Conduct or practice in the operations of the facility that is found by the division to be detrimental to the welfare of the residents.
(4) The physical safety of the clients or staff of the agency is compromised by a physical or sanitary condition of the facility.
(5) Violation of a federal or state statute, rule, or regulation in the course of the operation of the facility.

(b) When a license is revoked the division shall inform the residents and the general public. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-6; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3140)*

440 IAC 7.5-4-7 Requirements specific to a sub-acute facility
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-17.4-3; IC 12-21-2-3; IC 12-22-2-3; IC 12-24-12; IC 12-25; IC 12-28; IC 12-30-3; IC 16-28

Sec. 7. (a) A sub-acute stabilization facility is a facility in which an agency provides twenty-four (24) hour supervised treatment for psychiatric disorders or addictions, or both, that is less restrictive than an inpatient facility and more restrictive than a supervised group living facility.

(b) A sub-acute stabilization facility serves at least four (4) and not more than fifteen (15) individuals.

(c) The director of the division may waive the resident limitations for a sub-acute stabilization facility.

(d) A sub-acute stabilization facility may function as one (1) or both of the following:
(1) A crisis care or respite care facility:
(A) that serves people in need of short term respite care or short term crisis care; and
(B) the length of stay shall not exceed forty-five (45) days.
(2) Rehabilitative facility:
(A) that serves people who have a need for treatment of psychiatric disorders or addictions; and
(B) the length of stay in a rehabilitative facility shall not exceed one (1) year. The division director may waive the one (1) year limitation.

(e) A sub-acute facility may be a house or congregate living facility.
(Division of Mental Health and Addiction; 440 IAC 7.5-4-7; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3140)

440 IAC 7.5-4-8 Requirements specific to a supervised group living facility
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3

Sec. 8. (a) A supervised group living facility is a residential facility in which an agency provides twenty-four (24) hour supervision for residents with a psychiatric disorder or an addiction, or both.

(b) A supervised group living facility serves up to ten (10) consumers in a single family dwelling and up to fifteen (15) consumers in a apartment or congregate living setting.

(c) No supervised group living facility shall be licensed by the division if it is within one thousand (1,000) feet of another SGL licensed under this article unless the facility was approved by the division prior to October 1, 1984.

(d) The division may waive the one thousand (1,000) foot limitation for particular homes. Such waivers shall conform to the intent of the rule, which is to avoid the creation of nontherapeutic concentrations of residential facilities in any given area; and once given, will remain as long as the facility is licensed as a supervised group living facility.

(e) A supervised group living facility may be an apartment, house, or congregate facility.

(f) No supervised group living facility shall be located in or connected to buildings that have any other use or occupancy. *(Division of Mental Health and Addiction; 440 IAC 7.5-4-8; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3140)*

Rule 5. Transitional Residential Facilities for Individuals with a Psychiatric Disorder or an Addiction

440 IAC 7.5-5-1 Transitional residential facility
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3

Sec. 1. (a) A transitional residential facility must meet all of the following requirements:

(1) The facility serves fifteen (15) or fewer persons with a psychiatric disorder or an addiction, or both. The limit of fifteen (15) persons does not include children of the consumers.
(2) The persons served require a time limited supportive residential environment.
(3) The persons' individual treatment plans are overseen by:
(A) a community mental health center;
(B) a certified residential care provider;
(C) a managed care provider; or
(D) an addiction services provider with regular certification.

(b) The division director may waive the limitation of fifteen (15) or fewer persons.

(c) In order for the limitation to be waived, the transitional residential facility must be accredited by an accrediting agency approved by the division.

(d) Before a waiver is granted, the agency shall have an inspection conducted by the office of the state fire marshal to determine whether the facility's operation is in compliance with the applicable fire and life safety standards set forth in 440 IAC 7.5-8, 440 IAC 7.5-9, or 440 IAC 7.5-10.

(e) If a waiver is granted, the waiver will remain as long as the residence is accredited and operated by the agency.

(f) A transitional residential facility may be an apartment, house, or congregate facility.

(g) A transitional residential facility shall have evidence of compliance with local health and safety codes. *(Division of Mental Health and Addiction; 440 IAC 7.5-5-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3140)*

440 IAC 7.5-5-2 Administration
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-3

Sec. 2. (a) The transitional residential facility shall be operated by an agency under this rule. The agency is responsible for maintaining the administrative and supervisory structure required to provide and oversee the transitional residential services facility.

(b) Transitional residential programs shall be conducted in residences that are certified by the agency every two (2) years, in accordance with the requirements of this article.

(c) The agency shall establish and follow written certification policies and procedures that are approved by the division.

(d) A copy of the certification form shall be kept by the agency.

(e) The transitional residential facility shall provide activities that assist the individual in maintaining or acquiring skills necessary to live in the community.

(f) Each resident shall be assigned a case manager to provide case management services. *(Division of Mental Health and Addiction; 440 IAC 7.5-5-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3141)*

Rule 6. Semi-Independent Living Program for Individuals with Psychiatric Disorders or Addictions

440 IAC 7.5-6-1 Application
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 12-24-12

Sec. 1. (a) This rule applies to the following:
(1) All managed care providers or community mental health centers that provide semi-independent living facilities.
(2) Consumers in these facilities who have a psychiatric disorder or an addiction, or both.
(3) Residents of these facilities.

(b) A semi-independent living facility shall meet all of the following requirements:
(1) Each facility has six (6) or fewer consumers.
(2) The persons served require less than twenty-four (24) hour supervision.
(3) The persons' individual treatment plans are overseen by:
(A) a community mental health center; or
(B) a managed care provider.
(4) At least one (1) of the following applies:
(A) A resident living allowance is provided to at least one (1) of the residents.
(B) The facility is owned, operated, leased, or managed by the agency or its subcontractor.
(5) There is no maximum length of time an individual can remain in a semi-independent living program. The appropriate length of stay shall be determined with each individual consumer, based on the individual treatment plan.
(Division of Mental Health and Addiction; 440 IAC 7.5-6-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3141)

440 IAC 7.5-6-2 Administration
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3; IC 12-24-12

Sec. 2. (a) The semi-independent living facility shall be administered by an agency under contract with the division. The agency is responsible for maintaining the administrative and supervisory structure required to provide and oversee the semi-independent living facility.

(b) Semi-independent living facilities shall be conducted in residences that are certified every two (2) years by the agency in accordance with the requirements of this article.

(c) The agency shall establish and follow written certification policies and procedures that are approved by the division.

(d) A copy of the certification form shall be kept by the agency.

(e) The semi-independent living facility shall provide adequate supervision, including, but not limited to, activities that assist the individual in maintaining or acquiring skills necessary to live in the community, including the following:

(1) Personal contacts and activities with the resident.

(2) The required minimum hours of direct contact with a resident shall be one (1) hour weekly. The actual number of hours of supervisory time shall be determined by the individual needs of the resident.

(f) Staff of the agency shall visit each residence in a time frame specified by each resident's individual treatment plan.

(g) Staff and the resident shall determine whether the living environment is conducive to the resident's achievement of optimal development. *(Division of Mental Health and Addiction; 440 IAC 7.5-6-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3141)*

440 IAC 7.5-6-3 Environment

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2-3

Sec. 3. (a) Residents in semi-independent living facilities shall reside in residences with no more than six (6) persons. The actual capacity of a residence shall be determined after evaluation of the facility in accordance with standards established in this rule. A single building may have up to twenty-five (25) semi-independent living facility residences or up to twenty-five percent (25%) of a building occupied by semi-independent living facility residences, whichever is greater.

(b) A semi-independent living facility may be an apartment or house.

(c) A semi-independent living facility shall comply with local health and safety codes.

(d) The agency shall apply to the division for a waiver, setting forth the justification to allow an individual to reside in a mobile home as a semi-independent living facility.

(e) Mobile homes or manufactured housing constructed after 1984 must meet the standards of the federal Department of Housing and Urban Development "Manufactured Home Construction and Safety Standards".

(f) No mobile home that was manufactured before 1985 may serve as a semi-independent living facility. This requirement may not be waived. *(Division of Mental Health and Addiction; 440 IAC 7.5-6-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3142)*

Rule 7. Alternative Family for Adults Program for Individuals with Psychiatric Disorders or Addictions

440 IAC 7.5-7-1 Application

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 1. (a) This rule applies to all managed care providers and community mental health centers that provide an alternative family for adults program and residents of those programs.

(b) An alternative family for adults program shall meet all of the following requirements:

(1) The program serves six (6) or fewer residents with a psychiatric disorder or addiction living with a householder who is not an immediate relative (spouse, child, parent, grandparent, grandchild, or spouse of those listed).

(2) The householder is certified by the agency to care for the residents in accordance with their individual treatment plans.

(c) A copy of the certificate shall be kept on the premises of the residence, and a copy shall be kept by the agency. *(Division of Mental Health and Addiction; 440 IAC 7.5-7-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3142)*

440 IAC 7.5-7-2 Administration

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 2. (a) The alternative family for adults program shall be administered by a managed care provider or a community mental health center.

(b) The agency shall provide the following supervision:

(1) Staff of the agency shall visit each household at least monthly when residents are present to assure that the living environment is healthy, safe, and supportive.

(2) The required minimum hours of supervision with each alternative family for adults resident and householder shall be two (2) hours monthly, but the actual number of hours of supervisory time shall be determined by the agency, based on the needs of the residents and alternative family householder.

(3) Supervision shall include direct contact with the householder when the residents are not present as well as individual contacts with each resident when the householder is not present.

(4) Supervision shall include other personal contacts and

activities with the householder and residents to maintain the adults in the residence and to assure residents' satisfaction with the program.

(c) The agency shall provide directly or by arrangement with others, a minimum of twelve (12) hours in-service training annually for householders as well as ten (10) hours preservice and on-the-job training for new householders.

(d) The agency shall establish a minimum payment to the householder for each resident.

(e) The agency may choose to exceed that minimum as a difficulty of care payment or as additional payment for meritorious performance. *(Division of Mental Health and Addiction; 440 IAC 7.5-7-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3142)*

440 IAC 7.5-7-3 Householder

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 3. (a) The agency shall certify individuals as alternative family for adults householders for a period of two (2) years.

(b) A householder may be recertified by the agency every two (2) years.

(c) An alternative family for adults householder shall meet the following standards:

(1) Be at least twenty-one (21) years of age.
(2) Be a resident of the community and general geographic area for at least six (6) months prior to application.
(3) Demonstrate stable life relationships through employment, relationships in the community, family ties, and in the individual's current roles and responsibilities.
(4) Be financially stable.
(5) Have good communication and interpersonal skills and the ability to empathize with persons with psychiatric disorders.
(6) Be in good health as documented annually by a physician's statement.
(7) Have a valid driver's license, a safe driving history according to the agency policy, and comply with Indiana's automobile insurance liability requirements, if the householder is responsible for transporting residents.
(8) Have completed the preservice training program provided by the agency.
(9) In the professional opinion of the agency, be capable and willing to provide a safe and therapeutic environment for the residents.

(d) The agency shall demonstrate that nutritional training has been provided to householders, including the following:

(1) The agency shall have a written nutrition training plan for householders approved by a dietitian.
(2) Staff and householders shall have access to a dietitian to discuss specific resident nutritional issues.

(e) The agency shall verify and consider the criminal history of an applicant who applies to be an alternative family for adults householder. The agency shall use a criminal records check and other methods of verification in the process.

(f) The status of being a certified alternative family for adults householder does not entitle the alternative family to have an adult placed with it. Such placements are at the discretion of the agency.

(g) The alternative family may decline to accept a specific adult solely on the grounds that the alternative family is unable to meet the individual's needs.

(h) The agency shall enter into a written agreement with each alternative family for adults householder covering the terms and conditions of the householder's participation in the alternative family for adults program. The agreement shall cover the following:

(1) Program participation requirements, duties, and responsibilities of the householder in the program.
(2) Householder rights.
(3) Any restrictions on the householder's activities that are necessary conditions of participation in the program.

(i) In the event that the alternative family householder determines that it is unable to meet the needs of the individual placed with them, the alternative family householder shall notify the agency, in writing, thirty (30) days before the relocation of the adult. *(Division of Mental Health and Addiction; 440 IAC 7.5-7-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3143)*

440 IAC 7.5-7-4 The residence

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-22-2

Sec. 4. (a) Alternative family for adults program shall be conducted in the principal place of residence of the alternative family householder and may be in a house or an apartment.

(b) The agency shall apply to the division for a waiver, setting forth the justification to operate an alternative family for adults program in a mobile home.

(c) Mobile homes or manufactured housing constructed after 1984 must meet the standards of the federal Department of Housing and Urban Development "Manufactured Home Construction and Safety Standards".

(d) No alternative family for adults program may be operated in a mobile home that was manufactured before 1985. This requirement may not be waived.

(e) If private pay boarders not related to the householder are residing with the family, the total number of alternative family residents and private pay boarders shall not exceed eight (8) persons.

(f) Any alternative family household with four (4) or more individuals, excluding the immediate family of the householder, shall be inspected by the office of the state fire marshal and must meet the fire and life safety requirements set forth at 440 IAC 7.5-8 or 440 IAC 7.5-9. *(Division of Mental Health and Addiction; 440 IAC 7.5-7-4; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3143)*

Rule 8. Fire and Life Safety Standards for Facilities Located in Apartment Buildings for Persons with a Psychiatric Disorder or an Addiction

440 IAC 7.5-8-1 Scope
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 1. Facilities located in apartment buildings for persons with a psychiatric disorder or addicted individuals shall achieve a classification of prompt evacuation capability, as defined in 431 IAC 4-1-5, and shall comply with:

(1) the Indiana building code under the provisions of 675 IAC 13 in effect at the time of the initial application for licensure with the division or at the time of the initial certification by the agency; or

(2) the Indiana building rehabilitation standard, 675 IAC 12-8, for the rehabilitation of older structures.

(Division of Mental Health and Addiction; 440 IAC 7.5-8-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3144)

440 IAC 7.5-8-2 Application
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 2. (a) The level of evacuation capabilities of the residents as a group by the procedures described in Appendix F of the National Fire Protection Association, 101, Life Safety Code, 1985 Edition shall be determined for persons with a psychiatric disorder or addiction by the agency.

(b) On the basis of this evaluation under subsection (a), a facility shall be classified as one (1) of the following:

(1) Prompt.

(2) Slow.

(3) Impractical.

(Division of Mental Health and Addiction; 440 IAC 7.5-8-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3144)

440 IAC 7.5-8-3 Adoption by reference
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 3. (a) Those certain documents being titled the NFPA 101, Appendix F of the Life Safety Code, 1985 Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, and as listed in this article, are hereby adopted by reference, subject to the listed amendments, and made part of this article as if fully set out herein.

(b) Within the standards adopted under subsection (a), "authority having jurisdiction" means the division.

(c) Publications referenced within the documents adopted in subsection (a), unless specifically adopted by reference in this article, are deemed to be accepted practice and supplementary to these documents. *(Division of Mental Health and Addiction; 440 IAC 7.5-8-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3144)*

Rule 9. Fire and Life Safety Standards for One and Two Family Dwellings for Persons with a Psychiatric Disorder or an Addiction

440 IAC 7.5-9-1 Scope
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 1. (a) All one (1) and two (2) family dwellings licensed under 431 IAC 2.1 prior to January 18, 1996, shall:

(1) achieve a classification of prompt evacuation capability, as defined in 440 IAC 7.5-1, for one (1) and two (2) family dwellings for persons with a psychiatric disorder or addicted individuals; and

(2) comply with the Indiana one (1) and two (2) family dwelling code under the rules of the fire prevention and building safety commission or its predecessors.

(b) All one (1) and two (2) family dwellings licensed under 431 IAC 2.1 or under 440 IAC 7.5 after January 18, 1996, shall:

(1) achieve a classification of prompt evacuation capability, as defined in 440 IAC 7.5-1, for community residential facilities for persons with a psychiatric disorder or addicted individuals; and

(2) comply with:

(A) the Indiana one (1) and two (2) family dwelling code under the provisions of 675 IAC 14, which is in effect at the time of initial application for licensure with the division or at the time of the initial certification by the agency; or

(B) the Indiana building rehabilitation standard, 675 IAC 12-8, for the rehabilitation of older structures.

(Division of Mental Health and Addiction; 440 IAC 7.5-9-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3144)

440 IAC 7.5-9-2 Application
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 2. (a) The level of evacuation capabilities of the residents as a group by the procedures described in Appendix F of the National Fire Protection Association, 101, Life Safety Code, 1985 Edition shall be determined by the agency.

(b) On the basis of this evaluation under subsection (a), a facility shall be classified as one (1) of the following:
(1) Prompt.
(2) Slow.
(3) Impractical.
(Division of Mental Health and Addiction; 440 IAC 7.5-9-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3145)

440 IAC 7.5-9-3 Adoption by reference
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 3. (a) The document titled the NFPA 101, Appendix F of the Life Safety Code, 1985 Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, and as listed in this article, are hereby adopted by reference, subject to the listed amendments, and made part of this article as if fully set out herein.

(b) Within the standards adopted under subsection (a), "authority having jurisdiction" means the division.

(c) Publications referenced within the documents adopted in subsection (a), unless specifically adopted by reference in this article, are deemed to be accepted practice and supplementary to these documents. *(Division of Mental Health and Addiction; 440 IAC 7.5-9-3; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3145)*

Rule 10. Fire and Life Safety Standards for Congregate Living Facilities for Persons with a Psychiatric Disorder or an Addiction

440 IAC 7.5-10-1 Scope
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 1. (a) Congregate living facilities that are certified as sub-acute facilities may be located in or connected to buildings that have another use or occupancy.

(b) All congregate living facilities shall achieve a classification of prompt evacuation capability and shall comply with the rules of the fire prevention and building safety commission that apply to a congregate residence under the provisions of 675 IAC 13 that are in effect at the time of application for licensure with the division, or at the time of the initial certification by the agency, whichever is later. *(Division of Mental Health and Addiction; 440 IAC 7.5-10-1; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3145)*

440 IAC 7.5-10-2 Application
Authority: IC 12-21-2-3
Affected: IC 12-22-2

Sec. 2. (a) The agency shall determine the level of evacuation capabilities of the residents as a group by the procedures described in Appendix F of the National Fire Protection Association, Life Safety Code, 1985 Edition.

(b) On the basis of this evaluation under subsection (a), a facility shall be classified as one (1) of the following:
(1) Prompt.
(2) Slow.
(3) Impractical.
(Division of Mental Health and Addiction; 440 IAC 7.5-10-2; filed Jun 10, 2002, 2:25 p.m.: 25 IR 3145)

SECTION 2. THE FOLLOWING ARE REPEALED: 431 IAC 2.1; 431 IAC 5; 431 IAC 6; 440 IAC 7.

LSA Document #01-299(F)
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TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

LSA Document #01-356(F)

DIGEST

Amends 440 IAC 6 concerning the certification of residential care providers to make technical changes to the existing rule to conform to current state law and to clarify the requirements of residential care providers. Effective 30 days after filing with the secretary of state.

440 IAC 6-1-1	**440 IAC 6-2-5**
440 IAC 6-2-1	**440 IAC 6-2-6**
440 IAC 6-2-2	**440 IAC 6-2-7**
440 IAC 6-2-3	**440 IAC 6-2-8**
440 IAC 6-2-4	**440 IAC 6-2-9**

SECTION 1. 440 IAC 6-1-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-1-1 Definitions

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-7-2-40.6; IC 12-21-2-7; IC 12-22-2; IC 23-17

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

(1) "Annual assessment" means a written summary of a residential provider's successes and failures in achieving the fiscal and clinical goals established by the governing board.

(2) "Certification" means the process used by the division to document a residential care provider's compliance with the statutory and regulatory requirements for operation as a residential care provider, including the issuance of a certificate if the residential care provider is found to comply with the requirements in this article.

(3) "Conflict of interest" means activity of an individual (usually related to work or ownership) that is or runs the risk of being an oppositional interest to another interest or activity of the same individual thereby jeopardizing the ability of the individual to act in the best interest of one (1) of the activities.

(4) "Consumer" means a primary consumer.

(5) "Division" means the division of mental health **and addiction.**

(6) "Managed care provider" means an organization:

(A) that:

(i) for mental health services, is defined under 42 U.S.C. 300x-2(c); ~~or~~

(ii) provides addiction services; **or**

(iii) provides children's mental health services;

(B) that has entered into a provider agreement with the division under IC 12-21-2-7 to provide a continuum of care as defined in IC 12-7-2-40.6 in the least restrictive, most appropriate setting; and

(C) that is operated by at least one (1) of the following:

(i) A city, town, county, or other political subdivision of Indiana.

(ii) An agency of Indiana or of the United States.

(iii) A political subdivision of another state.

(iv) A hospital owned or operated by:

(AA) a unit of government; or

(BB) a building authority that is organized for the purpose of constructing facilities to be leased to units of government.

(v) A corporation incorporated under IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.

(vi) ~~A nonprofit corporation incorporated in another state.~~ **An organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.**

(vii) A university or college.

(7) "Primary consumer" means an individual who has received or is receiving mental health **or addiction** services.

(8) "Residential care provider" means an organization that the division has certified as fulfilling the statutory and regulatory requirements to be a residential care provider.

(9) "Secondary consumer" means a family member, guardian, or health care decision maker for a primary consumer.

(10) "Strategic plan" means a written summary of the governing board's future goals and objectives for the organization that provides a time-specified and systematic approach towards implementation, achievement, and methods of evaluation of the accomplishment of the stated goals and objectives.

~~(11) "Supervised group living facility" means a facility licensed by the community residential facility council as a supervised group living facility.~~

(Division of Mental Health and Addiction; 440 IAC 6-1-1; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1100; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3146)

SECTION 2. 440 IAC 6-2-1 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-1 Scope

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-7-2-127; IC 12-21-2-7; IC 12-22-2

Sec. 1. (a) Community mental health centers, which are certified by the division under 440 IAC 4.1, are deemed to also be certified as residential care providers.

(b) Entities certified by the division as managed care providers ~~for individuals with mental illness~~ **under 440 IAC 4.3** are deemed to also be certified as residential care providers.

(c) Entities certified by the division as having a regular certification as addiction services providers under 440 IAC 4.4-2-3 are deemed to also be certified as residential care providers.

(Division of Mental Health and Addiction; 440 IAC 6-2-1; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1104; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2379; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3146)

SECTION 3. 440 IAC 6-2-2 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-2 Certification by the division

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-7; IC 12-22-2

Sec. 2. (a) Before ~~the division~~ **an entity** may ~~recommend to the community residential facilities council that an entity be granted a license to~~ operate a supervised group living facility, **a semi-independent living program, a sub-acute stabilization facility, a transitional residential facility, or an alternative family for adults program,** the entity ~~managing the facility~~ must be **certified by the division as one (1) of the following:**

(1) A managed care provider.

(2) A community mental health center.

(3) An addiction services provider with a regular certification; or

(4) A residential care provider under this article.

(b) ~~Before the division may contract with an entity to provide a semi-independent group living program, a sub-acute stabilization setting, or an alternative families for adults program, that entity must be:~~

~~(1) a managed care provider;~~

~~(2) a community mental health center;~~

~~(3) an addiction services provider with a regular certification; or~~

~~(4) certified by the division under this article.~~

A residential care provider must apply separately for certification or licensure of the specific facility they intend to operate.

(c) An organization that has applied for certification or has been certified must provide information related to services as requested by the division and must participate in the division's quality assurance program. An organization must respond to a request from the division as fully as it is capable. Failure to comply with a request from the division may result in the ~~refusal~~ **denial** or ~~suspension~~ **termination** of an organization's certification.

(d) When an organization has demonstrated compliance with all applicable laws and regulations, including the specific criteria in this article, a certificate shall be issued and shall be posted in a conspicuous place in the facility open to ~~clients~~ **consumers** and the public. *(Division of Mental Health and Addiction; 440 IAC 6-2-2; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1101; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2379; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3146)*

SECTION 4. 440 IAC 6-2-3 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-3 Organizational standards and requirements

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-7; IC 12-22-2

Sec. 3. (a) The organization shall have a governing board.

(b) The purpose of the governing board is to make policy and to assure the effective implementation of the policy.

(c) The governing board shall meet the following criteria:

(1) The governing board shall be composed of at least five (5) individuals.

(2) At least one (1) member shall be a primary or secondary consumer.

(3) At least one (1) member shall be licensed by the health professions bureau as a physician or health services professional in psychology.

(d) The governing board shall meet on a regular basis. The duties of the governing board include the following:

(1) Employ a chief executive officer for the organization. The chief executive officer shall have at least a master's degree and shall have demonstrated managerial experience in the mental health care or related field. ~~An individual employed as a chief executive officer in an organization as of January 1, 1995, shall be considered as meeting this qualification.~~

(2) Evaluate the chief executive officer. Evaluations must be conducted at least every other year.

(3) Establish and enforce prudent business and fiscal policies for the organization.

(4) Develop and enforce written policies governing organization operations.

(5) Develop and implement an ongoing strategic plan that identifies the priorities of the governing board and utilizes community input and consumer assessment of programs and services offered.

(6) Assure that minutes of all meetings are maintained and accurately reflect the actions taken.

(7) Develop and enforce policies and procedures regarding conflict of interest by both governing board members and organization employees.

(8) Conduct an annual assessment, including the following:

(A) A review of the business practices of the organization to ensure that:

(i) appropriate risk management procedures are in place;

(ii) prudent financial practices occur;

(iii) there is an attempt to maximize revenue generation; and

(iv) professional practices are maintained in regard to information systems, accounts receivable, and accounts payable.

Deficiencies in the center's business practices shall be identified and a plan of corrective action implemented.

(B) A review of the programs of the organization, assessing whether the programs are well utilized, cost effective, and clinically effective. Deficiencies in the organization's current program practices shall be identified and a plan of corrective action implemented.

(e) The organization shall employ or contract for a professional services director who is licensed as a physician or health service professional in psychology and who is not the same person as the chief executive officer. *(Division of Mental Health and Addiction; 440 IAC 6-2-3; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1101; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3147)*

SECTION 5. 440 IAC 6-2-4 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-4 Certification

Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-7; IC 12-22-2

Sec. 4. (a) Before commencing services, an applicant for certification as a residential care provider shall file an application with the division. The application shall contain the following:

(1) A description of the organizational structure and mission of the applicant.
(2) A description of services to be provided and how the organization will provide them.
(3) A list of governing board members and executive staff.
(4) Proof of general liability insurance coverage in the minimum amount of five hundred thousand dollars ($500,000) for bodily injury and property damage.
(5) A copy of the applicant's procedures to ensure protection of resident rights and confidentiality.
(6) ~~A balance sheet of assets and liabilities~~ **The most recent audit** of the residential care provider, which shall be prepared by an independent certified public accountant.
(7) Copies of the current professional health provider license of a board member and the professional services director.

(b) When the division determines that:
(1) an application is satisfactory; **and**
~~(2) the proposed services are necessary; and~~
~~(3)~~ **(2)** the applicant has sufficient administrative and financial capacity to fulfill its proposed mission;
the division shall issue ~~regular~~ certification to the applicant. ~~Regular~~ Certification ~~is valid for~~ **shall expire** twenty-four (24) months **after the issuance of the certification or, for an entity that is accredited, ninety (90) days after the expiration of the entity's accreditation**. *(Division of Mental Health and Addiction; 440 IAC 6-2-4; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1102; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3147)*

SECTION 6. 440 IAC 6-2-5 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-5 Maintenance of certification
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-7; IC 12-22-2

Sec. 5. Maintenance of certification is dependent upon the following:
(1) The organization shall purchase and maintain general liability insurance in the minimum amount of five hundred thousand dollars ($500,000) for bodily injury and property damage.
(2) An audit of the financial operations of the organization shall be performed annually by an independent certified public accountant.
(3) The organization shall have written policies and enforce these policies to support and protect the fundamental human, civil, constitutional, and statutory rights of each ~~client.~~ **consumer.** The organization shall give a written statement of rights to each ~~client,~~ **consumer,** and, in addition, the organization shall document that organization staff provides an oral explanation of these rights to each ~~client.~~ **consumer.**
(4) The organization shall maintain compliance with required health, fire, and safety codes as prescribed by federal and state law.
(5) The organization shall comply with federal and state law regarding residential care providers.
(6) The residential care provider shall meet all the requirements regarding the specific facility for which they are certified or licensed.
(Division of Mental Health and Addiction; 440 IAC 6-2-5; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1102; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3148)

SECTION 7. 440 IAC 6-2-6 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-6 Notification of changes
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-7; IC 12-22-2

Sec. 6. An organization must notify the division, in writing, of any of the following:
(1) Change in the location of the organization's operational site.
(2) Change in the president or treasurer of the governing board.
(3) Change in the chief executive officer of the organization or professional services director.
(4) Substantial change in the primary program focus.
(5) The initiation of bankruptcy proceedings.
(6) The documented violation of health, fire, or safety codes as prescribed by federal and state law.
(7) The documented violation of the rights of an individual ~~being treated for mental illness under IC 12-27.~~ **who is a client of the residential provider.**
(Division of Mental Health and Addiction; 440 IAC 6-2-6; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1102; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3148)

SECTION 8. 440 IAC 6-2-7 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-7 Renewal of certification
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-7; IC 12-22-2

Sec. 7. (a) An organization shall submit a request for recertification, including the following:
(1) Proof of liability insurance in the amount required by the division.
(2) Proof of compliance with applicable health, fire, and safety codes as prescribed by federal and state law.
(3) Copy of the most recent annual audit and the management letter.
(4) Copies of current professional health provider license of a board member and the professional services director.

(b) The division may require the applicant to resolve any problems identified by the division before the division issues a renewal certificate.

(c) When a request for renewed certification is deemed to be complete by the division and the applicant has taken any action that is deemed necessary by the division, the division shall issue a new certification. The renewed certification shall expire twenty-four (24) months after the issuance of a renewal certification by the division **or, for an entity that is accredited, ninety (90) days after the expiration of the entity's accreditation.** *(Division of Mental Health and Addiction; 440 IAC 6-2-7; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1103; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3148)*

SECTION 9. 440 IAC 6-2-8 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-8 Termination of certification
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-7; IC 12-22-2

Sec. 8. The division may ~~suspend~~ **terminate** certification issued under this article upon the division's investigation and determination of the following:

(1) A substantive change in the operation of the organization.

(2) Failure to comply with this article.

(3) That the physical safety of the ~~clients~~ **consumers** or staff of the organization is compromised by a physical or sanitary condition of the organization or of a physical facility of the organization.

(4) Violation of a federal or state statute, rule, or regulation in the course of the operation of the organization **or its facilities.**

(Division of Mental Health and Addiction; 440 IAC 6-2-8; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1103; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3149)

SECTION 10. 440 IAC 6-2-9 IS AMENDED TO READ AS FOLLOWS:

440 IAC 6-2-9 Notification of termination
Authority: IC 12-8-8-4; IC 12-21-2-3
Affected: IC 12-21-2-7; IC 12-22-2

Sec. 9. ~~(a) Upon suspension of the organization's certification, the division shall so notify the community residential facility council.~~

~~(b)~~ The division shall notify the Indiana department of administration that the organization's certification has been ~~suspended or~~ terminated so that any other state agency having a contract with the organization may be notified of the division's ~~suspension or~~ termination of the organization's certification. *(Division of Mental Health and Addiction; 440 IAC 6-2-9; filed Dec 11, 1995, 3:00 p.m.: 19 IR 1103; readopted filed May 10, 2001, 2:30 p.m.: 24 IR 3235; filed Jun 10, 2002, 2:32 p.m.: 25 IR 3149)*

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TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #01-433(F)

DIGEST

Amends 511 IAC 7-17-10, 511 IAC 7-18-3, 511 IAC 7-19-1, 511 IAC 7-19-2, 511 IAC 7-22-1, 511 IAC 7-23-2, 511 IAC 7-25-3, 511 IAC 7-25-4, 511 IAC 7-25-5, 511 IAC 7-25-6, 511 IAC 7-25-7, 511 IAC 7-27-4, 511 IAC 7-27-5, 511 IAC 7-27-7, 511 IAC 7-27-9, 511 IAC 7-27-12, 511 IAC 7-28-3, 511 IAC 7-29-5, 511 IAC 7-29-6, 511 IAC 7-29-8, 511 IAC 7-30-1, 511 IAC 7-30-3, 511 IAC 7-30-4, and 511 IAC 7-30-6 to conform to the federal requirements for special education. Effective 30 days after filing with the secretary of state.

511 IAC 7-17-10
511 IAC 7-18-3
511 IAC 7-19-1
511 IAC 7-19-2
511 IAC 7-22-1
511 IAC 7-23-2
511 IAC 7-25-3
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511 IAC 7-29-5
511 IAC 7-29-6
511 IAC 7-29-8
511 IAC 7-30-1
511 IAC 7-30-3
511 IAC 7-30-4
511 IAC 7-30-6

SECTION 1. 511 IAC 7-17-10 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-17-10 "Case conference committee" defined
Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 10. "Case conference committee" means the group of persons described in 511 IAC 7-27-3, including parents and public agency personnel, who are responsible for the following:

(1) **Reviewing evaluation data, identifying the existence of a disability, and** determining a student's eligibility for special education and related services.

(2) Developing, reviewing, and revising a student's individualized education program.

(3) Determining the appropriate special ~~educational,~~ **education, related** services, and placement for a student and the setting or settings in which those services will be provided.

(4) Determining other matters, **including the provision of a free appropriate public education,** that are assigned to an IEP team by federal law or to a case conference committee by state law or any rule of the Indiana state board of education, including this article.

(Indiana State Board of Education; 511 IAC 7-17-10; filed May 22, 2000, 8:52 a.m.: 23 IR 2432; filed May 13, 2002, 2:00 p.m.: 25 IR 3149)

SECTION 2. 511 IAC 7-18-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-18-3 Other public agencies' special education programs; state-level interagency agreements

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 3. (a) The provisions of this article pertaining to identification, eligibility, evaluation, and placement procedures as well as the provision of a free appropriate public education, including all due process and procedural safeguards, for students at least three (3) years of age, but less than twenty-two (22) years of age, apply to special education programs conducted by, or under the jurisdiction of, the following:

(1) The Indiana state department of health.

(2) The family and social services administration, including, but not limited to, the division of disability, aging, and rehabilitative services and the division of mental health.

(3) The department of correction.

(4) The Indiana School for the Blind.

(5) The Indiana School for the Deaf.

(6) Any public or private agency providing special education programs for students referred by a public school corporation, the division of special education, or any other public agency.

(7) Any other public agency that contracts with any of the agencies in subdivisions (1) through (5) to provide special education.

(b) The division of special education shall, in conjunction with each public agency in subsection (a), develop an interagency agreement. Interagency agreements may address educational programs or noneducational programs that provide or pay for services that are considered special education, or both. Interagency agreements shall include the following as appropriate:

(1) Compliance with state and federal special education laws and regulations, including data collection and submission, program monitoring, state complaint investigation procedures, and due process hearings and appeals.

(2) Methods of ensuring services, including the following:

(A) Agency financial responsibility, including the responsibility of noneducational divisions and public insurers to provide or pay for services that are also considered special education or related services.

(B) Conditions and terms of reimbursement.

(C) Resolution of interagency disputes, including the provision of services pending resolution of disputes.

(D) Coordination of service procedures.

(c) An agreement described in subsection (b) shall meet the following criteria:

(1) Be signed by the state superintendent of public instruction and the chief administrator of the public agency.

(2) Be valid for a period not to exceed four (4) years.

(3) Relate specifically to special education or related services, or both.

(4) Not supersede the administrative jurisdiction of the agency to develop eligibility or admission criteria or other administrative aspects of the program or facility.

(5) Be binding on any successor in interest, including a consolidation with other agencies.

(d) If a **noneducational public agency or a** public agency other than the local educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy pursuant to an interagency agreement to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to students with disabilities within the state, the public agency shall fulfill that obligation or responsibility either directly, through contract, or through other arrangement.

(e) A public agency described in subsection (d) that receives Medicaid reimbursement for service provision may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a public school setting.

(f) If a public agency described in subsection (d) fails to provide or pay for the special education and related services necessary for the provision of a free appropriate public education to a student, the local educational agency shall provide or pay for these services in a timely manner. The local educational agency may then claim reimbursement for the services from the public agency that failed to provide or pay for these services and the public agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subsection (b). *(Indiana State Board of Education; 511 IAC 7-18-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2443; filed May 13, 2002, 2:00 p.m.: 25 IR 3150)*

SECTION 3. 511 IAC 7-19-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-19-1 Special education for students in private schools or facilities

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 1. (a) This rule applies to students with disabilities who

have been unilaterally enrolled by the parent in a private school or facility. This rule does not apply to students with disabilities who have been placed in or referred to a private school or facility by a public agency.

(b) **The activities undertaken to carry out child find responsibilities for private school students with disabilities must be comparable to activities undertaken for students with disabilities in public schools.** Each public agency shall, with regard to any private school or facility, including any religious school or home school, within its boundaries:

(1) locate, identify, and evaluate all students with disabilities as specified in 511 IAC 7-25;

(2) consult with appropriate representatives of private school students with disabilities on how to carry out the location, identification, and evaluation, and December 1 child count activities; and

(3) make available special education and related services to any such student **who is participating in any program assisted or carried out under this article.**

(c) The December 1 child count shall be used to determine the amount of subgrant funds from 20 U.S.C. 1411(g) and 20 U.S.C. 1419(g) that the public agency must spend on providing special education and related services to students in private schools and facilities in the subsequent fiscal year.

(d) Each public agency shall consult, in a timely and meaningful way, but at least annually, with appropriate representatives of private school students to determine the following:

(1) Which students require services from the public agency.

(2) What services will be provided.

(3) How and where the services will be provided.

(4) How the services provided will be evaluated.

(e) The public agency shall afford the representatives of the private school students a genuine opportunity to express their views in the consultation required in subsection (d). The consultation shall occur before the public agency makes any decision that affects the opportunities of students with disabilities enrolled in private schools or facilities, and the consultation shall include consideration of the following:

(1) The funding requirements.

(2) The number of private school students with disabilities.

(3) The needs of private school students with disabilities.

(4) The location of the private school students with disabilities.

(f) The case conference committee, in accordance with 511 IAC 7-27-4, shall make decisions with respect to the special education and related services to be provided to students enrolled in private schools or facilities.

(g) For each student in a private school or facility that has been determined eligible to receive special education and related services from the public agency, the public agency shall do the following:

(1) Initiate and conduct case conference committee meetings to develop, review, and revise an individualized education program in accordance with 511 IAC 7-27-4 and 511 IAC 7-27-6.

(2) Ensure that a representative of the private school or facility attends each case conference committee meeting, either in person or by telephone.

(3) Implement the individualized education program in accordance with 511 IAC 7-27-7.

(h) At the election of the public agency, services to students in private schools or facilities may be provided at:

(1) the private school or facility, including a religious school;

(2) the public school; or

(3) a neutral site.

(i) If services are provided at the public school or a neutral site and transportation is necessary, the public agency must provide transportation from the private school or the student's home to a site other than the private school or facility and from the service site to the private school or the student's home, depending on the timing of the services. The public agency is not required, under this article, to transport the student from the student's home to the private school. The cost of transportation may be included in the calculation of the public agency's required expenditure described in subsections (j) and (k).

(j) For students who are three (3) years of age, but less than twenty-two (22) years of age, the public agency, in providing special education and related services to students in private schools and facilities, must expend at least an amount that is the same proportion of the public agency total subgrant under 20 U.S.C. 1411(g) as the number of private school students with disabilities who are three (3) years of age, but less than twenty-two (22) years of age residing in its boundaries is to the total number of students with disabilities of the same age range.

(k) For students three (3) years of age through five (5) years of age, the public agency, in providing special education and related services to students in private schools and facilities, must expend at least an amount that is the same proportion of the public agency total subgrant under 20 U.S.C. 1419(g) as the number of private school students with disabilities three (3) years of age through five (5) years of age residing in its boundaries is to the total number of students with disabilities three (3) years of age through five (5) years of age.

(l) Expenditures for child find activities shall not be considered in determining whether the public agency has met the expenditure of federal funds requirement of this article.

(m) The public agency shall not use the funds described in subsections (j) and (k) to do the following:

(1) Fund existing levels of instruction currently provided by the private school or facility, **or otherwise benefit the private school.**

(2) Meet the needs of the private school or facility.
(3) Meet the general needs of the students enrolled in the private school or facility.
(4) Fund classes that are organized separately on the basis of school enrollment or religion of the students if the classes:
(A) are at the same site; and
(B) include students enrolled in public schools and students enrolled in private schools.

(n) The public agency may use the funds described in subsections (j) and (k) to make public school personnel available in the private school or facility to the extent necessary to provide special education and related services to students with disabilities in private schools or facilities, if those services are not normally provided by the private school or facility.

(o) The public agency may use funds described in subsections (j) and (k) to pay for the services of an employee of the private school or facility if the employee performs the services:
(1) outside of the employee's regular hours of duty; and
(2) under public supervision and control.

(p) The services provided to students in private schools or facilities must be provided by personnel meeting the same standards as personnel providing services in the public agency.

(q) A complaint that a public agency has failed to meet the requirements of this rule may be filed pursuant to the procedures described in 511 IAC 7-30-2.

(r) The procedures for mediation under 511 IAC 7-30-1 and for a due process hearing and appeal under 511 IAC 7-30-3 and 511 IAC 7-30-4 are not applicable to students under this rule, except to resolve disputes on the following issues:
(1) Child find.
(2) The appropriateness of an evaluation or reevaluation.
(3) The determination of eligibility for special education and related services.

(Indiana State Board of Education; 511 IAC 7-19-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2444; filed May 13, 2002, 2:00 p.m.: 25 IR 3150)

SECTION 4. 511 IAC 7-19-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-19-2 Reimbursement for parent's unilateral enrollment of student in private schools or facilities when the public agency's provision of a free appropriate public education is in dispute

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 2. (a) This section does not require the public agency to pay the cost of education, including special education and related services, of a student with a disability at a private school or facility if the public agency made a free appropriate public education available to the student, and the parent elected to place the student in a private school or facility. If, as a result of a disagreement between the parent and the public agency, regarding the availability of a free appropriate public education for a student who previously received special education and related services under the authority of the public agency, the parent of a student with a disability enrolls the student in a private preschool, elementary school, or secondary school without the consent or referral by the public agency, the parent may seek reimbursement for the costs of the private school or facility from the public agency.

(b) If the parent and the public agency cannot reach agreement on the issue of reimbursement, either may request a due process hearing pursuant to 511 IAC 7-30-3 to resolve the issue.

(c) The independent hearing officer or the court may require the public agency to reimburse the parent for the cost of the private school enrollment if the hearing officer finds both of the following:
(1) The public agency did not make a free appropriate public education available to the student in a timely manner prior to enrollment in the private school or facility.
(2) The private placement is appropriate.

(d) The hearing officer **or the court** may reduce or deny reimbursement to the parents if the hearing officer **or the court** finds any of the following:
(1) At the most recent case conference committee meeting that the parents attended prior to removal of the student from the public agency, the parents did not inform the case conference committee that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to the student, including stating their concerns and their intent to enroll the student in a private school at public expense.
(2) The parent failed to provide written notice to the public agency, at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public agency, of the information required by subdivision (1).
(3) Prior to the parent's removal of the student from the public agency, the public agency informed the parent, through the notice requirements of 511 IAC 7-22-2, of its intent to evaluate the student, **including a statement of the purpose of the evaluation that was appropriate and reasonable,** but the parent did not make the student available for evaluation.
~~(4) The action taken by the parent was unreasonable.~~

(e) The hearing officer **or the court** may not reduce or deny the reimbursement if the parent failed to provide the written notice described in subsection (d)(2) if the hearing officer **or the court** finds any of the following:

(1) The parent cannot read or write in English.
(2) Compliance with subsection (d)(2) would likely result in physical or serious emotional harm to the student.
(3) The public agency prevented the parent from providing the notice.
(4) The parent had not received notice of procedural safeguards, pursuant to 511 IAC 7-22-1, containing the notice requirement of subsection (d)(2).

(f) The hearing officer or the court may find that the private placement made by the parent is appropriate even if the placement does not meet the state standards that apply to education provided by the state and local educational agencies.

(g) The cost of reimbursement may be reduced or denied upon a judicial finding of unreasonableness with respect to the actions taken by the parents. *(Indiana State Board of Education; 511 IAC 7-19-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2446; filed May 13, 2002, 2:00 p.m.: 25 IR 3152)*

SECTION 5. 511 IAC 7-22-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-22-1 Notice of procedural safeguards
Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 1. (a) The public agency shall establish, maintain, and implement procedures in accordance with this section to ensure that students with disabilities and their parents are afforded procedural safeguards with respect to the provision of a free appropriate public education by the agency.

(b) The written notice of procedural safeguards shall be a standard notice and shall be:
(1) written in language understandable to the general public;
(2) provided in the native language or other mode of communication used by the parent unless it clearly is not feasible to do so; and
(3) printed in a format that is easy to read.

(c) When the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure the following:
(1) The procedural safeguards are translated orally or by other means to the parent in his or her native language or other mode of communication.
(2) The parent understands the content of the notice.
(3) There is written documentation that the requirements of this section are met.

(d) A copy of the notice of procedural safeguards shall be given to the parents, at a minimum, at the time of:
(1) initial referral for evaluation;
(2) notification of a case conference committee meeting;
(3) reevaluation of the student;
(4) filing of a due process hearing;
(5) the date of the decision to place a student in an interim alternative educational setting for up to forty-five (45) days or the date expulsion charges have been filed; and
(6) notification of a proposed placement or denial of placement.

(e) The written notice of procedural safeguards shall include a full explanation of the following:
(1) The parent's right to contact and meet with public agency personnel or the agency's governing body to do the following:
(A) Obtain an explanation or clarification of the procedural safeguards or due process procedures.
(B) Discuss any questions or issues.
(C) Obtain local access in a convenient place to:
(i) federal and state laws pertaining to special education;
(ii) the public agency's standards, policies, and procedures pertaining to special education;
(iii) the public agency's approved comprehensive plan;
(iv) approved applications; and
(v) final monitoring reports of the public agency.
(2) The prerequisite of written parental consent for:
(A) An initial evaluation.
(B) A reevaluation.
(C) An additional evaluation.
(D) Initial special education services.
(E) A change of placement.
(3) The parent's right to participate as a member of the case conference committee and the requirements of 511 IAC 7-27-4.
(4) The parent's right to obtain a copy of the initial educational evaluation report, in accordance with 511 IAC 7-25-4(k) and ~~(l),~~ **511 IAC 7-25-4(l),** prior to the case conference committee meeting.
(5) The parent's right to request that a case conference committee be convened at any time.
(6) The parent's right to request an evaluation and the protections contained in 511 IAC 7-25-4.
(7) The parent's right to prior written notice consistent with the requirements of section 2 of this rule.
(8) The parent's right to obtain an independent educational evaluation, including the following:
(A) The right to have the results of the independent educational evaluation considered by the case conference committee or the independent hearing officer in a due process hearing.
(B) The circumstances under which an independent educational evaluation may be obtained at public expense.
(C) The criteria that must be met when an independent educational evaluation is conducted at public expense.
(9) The requirement that a student with a disability be placed in the least restrictive environment, as determined by the case conference committee, that is appropriate to meet the student's individual needs, including the continuum of services to be considered under 511 IAC 7-27-9.

(10) The parent's rights with regard to the student's educational record, including the following:
(A) Accessing the record.
(B) Inspecting and reviewing the record.
(C) Challenging information in the record.
(D) Amending information in the record.
(E) The consent required for disclosure, use, and destruction of records pursuant to 511 IAC 7-23-1.
(F) Any fees associated with copying record.
(11) The availability of mediation as a means of dispute resolution and the mediation process pursuant to 511 IAC 7-30-1.
(12) The right of the parent, or any interested party, to file a complaint, including the process for filing a complaint and the timelines under 511 IAC 7-30-2.
(13) The parent's right to request a due process hearing to challenge the public agency's proposed or refused action regarding a student with a disability, including the following:
(A) The process for requesting a due process hearing.
(B) The student's **placement,** special education, **and related** services during the pendency of a due process hearing.
(C) The requirement to disclose evaluation results and recommendations.
(D) The rights of the parent and the public agency before, during, and after a due process hearing conducted pursuant to 511 IAC 7-30-3, including an administrative appeal, a civil action, and attorneys' fees.
(14) The procedures under 511 IAC 7-24 for appointing an educational surrogate parent and the circumstances in which an educational surrogate parent must be appointed.
(15) The requirements under 511 IAC 7-19-2 for a parent's unilateral placement of a student with a disability in a private school at public expense.
(16) The protections for students who have not been determined eligible for special education and related services pursuant to 511 IAC 7-29-8.
(17) The protections and procedures for students who are subject to placement in an interim alternative educational setting.
(18) The transfer of rights to the student at eighteen (18) years of age under 511 IAC 7-28-4.
(19) The names and addresses of agencies and organizations that provide assistance to parents in understanding this rule.

(Indiana State Board of Education; 511 IAC 7-22-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2451; filed May 13, 2002, 2:00 p.m.: 25 IR 3153)

SECTION 6. 511 IAC 7-23-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-23-2 Procedures for amending educational records

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 2. (a) A parent or eligible student who believes that information in an educational record collected, maintained, or used under this rule is inaccurate, misleading, or violates the privacy or other rights of the student may request the public agency that maintains the record to amend the information. The request shall:
(1) be in writing;
(2) be dated; and
(3) specify the information that the parent or eligible student believes is inaccurate, misleading, or violates the student's privacy or other rights.

(b) If the public agency agrees to amend the information as requested, the public agency shall:
(1) amend the information within ten (10) business days after the request is received; and
(2) notify the parent or eligible student, in writing, that the change has been made, including the date the change was made.

(c) If the public agency refuses to amend the information as requested, the public agency shall notify the parent or eligible student of the refusal, in writing, within ten (10) business days after the request is received. The written notice shall include a statement of the parent's or eligible student's right to a hearing to challenge the information in the student's educational record and the procedures for the hearing, including the following:
(1) The parent or eligible student shall submit to the public agency a written request for a hearing, specifying the information challenged and the reasons the parent or eligible student believes the information to be inaccurate, misleading, or in violation of the student's privacy or other rights.
(2) The public agency shall convene a hearing within fifteen (15) business days after the request for the hearing is received.
(3) The public agency shall notify the parent or eligible student, in writing, of the hearing date, time, and location, not less than five (5) business days in advance of the hearing.
(4) The hearing may be conducted by any person, including an official of the public agency, who does not have a direct interest in the outcome of the hearing.
(5) The parent or eligible student shall be given a full and fair opportunity to present evidence relevant to the issues. The parent or eligible student may, at their own expense, be assisted or represented by one (1) or more persons, including an attorney.
(6) The hearing officer shall notify the parent or eligible student of the hearing decision in writing within ten (10) business days after the hearing. The decision shall be based solely on evidence and testimony presented at the hearing and shall include a summary of the evidence and the reasons for the decision.
(7) If the hearing officer determines the information in question is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the public agency

shall amend the information accordingly, and inform the parent or eligible student in writing of the amendment.

(8) If the hearing officer determines the information in question is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the public agency shall inform the parent or eligible student in writing of the right to place a statement in the student's record commenting on the contested information or stating the reasons for disagreeing with the decision, or both.

(9) A statement placed in the record by the parent or eligible student under subdivision (8) shall be maintained by the public agency in the student's record as long as the record or the contested portion of the record is maintained by the public agency. The public agency shall disclose the statement whenever it discloses the record or the contested portion of the record to which the statement relates.

(d) If the public agency refuses to amend the information as requested, **the public agency shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.568.** The public agency shall conduct a hearing **upon the parent's request.** A hearing conducted under this section must be conducted according to the procedures under 34 CFR 99.22. *(Indiana State Board of Education; 511 IAC 7-23-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2455; filed May 13, 2002, 2:00 p.m.: 25 IR 3154)*

SECTION 7. 511 IAC 7-25-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-3 Educational evaluations; in general

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 3. (a) This rule applies only to evaluation procedures for an individual student to determine the existence, nature, and extent of a disability, if any, and the special education and related services the student may need. These procedures do not apply to basic tests administered to, or procedures used with, all students in a building, grade, or class, or those required by state law.

(b) Each public agency shall establish, maintain, and implement a general education intervention procedure, implemented at the building level, for students whose classroom performance is adversely affecting educational outcomes. General education intervention shall not be a prerequisite to an educational evaluation.

(c) The public agency shall establish, maintain, and implement written procedures regarding initial evaluations, additional evaluations, and reevaluations, including the following:

(1) A description of the way in which parents, teachers, school administrators, specialists, or the student may pursue or initiate an initial evaluation.

(2) A description of the methods used to assign a team of qualified professionals to conduct educational evaluations.

(3) A description of the procedures used for the required three (3) year reevaluations and additional evaluations.

(d) When referrals for any student from birth, but less than twenty-two (22) years of age are made directly to the Indiana School for the Deaf, the Indiana School for the Blind, Silvercrest Children's Development Center, Indiana Soldiers' and Sailors' Children's Home, or any other state-operated school by other than the designated representative of the student's public school corporation of legal settlement, the following procedures shall be implemented:

(1) The state-operated school shall refer the person making the contact back to the public school corporation of legal settlement.

(2) The referral, evaluation, and case conference committee meeting described in section 4 of this rule shall be the responsibility of the public school corporation of legal settlement.

(e) The public agency shall establish, maintain, and implement procedures to assure that the tests and other evaluation materials:

(1) are provided and administered in the student's native language or other mode of communication unless it is clearly not feasible to do so;

(2) are selected and administered so as not to be racially or culturally discriminatory;

(3) include materials designed to assess specific areas of educational need and not just those designed to provide a single general intelligence quotient;

(4) when administered to a student with impaired sensory, manual, or speaking skills, are capable of yielding results that accurately reflect the student's aptitude or achievement level, or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, except where these skills are the factors the test purports to measure;

(5) are technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors;

(6) provide relevant information that directly assists in determining the educational needs of the student; and

(7) are sufficiently comprehensive to identify all of the student's special education and related service needs whether or not commonly linked to the disability category in which the student has been classified.

(f) Materials and procedures used to evaluate a student with limited English proficiency shall be selected and administered to ensure they measure the extent to which the student has a disability and needs special education rather than measuring the student's English language skills.

(g) The public agency shall assure that any standardized tests given to a student:

(1) have been validated for the specific purpose for which they are used; and

(2) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(h) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

(i) The determination of eligibility for special education and appropriate special education services and placement must be made on the basis of more than a single test or procedure or sole criterion. Specific information and procedures required to determine a disability and eligibility are described in 511 IAC 7-26. A comprehensive educational evaluation conducted by a team of qualified professionals shall include a variety of assessments and information gathering procedures designed to provide relevant functional and developmental information in all areas that may be related to the suspected disability, including, where appropriate, information on the student's:

(1) health;
(2) vision;
(3) hearing;
(4) social and emotional status;
(5) general intelligence;
(6) academic performance;
(7) communication status; and
(8) motor abilities.

(j) The public agency shall ensure that information obtained from various sources, including information provided by the parent, **aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,** is documented and carefully considered by the case conference committee in determining the following:

(1) Whether the student has a disability and is eligible for special education and related services.

(2) The content of the student's individualized education program, including information related to enabling the student:

(A) to be involved in and progress in the general curriculum; or

(B) for an early childhood education student, to participate in appropriate activities.

(k) The public agency must evaluate a student with a disability in accordance with the requirements of this rule before determining that the student is no longer a student with a disability, except when termination of the student's eligibility is due to graduation with a regular high school diploma or exceeding the age eligibility under this article. *(Indiana State Board of Education; 511 IAC 7-25-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2458; filed May 13, 2002, 2:00 p.m.: 25 IR 3155)*

SECTION 8. 511 IAC 7-25-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-4 Initial educational evaluation

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 4. (a) If the public agency intends to pursue an initial evaluation, the public agency shall hold a personal meeting with the parent to inform the parent of the public agency's intent. If the parent is unwilling or unable to attend a personal meeting, a notice shall be mailed to the parent. The information presented verbally and in writing at the personal meeting or in the mailed notice must include the following:

(1) A description of the student's learning difficulties and the reasons an educational evaluation is needed.

(2) A description of the review process to determine what data exists and what, if any, additional data is needed.

(3) A description of the evaluation process, if additional data is needed, including proposed assessment techniques and what the tests or evaluation procedures will measure.

(4) When general education intervention strategies have been used, a description of attempts to remediate the learning difficulties through general education intervention strategies and why those attempts were unsuccessful.

(5) The timeline for conducting the educational evaluation and convening the case conference committee meeting.

(6) An explanation of how to obtain a copy of the report of the initial educational evaluation prior to the case conference committee meeting, including asking the parent if the parent wishes to have a meeting with an individual who can explain the results of the evaluation prior to the case conference committee meeting.

(7) Written notice of procedural safeguards described in 511 IAC 7-22-1.

(8) A list of sources for parents to contact to obtain assistance with understanding the provisions of this section.

(b) ~~A parent who wishes to initiate an~~ **Informed parental consent must be obtained prior to conducting an initial** educational evaluation. ~~must provide written consent.~~ A written request for an evaluation, signed by the parent and submitted to certified personnel, shall constitute written consent for an evaluation. When the referral for an evaluation is made by public agency personnel or if the parent makes a verbal request for an evaluation, the public agency's consent form, when signed by the parent and received by certified personnel, constitutes the parent's written consent. The public agency shall follow the procedures in subsection (a) to assure the parent is fully informed and to obtain information on the parent's reasons for requesting the educational evaluation. The initial educational evaluation must be conducted and the case conference committee convened within sixty (60) instructional days of the date the written parental consent is received by certified personnel.

(c) Parental consent is not required to review existing data as part of an initial evaluation. Parental consent for evaluation shall not be construed as consent for any services other than the evaluation of the student.

(d) As part of an initial educational evaluation, if appropriate, the case conference committee and other qualified professionals, as appropriate, shall do the following:

(1) Review existing evaluation data on the student, including evaluations and information provided by the parents of the student, current observations, and classroom-based assessments, and observations by teachers and related service providers.

(2) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(A) whether the student has a particular category of disability as described in 511 IAC 7-26;

(B) the present levels of performance and educational needs of the student; and

(C) whether the student needs special education and related services.

(e) The case conference committee members may conduct the review described in subsection (d) without a meeting.

(f) The public agency shall administer tests and evaluation materials as may be needed to produce the data identified in subsection (d). ~~of this section.~~

(g) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines no additional data are needed to determine the student's eligibility for special education, the public agency shall:

(1) notify the parent of that determination and the reasons for the determination;

(2) notify the parent of the right to request an assessment to determine whether the student is eligible for special education; and

(3) not be required to conduct such an assessment unless requested to by the student's parents.

(h) A comprehensive individual evaluation to determine the existence of a disability and the student's educational needs that fulfills the requirements of this rule and 511 IAC 7-26 shall precede any action with regard to the initial identification and provision of special education and related services. The educational evaluation of a student shall be conducted by a team of qualified professionals, including at least one (1) teacher licensed in, or other specialist with knowledge in, the area of suspected disability, and a school psychologist, except in the following situations:

(1) For a student with suspected communication disability only, such as a speech disorder, the speech-language pathologist may serve as the sole evaluator.

(2) For a student with a suspected learning disability, the evaluation team of qualified professionals shall also include the student's general education teacher, or if the student does not have a general education teacher, a general education teacher qualified to teach students of the same age.

(i) For a student with a visual or hearing impairment, or suspected multiple disabilities, the public agency may request that representatives of the state-operated schools serve as part of the team of qualified professionals only if the parent has provided written consent, in addition to the written consent to conduct the initial evaluation, for the representative's participation in the evaluation.

(j) For a student with a suspected developmental delay, the evaluation team shall include the parent and at least two (2) qualified professionals from different disciplines based upon the evaluation needs of the student.

(k) The public agency shall ensure that a copy of the evaluation report is made available at the school the student attends no less than five (5) instructional days prior to the scheduled case conference committee meeting. The parent may go to the school during the five (5) instructional days prior to the case conference meeting to obtain a copy of the report. The public agency shall provide a copy of the evaluation report to the parent at that time. At the time of the meeting described in subsection (a), the public agency shall ensure that the parent is informed of the procedure to obtain a copy of the evaluation report prior to the case conference committee meeting.

(l) A parent who wishes to have the results of the evaluation explained prior to the scheduled case conference committee meeting may request that a meeting to discuss the evaluation be arranged. The request for such a meeting shall be made by the parent at the time of the meeting to discuss the referral for an educational evaluation as described in subsection (a). In accordance with ~~subdivision (6) of~~ subsection ~~(a),~~ **(a)(6),** the public agency shall ask the parent if the parent wishes to have a meeting with an individual who can explain the evaluation results prior to the case conference committee meeting. The public agency shall arrange a meeting with the parent and an individual who can explain the evaluation results within five (5) instructional days prior to the case conference committee. The meeting shall be scheduled at a mutually agreed upon date, time, and place. A copy of the evaluation report shall be provided to and reviewed with the parent at this meeting.

(m) If the parent does not obtain a copy of the evaluation report prior to the case conference committee convened to consider the student's identification and eligibility for special education services, the public agency shall provide a copy of the evaluation report to the parent at the case conference committee meeting. *(Indiana State Board of Education; 511 IAC 7-25-4;*

filed May 22, 2000, 8:52 a.m.: 23 IR 2460; filed May 13, 2002, 2:00 p.m.: 25 IR 3156)

SECTION 9. 511 IAC 7-25-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-5 Independent educational evaluation
Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 5. (a) The public agency shall provide to parents, upon request, information about where an independent educational evaluation may be obtained and the public agency's criteria applicable to independent educational evaluations as described in subsection (h). An independent educational evaluation means an evaluation conducted by a qualified evaluator who is not employed by the public agency responsible for the student in question.

(b) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted by the public agency, subject to the provisions of subsection (c). Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. The public agency may ask the parent why the parent believes an independent educational evaluation is necessary, but the public agency cannot require such response, nor can it delay providing the evaluation or initiating the due process hearing as a result of the parent's response or lack of response.

(c) Upon a parent's request for an independent educational evaluation, **or upon the parent's request for reimbursement for an independent educational evaluation obtained at the parent's expense,** the public agency must take one (1) of the following actions within ten (10) business days of the date of the public agency's receipt of the **parent's** request:

(1) Initiate a due process hearing to show its educational evaluation is appropriate.

(2) Notify the parent in writing that the independent educational evaluation will be at public expense.

(d) If the public agency initiates a hearing to determine the appropriateness of its educational evaluation, and the hearing officer determines that the evaluation conducted by the public agency is appropriate, the parent may still seek an independent evaluation, but at the parent's expense.

(e) If the parent obtains an independent evaluation at the parent's expense, the results of the evaluation:

(1) shall be considered in any decisions made with respect to the provision of a free appropriate public education to the student if the independent educational evaluation complies with agency criteria for an evaluation; and

(2) may be presented by the parent as evidence at a due process hearing.

(f) ~~If the parent obtains~~ **In a hearing on the issue of the public agency's reimbursement of the parent's expense of** an independent educational evaluation, ~~at the parent's expense, and requests a due process hearing to obtain reimbursement for the cost of the evaluation,~~ the hearing officer may not order reimbursement if the hearing officer determines that the independent educational evaluation did not meet the public agency's criteria ~~described in~~ **under** subsection (h) **unless applying those criteria would deny a parent's right to any independent educational evaluation as identified in 34 CFR 300.502(e).**

(g) If an independent hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be borne by the public agency.

(h) If all or any part of an independent educational evaluation is paid for by the public agency, the criteria under which the evaluation is obtained must be the same that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation, including the following:

(1) The location of the evaluation.

(2) The qualifications of the evaluator.

(i) Except for the criteria described in subsection (h), the public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. *(Indiana State Board of Education; 511 IAC 7-25-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2461; filed May 13, 2002, 2:00 p.m.: 25 IR 3158)*

SECTION 10. 511 IAC 7-25-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-6 Reevaluation
Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 6. (a) For each student receiving special education and related services, a reevaluation shall be conducted every thirty-six (36) calendar months.

(b) The public agency shall obtain informed parental consent prior to conducting a reevaluation of a student, except that such informed consent need not be obtained if the public agency can demonstrate that reasonable measures were taken to obtain such consent and the student's parent failed to respond. The informed parental consent shall contain a description of the proposed reevaluation procedures. To satisfy the reasonable measures requirement of this section, the public agency shall keep a record of attempts to obtain parental consent, such as the following:

(1) Detailed records of telephone calls made or attempted and the results of the calls.

(2) Copies of correspondence sent to the parent and any responses received.
(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(c) The public agency may pursue mediation or a due process hearing in order to obtain parental consent for a reevaluation.

(d) In determining what shall be included in the triennial reevaluation, the case conference committee and other qualified professionals, as appropriate, shall do the following:
(1) Review any existing evaluation data on the student, including evaluations and information provided by the parents, current classroom-based assessments and observations, and observations of teachers and related services providers.
(2) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine the following:
(A) Whether the student continues to have a disability as described in 511 IAC 7-26.
(B) The present levels of performance and educational needs of the student.
(C) Whether the student continues to need special education and related services.
(D) Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's individualized education program and to participate, as appropriate, in the general curriculum.

(e) Parental consent is not required to review existing data as part of a reevaluation.

(f) The case conference committee may conduct the review described in subsection (d) without a meeting.

(g) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines that no additional data are needed to determine whether the student continues to be eligible for special education, the public agency shall:
(1) notify the parent of that determination and the reasons for the determination;
(2) notify the parent of the right to request an assessment to determine whether the student continues to be eligible for special education; and
(3) not be required to conduct such an assessment unless requested to by the student's parents.

(h) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines that additional data are needed, the public agency shall administer tests and other evaluation materials as may be needed to produce the data identified pursuant to subsection (d). **The public agency shall also conduct a reevaluation upon the request of the parent or a teacher in accordance with the requirements of subsection (b).**

(i) The public agency shall provide the parent with adequate notice of its intent to conduct the reevaluation. The notice shall be:
(1) given verbally at the student's case conference committee meeting and included in the case conference committee report the year before the reevaluation will be conducted; and
(2) provided again, in writing, no less than twenty (20) instructional days prior to the projected date of reevaluation.

(j) Within twenty (20) instructional days after the reevaluation, the public agency shall provide the parent with written notice that the reevaluation has been conducted and shall include a copy of the reevaluation report with the written notice. Contingent upon the results of the reevaluation, the notice shall contain one (1) of the following:
(1) The public agency will convene a case conference committee to discuss the results of the reevaluation and review the student's eligibility for special education and the appropriateness of the student's individualized education program.
(2) The public agency does not plan to convene a case conference committee, but the parent may request that a case conference committee be convened, and the parent may request to meet with a representative of the public agency.
(3) Unless otherwise requested by the parent or the public agency, the reevaluation results will be reviewed at the next case conference committee meeting.

(k) A reevaluation is subject to the procedures and assurances described in section 3(e) through 3(g) of this rule. *(Indiana State Board of Education; 511 IAC 7-25-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2462; filed May 13, 2002, 2:00 p.m.: 25 IR 3158)*

SECTION 11. 511 IAC 7-25-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-25-7 Additional evaluations
Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 7. (a) A request for an evaluation, subsequent to an initial evaluation and at a time other than the time scheduled for the triennial reevaluation, shall be considered a request for an additional evaluation. An additional evaluation may be:
(1) an assessment of an area or areas not previously evaluated; or
(2) a reassessment of an area or areas previously evaluated.

(b) An additional evaluation may be requested by the parent or the public agency, **including a teacher,** at any time. **An additional evaluation shall be conducted upon request or when conditions warrant such an evaluation.** Section 4 of this rule, including timelines for conducting the evaluation and

convening the case conference committee, is applicable to a request for an additional evaluation.

(c) Additional evaluations are subject to the procedures and assurances described in section 3(e) through 3(g) of this rule. *(Indiana State Board of Education; 511 IAC 7-25-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2463; filed May 13, 2002, 2:00 p.m.: 25 IR 3159)*

SECTION 12. 511 IAC 7-27-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-4 Case conference committee meetings

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6; IC 20-1-6.3; IC 20-8.1-5.1

Sec. 4. (a) A case conference committee shall convene in the following circumstances:

(1) In accordance with the timelines in 511 IAC 7-25-4(b) after an initial evaluation is conducted and in accordance with 511 IAC 7-25-7 after an additional evaluation is conducted.

(2) Within twelve (12) months of the preceding case conference committee meeting for a student previously determined eligible for special education to determine whether the annual goals for the student are being achieved.

(3) Upon request of a teacher, parent, or administrator.

(4) When a change of placement is proposed or to be considered.

(5) Within ten (10) instructional days of the enrollment date of a student who has been receiving special education in another state or another district within the state.

(6) To determine whether the behavior is a manifestation of the disability in the event of disciplinary action proposed or taken in accordance with 511 IAC 7-29-6 or IC 20-8.1-5.1, or both.

(7) To determine the setting when school personnel order a change to an interim alternative educational setting in accordance with 511 IAC 7-29-3 or IC 20-8.1-5.1 or both, unless the setting has been included in the student's individualized education program or behavioral intervention plan.

(8) To develop a plan for assessing functional behavior, or to review and modify an existing behavioral intervention plan, to address behavior for which disciplinary action was proposed or taken in accordance with 511 IAC 7-29-5 or IC 20-8.1-5.1, or both.

(9) At least every sixty (60) instructional days when the setting in which the student is receiving educational services is the student's home or out-of-school location determined in accordance with section 10 of this rule.

(b) The public agency shall take whatever action is necessary to ensure the parent understands the proceedings of the case conference committee meeting, including arranging for an interpreter for a parent who is deaf or whose native language is not English.

(c) A case conference committee shall develop, review, or revise an individualized education program for each student who is eligible for special education and related services under this article, taking into consideration the following general and special factors:

(1) The strengths of the student and the concerns of the parent for enhancing the education of the student.

(2) The results and instructional implications of the initial or most recent educational evaluation and other assessments of the student.

(3) Strategies, including positive behavioral interventions and supports, to address a student's behavior that impedes his or her learning or that of others.

(4) The language needs of a student with limited English proficiency, as those needs relate to the student's individualized education program.

(5) The communication needs of the student, and in the case of a student who is hearing impaired, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.

(6) The student's need for assistive technology devices and services.

(7) As appropriate, the results of the student's performance on any general statewide or local assessments.

(8) Any lack of expected progress toward the annual goals described in section 6(a)(2) of this rule and in the general curriculum, if appropriate.

(d) Instruction in Braille and the use of Braille for a student who is blind or visually impaired shall be provided unless the case conference committee determines, after a functional literacy assessment of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student.

(e) It is not necessary for a case conference committee to be convened in order for public agency personnel to discuss issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's individualized education program. Public agency personnel may engage in preparatory activities to develop a proposal or response to a parent proposal that will be discussed at a later case conference committee meeting. *(Indiana State Board of Education; 511 IAC 7-27-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2471; filed May 13, 2002, 2:00 p.m.: 25 IR 3160)*

SECTION 13. 511 IAC 7-27-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-5 Report of case conference committee meeting; notice and parental consent

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 5. (a) The public agency shall prepare a written report of the case conference committee meeting that shall include, but is not limited to, the following:

(1) The date and purpose of the meeting, and the names and titles of the participants.

(2) A description of each evaluation procedure, test, record, or report used as a basis for the determination of special education services and placement.

(3) A statement of eligibility for special education services.

(4) If a student is eligible for special education and related services, an individualized education program, including all components specified in section 6 of this rule, which may be attached to the case conference committee report rather than in the body of the report and must be provided at no cost to the parent.

(5) The reasons for the placement determination, including a description of any options considered and why those options were rejected.

(6) Other factors relevant to the proposed placement or denial of placement, such as information and justification if the amount of daily instructional time is less than that provided to nondisabled students of the same age.

(7) Written opinions, if any, that may be attached to the case conference committee report rather than included in the body of the report.

(8) A description of the action proposed, such as a recommendation for placement or denial of placement.

(b) The public agency shall provide the parent with written notice of the proposed placement or denial of placement in accordance with 511 IAC 7-22-2(d).

~~(b)~~ **(c) The public agency shall provide the parent with a copy of the written report.** The written report and notice may be provided to the parent at the conclusion of the case conference committee meeting or may be mailed to the parent at a later date. If mailed, the report and the notice must be received by the parent no later than ten (10) business days after the date of the case conference committee meeting.

~~(c)~~ **(d)** The public agency shall obtain written consent from a parent when the public agency proposes:

(1) the initial determination of the student's eligibility for special education and related services, including the student's classification under 511 IAC 7-26;

(2) the initial individualized education program and placement;

(3) a revised individualized education program that involves a change of placement as defined in 511 IAC 7-17-13;

(4) a change in the student's identified disability under 511 IAC 7-26;

(5) that additional evaluations be conducted pursuant to 511 IAC 7-25-7; or

(6) the termination of the student's eligibility for special education and related services.

~~(d)~~ **(e)** If the notice required under subsection (b) relates to an action proposed by the public agency that also requires parental consent, the public agency may give notice at the same time it requests parental consent.

~~(e)~~ **(f)** Whenever consent of a parent is required by subsection (d), the proposed services or placement or change of services or placement shall not be implemented until consent of a parent is obtained, except as otherwise provided in 511 IAC 7-29-2. A public agency may not use a parent's refusal to consent to one (1) service or activity to deny the parent or student any other service, benefit, or activity of the public agency, except as permitted by this article. Parental consent for evaluation under 511 IAC 7-25 shall not be construed as consent for any services other than the evaluation.

~~(f)~~ **(g)** When a parent provides written consent for the implementation of an individualized education program developed by the case conference committee, the individualized education program is considered an agreed-upon individualized education program. *(Indiana State Board of Education; 511 IAC 7-27-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2472; filed May 13, 2002, 2:00 p.m.: 25 IR 3161)*

SECTION 14. 511 IAC 7-27-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-7 Individualized education program; implementation

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 7. (a) An agreed-upon individualized education program, pursuant to section ~~5(f)~~ **5(g)** of this rule, shall be implemented as written.

(b) The student's teacher of record shall do the following:

(1) Monitor the implementation of the student's individualized education program.

(2) Provide technical assistance and consultation to the student's general education teachers, related services providers, paraprofessionals, and other school personnel interacting with the student.

(3) Be responsible for all other activities identified in 511 IAC 7-17-72.

(c) The services identified in the agreed-upon individualized education program shall be provided as soon as the necessary arrangements are completed, but no later than the following:

(1) Ten (10) instructional days after parental consent to the student's initial individualized education program is received.

~~unless~~ **However, if** that date ~~is~~ **falls** within the last twenty (20) instructional days of **the end of** the spring semester ~~in which case~~ **and the individualized education program does not require extended school year services to be provided during the summer, the** services need not be provided until the first day of the following semester.

(2) Ten (10) instructional days after the case conference committee meeting for a newly-enrolled student who had received special education services in another state.

(3) Immediately upon enrollment from another district within the state.

(4) The initiation date stated in the student's individualized education program in all other circumstances.

(d) No public agency shall continue to implement an individualized education program for a period of more than twelve (12) months unless the duration has been extended by operation of the stay-put provision of 511 IAC 7-30-3(j).

(e) At the beginning of each school year, each public agency shall have an individualized education program in effect for each student with a disability within its jurisdiction. *(Indiana State Board of Education; 511 IAC 7-27-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2474; filed May 13, 2002, 2:00 p.m.: 25 IR 3161)*

SECTION 15. 511 IAC 7-27-9 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-9 Least restrictive environment and delivery of special education and related services

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 9. (a) Each public agency shall have in place written policies and procedures to ensure the following:

(1) To the maximum extent appropriate, students with disabilities, including those **students placed** in **public or private institutions by the public agency outside the public agency's jurisdiction and those students placed in** public or private institutions and other care facilities in the public agency's jurisdiction, are educated with nondisabled students.

(2) Special classes, separate schooling, or other removal of students from the general education environment ~~to special classes or separate facilities~~ occurs only when it is documented that education in general education classes using supplementary aids and services cannot be satisfactorily achieved.

(3) Unless the individualized education program requires some other arrangement, ~~a student with disabilities is educated~~ **the student's placement is as close as possible to the student's home school and is** in the school the student would attend if not disabled.

(4) The case conference committee determines the placement in which a student will receive services on the basis of the student's individualized education program, regardless of the identified disability, and the individualized education program shall be developed prior to the determination and reviewed at least annually.

(5) The services provided for each student are based on the goals and benchmarks or short term objectives in the student's individualized education program.

(6) A continuum of services is available to meet the individual needs of students with disabilities, including, but not limited to:

(A) instruction in general education classes;
(B) special classes;
(C) special schools;
(D) home instruction; and
(E) instruction in hospitals and institutions;

and makes provision for supplementary services to be provided in conjunction with general education placement.

(7) In selecting the least restrictive environment, consideration is given to any potentially harmful effects of the suggested services on the student or on the quality of services needed.

(8) Each student with a disability has an equal opportunity to participate with nondisabled students in nonacademic and extracurricular services and activities to the maximum extent appropriate.

(9) Special education and related services are delivered in the least restrictive environment determined by the case conference committee, regardless of the identified disability.

(10) The provision of services to students with different disabilities at the same time and in the same classroom is permitted.

(11) Students with disabilities are in classes and buildings with their chronological peers unless an alternative is determined appropriate by the case conference committee and the reasons for that determination are documented in the written case conference committee report required by section 5 of this rule.

(12) Students with disabilities are not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general curriculum.

(b) The public agency shall make available to students with disabilities the variety of educational programs and services that are made available to nondisabled students served by the public agency, including vocational education, art, music, industrial arts, consumer and homemaking education, field trips, and convocations, as well as nonacademic and extracurricular activities, including meals and recess, athletics, clubs, employment assistance, and graduation ceremonies. Unless the student's individualized education program specifies otherwise, the student shall participate in these programs and activities with nondisabled students.

(c) The public agency shall make physical education, specially designed if necessary, available to all students with

disabilities. Physical education shall be provided by a general education teacher of physical education, or a teacher specially licensed in adapted physical education as applicable to the physical education appropriate for the student. Each student with a disability shall be afforded the opportunity to participate in the general physical education program available to nondisabled students unless:

(1) the student is enrolled full time in a separate facility; or

(2) the student needs specially designed physical education, as prescribed in the student's individualized education program.

(d) The public agency shall ensure the availability of a continuum of placement options, and shall include the following:

(1) General education classroom with special education and related services provided during the instructional day.

(2) Resource room with special education and related services provided outside the general education classroom during the instructional day.

(3) Separate classroom in a general education school building with special education and related services provided outside the general education classroom during the instructional day.

(4) Separate public nonresidential school or facility with special education and related services provided.

(5) Private nonresidential school or facility with special education and related services provided at public expense.

(6) Public residential school or facility with special education and related services provided.

(7) Private residential school or facility with special education and related services provided.

(8) Homebound or hospital settings with special education and related services provided at the student's home, a hospital, or other noneducational site selected by the public agency.

(e) The public agency shall ensure the availability of a continuum of placement options that shall include the following:

(1) Early childhood programs designed primarily for students without disabilities.

(2) Early childhood special education programs, designed primarily for students with disabilities, located in a general education building or community setting.

(3) Home-based early childhood special education and related services provided in the residence of the student's family or caregivers.

(4) Separate nonresidential school or facility for students with disabilities that provides early childhood special education and related services.

(5) A residential school or facility with early childhood special education and related services provided.

(f) The placement options listed in subsections (d) and (e) shall not be exclusive placement options, and a student's placement may be a combination of the options listed, as determined appropriate by the case conference committee.

(g) For a student with a disability who is convicted as an adult under state law and incarcerated in an adult facility, the case conference committee may modify the student's individualized education program or educational placement without regard to the requirements of this section where there is demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. *(Indiana State Board of Education; 511 IAC 7-27-9; filed May 22, 2000, 8:52 a.m.: 23 IR 2474; filed May 13, 2002, 2:00 p.m.: 25 IR 3162)*

SECTION 16. 511 IAC 7-27-12 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-27-12 Community-supported services; residential services

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 12. (a) **Before a public agency places a student with a disability in or refers a student to a private school or facility, the public agency shall convene a case conference committee and develop an individualized education program for the student in accordance with sections 4(c) and 6 of this rule. In accordance with section 3(e)(6) of this rule, the public agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls, if the representative cannot attend in person.** Upon the recommendation of the case conference committee, the public agency may apply to the division of special education for financial support when a student requires community-supported services or residential services for educational reasons. The division of special education shall establish an application process.

(b) Nothing in this section shall be construed as restricting a public agency from obtaining the recommended community-supported services or residential services utilizing its own resources.

(c) This section is not applicable to the following situations:

(1) Placement in a state-operated school upon the recommendation of the case conference committee.

(2) Unilateral action of the parent in placing a student with disabilities in a private school.

(3) Placement in any residential facility by any other public agency for other than educational reasons.

(d) All procedural safeguards under 511 IAC 7-22 and due process protections of 511 IAC 7-30 apply to this section.

(e) The division of special education shall approve or deny, in whole or in part, an application for financial support for community-supported services or residential services.

(f) Within ten (10) business days of approving or denying the application, the division of special education shall send written

notice of approval or denial of financial support to the public agency, the parent, and, as applicable, other public agencies with whom the student is involved.

(g) If the decision is to deny financial support for all or any part of the proposed community-supported services or residential services, the public agency and the parent have the right to appeal the decision through the due process hearing procedures described in 511 IAC 7-30-3. If no request for a due process hearing is filed within ten (10) calendar days of the date the decision is received by the parent or the public agency, the decision is deemed accepted.

(h) After the financial support is approved, the effective date of the financial support for all or part of community-supported services or residential services shall be determined by the mutual agreement of the service provider, the parent, and the public agency.

(i) When a student is placed in a state-operated facility pursuant to this rule, the state- operated facility shall not bill the parent or the public agency for the costs associated with the placement. The state-operated facility shall assume the costs of room and board, special education, and related services normally provided by the residential facility.

(j) If the parent or public agency obtains community-supported services or places the student in residential services prior to or during the application process, the parent or the public agency that obtained the services for the student is responsible for all costs of the placement incurred up to the date of approval for financial support by the division of special education. Approval of financial support shall not be retroactive, and expenses incurred prior to the date of approval are not eligible for reimbursement.

(k) When a student is placed in a private residential facility, the costs of room and board, educational, and nonmedical related services are the responsibility of the state, the public agency of the student's residence, and, as applicable, any other public agency with responsibility for the student. The school corporation of legal settlement is responsible for an amount equal to the per capita expenditure of that school corporation for educating a nondisabled student.

(l) The parent of a student placed in a public or private residential facility or other out-of-home placement is financially responsible for all costs for which the parent would be responsible if the student were living in the home, including, but not limited to, the following:

(1) Clothing and personal items as specified by the residential facility.

(2) All medical costs, including medications, emergency treatment, or dental costs incurred that are not incorporated into the daily, weekly, or monthly charges.

(3) Personal allowance, if applicable.

(m) If the student is in a public or private residential facility or other out-of-home or out-of-community placement, or there is a contracted third-party provider of services, **the state educational agency** and the school corporation of ~~the student's~~ legal settlement ~~is~~ **are** responsible for ensuring the following:

(1) That the public agency initiates at least two (2) contacts with the residential service staff or third-party provider during the period specified by the current contract for services and payment and that those contacts are documented.

(2) That, if the public agency permits the facility or provider to initiate and conduct case conference committee meetings on behalf of the student, all case conference committee procedures, including all required components of this section, are followed.

(3) That a representative of the residential service staff or third-party provider participates in the development, review and revision of the student's individualized education program by a method agreed upon by the public agency and the provider.

(4) That the parent and the school corporation are involved in all decisions with respect to the student's individualized education program and agree to any proposed changes in the services provided prior to the time any changes are implemented.

(5) That the case conference committee determines which public agency shall issue credits and diploma, if applicable, during the student's placement at the facility.

(6) That the facility or provider implements the student's individualized education program.

(7) That the state educational agency disseminates a copy of this article and the Procedural Manual for Community Supported and Residential Services to each private school or facility to which the public agency has referred or placed a student with a disability.

(Indiana State Board of Education; 511 IAC 7-27-12; filed May 22, 2000, 8:52 a.m.: 23 IR 2476; filed May 13, 2002, 2:00 p.m.: 25 IR 3163)

SECTION 17. 511 IAC 7-28-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-28-3 Transition to adult life

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6; IC 20-1-6.1

Sec. 3. (a) Beginning at fourteen (14) years of age, or earlier if determined appropriate by the case conference committee, and updated annually, the individualized education program shall include a statement of the student's transition service needs **under the applicable components of the student's individualized education program,** based on career considerations and focused on the student's courses of study (such as participation in academic honors or advanced placement courses, Core 40, technical preparation courses, or vocational education courses). The statement shall also indicate whether

the student will pursue a high school diploma or a certificate of completion.

(b) Beginning at the case conference prior to the student's entry into high school or sixteen (16) years of age, whichever comes first, **or earlier if determined appropriate by the case conference committee,** and at least annually thereafter, the student's individualized education program shall include a statement of needed transition services that guides the development of the special education and related services and the student's course of study, goals, benchmarks, and short term objectives, and includes the following:

(1) A coordinated set of activities designed within an outcome-oriented process that promotes movement from the public agency to postsecondary school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must meet the following criteria:

(A) Be based on the individual student's needs, taking into account the student's preferences and interests.

(B) Include the following:

(i) Instruction.

(ii) Related services.

(iii) Community experiences.

(iv) The development of employment and other postsecondary school adult living objectives.

(v) Where appropriate, acquisition of daily living skills and a functional vocational evaluation.

(2) The individuals and agencies responsible for implementing the activities and services, including, if appropriate, a statement of the interagency responsibilities or any needed linkages, or both, before the student leaves the secondary education program.

(3) An indication whether there is an expectation that the student will need adult services provided through state or local agencies, following graduation or exiting the secondary education program.

(c) When a purpose of a case conference committee meeting is to discuss transition services, the student shall be invited. The case conference committee shall review, based on areas addressed in the statement of needed transition services, the available adult services provided through state and local agencies and present written information on those services to the student and the parent. Adult services are provided by public agencies and other organizations to enhance adult life. Adult services may include, but are not limited to, the following:

(1) Services provided by a vocational rehabilitation services program.

(2) The department of workforce development.

(3) The Social Security Administration.

(4) The bureau of developmental disabilities services.

(5) A mental health center.

(6) A community rehabilitation program.

(7) An area agency on aging.

(d) Upon obtaining authorization to disclose confidential information, the public agency and the vocational rehabilitation counselor shall confer at least one (1) time per year to review transition-age students. If the public agency and the vocational rehabilitation counselor believe a student may be eligible for and benefit from vocational rehabilitation services, the public agency shall do the following:

(1) Provide adequate notice to the vocational rehabilitation counselor regarding the case conference committee meeting to be conducted during the school year before the student's projected final year of school. The notification to the vocational rehabilitation counselor shall include the name, address, age, and identified disability of the student for whom the case conference committee meeting is being conducted.

(2) At the case conference committee meeting, orally advise and provide written materials to the student and the parent that describe the array of vocational rehabilitation services that may be available and the process to access those services.

(e) Nothing in this article relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students who meet the eligibility criteria of that agency.

(f) If a participating agency, other than the public agency, fails to provide the transition services described in an agreed upon individualized education program, the public agency shall reconvene the case conference committee to identify alternative strategies to meet the transition objectives for the student set out in the individualized education program.

(g) Transition services may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(h) The requirements of this section do not apply to students who are convicted as adults under state law and incarcerated in adult prisons whose eligibility for special education and related services under this article will end, because of the student's age, before the student will be eligible to be released from prison based on consideration of the student's sentence and eligibility for early release. *(Indiana State Board of Education; 511 IAC 7-28-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2481; filed May 13, 2002, 2:00 p.m.: 25 IR 3164)*

SECTION 18. 511 IAC 7-29-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-29-5 Functional behavioral assessment and behavioral intervention plan procedures

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 5. (a) Either before but not later than ten (10) business days after either first suspending the student for more than ten (10) cumulative instructional days in a school year, placing the student in an interim alternative educational setting, ~~or~~ expelling the student, **or otherwise commencing a removal that constitutes a change of placement,** the public agency shall convene a case conference committee meeting for one (1) of the following purposes:

(1) To develop a plan for assessing the student's functional behavior if no functional behavioral assessment was conducted or behavioral intervention plan was implemented prior to the occurrence of the behavior that resulted in the removal.

(2) To review a student's existing behavioral intervention plan and its implementation and to modify the plan and its implementation as necessary to address the behavior.

(b) After an assessment plan has been developed as described in subsection (a)(1) and the assessments required by the plan are completed, the public agency shall convene a case conference committee meeting within ten (10) instructional days of the completion of the assessments to develop a behavioral intervention plan and provide for its implementation.

(c) If a student has an existing behavioral intervention plan and has been removed from the student's current placement for more than ten (10) cumulative instructional days in a school year and is subjected to a removal that does not constitute a change of placement, the case conference committee shall review the behavioral intervention plan and its implementation to determine whether modifications are necessary.

(d) If one (1) or more of the case conference committee members believe that modifications to an existing behavioral intervention plan are needed, the case conference committee shall meet to modify the plan and its implementation, to the extent the case conference committee determines necessary. *(Indiana State Board of Education; 511 IAC 7-29-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2485; filed May 13, 2002, 2:00 p.m.: 25 IR 3165)*

SECTION 19. 511 IAC 7-29-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-29-6 Manifestation determination

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 6. (a) If a public agency contemplates action for a student with a disability that involves removing a student with a disability from the student's current placement for a behavior described in sections 3(a) and 4(b) of this rule or that involves a removal that constitutes a change of placement for a student who has engaged in other behavior that violated any rule or code of conduct of the public agency that applies to all students, the public agency shall, no later than the date on which the decision to take action is made:

(1) notify the parent of the public agency's decision; and

(2) provide the parent with the notice of procedural safeguards.

(b) Immediately, if possible, but in no case later than ten (10) instructional days after the date on which the decision to take action is made, the case conference committee and other qualified professionals as appropriate shall conduct a review of the relationship between the student's disability and the behavior subject to the disciplinary action. This review may be conducted at the same case conference committee meeting that is convened to develop or review the functional behavior assessment and behavior intervention plan as described in section 5 of this rule.

(c) The local director of special education or the local director's designee shall serve as the public agency representative to the case conference committee when the case conference committee is convened to determine whether the student's behavior is:

(1) a manifestation of the student's disability; or

(2) the result of deficiencies in the student's individualized education program or special education placement.

(d) In carrying out this review, the case conference committee and other qualified professionals may determine that the student's behavior is not a manifestation of the student's disability only if the case conference committee and other qualified professionals do the following:

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including the following:

(A) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the student.

(B) Observations of the student.

(C) The student's individualized education program and placement.

(2) Then determine the following:

(A) In relationship to the behavior subject to the disciplinary action, the student's individualized education program and placement were appropriate.

(B) The special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's individualized education program and placement.

(C) The student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to the disciplinary action.

(D) The student's disability did not impair the student's ability to control the behavior subject to disciplinary action.

(e) If the case conference committee and other qualified professionals determine that any of the standards in subsection (d)(2) were not met, the behavior must be considered a manifestation of the student's disability.

(f) If, as a result of the case conference committee's review, the public agency identifies deficiencies in the student's individualized education program, placement, or **their** implementation, ~~of special education services,~~ the public agency shall take immediate steps to remedy the identified deficiencies.

(g) If the case conference committee and other qualified professionals determine that the student's behavior is a manifestation of the student's disability, the student may not be suspended or expelled for the behavior. The case conference committee shall review all of the following:

(1) The student's current educational placement.

(2) The student's individualized education program.

(3) Current educational evaluation data.

(h) The case conference committee and other qualified professionals shall, if necessary, revise the student's individualized education program or change the student's placement.

(i) If the case conference committee determines that the behavior of the student with a disability is not a manifestation of the student's disability, the written report of the case conference committee's findings shall be given to the parent and the superintendent of the public agency in which the student's current educational placement is located.

(j) Upon receipt of the case conference committee report, the superintendent shall decide whether or not to appoint an expulsion examiner in accordance with Indiana statute. If an expulsion examiner is appointed, the expulsion examiner shall give the student's parent notice of the right to request and appear at an expulsion meeting in accordance with Indiana statute. The public agency's expulsion procedures must comply with Indiana statute.

(k) The public agency shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the expulsion examiner.

(l) The parent of a student with a disability who disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding a student's change of placement under this rule may do the following:

(1) Request mediation in accordance with 511 IAC 7-30-1.

(2) Request a due process hearing in accordance with 511 IAC 7-30-3 or 511 IAC 7-30-5.

(3) Request, simultaneously, mediation and a due process hearing.

(m) Upon a parent's request for a due process hearing, the department of education shall arrange for an expedited hearing pursuant to 511 IAC 7-30-5.

(n) In reviewing a decision with respect to the manifestation determination, an independent hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the student's disability consistent with the requirements of subsection (d).

(o) Except as provided in section 7 of this rule, during the pendency of any proceeding to challenge the result of the manifestation determination, the student involved in the due process hearing must remain in the student's current educational placement unless the public agency and the parents of the student agree otherwise.

(p) In the event the student is expelled, the public agency shall provide services to enable the student to appropriately:

(1) progress in the general curriculum; and

(2) advance toward achieving the goals set out in the student's individualized education program.

(q) The student's case conference committee shall determine the extent to which services described in subsection (p) are necessary. *(Indiana State Board of Education; 511 IAC 7-29-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2485; filed May 13, 2002, 2:00 p.m.: 25 IR 3166)*

SECTION 20. 511 IAC 7-29-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-29-8 Protections for children not yet eligible for special education and related services

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 8. (a) A student who has not been determined eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the public agency, including any behavior described in this rule, may assert any of the protections provided for in this article if the public agency had knowledge, as described in subsection (b), that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

(b) A public agency shall be deemed to have knowledge that a student is a student with a disability if any of the following have occurred:

(1) The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to certified personnel of the public agency that the student is in need of special education and related services.

(2) The behavior or performance of the student demonstrates the need for these services.

(3) The parent of the student or the public agency has requested an evaluation of the student pursuant to 511 IAC 7-25-4.

(4) The teacher of the student, or other certified personnel of the public agency, has expressed concern about the behavior

or performance of the student to the director of special education of the public agency or to other administrative personnel in accordance with the agency's established child find or special education referral system.

(c) A public agency shall not be deemed to have knowledge if, as a result of receiving the information described in subsection (b), the public agency has done either of the following:

(1) Conducted an evaluation and determined that the student was not a student with a disability under this article, **and provided notice to the student's parents of this determination consistent with 511 IAC 7-22-2.**

(2) Determined that an evaluation was not necessary, and provided notice to the student's parents of its determination consistent with 511 IAC 7-22-2.

(d) If a public agency does not have knowledge, in accordance with subsections (b) and (c), that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who have engaged in comparable behaviors, subject to subsections (e) and (f).

(e) If a referral is made for an initial evaluation of a student during the time period in which the student is subjected to **suspension,** expulsion, **or placement in an interim alternative educational setting,** the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

(f) As used in this rule, "expedited evaluation" means that the public agency conducts the evaluation and convenes the case conference committee within twenty (20) instructional days from the date of the parent's written consent for the evaluation. A copy of the evaluation report shall be provided to the parent at the case conference committee convened to consider the student's identification and eligibility for special education services.

(g) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the public agency and information provided by the parents, the public agency shall provide special education and related services in accordance with this article, including the requirements of this rule. *(Indiana State Board of Education; 511 IAC 7-29-8; filed May 22, 2000, 8:52 a.m.: 23 IR 2487; filed May 13, 2002, 2:00 p.m.: 25 IR 3167)*

SECTION 21. 511 IAC 7-30-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-30-1 Mediation

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 4-21.5-3.5; IC 20-1-6

Sec. 1. (a) A request for mediation may be initiated by either the parent or the public agency, but the mediation process cannot begin unless both parties agree to participate. Mediation may be requested to resolve disputes regarding any of the following:

(1) A student's identification and eligibility for services under this article.

(2) The appropriateness of the educational evaluation.

(3) The appropriateness of the student's proposed or current special education services or placement.

(4) Any other dispute involving the provision of a free appropriate public education to the student.

(5) Reimbursement for services obtained by the parent.

(b) Mediation may occur prior to or concurrent with a request for a due process hearing. A request for mediation shall not preclude or delay a due process hearing or deny any other rights afforded in this article. Mediation is not an alternative to the complaint process under section 2 of this rule for alleged violations of state or federal laws in special education programs, nor is mediation under this section to address issues unrelated to the identification, evaluation, placement, or provision of a free appropriate public education to a student.

(c) The division of special education shall bear the cost of the mediation process.

(d) Persons who serve as mediators shall:

(1) be trained in effective mediation techniques;

(2) have no personal or professional conflict of interest regarding the parties involved in the process;

(3) be impartial;

(4) have knowledge of laws and regulations relating to the provision of special education and related services;

(5) be qualified as determined by the division of special education; and

(6) not be an employee of the department of education if the department of education is providing direct services to a student who is the subject of the mediation process or any public agency receiving funding under Part B of the Individuals with Disabilities Education Act.

(e) The division of special education shall maintain a current list of the persons who serve as mediators, including information on the qualifications of those persons. The division of special education shall, on a general rotation basis within the geographic region, select a mediator from the list for each mediation requested. A person who otherwise qualifies as a mediator is not considered an employee of the department of education solely because he or she is paid by the department of education to serve as a mediator.

(f) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute as determined by the mediator.

(g) ~~A nonbinding~~ **Any** agreement reached by the parties in the mediation process must be set forth in a written mediation agreement. ~~The mediation agreement shall be submitted to the student's case conference committee for approval or, where a due process hearing has been requested and an independent hearing officer appointed, the mediation agreement shall be submitted, upon request of the independent hearing officer, to the independent hearing officer for approval.~~

(h) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be asked to sign a confidentiality pledge prior to the beginning of the mediation session.

(i) The public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who:

(1) is under contract with a parent training and information center or an appropriate alternative dispute resolution entity; and

(2) would explain the benefits of the mediation process and encourage the parents to use the process.

Such procedures must be approved by the division of special education prior to implementation by the public agency, and the public agency may not use these procedures to deny or delay a parent's right to a due process hearing if the parent fails to participate in the meeting. The division of special education shall bear the cost of the meetings in accordance with the written procedures. *(Indiana State Board of Education; 511 IAC 7-30-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2488; filed May 13, 2002, 2:00 p.m.: 25 IR 3168)*

SECTION 22. 511 IAC 7-30-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-30-3 Due process hearings

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 4-21.5-3; IC 20-1-6

Sec. 3. (a) A parent, a public agency, or the state educational agency may initiate a due process hearing that is conducted by an independent hearing officer when there is any dispute regarding any of the following:

(1) A student's identification and eligibility for services under this article.

(2) The appropriateness of the educational evaluation.

(3) The appropriateness of the student's proposed or current level of special education services or placement.

(4) Any other dispute involving the provision of a free appropriate public education for the student.

(5) Reimbursement for services obtained by the parent.

(b) This section does not apply to allegations of violations of this article or the Individuals with Disabilities Education Act unless the allegations are directly related to a due process hearing issue with respect to the student. Due process hearing issues must present a dispute regarding ~~a current case or controversy involving~~ a student.

(c) A request for a due process hearing and for the appointment of an independent hearing officer shall:

(1) be in writing and signed;

(2) include the student's name and address and the name of the school the student attends;

(3) specify the reasons for the hearing request, including a description of the nature of the problem and any facts related to the problem;

(4) include a proposed resolution of the problem to the extent known and available to the parents at the time; and

(5) be sent simultaneously to the superintendent of public instruction, the division of special education, and the public agency, if the request is made by the parent. If the request is made by the public agency, the request shall be sent simultaneously to the superintendent of public instruction, the division of special education, and the parent.

(d) The right to a due process hearing shall not be denied or delayed for failure to provide the notice required in subsection (c).

(e) The state superintendent of public instruction shall appoint the independent hearing officer. When a due process hearing request is received, the department of education shall send the public agency and the parent a written notice of the name of the independent hearing officer who has been appointed and a copy of the letter requesting a due process hearing.

(f) The public agency shall inform the parent of the availability of mediation as a means of dispute resolution. ~~and~~ **The public agency shall inform the parent** of the availability of free or low-cost legal and other relevant services available in the area **if:**

(1) the parent requests the information; or

(2) the parent or the public agency initiates a hearing under this section.

(g) A person who may be appointed as an independent hearing officer shall:

(1) be trained in the due process hearing procedures;

(2) have no personal or professional interest that would conflict with the person's objectivity in the hearing;

(3) not be an officer, employee, or agent of the public agency, the department of education, or any other agency that may be involved in the education or care of the student;

(4) have knowledge of laws and regulations relating to the provision of special education and related services; and

(5) be subject to any other qualifications established by the superintendent of public instruction.

(h) A person who otherwise qualifies as an independent hearing officer is not considered an employee of the public agency solely because the person is paid by the public agency to serve as an independent hearing officer. The division of special education shall maintain a current list of the persons who serve as independent hearing officers, including information on the qualifications of those persons.

(i) The due process hearing timeline begins on the date a request for a due process hearing is received by the department of education. Due process hearings shall be conducted, a final written decision reached, and a copy of the written decision mailed to each of the parties not later than forty-five (45) calendar days after the request for a hearing is received. An independent hearing officer may grant specific extensions of time beyond the forty-five (45) day timeline at the request of a party. Any extension of time granted by the independent hearing officer shall be in writing to all parties and included in the record of the proceedings.

(j) Except as provided in 511 IAC 7-29-3 and 511 IAC 7-29-7, the student shall remain in the student's current educational placement during a due process hearing, administrative appeal, or judicial proceeding, unless the parties agree otherwise. If the proceedings extend beyond the end of the school year and the placement includes normal grade advancement, that advancement shall proceed unless normal grade advancement is at issue. If the last agreed-upon placement cannot be determined, the independent hearing officer shall determine the student's educational placement.

(k) If the issue of the proceedings involves initial enrollment in a public school, the student, with the consent of the parent, shall be placed in the public school program until the completion of the proceedings. If the parties cannot agree to the student's placement during the proceedings, the independent hearing officer shall determine the student's placement as a preliminary matter to the conduct of the due process hearing.

(l) Any party to a due process hearing has the right to:
(1) be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of children with disabilities;
(2) present evidence, confront, cross-examine, and compel the attendance of any witnesses;
(3) prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days prior to the hearing;
(4) a separation of witnesses who are not parties to the dispute;
(5) obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing;
(6) obtain written or, at the option of the parents, electronic findings of facts and decision;
(7) be provided with an interpreter, if any party to the hearing has a hearing or speaking impairment or other difficulty in communicating, or whose native language is not English; and
(8) obtain from the other party all evaluations completed and recommendations based on the offering party's evaluations that the party intends to use at least five (5) business days prior to a hearing.

(m) The independent hearing officer has the discretion and authority to:
(1) issue subpoenas;
(2) determine whether individuals are knowledgeable with respect to special education in order to assist in the proceedings;
(3) frame and consolidate issues in the hearing to provide clarity;
(4) rule on any other matters with respect to the conduct of a due process hearing, subject to administrative or judicial review of abuse of such discretion or authority, mistake in law as to exercise of such discretion or authority, or that such authority was exercised in an arbitrary or capricious manner;
(5) bar any party that fails to comply with subsection (l)(8) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party; and
(6) order a student with a disability to be placed in an interim alternative educational setting for not more than forty-five (45) calendar days if the requirements of 511 IAC 7-29-4(b) have been met.

(n) A parent, or the parent's representative, involved in a due process hearing has the right to:
(1) have the student who is the subject of the hearing attend;
(2) have the hearing opened or closed to the public;
(3) inspect and review, prior to the hearing, any records pertaining to the student maintained by the public agency, its agents, or employees, including all tests and reports upon which the proposed action may be based;
(4) recover reasonable attorney fees if a court determines the parent ultimately prevailed at the due process hearing, administrative appeal, or judicial review;
(5) obtain a written or electronic verbatim transcript of the proceedings at no cost; and
(6) obtain written or electronic findings of fact and decisions at no cost.

(o) At least five (5) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(p) Due process hearings under this section shall be conducted pursuant to IC 4-21.5-3 and this section. The hearing shall be held at a time and place reasonably convenient to all parties to the hearing. The notice of time and place shall be in writing to all parties.

(q) The public agency shall bear all costs pertaining to the conduct of a hearing whether or not a hearing is ultimately held, including transcription and hearing officer fees and expenses. Funds under Part B of the Individuals with Disabilities Education Act may be used to pay the costs of conducting the hearing, but such funds shall not be used to pay attorney's fees or costs of a party. When the hearing is initiated by or against the department of education regarding the proposal or denial of funding for community-supported intensive services or residential services under 511 IAC 7-27-12, the department of education shall be responsible for the aforementioned costs.

(r) The decision of the independent hearing officer shall be based solely upon the oral and written evidence presented at the hearing. The party requesting the due process hearing shall present evidence and testimony first regarding the appropriateness of the proposed or refused action.

(s) A verbatim transcript of the hearing shall be made. The independent hearing officer is responsible for ensuring the hearing is transcribed and for determining from the parents at the outset of the hearing whether the transcription will be written or electronic. The transcript shall be made available by the division of special education at no cost and upon the request of any party to the hearing at the conclusion of the hearing.

(t) The independent hearing officer shall render a written or, at the option of the parents, an electronic decision. The decision shall be dated and must include the following:

(1) Findings of fact and conclusions of law.

(2) A decision and orders, if necessary.

(3) A notice of the right and the process to appeal the decision and orders.

(4) A notice that an action for attorney's fees must be filed in a civil court within thirty (30) calendar days after receipt of the independent hearing officer's final decision if no request for review is filed with the board of special education appeals.

(u) Class action due process hearings are not permitted. If the parties and the independent hearing officer agree to a hearing involving two (2) or more students, a separate decision with specific findings of fact, conclusions of law, and orders, if necessary, shall be written for each student.

(v) If, as a result of the due process hearing, the independent hearing officer's decision concurs with the parents' contention that a change of placement is appropriate, the placement ordered by the independent hearing officer shall be treated as a placement agreed upon by the parent and the public agency.

(w) The independent hearing officer shall mail a copy of the hearing decision via certified mail, return receipt requested, to each party involved in the hearing. The independent hearing officer's decision is a final order unless appealed pursuant to section 4 of this rule.

(x) Any party involved shall have thirty (30) calendar days from the date the independent hearing officer's written decision is received to:

(1) implement the order or orders in the hearing decision; or

(2) initiate an appeal as described in section 4 of this rule.

(y) The division of special education shall maintain the following for the duration of the hearing, any appeal and any subsequent civil action:

(1) The original hearing decision.

(2) The transcript of the hearing.

(3) The exhibits admitted by the independent hearing officer.

(4) All notices, pleadings, exceptions, motions, requests, and other papers filed in the hearing.

(z) The division of special education shall, after deleting personally identifiable information from copies of the due process hearing findings, conclusions, and orders, do the following:

(1) Transmit a copy of the document to the state advisory council on the education of children with disabilities.

(2) Maintain a copy of the document for public review in its offices for at least five (5) years after administrative remedies have been exhausted and any litigation completed.

(Indiana State Board of Education; 511 IAC 7-30-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2490; filed May 13, 2002, 2:00 p.m.: 25 IR 3169)

SECTION 23. 511 IAC 7-30-4 IS AMENDED TO READ AS FOLLOWS

511 IAC 7-30-4 Due process hearing appeals

Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 4-21.5-3; IC 4-21.5-5-5; IC 20-1-6

Sec. 4. (a) The state board of special education appeals (board) is established. The board shall have three (3) members appointed by the state superintendent of public instruction. Each member shall be appointed for a three (3) year term, with the year of appointment alternating to preclude all three (3) members being appointed at once. The members of the board shall alternate as chair when conducting impartial reviews. A member of the board:

(1) may not be an officer, employee, or agent of a public agency involved in the education or care of a student;

(2) may not have any personal or professional interest that conflicts with the member's objectivity in the appeal process; and

(3) must be a resident of Indiana.

(b) The general counsel for the department of education shall serve as the agent for the board for receipt of all correspondence and the filing of documents.

(c) Due process hearing appeals under this section shall be conducted pursuant to IC 4-21.5-3 and this section.

(d) A petition for an impartial review of the independent hearing officer's decision by the board may be initiated by any party to the hearing. The petition shall be:

(1) in writing;

(2) filed simultaneously with the department of education and the opposing party;

(3) specific as to the reasons for the exceptions to the independent hearing officer's decision, identifying those portions of the findings, conclusions, and orders to which exceptions are taken; and

(4) filed within thirty (30) calendar days of the date the independent hearing officer's decision is received by the party.

(e) When a petition for review of an independent hearing officer's decision is received by the department of education, the department of education shall do the following:

(1) Notify each member of the board that a petition for review has been filed.

(2) Provide each member with a copy of:

(A) the petition for review;

(B) the independent hearing officer's findings, conclusions, and orders;

(C) a transcript of the hearing;

(D) exhibits, pleading, exceptions, motions, and requests; and

(E) any other papers filed with the independent hearing officer or the department of education regarding the hearing.

(f) Any party to a due process hearing for which a petition for review has been filed may, within ten (10) calendar days from the date on which the petition for review is filed with the department of education, file a reply to the petition for review.

(g) Any petition for review that does not comply with the requirements of subsection (d) may be dismissed, in whole or in part, at the discretion of the board. Only matters raised in the initial due process hearing may be raised in a petition for review.

(h) If no petition for review is filed, or is not filed in a timely manner, the decision of the independent hearing officer shall become the decision of the board.

(i) Within thirty (30) calendar days of the receipt of a petition for review by the department of education, the board shall conduct an impartial review, prepare a written decision, and mail the written decision via certified mail, return receipt requested, to all parties. At the option of the parents, the parent's copy of the decision may be in written or electronic format. Specific extensions of time may be requested by any party to the appeal and granted by the chair of the board. The chair shall respond, in writing, to all parties when a request for extension is made.

(j) The board, in conducting an impartial review, shall review the entire record of the due process hearing to ensure the procedures of the hearing were consistent with the requirements of section 3 of this rule. The board may decide the matter with or without oral argument. The board shall not disturb the findings of fact, conclusions of law, or orders of the independent hearing officer unless the board finds the independent hearing officer's decision to be one (1) or more of the following:

(1) Arbitrary or capricious.

(2) An abuse of discretion.

(3) Contrary to law, contrary to a constitutional right, power, privilege, or immunity.

(4) In excess the jurisdiction of the independent hearing officer.

(5) Reached in violation of an established procedure.

(6) Unsupported by substantial evidence.

(k) If the board decides to hear oral argument, the parties shall be notified of the decision in advance of the scheduled proceeding. The oral argument shall be held at a time and place reasonably convenient to all parties in the proceeding.

(l) When the board permits oral argument, each party has the right to be represented by counsel or other individuals with knowledge and training with respect to special education or the problems of children with disabilities. Each party has the opportunity for argument and rebuttal. The board may ask questions of any person present to clarify the record. The board may, at its discretion, exercise the same powers as an independent hearing officer under section 3 of this rule. When the board receives evidence or testimony, the parties shall have the same rights as under section 3(l) of this rule.

(m) The board, upon completion of its impartial review, shall prepare ~~a~~ **an independent** written decision that:

(1) contains findings of fact, conclusions of law, and, if necessary, orders; and

(2) includes a notice of ~~the right to seek judicial review of the board's decision.~~ **the following:**

(A) The right to seek judicial review of the board's decision.

(B) A party has thirty (30) calendar days from the date the party receives the board's written decision in which to seek judicial review.

(C) An action for attorney's fees must be filed in a civil court with jurisdiction within thirty (30) calendar days after receipt of the board's final decision if no request for judicial review is filed in federal or state civil court.

(D) The decision of the board is a final order unless judicial review in federal or state civil court is sought.

(n) Any party disagreeing with the decision of the board may appeal to a civil court with jurisdiction. Pursuant to IC 4-21.5-5-5, an appeal to a state or federal civil court must be filed within thirty (30) calendar days after the date the board's written decision is received by the party. **The court shall:**

(1) receive the record of administrative proceedings;
(2) hear additional evidence at the request of a party; and
(3) grant the relief it determines to be appropriate, basing its decision on a preponderance of the evidence.

(o) Nothing in this article shall be construed to restrict or limit the rights, procedures, and remedies available under the federal or state Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this article, the procedures under sections 3 and 4 of this rule shall be exhausted to the same extent as would be required had the action been brought under this article.

(p) A parent represented by legal counsel during the proceedings of a due process hearing, appeal, or civil court action is entitled to reimbursement for legal fees if the parent ultimately prevails. Determination of which party prevails and the amount of reimbursement shall be determined by negotiation between the parent and the public agency. If agreement cannot be reached, either party may proceed to civil court for resolution under section 6 of this rule. Mediation, as described in section 1 of this rule, is not available for resolution of legal fees.

(q) The costs of the board, including travel, associated expenses, and reporting services, shall be borne by the department of education.

(r) The division of special education, after deleting personally identifiable information from the findings, conclusions, and orders of the board, shall do the following:
(1) Transmit a copy of the document to the state advisory council on the education of children with disabilities.
(2) Maintain a copy of the document for public review in its offices for at least five (5) years after administrative remedies have been exhausted and any litigation completed.

(s) If, as a result of the board's review, the board's decision concurs with the parent's contention that a change of placement is appropriate, the placement ordered by the board shall be treated as a placement agreed upon by the parent and the state or local public agency. *(Indiana State Board of Education; 511 IAC 7-30-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2493; filed May 13, 2002, 2:00 p.m.: 25 IR 3171)*

SECTION 24. 511 IAC 7-30-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-30-6 Attorneys' fees
Authority: IC 20-1-1-6; IC 20-1-6-4
Affected: IC 20-1-6

Sec. 6. (a) **Independent hearing officers and the board of special education appeals shall include a notice in their written decisions stating that** an action for attorneys' fees must be filed in a civil court with jurisdiction within thirty (30) calendar days after:
(1) receipt of the independent hearing officer's final decision if no request for review is filed with the board of special education appeals; **or**
(2) receipt of the board of special education appeals' final decision if no request for judicial review is filed in federal or state civil court. ~~or~~
~~(3) the final decision of the civil court if no appeal is sought.~~

(b) Attorneys' fees awarded shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(c) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:
(1) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten (10) calendar days before the proceeding begins;
(2) the offer is not accepted within ten (10) calendar days; and
(3) the court finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(d) Notwithstanding subsection (c), a court may award attorneys' fees and related costs to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(e) Attorneys' fees may not be awarded relating to any meeting of the case conference committee unless such meeting is convened as a result of an administrative proceeding or judicial action. Attorneys' fees may not be awarded for a mediation described in section 1 of this rule that is conducted prior to the filing of the due process hearing.

(f) Unless a court finds that the public agency unreasonably protracted the final resolution of the action or proceeding or any other violation of this rule, a court may reduce the amount of attorneys' fees awarded if the court finds any of the following:
(1) During the course of the action or proceeding, the parent unreasonably protracted the final resolution of the controversy.
(2) The amount of attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience.
(3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding.
(4) The attorney representing the parent did not provide to the

public agency appropriate information in the due process hearing request pursuant to section 3(c) of this rule.

(g) A public agency may not use funds under Part B of the Individuals with Disabilities Education Act to pay attorneys' fees or costs of a party related to an action or procedure under the Individuals with Disabilities Education Act and this article. *(Indiana State Board of Education; 511 IAC 7-30-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2495; filed May 13, 2002, 2:00 p.m.: 25 IR 3173)*

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TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #01-171(F)

DIGEST

Adds 515 IAC 1-6 to establish a transition to teaching program, which is an alternate route to teacher licensure mandated by IC 20-6.1-3-11. Effective 30 days after filing with the secretary of state.

515 IAC 1-6

SECTION 1. 515 IAC 1-6 IS ADDED TO READ AS FOLLOWS:

Rule 6. Transition to Teaching Program

515 IAC 1-6-1 Applicability
Authority: IC 20-1-1.4-7; IC 20-6.1-3-11
Affected: IC 20-6.1-3-11

Sec. 1. (a) This rule implements and supplements IC 20-6.1-3-11.

(b) Beginning July 1, 2002, each institution accredited under 515 IAC 1-2-21 and 515 IAC 3-1-1 must offer a transition to teaching program to prepare a qualified person who holds at least a baccalaureate degree to enter the teaching profession through a transition to teaching program.

(c) The transition to teaching program shall include a preparation component to meet Indiana standards for teaching.

(d) Completion of the program and testing requirements as stated under 515 IAC 1-4 results in eligibility for an initial practitioner license. *(Professional Standards Board; 515 IAC 1-6-1; filed May 29, 2002, 4:05 p.m.: 25 IR 3174)*

515 IAC 1-6-2 Definitions
Authority: IC 20-1-1.4-7; IC 20-6.1-3-11
Affected: IC 20-6.1-3-11

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Approved program" means a general elementary or secondary content area preparation program under 515 IAC 1-1-1 through 515 IAC 1-1-69 or approved by the professional standards board under 515 IAC 3.

(c) "Board" means the professional standards board.

(d) "Complete the program" means to be verified by an institution as having successfully completed the preparation program.

(e) "Consortium" means a relationship between at least two (2) institutions to provide a transition to teaching program.

(f) "Degree" means a degree from a four (4) year college or university that is accredited by its state or equivalent jurisdiction to offer the participant's degree.

(g) "Elementary" means a school setting of elementary-primary or elementary-intermediate, or both, for purposes of determining the license sought by the participant. By statute, this is labeled as kindergarten through grade 5.

(h) "Eligible person" means a qualified person who meets the admission requirements of the institution.

(i) "Enroll" means to do the following:
(1) Be admitted by an institution to the preparation program; and
(2) Register for at least one (1) course in the program.

(j) "Participant" means a person who is enrolled in the preparation program.

(k) "Professional experience" means the experience that occurred through full-time employment in an educational related field or in a field in which the person intends to be licensed.

(l) "Program" means the transition to teaching program under this rule.

(m) "Qualified person" means a person who holds the

degree and any professional experience required for the intended license.

(n) "Unit" in this rule means the teacher preparation program at a college or university.

(o) "Secondary" means a school setting of middle/junior high school or senior high school, or both, for purposes of determining the license sought by the participant. By statute, this is labeled as grades 6 through 12.

(p) "Successfully complete" means to pass each assessment under the preparation program. *(Professional Standards Board; 515 IAC 1-6-2; filed May 29, 2002, 4:05 p.m.: 25 IR 3174)*

515 IAC 1-6-3 General provisions
Authority: IC 20-1-1.4-7; IC 20-6.1-3-11
Affected: IC 20-6.1-3-11

Sec. 3. (a) If an institution offers an approved general elementary program for an initial teaching license or secondary program for an initial teaching license in a content area, the institution must offer a course of study under the program.

(b) A course of study under the program shall be designed to prepare an eligible person to meet teaching standards.

(c) In relation to other approved programs at an institution offering a course of study under the program does not affect an institution's graduate level program to earn an initial teaching license, such as a master of teaching (MAT) program. The program does not replace or require the replacement of an approved program. An institution that offers the program in a content area may:
(1) add a separate approved program in the content area;
(2) discontinue the program in a content area if it discontinues its approved program in the content area; or
(3) agree with another institution to jointly provide, through a consortium, the preparation component for an eligible person.

(d) A participant is eligible to apply for an initial license when the participant successfully completes the program and successfully passes testing requirements.

(e) A license earned through the transition to teaching program and a license earned through a preparation program under 515 IAC 1-1 and 515 IAC 1-2 or under 515 IAC 4 are equivalent for all purposes under this title. *(Professional Standards Board; 515 IAC 1-6-3; filed May 29, 2002, 4:05 p.m.: 25 IR 3175)*

515 IAC 1-6-4 Eligibility for program in elementary teaching
Authority: IC 20-1-1.4-7; IC 20-6.1-3-11
Affected: IC 20-6.1-3-11

Sec. 4. A person who has either of the following qualifications, as set forth in IC 20-6.1-3-11, is eligible to enroll in the preparation program for an elementary license:
(1) a baccalaureate degree with a grade point average of at least 3.000, both in the major and overall; or
(2) both a baccalaureate degree with a grade point average of at least 2.500, both in the major and overall, and five (5) years of professional experience.
(Professional Standards Board; 515 IAC 1-6-4; filed May 29, 2002, 4:05 p.m.: 25 IR 3175)

515 IAC 1-6-5 Eligibility for program in secondary teaching
Authority: IC 20-1-1.4-7; IC 20-6.1-3-11
Affected: IC 20-6.1-3-11

Sec. 5. (a) This section covers preparation under the program for a secondary license that corresponds to the content area of the degree and of any required professional *[515]* **IAC 1-1 experience.**

(b) A person who has any of the following qualifications is eligible to enroll in the preparation program:
(1) a baccalaureate degree with a grade point average of at least 3.000, both in the major content area and overall;
(2) a graduate degree; or
(3) both a baccalaureate degree with a grade point average of at least 2.500, both in the major content area and overall, and five (5) years of professional experience.
(Professional Standards Board; 515 IAC 1-6-5; filed May 29, 2002, 4:05 p.m.: 25 IR 3175)

515 IAC 1-6-6 Preparation
Authority: IC 20-1-1.4-7; IC 20-6.1-3-11
Affected: IC 20-6.1-3-10.1

Sec. 6. (a) The unit may offer the course of study as either undergraduate or graduate credit.

(b) The qualified person must meet the general admission standards of the unit for the credit being awarded.

(c) The unit may require that, prior to enrollment, the qualified person must pass the written examinations under 515 IAC 3-1-6, 515 IAC 3-1-7, and IC 20-6.1-3-10.1 for reading, writing, mathematics, and knowledge in the content area of the intended license.

(d) The course of study may be part of a degree program, but a participant is not required to earn a degree to successfully complete the preparation program.

(e) Based on the teaching standards for the intended license, the preparation shall contain the following:

(1) the course work and field and classroom experiences that prepare the participant; and

(2) the performance assessments defined in the institution's unit assessment system that indicates whether the participant meets Indiana standards.

(f) Pursuant to IC 20-6.1-3-11, preparation shall include no more than the following:

(1) eighteen (18) credit hours for secondary teaching; or

(2) twenty-four (24) credit hours for elementary teaching, including at least six (6) credit hours in the teaching of reading.

(Professional Standards Board; 515 IAC 1-6-6; filed May 29, 2002, 4:05 p.m.: 25 IR 3175)

515 IAC 1-6-7 Scope of initial license; application procedures

Authority: IC 20-1-1.4-7; IC 20-6.1-3-11
Affected: IC 20-6.1-3-11

Sec. 7. (a) A participant who completes the program is eligible for an initial license in a school setting as follows:

(1) in elementary teaching, for elementary-primary or elementary-intermediate, or both; or

(2) in secondary teaching, for junior high/middle school or high school, or both.

(b) The professional standards board shall issue an initial practitioner license that is restricted to only the content area or areas in which the program participant has a degree unless the program participant demonstrates sufficient knowledge in other content areas of the license. *(Professional Standards Board; 515 IAC 1-6-7; filed May 29, 2002, 4:05 p.m.: 25 IR 3176)*

515 IAC 1-6-8 Annual report by institution

Authority: IC 20-1-1.4-7; IC 20-6.1-3-11
Affected: IC 20-6.1-3-11

Sec. 8. (a) No later than June 1 of each year, the professional standards board will provide institutions with the format for the annual program report integrated within the annual accreditation report due no later than October 15 of that year.

(b) An institution shall submit an annual program report to the professional standards board, including number of participants who have:

(1) enrolled and are participating only in the preparation program; and

(2) completed the preparation program.

(c) An institution shall submit any other information as required by federal statute. *(Professional Standards Board; 515 IAC 1-6-8; filed May 29, 2002, 4:05 p.m.: 25 IR 3176)*

LSA Document #01-171(F)
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TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #02-7(F)

DIGEST

Adds 515 IAC 3 to establish a performance-based process for accreditation of teacher preparation programs. Effective 30 days after filing with the secretary of state.

515 IAC 3

SECTION 1. 515 IAC 3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3. PERFORMANCE-BASED PROCESS FOR ACCREDITATION OF TEACHER PREPARATION PROGRAMS

Rule 1. Preparation and Testing of Educators

515 IAC 3-1-1 Accreditation of institutions preparing educators

Authority: IC 20-1-1.4-7
Affected: IC 20-6.1-2-2

Sec. 1. (a) State approval of institutions preparing educators is based on the following:

(1) Professional standards for the accreditation of schools, colleges, and departments of education of the National Council for Accreditation of Teacher Education (NCATE) Chapter 2 of NCATE's Professional Standards for the Accreditation of Schools, Colleges and Departments of Education, January, 2002 edition, is hereby incorporated by reference. Copies of this publication may be obtained by writing to the National Council for Accreditation of Teacher Education, 2010 Massachusetts Avenue, NW, Suite 500, Washington, D.C. 20036-1023. Copies may also be obtained from the Indiana Professional Standards Board, 101 W. Ohio Street, Suite 300, Indianapolis, IN 46204.

(2) Model standards for beginning teacher licensing and of the Interstate New Teacher Assessment and Support Consortium (INTASC). The draft standards section of the Model Standards for Beginning Teaching Licensing

and Developments: A Resource for State Dialogue as developed by the Interstate New Teacher Assessment and Support Consortium, 1992 edition, are hereby incorporated by reference. Copies of this publication may be obtained by writing to Interstate New Teacher Assessment and Support Consortium, Council of Chief State School Officers, One Massachusetts Avenue, NW, Suite 700, Washington, D.C. 20001-1431. Copies may also be obtained from the Indiana Professional Standards Board, 101 W. Ohio Street, Suite 300, Indianapolis, IN 46204.

(b) The standards for educators adopted by the professional standards board.

(c) Actual accreditation by NCATE is strongly encouraged but not mandatory. An institution not accredited by NCATE must be reviewed for approval according to subsection (d).

(d) An institution accredited by NCATE must submit to the professional standards board, prior to the NCATE accreditation visit, a copy of the Institutional Report (IR) that is submitted to NCATE.

(e) An institution not seeking NCATE accreditation must submit to the professional standards board, prior to the accreditation visit, a copy of the Institutional Report (IR) that follows the model established by NCATE as incorporated herein by reference in 515 IAC 3-3-1(a). Based on the model of NCATE accreditation and using the standards listed in this section, the professional standards board will conduct an accreditation visit using the professional standards board of examiners.

(f) The professional standards board will make the final determination of the Indiana accreditation status of all institutions desiring to prepare educators for licensing.

(g) The professional standards board shall assist institutions in developing quality programs for preparing educators. *(Professional Standards Board; 515 IAC 3-1-1; filed May 29, 2002, 4:24 p.m.: 25 IR 3176)*

515 IAC 3-1-2 General requirements
Authority: IC 20-1-1.4-7
Affected: IC 20-6.1-2-2

Sec. 2. (a) In this rule, a "unit" refers to the teacher preparation program at a college or university.

(b) Each unit shall do the following:
(1) Designate a unit head and a licensing advisor.
(2) Provide the name, mailing address, electronic mail address, telephone number, and facsimile number of the unit head and the licensing advisor to the professional standards board.

(c) Written notice from the professional standards board to the unit head, either printed or by electronic means, shall be notice to the institution.

(d) A unit shall maintain a record of its candidates and their progress.

(e) The professional standards board shall keep each unit head and licensing advisor informed of rules and policies adopted by the professional standards board. Each unit head and licensing advisor shall remain informed of rules and policies adopted by the professional standards board, and shall inform unit faculty and candidates of professional standards board rules and policies. *(Professional Standards Board; 515 IAC 3-1-2; filed May 29, 2002, 4:24 p.m.: 25 IR 3177)*

515 IAC 3-1-3 Unit assessment system
Authority: IC 20-1-1.4-7
Affected: IC 20-6.1-2-2

Sec. 3. (a) Each institution must create and implement the following:
(1) A unit assessment system (515 IAC 1-2-21) that assesses the quality of the unit's candidates and program.
(2) A plan for collecting and analyzing data on applicant qualifications, performance of candidates and graduates and unit operations for evaluating and improving the unit and its programs.

(b) No later than June 30, 2002, each institution accredited under this rule shall submit a unit assessment system narrative describing its unit assessment system in a format approved by the professional standards board. The narrative shall indicate the following:
(1) The sequence of performance assessments used by the institution during preparation to determine each candidate's competency and eligibility for a licensing recommendation under this title.
(2) The unit's plan for use of results of its graduates' performance on any beginning educator assessments under title 515 IAC 3-1-3, continuously improve the quality of the institution's preparation of educators, and the expected evidence that will document the institution's progress in improving that preparation.
(3) Other relevant information requested by the professional standards board.

(c) An institution shall submit its narrative to the professional standards board. The procedures for processing the narrative are as follows:
(1) Receipt of the unit assessment system plan shall be acknowledged to institutions and teacher education committee in compliance with professional standards board upon receipt of the plan by the submission deadline of June 30, 2002.

(2) Upon receipt of the completed unit assessment system document, a review of each document shall be completed to determine that each of the seven (7) criteria for the unit assessment system has been adequately addressed and that the plan is aligned with the professional standards board approved content and developmental standards and any other standards adopted by the professional standards board.

(3) All clerical review reports shall be completed and sent to institutions and the professional standards board or its designee within three (3) months. A letter shall be mailed to each institution indicating the results of the first clerical review of the unit assessment system document, noting, where necessary, any areas not addressed.

(4) Institutions shall submit no later than fifteen (15) months in advance of their accreditation visit an Institutional Report (IR) specific to NCATE Standard 2–Assessment System and Unit Evaluation. This report will be organized around the three (3) elements of the standard and the seven (7) professional standards board unit assessment system criteria. This timeline will have to be shortened for those institutions that will have an NCATE review in 2002-2003.

(5) A formative peer review shall be conducted of each plan to provide the professional standards board assurance of unit assessment system implementation and to provide each institution with a constructive peer review prior to each NCATE visit, including the following:

(A) The review panel shall consist of two (2) higher education representatives, one (1) P-12 representative and one (1) professional standards board staff member.

(B) The review process shall consist of the following:

(i) A morning panel paper review of the IR, which may be a maximum of fifty (50) pages, elaborative documents, and a list of unresolved questions a unit may have about the unit assessment system.

(ii) An afternoon interview of the unit head and representatives of the assessment team.

(C) A written report, by standard element and criteria, will be sent to each unit, and a copy of the report will be sent to the professional standards board or its designee.

(d) Acceptance of the unit assessment system shall equate to a determination regarding Standard 2 of the NCATE accreditation as set forth in section 1(a) of this rule. Criteria for an acceptable unit assessment system will be those set by NCATE.

(e) NCATE reports will be submitted to the professional standards board for final determination of state accreditation.

(f) If an institution does not submit a unit assessment system by the deadline in subsection (b), the professional standards board may immediately begin proceedings to revoke its accreditation and shall issue public notice regarding the reason for the revocation proceedings.

(g) An institution not accredited under section 1 of this rule as of July 1, 2002, that applies after that date to become accredited shall submit its unit assessment system as part of the process for accreditation. *(Professional Standards Board; 515 IAC 3-1-3; filed May 29, 2002, 4:24 p.m.: 25 IR 3177)*

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Incorporated Documents Filed with Secretary of State: "Professional Standards for the Accreditation of Schools, Colleges and Departments of Education", 2002 Edition published by National Council for Accreditation of Teacher Education; "Model Standards for Beginning Teacher Licensing and Development: A Resource for State Dialogue", 1992 Edition published by Interstate New Teacher Assessment and Support Consortium.

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

LSA Document #01-345(F)

DIGEST

Amends 820 IAC 4-4-5 to change specific curriculum requirements for manicurists training. Amends 820 IAC 4-4-14 to change the number of performances of actual practice hours required for students in manicurist training. Amends 820 IAC 6-2-1 to remove the prohibition to mention or promote products used during a continuing education course. Effective 30 days after filing with the secretary of state.

820 IAC 4-4-5
820 IAC 4-4-14
820 IAC 6-2-1

SECTION 1. 820 IAC 4-4-5 IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-4-5 Specific curriculum for manicurists

Authority: IC 25-8-3-23; IC 25-8-5-4
Affected: IC 25-8

Sec. 5. (a) The following are the requirements for ~~manicurist~~ **manicurists** *[sic.]* training:

Subject	Theory and Demonstration Practice	Actual Practice	Total Hours
Sanitation	~~20~~ **40**		~~20~~ **40**
Anatomy and disorders	25		25
~~Statute~~ **Statutes** and rules	10		10
Nail techniques	~~20~~ **40**	~~80~~ **160**	~~100~~ **200**
Basic preparation			
Tips			
Sculptures			
Overlays			
Fiberglass			
Gel nails			
Nail wrapping			
Acrylic nails			
Manicuring	10	~~40~~ **50**	~~50~~ **60**
Pedicuring	10	25	35
Chemistry	10		10
Salesmanship	5	10	15
Electric drill/file	**10**	**10**	**20**
Discretionary hours	35		35
Totals	~~145~~ **195**	~~155~~ **255**	~~300~~ **450**

(b) Students shall be required to complete no fewer than the number of actual practice performances provided for in the progress book required by section 14 of this rule.

(c) The nails on two (2) hands or two (2) feet constitutes one (1) performance of a manicure or pedicure. All manicures, pedicures, and nail techniques must be done on live models.

(d) Students shall not work on customers of the cosmetology school until they have completed a total of forty (40) hours. Customers shall be rotated according to students' needs for practice on live models. *(State Board of Cosmetology Examiners; 820 IAC 4-4-5; filed Feb 23, 1990, 5:00 p.m.: 13 IR 1409, eff Apr 1, 1990; filed Dec 3, 1991, 11:00 a.m.: 15 IR 576, eff Jan 1, 1992 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #91-87 was filed Dec 3, 1991.]; filed Oct 27, 1993, 9:00 a.m.: 17 IR 393; filed Dec 29, 1998, 10:54 a.m.: 22 IR 1489; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236; filed May 17, 2002, 1:15 p.m.: 25 IR 3178)*

SECTION 2. 820 IAC 4-4-14 IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-4-14 Student progress book for manicurists

Authority: IC 25-8-3-23
Affected: IC 25-8

Sec. 14. (a) Students in manicurist training shall perform no fewer than the number of performances of actual practice hours required by the student progress book.

(b) It is the purpose of the progress book that the student, cosmetology school, and state board of cosmetology examiners may at all times know the exact progress of the student concerning practical experience and the number of completed performances of required activities.

(c) It is the responsibility of the cosmetology school to keep the progress book up to date.

(d) All performances listed in the progress book are to be completed in accordance with 820 IAC 3.

(e) The progress book reads as follows:

OFFICIAL STUDENT
PROGRESS BOOK
TRAINING IN
MANICURING

STATE OF INDIANA
BOARD OF COSMETOLOGY EXAMINERS

Student's Name _____
Date Issued _____
Date Completed _____

REQUIREMENTS FOR USE ~~IN~~ **OF** PROGRESS BOOK

(1) All students enrolling in manicuring training shall be permitted to review this progress book which is to be completed on or before being admitted to the state board of cosmetology examiners for examination for a manicurist license.
(2) The amount of performances is equal to the hours outlined by the state board of cosmetology examiners. It is to be the minimum requirement only.
(3) Each performance, as it is accomplished, must be dated and initialed by the licensed instructor, or instructor trainee, who oversees the performance. All projects are to be checked for accuracy and credit ~~and~~ given only if done to the school's standards. All projects must be identified whether "S" for student or "P" for patron (or customer). A pencil cap rubber stamp or pen written initials (first and last initials) of the instructor are both acceptable methods of marking.
(4) Number of performances on patron or student may be determined by each school subject to the requirements of section 6 of this rule.
(5) Overages in any area may not be applied to any other area.
(6) In the development of the student's sales ability, all items in the sales category must be completed on patrons.
(7) All projects are to be recorded as one (1) project marked for one (1) project completed.
(8) The progress book must never be taken home by the student and must remain in the school at all times.

(9) The requirements of the progress book are minimum requirements. A school may require more actual performances than those prescribed in this book.

School name _____
Address _____
City _____ State _____ Zip _____
Instructor's signature _____
Instructor's identifying initialing _____
Instructor's signature _____
Instructor's identifying initialing _____
Instructor's signature _____
Instructor's identifying initialing _____
Instructor's signature _____
~~Instructor's identifying initialing~~ _____

Manicures ~~(53 performances)~~ **(40 performance** *[sic.]***)**

1	2	3	4	5	6	7	8	9	10	11	12	13
14	15	16	17	18	19	20	21	22	23	24	25	26
27	28	29	30	31	32	33	34	35	36	37	38	39
40	~~41~~	~~42~~	~~43~~	~~44~~	~~45~~	~~46~~	~~47~~	~~48~~	~~49~~	~~50~~	~~51~~	~~52~~
~~53~~												

Nail Techniques ~~(15~~ **(28** performances)

1	2	3	4	5	6	7	8	9	10	11	12	13
14	15	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**
27	**28**											

Nail Repair ~~(5~~ **(15** performances)
(1 performance per patron)

1	2	3	4	5	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**
14	**15**											

Pedicures ~~(25~~ **(15** performances)

1	2	3	4	5	6	7	8	9	10	11	12	13
14	15	~~16~~	~~17~~	~~18~~	~~19~~	~~20~~	~~21~~	~~22~~	~~23~~	~~24~~	~~25~~	

Salesmanship (20 performances)
Services or Retail

1	2	3	4	5	6	7	8	9	10	11	12	13
14	15	16	17	18	19	20						

Electric File/Drill (20 performances)

1	2	3	4	5	6	7	8	9	10	11	12	13
14	15	16	17	18	19	20						

I, _____, do hereby certify and declare this official progress book required to be kept by the state board of cosmetology examiners is a correct and accurate record of the progress of _____ enrolled at _____ cosmetology school and meeting the requirements of the state board of cosmetology examiners.
Subscribed and sworn to me this day of _____, ~~19~~ **20** _____.
Notary Public _____
My Commission Expires _____
County of Residence _____
(State Board of Cosmetology Examiners; 820 IAC 4-4-14; filed Oct 27, 1993, 9:00 a.m.: 17 IR 398; filed Dec 29, 1998, 10:54 a.m.: 22 IR 1500; filed May 4, 2001, 11:16 a.m.: 24 IR 2693; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236; filed May 17, 2002, 1:15 p.m.: 25 IR 3179)

SECTION 3. 820 IAC 6-2-1 IS AMENDED TO READ AS FOLLOWS:

820 IAC 6-2-1 Continuing education requirements
Authority: IC 25-8-3-23
Affected: IC 25-8-15-9; IC 25-8-16-1

Sec. 1. (a) Every cosmetology professional under IC 25-8:
(1) whose license has not been classified as inactive under IC 25-8-16-1; or
(2) who has not been granted a waiver under IC 25-8-15-9;
must complete, during each four (4) year licensure period, at least sixteen (16) hours of the continuing education required by IC 25-8-15 and this article, which are given by approved cosmetology educators.
(3) A cosmetology professional shall not be required to obtain more than sixteen (16) hours of continuing education under IC 25-8-15 regardless of the number of licenses that individual may hold.

(b) Measurements and reporting shall be in full hours with a fifty (50) minute instruction period equaling one (1) hour.

(c) Credit toward the hour requirement may be granted only where the length of the educational offering is at least two (2) hours.

(d) No more than eight (8) hours of continuing education may be acquired during any one (1) day.

(e) A cosmetology professional shall not be entitled to any continuing education credit for a course unless the cosmetology professional attends the entire course.

(f) There shall be no minimum requirement of numbers of credit hours to be completed in each single year of the four (4) year licensure period.

(g) Any continuing education credit accumulated above the minimum requirement for a four (4) year licensure period may not be carried forward to the next four (4) year licensure period.

(h) A cosmetology professional who attends the same continuing education course more than once in the same four (4) year licensure period is only entitled to continuing education credit for that course one (1) time only.

(i) An instructor shall be entitled to continuing education credit for courses the instructor teaches. However, an instructor may not be credited for more than six (6) hours of credit for instructing in any four (4) year licensure period. Instructors may not receive credit for repeated courses.

(j) Continuing education hours credited toward license renewal must be relevant to at least one (1) of the licenses held by the individual.

(k) ~~Mention, promotion, or~~ Sale of products is prohibited during a continuing education course. *(State Board of Cosmetology Examiners; 820 IAC 6-2-1; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3468; filed May 17, 2002, 1:15 p.m.: 25 IR 3180)*

LSA Document #01-345(F)
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Approved by Governor: May 16, 2002
Filed with Secretary of State: May 17, 2002, 1:15 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #01-403(F)

DIGEST

Amends 876 IAC 3-6-2 to incorporate by reference the 2002 edition of the Uniform Standards of Professional Appraisal Practice. Amends 876 IAC 3-6-3 to update the revisions to the Uniform Standards of Professional Appraisal Practice based upon the changes in the 2002 edition. Effective 30 days after filing with the secretary of state.

876 IAC 3-6-2
876 IAC 3-6-3

SECTION 1. 1. 876 IAC 3-6-2 IS AMENDED TO READ AS FOLLOWS:

876 IAC 3-6-2 Uniform Standards of Professional Appraisal Practice

Authority: IC 25-34.1-3-8
Affected: IC 4-22-2; IC 25-34.1

Sec. 2. (a) That certain document being titled Uniform Standards of Professional Appraisal Practice, ~~2001~~ **2002** edition, as published by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005, copyright ~~2001,~~ **2002,** is hereby incorporated by reference as if fully set out in this rule except for the revisions stated in section 3 of this rule. The Statements on Appraisal Standards are adopted as part of this rule. The Advisory Opinions are not adopted as part of this rule. The Comments are adopted as part of this rule.

(b) No subsequent editions, amendments, supplements, or releases of the Uniform Standards of Professional Appraisal Practice will be in effect in Indiana or adopted by the commission except by following the rulemaking provisions of IC 4-22-2.

(c) As used in this article, "appraiser" refers to the following:
(1) Indiana licensed trainee appraiser.
(2) Indiana licensed residential appraiser.
(3) Indiana certified residential appraiser.
(4) Indiana certified general appraiser.

(Indiana Real Estate Commission; 876 IAC 3-6-2; filed Sep 24, 1992, 9:00 a.m.: 16 IR 748; filed Dec 8, 1993, 4:00 p.m.: 17 IR 781; filed Apr 10, 1995, 10:00 a.m.: 18 IR 2124; filed Dec 24, 1997, 11:00 a.m.: 21 IR 1766; filed May 10, 1999, 12:42 p.m.: 22 IR 2879; filed Apr 24, 2000, 12:48 p.m.: 23 IR 2243; filed May 25, 2001, 2:42 p.m.: 24 IR 3068; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238; filed May 13, 2002, 2:05 p.m.: 25 IR 3181)

SECTION 2. 876 IAC 3-6-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 3-6-3 Deletions from the Uniform Standards of Professional Appraisal Practice

Authority: IC 25-34.1-3-8
Affected: IC 25-1-11-5; IC 25-34.1

Sec. 3. (a) Standards 6 through 10 are deleted.

(b) The references to Standards 6 through 10 of the Uniform Standards of Professional Appraisal Practice are deleted or revised as follows:

(1) In the Comment under the definition of "REPORT", delete the following:
(A) "personal property".
(B) "Appraisal Report: a written report prepared under Standards Rule 10-2(a)".
(C) "or 8-2(a)".
(D) "or 8-2(b)".
(E) The comma after 2-2(c) and "8-2(c) or 10-2(b)".

(2) Delete the last three (3) sentences of the fifth paragraph of the Preamble.

(3) In the second Comment under the Ethics Rule in the Preamble, delete "6-8, 8-3, and 10-3".

(4) In the second Comment under the Management category of the Ethics Rule in the Preamble, delete "6-8, 8-3 or 10-3" and before "5-3", insert "or".

(5) In the last paragraph of the Comment under the Record Keeping category under the Ethics Rule in the Preamble, delete "8-2(c)(ix), and 10-2(b)(ix)".

~~(5)~~ **(6)** In the third to last paragraph of the Comment following the Departure Rule in the Preamble, delete "8-2(a)(xi), 8-2(b)(xi), 8-2(c)(xi), 10-2(a)(x), and 10-2(b)(x)" and before "2-2(c)(xi)", insert "and".

~~(6)~~ **(7)** In the next to last paragraph of the Comment following the Departure Rule in the Preamble, delete "6-1, 6-3, 6-6, 6-7, 6-8, 7-1, 7-2, 7-5, 8-1, 8-2, 8-3, 9-1, 9-2, 9-3, 9-5, 10-1,

10-2, and 10-3"" and before "5-3", insert "and".

~~(7)~~ **(8)** In the Comment under Standards Rule 1-4(g), delete "(See Standard 7)" and "(See Standard 9)".

~~(8)~~ **(9)** In Standard 3, delete "or personal property".

~~(9)~~ **(10)** In the Comment under Standard 3, delete "or personal property" and delete "and 8-3".

~~(10)~~ **(11)** In the Comment under Standard 3-1(c), delete "(STANDARD 1 or 7)" and insert "(STANDARD 1)".

~~(11)~~ **(12)** In the Comment under Standard 3-2(d), delete "or 8-1" and "or 8-2(a), (b), or (c)(viii)".

~~(12)~~ **(13)** Any references to Standards 6 through 10 in the Statements on Appraisal Standards are deleted and shall not apply.

(c) Delete the second paragraph of the Preamble.

(d) In the Preamble, add the following sentences to the end of the text of Supplemental Standards, "Any such supplemental standard shall not be considered part of this title. However, this does not preclude the possibility of disciplinary sanctions under IC 25-1-11-5(a)(3) where appropriate.".

(e) In the Definitions in the Preamble, delete the title and text of the Comment under Real Property. *(Indiana Real Estate Commission; 876 IAC 3-6-3; filed Sep 24, 1992, 9:00 a.m.: 16 IR 748; filed Dec 8, 1993, 4:00 p.m.: 17 IR 781; filed Apr 10, 1995, 10:00 a.m.: 18 IR 2124; errata filed May 8, 1995, 4:30 p.m.: 18 IR 2262; filed Dec 24, 1997, 11:00 a.m.: 21 IR 1767; filed May 10, 1999, 12:42 p.m.: 22 IR 2880; errata, 22 IR 3420; filed Apr 24, 2000, 12:48 p.m.: 23 IR 2244; filed May 25, 2001, 2:42 p.m.: 24 IR 3068; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238; filed May 13, 2002, 2:05 p.m.: 25 IR 3181)*

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