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IN THIS ISSUE

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RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

The Indiana Register is an official monthly publication of the state of Indiana. The Indiana Legislative Council publishes the full text of proposed rules, final rules, and other documents, such as executive orders and attorney general's opinions, in the Indiana Register in the order in which the Indiana Legislative Council receives the documents.

The Indiana Administrative Code is an official annual publication of the state of Indiana. It codifies the current general and permanent rules of state agencies in subject matter order.

The Indiana Register acts as a source of information about the rules being proposed by state agencies and acts as an "advance sheet" to the Indiana Administrative Code. With few exceptions, an agency may not adopt a rule, i.e., a policy statement having the force of law, without publishing a substantially similar proposed version in the Indiana Register. Although a rule becomes effective without publication in the Indiana Register, an agency must file an adopted and approved rule with the Indiana Legislative Council. The Council publishes these final rules in the Indiana Register.

RETENTION SCHEDULE

A person must consult the following publications to find the current rules of state agencies:

(1) 2003 Indiana Administrative Code (CD-ROM version).

(2) Volume 26 of the Indiana Register (CD-ROM version).

The Indiana Administrative Code and Indiana Register are distributed in CD-ROM format only. Both are also accessible at www.in.gov/legislative/ic_iac/.

The 2001 Edition of the Indiana Administrative Code, the 2002 Supplement, and other volumes of the Indiana Register may be discarded. (Please consider recycling.)

Introduction

JUDICIAL NOTICE AND CITATION FORM

IC 4-22-9 provides for the judicial notice of rules published in the Indiana Register or the Indiana Administrative Code. Subject to any errata notice that may affect a rule, the latest published version of a final rule is prima facie evidence of that rule's validity and content.

Cite to a current general and permanent rule by Indiana Administrative Code citation, regardless of whether it has been published in a supplement to the Indiana Administrative Code. For example, cite the entire current contents of title 312 as "Title 312 of the Indiana Administrative Code," cite the entire current contents of the third article in title 312 as "312 IAC 3," cite the entire current contents of the fourth rule in article three as "312 IAC 3-4," and cite part or all of the current contents of the second section in rule four as "312 IAC 3-4-2." IC 4-22-9-6 provides that a citation in this form contains later adopted amendments. Cite a noncodified rule provision by LSA document number, SECTION number, and Indiana Register citation to the page at which the cited text begins. If a reference to a particular version of a rule or a page in the Indiana Register is appropriate, cite the volume, page, and year of publication as "25 Ind. Reg. 120 (2002)." A shorter Indiana Register citation form is "25 IR 120."

PRINTING CODE

This style type is used to indicate that substantive text is being inserted by amendment into a rule, and ~~this style type~~ is used to indicate that substantive text is being eliminated by amendment from a rule. ~~This style type~~ is replaced by a single large "X" to show the elimination of a form or other piece of artwork. **This style type** is used to indicate a rule is being added. *This style type* and **this style type** also are used to highlight nonsubstantive annotations to a rule and to indicate that an entry in a reference table or the index concerns a final rule.

REFERENCE TABLES AND INDEX

The page location of rules and other documents printed in the Indiana Register may be found by using the tables and index published in the Indiana Register. A citation listing of the general and permanent rules affected in a volume and a cumulative index are published in each issue. Cumulative tables that cite executive orders, attorney general's opinions, and other nonrule policy documents printed in a calendar year are published quarterly.

FILING AND PUBLISHING SCHEDULE

NOTICE AND PUBLICATION SCHEDULE. The Legislative Services Agency publishes documents filed by 4:45 p.m. on the tenth day of a month (no later than the twelfth day of a month, excluding holidays or weekends) in the following month's Indiana Register according to the schedule below:

PUBLICATION SCHEDULE

Closing Dates:	Publication Dates:	Closing Dates:	Publication Dates:
August 11, 2003	September 1, 2003	March 10, 2004	April 1, 2004
September 10, 2003	October 1, 2003	April 8, 2004	May 1, 2004
October 10, 2003	November 1, 2003	May 10, 2004	June 1, 2004
November 10, 2003	December 1, 2003	June 10, 2004	July 1, 2004
December 10, 2003	January 1, 2004	July 9, 2004	August 1, 2004
January 9, 2004	February 1, 2004	August 10, 2004	September 1, 2004
February 10, 2004	March 1, 2004	September 10, 2004	October 1, 2004

Documents will be accepted for filing on any business day from 8:00 a.m. to 4:45 p.m.

AROC NOTICES: Under IC 2-5-18-4, the Administrative Rules Oversight Committee is established to oversee the rules of any agency not listed in IC 4-21.5-2-4. As a result, certain notices to the AROC are required and are printed in the Indiana Register.

CORRECTIONS: IC 4-22-2-38 authorizes an agency to correct typographical, clerical, or spelling errors in a final rule without initiating a new rulemaking procedure. Correction notices are printed on errata pages in the Indiana Register.

EFFECTIVE DATE: IC 4-22-2-36 provides that, unless a later date is specified in the rule, a rule becomes effective thirty (30) days after filing with the Secretary of State.

EMERGENCY RULES: IC 4-22-2-37.1 provides summary rulemaking procedures for certain specified categories of rules.

INCORPORATION BY REFERENCE: IC 4-22-2-21 requires that a copy of matters that are incorporated by reference into a rule must be filed with the Attorney General, the Governor, and the Secretary of State along with the text of the incorporating final rule.

NONRULE POLICY DOCUMENTS: IC 4-22-7-7 requires that any nonrule document that interprets, supplements, or implements a statute and that the issuing agency may use in conducting its external affairs must be filed with the Legislative Services Agency and published in the Indiana Register.

NOTICE OF INTENT TO ADOPT A RULE: IC 4-22-2-23 requires an agency to publish a Notice of Intent to Adopt a Rule at least thirty (30) days before publication of the proposed rule.

PROMULGATION PERIOD: In order to be effective, the final version of an adopted rule must be approved by the Attorney General and the Governor within one (1) year after the date that the notice of intent is published. The final rule must then be filed with the Secretary of State.

PUBLIC HEARINGS: IC 4-22-2-24 requires that the public hearing on a proposed rule be scheduled at least twenty-one (21) days after a notice of the hearing is published in the Indiana Register and in a newspaper of general circulation in Marion County.

RULES READOPTION: IC 4-22-2.5 provides that a rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date.

State Agencies

ALPHABETICAL LIST

†Agency's rules are entirely repealed, transferred, or otherwise voided.

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†15 State Election Board
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25 Indiana Department of Administration
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31 State Personnel Department
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†325.1 Air Pollution Control Board
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327 Water Pollution Control Board
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329 Solid Waste Management Board
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†340 Commissioner of Agriculture
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415 Commission on Forensic Sciences
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920 Indiana War Memorials Commission
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†Agency's rules are entirely repealed, transferred, or otherwise voided.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #02-104(F)

DIGEST

Amends 312 IAC 12-1 by adding new definitions. Amends 312 IAC 25-4-43, 312 IAC 25-4-47, 312 IAC 25-4-85, and 312 IAC 25-4-93 with respect to performance standards for the protection of ground water quality. Adds 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5 to establish application procedures and performance standards consistent with 327 IAC 2-11 and IC 14-34. Effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.

312 IAC 25-1-45.5
312 IAC 25-1-60.5
312 IAC 25-1-109.5
312 IAC 25-4-43
312 IAC 25-4-47
312 IAC 25-4-85
312 IAC 25-4-93
312 IAC 25-6-12.5
312 IAC 25-6-76.5

SECTION 1. 312 IAC 25-1-45.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-45.5 "Drinking water well" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 45.5. "Drinking water well", for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means a bored, drilled, or driven shaft or a dug hole that meets each of the following:

(1) Supplies ground water for human consumption.

(2) Has a depth greater than its largest surface dimension.

(3) Is not permanently abandoned under 312 IAC 13-10-2.

(Natural Resources Commission; 312 IAC 25-1-45.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)

SECTION 2. 312 IAC 25-1-60.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-60.5 "Ground water management zone" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 60.5. "Ground water management zone" means a three (3) dimensional region of ground water around a potential or existing contaminant source where a contaminant is or was managed to prevent or mitigate deterioration of ground water quality such that the criteria established in 312 IAC 25-6-12.5(a) or 312 IAC 25-6-76.5(a) are met at and beyond the boundary of the region. *(Natural Resources Commission; 312 IAC 25-1-60.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

SECTION 3. 312 IAC 25-1-109.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-109.5 "Property boundary" defined
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 109.5. "Property boundary", for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means the edge of a contiguous parcel of land owned by or leased to the permittee. Contiguous land shall include land separated by a public right-of-way, if that land would otherwise be contiguous. *(Natural Resources Commission; 312 IAC 25-1-109.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

SECTION 4. 312 IAC 25-4-43 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-43 Surface mining permit applications; reclamation and operations plan; maps
Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 43. Each application shall contain maps and plans of the proposed permit and adjacent areas as follows:

(1) The maps and plans shall depict the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations if the facility or feature was shown under sections 37 and 38 of this rule.

(2) The following shall be shown for the proposed permit area and adjacent area within one thousand (1,000) feet:

(A) Buildings, utility corridors, and facilities to be used.

(B) The area of land to be affected within the proposed permit area according to the sequence of mining and reclamation.

(C) Each area of land for which a performance bond will be posted under 312 IAC 25-5.

(D) Each coal storage, cleaning, and loading area.

(E) Each topsoil, spoil, coal waste, and noncoal waste storage area.

(F) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used.

(G) Each source of waste and each disposal facility relating to coal processing or pollution control.

(H) Each facility to be used to protect and enhance fish and wildlife and related environmental values.

(I) Each explosive storage and handling facility.

(J) Location of each:

(i) siltation structure;

(ii) permanent water impoundment;

(iii) coal processing waste bank; and

(iv) coal processing waste dam and embankment;

in accordance with section 49 of this rule, and fill area for the disposal of excess spoil in accordance with section 54 of this rule.

(K) Each air pollution collection and control facility if required.

(3) Maps, plans, and cross sections required under subdivision (2)(D) through (2)(F) and (2)(J) shall be prepared by, or under the direction of, and certified by a registered professional engineer or professional geologist, with necessary assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans, and cross sections for:

(A) siltation structures may only be prepared by a registered professional engineer; and

(B) spoil disposal facilities may only be prepared by a registered professional engineer.

(4) All monitoring locations used to demonstrate compliance with 312 IAC 25-6-12.5.

(Natural Resources Commission; 312 IAC 25-4-43; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)

SECTION 5. 312 IAC 25-4-47 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-47 Surface mining permit applications; reclamation and operations plan; reclamation plan; protection of hydrologic balance

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 47. (a) Each reclamation plan shall contain a detailed description, including maps and drawings of the measures to be taken during the mining and reclamation process, through bond release, to assure the protection of the following:

(1) The quality of surface and ground water systems, within the permit area and adjacent area, from adverse effects of the mining and reclamation process.

(2) The rights of present users of that water.

(3) The quantity of surface and ground water systems, within the permit area and adjacent area, from adverse effects of the mining and reclamation process or to provide alternative sources of water under section 33 of this rule and 312 IAC 25-6-25 where the protection of quantity cannot be assured.

(4) The prevention of material damage outside the permit area.

(5) Compliance with applicable federal and state water quality laws and regulations.

(6) The hydrologic balance within the permit and adjacent areas.

(b) The description in subsection (a) shall include the following:

(1) A plan for the control of drainage under 312 IAC 25-6-5 through 312 IAC 25-6-69 of surface and ground water drainage into, through, and out of the proposed permit area.

(2) A plan for the treatment, where required under 312 IAC 25-6-5 through 312 IAC 25-6-69, of surface and ground water drainage from the area to be affected by the proposed activities and proposed quantitative limits on pollutants in discharges subject to 312 IAC 25-6-13, according to the more stringent of:

(A) 312 IAC 25-6-5 through 312 IAC 25-6-69; or

(B) other applicable state or federal laws.

(3) A plan for the restoration of the approximate recharge capacity of the permit area under 312 IAC 25-6-22 and as required by section 45 of this rule.

(4) A plan for the collection, recording, and reporting of ground and surface water quality and water quantity data under 312 IAC 25-6-23.

(5) A plan to avoid acid or toxic drainage.

(6) A plan to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow.

(7) A plan to provide water treatment facilities when needed.

(8) A plan to control drainage.

(9) A plan to demonstrate compliance with 312 IAC 25-6-12.5.

(c) The description in subsection (a) shall include a determination of the probable hydrologic consequences (PHC) of the mining and reclamation operations proposed, in the permit and adjacent areas, with respect to the quantity and quality of surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the director. Information shall be provided as follows:

(1) The PHC determination shall be based on baseline hydrologic, geologic, and other information collected for the permit application and may include data statistically representative of the site.

(2) The PHC determination shall include findings on the following:

(A) Whether adverse impacts may occur to the hydrologic balance.

(B) Whether acid-forming or toxic-forming materials are

present that could result in the contamination of surface or ground water supplies.

(C) Whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other legitimate purpose.

(D) What impact the proposed operation will have on the following:

(i) Sediment yields from the disturbed area.

(ii) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact.

(iii) Flooding or stream flow alteration.

(iv) Ground water and surface water availability.

(v) Other characteristics as required by the director.

(3) Sampling and analysis shall be conducted under section 28(d) of this rule.

(4) An application for a permit revision shall be reviewed by the director to determine whether a new or updated PHC determination shall be required.

(d) The description in subsection (a) shall include a plan specifically addressing any potentially adverse hydrologic consequences identified in the PHC determination prepared under subsection (c) and shall include preventative and remedial measures. *(Natural Resources Commission; 312 IAC 25-4-47; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3456, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3861, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

SECTION 6. 312 IAC 25-4-85 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-85 Underground mining permit applications; reclamation plan; protection of hydrologic balance

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 784.14

Sec. 85. (a) Each reclamation plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed underground mining activities, through bond release, under 312 IAC 25-6-70 through 312 IAC 25-6-132, to ensure the protection of the following:

(1) The quality of surface and ground water in the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities.

(2) The rights of present users to that surface and ground water.

(3) The quantity of surface and ground water in the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities, or to provide alternative sources of water, under section 74 of this rule and 312 IAC 25-6-88, where the protection of quantity cannot be ensured.

(4) Water quality by locating openings for mines under 312 IAC 25-6-85.

(5) The prevention of material damage outside the permit area.

(6) Compliance with applicable federal and state water quality laws and regulations.

(7) The hydrologic balance within the permit and adjacent areas.

(b) The description in subsection (a) shall include the following:

(1) A plan for the control, under 312 IAC 25-6-70 through 312 IAC 25-6-132, of surface and ground water drainage into, through, and out of the proposed permit area.

(2) A plan for the treatment, where required under 312 IAC 25-6-70 through 312 IAC 25-6-132, of surface and ground water drainage from the area to be affected by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 312 IAC 25-6-77, according to the more stringent of the following:

(A) 312 IAC 25-6-70 through 312 IAC 25-6-132.

(B) Other applicable state and federal laws.

(3) A plan for the collection, recording, and reporting of ground and surface water quality and water quantity data under 312 IAC 25-6-86.

(4) A plan to avoid acid or toxic drainage.

(5) A plan to prevent, to the extent possible using the best technology currently available, adding contributions of suspended solids to stream flow.

(6) A plan to provide water treatment facilities when needed.

(7) A plan to control drainage.

(8) A plan to demonstrate compliance with 312 IAC 25-6-76.5.

(c) The description in subsection (a) shall include the following:

(1) A determination of the probable hydrologic consequences (PHC) of the proposed underground mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the following:

(A) The contents of dissolved and total suspended solids.

(B) Total iron.

(C) pH.

(D) Total manganese.

(E) Other parameters required by the director.

(2) Whether the underground mining activities may result in contamination, diminution, or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

(d) Sampling and analysis shall be conducted under 312 IAC 25-6-86. Information shall be provided as follows:

(1) The PHC determination shall be based on baseline hydrologic, geologic, and other information collected for the permit application and may include data statistically representative of the site.

(2) The PHC determination shall include findings on the following:

(A) Whether adverse impacts may occur to the hydrologic balance.

(B) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies.

(C) What impact the proposed operation will have on the following:

(i) Sediment yields from the disturbed area.

(ii) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact.

(iii) Flooding or stream flow alteration.

(iv) Ground water and surface water availability.

(v) Other characteristics as required by the director.

(3) Any application for a permit revision shall be reviewed by the director to determine whether a new or updated PHC determination shall be required.

(e) Each plan shall contain a detailed description, with appropriate drawings, of permanent entry seals and down slope barriers, designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.

(f) The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under subsection (c) and shall include preventive and remedial measures. *(Natural Resources Commission; 312 IAC 25-4-85; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3472, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3862, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

SECTION 7. 312 IAC 25-4-93 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-93 Underground mining permit applications; reclamation plan; maps

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 93. Each application shall contain maps, plans, and cross sections of the proposed permit and adjacent areas as follows:

(1) The maps, plans, and cross sections shall show the underground mining activities to be conducted, the land to be affected throughout the operations, and any change in a facility or feature to be caused by the proposed operations if the facility or feature was shown under sections 78 and 79 of this rule.

(2) The following shall be shown for the proposed permit area:

(A) Buildings, utility corridors, and facilities to be used.

(B) The area of land to be affected within the proposed permit area according to the sequence of mining and reclamation.

(C) Each area of land for which a performance bond will be posted under 312 IAC 25-5.

(D) Each coal storage, cleaning, and loading area.

(E) Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area.

(F) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used.

(G) Each source of waste and each waste disposal facility relating to coal processing or pollution control.

(H) Each facility to be used to protect and enhance fish and wildlife related environmental values.

(I) Each explosive storage and handling facility.

(J) Location of each:

(i) siltation structure;

(ii) permanent water impoundment;

(iii) coal processing waste bank; and

(iv) coal processing waste dam and embankment;

in accordance with section 87 of this rule and disposal areas for underground development waste and excess spoil in accordance with section 90 of this rule.

(K) Each profile, at cross sections specified by the director, of the anticipated final surface configuration to be achieved for the affected areas.

(L) Location of each water and subsidence monitoring point.

(M) Location of each facility that will remain on the proposed permit area as a permanent feature after the completion of underground mining activities.

(3) Maps, plans, and cross sections required under subdivision (2)(D) through (2)(F) and 2(I) through (2)(K) shall be prepared by, or under the direction of, and certified by a professional engineer or professional geologist, with necessary assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans, and cross sections of:

(A) siltation structures may only be prepared by a registered engineer; and

(B) excess spoil and underground development waste facilities may only be prepared by a registered professional engineer.

(4) All monitoring locations used to demonstrate compliance with 312 IAC 25-6-76.5.

(Natural Resources Commission; 312 IAC 25-4-93; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3476, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3863, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of

the Interior and notice of that approval being published in the Indiana Register)

SECTION 8. 312 IAC 25-6-12.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-6-12.5 Hydrologic balance; application of ground water quality standards at surface coal mining and reclamation operations permitted under IC 14-34 on which coal extraction, including augering, coal processing, coal processing waste disposal, or spoil deposition, occurs after the effective date of this section, or on which disposal activity subject to IC 13-19-3-3 has occurred and the area is not fully released from the performance bond required by IC 14-34-6

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 12.5. (a) Ground water is classified under 327 IAC 2-11 to determine appropriate criteria that shall be applied to ground water.

(b) Surface coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2-11.

(c) Surface coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25-4-33 and 312 IAC 25-6-25 govern water replacement.

(d) The ground water management zone described in 327 IAC 2-11-9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal extraction area.

(B) A coal mine processing waste disposal site if not within a coal extraction area.

(C) An area where coal is extracted by auger mining methods.

(D) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site unless the location is within the coal extraction area.

(E) A spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone. *(Natural Resources Commission; 312 IAC 25-6-12.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3864, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

SECTION 9. 312 IAC 25-6-76.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-6-76.5 Underground mining; hydrologic balance; application of ground water quality standards at underground coal mining and reclamation operations permitted under IC 14-34 on which coal extraction, coal processing, coal processing waste disposal, or underground development waste and spoil deposition occurs after the effective date of this section, or on which disposal activity subject to IC 13-19-3-3 has occurred and the area is not fully released from the performance bond required by IC 14-34-6

Authority: IC 14-34-2-1
Affected: IC 14-34

Sec. 76.5. (a) Ground water is classified under 327 IAC 2-11 to determine appropriate criteria that shall be applied to ground water.

(b) Underground coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2-11.

(c) Underground coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25-4-74 and 312 IAC 25-6-88 govern water replacement.

(d) The ground water management zone described in 327 IAC 2-11-9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal mine processing waste disposal site.

(B) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site.

(C) An underground development waste and spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone. *(Natural Resources Commission; 312 IAC 25-6-76.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3865, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

SECTION 10. **SECTIONS 1 through 9 of this document take effect upon the department of natural resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of Interior and notice of that approval being published in the Indiana Register.**

LSA Document #02-104(F)
Notice of Intent Published: 25 IR 2544
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Approved by Governor: July 25, 2003
Filed with Secretary of State: July 29, 2003, 3:45 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #02-318(F)

DIGEST

Amends 312 IAC 9-6 that governs fish and fishing activities. Amends 312 IAC 9-6-1 to include additional definitions of fish species. Amends 312 IAC 9-6-7 by adding fish species that are illegal to import, possess, or release into public or private waters without a license issued by the department. Included are any live fish, fry, viable eggs, or genetic material of the exotic nuisance species black carp, bighead carp, silver carp, white perch, all species of snakeheads in the family Channidae, and hybrid or genetic modification of these fish. Exemptions are provided for accredited zoological parks, during lawful interstate shipment, and holders of an aquaculture permit under 312 IAC 9-10-17 for medical, educational, or scientific purposes. Effective 30 days after filing with the secretary of state.

312 IAC 9-6-1
312 IAC 9-6-7

SECTION 1. 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) "Bighead carp" means the species Hypophthalmichthys nobilis.

~~(6)~~ **(7)** "Black bass" means the species Micropterus salmoides, Micropterus dolomieui, and Micropterus punctulatus.

(8) "Black carp" means the species Mylopharyngodon piceus.

~~(7)~~ **(9)** "Black crappie" means the species Pomoxis nigromaculatus.

~~(8)~~ **(10)** "Blue catfish" means the species Ictalurus furcatus.

~~(9)~~ **(11)** "Bluegill" means the species Lepomis macrochirus.

~~(10)~~ **(12)** "Bluntnose minnow" means the species Pimephales notatus.

~~(11)~~ **(13)** "Bowfin" means the species Amia calva.

~~(12)~~ **(14)** "Brook trout" means the species Salvelinus fontinalis.

~~(13)~~ **(15)** "Brown trout" means the species Salmo trutta.

~~(14)~~ **(16)** "Buffalo" means the genus Ictiobus.

~~(15)~~ **(17)** "Bullhead" means the species Ictalurus melas, Ictalurus nebulosus, and Ictalurus natalis.

~~(16)~~ **(18)** "Burbot" means the species Lota lota.

~~(17)~~ **(19)** "Carp" means the species Cyprinus carpio.

~~(18)~~ **(20)** "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)~~ **(21)** "Cavefish" means a fish of the family Amblyopsidae.

~~(20)~~ **(22)** "Chain pickerel" means the species Esox niger.

~~(21)~~ **(23)** "Channel catfish" means the species Ictalurus punctatus.

~~(22)~~ **(24)** "Chinook salmon" means the species Oncorhynchus tshawytscha.

~~(23)~~ **(25)** "Chub" means the species Coregonus hoyi and the species Coregonus kiyi.

~~(24)~~ **(26)** "Cisco" means the species Coregonus artedii.

~~(25)~~ **(27)** "Closed aquaculture system" means a rearing facility designed to prevent the escape of cultured organisms to the wild.

~~(26)~~ **(28)** "Coho salmon" means the species Oncorhynchus kisutch.

~~(27)~~ **(29)** "Crappie" means white crappie and black crappie.

~~(28)~~ **(30)** "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)~~ **(31)** "Diploid" means a cell or organism that has two (2) complete sets of chromosomes.

~~(30)~~ **(32)** "Exotic catfish" means a walking catfish or other member of the family Clariidae.

~~(31)~~ **(33)** "Exotic fish" means an exotic catfish, **bighead carp, black carp, silver carp, white perch, snakehead,** rudd, ruffe, tubenose goby, ~~or~~ round goby, **or a hybrid or genetically altered fish of any of these species**.

~~(32)~~ **(34)** "Fathead minnow" means the species Pimephales promelas.

~~(33)~~ **(35)** "Flathead catfish" means the species Pylodictis olivaris.

~~(34)~~ **(36)** "Freshwater drum" means the species Aplodinotus

grunniens.

~~(35)~~ **(37)** "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)~~ **(38)** "Gar" means the genus Lepisosteus.

~~(37)~~ **(39)** "Genetically altered fish" means a fish which is the product of genetic manipulation, including polyploidy, gynogenesis, gene transfer, and hormonal sex control.

~~(38)~~ **(40)** "Gizzard shad" means the species Dorosoma cepedianum.

~~(39)~~ **(41)** "Golden shiner" means the species Notemigonus crysoleucas.

~~(40)~~ **(42)** "Goldfish" means the species Carassius auratus.

~~(41)~~ **(43)** "Grab hook" means a device or implement used as a tong to clutch, close down upon, or grasp fish.

~~(42)~~ **(44)** "Grass carp" means the genus Ctenopharyngodon.

~~(43)~~ **(45)** "Green sunfish" means the species Lepomis cyanellus.

~~(44)~~ **(46)** "Hybrid striped bass" means the hybrid of striped bass and white bass.

~~(45)~~ **(47)** "Hybrid sunfish" means a hybrid of the genus Lepomis.

~~(46)~~ **(48)** "Lake herring" means the species Coregonus artedii.

~~(47)~~ **(49)** "Lake sturgeon" means the species Acipenser fulvescens.

~~(48)~~ **(50)** "Lake trout" means the species Salvelinus namaycush.

~~(49)~~ **(51)** "Lake whitefish" means the species Coregonus clupeaformis.

~~(50)~~ **(52)** "Largemouth bass" means the species Micropterus salmoides.

~~(51)~~ **(53)** "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)~~ **(54)** "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)~~ **(55)** "Mosquitofish" means the species Gambusia affinis.

~~(54)~~ **(56)** "Muskellunge" means the species Esox masquinongy.

~~(55)~~ **(57)** "Northern pike" means the species Esox lucius.

~~(56)~~ **(58)** "Quagga mussel" means the species Dreissena bugensis.

~~(57)~~ **(59)** "Paddlefish" means the species Polyodon spathula.

~~(58)~~ **(60)** "Rainbow trout" means the species Oncorhynchus mykiss.

~~(59)~~ **(61)** "Redear sunfish" means the species Lepomis microlophus.

~~(60)~~ **(62)** "Rock bass" means the species Ambloplites rupestris.

~~(61)~~ **(63)** "Rough fish" means any species of fish not defined as a sport fish or protected under IC 14-22-34-12.

~~(62)~~ **(64)** "Round goby" mean the species Neogobius melanostomus.

~~(63)~~ **(65)** "Rudd" means the species Scardinius erythrophthalmus.

~~(64)~~ **(66)** "Ruffe" means the species Gymnocephalus cernuus.

~~(65)~~ **(67)** "Sauger" means the species Stizostedion canadense.

~~(66)~~ **(68)** "Saugeye" means the hybrid of walleye and sauger.

~~(67)~~ **(69)** "Shad" means the genera Alosa and Dorosoma.

(70) "Silver carp" means the species Hypophthalmichthys molitrix.

~~(68)~~ **(71)** "Single hook" means a fishing hook consisting of one (1) shank and one (1) point.

~~(69)~~ **(72)** "Smallmouth bass" means the species Micropterus dolomieui.

~~(70)~~ **(73)** "Smelt" means the genus Osmerus.

(74) "Snakehead" means all species of the family Channidae, including the genera Channa and Parachanna.

~~(71)~~ **(75)** "Sockeye salmon" means the species Oncorhynchus nerka.

~~(72)~~ **(76)** "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)~~ **(77)** "Spotted bass" means the species Micropterus punctulatus.

~~(74)~~ **(78)** "Steelhead" means the species Oncorhyncus mykiss.

~~(75)~~ **(79)** "Stretch mesh" means the extended distance or length between the extreme angles of a single mesh of net.

~~(76)~~ **(80)** "Striped bass" means the species Morone saxatilis.

~~(77)~~ **(81)** "Sucker" means the genera Carpiodes, Moxostoma, Hypentelium, Catostomus, and Erimyzon.

~~(78)~~ **(82)** "Tiger muskellunge" means the hybrid of muskellunge and northern pike.

~~(79)~~ **(83)** "Tilapia" means all species of the genus Tilapia.

~~(80)~~ **(84)** "Triploid" means a cell or organism having three (3) haploid sets of chromosomes.

~~(81)~~ **(85)** "Trout or salmon" means lake trout, coho salmon, chinook salmon, sockeye salmon, brown trout, steelhead (or rainbow trout), brook trout, and Atlantic salmon.

~~(82)~~ **(86)** "Tubenose goby" means the species Proterorhinus marmoratus.

~~(83)~~ **(87)** "Walleye" means the species Stizostedion vitreum.

~~(84)~~ **(88)** "Warmouth" means the species Lepomis gulosus.

~~(85)~~ **(89)** "White bass" means the species Morone chrysops.

~~(86)~~ **(90)** "White catfish" means the species Ictalurus catus.

(91) "White perch" means the species Morone americana.

~~(87)~~ **(92)** "White crappie" means the species Pomoxis annularis.

~~(88)~~ **(93)** "Yellow bass" means the species Morone

mississippiensis.

~~(89)~~ **(94)** "Yellow perch" means the species Perca flavescens.

~~(90)~~ **(95)** "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; filed Jul 23, 2003, 10:30 a.m.: 26 IR 3866)

SECTION 2. 312 IAC 9-6-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-6-7 Exotic fish

Authority: IC 14-22-2-6
Affected: IC 14-22-2-3

Sec. 7. (a) Except as otherwise provided under this section, ~~it is unlawful to~~ **a person must not** import, ~~to~~ possess, **propagate, buy, sell, barter, trade, transfer, loan,** or ~~to~~ release into public or private waters ~~an exotic catfish or rudd, ruffe, tubenose goby, or round goby.~~ **any of the following live fish or fry of live fish or their viable eggs or genetic material:**

(1) Exotic catfish.
(2) Bighead carp.
(3) Black carp
(4) Silver carp.
(5) White perch.
(6) Snakehead.
(7) Rudd.
(8) Ruffe.
(9) Tubenose goby.
(10) Round goby.
(11) A hybrid or genetically altered fish of any of these species.

(b) A person who takes a fish listed in subsection (a) does not violate this section if the fish listed in subsection (a) is killed immediately upon capture.

(c) This section does not apply to the following:

(1) The use of a fish by a properly accredited zoological park as defined in 312 IAC 9-5-8(i).

(2) During the lawful interstate shipment of fish through the state if the fish are not unloaded or do not leave the control of a common carrier.

(3) A person who lawfully possesses an exotic fish under a permit issued under 312 IAC 9-10-17 for medical, educational, or scientific purposes.

~~(c)~~ **(d)** A person who possesses ~~an exotic fish under a permit issued under 312 IAC 9-10-6 does not violate this section.~~ **federally listed injurious species must also comply with 18 U.S.C. 42 and 50 CFR 16.** *(Natural Resources Commission; 312 IAC 9-6-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 28, 1998, 5:14 p.m.: 21 IR 3719; filed Jul 23, 2003, 10:30 a.m.: 26 IR 3868)*

LSA Document #02-318(F)
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Approved by Attorney General: July 1, 2003
Approved by Governor: July 16, 2003
Filed with Secretary of State: July 23, 2003, 10:30 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-24(F)

DIGEST

Amends 312 IAC 5-2-47, which defines "waters of concurrent jurisdiction", to include the portion of the Wabash River that forms a border with Illinois and to include the Great Miami River. Amends 312 IAC 5-13-2 by requiring children under 13 years of age to wear personal flotation devices (sometimes call "life preservers") to conform with United States Coast Guard requirements. Deletes rule language pertaining to personal flotation devices that is now addressed by statute. Effective 30 days after filing with the secretary of state.

312 IAC 5-2-47
312 IAC 5-13-2

SECTION 1. 312 IAC 5-2-47 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-2-47 "Waters of concurrent jurisdiction" defined

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

Sec. 47. "Waters of concurrent jurisdiction" ~~means the portions of Lake Michigan over which Indiana has concurrent jurisdiction with the United States and the portions of the Ohio River over which Indiana has concurrent jurisdiction with the commonwealth of Kentucky.~~ **refers to the following waters within Indiana:**

(1) Lake Michigan.
(2) Ohio River.
(3) Wabash River where it forms the boundary between Indiana and Illinois.
(4) Great Miami River.

(Natural Resources Commission; 312 IAC 5-2-47; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002; filed Jul 23, 2003, 10:15 a.m.: 26 IR 3868)

SECTION 2. 312 IAC 5-13-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-13-2 Children wearing personal flotation devices on waters of concurrent jurisdiction

Authority: IC 14-10-2-4; IC 14-15-7-5
Affected: IC 14-15

Sec. 2. ~~(a)~~ A person must not use a recreational watercraft **on waters of concurrent jurisdiction** unless ~~at least one (1) personal flotation device is onboard for each person as follows:~~

~~(1) Type I personal flotation device.~~
~~(2) Type II personal flotation device.~~
~~(3) Type III personal flotation device.~~

~~(b) A person must not use a recreational watercraft at least sixteen (16) feet long unless one (1) Type IV personal flotation device is on-board in addition to the total number of personal flotation devices required in subsection (a).~~

~~(c) Notwithstanding subsections (a) and (b), a Type V personal flotation device may be carried instead of a required personal flotation device if the Type V personal flotation device is approved by the United States Coast Guard for the activity in which the recreational watercraft is being used.~~ **each child onboard under thirteen (13) years of age is wearing an appropriate personal flotation device approved by the United States Coast Guard except where:**

(1) the child is below deck;
(2) the child is in an enclosed cabin; or
(3) the watercraft is docked or at anchor.

(Natural Resources Commission; 312 IAC 5-13-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002; filed Jul 23, 2003, 10:15 a.m.: 26 IR 3869)

LSA Document #03-24(F)
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Approved by Governor: July 16, 2003
Filed with Secretary of State: July 23, 2003, 10:15 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #02-340(F)

DIGEST

Amends 405 IAC 1-14.6 to revise the Medicaid nursing facility case mix reimbursement methodology to increase the minimum occupancy parameter for the direct care, indirect care, and administrative rate components; eliminates the provision that disallows annual rebasing of rates; extends the date for application of the historical cost inflation reduction factor; and removes profit add-on from direct care component. Effective 30 days after filing with the secretary of state.

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

SECTION 1. 405 IAC 1-14.6-2, AS AMENDED AT 26 IR 707, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-2 Definitions

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15; IC 16-10-1

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

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

(b) As used in this rule, "allowable per patient day cost" means a ratio between allowable **variable** cost and patient days **using each provider's actual occupancy from the most recently completed desk reviewed annual financial report, plus a ratio between allowable fixed costs and patient days using the greater of the minimum occupancy requirements as contained in this rule, or each provider's actual occupancy rate from the most recently completed desk reviewed annual financial report.**

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

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

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

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

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

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

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

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

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

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

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

~~(l)~~ **(j)** As used in this rule, "children's nursing facility" means a nursing facility that has twenty-five percent (25%) or more of its residents who are under the chronological age of twenty-one (21) years and has received written approval from the office to be designated as a children's nursing facility.

~~(m)~~ **(k)** As used in this rule, "delinquent MDS resident assessment" means an assessment that is greater than one hundred thirteen (113) days old, as measured by the R2b date field on the MDS. This determination is made on the fifteenth ~~(15th)~~ day of the second ~~(2nd)~~ month following the end of a calendar quarter.

~~(n)~~ **(l)** As used in this rule, "desk review" means a review and application of these regulations to a provider submitted annual financial report including accompanying notes and supplemental information.

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

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

~~(p)~~ **(n)** As used in this rule, "fair rental value allowance" means a methodology for reimbursing nursing facilities for the use of allowable facilities and equipment, based on establishing

a rental valuation on a per bed basis of such facilities and equipment, and a rental rate.

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

(p) As used in this rule, "fixed costs" means the portion of each rate component that shall be subjected to the minimum occupancy requirements as contained in this rule. The following percentages shall be multiplied by total allowable costs to determine allowable fixed costs for each rate component:

Rate Component	Fixed Cost Percentage
Direct Care	**25%**
Indirect Care	**37%**
Administrative	**84%**
Capital	**100%**

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

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

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

~~(u)~~ **(t)** As used in this rule, "incomplete MDS resident assessment" means an assessment that is not printed by the nursing facility provider upon request by the office or its contractor.

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

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

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

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

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

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

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

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

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

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

~~(ee) As used in this rule, "rebasing year" means the year during which a nursing facility's Medicaid rate is based on a~~

~~review of its annual financial report covering its most recently completed historical period. The following years shall be rebasing years:~~

~~July 1, 2002, through June 30, 2003~~
~~July 1, 2004, through June 30, 2005~~
~~And every year thereafter.~~

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

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

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

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

~~(jj)~~ **(gg)** As used in this rule, "unsupported MDS resident assessment" means an assessment where one (1) or more data items that are required to classify a resident pursuant to the RUG-III resident classification system are not supported according to the MDS supporting documentation guidelines as set forth in 405 IAC 1-15, and such data items result in the assessment being classified into a different RUG-III category.

~~(kk)~~ **(hh)** As used in this rule, "untimely MDS resident assessment" means a significant change MDS assessment, as defined by CMS' Resident Assessment Instrument (RAI) Manual, that is not completed within fourteen (14) days of determining that a nursing facility resident's condition has changed significantly; or a full or quarterly MDS assessment that is not completed as required by 405 IAC 1-15-6(a) following the conclusion of all physical therapy, speech therapy, and occupational therapy. *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-2; filed Aug 12, 1998, 2:27 p.m.: 22 IR 69, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2238; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2462; filed Oct 10, 2002, 10:47 a.m.: 26 IR 707; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3869)*

SECTION 2. 405 IAC 1-14.6-6, AS AMENDED AT 26 IR 712, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

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

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

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

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

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

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

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

~~(e)~~ **(d)** Subsequent to the annual rate review, ~~established during rebasing years and non-rebasing years,~~ the direct care component of the Medicaid rate will be adjusted quarterly to reflect changes in the provider's case mix index for Medicaid residents. If the facility has no Medicaid residents during a quarter, the facility's average case mix index for all residents will be used in lieu of the case mix index for Medicaid resi-

dents. This adjustment will be effective on the first day of each of the following three (3) calendar quarters beginning after the effective date of the annual rate review.

~~(f)~~ **(e)** The case mix index for Medicaid residents in each facility shall be updated each calendar quarter and shall be used to adjust the direct care component that becomes effective on the second calendar quarter following the updated case mix index for Medicaid residents.

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

(g) When the number of nursing facility beds licensed by the Indiana state department of health is changed after the annual reporting period, the provider may request in writing before the effective date of their next annual rate review an additional rate review effective on the first day of the calendar quarter on or following the date of the change in licensed beds. This additional rate review shall be determined using all rate-setting parameters in effect at the provider's latest annual rate review, except that the number of beds and associated bed days available for the calculation of the rate-setting limitations shall be based on the newly licensed beds. *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-6; filed Aug 12, 1998, 2:27 p.m.: 22 IR 73, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2243; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2468; filed Oct 10, 2002, 10:47 a.m.: 26 IR 712; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3872)*

SECTION 3. 405 IAC 1-14.6-7, AS AMENDED AT 26 IR 712, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

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

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

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

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

(b) Notwithstanding subsection (a), beginning on the effective date of this rule through September 30, ~~2003,~~ **2005,** the inflation adjustment determined as prescribed in subsection (a) shall be reduced by an inflation reduction factor equal to three and three-tenths percent (3.3%). The resulting inflation adjustment shall not be less than zero (0). Prior to September 30, ~~2003,~~ **2005,** the office may reduce or eliminate the inflation reduction factor to increase aggregate expenditures up to levels appropriated by the Indiana general assembly. Any reduction or elimination of the inflation reduction factor shall be made effective no earlier than permitted under IC 12-15-13-6(a).

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

(d) Allowable **fixed** costs per patient day for direct care, indirect care, and administrative costs shall be computed based on an occupancy rate equal to the greater of ~~sixty-five~~ **eighty-five** percent ~~(65%)~~ **(85%),** or the provider's actual occupancy rate from the most recently completed historical period.

(e) Notwithstanding subsection (d), the office or its contractor shall reestablish a provider's Medicaid rate effective on the first day of the ~~month~~ **quarter** following the date that the conditions specified in this subsection are met, by applying all provisions of this rule, except for the ~~sixty-five~~ **eighty-five** percent ~~(65%)~~ **(85%)** minimum occupancy requirement, if **both of** the following conditions can be established to the satisfaction of the office:

(1) the provider demonstrates that its current resident census has increased to ~~sixty-five~~ **eighty-five** percent ~~(65%)~~ **(85%)** or greater since the facility's fiscal year end of the **most recently completed and desk reviewed** cost report ~~used to establish its Medicaid rate during the most recent rebasing year~~ **utilizing total nursing facility licensed beds as of the most recently completed desk reviewed cost report period,** and **the provider's census** has remained at such

level for no less than ninety (90) days; and

(2) the provider demonstrates that its resident census has increased by a minimum of fifteen percent (15%) since the facility's fiscal year end of the **most recently completed and desk reviewed** cost report ~~used to establish its Medicaid rate during the most recent rebasing year.~~ **and has remained at such level for no less than ninety (90) days.**

(f) Allowable **fixed** costs per patient day for capital-related costs shall be computed based on an occupancy rate equal to the greater of ninety-five percent (95%) or the provider's actual occupancy rate from the most recently completed historical period.

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

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

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

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

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

(i) The office may increase Medicaid reimbursement to nursing facilities that provide inpatient services to more than eight (8) ventilator-dependent residents. Additional reimbursement shall be made to such facilities at a rate of eight dollars and seventy-nine cents ($8.79) per Medicaid resident day. Such additional reimbursement shall be effective on the day the nursing facility provides inpatient services to more than eight (8) ventilator-dependent residents and shall remain in effect until the first day of the calendar quarter following the date the nursing facility provides inpatient services to eight (8) or fewer ventilator-dependent residents. *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-7; filed Aug 12, 1998, 2:27 p.m.: 22 IR 74, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2243; readopted filed Jun 27, 2001, 9:40 a.m.:24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2468; filed Oct 10, 2002, 10:47 a.m.: 26 IR 712; errata filed Feb 27, 2003, 11:33 a.m.: 26 IR 2375; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3873)*

SECTION 4. 405 IAC 1-14.6-9, AS AMENDED AT 26 IR 714, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

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

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

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

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

(2) The therapy component is equal to the provider's allowable per patient day direct therapy costs.
(3) The direct care component is equal to the provider's normalized allowable per patient day direct care costs times the facility-average case mix index for Medicaid residents, plus the allowed profit add-on payment as determined by the methodology in subsection (b).

(b) The profit add-on payment will be calculated as follows:
(1) For nursing facilities designated by the office as children's nursing facilities, the direct care component profit add-on is equal to fifty-two percent (52%) of the difference (if greater than zero (0)) of:
(A) the normalized average allowable cost of the median patient day for direct care costs ~~applicable to the facility based on its actual occupancy rate from the most recently completed historical period,~~ times the facility average case mix index for Medicaid residents times one hundred five percent (105%); minus
(B) the provider's normalized allowable per patient day costs times the facility average case mix index for Medicaid residents.
(2) Beginning on the effective date of this rule ~~and continuing for eight (8) full calendar quarters thereafter,~~ **through June 30, 2006,** for nursing facilities that are not designated by the office as children's nursing facilities, the direct care component profit add-on is equal to zero (0). Beginning ~~on the first day of the ninth (9th) full calendar quarter after the effective date of this rule,~~ **July 1, 2006,** the direct care component profit add-on is equal to fifty-two percent (52%) of the difference (if greater than zero (0)) of:
(A) the normalized average allowable cost of the median patient day for direct care costs ~~applicable to the facility based on its actual occupancy rate from the most recently completed historical period,~~ times the facility average case mix index for Medicaid residents times one hundred five percent (105%); minus
(B) the provider's normalized allowable per patient day costs times the facility average case mix index for Medicaid residents.
(3) The indirect care component profit add-on is equal to fifty-two percent (52%) of the difference (if greater than zero (0)) of:
(A) the average allowable cost of the median patient day ~~applicable to the facility based on its actual occupancy rate from the most recently completed historical period,~~ times one hundred percent (100%); minus
(B) a provider's allowable per patient day cost.
(4) The administrative component profit add-on is equal to sixty percent (60%) of the difference (if greater than zero (0)) of:
(A) the average allowable cost of the median patient day ~~applicable to the facility based on its actual occupancy rate from the most recently completed historical period,~~ times one hundred percent (100%); minus
(B) a provider's allowable per patient day cost.
(5) The capital component profit add-on is equal to sixty percent (60%) of the difference (if greater than zero (0)) of:
(A) the average allowable cost of the median patient day times eighty percent (80%); minus
(B) a provider's allowable per patient day cost.
(6) The therapy component profit add-on is equal to zero (0).

(c) Notwithstanding subsections (a) and (b), in no instance shall a rate component exceed the overall rate component limit defined as follows:
(1) The normalized average allowable cost of the median patient day for direct care costs ~~applicable to the facility based on its actual occupancy rate from the most recently completed historical period,~~ times the facility-average case mix index for Medicaid residents times one hundred ten percent (110%).
(2) The average allowable cost of the median patient day for indirect care costs ~~applicable to the facility based on its actual occupancy rate from the most recently completed historical period,~~ times one hundred percent (100%).
(3) The average allowable cost of the median patient day for administrative costs ~~applicable to the facility based on its actual occupancy rate from the most recently completed historical period,~~ times one hundred percent (100%).
(4) The average allowable cost of the median patient day for capital-related costs times eighty percent (80%).
(5) For the therapy component, no overall rate component limit shall apply.

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

(e) The office shall publish guidelines for use in determining the time-weighted CMI. These guidelines shall be published as a provider bulletin and may be updated by the office as needed. Any such updates shall be made effective no earlier than permitted under IC 12-15-13-6(a). *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-9; filed Aug 12, 1998, 2:27 p.m.: 22 IR 75, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2244; readopted filed Jun 27, 2001, 9:40 a.m.:24 IR 3822; filed Mar 18, 2002, 3:30 p.m.: 25 IR 2470; filed Oct 10, 2002, 10:47 a.m.: 26 IR 714; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3874)*

SECTION 5. 405 IAC 1-14.6-16, AS AMENDED AT 26 IR 716, SECTION 7, IS AMENDED TO READ AS FOLLOWS:

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

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

Sec. 16. (a) Charity, courtesy allowances, discounts, refunds,

rebates, and other similar items granted by a provider shall not be included in allowable costs. Bad debts incurred by a provider shall not be an allowable cost.

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

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

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

(e) For nursing facilities that are certified to provide Medicare-covered skilled nursing facility services that are not required by the Medicare fiscal intermediary to submit a full Medicare cost report, the office or its contractor shall remove from allowable indirect care and administrative costs the portion of those costs that are allocable to therapy services reimbursed by other payers and nonallowable ancillary services. In determining the amount of indirect care costs and administrative costs that shall be removed from allowable costs, the office or its contractor shall ~~apply cost allocation principles established by the federal Medicare cost report methodology~~ **remove the indirect and administrative costs reimbursed by other payers** based on a statewide average ratio, **excluding hospital based facilities,** of indirect costs to direct costs for such therapy and ancillary services, as determined from full Medicare cost reports. **The statewide average ratio shall be computed on a statewide basis from the most recently completed desk reviewed annual financial report and shall be maintained by the office with revisions made four (4) times per year effective January 1, April 1, July 1, and October 1.** *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-16; filed Aug 12, 1998, 2:27 p.m.: 22 IR 79, eff Oct 1, 1998; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 10, 2002, 10:47 a.m.: 26 IR 716; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3875)*

SECTION 6. 405 IAC 1-14.6-22, AS AMENDED AT 26 IR 716, SECTION 8, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-14.6-22 Administrative reconsideration; appeal

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

Sec. 22. (a) The Medicaid rate-setting contractor shall notify each provider of the provider's rate ~~and allowable cost determinations~~ after ~~they have~~ **such rate has** been computed. If the provider disagrees with the rate or allowable cost determinations, the provider must request an administrative reconsideration by the Medicaid rate-setting contractor. Such reconsideration request shall be in writing and shall contain specific issues to be reconsidered and the rationale for the provider's position. The request shall be signed by the provider or the authorized representative of the provider and must be received by the contractor within forty-five (45) days after release of the rate ~~or allowable cost determinations~~ as computed by the Medicaid rate-setting contractor. Upon receipt of the request for reconsideration, the Medicaid rate-setting contractor shall evaluate the data. After review, the Medicaid rate-setting contractor may amend the rate, amend the challenged procedure or allowable cost determination, or affirm the original decision. The Medicaid rate-setting contractor shall thereafter notify the provider of its final decision in writing, within forty-five (45) days of the Medicaid rate-setting contractor's receipt of the request for reconsideration. In the event that a timely response is not made by the rate-setting contractor to the provider's reconsideration request, the request shall be deemed denied and the provider may pursue its administrative remedies as set out in subsection (d).

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

shall be deemed denied and the provider may pursue its administrative remedies under subsection (d).

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

(d) After completion of the reconsideration procedure under subsection (a), (b), or (c), the provider may initiate an appeal under IC 4-21.5-3. *(Office of the Secretary of Family and Social Services; 405 IAC 1-14.6-22; filed Aug 12, 1998, 2:27 p.m.: 22 IR 81, eff Oct 1, 1998; filed Mar 2, 1999, 4:42 p.m.: 22 IR 2247; errata filed Jul 28, 1999, 3:10 p.m.: 22 IR 3937; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 10, 2002, 10:47 a.m.: 26 IR 716; filed Jul 29, 2003, 4:00 p.m.: 26 IR 3876)*

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Incorporated Documents Filed with Secretary of State: None

TITLE 550 BOARD OF TRUSTEES OF THE INDIANA STATE TEACHERS' RETIREMENT FUND

LSA Document #02-325(F)

DIGEST

Amends 550 IAC 3 to conform to changes made to the Internal Revenue Code by the Economic Growth and Tax Relief Reconciliation Act of 2001. Adds 550 IAC 5 to changes made to the Internal Revenue Code by the Economic Growth and Tax Relief Reconciliation Act of 2001. Adds 550 IAC 6 concerning rollovers, service purchases, and enhanced retirement savings opportunities for fund members (Senate Enrolled Act 59). Effective 30 days after filing with the secretary of state.

550 IAC 3-1-1
550 IAC 3-1-2
550 IAC 3-1-3
550 IAC 3-2-1
550 IAC 3-2-2
550 IAC 5
550 IAC 6

SECTION 1. 550 IAC 3-1-1 IS AMENDED TO READ AS FOLLOWS:

550 IAC 3-1-1 Definitions
Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-2-14; IC 21-6.1

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Board of trustees" means the board of trustees of the Indiana state teachers' retirement fund.

(c) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(d) "EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16, and all applicable regulations and amendments related thereto.

~~(d)~~ **(e)** "Eligible rollover distribution" means any distribution of all or any taxable portion of the benefit to the credit of a member or a member's spouse, except that an eligible rollover distribution does not include the following:

(1) Any distribution that is one (1) of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the member and the member's designated beneficiary.

(2) Any distribution that is one (1) of a series of substantially equal periodic payments for a specified period of ten (10) years or more.

(3) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.

(4) The portion of any distribution that is not ~~includable~~ **includible** in gross income, **provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:**

(A) a traditional individual retirement account or individual retirement annuity; or

(B) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer.

(5) Any distribution that is made upon hardship by the member.

~~(e)~~ **(f)** "Fund" means the Indiana state teachers' retirement fund.

~~(f)~~ **(g)** "IRS" means the Internal Revenue Service.

~~(g)~~ **(h)** "UCA" refers to the federal Unemployment Compensation Amendments of 1992, P.L.102-318, and all applicable regulations and amendments related thereto. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 3-1-1; filed Mar 21, 1995, 2:00 p.m.: 18 IR 2033; readopted and extended filed Dec 3, 2001, 11:02 a.m.: 25 IR 1731; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3877)*

SECTION 2. 550 IAC 3-1-2 IS AMENDED TO READ AS FOLLOWS:

550 IAC 3-1-2 Introduction
Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-2-14; IC 21-6.1

Sec. 2. (a) The UCA was signed into law on July 3, 1992. The UCA expanded the permanent federal-state extended unemployment benefits program and extended the existing emergency unemployment insurance program. The sources of financing for the UCA benefit extensions include provisions affecting distributions from tax-qualified pension plans such as the fund. The provisions ~~in this article apply to distributions made after December 31, 1992, and include the following:~~ **of the UCA were subsequently amended by EGTRRA.**

~~(1) Changes in the rules applicable to rollovers from tax-qualified plans.~~

~~(2) A provision that requires such plans to give participants entitled to a distribution eligible for rollover treatment the option to have that amount paid directly in the form of a direct rollover to a qualified defined contribution plan, an individual retirement account or annuity, or a similar plan specified by the participant.~~

~~(3) Changes in the withholding taxes applicable to distributions from such plans.~~

~~(b) The fund does not accept rollover contributions from other retirement plans. However, the fund permits rollover contributions to be paid directly to other retirement plans under certain circumstances. Accordingly, the rules governing the fund need to be amended to conform to the direct rollover requirements under the UCA to allow such rollovers at the member's or member's spouse's election.~~

~~(c)~~ **(b)** 550 IAC 3-2 includes the model language set forth in Revenue Procedure 93-12, issued December 30, 1992, to amend the fund to comply with the requirements of Section 401(a)(31) of the Code. 550 IAC 3-2 reflects the model amendment drafted by the IRS **as amended by EGTRRA.** The board of trustees recognizes that some provisions included in the model amendment language are not applicable to a governmental plan as defined in Section 414(d) of the Code. As a result, those provisions that are not applicable to a governmental plan will not be applied by the board of trustees. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 3-1-2; filed Mar 21, 1995, 2:00 p.m.: 18 IR 2034; readopted and extended filed Dec 3, 2001, 11:02 a.m.: 25 IR 1731; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3878)*

SECTION 3. 550 IAC 3-1-3 IS AMENDED TO READ AS FOLLOWS:

550 IAC 3-1-3 Purpose
Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-2-14; IC 21-6.1

Sec. 3. (a) The purpose of this rule is to comply with the UCA to the extent required by Section 401(a)(31) of the Code.

(b) A member of the fund may elect, at the time and in the manner prescribed by the board of trustees, to have all or a portion of an eligible rollover distribution paid directly to another eligible retirement plan as specified by the member.

(c) A surviving spouse who is entitled to receive an eligible rollover distribution may elect, at the time and in the manner prescribed by the board of trustees, to have all or a portion of an eligible rollover distribution paid directly to ~~an individual~~ **another eligible** retirement ~~account or annuity~~ **plan** as specified by the spouse. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 3-1-3; filed Mar 21, 1995, 2:00 p.m.: 18 IR 2034; readopted and extended filed Dec 3, 2001, 11:02 a.m.: 25 IR 1731; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3878)*

SECTION 4. 550 IAC 3-2-1 IS AMENDED TO READ AS FOLLOWS:

550 IAC 3-2-1 Model amendment language
Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-2-14; IC 21-6.1

Sec. 1. **The amendments to** this rule ~~applies~~ **required by EGTRRA apply** to distributions made on or after January 1, ~~1993.~~ **2002.** Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 3-2-1; filed Mar 21, 1995, 2:00 p.m.: 18 IR 2034; readopted and extended filed Dec 3, 2001, 11:02 a.m.: 25 IR 1731; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3878)*

SECTION 5. 550 IAC 3-2-2 IS AMENDED TO READ AS FOLLOWS:

550 IAC 3-2-2 Definitions
Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-2-14; IC 21-6.1

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) "Distributee" includes an employee or former employee, **as well as the employee's or former employee's surviving spouse.** In addition, the employee's or former employee's surviving ~~spouse and the employee's or former employee's spouse~~ or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, ~~are distributees~~ **is a distributee** with regard to the interest of the spouse or former spouse.

(d) "Eligible retirement plan" means:
(1) an individual retirement account described in Section 408(a) of the Code;
(2) an individual retirement annuity described in Section 408(b) of the Code;
(3) an annuity plan described in Section 403(a) of the Code; ~~or~~
(4) a qualified trust described in Section 401(a) of the Code;
(5) an eligible deferred compensation plan under Section 457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (so long as the plan agrees to separately account for amounts rolled into the plan); or
(6) an annuity contract under Section 403(b) of the Code;
that accepts the distributee's eligible rollover distribution. ~~However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~

(e) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include the following:
(1) Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee) and the distributee's designated beneficiary, or for a specified period of ten (10) years or more.
(2) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.
(3) The portion of any distribution that is not ~~includable~~ **includible** in gross income, ~~(determined without regard to the exclusion~~ **provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution** for ~~net unrealized appreciation with respect~~ **purposes of a rollover** to ~~employer securities).~~ **either:**
(A) a traditional individual retirement account or individual retirement annuity; or
(B) a qualified trust that is part of a plan that is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer.
(4) Any distribution that is made upon hardship by the member.
(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 3-2-2; filed Mar 21, 1995, 2:00 p.m.: 18 IR 2034; readopted and extended filed Dec 3, 2001, 11:02 a.m.: 25 IR 1731; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3879)

SECTION 6. 550 IAC 5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 5. ANNUAL COMPENSATION LIMITS

Rule 1. General Provisions

550 IAC 5-1-1 Definitions
Authority: IC 5-10.2-2-1; IC 21-6.1-3-6
Affected: IC 5-10.2-2-1.5; IC 21-6.1

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(c) "EGTRRA" means Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16, and all applicable regulations and amendments related thereto.

(d) "Fund" means the Indiana state teachers' retirement fund.

(e) "IRS" means the Internal Revenue Service.

(f) "OBRA '93" refers to the federal Omnibus Budget Reconciliation Act of 1993, P.L.103-66, and all applicable regulations and amendments related thereto. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 5-1-1; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3879)*

550 IAC 5-1-2 Introduction
Authority: IC 5-10.2-2-1; IC 21-6.1-3-6
Affected: IC 5-10.2-2-1.5; IC 21-6.1

Sec. 2. (a) OBRA '93 was signed into law on August 10, 1993. Among other things, OBRA '93 contained amendments to Section 401(a)(17) of the Code relating to the annual compensation limit for tax-qualified retirement plans. Section 401(a)(17) of the Code provides an annual compensation limit for each employee under a qualified

plan. The annual compensation limit was subsequently amended by EGTRRA for plan years beginning after December 31, 2001. A plan may not base contributions or benefits on annual compensation in excess of this annual compensation limit.

(b) Prior to its amendment by OBRA '93, the annual compensation limit under Section 401(a)(17) of the Code was two hundred thousand dollars ($200,000), adjusted for cost-of-living increases (two hundred thirty-five thousand eight hundred forty dollars ($235,840) for 1993). Section 401(a)(17) of the Code was amended by OBRA '93 to reduce the annual compensation limit to one hundred fifty thousand dollars ($150,000), and to modify the manner in which cost-of-living adjustments are made to the annual compensation limit. EGTRRA subsequently amended this annual compensation limit to two hundred thousand dollars ($200,000) as modified by cost of living adjustments.

(c) OBRA '93, however, provides a grandfather clause for certain eligible participants in governmental plans. This grandfather rule applies to individuals who already were participants in governmental plans before the first plan year beginning after December 31, 1995, or, if earlier, the first plan year for which the plan is amended to comply with OBRA '93. Under the grandfather rule, the annual compensation limit contained in OBRA '93 will not apply to those eligible participants to the extent that the annual compensation limit in OBRA '93 would reduce the amount of compensation taken into account under the plan below the amount that was allowed to be taken into account under the plans as in effect on July 1, 1993. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 5-1-2; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3879)*

550 IAC 5-1-3 Purpose
Authority: IC 5-10.2-2-1; IC 21-6.1-3-6
Affected: IC 5-10.2-2-1.5; IC 21-6.1

Sec. 3. The purpose of this rule is to comply with OBRA '93 and EGTRRA as those acts amended Section 401(a)(17) of the Code. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 5-1-3; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3880)*

550 IAC 5-1-4 Text
Authority: IC 5-10.2-2-1; IC 21-6.1-3-6
Affected: IC 5-10.2-2-1.5; IC 21-6.1

Sec. 4. The annual compensation limitations of Section 401(a)(17) of the Code shall be applied as follows:
(1) The annual compensation limit under Section 401(a)(17) of the Code, as amended by OBRA '93 and EGTRRA, shall not apply to any eligible participant, in any future year, to the extent that the application of the annual compensation limit in Section 401(a)(17) of the Code, as amended by OBRA '93 and EGTRRA, would reduce the amount of annual compensation that is allowed to be taken into account under the fund below the amount that was allowed to be taken into account under the fund as in effect on July 1, 1993. As used in this subdivision, "eligible participants" includes all members who participated in the fund prior to July 1, 1996.
(2) The annual compensation limit under Section 401(a)(17) of the Code, as amended by OBRA '93, will be effective with respect to noneligible participants as of July 1, 1996. As used in this subdivision, "noneligible participants" includes all members who did not participate in a fund prior to July 1, 1996. Effective for years beginning after December 31, 2001, the annual compensation limit under Code Section 401(a)(17), as amended by EGTRRA, will be effective with respect to noneligible participants.
(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 5-1-4; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3880)

SECTION 7. 550 IAC 6 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6. ROLLOVERS, SERVICE PURCHASES, AND ENHANCED RETIREMENT SAVINGS OPPORTUNITIES

Rule 1. General Provisions

550 IAC 6-1-1 Definitions
Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-3-10; IC 21-6.1

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Board of trustees" means the board of trustees of the Indiana state teachers' retirement fund.

(c) "Code" means the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq., and all amendments related thereto.

(d) "Direct rollover" means a payment from an eligible retirement plan specified by the member to the fund.

(e) "EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16, and all applicable regulations and amendments related thereto.

(f) "Eligible retirement plan" means:
(1) an individual retirement account described in Section 408(a) of the Code;
(2) an individual retirement annuity described in Section 408(b) of the Code;
(3) an annuity plan described in Section 403(a) of the Code;

(4) a qualified trust described in Section 401(a) of the Code;
(5) an eligible deferred compensation plan under Section 457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (so long as the plan agrees to separately account for amounts rolled into the plan); or
(6) an annuity contract under Section 403(b) of the Code;
that accepts the distributee's eligible rollover distribution.

(g) "Eligible rollover distribution" means any distribution of all or any taxable portion of the benefit to the credit of a member or a member's spouse, except that an eligible rollover distribution does not include the following:
(1) Any distribution that is one (1) of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the member and the member's designated beneficiary.
(2) Any distribution that is one (1) of a series of substantially equal periodic payments for a specified period of ten (10) years or more.
(3) Any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.
(4) The portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover to either:
(A) a traditional individual retirement account or individual retirement annuity; or
(B) a qualified trust which is part of a plan which is a defined contribution plan that will separately account for the taxable and nontaxable portions of the distribution, in a direct trustee-to-trustee transfer.
(5) Any distribution that is made upon hardship by the member.

(h) "Fund" means the Indiana state teachers' retirement fund.

(i) "IRS" means the Internal Revenue Service. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 6-1-1; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3880)*

550 IAC 6-1-2 Rollover for purchase of service
Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-3-10; IC 21-6.1

Sec. 2. The fund may accept any portion of an eligible rollover distribution in payment of all or a portion of a member's purchase of service credit authorized under the fund's statutes. The fund may accept an eligible rollover distribution paid directly to the system in a direct rollover. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 6-1-2; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3881)*

550 IAC 6-1-3 Trustee-to-trustee transfer
Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-3-10; IC 21-6.1

Sec. 3. The fund may accept a direct trustee-to-trustee transfer from a deferred compensation plan under Code Section 457(b) or a tax-sheltered annuity under Code Section 403(b) for the purchase of permissive service credit, as defined in Code Section 415(n)(3)(A), or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3). *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 6-1-3; filed Jul 15, 2003, 4:30 p.m.: 26 IR 3881)*

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TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #02-213(F)

DIGEST

Amends 872 IAC 1-1-6.1 to establish that credit hours taken to comply with the educational requirements in IC 25-2.1-3-2 cannot be duplicated. Amends 872 IAC 1-1-12 to revise the examination used for accounting practitioners to comply with IC 25-2.1-6-1. Amends 872 IAC 1-3-14 to establish that continuing professional education hours obtained to renew a lapsed certificate cannot be double counted by using the hours for credit for renewal at the end of the reporting period. Adds 872 IAC 1-5 to establish the requirements for substantial equivalency. Effective 30 days after filing with the secretary of state.

872 IAC 1-1-6.1 **872 IAC 1-3-14**
872 IAC 1-1-12 **872 IAC 1-5**

SECTION 1. 872 IAC 1-1-6.1 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-6.1 Educational requirements
Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-3-2; IC 25-2.1-6

Sec. 6.1. **(a)** Compliance with IC 25-2.1-3-2, regarding educational requirements for first time examination applicants, will be met by obtaining at least one hundred fifty (150) semester hours of college education, including a baccalaureate

or higher degree from an accredited college or university. As part of the one hundred fifty (150) semester hours, an applicant must meet any one (1) of the following conditions:

(1) Earned a graduate degree from a college or university that is accredited by an accrediting organization as included in section 6.3 of this rule and completed:

(A) at least twenty-four (24) semester hours in accounting at the undergraduate level or fifteen (15) semester hours in accounting at the graduate level; and

(B) at least twenty-four (24) semester hours in business administration and economics courses, other than accounting courses, at the undergraduate or graduate level.

The business administration courses may include up to six (6) hours of business and tax law courses and up to six (6) hours of computer science courses. The accounting hours must include courses covering the subjects of financial accounting, auditing, taxation, and managerial accounting. If the accounting hours are a mixture of graduate and undergraduate hours, the higher number of required hours applies.

(2) Earned a baccalaureate degree from a college or university that is accredited by an accrediting organization as included in section 6.3 of this rule and completed:

(A) at least twenty-four (24) semester hours in accounting at the undergraduate or graduate level, including courses covering the subjects of financial accounting, auditing, taxation, and managerial accounting; and

(B) at least twenty-four (24) semester hours in business administration and economics courses other than accounting courses.

The business administration courses may include up to six (6) hours of business and tax law courses and up to six (6) hours of computer science courses.

(b) College courses with substantial duplication of content may be counted only one (1) time toward the requirements in IC 25-2.1-3-2 and this section. *(Indiana Board of Accountancy; 872 IAC 1-1-6.1; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3933; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Aug 3, 2001, 4:34 p.m.: 24 IR 3989; filed Jul 30, 2003, 5:15 p.m.: 26 IR 3881)*

SECTION 2. 872 IAC 1-1-12 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-12 Contents of examinations; grading

Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-3; IC 25-2.1-6-1

Sec. 12. (a) As the examination for certified public accountant applicants, the board or the board's designee shall use the Uniform CPA examination ~~which~~ **that** is given in May and November of each calendar year and prepared by the AICPA under a plan of cooperation with the boards of all states and territories of the United States. The examination consists of the following parts:

(1) Auditing.

(2) Business law and professional responsibilities.

(3) Financial accounting and reporting.

(4) Accounting and reporting–taxation, managerial and governmental, and not-for-profit organizations.

(b) The board or the board's designee shall use the Advisory Grading Service provided by the AICPA under a plan of cooperation with the boards of all states and territories of the United States to assist it in performing its duties under IC 25-2.1.

(c) A passing grade of seventy-five percent (75%) or more for each subject is required.

(d) For ~~the~~ purposes of section 19 of this rule, for conditioned candidates reexamination requirements, those applicants who prior to the May 1994 examination had credit for **passing:**

(1) ~~passing~~ auditing shall have credit for auditing;

(2) ~~passing~~ commercial law shall have credit for passing business law and professional responsibilities;

(3) ~~passing~~ theory of accounts shall have credit for passing financial accounting and reporting; and

(4) ~~passing~~ accounting practice (two (2) parts) shall have credit for passing accounting and reporting.

(e) As the examination for accounting practitioners, the board or the board's designee shall use ~~the Accounting and Reporting section~~ **sections** of the Uniform CPA examination ~~given in May and November of each calendar year and prepared by the AICPA.~~ **as provided for in this subsection. An individual with a two (2) year associate degree under IC 25-2.1-6-1(a)(3)(A) shall take the financial accounting and reporting and the accounting and reporting sections of the Uniform CPA examination. An individual with a baccalaureate degree under IC 25-2.1-6-1(a)(3)(B) shall take only the financial accounting and reporting section of the Uniform CPA examination.**

(f) The board or the board's designee may also make use of the Advisory Grading Service provided by the AICPA to assist in performing its duties under IC 25-2.1. A passing grade of seventy-five percent (75%) or more is required. *(Indiana Board of Accountancy; Rule 69-1, 12; filed Jun 30, 1978, 9:54 a.m.: 1 IR 397; filed May 1, 1984, 12:50 p.m.: 7 IR 1540; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1034; filed Aug 28, 1986, 3:20 p.m.: 10 IR 66; filed Apr 5, 1994, 3:30 p.m.: 17 IR 1888; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Jul 30, 2003, 5:15 p.m.: 26 IR 3882)*

SECTION 3. 872 IAC 1-3-14 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-3-14 Reactivation of lapsed certificate

Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-4-5

Sec. 14. (a) An individual whose certificate has lapsed for more than eighteen (18) months who wishes to reenter the practice of accountancy must file an application to renew the lapsed certificate. An individual whose certificate has lapsed for eighteen (18) months or less is governed by section 17 of this rule.

(b) The application shall be accompanied by the following:
(1) A statement of the licensee's employment activity for the previous twenty-four (24) months.
(2) The payment of the fee for a triennial permit specified in 872 IAC 1-1-10.
(3) Evidence of the completion of the CPE hours required by subsection (c).

(c) In order to reenter the practice of public accountancy and receive a certificate under this section, a licensee shall complete one hundred twenty (120) CPE hours prior to filing the application.

(d) The CPE hours required under subsection (c) must:
(1) have been obtained no earlier than three (3) years prior to the date the application for reentry is filed; and
(2) meet the requirements established in sections 3 through ~~5~~ **4** of this rule.

~~For purposes of this section, the reporting period referenced in section 5 of this rule shall be the period described in subdivision (1).~~

(e) CPE hours obtained by a certificate holder to renew a lapsed certificate under this section cannot be double counted by also using them for credit in the reporting period in progress for renewal of the license at the end of the reporting period. The CPE requirements for the reporting period in progress at the time of reactivation are stated in section 16 of this rule. *(Indiana Board of Accountancy; 872 IAC 1-3-14; filed May 17, 1988, 3:15 p.m.: 11 IR 3569, eff Jul 1, 1988; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2351; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3937; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Jul 30, 2003, 5:15 p.m.: 26 IR 3882)*

SECTION 4. 872 IAC 1-5 IS ADDED TO READ AS FOLLOWS:

Rule 5. Substantial Equivalency

872 IAC 1-5-1 Certification or permit not required for CPA certificate holders from other states; substantial equivalency

Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-3; IC 25-2.1-4-10

Sec. 1. (a) Any out-of-state CPA certificate holder, whose principal place of business is not in Indiana, exercising the privileges under IC 25-2.1-4-10 shall submit to the board, prior to practicing in Indiana, a notice of intent to practice accountancy in Indiana, including all of the following:

(1) The individual's name, address of the principal place of business, and certificate number.

(2) A certification of the CPA's certificate of registration from the jurisdiction that issued the certificate.

(3) The name, address, and firm permit number, if any, of the firm with which the individual CPA practices.

(b) An individual exercising the privileges under IC 25-2.1-4-10 shall renew with the board his or her notice of intent no later that January 2 of each year by submitting the information required in subsection (a).

(c) The notice of intent shall be amended within thirty (30) days after the individual changes his or her principal place of business or within thirty (30) days after the out-of-state certificate of registration has been denied, revoked, or suspended in any jurisdiction.

(d) An individual who previously exercised the privileges under IC 25-2.1-4-10 but no longer holds a valid certificate of registration in another state or whose principal place of business becomes in Indiana may no longer exercise those privileges without obtaining an Indiana CPA certificate. *(Indiana Board of Accountancy; 872 IAC 1-5-1; filed Jul 30, 2003, 5:15 p.m.: 26 IR 3883)*

LSA Document #02-213(F)
Notice of Intent Published: 25 IR 3810
Proposed Rule Published: April 1, 2003; 26 IR 2465
Hearing Held: May 16, 2003
Approved by Attorney General: July 15, 2003
Approved by Governor: July 23, 2003
Filed with Secretary of State: July 30, 2003, 5:15 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 327 WATER POLLUTION CONTROL BOARD

Under IC 4-22-8-4(c), corrects the following clerical error in the Indiana Administrative Code, 2003 Edition:

In 327 IAC 5-2-11.6(c)(5)(B), delete

"Monthly Average $= 22\left(e^{(Z_{95}\sigma_n - 0.5\sigma_n{}^2)}\right)$ LTA"

and insert

"Monthly Average $= \left(e^{(Z_{95}\sigma_n - 0.5\sigma_n{}^2)}\right)$ LTA".

Retroactively effective to the same date and time as LSA Document #96-244(F).

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Under IC 4-22-2-38, corrects the following clerical error in the Indiana Administrative Code:

In 410 IAC 6-9-3(j)(3), delete "410 IAC 7-15.1" and insert "410 IAC 7-20".

Filed with Secretary of State: July 29, 2003, 3:45 p.m.

Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from the date and time filed with the Secretary of State.

Notice of Recall

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #02-342

Under IC 4-22-2-40, LSA Document #02-342, printed at 26 IR 2397, is recalled.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-197(E)

DIGEST

Temporarily adds rules concerning instant game number 655. Effective July 15, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 655, Triple Payout".**

SECTION 2. **Instant tickets in instant game number 655 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 655 shall contain twelve (12) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Ten (10) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" and be arranged in pairs representing numbers and prize amounts.**

(b) The play symbols and play symbol captions, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELV
(12) 12
TLV
(13) 13
TRN
(14) 14
FRN
(15) 15
FTN
(16) $$
DOUBLE
(17) $$$
TRIPLE

(c) The play symbols and play symbol captions representing prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $5.00
FIVE
(4) $10.00
TEN
(5) $20.00
TWENTY
(6) $50.00
FIFTY
(7) $100
ONE HUN
(8) $500
FIVE HUN
(9) $2,000
TWO THOU

SECTION 4. **The holder of a ticket in instant game number 655 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If one (1) or more of "YOUR NUMBERS" match either of the "WINNING NUMBERS", the holder is entitled to the prize amount paired with the matched number. If the play symbol "$$" is exposed, the holder is entitled to double the paired prize amount. If the play symbol "$$$" is exposed, the holder is entitled to triple the paired prize amount. The matched prize play symbols, prize amounts, and number of winners in instant game number 655 are as follows:**

Matched Play Symbols	Prize Amount	Approximate Number of Winners
1 – $1.00	$1	480,000
2 – $1.00	$2	48,000
1 – $1.00 with $$	$2	36,000
1 – $2.00	$2	36,000
3 – $1.00	$3	24,000
1 – $1.00 with $$$	$3	12,000
5 – $1.00	$5	24,000
1 – $5.00	$5	12,000
2 – $5.00	$10	12,000
1 – $5.00 with $$	$10	12,000
5 – $2.00	$10	12,000

1 – $10	**$10**	**6,000**
1 – $5.00 with $$$	**$15**	**12,000**
2 – $5.00 +1 – $10.00	**$20**	**6,000**
1 – $20.00	**$20**	**6,000**
1 – $10.00 + 2 – $20.00	**$50**	**1,290**
2 – $5.00 with $$ + 1 – $10.00 with $$$	**$50**	**1,290**
1 – $50	**$50**	**1,290**
5 – $100	**$500**	**30**
1 – $500	**$500**	**45**
1 – $500 with $$	**$1,000**	**15**
1 – $2,000	**$2,000**	**6**

SECTION 5. **(a) There shall be approximately three million six hundred thousand (3,600,000) instant tickets initially available in instant game number 655.**

(b) The odds of winning a prize in instant game number 655 are approximately 1 in 4.85.

(c) All reorders of tickets for instant game number 655 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 655 is July 30, 2004.**

SECTION 7. **SECTIONS 1 through 6 of this document expire August 31, 2004.**

LSA Document #03-197(E)
Filed with Secretary of State: July 15, 2003, 4:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-198(E)

DIGEST

Temporarily adds rules concerning instant game number 656. Effective July 15, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 656, Tic Tac Toe".**

SECTION 2. **Instant tickets for instant game number 656 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Instant tickets for instant game number 656 shall have four (4) separate and independent game play data areas. The game play data area located on the left side of each instant ticket shall be labeled "YOUR NUMBERS" and shall have ten (10) play symbols. The game play data area in the middle of the ticket shall have four (4) separate games and each game shall contain nine (9) play symbols representing numbers arranged in three (3) rows and three (3) columns. Each row, column, and diagonal in each of the four (4) separate games shall be labeled with a prize amount.**

(b) The play symbols appearing in each of the four (4) separate games shall consist of the following possible play symbols:

01	**11**	**21**	**31**	**41**
02	**12**	**22**	**32**	**42**
03	**13**	**23**	**33**	**43**
04	**14**	**24**	**34**	**44**
05	**15**	**25**	**35**	**45**
06	**16**	**26**	**36**	**46**
07	**17**	**27**	**37**	**47**
08	**18**	**28**	**38**	**48**
09	**19**	**29**	**39**	**49**
10	**20**	**30**	**40**	**50**

SECTION 4. **The holder of a valid instant ticket in instant game number 656 shall remove the latex material covering the play symbols in the "YOUR NUMBERS" game play data area. The holder shall then remove the latex material covering the play symbols in each of the four (4) separate games. If the play symbols exposed in "YOUR NUMBERS" game play data area match three (3) play symbols exposed in a row, column, or diagonal, the holder is entitled to the associated prize. Players can win once on each game and up to four (4) times on an instant ticket in instant game number 656. The number of winning plays, total prize amounts, and approximate number of winners in instant game number 656 are as follows:**

Number of Rows with Matching Play Symbols and Row Prize Amounts	Total Prize Amount	Approximate Number of Winners
1 – $2.00	**$2**	**327,600**
4 – $1.00	**$4**	**88,200**
1 – $5.00	**$5**	**63,000**
2 – $5.00	**$10**	**25,200**
1 – $10.00	**$10**	**12,600**
4 – $5.00	**$20**	**12,600**
2 – $10.00	**$20**	**12,600**
2 – $5.00 + 1 – $10.00	**$20**	**6,300**
1 – $20.00	**$20**	**6,300**
3 – $10.00	**$30**	**2,100**
2 – $5.00 + 1 – $20.00	**$30**	**2,100**

2 – $10.00 + 1 – $20.00	**$40**	**1,575**
4 – $10.00	**$40**	**1,575**
1 – $10.00 + 1 – $40.00	**$50**	**1,365**
1 – $50.00	**$50**	**1,365**
3 – $10.00 + 1 – $20.00	**$50**	**1,365**
2 – $50.00	**$100**	**210**
1 – $100	**$100**	**210**
1 – $10.00 + 1 – $40.00 + 1 – $50.00	**$100**	**210**
2 – $5.00 + 1 – $40.00 + 1 – $50.00	**$100**	**210**
4 – $50.00	**$200**	**126**
2 – $50.00 + 1 – $100	**$200**	**126**
1 – $200	**$200**	**126**
2 – $500	**$1,000**	**42**
1 – $100 + 2 – $200 + 1 – $500	**$1,000**	**42**
1 – $1,000	**$1,000**	**21**
1 – $15,000	**$15,000**	**4**

SECTION 5. **(a) A total of approximately two million five hundred thousand (2,500,000) instant tickets will be initially available for instant game number 656.**

(b) The odds of winning a prize with an instant ticket in instant game number 656 are approximately 1 in 4.44.

(c) All reorders of tickets for instant game number 656 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 656 is July 31, 2004.**

SECTION 7. **SECTIONS 1 through 6 of this document expire August 31, 2004.**

LSA Document #03-198(E)
Filed with Secretary of State: July 15, 2003, 4:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-199(E)

DIGEST

Temporarily adds rules concerning instant game number 657. Effective July 15, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 657, Domino Dollars".**

SECTION 2. **Instant tickets in instant game number 657 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 657 shall contain eleven (11) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. One (1) play symbol and play symbol caption representing a domino shall appear in the area labeled "LUCKY DOMINO". Ten (10) play symbols and play symbol captions shall be in the area labeled "YOUR DOMINOES" and shall be arranged in pairs representing dominoes and prize amounts.**

(b) The play symbols and play symbol captions appearing in the instant game number 657, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:
(1) A picture representing a domino with the numbers 0 0 ZROZRO
(2) A picture representing a domino with the numbers 0 1 ZROONE
(3) A picture representing a domino with the numbers 0 2 ZROTWO
(4) A picture representing a domino with the numbers 0 3 ZROTHR
(5) A picture representing a domino with the numbers 0 4 ZROFOR
(6) A picture representing a domino with the numbers 0 5 ZROFIV
(7) A picture representing a domino with the numbers 0 6 ZROSIX
(8) A picture representing a domino with the numbers 1 1 ONEONE
(9) A picture representing a domino with the numbers 1 2 ONETWO
(10) A picture representing a domino with the numbers 1 3 ONETHR
(11) A picture representing a domino with the numbers 1 4 ONEFOR
(12) A picture representing a domino with the numbers 1 5 ONEFIV
(13) A picture representing a domino with the numbers 1 6 ONESIX
(14) A picture representing a domino with the numbers 2 2 TWOTWO
(15) A picture representing a domino with the numbers 2 3 TWOTHR
(16) A picture representing a domino with the numbers 2 4 TWOFOR
(17) A picture representing a domino with the numbers 2 5 TWOFIV
(18) A picture representing a domino with the numbers 2 6 TWOSIX

(19) A picture representing a domino with the numbers 3 3
THRTHR
(20) A picture representing a domino with the numbers 3 4
THRFOR
(21) A picture representing a domino with the numbers 3 5
THRFIV
(22) A picture representing a domino with the numbers 3 6
THRSIX
(23) A picture representing a domino with the numbers 4 4
FORFOR
(24) A picture representing a domino with the numbers 4 5
FORFIV
(25) A picture representing a domino with the numbers 4 6
FORSIX
(26) A picture representing a domino with the numbers 5 5
FIVFIV
(27) A picture representing a domino with the numbers 5 6
FIVSIX
(28) A picture representing a domino with the numbers 6 6
SIXSIX

(c) The play symbols and play symbol captions representing prize amounts in instant game number 657 shall consist of the following possible play symbols and play symbol captions:
(1) $1.00
ONE
(2) $2.00
TWO
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $10.00
TEN
(6) $20.00
TWENTY
(7) $25.00
TWY FIVE
(8) $50.00
FIFTY
(9) $500
FIVE HUN
(10) $1,500
FTN HUN

SECTION 4. **The holder of a ticket in instant game number 657 shall remove the latex material covering the eleven (11) play symbols and play symbol captions. If one (1) or more of "YOUR DOMINOES" match the "LUCKY DOMINO", the holder is entitled to the prize amount paired with the matched domino. The number of matched play symbols, total prize amounts, and approximate number of winners are as follows:**

Number of Matched Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $1.00	$1	499,200
2 – $1.00	$2	41,600
1 – $2.00	$2	41,600
3 – $1.00	$3	10,400
1 – $5.00	$5	41,600
5 – $2.00	$10	10,400
2 – $5.00	$10	10,400
1 – $10.00	$10	10,400
3 – $5.00	$15	10,400
5 – $4.00	$20	5,200
2 – $5.00 + 1 – $10.00	$20	5,200
1 – $20.00	$20	2,600
5 – $5.00	$25	910
1 – $25.00	$25	910
5 – $10.00	$50	910
2 – $25.00	$50	325
1 – $50.00	$50	325
1 – $500	$500	91
1 – $1,500	$1,500	13

SECTION 5. **(a) There shall be approximately three million (3,000,000) instant tickets initially available in instant game number 657.**

(b) The odds of winning a prize in instant game number 657 are approximately 1 in 4.51.

(c) All reorders of tickets for instant game number 657 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 657 is July 30, 2004.**

SECTION 7. **SECTIONS 1 through 6 of this document expire August 31, 2004.**

LSA Document #03-199(E)
Filed with Secretary of State: July 15, 2003, 5:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #03-200(E)

DIGEST

Temporarily adds rules concerning instant game number 709. Effective July 15, 2003.

SECTION 1. **The name of this instant game is "Instant Game Number 709, 5 CARD POKER".**

SECTION 2. **Instant tickets in instant game number 709 shall sell for five dollars ($5) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 709 shall contain twenty-five (25) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. The play symbols and play symbol captions shall appear in a matrix of five (5) rows and five (5) columns. The rows shall be labeled "Row 1", "Row 2", "Row 3", "Row 4", and "Row 5". The columns shall be labeled "Column 1", "Column 2", "Column 3", "Column 4", and "Column 5". A legend containing play symbols and prize amounts shall appear above the game play data area.**

(b) The columns shall consist of the following possible play symbols and play symbol captions:

(1) A playing card ♠ with the number 2
TWOSP
(2) A playing card ♠ with the number 3
THRSP
(3) A playing card ♠ with the number 4
FORSP
(4) A playing card ♠ with the number 5
FIVSP
(5) A playing card ♠ with the number 6
SIXSP
(6) A playing card ♠ with the number 7
SVNSP
(7) A playing card ♠ with the number 8
EGTSP
(8) A playing card ♠ with the number 9
NINSP
(9) A playing card ♠ with a letter *[sic., the number]* **10**
TENSP
(10) A playing card ♠ with a letter "J"
JACSP
(11) A playing card ♠ with the letter "Q"
QUESP
(12) A playing card ♠ with the letter "K"
KNGSP
(13) A playing card ♠ with the letter "A"
ACESP
(14) A playing card ♣ with the number 2
TWOCL
(15) A playing card ♣ with the number 3
THRCL
(16) A playing card ♣ with the number 4
FORCL
(17) A playing card ♣ with the number 5
FIVCL
(18) A playing card ♣ with the number 6
SIXCL
(19) A playing card ♣ with the number 7
SVNCL
(20) A playing card ♣ with the number 8
EGTCL
(21) A playing card ♣ with the number 9
NINCL
(22) A playing card ♣ with a letter *[sic., the number]* **10**
TENCL
(23) A playing card ♣ with a letter "J"
JACCL
(24) A playing card ♣ with the letter "Q"
QUECL
(25) A playing card ♣ with the letter "K"
KNGCL
(26) A playing card ♣ with the letter "A"
ACECL
(27) A playing card ♥ with the number 2
TWOHT
(28) A playing card ♥ with the number 3
THRHT
(29) A playing card ♥ with the number 4
FORHT
(30) A playing card ♥ with the number 5
FIVHT
(31) A playing card ♥ with the number 6
SIXHT
(32) A playing card ♥ with the number 7
SVNHT
(33) A playing card ♥ with the number 8
EGTHT
(34) A playing card ♥ with the number 9
NINHT
(35) A playing card ♥ with a letter *[sic., the number]* **10**
TENHT
(36) A playing card ♥ with a letter "J"
JACHT
(37) A playing card ♥ with the letter "Q"
QUEHT
(38) A playing card ♥ with the letter "K"
KNGHT
(39) A playing card ♥ with the letter "A"
ACEHT
(40) A playing card ♦ with the number 2
TWODM
(41) A playing card ♦ with the number 3
THRDM
(42) A playing card ♦ with the number 4
FORDM
(43) A playing card ♦ with the number 5
FIVDM
(44) A playing card ♦ with the number 6
SIXDM
(45) A playing card ♦ with the number 7
SVNDM

(46) A playing card ♦ with the number 8
EGTDM
(47) A playing card ♦ with the number 9
NINDM
(48) A playing card ♦ with a letter *[sic., the number]* **10**
TENDM
(49) A playing card ♦ with a letter "J"
JACDM
(50) A playing card ♦ with the letter "Q"
QUEDM
(51) A playing card ♦ with the letter "K"
KNGDM
(52) A playing card ♦ with the letter "A"
ACEDM

SECTION 4. **The holder of a ticket in instant game number 709 shall remove the latex material covering the twenty-five (25) play symbols and play symbol captions. Play symbols have the value designated on the face of the playing card except that those with "J", "Q", and "K" shall have a value of ten (10) and those with "A" shall have a value of eleven (11). A player who exposes a poker hand designated on the legend shall win the associated prize(s) on the legend. The winning play symbols, total prize amounts, and number of winners in instant game number 709 are as follows:**

Number of Winning Hands and Play Symbols of Prizes	Total Prize Amount	Approximate Number of Winners
1 – pair of 10s or better	$5.00	448,800
2 – pair of 10s of *[sic., or]* better	$10.00	20,400
2 – pair	$10.00	20,400
1 – pair of 10s or better + 2 pair	$15.00	20,400
2 – pair	$20.00	10,200
2 – pairs + 1 pair of 10s or better	$25.00	20,400
3 – pair of 10s or better + 2 – pair	$25.00	20,400
1 – three of a kind	$25.00	20,400
1 – pair of 10s or better + 1 – three of a kind	$30.00	5,950
3 – 2 pair	$30.00	5,950
4 – pair of 10s or better + 2 – pair	$30.00	5,950
2 – three of a kind	$50.00	3,570
5 – 2 pair	$50.00	3,485
1 – straight	$50.00	3,400
2 – straight	$100	2,550
4 – three of a kind	$100	2,550
1 – flush	$100	2,550
5 – flush	$500	170
1 – full house	$500	170
2 – full house	$1,000	17
1 – 4 of a kind	$1,000	17
1 – 4 aces	$5,000	10
1 – straight flush	$10,000	6
1 – royal flush	$50,000	4

SECTION 5. **(a) There shall be approximately two million (2,000,000) instant tickets initially available in instant game number 709.**

(b) The odds of winning a prize in instant game number 709 are approximately 1 in 3.30.

(c) All reorders of tickets for instant game number 709 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 709 is July 31, 2004.**

SECTION 7. **SECTIONS 1 through 6 of this document expire August 31, 2004.**

LSA Document #03-200(E)
Filed with Secretary of State: July 15, 2003, 5:00 p.m.

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #03-210(E)

DIGEST

Temporarily adds a new rule restricting operating agents or applicants for operating agent to offer any gift, gratuity, compensation, travel, lodging, or anything of value to any individual associated with the contracting process that the individual is prohibited from accepting under state law and rules adopted by the state ethics commission under IC 4-2-6 and 40 IAC. Temporarily adds a new rule to require that any individual or business entity who directly or indirectly has applied or may apply to be an operating agent or has any commercial interest in a contract for operating agent with the commission under IC 4-33 and those representing an individual or business entity before the commission shall not engage in ex parte communications with a commission member or a member of the historic hotel preservation commission. Authority: IC 4-22-2-37.1; IC 4-33-4-3. Effective July 15, 2003.

SECTION 1. **(a) The purpose of this rule is to ensure the integrity of the contracting process for selection of an operating agent for the riverboat that may be operated in a historic hotel district. Because the gaming commission is charged with the responsibility of selecting an operating agent and directing the operation and management of the riverboat to be operated in a historic hotel district, and the historic hotel preservation commission is responsible to make recommendations to the gaming commission concerning the contracting process, the commission feels that it is necessary to put safeguards in place to ensure the integrity of the contracting process.**

(b) For purposes of this rule only, "applicant" means any individual or business entity that directly or indirectly has applied or may apply or has any commercial interest in a contract for operating agent with the commission under IC 4-33.

(c) This rule applies to operating agents and applicants for operating agent.

(d) Applicants for operating agent and those representing applicants before the commission shall not engage in any ex parte communication with members of the commission or members of a historic hotel preservation commission established pursuant to IC 36-7-11.5.

(e) No operating agent or applicant for operating agent may, directly or indirectly, give or offer to give any gift, gratuity, compensation, travel, lodging, or anything of value to individuals or groups of individuals who are involved in the contracting process or regulation of a casino in a historic hotel district, which the individual is prohibited from accepting under rules adopted by the state ethics commission under IC 4-2-6 and 40 IAC. Those individuals include, but are not limited to, the following people:

(1) Commission members.
(2) Commission employees.
(3) Commission agents.
(4) Members of the historic hotel preservation commission and its:
(A) advisory members;
(B) administrators;
(C) staff members;
(D) professional staff;
(E) consultants;
(F) attorneys;
(G) accountants; and
(H) other professionals necessary to carry out the historic hotel preservation commission's duties.

(f) Upon a determination by the commission that an operating agent or applicant for operating agent has violated this document, the commission may take any action it deems appropriate, including:

(1) denial of an applicant's application for operating agent under IC 4-33;
(2) void the operating agent contract;
(3) suspension of an operating agent contract;
(4) pursuant to IC 4-33-4-2(5), imposition of a penalty of not more than ten thousand dollars ($10,000), which shall be collected from the applicant and deposited in the state gaming account; or
(5) any combination of the penalties set forth in (A) through (D) of this section *[subdivisions (1) through (4)]***.**

SECTION 2. **SECTION 1 of this document expires 3 months** *[90 days]* **after filing with the secretary of state.**

LSA Document #03-210(E)
Filed with Secretary of State: July 15, 2003, 3:30 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-211(E)

DIGEST

Temporarily adds this rule defining "reconstruction" so that the Department of Natural Resources can carry out its duties under IC 14-28 concerning flood control. The Department adds this emergency rule taking into consideration the legislative intent set forth in IC 14-28-1-1. Authority: IC 4-22-2-37.1(16); IC 14-10-2-5(16). Effective August 1, 2003.

SECTION 1. **"Reconstruction", for purposes of IC 14-28-1-20, IC 14-28-1-24, and IC 14-28-1-25, means an activity that rehabilitates or restores the structural elements of the building, including, but not limited to, replacing walls, restoring the foundation, replacing floors, or conducting work on any elements necessary to support the structure. The term does not include activities such as painting, replacing floor coverings, replacing doors, replacing windows, or cleaning.**

SECTION 2. **SECTION 1 of this document expires July 31, 2004.**

LSA Document #03-211(E)
Filed with Secretary of State: July 30, 2003, 4:00 p.m.

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #03-223(E)

DIGEST

Temporarily amends provisions at 327 IAC 5-4-3 and adds provisions at 327 IAC 15-15. Authority: IC 4-22-2-37.1(a)(14).

NOTE: The original emergency document, LSA Document #03-127(E), as printed at 26 IR 3066, effective May 14, 2003, expires August 12, 2003. Effective August 11, 2003. Expires November 9, 2003.

SECTION 1. (327 IAC 5-4-3) (a) Concentrated animal feeding operations are point sources ~~subject to the~~ **that require** NPDES ~~permit program~~ **permits for discharges or potential discharges. Once an operation is defined as a CAFO SECTION, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.**

(b) **The following** definitions **apply throughout this rule:**

(1) "Animal confinement area" means the areas of the facility where animals are housed. It includes, but is not limited to, the following areas:

(A) Open lots.
(B) Housed lots.
(C) Feedlots.
(D) Confinement houses.
(E) Stall barns.
(F) Free stall barns.
(G) Milk rooms.
(H) Milking center.
(I) Cowyards.
(J) Barnyards.
(K) Medication pens.
(L) Walkers.
(M) Animal walkways.
(N) Stables.

~~(1)~~ **(2)** "Animal feeding operation" **or "AFO"** means **the following:**

(A) A lot or facility where the following conditions are met:

~~(A)~~ **(i)** Animals, other than aquatic animals, **that** have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any **twelve** (12) month period. ~~and~~

~~(B)~~ **(ii)** Crops, vegetation, forage growth, or post-harvest residues **that** are not sustained in the normal growing season over any portion of the lot or facility.

(B) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of this article, ~~(327 IAC 5),~~ to be a single animal feeding operation if ~~they~~ **the operations** adjoin each other or if ~~they~~ **the operations** use a common area or system for the disposal of wastes.

~~(2)~~ **(3)** "Concentrated animal feeding operation" **or "CAFO"** means an ~~animal feeding operation which meets the criteria set forth in clause (A) or (B) or which is designated~~ **AFO that is one (1) of the following:**

(A) A large CAFO.
(B) A medium CAFO.
(C) Designated as a CAFO by the commissioner under subsection (c).

~~(A) More than the numbers of animals specified in any of the following categories are confined:~~

~~(i) one thousand (1,000) slaughter and feeder cattle;~~
~~(ii) seven hundred (700) mature dairy cattle (whether milked or dry cows);~~
~~(iii) two thousand five hundred (2,500) swine each weighing over 25 kilograms (approximately 55 pounds);~~
~~(iv) five hundred (500) horses;~~
~~(v) ten thousand (10,000) sheep or lambs;~~
~~(vi) fifty-five thousand (55,000) turkeys;~~
~~(vii) one hundred thousand (100,000) laying hens or broilers (if the facility has continuous overflow watering);~~
~~(viii) thirty thousand (30,000) laying hens or broilers (if the facility has a liquid manure system);~~
~~(ix) five thousand (5,000) ducks; or~~
~~(x) one thousand (1,000) animal units; or~~

~~(B) (i) Either pollutants are discharged from the facility into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly from the facility into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event; and~~

~~(ii) More than the following numbers of animals are confined in any of the following categories:~~

~~(AA) three hundred (300) slaughter or feeder cattle;~~
~~(BB) two hundred (200) mature dairy cattle (whether milked or dry cows);~~
~~(CC) seven hundred fifty (750) swine, each weighing over 25 kilograms;~~
~~(DD) one hundred fifty (150) horses;~~
~~(EE) three thousand (3,000) sheep or lamb;~~
~~(FF) sixteen thousand five hundred (16,500) turkeys;~~
~~(GG) thirty thousand (30,000) laying hens or broilers (if the facility has continuous overflow watering);~~
~~(HH) nine thousand (9,000) laying hens or broilers (if the facility has a liquid manure handling system);~~
~~(II) one thousand five hundred (1,500) ducks; or~~
~~(JJ) three hundred (300) animal units.~~

~~(3) "Animal unit" means a unit of measurement for any animal feeding operation such that the total animal units is calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds)~~

~~multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.~~

~~(4) "Manmade" means constructed by man and used for the purpose of transporting wastes.~~

Two (2) or more AFOs under common ownership that are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for disposal of wastes.

(4) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.

(5) "Land application area" means land under the control of an AFO owner or operator, whether the land is owned, rented, leased, or subject to an access agreement, to which manure, litter, or process wastewater from the production area is or may be applied.

(6) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines as many as or more than the number specified in any of the following categories:

(A) Seven hundred (700) mature dairy cows, whether milked or dry.

(B) One thousand (1,000) veal calves.

(C) One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.

(D) Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more.

(E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.

(F) Five hundred (500) horses.

(G) Ten thousand (10,000) sheep or lambs.

(H) Fifty-five thousand (55,000) turkeys.

(I) Thirty thousand (30,000) hens or broilers if the AFO uses a liquid manure handling system.

(J) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.

(K) Eighty-two thousand (82,000) laying hens if the AFO uses other than a liquid manure handling system.

(L) Thirty thousand (30,000) ducks if the AFO uses other than a liquid manure handling system for ducks.

(M) Five thousand (5,000) ducks if the AFO uses a liquid manure handling system for ducks.

(7) "Liquid manure handling system for ducks" means any waste collection or storage system that involves the use of ponds for animal confinement and that collects waste generated by ducks or contaminated storm water from the production area.

(8) "Manure" means animal waste, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(9) "Manure storage area" means any area where manure is kept. It includes, but is not limited to, the following areas:

(A) Lagoons.

(B) Run-off ponds.

(C) Storage sheds.

(D) Stockpiles.

(E) Under house or pit storages.

(F) Liquid impoundments.

(G) Static piles.

(H) Composting piles.

(10) "Medium concentrated animal feeding operation" or "medium CAFO" means:

(A) any AFO that stables or confines the type and number of animals that fall within any of the following ranges and has been defined or designated as a CAFO:

(i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cattle, whether milked or dry.

(ii) Three hundred (300) to nine hundred ninety-nine (999) veal calves.

(iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.

(iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing fifty-five (55) pounds or more.

(v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.

(vi) One hundred fifty (150) to four hundred ninety-nine (499) horses.

(vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.

(viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.

(ix) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers if the AFO uses a liquid manure handling system.

(x) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.

(xi) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens if the AFO uses other than a liquid manure handling system.

(xii) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks if the AFO uses other than a liquid manure handling system for ducks.

(xiii) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks if the AFO uses a liquid manure handling system for ducks; and

(B) one (1) of these conditions are met:

(i) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(11) "No potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.

(12) "Process wastewater" means the following:

(A) Water directly or indirectly used in the operation of the AFO for any or all of the following:

(i) Spillage or overflow from animal or poultry watering systems.

(ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.

(iii) Direct contact swimming, washing, or spray cooling of animals.

(iv) Dust control.

(B) Process wastewater includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.

(13) "Production area" means that part of an AFO that includes the following:

(A) The animal confinement areas.

(B) The manure storage areas.

(C) The raw materials storage areas.

(D) The waste containment areas.

(E) Egg washing or processing facility.

(F) Any area used in the storage, handling, treatment, or disposal of mortalities.

(14) "Raw materials storage area" includes, but is not limited to, the following:

(A) Feed silos.

(B) Silage bunkers.

(C) Bedding materials.

(15) "Small concentrated animal feeding operation" or "small CAFO" means an AFO that is designated as a CAFO and is not a medium CAFO.

(16) "Waste containment area" means an area designed to contain manure, litter, or process wastewater and includes, but is not limited to, the following:

(A) Settling basins.

(B) Areas within berms and diversions that separate uncontaminated storm water.

(c) Case-by-case designation of concentrated animal feeding operations **requirements are as follows:**

(1) Notwithstanding any other provision of this SECTION, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of ~~pollution~~ **pollutants** to the waters of the state. In making this designation, the commissioner shall consider the following factors:

(A) The size of the animal feeding operation and the amount of wastes reaching waters of the state.

(B) The location of the animal feeding operation relative to waters of the state.

(C) The means of conveyance of ~~animal wastes~~ **manure** and process wastewaters into waters of the state.

(D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, **manure,** and process wastewaters into waters of the state. ~~and~~

(E) Other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall a permit application be required from a concentrated animal feeding operation designated under this subsection until there has been an on-site inspection of the operation and a determination that the operation should be regulated under the permit program.

(3) No animal feeding operation with less than the numbers of animals set forth in subsection ~~(b)~~ **(b)(6)** shall be designated as a concentrated animal feeding operation unless:

(A) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(B) pollutants are discharged directly into waters of the state ~~which~~ **that** originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) An owner or operator of a large CAFO does not need to seek permit coverage under this rule if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with SECTION 13 of this rule *[document]***.**

SECTION 2. (327 IAC 15-15-1) **The purpose of this rule is to establish an NPDES general permit for CAFOs. In addition to the requirements of this article for all general permits, this rule establishes the requirements for CAFOs in Indiana.**

SECTION 3. (327 IAC 15-15-2) **The definitions contained in IC 13-11-2, 327 IAC 5-1.5, SECTION 1 of this rule** *[document]***, and 327 IAC 15-1-2 apply throughout this rule. In addition to those definitions, the following definitions apply throughout this rule:**

(1) "Manure management plan" or "MMP" means the plan required under 327 IAC 16 for the proper handling, storage, and disposal of manure, litter, and process wastewater.

(2) "NRCS 590 standard" means the Indiana Natural

Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, July 2001.

SECTION 4. (327 IAC 15-15-3) **(a) This rule applies to all CAFOs or AFOs designated as CAFOs, under SECTION 1(c) of this rule** *[document]***, located within the permit boundary set forth in SECTION 4 of this rule** *[document]***. All CAFO owners or operators must seek coverage under this rule or through an individual NPDES permit except as provided in subsection (d).**

(b) Any owner or operator covered by this rule can request to be excluded from coverage under this general permit rule by applying for and obtaining an individual NPDES permit.

(c) A person excluded from the general permit rule solely because the person has a valid existing individual NPDES permit may request coverage under the general permit rule and may request revocation of the existing individual NPDES permit pursuant to 327 IAC 15-2-3.

(d) The discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of land application of the manure, litter, or process wastewater to land areas under its control is a discharge from the CAFO subject to NPDES permit requirements except in the event of an agricultural storm water discharge. A precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge provided the manure, litter, or wastewater has been applied in accordance with site-specific nutrient management practices and the requirements of this rule.

SECTION 5. (327 IAC 15-15-4) **(a) An owner or operator proposing:**

(1) construction of a CAFO;

(2) construction at a CFO that results in an increase in the number of animals such that it becomes a CAFO; or

(3) construction of a confinement building or waste management system at a CAFO;

must apply for a CFO approval from the commissioner in accordance with the following:

(A) 327 IAC 16-3-1(d) through (e).

(B) 327 IAC 16-5.

(C) 327 IAC 16-7-1.

(D) 327 IAC 16-7-2.

(E) 327 IAC 16-7-5 through 327 IAC 16-7-13.

(F) 327 IAC 16-8.

(b) If the proposed construction for the CAFO meets the requirements of this SECTION, as applicable, the commissioner will issue an approval. An application for a CFO approval constitutes a NOI for purposes of this rule. The approval can only be denied for noncompliance with applicable provisions in this SECTION and this rule.

(c) Any person proposing a new CAFO facility within the permit boundary shall submit a NOI at least one hundred eighty (180) days before the date the facility is populated with animals and must comply with all requirements of this rule upon submittal of the NOI.

SECTION 6. (327 IAC 15-15-5) **All CAFOs, or AFOs designated as CAFOs under SECTION 1(c) of this rule** *[document]* **or 40 CFR 122.23(c), within the boundaries of the state are regulated by this rule.**

SECTION 7. (327 IAC 15-15-6) **(a) Qualifying for this general permit rule constitutes an approval under IC 13-18-10.**

(b) A CAFO that has a general permit is not required to obtain or renew the CFO approval under 327 IAC 16-7-3 and 327 IAC 16-7-4 in order to operate.

SECTION 8. (327 IAC 15-15-7) **(a) The owner or operator of a CAFO shall submit a notice of intent (NOI) to be covered by this rule, on a form supplied by the commissioner, to the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015, Attention: Permits Section.**

(b) The NOI shall include the following:

(1) Name, telephone number, and mailing address of the owner and operator.

(2) Facility name and location address. Contact person and telephone number.

(3) Type and number of animals at the facility.

(4) Type of containment and storage and total capacity for manure, litter, and process wastewater storage.

(5) Total number of acres under control of the applicant available for land application.

(6) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).

(7) List of other environmental permits held and permit numbers including the CFO farm ID number provided on state CFO approval under 327 IAC 16.

(8) A topographic map of the facility.

(9) Payment of application fee of fifty dollars ($50).

(10) SIC code for the facility.

(c) The NOI must be signed by:

(1) the owner or operator of the facility for which the NOI is submitted; or

(2) a person described under 327 IAC 15-4-3(g).

(d) Following submittal of the NOI to IDEM, IDEM shall do the following:

(1) Review the NOI for completeness and applicability under this rule.
(2) Consider comments received on whether a facility meets the eligibility requirements for a general permit.
(3) Determine if the facility is eligible for a general permit under this rule or will be required to obtain an individual NPDES permit under 327 IAC 5.
(4) Request additional information, if needed.
(5) Notify the facility, within ninety (90) days of receipt of the NOI, that the applicant:
(A) qualifies for the general permit under this rule;
(B) does not qualify for the general permit under this rule; or
(C) must submit an individual NPDES permit application.

(e) In accordance with 40 CFR 122.28(b), any interested person may petition the commissioner to require a person subject to this rule to apply for and obtain an individual NPDES permit.

(f) Compliance with the NOI submission requirements under this rule may not be transferred. If ownership of a facility is transferred to a new person, that person must submit a NOI under this SECTION or apply for an individual NPDES permit under 327 IAC 5. The new owner must submit the NOI at least thirty (30) days prior to beginning operation at the transferred facility.

(g) A determination under this SECTION is appealable under IC 4-21.5.

SECTION 9. (327 IAC 15-15-8) **(a) The following are required to submit a NOI on or before April 13, 2006:**
(1) CAFOs with one thousand (1,000) or more cow/calf pairs.
(2) CAFOs with one thousand (1,000) or more veal calves.
(3) CAFOs with ten thousand (10,000) or more swine weighing less than fifty-five (55) pounds.
(4) CAFOs with one hundred twenty-five thousand (125,000) or more chickens other than laying hens and if the operation uses other than a liquid manure handling system.
(5) CAFOs with eighty-two thousand (82,000) or more laying hens if the operation uses other than a liquid manure handling system.
(6) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOS prior to that date because the operation discharged, is discharging, or will discharge only in the event of a twenty-five (25) year, twenty-four (24) hour storm.
These CAFOs must maintain a CFO approval under 327 IAC 16 until the NOI is submitted to comply with this rule.

(b) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date because the operation has not discharged, does not discharge, and will not discharge except in the event of a twenty-five (25) year, twenty-four (24) hour storm must certify to the commissioner in writing within ninety (90) days of the effective date of this rule that the AFO was not required to apply for a permit under 327 IAC 5 and that a discharge has not occurred from the operation and the operation was constructed and is at all times being maintained to preclude discharge during dry weather and wet weather up to and including the twenty-five (25) year, twenty-four (24) hour storm. The certification shall be signed in accordance with 327 IAC 15-4-3(g). Any operation that has a discharge after certifying to the commissioner under this subsection shall submit a NOI within thirty (30) days after the discharge.

(c) The owner or operator of any existing CAFO, except those listed in subsection (a) or timely certifying under subsection (b), shall submit a NOI within ninety (90) days of the effective date of this rule.

(d) Operations designated as a CAFO in accordance with SECTION 1(c) of this rule *[document]* **or 40 CFR 122.23(c) must submit a NOI no later than ninety (90) days after receiving the notice of designation.**

SECTION 10. (327 IAC 15-15-9) **(a) In addition to the conditions set forth in this rule, the conditions for a NPDES general permit under the following apply:**
(1) 327 IAC 15-1-1 Purpose.
(2) 327 IAC 15-1-2 Definitions.
(3) 327 IAC 15-1-3 Department request for data.
(4) 327 IAC 15-1-4 Enforcement.
(5) 327 IAC 15-2-1 Purpose and scope.
(6) 327 IAC 15-2-3 NPDES general permit rule applicability requirements.
(7) 327 IAC 15-2-4 Administrative requirement for NPDES general permits.
(8) 327 IAC 15-2-5 Notice of intent letter.
(9) 327 IAC 15-2-6 Exclusions.
(10) 327 IAC 15-2-7 Effect of general permit rule.
(11) 327 IAC 15-2-8 Nontransferability of notification requirements; time limits for individual NPDES permit applications.
(12) 327 IAC 15-2-9 Special requirements for NPDES general permit rule.
(13) 327 IAC 15-2-10 Prohibitions.
(14) 327 IAC 15-4-1, excluding subsections (h) and (m), General conditions.
(15) 327 IAC 15-4-3 Reporting requirements.

(b) The permittee must comply with 327 IAC 16-9 through 327 IAC 16-12 and must maintain the manure management plan (MMP) required under 327 IAC 16-7-11.

(c) This permit does not constitute a new or amended permit under 327 IAC 16-10-3(f)(2).

(d) Animals may not have direct access to waters of the state.

(e) Disposal of dead animals must be handled under rules of the board of animal health at 345 IAC 7-7-3.

SECTION 11. (327 IAC 15-15-10) **The following are specific permit conditions that apply to all CAFO NPDES general permits. Permit holders must:**

(1) Obtain approval under 327 IAC 16-7-1(b) for any change in design or construction under 327 IAC 16-8 and 327 IAC 16-9-1.

(2) Comply with NRCS 590 Standard* by December 31, 2006, unless the commissioner has approved an alternative method to minimize the potential for nutrients to be transported or to migrate. This approval is based on satisfying the intent of the NRCS 590 Standard*.

(3) Submit an annual report to the commissioner by February fifteenth of each year for the previous calender *[sic.]* **year with the following information:**

(A) Number and type of animals, whether in open confinement or housed under roof.

(B) Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous twelve (12) months.

(C) Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous twelve (12) months.

(D) Total number of acres for land application covered by MMP required by this rule.

(E) Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous twelve (12) months.

(F) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including the date, time, and approximate volume for each discharge.

(4) Develop soil conservation practice plan for land application areas within one (1) year after the effective date of this rule and implement the plan within three (3) years after the effective date of this rule. Developing and implementing a CNMP within the time frame specified in this subdivision satisfies this requirement. Any land:

(A) not owned or controlled by the CAFO to which manure is applied; and

(B) where the land owner does not implement conservation practices;

must be used in accordance with 327 IAC 16-10-3 through 327 IAC 16-10-5.

(5) Conduct manure testing for nitrogen and phosphorus annually.

(6) Land application of liquid manure on snow-covered or frozen ground is prohibited unless done in accordance with a plan approved by the commissioner. The plan must demonstrate to the commissioner that land application under such conditions will not lead to run-off and discharge to waters of the state. The plan may include information about slope, barriers between the land application area and waters of the state, method of application, other conservation practices to be used, or any other information that would demonstrate that the potential to discharge pollutants to waters of the state is minimized. Permittees may not land apply under such conditions until receiving approval of the plan by the commissioner.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204 or on-line at http://www.nrcs.usda.gov/technical/ECS/nutrient/590.html.**

SECTION 12. (327 IAC 15-15-11) **(a) The permittee shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter upon the premises where a regulated facility or activity is located, have access to and copy any records that must be kept under the conditions of this rule, in accordance with 327 IAC 15-4-1(l).**

(b) The conditions of this rule are subject to enforcement pursuant to 327 IAC 15-4-1 and IC 13-30.

SECTION 13. (327 IAC 15-15-12) **(a) The commissioner, upon request, may make a case-specific determination that a large CAFO has no potential to discharge pollutants to waters of the state. When making such a determination, the commissioner shall consider the following:**

(1) The potential for discharges from the production area.

(2) The potential for discharges from any land application area.

(3) Any record of prior discharges by the CAFO.

(b) The commissioner shall not determine the CAFO to have no potential to discharge pollutants if the CAFO has had a discharge within the five (5) years prior to the date of the request under this SECTION.

(c) To request a determination of no potential to discharge, the owner or operator shall submit any information that would support such a determination, including all NOI information required under SECTION 8 of this rule *[document]***. The commissioner may require additional**

information to supplement the request and may gather information through an on-site inspection of the CAFO. The information is to be submitted to the commissioner by the date required for submission of a NOI or permit application.

(d) Before making a final decision to grant a no potential to discharge determination, the commissioner shall issue a public notice of receipt of the request. The notice must be accompanied by a fact sheet, which shall include the following:

(1) A brief description of the type of facility or activity requesting the determination.

(2) A brief summary of the factual basis, upon which the request was based, for granting the determination.

(3) A description of the procedures for reaching a final decision on the determination.

(e) The commissioner must notify a CAFO of the final determination within ninety (90) days of receiving the request. If the commissioner denies the no potential for discharge determination, the owner or operator must seek coverage under a permit within thirty (30) days of the denial.

(f) Any unpermitted CAFO that discharges pollutants into waters of the state is in violation of the Clean Water Act even if it has received a no potential to discharge determination from the commissioner.

(g) Any CAFO that has received a determination under this SECTION but that anticipates changes in circumstances that could create the potential for a discharge shall contact the commissioner and apply for and obtain permit authorization prior to the change of circumstances.

(h) The commissioner retains the authority to require NPDES permit coverage for a CAFO that has received a determination under this SECTION if circumstances at the facility change, new information becomes available, or there is reason to believe that the CAFO has a potential to discharge.

SECTION 14. (327 IAC 15-15-13) **(a) Coverage under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences.**

(b) Coverage commences on the date that the applicant receives a letter of approval from the commissioner. The commissioner shall notify the applicant within ninety (90) days of receipt of the NOI as required in SECTION 8 of this rule *[document]***. If the applicant does not receive notification from the commissioner within the time frames specified in this SECTION, coverage shall commence ninety (90) days from the date the commissioner receives the NOI.**

(c) To obtain renewal of coverage under this general permit rule, the information required under SECTION 8 of this rule *[document]* **shall be submitted to the commissioner no later than forty-five (45) days prior to the expiration of coverage under this rule unless the commissioner determines that a later date is acceptable.**

(d) If a CAFO is required to submit an application for an individual NPDES permit, the general permit terminates when:

(1) the owner or operator fails to submit the permit application; or

(2) the individual permit is issued or denied by the commissioner.

SECTION 15. (327 IAC 15-15-14) **(a) CAFOs subject to this rule are required to meet the effluent limitations contained in 40 CFR 412*.**

(b) Compliance with general and specific permit conditions as required by SECTIONS 10 and 11 of this rule *[document]* **constitutes compliance with a nutrient management plan and implementation of best management practices as detailed in 40 CFR 412.4.**

(c) Any discharges under this rule are required to meet water quality standards under 327 IAC 5.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

LSA Document #03-223(E)
Filed with Secretary of State: August 11, 2003, 2:17 p.m.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #03-208(E)

DIGEST

Temporarily amends 345 IAC 1-3-30 by continuing provisions to prohibit the movement of cervids, cervid semen, and cervid embryos into Indiana. Authority: IC 15-2.1-18-21. The original emergency document LSA Document #03-120, as printed at 26 IR 3363, effective April 30, 2003, expires July 29, 2003. Effective July 29, 2003.

SECTION 1. **(a) For the purpose of this document, the following apply:**

(1) "Board" means the Indiana state board of animal health created under IC 15-2.1-3.
(2) "Chronic wasting disease" and "CWD" mean a transmissible spongiform encephalopathy of cervids.
(3) "State veterinarian" means the state veterinarian appointed under IC 15-2.1-4 and all authorized agents.

SECTION 2. **Chronic wasting disease (CWD) is not known to exist in the state. CWD has been diagnosed in captive and wild cervids in other states and Canadian provinces. CWD presents a health hazard to the animals of the state that could result in substantial damage to the domestic cervid industry in the state and the state's wild cervid population. Preventing the spread of CWD from cervids in other states is the best currently available method for addressing the CWD threat to animals in the state. The state veterinarian shall continue to evaluate the risks associated with CWD and the available methods for protecting animals in the state from CWD. The state veterinarian shall update the board on his findings. In the interim, because of the current CWD threat, the board temporarily adopts the following restrictions to protect the animals of the state from CWD:**

(1) Notwithstanding 345 IAC 1-3, a person may not move a cervid into the state. A person may not move cervid semen or cervid embryos into the state.

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

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

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

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

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

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

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

SECTION 3. **SECTIONS 1 and 2 of this document take effect July 29, 2003.**

SECTION 4. **SECTIONS 1 and 2 of this document expire October 27, 2003.**

LSA Document #03-208(E)
Filed with Secretary of State: July 11, 2003, 8:28 a.m.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #03-209(E)

DIGEST

Temporarily adds provisions that prohibit or limit the movement of certain animals and exposed animals into and within the state to control the spread of monkeypox. Authority: IC 15-2.1-18-21. Effective July 11, 2003.

SECTION 1. **The definitions in IC 15-2.1-2 and this SECTION apply throughout this document.**

(1) "Affected species" means the following:

(A) Prairie dogs (Cynomys sp.).
(B) Tree squirrels (Heliosciurus sp.).
(C) Rope squirrels (Funisciurus sp.).
(D) Dormices *[sic.]* **(Graphiurus sp.).**
(E) Gambian giant pouched rats (Cricetomys sp.).
(F) Brush-tailed porcupines (Atherurus sp.).
(G) Striped mice (Hybomys sp.).

(2) "Board" means the Indiana state board of animal health appointed under IC 15-2.1-3.
(3) "State veterinarian" means the state veterinarian appointed under IC 15-2.1-4.

SECTION 2. **(a) The United States Centers for Disease Control and Prevention (CDC) has diagnosed monkeypox in animals that have been distributed in the United States. Monkeypox presents a definite health hazard to the citizens and animals of Indiana. The board of animal health is enacting emergency provisions in this document to protect the citizens and animals of Indiana from the threat of monkeypox infection.**

(b) Notwithstanding 345 IAC 1-3 the following apply:
(1) No person may move an animal of the affected species into the state.
(2) No person may move into the state an animal that has been exposed to an animal of the affected species acquired since April 1, 2003.

(c) No person may transport, offer to transport, sell, offer for sale, distribute or exchange in any manner, or release into the environment an animal of the affected species.

(d) No person may display, exhibit, or engage in a similar activity with an animal of the affected species acquired since April 1, 2003, if the activity could result in direct human contact with the animal.

(e) The prohibitions in this document do not apply to the following:

(1) Persons who transport affected animals to veterinarians, animal control officials, or other entities under permit or instructions issued by the state veterinarian or a federal official.

(2) A state, federal, or local official discharging their official duties.

SECTION 3. **This document expires October 7, 2003.**

LSA Document #03-209(E)
Filed with Secretary of State: July 11, 2003, 8:28 a.m.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-66

Under IC 12-8-3-4.4, LSA Document #03-66, printed at 26 IR 3381, which amends 405 IAC 5-3-13 and 405 IAC 5-21-7 to require prior authorization for Medicaid reimbursement of assertive community treatment intensive case management services and amends 405 IAC 5-21-1 to define terms associated with assertive community treatment. The rule adds 405 IAC 5-21-8 to provide for assertive community treatment intensive case management service for certain Medicaid recipients with serious mental illness. The rule which was adopted on August 7, 2003, is in a different version than the proposed rule which was published in the Indiana Register on July 1, 2003.

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

LSA Document #03-57

LSA Document #03-57, which adds 440 IAC 5.2 concerning assertive community treatment teams which are certified by the Division of Mental Health and Addiction for individuals with a psychiatric disorder and/or an addiction, was adopted by the Director of the Division of Mental Health and Addiction, Suzanne F. Clifford, on August 1, 2003. The rule that was adopted is different from the proposed rule which was published in the Indiana Register on July 1, 2003.

Change in Notice of Public Hearing

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #01-288

The Solid Waste Management Board (board) hereby gives notice that the date of the public hearing for consideration of final adoption of LSA Document #01-288, Removal of References to Special Waste and Industrial Waste, has been changed. The hearing will now be held on October 21, 2003. If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register. The new Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on ***October 21, 2003****, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on proposed amendments removing references to special waste and industrial waste in 329 IAC 10, 329 IAC 11, 329 IAC 12, and 329 IAC 13.*

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

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

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

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

Copies of these rules are now on file at the IDEM Office of Land Quality, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

#02-160(SWMB)

The Solid Waste Management Board (board) hereby gives notice that the public hearing for consideration of preliminary adoption of LSA Document #02-160 will be held on October 21, 2003. If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register. The Notice of Public Hearing appears below.

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on ***October 21, 2003****, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on proposed amendments to 329 IAC 3.1-9-2.*

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

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

Attn: ADA Coordinator
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Indianapolis, Indiana 46206-6015

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

Copies of these rules are now on file at the IDEM Office of Land Quality, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

Change in Notice of Public Hearing

TITLE 828 STATE BOARD OF DENTISTRY

LSA Document #03-73

The State Board of Dentistry gives notice that the date of the public hearing for LSA Document #03-73, printed at 26 IR 3408, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

*Under IC 4-22-2-24, notice is hereby given that on **November 7, 2003** at **9:30 a.m.**, at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the State Board of Dentistry will hold a public hearing on proposed amendments concerning the examination for licensure to practice dentistry and proposed amendments concerning the examination for licensure to practice dental hygiene. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Lisa R. Hayes
Executive Director
Health Professions Bureau

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #03-235

Under IC 4-22-2-23, the Department of Local Government Finance intends to adopt a rule concerning the following:

OVERVIEW: Under the authority of IC 6-1.1-8.7-9; P.L.198-2001, the Department of Local Government Finance intends to adopt rules to provide just valuations of industrials facilities. This rule will also establish the uniform procedures necessary to review and assess the real property of an industrial facility as defined by the chapter. The Department of Local Government Finance invites written submissions expressing your views on these matters. Questions or comments may be directed to Heather Scheel, General Counsel, Department of Local Government Finance, at 100 North Senate Avenue, Room N1058, Indianapolis, Indiana 46204 or hscheel@tcb.state.in.us. Telephone number: 317-232-5895. Statutory authority: IC 6-1.1-8.7-9; P.L.198-2001.

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #03-234

Under IC 4-22-2-23, the Indiana Gaming Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds a new rule restricting operating agents or applicants for operating agent to offer any gift, gratuity, compensation, travel, lodging, or anything of value to any individual associated with the contracting process that the individual is prohibited from accepting under state law and rules adopted by the state ethics commission under IC 4-2-6 and 40 IAC. Adds a new rule to require that any individual or business entity who directly or indirectly has applied or may apply to be an operating agent or has any commercial interest in a contract for operating agent with the commission under IC 4-33 and those representing an individual or business entity before the commission shall not engage in ex parte communications with a commission member or a member of the historic hotel preservation commission. Public comments are invited. Questions concerning the rule may be directed to the following telephone number: (317) 233-0046, or e-mailed to jchelf@igc.state.in.us. Statutory authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-6.5.

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

LSA Document #03-212

Under IC 4-22-2-23, the Indiana Board of Licensure for Professional Geologists intends to adopt a rule concerning the following:

OVERVIEW: Amends 305 IAC by adding rule 5 establishing a code of ethics for licensed professional geologists. Also includes amendments to provide that fees are set by board resolution not directly by rule. Clarifies that certificates are reinstated by the board not the Indiana geological survey. Provides for annual rather than biannual publication of a roster of licensed geologists. Makes other technical changes. Public comments are invited. Statutory authority: IC 25-17.6-3-12.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-213

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 18 that regulates activities pertaining to entomology and plant pathology. An additional section would govern the release of a "beneficial organism" or a "pest or pathogen". Kudzu would be listed and regulated as a pest or pathogen. The authority of the state entomologist to establish and dissolve technical committees, to assist in evaluating issues pertaining to the release of beneficial organisms or pests or pathogens, would be clarified. A fee and acreage surcharge would be established for the performance of the voluntary certification of florist premises and greenhouses. Questions concerning the proposed rule amendments may be directed to the following telephone number: (317) 233-3322 or e-mail address: slucas@dnr.state.in.us. Statutory authority: IC 14-10-2-4; IC 14-24-3.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-214

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 18-3-12 that governs standards for the control of the larger pine shoot beetle by adding Union County to the quarantine area. Public questions and comments may be sent to the Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204, at jkane@dnr.state.in.us, or by telephone at (317) 232-4699. Statutory authority: IC 14-34-2-1.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-215

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends the rule that governs general licenses within floodways (with application, as well, to navigable waters under limited circumstances). The rule would be restructured so that provisions having universal application to these general licenses would be set forth at the beginning of the rule in new 312 IAC 10-5-0.3 and 312 IAC 10-5-0.6. The amendments would allow logjam and obstruction removal activities, from a qualified waterway listed on the Outstanding Rivers List, according to the approval requirements that ordinarily apply to logjam and obstruction removals under a general license. Questions concerning the proposed rule amendments may be directed to the following telephone number: (317) 233-3322 or e-mail: slucas@dnr.state.in.us. Statutory authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-218

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 19-1 that governs research, collection, quotas, and the sale of ginseng. Included are amendments to increase the application fee for a new license from $25 to $100 as anticipated by HEA 1552-2003. Questions or comments may be directed to slucas@dnr.state.in.us or by telephone at 317-233-3322. Statutory authority: IC 14-31-3-14.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-220

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 2 that governs delegations and informal procedures of the commission and its boards. The director of the commission's division of hearings would be authorized to give preliminary adoption to the readoption of rules, where no changes are proposed to existing language. Procedures for informal hearings, held prior to those governed by IC 4-21.5, would be modified to address any hearing by an agency board. Obsolete references to 310 IAC, which formerly applied to rules of the department of natural resources, would be repealed. Questions concerning the proposed rule amendments may be directed to the following telephone number: (317) 233-3322 or e-mail: slucas@dnr.state.in.us. Statutory authority: IC 14-10-2-4.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-236

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 405 IAC 1-10.5 to define intestinal and multivisceral transplants and to allow intestinal and multivisceral transplant procedures to be reimbursed on a percentage of reasonable cost until such time an appropriate Diagnosis Related Grouping (DRG) as determined by the office can be assigned. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #03-216

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Amends the rules on hospitals and ambulatory outpatient surgical centers to update the incorporated life safety code. Written comments may be submitted to the Indiana State Department of Health, Attn: Acute Care, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-21-1-7.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #03-224

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Amends rules setting licensing fees for hospitals or ambulatory outpatient surgery centers. Written comments may be submitted to the Indiana State Department of Health, Attn: Health Care Regulatory Services Commission, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-21-1-7.

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #03-229

Under IC 4-22-2-23, the Division of Disability, Aging, and Rehabilitative Services intends to adopt a rule concerning the following:

OVERVIEW: Adds a new rule to 460 IAC to provide for the posting of notices at housing with services establishments, area agencies on aging, and centers for independent living that advise residents of their rights, and for procedures for residents and their representatives to file complaints concerning violations of filing disclosure requirements. Statutory authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14.

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #03-230

Under IC 4-22-2-23, the Division of Disability, Aging, and Rehabilitative Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 460 IAC 1-3.5 concerning the funding for recipients of services provided under the Residential Care Assistance Program out of the available program appropriation. Effective 30 days after filing with the secretary of state. Statutory authority: IC 12-9-2-3; IC 12-10-6.

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #03-231

Under IC 4-22-2-23, the Division of Disability, Aging, and Rehabilitative Services intends to adopt a rule concerning the following:

OVERVIEW: Adds a new rule to 460 IAC to establish the caretaker support program and provide for the coordination and administration of the program and a client cost share formula for respite care services. Statutory authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-1-4; IC 12-10.5-2.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #03-232

Under IC 4-22-2-23, the Division of Family and Children intends to adopt a rule concerning the following:

OVERVIEW: Adds 470 IAC 3-4.8 for the emergency or temporary closure of child care centers and child care homes. Establishes a list of violations as required by IC 12-17.2-4-18.7 and IC 12-17.2-5-18.7 that would pose an immediate threat to the life or well-being of a child in the care of a child care licensee. Establishes procedures that will be used to invoke an emergency or temporary closure of a child care center or child care home. Statutory authority: IC 12-13-5-3; IC 12-17.2-4-18.7; IC 12-17.2-5-18.7.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #03-233

Under IC 4-22-2-23, the Division of Family and Children intends to adopt a rule concerning the following:

OVERVIEW: Adds 470 IAC 3-18 to establish the requirements and standards child care providers must meet in order to be eligible to receive a voucher payment under the Child Care and Development Fund voucher program. Applies to all types of child care providers who want to participate in the Child Care and Development Fund voucher program. Statutory authority: IC 12-13-5-3; IC 12-17.2-3.5-15.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #03-219

Under IC 4-22-2-23, the Indiana State Board of Education intends to adopt a rule concerning the following:

OVERVIEW: Amends 511 IAC 6.2 to bring the school accountability system into alignment with the federal No Child Left Behind Act of 2001. Adds a definition of "graduation rate" to 511 IAC 6.2. Repeals the definition of "Graduation rate" in 511 IAC 6.1-1-2(k). Effective for the class of students expected to graduate in the 2005-2006 school year. Statutory authority: IC 20-1-1-6; IC 20-1-1.2-18; IC 20-10.2-7-1.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #03-221

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: The department intends to promulgate a rule to implement various provision of IC 27-8-29 and IC 27-13-1.1

regarding external grievance procedures. Written comments may be submitted to the Indiana Department of Insurance, Attn: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204 or e-mail to astrati@doi.state.in.us. Statutory authority: IC 27-8-29-24; IC 27-13-10.1-12.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #03-222

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: The department intends to promulgate a rule to adjust the amounts that may be charged for copying medical records under IC 16-39. Written comments may be submitted to the Indiana Department of Insurance, Attn: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204 or e-mail to astrati@doi.state.in.us. Statutory authority: IC 16-39-9-4.

TITLE 808 STATE BOXING COMMISSION

LSA Document #03-226

Under IC 4-22-2-23, the State Boxing Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 808 IAC 1-3-6 to establish a time for the promoter to provide the commission an acceptable form of security for a match or exhibition. Amends 808 IAC 1-5-1 to address the seats provided by the promoter for the commission and for the judges. Amends 808 IAC 1-5-2 to require an applicant for a promoter's license to execute and file with the commission a bond. Amends 808 IAC 2-1-12 to establish the general requirements for female boxers. Amends 808 IAC 2–7-14 to revise the requirements for the discontinuation of a fight following an accidental butt. Amends 808 IAC 2-8-7 to revise the requirements for the termination of contests. Repeals 808 IAC 2-8-8 regarding the standing eight count. Amends 808 IAC 2-9-5 to change no decision matches to exhibitions. Amends 808 IAC 2-17-1 to revise the classifications in the weight schedule and the limitation on weight differences. Amends 808 IAC 2-18-1 to allow the commission to determine the weigh-in time for contestants in main events and exhibitions. Amends 808 IAC 2-22-1 to revise the weight of gloves worn by each contestant for match or exhibition. Questions or comments concerning the proposed rules may be directed to: State Boxing Commission, ATTENTION: Board Director, 302 West Washington Street, Room E034, Indianapolis, IN 46204-2700 or by electronic mail at dwidemon@pla.state.in.us. Statutory authority: IC 25-9-1-2; IC 25-9-1-6.

TITLE 808 STATE BOXING COMMISSION

LSA Document #03-227

Under IC 4-22-2-23, the State Boxing Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds 808 IAC 2-12 to establish the requirements and procedures for the testing of licensed contestants for the use of prohibited drugs. Questions or comments concerning the proposed rules may be directed to: State Boxing Commission, ATTENTION: Board Director, 302 West Washington Street, Room E034, Indianapolis, IN 46204-2700 or by electronic mail at dwidemon@pla.state.in.us. Statutory authority: IC 25-9-1-2; IC 25-9-1-6.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #03-225

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 876 IAC 3-6-2 to incorporate by reference the 2004 edition of the Uniform Standards of Professional Appraisal Practice (USPAP). Amends 876 IAC 3-6-3 to update the revisions to USPAP based upon the changes in the 2004 edition. Questions or comments concerning the proposed rules may be directed to: Indiana Real Estate Commission, ATTENTION: Board Director, 302 West Washington Street, Room E012, Indianapolis, IN 46204-2700 or via e-mail at csnyder@pla.state.in.us. Statutory authority: IC 25-34.1-3-8; IC 25-34.1-2-5.1; IC 25-34.1-2-5.

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

Proposed Rule
LSA Document #03-167

DIGEST

Amends 10 IAC 3-1-1 and 10 IAC 3-1-2 relating to and updating the form for filing tort claims against the state. Effective 30 days after filing with the secretary of state.

10 IAC 3-1-1
10 IAC 3-1-2

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

10 IAC 3-1-1 Tort claims against the state; form
Authority: IC 34-13-3-6
Affected: IC 9-13-2-73; IC 11-10-8; IC 11-12; IC 12-23; IC 20-8.1-5.1-7; IC 34-6-2-38; IC 34-13-3-3; IC 35-33-8; IC 35-46-1-15.1

Sec. 1. (a) A claim for personal injury or property damage against the state of Indiana must be filed on the form prescribed in subsection (b) or be in writing as prescribed under ~~IC 34-4-16.5~~ **IC 34-13-3** and this rule.

(b) Claim Form:

STATE OF INDIANA
CLAIM FOR PERSONAL INJURY OR PROPERTY DAMAGE
* Use additional sheets if necessary *

1. Name of Claimant: _____ Driver's License No.: _____
2. Date and Time of Loss: _____
3. Exact Location of Loss (Include County, Nearest Crossroad, and Town, etc.): _____
4. Dollar Amount of Loss: _____
5. State Agency and State Vehicle Commission Number (If known): _____
6. Names and Addresses of All Persons Involved (If known): _____
7. Address of Claimant at Time of Loss: _____
8. Claimant's Current Address and Work/Home Telephone Numbers: _____
9. How was the State Negligent: _____
10. Explanation of What Happened: _____

I swear and affirm under the penalties for perjury that the foregoing information is true and correct to the best of my knowledge and belief.

_____ _____
Claimant's Signature Date

ATTACH COPIES OF MEDICAL BILLS, ACCIDENT REPORTS, VEHICLE REGISTRATION, PHOTOGRAPHS, TWO ESTIMATES OF REPAIR, OR RECEIPTS FOR REPAIRS TO YOUR PROPERTY, AND ANY ADDITIONAL DOCUMENTATION IN REFERENCE TO THIS MATTER.

Mail this claim form and any attachments by CERTIFIED or REGISTERED mail to:

Office of the Attorney General
Attn: Tort Claims Investigations
IGCS - 5th Floor
402 West Washington Street
Indianapolis, Indiana 46204

NOTICE OF TORT CLAIM FORM
for PROPERTY DAMAGE & PERSONAL INJURY
Provided by the State of Indiana - Office
of the Attorney General

Anyone who has a claim for personal injury or property damage against the State of Indiana must either use the following form to file a claim or make the claim in writing as prescribed in Indiana Code ~~34-4-16.5~~ **34-13-3** and these rules.

KEEP A COPY OF YOUR CLAIM FORM, YOUR RECEIPTS FOR YOUR BILLS, AND YOUR CERTIFIED OR REGISTERED MAIL RECEIPT.

If your claim is properly filed, the Office of the Attorney General will investigate it and will notify you in writing within 90 days of receipt if your claim is approved. A claim is denied if not approved within 90 days.

DO NOT DELAY MAKING YOUR CLAIM. INDIANA LAW GIVES YOU ONLY 270 (TWO HUNDRED SEVENTY) DAYS AFTER THE LOSS TO MAKE A CLAIM, AND IT MUST COMPLY WITH Indiana Code ~~34-4-16.5.~~ **34-13-3.** EACH PERSON WHO HAD A LOSS SHOULD FILE A SEPARATE FORM.

The filing of this claim is part of a legal process. If you have any questions about the right way to file a claim, you should contact an attorney of your choice. The state's attorneys are not authorized by law to assist you with filing this claim; however, for your information, the following is a list of actions or conditions resulting in nonliability pursuant to Indiana Code ~~34-4-16.5-3.~~ **34-13-3-3:**

"Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from:

(1) The natural condition of unimproved property.

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose which is not foreseeable.

(3) The temporary condition of a public thoroughfare ~~which~~ **or extreme sport area that** results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

~~(5)~~ **(6)** The initiation of a judicial or an administrative proceeding.

~~(6)~~ **(7)** The performance of a discretionary function; however, the provision of medical or optical care, as provided in IC 34-6-2-38 ~~section 2(b) (IC 34-4-16.5-2(b)) of this chapter,~~ shall be considered to be a ministerial act.

~~(7)~~ **(8)** The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

~~(8)~~ **(9)** An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid, if the employee would not have been liable had the statute been valid.

~~(9)~~ **(10)** The act or omission of anyone other than the governmental entity or the governmental entity's employee.

~~(10)~~ **(11)** The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

~~(11)~~ **(12**) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

~~(12)~~ **(13)** Entry upon any property where the entry is expressly or impliedly authorized by law.

~~(13)~~ **(14)** Misrepresentation if unintentional.

~~(14)~~ **(15)** Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

~~(15)~~ **(16)** Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section ~~6.5 (IC 34-4-16.5-6.5)~~ **7** of this chapter.

~~(16)~~ **(17)** Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, **a pretrial conditional release program under IC 35-33-8,** or a community corrections program under IC 11-12.

~~(17)~~ **(18)** Design of a highway (as defined in IC 9-13-2-73), if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve the responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

~~(18)~~ **(19)** Development, adoption, or implementation, operation, maintenance, or use of an enhanced emergency communication system.

~~(19)~~ **(20)** Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(Office of Attorney General for the State; 10 IAC 3-1-1; filed Jul 1, 1997, 4:15 p.m.: 20 IR 2994)

SECTION 2. 10 IAC 3-1-2 IS AMENDED TO READ AS FOLLOWS:

10 IAC 3-1-2 Claim forms available

Authority: IC 34-13-3-6
Affected: IC 34-13-3

Sec. 2. The **office of the** attorney general will make claims forms available to all state agencies and to all persons who request a claim form. *(Office of Attorney General for the State; 10 IAC 3-1-2; filed Jul 1, 1997, 4:15 p.m.: 20 IR 2996)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 23, 2003 at 10:00 a.m., at the Office of the Attorney General, Indiana Government Center-South, 302 West Washington Street, Fifth Floor, Indianapolis, Indiana the Office of Attorney General for the State will hold a public hearing on proposed amendments to update the form used for filing tort claims against the state. Written comments may be directed to Mike Ward, Investigations Division, Office of the Indiana Attorney General, Indiana Government Center-South, 302 West Washington Street, Fifth Floor, Indianapolis, Indiana 46204. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Steve Carter
Attorney General
Office of Attorney General for the State

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

Proposed Rule
LSA Document #03-165

DIGEST

Adds 11 IAC 3 relating to the regulation of professional fundraiser consultants and professional solicitors to establish fines on professional fundraiser consultants and solicitors as permitted by IC 23-7-8, define certain terms, and establish requirements for the registration application, the solicitation notice, and the financial report that are filed with the consumer protection division. Effective 30 days after filing with the secretary of state.

11 IAC 3

SECTION 1. 11 IAC 3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3. PROFESSIONAL FUNDRAISER CONSULTANTS AND PROFESSIONAL SOLICITORS

Rule 1. Definitions

11 IAC 3-1-1 Applicability

Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-1

Sec. 1. Unless otherwise noted, the definitions set forth at IC 23-7-8-1 and this rule apply throughout this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-1)*

11 IAC 3-1-2 "Document" defined

Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 2. As used in this article, "document" refers to a registration application, contract, solicitation notice, financial report, or consultant disclosure form. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-2)*

11 IAC 3-1-3 "Information" defined

Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 3. As used in this article, "information" refers to:

(1) a document as described in section 2 of this rule;

(2) an amendment as described in 11 IAC 3-2-3; or

(3) any other paperwork required to be filed under IC 23-7-8 or this article.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-1-3)

Rule 2. General Provisions

11 IAC 3-2-1 Filing requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 1. (a) Subject to subsection (b), the filing of information with the division is complete on the earliest of the following dates that apply to the filing:
(1) The date on which the information is delivered to the division.
(2) The date of the postmark on the envelope containing the information if the information is mailed to the division by United States mail.
(3) The date on which the information is deposited with a private carrier, as shown by a receipt issued by the carrier, if the information is sent to the division by private carrier.

(b) Any information required to be filed under IC 23-7-8 shall not be considered filed with the division if the information is incomplete, incorrect, or fails to comply with the requirements of IC 23-7-8 and this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-1)*

11 IAC 3-2-2 Document filing
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 2. The date a document is considered filed is the date the document first meets the requirements of section 1 of this rule. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-2)*

11 IAC 3-2-3 Amendments
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 3. (a) A professional fundraiser consultant or professional solicitor may file an amendment to a registration application, contract, solicitation notice, financial report, or consultant campaign disclosure form.

(b) The amendment becomes a part of the document to which the amendment relates upon filing.

(c) The amendment shall:
(1) clearly indicate that it is an amendment; and
(2) reference the document that it is amending.

(d) The filing of an amendment does not prohibit or restrict the division from initiating any action under IC 23-7-8 or this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-2-3)*

Rule 3. Registration

11 IAC 3-3-1 Application requirement
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. To comply with the disclosure requirements of IC 23-7-8-2(a), a professional fundraiser consultant or professional solicitor shall complete a registration application as prescribed by the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-1)*

11 IAC 3-3-2 Information and fee required
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 2. A professional fundraiser consultant or professional solicitor shall not be considered registered under IC 23-7-8-2(a) until:
(1) the registration application is filed with the division; and
(2) the correct fee is received by the division.
(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-2)

11 IAC 3-3-3 Requirements for registration update
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 3. (a) A professional fundraiser consultant or professional solicitor who files a registration update under IC 23-7-8-4(c) shall comply with:
(1) IC 23-7-8-2(a); and
(2) this article.

(b) A professional fundraiser consultant or professional solicitor who fails to file a registration update as required by IC 23-7-8-4(c) will be deemed not registered with the division under IC 23-7-8-2(a). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-3)*

11 IAC 3-3-4 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 4. (a) The division may fine a professional fundraiser consultant or professional solicitor up to one hundred dollars ($100) for each month or part of a month after the date on which the registration update and renewal fee were due to be filed under IC 23-7-8-4(c).

(b) If a professional fundraiser consultant or professional solicitor was previously fined by the division under subsection (a), the division may fine the professional fundraiser consultant or professional solicitor up to two hundred dollars ($200) for each month or part of a month after the date on which the registration update and renewal fee are due under IC 23-7-8-4(c). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-4)*

11 IAC 3-3-5 Registration renewals arriving after the renewal year ends
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2; IC 23-7-8-4

Sec. 5. If a professional fundraiser consultant or professional solicitor has not filed a registration update or paid the renewal fee under IC 23-7-8-4(c) before September 2 of the year the renewal is due, the professional fundraiser consultant or professional solicitor must:

(1) apply for registration under IC 23-7-8-2(a); and

(2) pay the registration fee of one thousand dollars ($1,000) under IC 23-7-8-4(a).

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-3-5)

Rule 4. Consultant Contracts

11 IAC 3-4-1 Contract filing requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. Before acting as a professional fundraiser consultant for a charitable organization, the professional fundraiser consultant must file a written contract described under IC 23-7-8-2(c) with the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-1)*

11 IAC 3-4-2 Consultant disclosure form
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. A professional fundraiser consultant may complete a consultant disclosure form as prescribed by the division for each contract the professional fundraiser consultant enters into with a charitable organization. The professional fundraiser consultant shall sign the consultant disclosure form while under oath. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-2)*

11 IAC 3-4-3 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 3. (a) For each contract entered into with a charitable organization, a professional fundraiser consultant who fails to file a contract within the period specified by IC 23-7-8-2(c) may be assessed a fine of up to one hundred dollars ($100) for each month or part of a month after the date on which the consultant begins acting as a professional fundraiser consultant.

(b) If a professional fundraiser consultant was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars ($200) for each month or part of a month after the date on which the consultant begins acting as a professional fundraiser consultant. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-3)*

11 IAC 3-4-4 Campaign starting date
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 4. For purposes of section 3 of this rule, the following applies:

(1) Whenever a professional fundraiser consultant does not submit to the division a consultant disclosure form, the date on which the consultant begins acting as a professional fundraiser consultant is the starting date of the consulting services as stated on the contract.

(2) Whenever a professional fundraiser consultant submits to the division a consultant disclosure form that complies with section 2 of this rule, the date on which the consultant begins acting as a professional fundraiser consultant is the starting date listed on the consultant disclosure form.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-4-4)

Rule 5. Solicitor Contracts

11 IAC 3-5-1 Contract requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. Before a professional solicitor engages in a solicitation, the professional solicitor must file a written contract described under IC 23-7-8-2(d) with the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-1)*

11 IAC 3-5-2 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. (a) For each contract entered into with a charitable organization, a professional solicitor who fails to file a contract within the period specified by IC 23-7-8-2(d) may be assessed a fine of up to one hundred dollars ($100) for each month or part of a month after the date on which the professional solicitor begins soliciting.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars ($200) for each month or part of a month after the date on which the professional solicitor begins soliciting. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-2)*

11 IAC 3-5-3 Campaign starting date
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 3. For purposes of section 2 of this rule and 11 IAC 3-6-2, the date on which the professional solicitor begins soliciting for a charitable organization is considered to be the earlier of:

(1) the date the professional solicitor begins soliciting; or
(2) the date when soliciting began as listed on the solicitation notice under IC 23-7-8-2(e)(2).
(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-5-3)

Rule 6. Solicitation Notice Filings

11 IAC 3-6-1 Campaign requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. Before a professional solicitor begins a solicitation campaign, the professional solicitor must file a solicitation notice described under IC 23-7-8-2(e) with the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-6-1)*

11 IAC 3-6-2 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. (a) A professional solicitor who fails to file a solicitation notice by the beginning date of a solicitation campaign may be assessed a fine of up to one hundred dollars ($100) for each month or part of a month after the beginning date of the solicitation campaign.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars ($200) for each month or part of a month after the beginning date of the solicitation campaign. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-6-2)*

Rule 7. Financial Reports

11 IAC 3-7-1 Financial report requirements
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. To comply with IC 23-7-8-2(f), a professional solicitor shall complete a financial report as prescribed by the division. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-1)*

11 IAC 3-7-2 Filing deadlines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. A financial report under IC 23-7-8-2(f) shall be filed with the division not later than ninety (90) days after one (1) of the following occurs:
(1) The ending of a solicitation campaign.
(2) The anniversary of the commencement of a solicitation campaign lasting more than one (1) year.
(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-2)

11 IAC 3-7-3 Fines
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 3. (a) For each financial report, a professional solicitor who fails to file a financial report within the time period prescribed by section 2 of this rule may be assessed a fine of up to one hundred dollars ($100) for each month or part of a month starting from the ninety-first day after one (1) of the following occurs:
(1) The ending of a solicitation campaign.
(2) The anniversary of the commencement of a solicitation campaign lasting more than one (1) year.

(b) If a professional solicitor was previously fined by the division under subsection (a), the division may assess a fine of up to two hundred dollars ($200) for each subsequent violation of subsection (a). *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-3)*

11 IAC 3-7-4 Campaign starting and ending dates
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 4. (a) For purposes of sections 2 through 3 of this rule, the dates when a solicitation campaign, other than a campaign described in subsection (b), will begin and end are the projected dates when soliciting will begin and end as listed on the solicitation notice under IC 23-7-8-2(e)(2).

(b) If a solicitation campaign ends earlier than the projected date when soliciting will end as listed on the solicitation notice, the professional solicitor shall submit a financial report as described in this rule within ninety (90) days from the actual ending date of the solicitation campaign. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-7-4)*

Rule 8. Miscellaneous and Penalties

11 IAC 3-8-1 Division's authority not prohibited or restricted
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 1. (a) This article shall not prohibit or restrict the division from initiating any action authorized under IC 23-7-8 or any other law enforced by the division.

(b) The division may deny or revoke the registration of a professional solicitor who fails to comply with IC 23-7-8-2(f) even if the professional solicitor has not been previously assessed a fine under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-1)*

11 IAC 3-8-2 Fines are in addition to fees
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8-2

Sec. 2. A fine under this article is in addition to any fee provided under IC 23-7-8. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-2)*

11 IAC 3-8-3 Administrative Orders and Procedures Act applies
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 4-21.5; IC 23-7-8

Sec. 3. IC 4-21.5 applies to any proceedings under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-3)*

11 IAC 3-8-4 Lack of warning not a defense
Authority: IC 4-6-9-8; IC 23-7-8-8
Affected: IC 23-7-8

Sec. 4. The lack of a warning to a professional fundraiser consultant or professional solicitor that a document submitted by the professional fundraiser consultant or professional solicitor is in any way incomplete, incorrect, or fails to comply with the requirements of IC 23-7-8 or this title is not a defense to an action by the division under this article. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 3-8-4)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 25, 2003 at 10:00 a.m., at the Office of the Attorney General, Indiana Government Center-South, 302 West Washington Street, Fifth Floor, Indianapolis, Indiana the Consumer Protection Division of the Office of the Attorney General will hold a public hearing on proposed new rules relating to the regulation of professional fundraiser consultants and professional solicitors under IC 23-7-8 to establish fines and requirements for reports to be filed with the Consumer Protection Division. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Fifth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Steve Carter
Attorney General
Consumer Protection Division of the Office of the Attorney General

TITLE 52 INDIANA BOARD OF TAX REVIEW

Proposed Rule
LSA Document #03-179

DIGEST

Adds 52 IAC 2 and 52 IAC 3 to establish standards to govern proceedings before the Indiana board of tax review. Effective 30 days after filing with the secretary of state.

52 IAC 2
52 IAC 3

SECTION 1. 52 IAC 2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 2. PROCEDURAL RULES

Rule 1. Purpose and Applicability

52 IAC 2-1-1 Purpose
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. The purpose of this article is to establish procedures to govern administrative proceedings before the board. The definitive procedures, procedural requirements, and evidentiary controls established by this article are deemed essential to assure that the administrative appeals before the board are conducted in the most uniform and objective manner possible. *(Indiana Board of Tax Review; 52 IAC 2-1-1)*

52 IAC 2-1-2 Applicability
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. Except as provided in 52 IAC 3 regarding the small claims procedures, the provisions of this article apply to and govern all proceedings before the board. *(Indiana Board of Tax Review; 52 IAC 2-1-2)*

52 IAC 2-1-3 Jurisdiction of the board
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-4-1; IC 6-1.5-5-1

Sec. 3. The board shall conduct an impartial review of an appeal from:
(1) a determination by an assessing official or a county property tax assessment board of appeals described under IC 6-1.5-4-1;
(2) a final determination of the department described under IC 6-1.5-5-1; or
(3) any other determination or finding by the department, a PTABOA, or an assessing official for which review by the board is expressly authorized under Indiana law.
(Indiana Board of Tax Review; 52 IAC 2-1-3)

Rule 2. Definitions

52 IAC 2-2-1 Applicability
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. The definitions in this rule apply throughout this article. *(Indiana Board of Tax Review; 52 IAC 2-2-1)*

52 IAC 2-2-2 "Administrative law judge" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-3-3

Sec. 2. "Administrative law judge" refers to an individual appointed under IC 6-1.5-3-3 to conduct a hearing that the board is required by law to hold. *(Indiana Board of Tax Review; 52 IAC 2-2-2)*

52 IAC 2-2-3 "Appeal petition" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-3

Sec. 3. "Appeal petition" means a petition for review filed with the board under IC 6-1.1-15-3. *(Indiana Board of Tax Review; 52 IAC 2-2-3)*

52 IAC 2-2-4 "Authorized representative" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. "Authorized representative" means a person, including, but not limited to, a tax representative as defined in 52 IAC 1-1-6, authorized to represent a party in a matter governed by this article. *(Indiana Board of Tax Review; 52 IAC 2-2-4)*

52 IAC 2-2-5 "Board" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-1-3

Sec. 5. "Board" means the Indiana board of tax review established under IC 6-1.5-1-3. *(Indiana Board of Tax Review; 52 IAC 2-2-5)*

52 IAC 2-2-6 "Board member" or "member of the board" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.5-2-1

Sec. 6. "Board member" or "member of the board" means one (1) of the three (3) members of the board appointed under IC 6-1.5-2-1. *(Indiana Board of Tax Review; 52 IAC 2-2-6)*

52 IAC 2-2-7 "Central office" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. "Central office" means the principal office of the board located in Indianapolis, Indiana. *(Indiana Board of Tax Review; 52 IAC 2-2-7)*

52 IAC 2-2-8 "Department" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.1-30-1.1

Sec. 8. "Department" means the department of local government finance established under IC 6-1.1-30-1.1. *(Indiana Board of Tax Review; 52 IAC 2-2-8)*

52 IAC 2-2-9 "Final order or final determination" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 9. "Final order or final determination" means any action of the board that is:
(1) designated as final by the board;
(2) the final step in the administrative process before resort may be made to the judiciary; or
(3) deemed final under IC 6-1.1-15-4 and IC 6-1.1-15-5.
(Indiana Board of Tax Review; 52 IAC 2-2-9)

52 IAC 2-2-10 "Nonfinal order" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 10. " Nonfinal order" means any action by the board that is not a final order or final determination subject to direct judicial review. *(Indiana Board of Tax Review; 52 IAC 2-2-10)*

52 IAC 2-2-11 "Order or ruling" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 11. "Order or ruling" means any final or nonfinal order, ruling, or determination by the board. *(Indiana Board of Tax Review; 52 IAC 2-2-11)*

52 IAC 2-2-12 "Original determination" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 12. "Original determination" means a determination of assessed value, qualification for an exemption, credit, or deduction, or other decision that is the subject of the appeal petition. *(Indiana Board of Tax Review; 52 IAC 2-2-12)*

52 IAC 2-2-13 "Party" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 13. "Party" means participants in a matter governed by this article, which may include the following:
(1) The owner of the subject property.
(2) The taxpayer responsible for the property taxes payable on the subject property.
(3) The person filing an appeal petition.
(4) The township assessor, county assessor, or PTABOA that made the original determination under appeal.
(5) A PTABOA that made a determination on an exemption application under appeal.
(6) A county auditor or other local official or body who made the original determination concerning a property tax deduction, credit, or refund.
(7) The department.
(Indiana Board of Tax Review; 52 IAC 2-2-13)

52 IAC 2-2-14 "Person" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-1-10; IC 6-1.1-15

Sec. 14. "Person" means:
(1) an individual;
(2) an agency;
(3) a political subdivision;
(4) a partnership;
(5) a corporation;
(6) a limited liability corporation;
(7) an association; or
(8) other entity designated as a person under IC 6-1.1-1-10.
(Indiana Board of Tax Review; 52 IAC 2-2-14)

52 IAC 2-2-15 "Petition for rehearing" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-5

Sec. 15. "Petition for rehearing" means a written request for rehearing properly filed with the board under IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 2-2-15)*

52 IAC 2-2-16 "Practice before the board" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 16. "Practice before the board" means participation in any matters connected with a proceeding before the board, any of its members, or any contractor or employee designated to act in the capacity of an administrative law judge relating to a client's rights, privileges, or liabilities under Indiana's property tax laws or rules. Such presentations include, but are not limited to, the following:
(1) Preparing and filing necessary documents except personal property returns.
(2) Corresponding and communicating with the board on a substantive issue in a pending proceeding.
(3) Representing a client at a hearing, on-site inspection, or meeting.
(Indiana Board of Tax Review; 52 IAC 2-2-16)

52 IAC 2-2-17 "Property tax assessment board of appeals" or "PTABOA" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15; IC 6-1.1-28-1

Sec. 17. "Property tax assessment board of appeals" or "PTABOA" means the county property tax assessment board of appeals established under IC 6-1.1-28-1. *(Indiana Board of Tax Review; 52 IAC 2-2-17)*

52 IAC 2-2-18 "Tax representative" defined
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-2-4; IC 6-1.1-15

Sec. 18. "Tax representative" means a person who represents another person at a proceeding before the board under IC 6-1.1-15. The term does not include:
(1) the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) that is the subject of the appeal;
(2) a permanent full-time employee of the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) who is the subject of the appeal;
(3) representatives of local units of government appearing on behalf of the unit or as the authorized representative of another unit;
(4) a certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or
(5) an attorney who is a member in good standing of the Indiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the board to appear pro hac vice.
(Indiana Board of Tax Review; 52 IAC 2-2-18)

Rule 3. Computation of Time and Service

52 IAC 2-3-1 Determination of designated periods of time and filing dates
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) This section applies to the computation of any period of time prescribed or allowed by this article or by order of the board.

(b) The day of the act, event, or default from which the designated period of time begins is not counted. The last day of the designated period is counted but may not be a:
(1) Saturday;
(2) Sunday;
(3) legal holiday as defined by state statute; or
(4) day the office in which the act is to be done is closed during regular business hours.

(c) The postmark date on an appeal petition or petition for rehearing, correctly addressed and sent by United States first class mail, registered mail, or certified mail, will constitute prima facie proof of the date of filing.

(d) The date-received stamp affixed by the proper county official or the board to an appeal petition or a petition for rehearing filed by personal delivery will constitute prima facie proof of the date of filing.

(e) If a paper is served through the United States mail, three (3) days must be added to a period that commences upon service of that paper. *(Indiana Board of Tax Review; 52 IAC 2-3-1)*

52 IAC 2-3-2 Notice of appearance; power of attorney
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) If the petitioner is represented by a tax representative, the tax representative must file a power of attorney with the board.

(b) Other authorized representatives, including attorneys, must file a notice of appearance with the board, stating that the petitioner has authorized the representative to appear on the petitioner's behalf.

(c) The power of attorney or notice of appearance must contain the authorized representative's name, address, and telephone number. *(Indiana Board of Tax Review; 52 IAC 2-3-2)*

52 IAC 2-3-3 Service by the board
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 3. (a) This section applies to the service of:
(1) notices required by the board under IC 6-1.1-15-4 and IC 6-1.1-15-5; and
(2) any other ruling, order, determination, or paper issued by the board.

(b) The board will keep a record of all notices, rulings, determinations, or other papers, served by personal delivery or United States mail, indicating the date and circumstances of the service. The record will constitute prima facie proof of the date and circumstances of service.

(c) Except as otherwise provided by law, the board may serve papers by facsimile.

(d) Service shall be given to each party unless the party has properly designated an authorized representative and that representative has filed a power of attorney or notice of appearance as required under section 2 of this rule, in which case service shall be given to the party's authorized representative.

(e) Service to a person that is not an individual must be made to the party's authorized representative in accordance with:
(1) the power of attorney attached to the appeal petition;
(2) any superseding power of attorney filed with the board; or
(3) any notice of appearance filed by an attorney or other authorized representative.

(f) The taxpayer, or the taxpayer's authorized representative, must provide written notification to the board of any change of address or facsimile number. Unless this written notification is provided, service will be deemed accomplished when mailed or faxed according to the last known address or facsimile number properly provided to the board. *(Indiana Board of Tax Review; 52 IAC 2-3-3)*

52 IAC 2-3-4 Service by a party
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) Unless otherwise specified by an administrative law judge or the board, all documents and other papers that are filed with or submitted to the administrative law judge or board regarding a matter governed by this article must also be served upon all parties or, if the party has a properly authorized representative, upon the authorized representative.

(b) Service of papers other than appeal petitions and petitions for rehearing may be made by electronic mail or facsimile. *(Indiana Board of Tax Review; 52 IAC 2-3-4)*

Rule 4. Filing Appeal Petitions and Petitions for Rehearing

52 IAC 2-4-1 Filing of appeal petitions; petitions for rehearing
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) The filing of appeal petitions and petitions for rehearing must be made by:
(1) personal delivery;
(2) deposit in the United States mail; or
(3) registered or certified mail, return receipt requested.

(b) Appeal petitions and petitions for rehearing may not be filed by facsimile or electronic mail. *(Indiana Board of Tax Review; 52 IAC 2-4-1)*

52 IAC 2-4-2 Time and place for filing appeal petitions
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-11-7; IC 6-1.1-15-3; IC 6-1.1-15-12

Sec. 2. (a) A petition for review of assessment (on Form 131 or other form designated by the board) under IC 6-1.1-15-3 must be filed with the county assessor within thirty (30) days after the notice of the determination by the PTABOA.

(b) A petition to correct errors (on Form 133 or other form designated by the board) under IC 6-1.1-15-12 must be filed with the county auditor within thirty (30) days after notice of the determination of the PTABOA.

(c) A petition for review of exemption (on Form 132 or other form designated by the board) under IC 6-1.1-11-7 must be filed with the county assessor within thirty (30) days after notice of the determination of the PTABOA.

(d) A petition for review of an action by the department must be filed with the board within forty-five (45) days after notice of the determination of the department unless otherwise specified by statute.

(e) There is a rebuttable presumption that the notice of

determination is mailed on the date of the notice. *(Indiana Board of Tax Review; 52 IAC 2-4-2)*

52 IAC 2-4-3 Time and place for filing petitions for rehearing
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 3. Persons filing a petition for rehearing under IC 6-1.1-15-5 must file the petition with the board within fifteen (15) days after the board gives notice of its final determination under IC 6-1.1-15-4. *(Indiana Board of Tax Review; 52 IAC 2-4-3)*

Rule 5. Compliant Appeal Petitions and Scope of Review

52 IAC 2-5-1 Compliant appeal petition
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) Appeal petitions must be submitted on the form prescribed by the board and in conformance with the instructions provided on the petition.

(b) A separate petition must be filed for each parcel.

(c) The petition shall include the following:
(1) Legal and factual basis of the appeal.
(2) Assessment of the subject property that the petitioner alleges is correct.
(3) Assessed value placed on the subject property in the original determination or, if different, the assessed value placed on the property by the PTABOA.
(4) All information requested on the petition form.
(5) Any other information requested by the board.

(d) If the appeal petition is not properly completed, the board will issue a notice of defect specifying the nature of the defect and shall return the appeal petition to the petitioner. The petitioner must correct or cure the appeal petition within thirty (30) days from the date the notice of defect is served.

(e) Failure to adequately correct the specified defect will result in denial of the petition without hearing. *(Indiana Board of Tax Review; 52 IAC 2-5-1)*

52 IAC 2-5-2 Amendments to appeal petitions; additional written specification
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) Timely filed amendments to appeal petitions are permitted.

(b) The petition may be amended once as a matter of course within thirty (30) days of the filing of the original appeal petition.

(c) Amendments filed later than thirty (30) days following the filing of the petition must be approved by the board for good cause shown. Amendments filed solely for the purpose of adding new issues will be approved if filed fifteen (15) days prior to the hearing.

(d) Notwithstanding subsection (b), the board will not approve an amendment filed within fifteen (15) days prior to the hearing without the consent of the other parties to the hearing.

(e) Amendments to appeal petitions must be filed at the central office and must be served upon all parties.

(f) The rules regarding the filing of appeal petitions also apply to amendments to appeal petitions.

(g) Only issues raised in the appeal petition or any approved amendments to the petition may be raised at the hearing. *(Indiana Board of Tax Review; 52 IAC 2-5-2)*

52 IAC 2-5-3 Limitations of issues
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) The board may not limit the scope of the issues raised in the appeal petition to those presented to the county property tax assessment board unless all parties agree to the limitation of issues.

(b) If new issues are raised in an amendment to the appeals petition, the amendment is subject to the terms of section 2 of this rule.

(c) If an issue not presented to the PTABOA is raised in the appeal petition or the amended appeal petition, the board may remand the petition to the PTABOA for consideration of the new issue if consented to by the parties and the PTABOA.

(d) If the board remands the petition to the PTABOA under subsection (c) and the PTABOA does not issue a determination on the new issue within sixty (60) days of the remand, the board shall proceed to hear the appeal. *(Indiana Board of Tax Review; 52 IAC 2-5-3)*

Rule 6. Hearing Procedures

52 IAC 2-6-1 Hearing date
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-4-4; IC 6-1.1-15

Sec. 1. (a) Except as provided in subsection (b), the board shall conduct a hearing within nine (9) months after a petition in proper form is filed with the board, excluding

any time due to a delay reasonably caused by any of the parties or any extension of time agreed to by the parties.

(b) With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect under IC 6-1.1-4-4, the board shall conduct a hearing within one (1) year after a petition in proper form is filed with the board, excluding any time due to a delay reasonably caused by any of the parties or any extension of time agreed to by the parties. *(Indiana Board of Tax Review; 52 IAC 2-6-1)*

52 IAC 2-6-2 Place of hearing
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) Hearings held before an administrative law judge or by a member of the board acting as an administrative law judge shall be held in the county in which the property subject to the appeal is located, in an adjacent county, or at such other location as the parties and the designated administrative law judge agree.

(b) All hearings conducted by a member of the board or by the board sitting in its entirety will be held in the central office unless otherwise agreed to by the board. *(Indiana Board of Tax Review; 52 IAC 2-6-2)*

52 IAC 2-6-3 Expedited hearing procedures
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) A petitioner may submit evidence by affidavit, duly sworn, in lieu of the petitioner's or other witness's appearance at the hearing.

(b) The board may issue a determination based upon a record created by stipulation of the parties as to some or all of the issues on appeal.

(c) A hearing or prehearing conference may be conducted by telephone or through video conferencing upon agreement of the parties. *(Indiana Board of Tax Review; 52 IAC 2-6-3)*

52 IAC 2-6-4 Issuance of final determination
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-4-4; IC 6-1.1-15-5

Sec. 4. (a) Except as provided in subsections (b) and (c), the board shall make a final determination within ninety (90) days after the date the hearing is held.

(b) With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect under IC 6-1.1-4-4, the board shall make a determination within one hundred eighty (180) days after the hearing.

(c) The board may, on its own motion and upon written notification, extend the final determination date under subsection (a) or (b) by up to one hundred eighty (180) days. The board shall be presumed to have extended the final determination date to the maximum time allowed unless otherwise specified by the board in writing.

(d) If the board does not issue a final determination within the maximum time allowed by this section, the petitioner may:
(1) take no action and wait for the board to issue a final determination; or
(2) treat the petition as having been deemed denied and petition for judicial review under IC 6-1.1-15-5.

(e) Upon notice to the parties of the denial, or if the petitioner elects to treat the matter as deemed denied under subsection (d)(2), the petitioner may seek judicial review under IC 6-1.1-15-5.

(f) A final determination requires the approval by a majority of the board. If a majority of the board is not able to arrive at a final determination, the petition shall be deemed denied and the parties will be so notified. *(Indiana Board of Tax Review; 52 IAC 2-6-4)*

52 IAC 2-6-5 Hearing formality; transcription services
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 5. (a) Hearings will be conducted by an administrative law judge, any member of the board, or the board sitting in its entirety.

(b) Hearings shall be informal proceedings.

(c) All testimony shall be under oath or affirmation.

(d) Hearings will be tape recorded by the administrative law judge. The recording of the administrative law judge will serve as the basis of the official record of the proceeding unless the hearing is transcribed by a court reporter. A party may hire a court reporting service to transcribe the hearing so long as the reporting service is directed to submit an official copy of the transcript to the board at no cost to the board.

(e) The administrative law judge may rule on any nonfinal order without the approval of a majority of the board. *(Indiana Board of Tax Review; 52 IAC 2-6-5)*

52 IAC 2-6-6 Evidentiary burden
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 6. (a) The petitioner must establish a prima facie case with probative evidence sufficient to establish both an error in the assessment or original determination and to establish the correct assessment or proper determination.

(b) The respondent must rebut any established prima facie case with sufficient probative evidence to outweigh the petitioner's contentions by a preponderance of all probative evidence presented.

(c) Except as provided in 52 IAC 2-7-4, the board shall consider only the evidence, exhibits, and briefs submitted to it, other documents made part of the record, and matters of which the board expressly takes judicial notice. *(Indiana Board of Tax Review; 52 IAC 2-6-6)*

52 IAC 2-6-7 County assessor as an additional party
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. (a) The county assessor in the county where the property is located may:
(1) appear as an additional party in a proceeding before the board; or
(2) file an objection to a settlement or stipulation of assessed value or exempt status.

(b) In order to appear as an additional party or to object to settlement or stipulation of value or exempt status, the county assessor must do the following:
(1) Notify the parties and the board in writing.
(2) Include a detailed statement of the reason for the appearance or objection.
(3) File the notice of their appearance as a party within thirty (30) days of the petition filing or within ten (10) days of receipt of notice of the proposed settlement or stipulation.

(c) If a county assessor does not appear as an additional party in a case, but files an objection to a settlement or stipulation of assessed value or exempt status, the parties in the case may submit a written response to the objection within ten (10) days. The board may either accept or reject the objection or may accept the objection in part and reject it in part. *(Indiana Board of Tax Review; 52 IAC 2-6-7)*

52 IAC 2-6-8 Consolidation order
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 8. (a) The board may, on its own motion or upon motion by one (1) or more parties, consolidate two (2) or more petitions for the appeal of an assessment of real property if:
(1) the properties are located in the same township and are of the same classification; and
(2) the common factual and legal issues in dispute predominate over the individual issues.

(b) The board shall notify the parties of its intent to consolidate the actions and shall permit a petitioner, as a matter of right, to sever itself from the consolidated action.

(c) A motion to sever under subsection (b) must be in writing. *(Indiana Board of Tax Review; 52 IAC 2-6-8)*

52 IAC 2-6-9 Summary judgment; partial summary judgment
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 9. The board may, on its own motion or upon motion of a party, set a matter for a hearing on summary judgment or partial summary judgment. Unless otherwise specified in these rules, the hearing shall be conducted in substantial compliance with Rule 56 of the Indiana Rules of Trial Procedure. *(Indiana Board of Tax Review; 52 IAC 2-6-9)*

Rule 7. Evidentiary Procedures

52 IAC 2-7-1 Evidence not previously presented
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) Except as provided in subsection (b), a person participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.

(b) A party to the appeal must provide to the other parties:
(1) copies of documentary evidence or summaries of statements of testimonial evidence at least five (5) days prior to the hearing; and
(2) a list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) days prior to the hearing. If a new issue has been added by another party under 52 IAC 2-5-2(c), a party may supplement its list of witnesses and exhibits ten (10) days prior to the hearing in order to address the new issue.

(c) For purposes of determining compliance with the deadlines under subsection (b), the parties must either provide personal or hand delivery or deposit the materials in the U.S. mail or other courier service three (3) days prior to the deadline in accordance with provisions of 52 IAC 2-3-1.If a party uses a courier service that guarantees next day delivery, the materials must be sent one (1) day before the specified deadline.

(d) The board or the presiding administrative law judge may waive the deadlines under subsection (b) for any materials that had been submitted at or made part of the

record at a PTABOA hearing, a department hearing, or other proceeding from which the appeal arises.

(e) Copies of all materials provided to other parties under subsection (b) must be provided to the board or the presiding administrative law judge at the commencement of the hearing. Such materials will become part of the administrative record only if admitted into evidence by the board or administrative law judge.

(f) Failure to comply with subsection (b) may serve as grounds to exclude the evidence or testimony at issue.

(g) Materials submitted to or made a part of the record at a PTABOA hearing, department hearing, or other proceeding from which the appeal arises proceeding will not be made part of the record of the board proceeding unless submitted to the board and, with respect to evidentiary materials, admitted into evidence by the board. *(Indiana Board of Tax Review; 52 IAC 2-7-1)*

52 IAC 2-7-2 Admissibility; relevancy; weight
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) A party may object to the admissibility of evidence during the hearing. The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the rules of evidence. The administrative law judge may defer a ruling on the admissibility of the evidence for the board's decision. If the administrative law judge defers a ruling, all proffered evidence will be entered for the record and its admissibility will be considered by the board and addressed in the findings.

(b) The board will determine the relevance and weight to be assigned to the evidence. Although evidence may be admitted over the objection of a party, if it is immaterial, irrelevant, or should be excluded or disregarded on other grounds, it will not be assigned any weight in the board's final determination. *(Indiana Board of Tax Review; 52 IAC 2-7-2)*

52 IAC 2-7-3 Hearsay evidence
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence. *(Indiana Board of Tax Review; 52 IAC 2-7-3)*

52 IAC 2-7-4 Commonly recognized sources
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) The board may consult and rely on publications, treatises, or other documents relevant to the issues presented at the hearings and that are commonly considered to be reliable authorities on the subjects addressed in reaching its final determination.

(b) The board's findings will include specific reference to any publication, treatise, or other documents relied on under subsection (a). *(Indiana Board of Tax Review; 52 IAC 2-7-4)*

52 IAC 2-7-5 Confidential information
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 5-14-3-1; IC 6-1.1-15; IC 6-1.1-35-9

Sec. 5. (a) A party must, at the time it is submitted, clearly identify all confidential information provided to the board and specify the statutory basis under which the information is claimed to be confidential.

(b) The board shall make a finding on the confidentiality of information upon the motion of the party and submission of such information.

(c) Information deemed confidential by the board shall be so identified by the board and shall be disclosed only in a manner consistent with IC 6-1.1-35-9, IC 5-14-3-1, et seq., and other applicable law.

(d) A redacted version of a document containing both confidential and nonconfidential evidence shall be provided to the board by the party requesting confidential treatment. The redacted version of the document will be available to the public under IC 5-14-3. *(Indiana Board of Tax Review; 52 IAC 2-7-5)*

Rule 8. Prehearing and Posthearing Activities

52 IAC 2-8-1 Continuance of proceedings
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) Continuances and extensions of time may be granted only if:
(1) timely made;
(2) good cause is shown; and
(3) the request was served on all parties.

(b) A continuance or extension granted prior to the hearing shall be considered a delay reasonably caused by the party requesting the continuance or extension and shall automatically extend the time during which the hearing must be held. *(Indiana Board of Tax Review; 52 IAC 2-8-1)*

52 IAC 2-8-2 Prehearing conference
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) The board may, upon reasonable notice to the parties, order a prehearing conference. A prehearing conference order may include a requirement for the parties to confer and submit an appeals management plan addressing matters outlined in subsection (b).

(b) The board may, through the prehearing conference or appeals management plan, require the parties to submit:
(1) a list of two (2) or more desired dates for the hearing;
(2) a preliminary statement of all contentions and defenses;
(3) a discovery and motion schedule;
(4) a preliminary witness and exhibit list;
(5) possible stipulations;
(6) amendments to the appeal petition;
(7) an outline or summary of the matter under appeal; or
(8) any other information that the board deems beneficial to the orderly review of an appeal petition.

(c) The parties, subject to an order issued under subsection (a), must demonstrate a good faith effort to comply with the order and reach agreement on an appeals management plan and the matters specified in the order. If the parties fail to materially comply with the order, or do not demonstrate a good faith effort, the board or the designated administrative law judge may:
(1) conduct the prehearing conference and, following such conference, enter an order reflecting the matters ordered and agreed to at the prehearing conference; or
(2) issue an order addressing any matter not adequately resolved.
(Indiana Board of Tax Review; 52 IAC 2-8-2)

52 IAC 2-8-3 Discovery
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) A party may use the applicable discovery methods contained in the Indiana Rules of Trial Procedure to the extent they are not inconsistent with other board rules, controlling statutes, or the efficient operation of the administrative proceeding. The board will look to the Indiana Rules of Trial Procedure for general guidance on discovery procedures but may, at its discretion, apply different procedures as it deems appropriate to administer the proceeding effectively.

(b) The parties shall make all reasonable efforts to resolve discovery disputes before seeking a seeking a discovery order from the board.

(c) Upon showing of good cause, including a description of independent efforts made to resolve the discovery dispute, the board may issue a discovery order consistent with subsection (a). If necessary, the enforcement of such order or right of discovery shall be in accordance with the Indiana Rules of Trial Procedure.

(d) A party seeking a discovery order under this section shall notify all parties.

(e) A party may seek discovery of witnesses, exhibits, or other evidence that the other party intends to present at the hearing. However, a party may not be precluded from supplementing the evidence and witness summaries required by 52 IAC 2-7-1(b)(1) or adding to the witness and exhibit lists required by 52 IAC 2-7-1(b)(2) because such items were not identified in discovery.

(f) Failure to respond to requests for admission in accordance with the Indiana Rules of Trial Procedure will not result in automatic admission. However, a party seeking discovery may request an order from the board that requests for admissions which have not been responded to by a party in accordance with the Indiana Rules of Trial Procedure will be deemed admitted unless the party responds to such requests for admission within fifteen (15) days of the board's order or within such other period of time as the board shall specify in its order.

(g) No party shall serve on any other party more than twenty-five (25) interrogatories or more than twenty-five (25) requests for admissions, including subparagraphs and subparts, without leave of the board.

(h) Upon motion of a party and for good cause shown, the board may issue a protective order restricting discovery of a trade secret or other confidential information or other matter consistent with the Indiana Rules of Trial Procedure and these rules.

(i) Depositions may be taken in accordance with the Indiana Rules of Trial Procedure.

(j) Any member of the board or the administrative law judge assigned to the hear the petition may issue a nonfinal order with respect to a discovery motion, motion to compel, motion for protective order, or other motion related to discovery or procedure. *(Indiana Board of Tax Review; 52 IAC 2-8-3)*

52 IAC 2-8-4 Subpoena
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) Any party may request that the board issue a subpoena or subpoena duces tecum by filing a request with the board at least ten (10) business days before the date on which the hearing commences or the deposition is sched-

uled. The request shall state the following information:

(1) The name of the witness.

(2) The address, including street address, city, and county, where the witness can be served.

(3) The date, time, and location the witness is expected to appear.

(4) The matter in which the witness is expected to testify.

(5) If a subpoena duces tecum, the material, listed in detail, to be brought by the witness to the hearing or deposition.

(b) A request for a subpoena or subpoena duces tecum shall not be granted by the board if filed fewer than ten (10) business days before the date on which the hearing commences or the deposition is scheduled except by approval of the board upon a showing of good cause.

(c) Except as provided in subsection (b), upon receipt of a properly filed request, the appropriate subpoena shall be issued by any member of the board.

(d) Any fees for service by the sheriff are the responsibility of the party requesting the subpoena. Subpoenas may be served in any manner specified by the rules governing the trial of civil causes. Subpoenas shall be enforced in a court of competent jurisdiction as provided for by law. *(Indiana Board of Tax Review; 52 IAC 2-8-4)*

52 IAC 2-8-5 Motions

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 5. (a) A party may file motions with the board or the designated administrative law judge. Except motions made during the hearing, all motions must:

(1) be in writing;

(2) state the basis for the motion;

(3) set forth the relief or order sought;

(4) be properly captioned with the petition number, parcel number, and taxpayer's name, address, and telephone number;

(5) be signed by the party or authorized representative; and

(6) include verification or proof of service to all parties.

(b) The failure to serve all parties may result in a denial of the motion.

(c) Any response to a motion must be filed within ten (10) days after the date of service unless otherwise specified by the board or the administrative law judge. *(Indiana Board of Tax Review; 52 IAC 2-8-5)*

52 IAC 2-8-6 Briefs

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 6. (a) Parties may file, or the board may request, briefs in support of a party's position on any issue relevant to the appeal.

(b) Briefs shall be filed within the time limits set by the administrative law judge or board. An extension of time may be requested. If a party fails to timely file a brief, the board may exclude the brief from consideration.

(c) An original and two (2) copies of a brief submitted under this section must be filed with the board at the central office. A copy of the brief shall also be served on each party.

(d) A brief submitted under this section must not exceed thirty (30) pages (excluding exhibits) without prior written permission of the board or administrative law judge.

(e) Notwithstanding a submission deadline, a party may supplement a previously filed brief with subsequently decided cases, but without further argument.

(f) Briefs amicus curiae may be filed with leave of the board and must be filed in accordance with the briefing schedule established for the parties or by order of the board or the designated administrative law judge. *(Indiana Board of Tax Review; 52 IAC 2-8-6)*

52 IAC 2-8-7 Submission of proposed findings and conclusions

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. (a) Parties may file proposed findings of fact and conclusions of law with the board.

(b) Proposed findings and conclusions must be filed within the time period established and at the address designated by the board or administrative law judge and a copy served on each party. *(Indiana Board of Tax Review; 52 IAC 2-8-7)*

52 IAC 2-8-8 Posthearing evidence

Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 8. (a) No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board. The administrative law judge will set a deadline for the submission of any requested evidence and specify the address to which the posthearing evidence must be submitted.

(b) An extension of time to submit posthearing evidence may be requested if submitted in writing to the administrative law judge. An extension may be granted if timely made and good cause is shown. If posthearing evidence is un-

timely submitted, the board will proceed to determine the appeal petition without considering the untimely submitted posthearing evidence.

(c) Posthearing evidence submitted must be served on all parties. *(Indiana Board of Tax Review; 52 IAC 2-8-8)*

Rule 9. Orders and Determinations

52 IAC 2-9-1 Orders and determinations
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. All parties will be notified of all orders or determinations issued by the board. *(Indiana Board of Tax Review; 52 IAC 2-9-1)*

52 IAC 2-9-2 Final order
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-5

Sec. 2. (a) Final orders and final determinations shall:
(1) contain the name of the petitioner and identify the property that is the subject of the appeal;
(2) identify the parties and representatives participating in the proceeding;
(3) a concise statement of the basic facts of record;
(4) contain separately stated findings of fact;
(5) contain a decision disposing of all contested issues; and
(6) include a notice of appeal rights.

(b) Findings must be based exclusively on the evidence in the record and on matters officially noticed in the proceeding.

(c) A final order is subject to judicial review under IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 2-9-2)*

52 IAC 2-9-3 Corrected or amended final order
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) The board may issue a corrected final order to correct an oversight, error, or omission in the original final determination within the earlier of:
(1) forty-five (45) days of issuing the final order; or
(2) the date a verified petition for judicial review of the final determination is filed with the Indiana tax court.

(b) A corrected or amended final order shall be treated as the final order or determination on the appeal petition, and the parties shall have forty-five (45) days from the date the amended or corrected final order is issued to seek judicial review. *(Indiana Board of Tax Review; 52 IAC 2-9-3)*

52 IAC 2-9-4 Settlement; stipulation of value
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) All stipulations submitted by the parties concerning the value or status of the property must be approved by the board.

(b) If the stipulation concerns property original assessed by or under the authority of a township assessor, the petitioner must notify the county assessor in the county in which the property is located of the proposed stipulation at the time the stipulation is filed with the board.

(c) If the county assessor wishes the board to consider the county assessor's objections to the stipulation, the county assessor must file a written objection to the stipulation within ten (10) days of the date the stipulation is filed with the board.

(d) If the board does not approve a stipulation, the appeal shall proceed to hearing or such posthearing procedure as appropriate and authorized by statute and rules. *(Indiana Board of Tax Review; 52 IAC 2-9-4)*

Rule 10. Sanctions

52 IAC 2-10-1 Failure to appear
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. (a) The failure to appear at a hearing, after proper notice has been given, may constitute the basis for a default or dismissal of the appeal petition.

(b) Within ten (10) days after the order of default or dismissal is issued, the party against whom the order is entered may file a written objection requesting that the order be vacated and set aside. This objection must contain supportive facts stating why the party did not appear.

(c) The board may vacate and set aside an entry of a dismissal or default order.

(d) If an order of default or dismissal is vacated and set aside, the board will schedule another hearing on the appeal petition. At least ten (10) days' notice will be given for the hearing unless waived by agreement of all parties. The time period within which the board must issue a final determination on the appeal petition will be calculated from the date of the hearing on the merits. *(Indiana Board of Tax Review; 52 IAC 2-10-1)*

52 IAC 2-10-2 Default or dismissal
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-5

Sec. 2. (a) The board may issue an order of default or dismissal as the result of:
(1) failure of the petitioner to state a claim on which relief can be granted;

(2) failure of a party to comply with a rule or order of the board or administrative law judge;
(3) disruptive, vulgar, abusive, or obscene conduct or language by a party or authorized representative; or
(4) failure of a party to provide or exchange evidence in accordance with this article.

(b) The board may issue an order of default or dismissal on motion of a party or on its own motion.

(c) A dismissal or default under this section is a final determination and may be appealed to tax court in accordance with the provisions of IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 2-10-2)*

52 IAC 2-10-3 Ex parte communications prohibited
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) Parties, their authorized representatives, or anyone acting on their behalf are prohibited from engaging in ex parte communications with the administrative law judge or the board regarding any substantive matters relating to the appeal petition while the administrative appeals process is ongoing.

(b) Ex parte communications may be grounds for dismissal of the appeal.

(c) Communications:
(1) regarding matters of practice and procedure;
(2) that do not pertain to the merits of the appeal; or
(3) to which the opposing party or parties have given consent;
are not considered ex parte communications under this section. *(Indiana Board of Tax Review; 52 IAC 2-10-3)*

Rule 11. Mediation and Dispute Resolution

52 IAC 2-11-1 Mediation and alternative dispute resolution
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. Any appeal to the board may, with the consent of the parties, be resolved by mediation or other alternate dispute resolution procedures. *(Indiana Board of Tax Review; 52 IAC 2-11-1)*

52 IAC 2-11-2 Arbitration
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) An appeal may, with the consent of the parties, be resolved by arbitration. Requests for diversion of an appeal to arbitration may be made by any party, or the board may recommend that the matter be arbitrated.

(b) If ordered by the board, the arbitration may be conducted by a licensed real estate appraiser who shall do the following:
(1) Inspect the subject property.
(2) Prepare a report that includes the arbitrator's recommendation on the value of the property.
(3) Submit the report to the parties and the board.

(c) The board shall accept, reject, or modify the arbitrator's recommendation. If the board accepts the arbitrator's decision, the parties shall be bound by the determination. If the board rejects or modifies the arbitrator's decision, the matter will be set for a hearing in accordance with IC 6-1.1-15.

(d) The costs of arbitration may be paid by the board if the arbitrator is selected by the parties from a panel of arbitrators approved by the board in accord with the process described in subsection (e).

(e) The selection process shall be conducted as follows:
(1) The board shall present the parties with a panel of three (3) arbitrators.
(2) The respondent, or co-respondents acting jointly, shall strike one (1) name from the panel.
(3) The petitioner, or co-petitioners acting jointly, shall strike one (1) name from the panel.
(4) The remaining arbitrator shall conduct the arbitration.
(Indiana Board of Tax Review; 52 IAC 2-11-2)

Rule 12. Miscellaneous Provisions

52 IAC 2-12-1 Supersedes conflicting rules
Authority: IC 4-22-5-1; IC 4-22-2-37.1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. The provisions of this article shall supersede 50 IAC 17. *(Indiana Board of Tax Review; 52 IAC 2-12-1)*

SECTION 2. 52 IAC 3 IS ADDED TO READ AS FOLLOWS:

ARTICLE 3. SMALL CLAIMS PROCEDURES

Rule 1. Small Claims Procedures

52 IAC 3-1-1 Applicability
Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 1. This article governs the practice and procedure in all matters of small claims procedure. The provisions of 52 IAC 2 apply to the small claims procedures unless inconsistent with the provisions of this article or the general object and purpose of this article to make the administration of small claims more efficient, informal, simple, and expedi-

tious than those administered under 52 IAC 2. *(Indiana Board of Tax Review; 52 IAC 3-1-1)*

52 IAC 3-1-2 Property subject to the small claims procedure

Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 2. (a) Unless a party elects to transfer out under section 3 of this rule, a petition shall be subject to the small claims procedure if the property under appeal is:

(1) an unimproved parcel of land with an assessed value not in excess of one million dollars ($1,000,000);

(2) a parcel of land, as improved, with an assessed value for land and improvements not in excess of one million dollars ($1,000,000); or

(3) personal property not in excess of one million dollars ($1,000,000).

(b) By accepting the small claims procedure, the parties agree that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agree that no new issues will be raised before the board.

(c) The small claims appeal petition may not be amended except to conform the issues raised in the appeal petition to those issued raised at the PTABOA hearing from which the appeal arises.

(d) A party to any appeal concerning a property that does not meet the criteria described in subsection (a) may elect to have the petition heard pursuant to the small claims procedure by:

(1) requesting so upon filing the appeal petition or by notifying the board, in writing, within thirty (30) days of filing his or her petition; and

(2) obtaining the written consent to such election from the other parties to the proceeding.

(Indiana Board of Tax Review; 52 IAC 3-1-2)

52 IAC 3-1-3 Transfer

Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 3. (a) A party who does not wish his or her matter to be heard pursuant to the small claims procedure may request a transfer for the proceeding from the small claims procedure to the standard hearing procedure governed by 52 IAC 2.

(b) The request for transfer shall be made by:

(1) opting out of the small claims procedure on the appeal petition; or

(2) written notice to the board no later than fifteen (15) days prior to the date of the small claims hearing.

(c) The time for hearing the matter pursuant to the standard board procedure described under 52 IAC 2 shall begin to run from the date the request for transfer is received by the board. *(Indiana Board of Tax Review; 52 IAC 3-1-3)*

52 IAC 3-1-4 Representation

Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 4. (a) A party may appear on his or her own behalf, by any representative expressly authorized by the party, in writing, to appear on the party's behalf, or by an attorney who has complied with the notice of appearance requirements of 52 IAC 2-3-2.

(b) The rules concerning tax representatives under 52 IAC 1 apply to the small claim procedure. *(Indiana Board of Tax Review; 52 IAC 3-1-4)*

52 IAC 3-1-5 Informality of proceeding

Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 5. (a) The small claims procedures shall be informal with the sole objective of hearing the petition in an expeditious and just manner according to the rules of substantive law. Small claims procedures are not bound by the rules of trial practice, procedure, or evidence except provisions relating to privileged communications and offers of settlement. This relaxation of evidentiary rules is not a relaxation of the burden of proof.

(b) Hearsay evidence may considered if not objected to, but the determination may not be based solely upon the hearsay evidence.

(c) Except as provided in subsection (f), there shall be no prehearing discovery in the small claims.

(d) No prehearing conferences will be held in small claims.

(e) No posthearing submissions will be allowed or accepted in small claims.

(f) The parties shall make available to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing.

(g) At the commencement of the small claims hearing, the parties shall make available to the presiding administrative law judge a copy of all documentary evidence provided to the other parties.

(h) Failure to comply with subsection (f) may serve as

grounds to exclude evidence or testimony that has not been timely provided. *(Indiana Board of Tax Review; 52 IAC 3-1-5)*

52 IAC 3-1-6 Waiver of hearing
Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 6. The parties in small claims may elect to waive a hearing and have the board issue a final determination based solely on the written and documentary evidence submitted by the parties. *(Indiana Board of Tax Review; 52 IAC 3-1-6)*

52 IAC 3-1-7 Continuance of the hearing
Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 7. A small claims proceeding shall be continued only upon a showing of extraordinary circumstances. *(Indiana Board of Tax Review; 52 IAC 3-1-7)*

52 IAC 3-1-8 Hearing presentation time restrictions
Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 8. (a) Each party will be restricted in the amount of time they will be allowed to present their case in a small claims proceeding to no more than twenty (20) minutes.

(b) Parties that elect the small claims procedure, but have a substantial amount of written and documentary evidence or numerous witnesses, must be prepared to present their case within the time restrictions. It is the responsibility of the parties to organize their presentation such that the oral presentation references the supporting written and documentary evidence sufficient for the administrative law judge and the board to make the desired connections between the oral testimony and any more detailed supporting evidence. Exhibit lists, evidentiary outlines, affidavits, summaries, and other such tools should be utilized if necessary for the party to present their case within the time restrictions.

(c) If a party cannot adequately present its case within the time restrictions, it is the duty of that party to request in writing that the matter be removed from the small claims docket and scheduled to be heard under 52 IAC 2. Petitions cannot be withdrawn from small claims once the hearing has commenced except under extraordinary circumstances. *(Indiana Board of Tax Review; 52 IAC 3-1-8)*

52 IAC 3-1-9 Record of proceedings
Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 9. Small claims hearings shall be recorded with a recording device. *(Indiana Board of Tax Review; 52 IAC 3-1-9)*

52 IAC 3-1-10 Decision and judicial review
Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15-5

Sec. 10. (a) A decision rendered through the small claims process shall be in writing.

(b) A decision rendered through the small claims process shall be reviewed by the board.

(c) The board shall accept, reject, or modify the decision and issue a final determination.

(d) The final determination is subject to judicial review under IC 6-1.1-15-5. *(Indiana Board of Tax Review; 52 IAC 3-1-10)*

52 IAC 3-1-11 Supersedes conflicting rules
Authority: IC 4-22-5-1; IC 6-1.5-6-2
Affected: IC 6-1.1-15

Sec. 11. The provisions of this article shall supersede any rule or instructional bulletin promulgated or issued prior to the effective date of this article to the extent that the rule or instructional bulletin is in conflict with the provisions of this article. *(Indiana Board of Tax Review; 52 IAC 3-1-11)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 29, 2003 at 10:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room N1058, Indianapolis, Indiana the Indiana Board of Tax Review will hold a public hearing on proposed rules to govern the processing of petitions, and practice and procedures, for proceedings before the Indiana Board of Tax Review. Parties interested in participating in the public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation that may serve to support, clarify, or supplement their concerns, suggestions, or proposed revisions. The Indiana Board of Tax Review also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Michael Dart, Senior Administrative Law Judge, Indiana Board of Tax Review, at (317) 233-6767. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Annette Biesecker
Chairman
Indiana Board of Tax Review

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #03-164

DIGEST

Amends 405 IAC 1-8-2 to clarify that ambulatory surgical center services are covered within the scope of 405 IAC 1-8. Amends 405 IAC 1-8-3 to eliminate outpatient reimbursement for outpatient hospital and ambulatory surgical center services occurring within three calendar days of an inpatient admission for the same or related diagnosis. The amendments also change the basis of rates that were established using data from 1992 to indicate that rates will be based on the fee schedule amounts during state fiscal year 2003 and include conforming changes and other changes to reflect current operant policies. Amends 405 IAC 1-10.5-2 and 405 IAC 1-10.5-3 to define marginal cost factor; clarify the definition of a Medicaid day; modify inpatient reimbursement to pay the lower of provider charges or diagnosis related grouping (DRG) and level of care (LOC) inpatient rates; include the costs of outpatient hospital and ambulatory surgical center services that lead to an inpatient admission when determining relative weights; indicate that readmissions for the same or related diagnoses within three calendar days after discharge will be treated as the same admission for payment purposes; eliminate DRG payments for Medicaid recipients subsequent to their return from a transferee hospital; and changes the reimbursement methodology for inpatient hospital stays less than one-day to the outpatient methodology. The amendments include conforming changes and other changes to reflect current operant policies. Effective 30 days after filing with the secretary of state.

405 IAC 1-8-2 **405 IAC 1-10.5-2**
405 IAC 1-8-3 **405 IAC 1-10.5-3**

SECTION 1. 405 IAC 1-8-2 IS AMENDED TO READ AS FOLLOWS:

Rule 8. Hospital and Ambulatory Surgical Center Reimbursement for Outpatient Services

405 IAC 1-8-2 Policy; scope
Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1

Sec. 2. (a) Reimbursement for outpatient hospital services as defined by 42 CFR 440.20(a) **and to ambulatory surgical centers** is available to providers enrolled by the office of Medicaid policy and planning (office) as Medicaid providers who are in good standing. Continued participation in the Medicaid program and payment for outpatient hospital services **and ambulatory surgical centers** are contingent upon maintenance of state licensure and conformance with the office's provider agreement.

(b) The methodology for the reimbursement described in subsection (a) shall be based on set fee schedule allowances for each procedure or occurrence as established by the office of Medicaid policy and planning. *(Office of the Secretary of Family and Social Services; 405 IAC 1-8-2; filed Dec 2, 1993, 2:00 p.m.: 17 IR 735; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 2. 405 IAC 1-8-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-8-3 Reimbursement methodology
Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1

Sec. 3. (a) The reimbursement methodology for all covered outpatient **hospital and ambulatory surgical center** services shall be subject to the lower of the submitted charges for the procedure or the established fee schedule allowance for the procedure as provided in this section. ~~All~~ Services ~~will~~ **shall** be billed ~~on the uniform billing form, using both revenue codes and HCPCS codes. The appropriate HCPCS code, if one exists for the billed procedure, will be required in addition to the revenue code.~~ **in accordance with provider manuals and update bulletins.**

(b) Surgical procedures shall be classified into a group corresponding to the Medicare ambulatory surgical center (ASC) methodology and shall be paid a rate established for each ASC payment group. Outpatient surgeries ~~which~~ **that** are not classified into the nine (9) groups designated by Medicare will be classified by the office into one (1) of those nine (9) groups or additional payment groups. Reimbursement will be based on ~~a blended rate equal to fifty percent (50%) of~~ the ~~Medicare ASC rate and fifty percent (50%) of the fiscal year 1992~~ Indiana Medicaid statewide ~~median~~ allowed amount for that service **in effect during state fiscal year 2003.** Hospitals will bill for surgeries using a **revenue code and** HCPCS code.

(c) ~~Emergency~~ **Payments for emergent** care ~~(as identified by the outpatient hospital~~ **that do not include surgery and that are provided in an emergency** department, ~~payment~~ **treatment room, observation room, or clinic** will be based on ~~a~~ **the** statewide fee schedule ~~per HCPCS code. The fee schedule amount will be equal to the Indiana Medicaid statewide median amount paid per service during fiscal year 1992. Claims for services designated as emergency by a hospital will be subject to audit on a postpayment basis to validate that a bona fide emergency existed.~~ **amount in effect during state fiscal year 2003. Services will be billed using revenue codes only.**

(d) ~~Nonemergency~~ **Payments for nonemergent** care ~~determined by the office and as identified by nonemergency diagnosis codes,~~ that ~~is~~ **do not include surgery and that are** provided in an emergency **department, treatment** room, ~~shall~~ **observation room, or clinic will** be ~~paid~~ based ~~upon a~~

~~nonemergency setting (for example, a clinic)~~ **on the statewide** fee schedule ~~established by the office. This fee schedule~~ amount ~~will be equal to the Indiana Medicaid statewide median amount paid per service~~ **in effect** during ~~fiscal year 1992. Hospitals will bill using HCPCS codes.~~ **SFY 2003. Services will be billed using revenue codes only.**

(e) Reimbursement for laboratory procedures ~~and~~ **is based on the Medicare fee schedule amounts. Reimbursement for** the technical component of radiology procedures ~~shall be~~ **is** based on ~~ninety-five percent (95%) of the Medicare allowance that was in effect prior to federal adoption of the Resource Based Relative Value Scale (RBRVS) for Medicare services. These services~~ **the statewide fee schedule amount in effect during state fiscal year 2003. Laboratory and radiology procedures** will be billed ~~by~~ **using revenue codes and** HCPCS.

(f) Reimbursement allowances for all outpatient hospital procedures not addressed elsewhere in this section, for example, therapies, testing, etc., shall be equal to the Indiana Medicaid statewide ~~median amount paid per service~~ **fee schedule amounts in effect** during **state** fiscal year ~~1992. All other~~ **2003. These** services will be billed using **revenue codes only or** a combination of HCPCS and revenue codes.

(g) Payments will not be made for outpatient hospital and ambulatory surgical center services occurring within three (3) calendar days preceding an inpatient admission for the same or related diagnosis. The office may exclude certain services or categories of service from this requirement. Such exclusions will be described in provider manuals and update bulletins.

~~(g)~~ **(h)** The established rates for hospital outpatient **and ambulatory surgical center** reimbursement shall be reviewed annually by the office and adjusted, as necessary, in accordance with this section. *(Office of the Secretary of Family and Social Services; 405 IAC 1-8-3; filed Dec 2, 1993, 2:00 p.m.: 17 IR 736; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 3. 405 IAC 1-10.5-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-2 Definitions

Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1; IC 12-24-1-3; IC 12-25; IC 16-21

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Allowable costs" means Medicare allowable costs as defined by 42 U.S.C. 1395(f).

(c) "All patient DRG grouper" refers to a classification system used to assign inpatient stays to DRGs.

(d) "Base amount" means the rate per Medicaid stay which is multiplied by the relative weight to determine the DRG rate.

(e) "Base period" means the fiscal years used for calculation of the prospective payment rates including base amounts and relative weights.

(f) "Capital costs" are costs associated with the capital costs of the facility. ~~Capital costs include,~~ **The term includes,** but ~~are~~ **is** not limited to, the following:

(1) Depreciation.
(2) Interest.
(3) Property taxes.
(4) Property insurance.

(g) "Children's hospital" means a freestanding general acute care hospital licensed under IC 16-21 that:

(1) is designated by the Medicare program as a children's hospital; or
(2) furnishes services to inpatients who are predominantly individuals under ~~the age of~~ eighteen (18) **years of age,** as determined using the same criteria used by the Medicare program to determine whether a hospital's services are furnished to inpatients who are predominantly individuals under ~~the age of~~ eighteen (18) **years of age.**

"Freestanding" does not mean a wing or specialized unit within a general acute care hospital.

(h) "Cost outlier case" means a Medicaid stay that exceeds a predetermined threshold, defined as the greater of twice the DRG rate or a fixed dollar amount established by the office. ~~The initial fixed dollar amount for the threshold is twenty-five thousand dollars ($25,000).~~ This amount may be changed at the time the relative weights are adjusted.

(i) "Diagnosis-related group" or "DRG" means a classification of an inpatient stay according to the principal diagnosis, procedures performed, and other factors that reflect clinically cohesive groupings of inpatient hospital stays utilizing similar hospital resources. Classification is made through the use of the all patient (AP) DRG grouper.

(j) "Discharge" means the release of a patient from an acute care facility. Patients may be discharged to their home, another health care facility, or due to death. Transfers from one (1) unit in a hospital to another unit in the same hospital shall not be considered a discharge unless one (1) of the units is paid according to the level-of-care approach.

(k) "DRG daily rate" means the per diem payment amount for a stay classified into a DRG calculated by dividing the DRG rate by the average length of stay for all stays classified into the DRG.

(l) "DRG rate" means the product of the relative weight multiplied by the base amount. It is the amount paid to reim-

burse hospitals for routine and ancillary costs of providing care for an inpatient stay.

~~(m) "Hospital Market Basket Index" means the DRI-Type Hospital Market Basket Index, published quarterly by DRI/McGraw-Hill in "Health Care Costs".~~

~~(n)~~ **(m)** "Inpatient" means a patient who was admitted to a medical facility on the recommendation of a physician and who received room, board, and professional services in the facility.

~~(o)~~ **(n)** "Inpatient hospital facility" means:
(1) a general acute hospital licensed under IC 16-21;
(2) a mental health institution licensed under IC 12-25;
(3) a state mental health institution under IC 12-24-1-3; or
(4) a rehabilitation inpatient facility.

~~(p)~~ **(o)** "Less than one-day stay" means a medical stay of less than twenty-four (24) hours. ~~that is paid according to a DRG rate.~~

~~(q)~~ **(p)** "Level-of-care case" means a medical stay, as defined by the office, that ~~is not part of the DRG reimbursement system. Level-of-care cases include~~ **includes** psychiatric cases, rehabilitation cases, **long term care hospital admissions,** and certain burn cases.

~~(r)~~ **(q)** "Level-of-care rate" means a per diem rate that is paid for treatment of a diagnosis or performing a procedure ~~that is not paid through the DRG payment system.~~ **subject to subsection (p).**

~~(s)~~ **(r)** "Long term care hospital" means a freestanding general acute care hospital licensed under IC 16-21 that:
(1) is designated by the Medicare program as a long term hospital; or
(2) has an average inpatient length of stay greater than twenty-five (25) days as determined using the same criteria used by the Medicare program to determine whether a hospital's average length of stay is greater than twenty-five (25) days.
"Freestanding" does not mean a wing or specialized unit within a general acute care hospital.

(s) "Marginal cost factor" means a percentage applied to the difference between the cost per stay and the outlier threshold for purposes of the cost outlier computation.

(t) "Medicaid day" means any part of a day, including the date of admission, for which a patient enrolled with the Indiana Medicaid program is admitted as an inpatient and remains overnight. The day of discharge is not considered a Medicaid day. **The term does not include any portion of an outpatient service under 405 IAC 1-8-3 that precedes an admission as an inpatient subject to subsection (m).**

(u) "Medicaid stay" means an episode of care provided in an inpatient setting that includes at least one (1) night in the hospital and is covered by the Indiana Medicaid program.

(v) "Medical education costs" means the direct costs associated with the salaries and benefits of medical interns and residents and paramedical education programs.

(w) "Office" means the office of Medicaid policy and planning of the family and social services administration.

(x) "Outlier payment amount" means the amount reimbursed in addition to the DRG rate for certain inpatient stays that exceed cost thresholds established by the office.

(y) "Per diem" means an all-inclusive rate per day that includes routine and ancillary costs and capital costs.

(z) "Principal diagnosis" means the diagnosis, as described by ICD-9-CM code, for the condition established after study to be chiefly responsible for occasioning the admission of the patient for care.

(aa) "Readmission" means that a patient is admitted into the hospital ~~within fifteen (15) days~~ following a previous hospital admission and discharge for a related condition as defined by the office.

(bb) "Rebasing" means the process of adjusting the base amount using more recent claims data, cost report data, and other information relevant to hospital reimbursement.

(cc) "Relative weight" means a numeric value ~~which~~ **that** reflects the relative resource consumption for the DRG to which it is assigned. Each relative weight is multiplied by the base amount to determine the DRG rate.

(dd) "Routine and ancillary costs" means costs that are incurred in providing services exclusive of medical education and capital costs.

(ee) "Transfer" means a situation in which a patient is admitted to one (1) hospital and is then released to another hospital during the same episode of care. Movement of a patient from one (1) unit to another unit within the same hospital will not constitute a transfer unless one (1) of the units is paid under the level-of-care reimbursement system.

(ff) "Transferee hospital" means that hospital that accepts a transfer from another hospital.

(gg) "Transferring hospital" means the hospital that initially admits and then discharges the patient to another hospital. *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-2; filed Oct 5, 1994, 11:10 a.m.: 18 IR 244; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1082; filed Dec 27, 1996, 12:00*

p.m.: 20 IR 1514; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 55)

SECTION 4. 405 IAC 1-10.5-3, PROPOSED TO BE AMENDED AT 26 IR 3378, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-10.5-3 Prospective reimbursement methodology

Authority: IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-15-15-1

Sec. 3. (a) The purpose of this section is to establish a prospective, cost-based reimbursement methodology for services provided by inpatient hospital facilities that are covered by the state of Indiana Medicaid program. The methodology for reimbursement described in this section shall be a prospective system wherein a payment rate for each hospital stay will be established according to a DRG reimbursement methodology or a level-of-care reimbursement methodology. Prospective payment shall constitute full reimbursement **unless otherwise indicated herein or as indicated in provider manuals and update bulletins.** There shall be no year-end cost settlement payments.

(b) Rebasing of the DRG and level-of-care methodologies will apply information from the most recent available cost report that has been filed and audited by the office or its contractor.

(c) Payment for inpatient stays reimbursed according to the DRG methodology shall be equal to the **lower of billed charges or the** sum of the DRG rate, the capital rate, the medical education rate, and, if applicable, the outlier payment amount.

(d) Payment for inpatient stays reimbursed as level-of-care cases shall be equal to the **lower of billed charges or the** sum of the per diem rate for each Medicaid day, the capital rate, the medical education rate, and, if applicable, the outlier payment amount (burn cases only).

(e) Inpatient stays reimbursed according to the DRG methodology shall be assigned to a DRG using the all patient DRG grouper.

(f) The DRG rate is equal to the product of the relative weight and the base amount.

(g) ~~Initial relative weights were calculated using Indiana Medicaid claims data for inpatient stays with dates of admission within state fiscal years 1990, 1991, and 1992 and cost report data from facilities' fiscal year 1990 cost reports.~~ Relative weights will be reviewed by the office and adjusted no more often than annually by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the relative use of hospital resources. Interim adjustments to the relative weights will not be made except in response to legislative mandates affecting Medicaid participating hospitals. Each legislative mandate will be evaluated individually to determine whether an adjustment to the relative weights will be made. DRG average length of stay values and outlier thresholds will be revised when relative weights are adjusted. **The office shall include the costs of outpatient hospital and ambulatory surgical center services that lead to an inpatient admission when determining relative weights. Such costs occurring within three (3) calendar days of an inpatient admission will not be eligible for outpatient reimbursement under 405 IAC 1-8-3. For reporting purposes, the day on which the patient is formally admitted as an inpatient is counted as the first inpatient day.**

(h) ~~Initial base amounts were calculated using cost report data from facilities' fiscal year 1990 as-settled cost reports. Cost report data were inflated to the midpoint of the state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index available at the end of the 1993 calendar year.~~ Base amounts will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing hospital services.

(i) The office may establish a separate base amount for children's hospitals to the extent necessary to reflect significant differences in cost. Each children's hospital will be evaluated individually for eligibility for the separate base amount. Children's hospitals with a case mix adjusted cost per discharge greater than one (1) standard deviation above the mean cost per discharge for DRG services will be eligible to receive the separate base amount established under this subsection. The separate base amount is equal to one hundred ~~and~~ twenty percent (120%) of the statewide base amount for DRG services.

(j) ~~Initial level-of-care payment rates were calculated using Indiana Medicaid claims data for inpatient stays with dates of admission within state fiscal years 1990, 1991, and 1992 and cost report data from facilities' fiscal year 1990 cost reports. Cost report data was inflated to the midpoint of the state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index.~~ Level-of-care rates will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing hospital services. The office shall not set separate level-of-care rates for different categories of facilities except as specifically noted in this section.

(k) Level-of-care cases are categorized as DRG numbers 424–428, 429 (excluding diagnosis code 317.XX–319.XX),

430–432, 456–459, 462, and 472, as defined and grouped using the all patient DRG grouper, version 14.1. These DRG numbers represent burn, psychiatric, and rehabilitative care.

(l) In addition to the burn level-of-care rate, the office may establish an enhanced burn level-of-care rate for hospitals with specialized burn facilities, equipment, and resources for treating severe burn cases. In order to be eligible for the enhanced burn rate, facilities must offer a burn intensive care unit.

(m) The office may establish separate level-of-care rates for children's hospitals to the extent necessary to reflect significant differences in cost. Each children's hospital will be evaluated individually for eligibility for the separate level-of-care rate. Children's hospitals with a cost per day greater than one (1) standard deviation above the mean cost per day for level-of-care services will be eligible to receive the separate base amount. Determinations will be made for each level-of-care category. The separate base amount is equal to one hundred twenty percent (120%) of the statewide level-of-care rate.

(n) The office may establish separate level-of-care rates, policies, billing instructions, and frequency for long term care hospitals to the extent necessary to reflect differences in treatment patterns for patients in such facilities. Hospitals must meet the definition of long term hospital set forth in this rule to be eligible for the separate level-of-care rate.

(o) Capital payment rates shall be prospectively determined and shall constitute full reimbursement for capital costs. ~~The initial flat, statewide per diem capital rate was calculated using cost report data from facilities' fiscal year 1990 cost reports, inflated to the midpoint of state fiscal year 1995 using the DRI/McGraw-Hill Hospital Market Basket Index and adjusted to reflect a minimum occupancy level for non-nursery beds of eighty percent (80%).~~ Capital per diem rates will be reviewed annually by the office and adjusted no more often than every second year by using the most recent reliable claims data and cost report data to reflect changes in treatment patterns, technology, and other factors that may change the capital costs associated with efficiently providing hospital services. **Capital payment rates shall be adjusted to reflect a minimum occupancy level for nonnursery beds of eighty percent (80%).**

(p) The capital payment amount for Medicaid stays reimbursed under the DRG methodology shall be equal to the product of the per diem capital rate and the average length of stay for all cases within the particular DRG. Medicaid stays reimbursed under the level-of-care methodology will be paid the per diem capital rate for each covered day of care. The office shall not set separate capital per diem rates for different categories of facilities except as specifically noted in this rule.

(q) Medical education rates shall be prospective, hospital-specific per diem amounts. The medical education payment amount for stays reimbursed under the DRG methodology shall be equal to the product of the medical education per diem rate and the average length of stay for the DRG. Payment amounts for medical education for stays reimbursed under the level-of-care methodology shall be equal to the medical education per diem rate for each covered day of care.

(r) Facility-specific, per diem medical education rates shall be based on medical education costs per day multiplied by the number of residents reported by the facility. ~~Initial costs per resident per day were determined according to each facility's fiscal year 1990 cost report.~~ In subsequent years, but no more often than every second year, the office will use the most recent cost report data that has been filed and audited by the office or its contractor to determine a medical education cost per day that more accurately reflects the cost of efficiently providing hospital services. For hospitals with approved graduate medical education programs, the number of residents will be determined according to the most recent available cost report that has been filed and audited by the office or its contractor. Indirect medical education costs shall not be reimbursed.

(s) Medical education payments will only be available to hospitals that continue to operate medical education programs. Hospitals must notify the office within thirty (30) days following discontinuance of their medical education program.

(t) For hospitals with new medical education programs, the corresponding medical education per diem will not be effective prior to notification to the office that the program has been implemented. The medical education per diem shall be based on the most recent reliable claims data and cost report data.

(u) Cost outlier cases are determined according to a threshold established by the office. For purposes of establishing outlier payment amounts, prospective determination of costs per inpatient stay shall be calculated by multiplying a cost-to-charge ratio by submitted and approved charges. Outlier payment amounts shall be equal to ~~a percentage of~~ **the marginal cost factor multiplied by** the difference between the prospective cost per stay and the outlier threshold amount. Cost outlier payments are not available for cases reimbursed using the level-of-care methodology except for burn cases that exceed the established threshold.

(v) Readmissions **for the same or related diagnoses within three (3) calendar days after discharge will be treated as the same admission for payment purposes. Readmissions that occur after three (3) calendar days** will be treated as separate stays for payment purposes but will be subject to medical review. ~~If it is determined that a discharge is premature, payment made as a result of the discharge or readmission may be subject to recoupment.~~

(w) Special payment policies shall apply to **certain** transfer cases. The transferee, or receiving, hospital is paid according to

the DRG methodology or level-of-care methodology. The transferring hospital is paid the sum of the following:

(1) A DRG daily rate for each Medicaid day of the recipient's stay, not to exceed the appropriate full DRG payment, or the level-of-care per diem payment rate for each Medicaid day of care provided.

(2) The capital per diem rate.

(3) The medical education per diem rate. Certain DRGs are established to specifically include only transfer cases; for these DRGs, reimbursement shall be equal to the DRG rate.

(x) Hospitals will not receive separate DRG payments for Medicaid patients subsequent to their return from a transferee hospital. Additional costs incurred as a result of a patient's return from a transferee hospital are eligible for cost outlier reimbursement subject to subsection (u). The office may establish a separate outlier threshold or marginal cost factor for such cases.

~~(x)~~ **(y)** Special payment policies shall apply to less than ~~one-day~~ **twenty-four (24) hour** stays. ~~that are paid according to a DRG rate.~~ For less than ~~one-day~~ **twenty-four (24) hours** stays, hospitals will be paid ~~a DRG daily rate, the capital per diem rate for one (1) day of stay, and the medical education per diem rate for one (1) day of stay, if applicable.~~ **under the outpatient reimbursement methodology as described in 405 IAC 1-8-3.** *(Office of the Secretary of Family and Social Services; 405 IAC 1-10.5-3; filed Oct 5, 1994, 11:10 a.m.: 18 IR 245; filed Nov 16, 1995, 3:00 p.m.: 19 IR 664; filed Dec 19, 1995, 3:00 p.m.: 19 IR 1083; filed Dec 27, 1996, 12:00 p.m.: 20 IR 1515; errata filed Mar 21, 1997, 9:45 a.m.: 20 IR 2116; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Aug 31, 2001, 9:53 a.m.: 25 IR 57; errata filed Jan 25, 2002, 2:27 p.m.: 25 IR 1906)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 23, 2003 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to the Medicaid hospital/surgical center outpatient reimbursement regulation and the Medicaid hospital inpatient reimbursement regulation.

In accordance with public notice requirements of 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration, Office of Medicaid Policy and Planning publishes this notice of proposed changes to the reimbursement methodology for Medicaid enrolled hospitals and ambulatory surgical centers.

The Office of Medicaid Policy and Planning (OMPP) proposes to modify the outpatient reimbursement formula (405 IAC 1-8-2 and 405 IAC 1-8-3) as follows:

•Eliminate outpatient reimbursement for outpatient hospital and ambulatory surgical center services occurring within three calendar days of an inpatient admission for the same or related diagnosis.

•Change the basis of rates that were established using data from 1992 to indicate that rates will be based on the fee schedule amounts during state fiscal year 2003.

•Include conforming changes to reflect current operant policies.

OMPP proposes to modify the inpatient hospital reimbursement formula (405 IAC 1-10.5-2 and 405 IAC 1-10.5-3) as follows:

•Define the marginal cost factor.

•Clarify the definition of a Medicaid day.

•Modify inpatient reimbursement to pay the lower of provider charges or diagnosis related grouping (DRG) and level of care (LOC) inpatient rates.

•Include the costs of outpatient hospital and ambulatory surgical center services that occur within three days of a related inpatient admission when determining relative weights.

•Indicate that readmissions for the same or related diagnoses within three calendar days after discharge will be treated as the same admission for payment purposes.

•Eliminate DRG payments for Medicaid recipients subsequent to their return from a transferee hospital.

•Change the reimbursement methodology for inpatient hospital stays less than 24 hour stays to the outpatient methodology.

•Removes outdated references to initial rate-setting methodologies.

These changes are necessary to reduce overall state expenditures and stay within state appropriations. Policies are also consistent with Medicare and other third party payers.

It is estimated that the fiscal impact of these changes will be savings in expenditures of state and federal dollars of approximately $31.4 million annually.

Copies of proposed amendments to this rule are now available (along with copies of the public notice) and may be inspected by contacting the Director of the local County Division of Family and Children office, except in Marion County, where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana. Written comments may be directed to IFSSA, Attention: Zachary Jackson, 402 West Washington Street, Room W382, P.O. Box 7083, Indianapolis, Indiana 46207-7083. Correspondence should be identified in the following manner: "COMMENTS RE: LSA DOCUMENT #03-164 PROPOSED CHANGES TO OUTPATIENT AND INPATIENT HOSPITAL REIMBURSEMENT SYSTEM". Written comments received will be made available for public display at the address herein of the Office of Medicaid Policy and Planning. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Proposed Rule
LSA Document #03-123

DIGEST

Amends 460 IAC 6 to incorporate a code of ethics for providers providing case management services to an individual and to make other necessary changes. Effective 30 days after filing with the secretary of state.

460 IAC 6-2-2
460 IAC 6-2-3
460 IAC 6-3-15.2
460 IAC 6-14-6
460 IAC 6-14-7
460 IAC 6-15-2
460 IAC 6-19-6
460 IAC 6-31-1
460 IAC 6-36

SECTION 1. 460 IAC 6-2-2, AS ADDED AT 26 IR 749, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-2-2 Rules applicable to all providers
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. This rule, ~~and~~ 460 IAC 6-3 through 460 IAC 6-17, **and 460 IAC 6-34** apply to all providers of supported living services and supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-2-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749)*

SECTION 2. 460 IAC 6-2-3, AS ADDED AT 26 IR 749, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-2-3 Rules applicable to specific providers
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. 460 IAC 6-18 through ~~460 IAC 6-35~~ **460 IAC 6-34** apply to the providers of supported living services and supports specified in the respective rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-2-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749)*

SECTION 3. 460 IAC 6-3, AS ADDED AT 26 IR 749, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

460 IAC 6-3-15.2 "Conflict of interest" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 15.2. "Conflict of interest" means a situation in which an agent, employee, officer of a provider, or a family member of any of these individuals has a private financial interest, such as affiliation through employment or contract with an organization that does business with the provider. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-15.2)*

SECTION 4. 460 IAC 6-14, AS ADDED AT 26 IR 771, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

460 IAC 6-14-6 Policies and procedures for conflicts of interest
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. A provider shall develop and enforce policies and procedures regarding conflicts of interest and the disclosure of possible conflicts of interest for all of the provider's employees or agents. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-6)*

SECTION 5. 460 IAC 6-14, AS ADDED AT 26 IR 771, SECTION 1, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

460 IAC 6-14-7 Policies and procedures for code of ethics
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. A provider shall develop and enforce policies and procedures regarding a code of ethics for agents and employees. The policies and procedures shall be consistent with 460 IAC 6-36. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-7)*

SECTION 6. 460 IAC 6-15-2, AS ADDED AT 26 IR 772, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-15-2 Maintenance of personnel files
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) A provider shall maintain in the provider's office files for each employee or agent of the provider.

(b) The provider's files for each employee or agent shall contain the following:

(1) A negative tuberculosis screening prior to providing services and updated in accordance with recommendations of Centers for Disease Control.

(2) Cardiopulmonary resuscitation certification and recertification, updated ~~annually.~~ **every two (2) years, for each employee or agent who works with individuals.**

(3) Auto insurance information, updated ~~annually,~~ **when it is due to expire,** if the employee or agent will be transporting an individual in the employee's or agent's personal vehicle.

(4) Limited criminal history information that meets the

requirements of 460 IAC 6-10-5 with the information updated at least every three (3) years.

(5) Professional licensure, certification, or registration, including renewals, as applicable.

(6) A copy of the employee's or agent's driver's license, updated when the driver's license is due to expire.

(7) Copies of:

(A) the employee's time records; or

(B) the agent's invoices for services.

(8) Copies of the agenda for each training session attended by the employee or agent, including the following:

(A) Subject matter included in each training session.

(B) The date and time of each training session.

(C) The name of the person or persons conducting each training session.

(D) Documentation of the employee's or agent's attendance at each training session, signed by:

(i) the employee or agent; and

(ii) the trainer.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-15-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 772)

SECTION 7. 460 IAC 6-19-6, PROPOSED TO BE AMENDED AT 26 IR 2676, SECTION 40, IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-19-6 Monitoring of services

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) A provider of case management shall monitor and document the quality, timeliness, and appropriateness of the care, services, and products delivered to an individual.

(b) The documentation required under this section shall include an assessment of the following:

(1) The appropriateness of the outcomes in the individual's ISP.

(2) An individual's progress toward the goals in the individual's ISP.

(c) The documentation required by this section shall include the following:

(1) Any medication administration system for the individual.

(2) An individual's behavioral support plan.

(3) Any health-related incident management system for the individual.

(4) Any side effect monitoring system for the individual.

(5) Any seizure management system for the individual.

(6) Any other system for the individual implemented by more than one (1) provider.

(d) A provider of case management services shall continuously monitor the services and outcomes established for the individual in the individual's ISP, including the following:

(1) A provider of case management services shall timely follow-up on identified problems.

(2) A provider of case management services shall act immediately to resolve critical issues and crises in accordance with this article.

(3) If concerns with services or outcomes are identified, a provider of case management services shall:

(A) address the concerns in a timely manner; and

(B) involve all necessary providers and the individual's support team if necessary.

(e) A provider of case management services who is attempting to resolve a dispute shall follow the dispute resolution procedure described in 460 IAC 6-10-8.

(f) No later than thirty (30) days after the implementation of an individual's ISP, unless otherwise specified in the ISP, a provider of case management shall make the first monitoring contact with the individual.

(g) A provider of case management services shall have regular in-person contact with the individual as required by the ISP and this section. The provider of case management services shall make at least:

(1) one (1) in-person contact with the individual every ninety (90) days to ~~assess the quality and effectiveness of the ISP;~~ **review and complete with the individual or the individual's representative the case management ninety (90) day check list available to providers of case management on the division's providers' computer automation system;**

(2) two (2) in-person contacts each year in the individual's residence; and

(3) one (1) in-person contact each year unannounced.

(h) If an individual's ISP requires more contact than required by subsection (g), the individual's ISP shall control the amount of contact a provider of case management services must make with an individual receiving case management services.

(i) A provider of case management services shall coordinate the provision of family and caregiver training services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 777)*

SECTION 8. 460 IAC 6-31-1, AS ADDED AT 26 IR 785, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-31-1 Documentation required

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. (a) A provider of respite care services shall maintain chronological documentation of the services provided for an individual.

(b) The documentation shall include the following:

(1) The date and duration of respite care services provided.

(2) The signature of the person providing respite care services.

(3) The location and setting where the respite care service was provided.

(4) The reason for the respite care services.

(5) The setting where the respite care services are provided.

(c) Documentation shall be updated, reviewed, and analyzed whenever respite care services are provided. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-31-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 785)*

SECTION 9. 460 IAC 6, AS ADDED AT 26 IR 749, SECTION 1, IS AMENDED BY ADDING A NEW RULE TO READ AS FOLLOWS:

Rule 36. Code of Ethics

460 IAC 6-36-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all supported living services and supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-36-1)*

460 IAC 6-36-2 Code of ethics

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider, in the provision of services under this article, shall abide by the following code of ethics:

(1) A provider shall provide professional services with objectivity and with respect for the unique needs and values of the individual being provided services.

(2) A provider shall avoid discrimination on the basis of factors that are irrelevant to the provision of services, including, but not limited to:

(A) race;

(B) creed;

(C) gender;

(D) age; or

(E) disability.

(3) A provider shall provide sufficient objective information to enable an individual, or the individual's guardian, to make informed decisions.

(4) A provider shall accurately present professional qualifications and credentials.

(5) A provider shall accurately present professional qualifications of all employees or agents.

(6) A provider shall require all employees or agents to assume responsibility and accountability for personal competence in the practice of the person's profession and in the provision of services under this article.

(7) A provider shall require employees or agents to maintain knowledge and skills required for continued professional competence including all requirements necessary for a licensed or accredited professional to maintain the professional's licensure or accreditation.

(8) A provider shall require processional, licensed, or accredited employees or agents to adhere to acceptable standards for the employee or agent's area of professional practice.

(9) A provider shall require employees or agents to comply with all laws and regulations governing a licensed or accredited professional's profession.

(10) A provider shall require all employees or agents to maintain the confidentiality of individual information consistent with the standards of this article and all other laws and regulations governing confidentiality of individual information.

(11) A provider shall require all employees or agents to conduct all practice with honesty, integrity, and fairness.

(12) A provider shall require all employees or agents to fulfill professional commitments in good faith.

(13) A provider shall require all employees or agents to inform the public and colleagues of services by use of factual information.

(14) A provider shall not advertise or market services in a misleading manner.

(15) A provider providing case management services shall not engage in uninvited solicitation of potential clients, who are vulnerable to undue influence, manipulation, or coercion.

(16) A provider shall make reasonable efforts to avoid bias in any kind of professional evaluation.

(17) A provider shall notify the appropriate party, which may include:

(A) the division;

(B) the Indiana state department of health;

(C) a licensing authority;

(D) an accrediting agency;

(E) an employer;

(F) the office of the attorney general, consumer protection division;

of any unprofessional conduct that may jeopardize an individual's safety or impair the individual or individual's representative in any decision making process.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-36-2)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 24, 2003 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Room W451, Conference Room A, Indianapolis, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on proposed amendments to 460 IAC 6 incorporating a code of ethics for providers providing case management services to an individual and making other necessary changes. If an accommodation is required to allow an individual with a disability to participate in this meeting, please contact Kevin Wild at (317) 233-2582 at least 48 hours prior to the meeting. Copies of these

rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Steven C. Cook
Director
Division of Disability, Aging, and Rehabilitative Services

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #03-150

DIGEST

Amends 511 IAC 6-7-6.1 to require students who enter high school after June 30, 2004, to complete Algebra I or Integrated Mathematics I. Effective 30 days after filing with the secretary of state.

511 IAC 6-7-6.1

SECTION 1. 511 IAC 6-7-6.1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6-7-6.1 Required and elective credits
Authority: IC 20-1-1-6
Affected: IC 20-10.1-4-7; IC 20-10.1-5.7-3

Sec. 6.1. (a) Beginning with students who enter high school in the 2000-2001 school year, a minimum of forty (40) credits is necessary for high school graduation. Twenty-four (24) of the credits shall be earned in the areas of study specified in subsection (b), and sixteen (16) of the credits shall be earned from courses in these and other areas of study listed in subsection (b) and 511 IAC 6.1-5.1.

(b) The twenty-four (24) required credits consist of the following:

(1) Language arts	8 credits
(2) Social studies	4 credits
(3) Mathematics	4 credits
(4) Science	4 credits
(5) Additional credits in the areas above or in technology competency	2 credits
(6) Health and education	1 credit
(7) Basic physical education	1 credit

(c) Courses that may be counted toward the required credits prescribed in subsection (b) are subject to the following provisions:

(1) A minimum of six (6) credits of the language arts requirement shall be from the English language arts area of study and is to provide a balance of writing, reading, listening, speaking, grammar, literature, and media studies. Two (2) credits may be from business technology, family and consumer sciences, technology education, or vocational-technical courses having predominately language arts content. For students who successfully complete a Level III foreign language course, two (2) credits of the language arts requirement may be waived.

(2) The social studies requirement shall include two (2) credits in United States history, one (1) credit in United States government, and one (1) credit in another social studies course or in global economics or consumer economics.

(3) **For students who enter high school after June 30, 2003, mathematics credits must include two (2) credits in Algebra I or Integrated Mathematics I unless a student has completed Algebra I or Integrated Mathematics I prior to entering high school.** A minimum of two (2) credits of the mathematics requirement shall be from the mathematics area of study. Two (2) credits may be from business technology, family and consumer sciences, technology education, or vocational-technical courses having predominately mathematics content.

(4) Subject to subdivisions (5) through (7), the health and education credit shall be from a course in the health and physical education area of study that has comprehensive health education content.

(5) The health education credit may be waived for a student if the student's program includes three (3) credits from the family and consumer sciences courses:

(A) Child development and parenting.
(B) Human development and family wellness.
(C) Interpersonal relationships.
(D) Nutrition and wellness.
(E) Orientation to life and careers or adult roles and responsibilities.

(6) One (1) credit substitution of either a science, family and consumer sciences, or health and physical education credit may be used to fulfill the health education requirement for students qualifying under the religious objection provision of IC 20-10.1-4-7 (hygiene instruction).

(7) The four (4) credits of science shall include content from more than one (1) of the major science discipline categories, which are life science, physical science, and earth and space science. Two (2) credits may be from business technology, family and consumer sciences, technology education, or vocational-technical courses having predominately science content.

(8) The technology competency requirement may be fulfilled by completing courses from the following:

(A) Computer applications.
(B) Computer applications, advanced.
(C) Computer keyboarding/document formatting.
(D) Computer programming.
(E) Business technology lab I.
(F) Business technology lab II.
(G) Computerized accounting services.

(H) Computer operations and/or programming.
(I) Introduction to computer applications.
(J) Computer graphics.
(K) Communications processes.
(L) Technology systems.
(M) Two (2) credits in business technology, family and consumer sciences, technology education, or vocational-technical courses having predominately technology content taught through a project-based approach.

(9) The technology competency requirement may be met by completing a student project that addresses individual, workplace, or community needs and demonstrates the ability to:
(A) evaluate, select, and apply appropriate technology tools and resources;
(B) use telecommunications tools and resources to meet needs for collaboration, research, publication, communications, and productivity;
(C) use technology tools for managing and exchanging information;
(D) use technology tools for information analysis, problem-solving, and decision making; and
(E) design, develop, publish, and disseminate information, models, or other creative products that include printed information and graphics, charts, tables, or other visual elements.

A student who meets the technology competency requirement by demonstrating these performances shall be given two (2) credits in computer applications.

(Indiana State Board of Education; 511 IAC 6-7-6.1; filed Mar 27, 2000, 9:07 a.m.: 23 IR 1999)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 2, 2003 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on a proposed amendment to require students who enter high school after June 30, 2004, to complete Algebra I or Integrated Mathematics I. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #03-151

DIGEST

Amends 511 IAC 6.1-5.1-9 concerning business technology education and technology education and 511 IAC 6.1-5.1-10.1 concerning vocational-technical courses. Effective 30 days after filing with the secretary of state.

511 IAC 6.1-5.1-9
511 IAC 6.1-5.1-10.1

SECTION 1. 511 IAC 6.1-5.1-9 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-9 Business technology education; technology education

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 9. The following courses may be offered in the business technology education and technology education areas of study:

(1) The following business technology education courses:
(A) The following business technology education and economics courses:
(i) Accounting I.
(ii) Accounting II.
(iii) Business foundations.
(iv) Computer applications.
(v) Computer applications, advanced.
(vi) Computer keyboarding/document formatting.
(vii) Computer programming.
(viii) Digital communication tools.
~~(viii)~~ **(ix)** Marketing.
~~(ix)~~ **(x)** Business mathematics/personal finance.
~~(x)~~ **(xi)** Shorthand/notehand.

(B) The following advanced business technology education and economics courses:
(i) Business, college level.
(ii) Business and personal law.
(iii) Business management.
(iv) Desktop publishing.
~~(iv)~~ **(v)** Entrepreneurship.
(vi) Financial services and planning.
~~(v)~~ **(vii)** Global economics.
~~(vi)~~ **(viii)** International business.
~~(vii)~~ **(ix)** Technical/business communication.

(2) The following technology education courses:
(A) The following technology education courses:
(i) Communication systems (one (1) semester).
(ii) Construction systems (one (1) semester).
(iii) Manufacturing systems (one (1) semester).
(iv) Transportation systems (one (1) semester).
(v) Communication processes (one (1) or two (2) semesters).
(vi) Construction processes (one (1) or two (2) semesters).
(vii) Manufacturing processes (one (1) or two (2) semesters).
(viii) Transportation processes (one (1) or two (2) semesters).

(ix) Design processes (one (1) or two (2) semesters).
(x) Technology enterprises (one (1) semester).
(xi) Technology and society (one (1) semester).
(xii) Technology systems (one (1) or two (2) semesters).
(xiii) Fundamentals of engineering (one (1) semester).
(xiv) Computers in design and production systems (one (1) or two (2) semesters).

(B) ~~After July 1, 2001,~~ Schools involved in Project Lead the Way may substitute the following pre-engineering courses:

(i) Introduction to engineering design (two (2) semesters) in lieu of design processes.
(ii) Principles of engineering (two (2) semesters) in lieu of fundamentals of engineering.
(iii) Computer integrated manufacturing (two (2) semesters) in lieu of computers in design and production systems.

(C) Schools involved in Project Lead the Way may also offer the following pre-engineering courses:

(i) Aerospace technology.
(ii) Biotechnology.
(iii) Civil engineering and architecture.

(Indiana State Board of Education; 511 IAC 6.1-5.1-9; filed Nov 8, 1990, 3:05 p.m.: 14 IR 658; filed Jul 12, 1993, 10:00 a.m.: 16 IR 2853, eff Jul 1, 1993 [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 #92-143 was filed Jul 12, 1993.]; filed May 24, 1995, 10:00 a.m.: 18 IR 2409; filed May 28, 1998, 4:57 p.m.: 21 IR 3826; errata filed Aug 17, 1998, 10:21 a.m.: 22 IR 127; filed Dec 2, 2001, 12:22 p.m.: 25 IR 1141)

SECTION 2. 511 IAC 6.1-5.1-10.1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-10.1 Vocational-technical courses

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 10.1. (a) The following courses may be offered in the vocational-technical area of study:

(1) The following agricultural science and business courses:
(A) Fundamentals of agricultural science and business.
(B) The following agricultural business courses:
(i) Agribusiness management.
(ii) Agricultural mechanization.
(iii) Farm management.
(iv) Landscape management.
(v) Natural resource management.
(vi) Supervised agricultural experience.
(C) The following agricultural science courses:
(i) Animal science.
(ii) Food science.
(iii) Horticultural science.
(iv) Plant and soil science.

(2) The following business services and technology education courses:
(A) Career planning and success skills.
(B) The following business services and technology education laboratory courses:
(i) Business technology lab I.
(ii) Business technology lab II.
(iii) Business management and finance.
(iv) Computer operations and/or programming.
(v) Computerized accounting services.
(vi) Information technology network systems.
(vii) Information technology information support and services.
(viii) Information technology programming and software development.
(ix) Information technology interactive media.
(C) Business cooperative experiences (cooperative/related).

(3) The following health careers education courses:
(A) The following health careers education core courses:
(i) Introduction to health care systems.
(ii) Integrated health sciences I.
(iii) Integrated health sciences II.
(iv) Introduction to dental health careers.
(B) The following health careers education skill courses:
(i) Health careers I.
(ii) Health careers II.
(iii) Health careers III.
(iv) Introduction to medical assisting.
(v) Introduction to health care specialties.
(vi) Introduction to community health services.
(vii) Introduction to pharmacy.
(viii) Introduction to physical therapy.
(ix) Introduction to health care technology.
(x) Introduction to emergency medical services.
(xi) Dental assisting I, II, III, and IV.
(C) The following health occupations, other courses:
(i) Medical terminology.
(ii) Anatomy and physiology.
(D) Health career practicum (extended lab/related).

(4) The following one (1) semester family and consumer sciences courses:
(A) Orientation to life and careers.
(B) Nutrition and wellness.
(C) Child development and parenting.
(D) Interpersonal relationships.
(E) Adult roles and responsibilities.
(F) Consumer economics.
(G) Chemistry of foods.
(H) Advanced foods and nutrition.
(I) Advanced child development.
(J) Human development and family wellness.
(K) Housing and interiors.
(L) Textiles and fashion technologies.
(M) Family and consumer sciences issues and applications.

(5) The following one (1) year occupational family and consumer sciences courses:

(A) The following early childhood education and services courses:
(i) Early childhood education and services I.
(ii) Early childhood education and services II.
(B) The following apparel and textile occupations courses:
(i) Apparel and textile occupations I.
(ii) Apparel and textile occupations II.
(C) The following food industry occupations courses:
(i) Food industry occupations I.
(ii) Food industry occupations II.
(D) The following housing occupations courses:
(i) Housing occupations I.
(ii) Housing occupations II.
(E) The following residential and institutional facilities and equipment courses:
(i) Residential and institutional facilities and equipment I.
(ii) Residential and institutional facilities and equipment II.
(F) The following human services occupations courses:
(i) Human services I.
(ii) Human services II.
(G) The following cooperative occupational family and consumer sciences courses:
(i) Cooperative occupational family and consumer sciences I.
(ii) Cooperative occupational family and consumer sciences II.

(6) The following trade and industrial education courses:
~~(A) The following air conditioning courses:~~
~~(i) Cooling and refrigeration.~~
~~(ii) Heating and air conditioning.~~
~~(iii) Solar heating and cooling.~~
~~(B) The following appliance repair courses:~~
~~(i) Major appliance repair.~~
~~(ii) Small appliance repair.~~
~~(C) The following automotive courses:~~
~~(i) Body and fender repair.~~
~~(ii) Auto mechanics.~~
~~(iii) Auto specialization.~~
~~(D) The following aviation courses:~~
~~(i) Aircraft maintenance.~~
~~(ii) Air frame mechanics.~~
~~(iii) Aircraft mechanics.~~
~~(iv) Aircraft operations.~~
~~(v) Ground operations.~~
~~(E) The following business machine maintenance courses:~~
~~(i) Business machine maintenance.~~
~~(ii) Business machine repair.~~
~~(F) The following commercial art courses:~~
~~(i) Commercial art.~~
~~(ii) Interior design.~~
~~(iii) Product design.~~
~~(G) Commercial fishery.~~
~~(H) Commercial photography.~~
~~(I) The following construction and maintenance courses:~~
~~(i) Building trades.~~
~~(ii) Carpentry.~~
~~(iii) Electricity.~~
~~(iv) Masonry.~~
~~(v) Painting and decorating.~~
~~(vi) Plumbing and pipe fitting.~~
~~(J) The following custodial service courses:~~
~~(i) Custodial service.~~
~~(ii) Building maintenance.~~
~~(K) Diesel mechanics.~~
~~(L) The following drafting courses:~~
~~(i) Architectural.~~
~~(ii) Civil/structural.~~
~~(iii) Engineering.~~
~~(iv) Blueprint reading.~~
~~(v) Die designer.~~
~~(vi) Design.~~
~~(vii) Drafting.~~
~~(viii) Electrical/electronics.~~
~~(ix) Mechanical.~~
~~(M) The following electrical courses:~~
~~(i) Industrial electrician.~~
~~(ii) Lineman.~~
~~(iii) Motor repair.~~
~~(N) The following electronics courses:~~
~~(i) Biomedical.~~
~~(ii) Communications.~~
~~(iii) Computer electronics.~~
~~(iv) Electronic product servicing.~~
~~(v) Industrial electronics.~~
~~(vi) Radio/television repair.~~
~~(vii) Robotics.~~
~~(O) The following fabric maintenance courses:~~
~~(i) Dry cleaning.~~
~~(ii) Laundering.~~
~~(P) Foremanship, supervision, and management development.~~
~~(Q) The following graphic arts-printing courses:~~
~~(i) Graphic arts.~~
~~(ii) Printing.~~
~~(R) Industrial atomic energy.~~
~~(S) The following instrument maintenance and repair courses:~~
~~(i) Instrument maintenance and repair.~~
~~(ii) Watchmaking and repair.~~
~~(T) The following maritime courses:~~
~~(i) Maritime.~~
~~(ii) Marine maintenance.~~
~~(U) The following metalworking courses:~~
~~(i) Foundry.~~
~~(ii) Machine shop.~~
~~(iii) Machine tool operation.~~
~~(iv) Sheet metal.~~
~~(v) Metal fabrication.~~
~~(vi) Welding and cutting.~~

~~(vii) Gas welding.~~
~~(viii) Electric welding.~~
~~(ix) Tool and die making.~~
~~(V) Metallurgy.~~
~~(W) The following precision food production courses:~~
~~(i) Precision food production, general.~~
~~(ii) Meat cutting.~~
~~(iii) Slaughtering and butchering.~~
~~(iv) Precision food production.~~
~~(X) The following personal services courses:~~
~~(i) Barbering.~~
~~(ii) Cosmetology.~~
~~(iii) Electrolysis.~~
~~(Y) Plastics.~~
~~(Z) The following public service courses:~~
~~(i) Fireman training.~~
~~(ii) Law enforcement training.~~
~~(AA) Small engine repair.~~
~~(BB) Stationary energy sources.~~
~~(CC) The following textile production and fabrication courses:~~
~~(i) Textile production and fabrication.~~
~~(ii) Commercial sewing.~~
~~(iii) Tailoring.~~
~~(DD) The following leather working courses:~~
~~(i) Leather working.~~
~~(ii) Shoe repair.~~
~~(EE) Upholstering.~~
~~(FF) The following woodworking courses:~~
~~(i) Cabinet making.~~
~~(ii) Millwork.~~
~~(iii) Furniture making.~~
~~(iv) Woodworking, general.~~
(A) Aerospace engineering technology.
(B) Aircraft operations.
(C) Appliance technology.
(D) Automotive collision repair technology.
(E) Automotive services technology.
(F) Aviation maintenance technology.
(G) Aviation support operations.
(H) Biotechnical engineering.
(I) Building facilities and management.
(J) Building trades technology.
(K) Cabinet and furniture manufacturing.
(L) Civil-architectural engineering.
(M) Commercial art and graphic design.
(N) Commercial photography.
(O) 3D computer animation and visualization.
(P) Computer integrated manufacturing.
(Q) Computer network technology.
(R) Computer repair and maintenance technology.
(S) Cosmetology.
(T) Diesel service technology.
(U) Digital electronics technology.
(V) Drafting and computer aided design (CAD).
(W) Electronics technology.
(X) Engineering.
(Y) Fire science.
(Z) Graphic imaging technology.
(AA) Heating, ventilation, air conditioning, and refrigeration (HVACR).
(BB) Industrial repair and maintenance.
(CC) Law enforcement.
(DD) Plastics technology.
(EE) Precision machine technology.
(FF) Recreational and portable power equipment.
(GG) Tractor/trailer operation.
(HH) Welding technology.
~~(GG)~~ **(II)** The following industrial cooperative training courses:
(i) Related instruction.
(ii) On-the-job training.

(7) The following interdisciplinary cooperative education courses:
(A) Related instruction.
(B) On-the-job training.

(8) The following marketing education courses:
(A) The following marketing courses:
(i) Marketing foundations.
(ii) Marketing, advanced (related).
(B) The following specialized marketing education courses:
(i) Entrepreneurship.
(ii) Fashion merchandising.
(iii) Financial services marketing.
(iv) Hospitality, travel, and tourism.
(v) Marketing seminar.
(vi) Sports, recreation, and entertainment marketing.
(vii) Radio-TV broadcasting/telecommunications.
(C) Marketing field experiences (cooperative).

(b) All of the courses listed in subsection (a) must also meet the requirements of 511 IAC 8.

(c) Schools may qualify their family and consumer sciences programs for vocational status by meeting the following additional requirements:
(1) A minimum offering for vocational family and consumer sciences consists of teaching orientation to life and careers or interpersonal relationships every year and teaching at least four (4) additional courses from the following:
(A) Nutrition and wellness.
(B) Interpersonal relationships.
(C) Child development and parenting or human development and family wellness.
(D) Adult roles and responsibilities.
(E) Consumer economics.
(F) Orientation to life and careers.

This minimum offering must be taught within any consecutive two (2) year time period.
(2) A major in vocational family and consumer sciences

education consists of at least six (6) credits, including three (3) of the following:

(A) Orientation to life and careers.

(B) Adult roles and responsibilities.

(C) Nutrition and wellness.

(D) Child development and parenting or human development and family wellness.

(E) Interpersonal relationships.

(3) A minor in vocational family and consumer sciences consists of at least four (4) credits from the following:

(A) Child development and parenting or human development and family wellness.

(B) Nutrition and wellness.

(C) Orientation to life and careers.

(D) Adult roles and responsibilities.

(E) Consumer economics.

(F) Interpersonal relationships.

(Indiana State Board of Education; 511 IAC 6.1-5.1-10.1; filed Jul 12, 1993, 10:00 a.m.: 16 IR 2854, eff Jul 1, 1993 [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 #92-143 was filed Jul 12, 1993.]; filed May 28, 1998, 4:57 p.m.: 21 IR 3827; errata filed Aug 17, 1998, 10:21 a.m.: 22 IR 127; filed Dec 2, 2001, 12:22 p.m.: 25 IR 1143)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 2, 2003 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on proposed amendments concerning business technology education, technology education, and vocational-technical courses. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 515 PROFESSIONAL STANDARDS BOARD

Proposed Rule
LSA Document #03-65

DIGEST

Adds 515 IAC 12 to provide for certain requirements for the issuance of an accomplished practitioner license by the professional standards board. Effective 30 days after filing with the secretary of state.

515 IAC 12

SECTION 1. 515 IAC 12 IS ADDED TO READ AS FOLLOWS:

ARTICLE 12. ACCOMPLISHED PRACTITIONER LICENSE

Rule 1. Accomplished Practitioner License

515 IAC 12-1-1 Accomplished practitioner instructional license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 1. An accomplished practitioner instructional license is a renewable license that may be issued to a teacher who:

(1) holds a proficient practitioner instructional license, as noted in 515 IAC 8-1-8 through 515 IAC 8-1-15, 515 IAC 8-1-17 through 515 IAC 8-1-34, and 515 IAC 8-1-36 through 515 IAC 8-1-39, and completes either:

(A) a master's degree or higher approved or recognized by the professional standards board and has been recommended for the accomplished practitioner license by the institution granting the degree; or

(B) certification by the National Board for Professional Teaching Standards of a content area recognized by the professional standards board; or

(2) holds a proficient practitioner instructional license, as noted in 515 IAC 8-1-16 or 515 IAC 8-1-35, and completes the requirements as outlined in the rule.

(Professional Standards Board; 515 IAC 12-1-1)

515 IAC 12-1-2 Accomplished practitioner administration or school services license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 2. An accomplished practitioner instructional license is a renewable license that may be issued to an administrator or school services applicant who holds a proficient practitioner administration or school services license, as noted in 515 IAC 8-1-40 through 515 IAC 8-1-48, and completes the requirements as outlined in the rule. *(Professional Standards Board; 515 IAC 12-1-2)*

515 IAC 12-1-3 Accomplished practitioner license validity period

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 3. The accomplished practitioner administration or school services license is valid for ten (10) years from the date the materials are received by the professional standards board. After the initial ten (10) years, all subsequent renewals will be valid for five (5) years. *(Professional Standards Board; 515 IAC 12-1-3)*

515 IAC 12-1-4 Accomplished practitioner application procedures

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 4. The application procedures set forth in 515 IAC 9-1-5 and 515 IAC 9-1-6 shall apply to this rule. *(Professional Standards Board; 515 IAC 12-1-4)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 1, 2003 at 10:00 a.m., at the Professional Standards Board, 101 West Ohio Street, Suite 300, Indianapolis, Indiana the Professional Standards Board will hold a public hearing on a proposed new rule to provide certain requirements for the issuance of an accomplished practitioner's license by the Professional Standards Board. Copies of these rules are now on file at the Professional Standards Board, 101 West Ohio Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Marie Theobald
Executive Director
Professional Standards Board

TITLE 550 BOARD OF TRUSTEES OF THE INDIANA STATE TEACHERS' RETIREMENT FUND

Proposed Rule
LSA Document #03-155

DIGEST

Amends 550 IAC 2-2-7 regarding the definition of compensation to clarify the treatment of vacation pay. Effective 30 days after filing with the secretary of state.

550 IAC 2-2-7

SECTION 1. 550 IAC 2-2-7 IS AMENDED TO READ AS FOLLOWS:

550 IAC 2-2-7 Definition of compensation

Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-4-3; IC 21-6.1-5-7

Sec. 7. (a) "Basic salary" means the monetary compensation agreed to in advance in writing that is earned by and paid to a teacher for services rendered under a uniform or supplemental contract for a school year running from July 1 through June 30 plus the amounts stated in IC 5-10.2-4-3 that are not paid directly to the member.

(b) Annual compensation does not include any of the following:

(1) Those amounts excluded under IC 5-10.2-4-3.

(2) A one (1) time payment, or lump sum payment, by the employer which is not made for services actually rendered or based upon the member's standard rate of pay.

(3) Back pay awards or settlements arising out of an employment grievance proceeding, except that back pay may be allocated among the years in which the service was rendered.

(4) Payments by the employer for accrued but unused compensatory time for overtime worked.

(5) Meals, lodging, life insurance, or other fringe benefits provided by the employer unless they fall within IC 5-10.2-4-3(c)(2).

(6) Payments by the employer for accrued but unused holiday, sick, **and** personal ~~and vacation~~ time, even when paid as part of a bargained agreement on a yearly or terminal basis.

(7) Payments for dues for professional or other organizations.

(8) Payments made as bonuses or awards for attendance, incentives, or performance unless such payments are available to all covered members employed by the employing unit.

(9) Payments in lieu of insurance coverage to members who do not participate in employer provided health insurance plans or other fringe benefits provided by the employer.

(10) Reimbursements for expenditures made by the member.

(11) Payments by the employer for accrued but unused vacation time, even when paid as part of a bargained agreement on a yearly or terminal basis, except for annual amounts paid to a member:

(A) employed in a state institution with an instructional calendar of less than one hundred ninety-five (195) days;

(B) pursuant to the state department of personnel's teacher salary policy; and

(C) who retired after May 1, 2001.

These items do not constitute an exhaustive list.

(c) A member's basic salary and annual compensation must be certified by an official of the employing unit who has knowledge of and access to the records. A member may not certify his or her basic salary and annual compensation. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 2-2-7; filed Oct 5, 1992, 5:00 p.m.: 16 IR 705; filed Jul 26, 2000, 2:48 p.m.: 23 IR 3089; readopted and extended filed Dec 3, 2001, 11:02 a.m.: 25 IR 1731)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 26, 2003 at 1:00 p.m., at the Board of Trustees of the Indiana State Teachers' Retirement Fund, 150 West Market Street, Suite 300, Indianapolis, Indiana the Board of Trustees of the Indiana State Teachers' Retirement Fund will hold a public hearing on proposed amendments regarding counting vacation time payments as compensation. Send written comments to Thomas

N. Davidson, General Counsel, Indiana State Teachers' Retirement Fund, 150 West Market Street, Suite 300, Indianapolis, Indiana 46204. Copies of these rules are now on file at the Indiana State Teachers' Retirement Fund, 150 West Market Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Dr. William E. Christopher
Executive Director
Board of Trustees of the Indiana State Teachers' Retirement Fund

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #03-8

DIGEST

Adds 760 IAC 1-69 to recognize, permit, and prescribe the use of the 2001 Commissioners Standard Ordinary Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits. Effective January 1, 2004.

760 IAC 1-69

SECTION 1. 760 IAC 1-69 IS ADDED TO READ AS FOLLOWS:

Rule 69. Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits

760 IAC 1-69-1 Definitions
Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5

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

(1) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002. Unless the context indicates otherwise, the term includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

(2) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(3) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(4) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(5) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(Department of Insurance; 760 IAC 1-69-1)

760 IAC 1-69-2 2001 CSO Mortality Table
Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5

Sec. 2. (a) At the election of the company for any one (1) or more specified plans of insurance and subject to the conditions stated in this rule, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2004, and before the date specified in subsection (b) to which IC 27-1-12-10(2), IC 27-1-12-7(dd), 760 IAC 1-64-3(a), and 760 IAC 1-64-3(b) are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which IC 27-1-12-10(2), IC 27-1-12-7(dd), 760 IAC 1-64-3(a), and 760 IAC 1-64-3(b) are applicable. *(Department of Insurance; 760 IAC 1-69-2)*

760 IAC 1-69-3 Conditions
Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5

Sec. 3. (a) For each plan of insurance with separate rates for smokers and nonsmokers, an insurer may use any of the following:

(1) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by IC 27-1-12-10(6) and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits.

(3) Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables shall be used.

(c) For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts

of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of 760 IAC 1-64 relative to use of the select and ultimate form.

(d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis as specified in 760 IAC 1-57-8. *(Department of Insurance; 760 IAC 1-69-3)*

760 IAC 1-69-4 Applicability of the 2001 CSO Mortality Table to 760 IAC 1-64

Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5

Sec. 4. (a) The 2001 CSO Mortality Table may be used in applying 760 IAC 1-64 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in section 2 of this rule:

(1) 760 IAC 1-64-1(c)(3)(B): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

(2) 760 IAC 1-64-2(d): All calculations are made using the 2001 CSO Mortality Rate and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in subdivision (4). The value of q_{x+k-1} is the valuation mortality rate for deficiency reserves in policy year k+t, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

(3) 760 IAC 1-64-3(a): The 2001 CSO Mortality Table is the minimum standard for basic reserves.

(4) 760 IAC 1-64-3(b): The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in 760 IAC 1-64-3(b)(3)(A) through 760 IAC 1-64-3(b)(3)(I). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table unless the combination is explicitly required by rule or necessary to be in compliance with relevant Actuarial Standards of Practice.

(5) 760 IAC 1-64-4(c): The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

(6) 760 IAC 1-64-4(e)(4): The calculations specified in 760 IAC 1-64-4(e) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(7) 760 IAC 1-64-4(f)(4): The calculations specified in 760 IAC 1-64-4(f) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(8) 760 IAC 1-64-4(g)(2): The calculations specified in 760 IAC 1-64-4(g) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(9) 760 IAC 1-64-5(a)(1)(B): The one (1) year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

(b) Nothing in this section shall be construed to expand the applicability of 760 IAC 1-64 to include life insurance policies exempted under 760 IAC 1-64-1(c). *(Department of Insurance; 760 IAC 1-69-4)*

760 IAC 1-69-5 Gender-blended tables

Authority: IC 27-1-3-7; IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5
Affected: IC 27-1-12-7; IC 27-1-12-10; IC 27-1-12-10.5; IC 27-4-1-4

Sec. 5. (a) For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2004, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this provision.

(b) The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the National Association of Insurance Commissioners in December 2002.

(c) It shall not, in and of itself, be a violation of IC 27-4-1-4 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis. *(Department of Insurance; 760 IAC 1-69-5)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 24, 2003 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed new rule to recognize, permit, and prescribe the use of the 2001 Commissioners Standard Ordinary Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits. Copies are available on the Department of Insurance's Web site at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance

TITLE 848 INDIANA STATE BOARD OF NURSING

Proposed Rule
LSA Document #03-34

DIGEST

Amends 848 IAC 5-1-1 and 848 IAC 5-1-3 concerning prescriptive authority for advanced practice nursing. Effective 30 days after filing with the secretary of state.

848 IAC 5-1-1
848 IAC 5-1-3

SECTION 1. 848 IAC 5-1-1 IS AMENDED TO READ AS FOLLOWS:

848 IAC 5-1-1 Initial authority to prescribe legend drugs
Authority: IC 25-23-1-7
Affected: IC 25-23-1

Sec. 1. (a) An advanced practice nurse may be authorized to prescribe legend drugs, including controlled substances, if the advanced practice nurse does the following:

(1) Submits an application on a form prescribed by the board with the required fee, including, but not limited to, the following information:

(A) Complete name, residence and office addresses with zip codes, and residence and business telephone numbers with area codes.

(B) All names used by the applicant, explaining the reasons for any name change or use.

(C) Date and place of birth.

(D) Citizenship and visa status, if applicable.

(E) A complete statement of all nursing education received, providing **the following:**

(i) Names and locations of all colleges, schools, or universities attended.

(ii) Dates of attendance. ~~and~~

(iii) Degrees obtained or received.

(F) Whether the applicant has ever had any disciplinary action taken against the applicant's nursing license by the board or by the licensing agency of any other state or jurisdiction and the details and dates thereof.

(G) A complete list of all places of employment, including **the following:**

(i) The names and addresses of employers.

(ii) The dates of each employment. ~~and~~

(iii) Employment responsibilities held or performed ~~which~~ **that** the applicant had since graduation from nursing school.

(H) Whether the applicant is, or has been, addicted to any narcotic drug, alcohol, or other drugs and, if so, the details thereof.

(I) Whether the applicant has been convicted of any violation of law relating to drug abuse, controlled substances, narcotic drugs, or any other drugs.

(J) Whether the applicant has previously been licensed to practice nursing in any other state or jurisdiction and, if so, **the following:**

(i) The names of such states or jurisdictions ~~which~~ **that** previously licensed the applicant.

(ii) The dates of such licensure.

(iii) The license number. ~~and~~

(iv) The current status of such licensure.

(K) Whether the applicant has been denied a license to practice nursing by any state or jurisdiction and, if so, the details thereof, including **the following:**

(i) The name and location of the state or jurisdiction denying licensure.

(ii) The date of denial of such licensure. ~~and~~

(iii) The reasons relating thereto.

(L) A certified statement that the applicant has not been convicted of a criminal offense (excluding minor traffic violations) or a certified statement listing all criminal offenses of which the applicant has been convicted. This listing must include **the following:**

(i) The offense of which the applicant was convicted.

(ii) The court in which the applicant was convicted. ~~and~~

(iii) The cause number in which the applicant was convicted.

(M) All information in the application shall be submitted under oath or affirmation, subject to the penalties for perjury.

(2) Submits proof of **holding** an active, unrestricted:

(A) Indiana registered nurse license; **or**

(B) registered nurse license in another compact state and having filed a Multi-state Privilege Notification Form with the health professions bureau.

(3) Submits proof of having met the requirements of all applicable laws for practice as an advanced practice nurse in the state of Indiana.

(4) Submits proof of a baccalaureate or higher degree in nursing.

(5) If the applicant holds a baccalaureate degree only, submits proof of certification as a nurse practitioner or certified nurse-midwife by a national organization recognized by the board and which requires a national certifying examination.

~~(5)~~ **(6)** Submits proof of having successfully completed a graduate level pharmacology course consisting of at least two (2) semester hours of academic credit from a college or university accredited by the Commission on Recognition of Postsecondary Accreditation:

(A) within five (5) years of the date of application; or

(B) ~~as part of a degree program, with clear and convincing proof of subsequent collaborative experience as an advanced practice nurse within the last five (5) years,~~ if the **pharmacology** course was completed more than five (5) years ~~but not more than eight (8) years, prior to~~ **immedi-**

ately preceding the date of **filing the** application, **the applicant must submit proof of the following:**

(i) Completing at least thirty (30) actual contact hours of continuing education during the two (2) years immediately preceding the date of the application, including a minimum of at least eight (8) actual contact hours of pharmacology, all of which must be approved by a nationally approved sponsor of continuing education for nurses.

(ii) Prescriptive experience in another jurisdiction within the five (5) years immediately preceding the date of the application.

~~(6)~~ **(7)** Submits proof of collaboration with a licensed practitioner in the form of a written practice agreement that sets forth the manner in which the advanced practice nurse and licensed practitioner will cooperate, coordinate, and consult with each other in the provision of health care to patients. Practice agreements shall be in writing and shall also set forth provisions for the type of collaboration between the advanced practice nurse and the licensed practitioner and the reasonable and timely review by the licensed practitioner of the prescribing practices of the advanced practice nurse. Specifically, the written practice agreement shall contain at least the following information:

(A) Complete names, home and business addresses, zip codes, and telephone numbers of the licensed practitioner and the advanced practice nurse.

(B) A list of all other offices or locations besides those listed in clause (A) where the licensed practitioner authorized the advanced practice nurse to prescribe.

(C) All specialty or board certifications of the licensed practitioner and the advanced practice nurse.

(D) The specific manner of collaboration between the licensed practitioner and the advanced practice nurse, including how the licensed practitioner and the advanced practice nurse will:

(i) work together;

(ii) share practice trends and responsibilities;

(iii) maintain geographic proximity; and

(iv) provide coverage during absence, incapacity, infirmity, or emergency by the licensed practitioner.

(E) A description of what limitation, if any, the licensed practitioner has placed on the advanced practice nurse's prescriptive authority.

(F) A description of the time and manner of the licensed practitioner's review of the advanced practice nurse's prescribing practices. The description shall include provisions that the advanced practice nurse must submit documentation of the advanced practice nurse's prescribing practices to the licensed practitioner within seven (7) days. Documentation of prescribing practices shall include, but not be limited to, at least a five percent (5%) random sampling of the charts and medications prescribed for patients.

(G) A list of all other written practice agreements of the licensed practitioner and the advanced practice nurse.

(H) The duration of the written practice agreement between the licensed practitioner and the advanced practice nurse.

~~(7)~~ **(8)** Written practice agreements for advanced practice nurses applying for prescriptive authority shall not be valid until prescriptive authority is granted by the board.

(b) When the board determines that the applicant has met the requirements under subsection (a), the board shall send written notification of authority to prescribe to the advanced practice nurse, including the identification number and designated authorized initials to be used by the advanced practice nurse.

(c) Advanced practice nurses who have been granted prescriptive authority will immediately notify the board in writing of any changes in, or termination of, written practice agreements, including any changes in the prescriptive authority of the collaborating licensed practitioner. Written practice agreements shall terminate automatically if the advanced practice nurse or licensed practitioner no longer has an active, unrestricted license.

(d) Advanced practice nurses wishing to prescribe controlled substances must obtain an Indiana controlled substances registration and a federal Drug Enforcement Administration registration. *(Indiana State Board of Nursing; 848 IAC 5-1-1; filed Jul 29, 1994, 5:00 p.m.: 17 IR 2876; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 940)*

SECTION 2. 848 IAC 5-1-3 IS AMENDED TO READ AS FOLLOWS:

848 IAC 5-1-3 Renewal of authority to prescribe legend drugs

Authority: IC 25-23-1-7
Affected: IC 25-23-1

Sec. 3. (a) Prescriptive authority for the advanced practice nurse expires on October 31 in each odd-numbered year. Failure to renew the prescriptive authority on or before the expiration date will automatically render the authority invalid without any action by the board.

(b) An application form and instructions for renewal of the authority to prescribe legend drugs will be mailed in odd-numbered years with the renewal for registered nurse licensure.

(c) Applicants for renewal of the prescriptive authority shall pay a renewal fee in addition to the fee for renewal of the registered nurse license.

(d) Applications for renewal of the prescriptive authority shall be mailed to the last known address of the licensee. Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing the registered nurse license and the authorization to prescribe by the renewal date.

(e) Applicants for renewal of prescriptive authority shall

submit **the following** to the board along with the renewal form and fee:

(1) Proof of at least thirty (30) actual contact hours of continuing education during the two (2) years immediately preceding renewal, including at least eight (8) actual contact hours of pharmacology, approved by a nationally approved sponsor of continuing education for nurses. ~~and approved by the board and contained on a list at the health professions bureau.~~

(2) A current signed and dated written collaborative practice agreement that contains all of the information required under section 1 of this rule.

(Indiana State Board of Nursing; 848 IAC 5-1-3; filed Jul 29, 1994, 5:00 p.m.: 17 IR 2878; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 940)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 16, 2003 at 9:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Auditorium, Indianapolis, Indiana the Indiana State Board of Nursing will hold a public hearing on proposed amendments concerning prescriptive authority for advanced practice nursing. Copies of these rules are now on file at the Health Professions Bureau, Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau

TITLE 856 INDIANA BOARD OF PHARMACY

Proposed Rule
LSA Document #03-154

DIGEST

Amends 856 IAC 1-33-1, 856 IAC 1-33-2, and 856 IAC 1-33-4 concerning patient counseling. Effective 30 days after filing with the secretary of state.

856 IAC 1-33-1
856 IAC 1-33-2
856 IAC 1-33-4

SECTION 1. 856 IAC 1-33-1 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-1 Definitions
Authority: IC 25-26-13-4
Affected: IC 25-26-13-4

Sec. 1. ~~As used in~~ **For purposes of this rule, the following definitions apply throughout** this rule:

(1) "Alternative forms of patient information" includes, but is not limited to, written information leaflets, pictograms labels, video programs, or information generated by electronic data processing equipment.

(2) "Clerkship" means:

(A) a pharmacy student in the student's final year of pharmacy school engaged in a school sponsored, board approved program related to the practice of pharmacy; or

(B) an individual who has a professional degree from a school of pharmacy located outside the United States and Canada and who is working to secure additional hours of practice and experience.

(3) "Counseling" means effective communication ~~by a pharmacist,~~ of information **between a pharmacist or pharmacist intern/extern engaged in clerkship and a patient or the patient's designee** in order to improve therapeutic outcomes by maximizing the proper use of prescription medications and devices.

(4) "Not practicable" means patient variables including, but not limited to, the absence of the patient's caregiver, the patient's or caregiver's hearing impairment, or a language barrier. The term does not include pharmacy variables such as inadequate staffing, technology failure, or high prescription volume.

(Indiana Board of Pharmacy; 856 IAC 1-33-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1176; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330)

SECTION 2. 856 IAC 1-33-2 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-2 Patient counseling requirements
Authority: IC 25-26-13-4
Affected: IC 25-26-13-16

Sec. 2. **(a) The qualifying pharmacist shall be responsible for developing, implementing, and enforcing policies and procedures to ensure that patients receive appropriate counseling.**

~~(a)~~ **(b)** Upon the receipt of a prescription or upon the subsequent refilling of a prescription, and following a review of the patient's prescription medication profile, the pharmacist shall be responsible for the initiation of ~~an offer~~ **face-to-face counseling** to discuss matters (counsel) ~~which, in the pharmacist's professional judgment,~~ **that** are significant to optimizing drug therapy. Depending upon the situation, **and in the pharmacist's professional judgment,** these matters may include, but are not necessarily limited to, the following:

(1) The name and description of the medicine.

(2) The route, dosage form, dosage, route of administration, and duration of drug therapy.

(3) Special directions and precautions.

(4) Common adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur.
(5) Techniques for self-monitoring drug therapy.
(6) Proper storage.
(7) Prescription refill information.
(8) Action to be taken in the event of a missed dose.

~~(b)~~ **(c)** Counseling shall be in person, whenever practicable, or through access to a telephone service ~~which~~ **that** is toll-free for long distance calls, and be held with the patient, the patient's caregiver, or the patient's representative.

~~(c)~~ **(d) When used in place of face-to-face counseling,** alternative forms of patient information ~~may be used to supplement verbal counseling when appropriate. Examples include, written information leaflets, pictogram labels, and video programs. Nothing in this subsection shall be construed to mean that supplements may be a substitute for verbal counseling when verbal counseling is practicable.~~ **shall advise the patient or caregiver that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone or collect telephone call.**

~~(d) Nothing in this rule shall be construed as requiring a pharmacist to provide counseling when a patient refuses the offer to counsel.~~

(e) A combination of face-to-face counseling and alternative forms of counseling is required.

(f) Mail-order pharmacies shall be subject to the same counseling requirements as any other pharmacy.

(g) A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation. A patient's or caregiver's refusal of consultation must be documented by the pharmacist. The absence of any record of a refusal of the pharmacist's attempt to counsel shall be presumed to signify that the offer was accepted and that counseling was provided. *(Indiana Board of Pharmacy; 856 IAC 1-33-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1176; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330)*

SECTION 3. 856 IAC 1-33-4 IS AMENDED TO READ AS FOLLOWS:

856 IAC 1-33-4 Institutional patient exception
Authority: IC 25-26-13-4
Affected: IC 25-26-13-4

Sec. 4. The requirements for patient counseling, as described in this rule, shall not apply to patients residing in institutional facilities in Indiana as defined under ~~856 IAC 1-28-1(a).~~ **856 IAC 1-28.1-1(6).** *(Indiana Board of Pharmacy; 856 IAC 1-33-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1177; readopted filed Nov 13, 2001, 3:55 p.m.: 25 IR 1330)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 15, 2003 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Indiana Board of Pharmacy will hold a public hearing on proposed amendments to revise the requirements for patient counseling. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

Proposed Rule
LSA Document #03-22

DIGEST

Amends 865 IAC 1-7-3 to revise what a registered land surveyor may include in the registrant's plans. Amends 865 IAC 1-12 to revise the standards for the competent practice of land surveying. Repeals 865 IAC 1-10-23 and 865 IAC 1-10-24. Effective 30 days after filing with the secretary of state.

865 IAC 1-7-3
865 IAC 1-10-23
865 IAC 1-10-24
865 IAC 1-12-2
865 IAC 1-12-3
865 IAC 1-12-5
865 IAC 1-12-6
865 IAC 1-12-7
865 IAC 1-12-9
865 IAC 1-12-10
865 IAC 1-12-11
865 IAC 1-12-12
865 IAC 1-12-13
865 IAC 1-12-14
865 IAC 1-12-18

SECTION 1. 865 IAC 1-7-3 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-7-3 Use of seal and signature; acceptance of full responsibility
Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 3. (a) The seal and signature of a registrant on any drawings, documents, or instruments signifies the registrant's acceptance of full responsibility for the professional work represented thereon, except as another registrant shall have assumed a limited responsibility for portions of the work in

accordance with ~~the provisions of~~ section 2(e) of this rule.

(b) A registrant may include in the registrant's plans certain ~~predesigned manufactured equipment or~~ products ~~which~~ **that** have become established as acceptable for the proposed use when such items:

(1) meet standards established by nonprofit trade organizations;

(2) meet the requirements for the proposed use as indicated by tests performed by a competent, unbiased testing agency; ~~or~~

(3) are mechanical or other types of machinery or systems guaranteed by a reputable manufacturer; or

(4) do not affect the structural safety of the project.

(State Board of Registration for Land Surveyors; Rule 7, Sec 4; filed Feb 29, 1980, 3:40 p.m.: 3 IR 633; filed Oct 13, 1992, 5:00 p.m.: 16 IR 879; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-7-4 was renumbered by Legislative Services Agency as 865 IAC 1-7-3.

SECTION 2. 865 IAC 1-12-2 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-2 Definitions; abbreviations

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5-4-2

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Controlling monument" means any artificial, physical, or record monument called for in a record plat or land title description and controls the location, dimensions, and configuration of the described tract.

(c) "EDM" refers to electronic distance measurements.

~~(b)~~ **(d)** "Land surveyor" means:

(1) a registered land surveyor; or

(2) an individual who is:

(A) an employee or subordinate of a registered land surveyor; and

(B) exempt from licensure under IC 25-21.5-4-2.

(e) "Original survey" means a survey that is executed for the purpose of locating and describing real property that has not been previously described in documents conveying an interest in said real property.

~~(c)~~ **(f)** "Registered land surveyor" means an individual who has been registered by the board in the profession of land surveying under IC 25-21.5.

~~(d)~~ **(g)** "Retracement ~~or "record document~~ survey" means a survey of real property ~~which~~ **that** has been previously described in documents conveying an interest in said real property.

~~(e) "Original survey" means a survey that is executed for the purpose of locating and describing real property which has not been previously described in documents conveying an interest in said real property.~~

~~(f) "EDM" refers to electronic distance measurements.~~

~~(g) "tu" refers to theoretical uncertainty.~~

~~(h) "Theoretical uncertainty" refers to theoretical uncertainty of measurements.~~

~~(i) "Theoretical uncertainty of measurements" means the radius of a circle, which circumscribes an area, which contains the probable true location of a specified point.~~

(h) "Right-of-way" means that land taken by either easements or fee simple title for the linear routes identified in subsection (i).

~~(j)~~ **(i)** "Route survey" refers to surveys executed for the purpose of acquiring an interest in the tracts of land required for highways, railroads, waterways, pipelines, electric lines, or any other linear transportation or utility route. It does not include surveys executed for acquisition parcels that are of even width and immediately adjacent to an existing title, easement, or right-of-way line and do not require a property survey in order to prepare an accurate legal description for the parcel. Route surveys are not considered either original surveys or retracement surveys.

~~(k) "Right-of-way" means that land taken by either easements or fee simple title for the linear routes identified in subsection (j).~~

~~(l) "Controlling monument" means any artificial, physical, or record monument called for in a record plat or land title description and controls the location, dimensions, and configuration of the described tract.~~

~~(m)~~ **(j)** "Subdivision plat" means a plat of subdivision of land prepared in accordance with state plat statutes or local subdivision regulations, or both.

(k) "Theoretical uncertainty" refers to theoretical uncertainty of measurements.

(l) "Theoretical uncertainty of measurements" means the radius of a circle, which circumscribes an area, that contains the probable true location of a specified point.

(m) "Theory of location" means the establishment of the survey corners, in accordance with federal laws, including 43 U.S.C. 751 through 43 U.S.C. 775, state and local laws, together with court precedent.

(n) "tu" refers to theoretical uncertainty. *(State Board of Registration for Land Surveyors; 865 IAC 1-12-2; filed Jun 21,*

1988, 4:05 p.m.: 11 IR 3909; errata filed Feb 5, 1990, 4:15 p.m.: 13 IR 1189; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2240; filed Oct 13, 1992, 5:00 p.m.: 16 IR 885; filed Oct 14, 1993, 5:00 p.m.: 17 IR 408; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-2 was renumbered by Legislative Services Agency as 865 IAC 1-12-2.

SECTION 3. 865 IAC 1-12-3 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-3 Surveyor responsibility

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5-4-2; IC 25-21.5-7-3

Sec. 3. (a) A registered land surveyor shall be personally responsible for planning and supervising the training, procedures, and daily activities of the nonregistered employees or subordinates involved in the surveys who are acting as exempt persons under IC 25-21.5-4-2. These activities will include, but not necessarily be limited to, the following:

(1) Client contact.
(2) Research.
(3) Collection of field data.
(4) Note reduction.
(5) Computation.
(6) Office analysis.
(7) Drafting.
(8) Preparation of certificates and reports.

(b) The daily activities by nonregistered employees or subordinates referred to in subsection (a) may not continue during any extended absences of the responsible registered land surveyor unless another registered land surveyor is in responsible charge during the land surveyor's absence.

(c) The procedures followed and the decisions made by persons under the registered land surveyor's supervision shall be regularly and systematically reviewed and approved by the registered land surveyor prior to signing the survey plat.

(d) "Supervision", as used in this section, shall be deemed to require:

(1) such control by the registered land surveyor that the registered land surveyor can certify that he or she is knowledgeable of, and has reviewed and approved, all actions pertaining to the surveys by persons not licensed who have participated in the survey; **and**

(2) that all persons participating in the survey shall be regular employees of the registered land surveyor, the registered land surveyor's employer, or another registered land surveyor.

~~(e) "Supervision", as used in this section, shall be deemed to require that all persons participating in the survey shall be regular employees of the registered land surveyor, the registered land surveyor's employer, or another registered land surveyor.~~

~~(f) Any~~ **(e) In addition to the requirements in IC 25-21.5-7-3, each** office **of a firm, partnership, or corporation** offering to perform land surveys must have a registered land surveyor in charge of the operations, and that registered land surveyor, **who must be a full-time employee or principal of the partnership or firm or an officer of the corporation,** must have full **responsible** control of the survey operations. ~~It is essential that~~ This registered land surveyor **must** maintain regular hours at that office ~~during which he or she can be contacted in person by the public and/or the nonlicensed employees participating in those surveys.~~ **adequate for client contact and employee supervision as defined in subsection (d).**

(f) For purposes of this rule, an individual practices as a principal by being:

(1) a registered land surveyor; and

(2) the individual in charge of the organization's land surveying practice, either alone or with other registered land surveyors.

(g) A registered land surveyor shall not affix his or her seal on any surveying work unless:

(1) the registered land surveyor personally did the surveying work;

(2) the surveying work was performed by a nonregistered employee or subordinate following the requirements of subsection (a) or by the employees of another registered land surveyor as allowed by subsection (e); or

(3) the registered land surveyor is certifying additional survey work based on a survey executed according to this rule and certified by a registered land surveyor working on the same project.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-3; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3909; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2240; filed Oct 13, 1992, 5:00 p.m.: 16 IR 886; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-3 was renumbered by Legislative Services Agency as 865 IAC 1-12-3.

SECTION 4. 865 IAC 1-12-5 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-5 Property surveys affected

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 5. ~~All Indiana real property~~ **Retracement** surveys ~~including~~ **and original** surveys ~~or inspections used in conjunction with mortgage transactions,~~ **and all updates or recertifications of previously completed surveys** must fully comply with ~~the provisions of~~ this rule except the following:

(1) Surveyor location reports as provided for in sections 27 through 29 of this rule are only subject to sections 1 through 4, 6, and 27 through 29 of this rule.

(2) Construction surveys made for the purpose of marking the limits of existing easements **or rights-of-way** for the construction of improvements within the easement **or rights-of-**

way must be executed by a registered land surveyor but are only subject to the provisions of sections 1 through 4 and 6 of this rule.

~~(3) A property survey last certified before January 1, 1990, and less than ten (10) years prior to the current date may be recertified for use in a current real estate transaction by the original registered land surveyor or a registered land surveyor in the same firm who has personal knowledge of the field and office procedures used in the execution of said survey. The recertification must state the following:~~

~~(A) That no survey of the premises was performed other than an inspection by the registered land surveyor or his or her qualified employee.~~

~~(B) That the inspection revealed no substantial change that affects the external boundary or other title that matters from those matters reported on the prior survey.~~

~~(C) That, after reviewing the prior survey plat, the measurement and office procedures used in the execution of that survey, and the current description of the surveyed premises and the adjoiners, it is the opinion of the registered land surveyor that, to the best of his or her knowledge, it generally conforms with the standards in this rule.~~

~~Such a recertified survey is not required to be recorded.~~

(3) Delineation or demarcation and placement of stakes or markers for the purpose of constructing fences, buildings, walls, or other improvements on or in close proximity to a land boundary, except for property corner monumentation, are only subject to the provisions of sections 1 through 4 and 6 of this rule provided the land surveyor has found acceptable evidence of the boundary location in accordance with this rule.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-5; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2242; filed Oct 13, 1992, 5:00 p.m.: 16 IR 887; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-5.1 was renumbered by Legislative Services Agency as 865 IAC 1-12-5.

SECTION 5. 865 IAC 1-12-6 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-6 Field notes

Authority: IC 25-31-1-7
Affected: IC 25-31-1

Sec. 6. When conducting an original survey or a retracement ~~or record document~~ survey, the land surveyor shall record in the field notes all pertinent information, measurements, and observations made in the field during the course of a survey in a manner that is clear and intelligible to other land surveyors who may use the information so recorded. *(State Board of Registration for Land Surveyors; 865 IAC 1-12-6; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3910; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2242; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-6 was renumbered by Legislative Services Agency as 865 IAC 1-12-6.*

SECTION 6. 865 IAC 1-12-7 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-7 Measurements for retracement surveys and original surveys

Authority: IC 25-31-1-7
Affected: IC 25-31-1

Sec. 7. (a) When conducting a retracement ~~or record document~~ survey or an original survey, the land surveyor shall be responsible to use the minimum standards of measurement provided for in this section. However, when platting laws set forth technical minimums for original surveys more stringent than those stated in this section, the more stringent standards shall be followed to the extent of the difference.

(b) Measurements generally **shall be:**

(1) ~~shall be~~ obtained with a precision compatible with the type of survey involved and with the size and shape of the parcel involved;

(2) ~~shall be~~ taken with a precision that is consistent with that required by the agreement with the client but may not be less precise than defined in this section; and

(3) ~~shall be~~ shown on the plat with a number of significant figures representative of the precision of the work.

(c) The measurement specifications contained in subsection (d) will apply for all retracement surveys, surveys based on record documents, and original surveys.

(d) The following specifications shall be used for the location of property boundaries with respect to the referenced controlling corners:

Class of Survey	Theoretical Uncertainty (tu)
A	plus or minus .10 feet
B	plus or minus .25 feet
C	plus or minus .50 feet
D	plus or minus 1.00 feet
E	
all other surveys	to be negotiated with the client

(e) The classes of surveys listed in subsection (d) shall fall into the following sizes:

(1) Class A - Small area wherein dense monument controls exist, as in a downtown commercial area. Lots are typically fifty (50) feet by one hundred (100) feet. Periphery and beginning distance is less than four hundred (400) feet.

(2) Class B - Longest side is typically under two hundred fifty (250) feet and periphery and beginning distance is less than one thousand (1,000) feet.

(3) Class C - Longest side is typically under one thousand (1,000) feet and periphery and beginning distance is less than five thousand (5,000) feet.

(4) Class D - All sides are typically over one thousand (1,000) feet and periphery and beginning distance is less than twelve thousand (12,000) feet.

(5) Class E - The precision of larger surveys shall be negotiated with the client and shall be clearly stated on the plat of survey.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-7; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3910; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2242; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-7 was renumbered by Legislative Services Agency as 865 IAC 1-12-7.

SECTION 7. 865 IAC 1-12-9 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-9 Preliminary research and investigation on retracement surveys

Authority: IC 25-31-1-7
Affected: IC 25-31-1

Sec. 9. When conducting a retracement ~~or record~~ ~~document~~ survey, a land surveyor shall do the following:

(1) Obtain the record description of the parcel to be surveyed as well as the record description of the adjoining properties as necessary to reveal any gaps or overlaps with the adjoining properties.

(2) Obtain copies of any recorded subdivision plats that relate to the survey.

(3) Obtain from public offices, copies of any maps, documents, and field notes that relate to the survey.

(4) Obtain copies of data that relate to the survey that are available from known private sources.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-9; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2244; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-9 was renumbered by Legislative Services Agency as 865 IAC 1-12-9.

SECTION 8. 865 IAC 1-12-10 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-10 Field investigation for retracement surveys

Authority: IC 25-31-1-7
Affected: IC 25-31-1

Sec. 10. When conducting a retracement ~~or record~~ ~~document~~ survey, a land surveyor shall do the following:

(1) Search for controlling physical monuments and, when found, weigh their reliability.

(2) Search for and locate monuments that:

(A) reference missing control monuments; and

(B) substantiate control monuments that have been obliterated.

(3) Search for and locate other monuments and real evidence ~~which~~ **that** are necessary to the survey.

(4) Investigate possible parol evidence supporting the positions of obliterated control monuments and obtain the necessary ~~affidavit(s)~~ **affidavit or affidavits** from individuals involved.

(5) Obtain necessary measurements to correlate all found evidence, including the relationship to adjoining properties.

(6) Obtain sufficient check measurements to satisfactorily verify the work.

(7) Locate physical evidence of possession between adjoiners, make comments on possible age of possession, **and** verify age by parol evidence if possible.

(8) Survey field notes shall be in the form required by section 6 of this rule.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-10; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2244; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-10 was renumbered by Legislative Services Agency as 865 IAC 1-12-10.

SECTION 9. 865 IAC 1-12-11 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-11 Surveyor conclusions in retracement survey

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 11. When conducting a retracement ~~or record~~ ~~document~~ survey, a land surveyor shall do the following:

(1) Make any necessary computations to verify the correctness of measurements obtained.

(2) Make any necessary computations to determine and verify the position of the monuments, adjoining properties, and any parol evidence.

(3) Evaluate the evidence.

(4) In the event of the discovery of a material disagreement with the work of another surveyor, attempt to contact the other surveyor and investigate the disagreement.

(5) Apply the ~~proper~~ theory of location ~~in accordance with law or a precedent, and finalize the establishment of the survey corners.~~ **as defined in section 2 of this rule.**

(6) Set any final monuments required by section 18 of this rule.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-11; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2245; filed Oct 13, 1992, 5:00 p.m.: 16 IR 888; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-11 was renumbered by Legislative Services Agency as 865 IAC 1-12-11.

SECTION 10. 865 IAC 1-12-12 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-12 Publication of retracement survey results

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 12. (a) When conducting a retracement ~~or record~~

~~document~~ survey or an original survey, a registered land surveyor shall do the following:

(1) Furnish the client with a written surveyor's report ~~which,~~ **that** in addition to other pertinent data, **explains the theory of location applied in establishing or retracing the lines and corners of the surveyed parcel and** gives the registered land surveyor's professional opinion of the cause and the amount of uncertainty in ~~the~~ **those** lines and corners ~~found or established by the survey~~ because of the following:

(A) Availability and condition of reference monuments.

(B) Occupation or possession lines.

(C) Clarity or ambiguity of the record description used ~~and/or~~ **or** adjoiner's descriptions, **or both.**

(D) The theoretical uncertainty of the measurements.

(2) Record the plat of survey and the associated surveyor's report in the county recorder's office in the county where the property is located when:

(A) a new tax parcel ~~is~~ **will be** created ~~by~~ **based on** the survey;

(B) a survey of an unsubdivided tract or a portion of a subdivided lot has not been previously recorded;

(C) if, in the registered land surveyor's opinion, a survey of a whole subdivided lot or lots is substantially at variance with the subdivision plat, previously recorded surveys, ~~or the~~ monuments, or evidence of possession;

(D) if, in the registered land surveyor's opinion, the monuments, monument witnesses, evidence of possession, or description is not consistent with the last recorded survey of the parcel;

(E) it is required by law; or

(F) the plat of survey contains a new subdivision plat that will subsequently be recorded and must be cross-referenced to the previously recorded survey plat.

(b) The recorded plat of survey shall show the name of the owner of the property on the recorded plat of survey according to the county tax records at the time the survey is recorded and shall be cross-referenced to the latest record plat of survey of the property, if any is found.

(c) The plat of survey and the associated surveyor's report shall be recorded:

(1) in the case of an original or retracement survey (not previously recorded) ~~which~~ **that** contains a proposed new subdivision plat, prior to recording the new subdivision plat; or

(2) in the case of retracement or original surveys not described in subdivision (1):

(A) within three (3) months of the survey certification date; or

(B) within three (3) years and three (3) months of the survey certification date in those instances where the client signs an objection, which must contain the following statement:

"I, the undersigned, hereby request that the following identified survey, certified to me":

(Indicate one (1) or both of the following:)

(i) Shall not be recorded for a period of three (3) years and three (3) months from the date of certification.

(ii) Shall not contain the name of the undersigned client on the survey recorded.

Signed: _____

Date: _____

Certifying Surveyor:

Certificate Date:

Job Number:

Brief Description:

A copy of the signed statement shall be kept with the land surveyor's file.

(d) Nothing contained in this rule shall require the registered land surveyor to furnish any survey documents to the client ~~nor~~ **or** record them unless the client has satisfied the terms of the surveying engagement.

(e) Nothing contained in this rule shall prevent the registered land surveyor from furnishing a pro forma copy of the survey to the client for use until the certified survey is requested **provided the survey is clearly marked "PRO FORMA SURVEY".** *(State Board of Registration for Land Surveyors; 865 IAC 1-12-12; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3912; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2245; filed Oct 13, 1992, 5:00 p.m.: 16 IR 889; errata, 16 IR 1188; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-12 was renumbered by Legislative Services Agency as 865 IAC 1-12-12.*

SECTION 11. 865 IAC 1-12-13 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-13 Retracement survey plats

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 13. When conducting a retracement ~~or record~~ ~~document~~ survey, a registered land surveyor shall furnish the client with the surveyor's report and a copy of the plat of survey of the premises drawn to an appropriate scale in such a manner that the data shown will be clearly legible when the plat is reduced to sheets suitable for recording ~~which~~ **that** are no larger than eleven (11) inches by seventeen (17) inches and no smaller than eight and one-half (8½) inches by eleven (11) inches. The plat of survey shall show the following information at a minimum:

(1) The client's name, date of the fieldwork, surveyor's file number, and the name, address, signature, and registration number of the surveyor responsible for the work.

(2) Record document description of the parcel surveyed and any new, modified, or consolidation description with an explanation in the surveyor's report as to why the new description was done, together with a statement regarding the location of the new description relative to the record description. If necessary to define the location, a vicinity map shall be provided.

(3) North arrow, area, and scale, including a graphic scale.

(4) Angles or bearings. When bearings are shown, their basis shall be indicated.
(5) All pertinent dimensions. On dimensions other than those measured, sufficient notations shall be used to identify their source, such as the following:
(A) Recorded measurement (Rec).
(B) Calculated from record values (Calc. Rec.).
(6) All pertinent monuments, with a notation indicating which were found and which were set, including those required to be set by section 18 of this rule, identified as to their character, size, and location including their location relative to the surface of the ground. Found monuments shall be accompanied by a reference to their origin when it is known. Where there is no available documented reference, it shall be noted on the plat.
(7) The location of all monuments and physical evidence of possession on or beyond the surveyed premises on which establishment of the corners of the surveyed premises are dependent.
(8) Any physical evidence of possession appurtenant to either the surveyed premises or the adjoining property that is on, near, or across any exterior boundary of the premises, or depicted interior setback or easement line on the premises that may have been a factor in the location of such line. Show the location by the shortest distance to such line. Failure to show any such evidence will be taken to indicate that there was none.
(9) Any lakes, streams, known legal drains, or legal drain easements on or within seventy-five (75) feet of the surveyed premises. A detailed location, **based on applicable statutes and rules,** is required when a boundary or easement is determined thereby.
(10) Any evidence of use of the surveyed premises by others.
(11) Adjoining parcels identified by title description or record reference. Map delineation must be such that contiguity, gaps, and overlaps with adjoining parcels are clearly shown. Show only the portion of adjoining tracts relevant to the location of the surveyed tract. Gaps and overlaps on the perimeter of the survey shall be dimensioned. Gaps and overlaps interior to the surveyed parcel shall be depicted, but must be dimensioned only if the client requests.
(12) Any easements or setback lines affecting the survey ~~which~~ **that** were created by a subdivision plat unless they are omitted at the request of the client. It must be noted on the plat of survey if they are omitted for this reason.
(13) Any other easements or setback lines affecting the survey, as required, and when documentation is furnished by the client.
(14) Show zoning ordinance classification references according to documentation provided by the client. Any other zoning ~~classification data~~ **use certifications** shall be limited to those facts that can be counted or measured.
(15) Sufficient data to clearly indicate the theory of location applied in finalizing the locations of the corners, any data at variance with this theory of location, **and** sufficient data to allow the retracement without difficulty of all pertinent lines and corners shown on the plat.
(16) A certificate stating that the survey was performed wholly or in part (state which part) by or under the direction of the registered land surveyor, and to the best of the registered land surveyor's knowledge and belief was executed according to survey requirements in this rule. This certificate shall bear the signature, registration number, and seal of the registered land surveyor and date of the certificate.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-13; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3913; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2246; filed Oct 13, 1992, 5:00 p.m.: 16 IR 889; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-13 was renumbered by Legislative Services Agency as 865 IAC 1-12-13.

SECTION 12. 865 IAC 1-12-14 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-14 Original survey preliminary research
Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 14. When conducting an original survey, a land surveyor shall do the following:
(1) Obtain or prepare the documents establishing the intended position of the lines to be created by the original survey, such as:
(A) client's approved sketch;
(B) instructions defining the lines; and
(C) tentative subdivision map.
(2) Obtain copies of the laws regulating division of property that govern in the area in which the property is located.
(3) Survey the parcel upon which the original survey is to be based, or such portion thereof as is relevant to the proposed work. This work ~~should~~ **must** be in accordance with ~~the procedural standards for retracement surveys as set forth in~~ **section 13 of** this rule. Any conflicts or gaps between the lines of the retracement survey and the adjoiners lines that affect newly created tracts must be clearly depicted on the original survey, showing which of the new tracts are affected and to what extent.
(4) Conduct field surveys to determine the location of planimetric or topographic features that are to control the intended position of the lines being created.

(State Board of Registration for Land Surveyors; 865 IAC 1-12-14; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3914; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2247; filed Oct 13, 1992, 5:00 p.m.: 16 IR 890; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-15 was renumbered by Legislative Services Agency as 865 IAC 1-12-14.

SECTION 13. 865 IAC 1-12-18 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-12-18 Original and retracement survey monumentation

Authority: IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 18. (a) When conducting a retracement ~~or record document~~ survey or an original survey, a registered land surveyor shall be responsible to set monuments in accordance with the following:

(1) ~~Generally,~~ **Except as provided in subdivision (7), a monument, as defined in subdivisions (2) through (6), shall be set at every lot or parcel corner being surveyed including the interior lots of a subdivision. Corners to be set include** the beginning and end of curves and the intersection of lines ~~on the perimeter of all original or retracement surveys, including new subdivision plats, shall be marked with physical monuments that are of a type and character, and set in a manner providing a degree of permanency, consistent with the terrain, physical features, intended use, and character of the corner being marked. A sufficient number of monuments must be set to facilitate the complete reestablishment of the survey even if a substantial number of the monuments are disturbed or destroyed.~~ **except where the setting of a monument near another monument would cause confusion. Further, a monument is not required to be set if there is an existing monument at the corner that is within the limits of theoretical uncertainty for the class of survey being performed.**

(2) Monuments set in unpaved locations shall be five-eighths (⅝) inch diameter or larger iron or steel ~~rebars~~ **rods, reinforcement bars,** or **galvanized** pipes weighing a minimum of one (1) pound per foot and being at least twenty-four (24) inches long **and set with not less than eighteen (18) inches below grade.** Other monuments may be used if they are made of material of similar **or greater** durability, ~~which includes an element that can be found by a device capable of detecting ferrous or magnetic objects. Such monuments shall have a substantial plastic or metal cap permanently affixed thereto showing the registered land surveyor's professional license number and/or the name or identification number of the land surveying firm or government agency.~~ **size, and character and can be found by a device capable of detecting ferrous or magnetic objects.**

(3) Where practical, monuments in ~~paved locations~~ **pavement** shall be set according to the requirements contained in subdivision (2). **However, when it is not practical to set a monument in accordance with subdivision (2), then a two (2) inch or longer, one-fourth (¼) inch or larger diameter, magnetic concrete nail, or similar magnetic monument, shall be set.**

(4) ~~Survey points, where~~ Monuments ~~as defined in~~ **set under** subdivision (2) or (3) ~~cannot readily be set, must be marked by a drill hole, cut cross, notch, railroad spike, or other similar permanent mark and referenced to any nearby witness monuments or permanent objects, such as building foundations or concrete head walls.~~ **shall have a substantial plastic or metal tag or cap permanently affixed showing the registered land surveyor's surname and professional license number or board issued firm/agency identification number.**

(5) ~~Any comparable or better~~ **Where** monuments ~~required by more stringent local ordinances shall~~ **as defined in subdivision (2) or (3) cannot** be set, **the survey points must be marked by a drill hole, cut cross, notch, or other similar permanent mark and referenced to any nearby witness monuments or permanent objects, such as building foundations or concrete head walls.**

(6) Monuments required by local ordinances shall be set provided they meet or exceed the requirements in subdivisions (2) and (3).

~~(6) When conditions warrant setting~~ **(7) Except at interior lot corners not adjoining a street right-of-way line, where it is not possible or practical to set a monument at the survey point, then** a monument ~~on an~~ **shall be** offset **and** the location shall be selected so that the monument lies on a line of the survey or on a prolongation of such line. Offset monuments shall be identified as such on the plat and, if possible, in the field. **However, if existing monuments fall within the theoretical uncertainty of the survey, a monument will not be required to be set.**

~~(7)~~ **(8) If recovery of the monument would be difficult due to the topography or other features of the land, the** monuments shall be witnessed or referenced in such a manner that will facilitate ~~the~~ **their** recovery. ~~of the monuments by surveyors.~~

~~(8)~~ **(9)** Monuments shall be marked, such as ribbon, paint, or lath, to facilitate the recovery of the monument by the client.

(10) It shall be the responsibility of the land surveyor certifying the subdivision plat to set all monuments required by this section in a new subdivision.

(b) ~~Subsection (a)(2) through (a)(3) shall apply only to monuments set after Decter 31, 1991.~~ **Monuments shall be set prior to providing the client with the survey documents required by this rule. However, in the case of new subdivisions where, in the opinion of the surveyor, it is probable the individual lot monuments will be disturbed by construction, only the perimeter of the subdivision, or section thereof, must be monumented prior to recordation. In this situation, the setting of the individual lot monuments may be delayed until no later than:**

(1) after construction is complete (including buildings); or

(2) two (2) years after recordation of the subdivision plat, or if the subdivision is platted by sections after recordation of each section;

whichever occurs first. In new subdivisions, if monuments are to be set prior to recording, then the placement of monuments shall be shown on the plat subdivision. If monuments are to be set after construction is complete, the surveyor shall record an affidavit, cross-referenced to the recorded plat, showing which monuments were set and which were found, the dates the monuments were set or

found, together with a certification that states to the best of the surveyor's knowledge and belief the information contained in the affidavit is true and correct. Nothing in this subsection shall be construed to require the surveyor to wait until construction is completed to place monuments.

(c) A surveyor is not required to replace or restore any monument that has been moved, disturbed, or destroyed after its original placement.

~~(c) Any~~ **(d)** Identification numbers, other than registered land surveyor's registration numbers, used by a land surveying firm or government agency under subsection (a)(2) or (a)(3) must be assigned and authorized for use by the state board of registration for land surveyors upon written request. **Request for firm or agency numbers must be in writing on forms provided by the board.** *(State Board of Registration for Land Surveyors; 865 IAC 1-12-18; filed Jun 21, 1988, 4:05 p.m.: 11 IR 3914; filed Jul 17, 1991, 4:30 p.m.: 14 IR 2248; filed Oct 13, 1992, 5:00 p.m.: 16 IR 891; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237) NOTE: 864 IAC 1.1-13-19 was renumbered by Legislative Services Agency as 865 IAC 1-12-18.*

SECTION 14. THE FOLLOWING ARE REPEALED: 865 IAC 1-10-23; 865 IAC 1-10-24.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 10, 2003 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Training Center Room 12, Indianapolis, Indiana the State Board of Registration for Land Surveyors will hold a public hearing on proposed amendments to amend 865 IAC 1-7-3 to revise what a registered land surveyor may include in the registrant's plans, to repeal 865 IAC 1-10-23 and 865 IAC 1-10-24, and to amend 865 IAC 1-12 to revise the standards for the competent practice of land surveying. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E034 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Professional Licensing Agency

Final Readopted Rules

TITLE 210 DEPARTMENT OF CORRECTION

Final Rule
LSA Document #03-54(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

210 IAC 7

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

210 IAC 7	OFFENDER HEALTH CARE CO-PAYMENT PROCEDURES

LSA Document #03-54(F)
Intent to Readopt Rules Published: April 1, 2003; 26 IR 2470
Proposed Readopted Rules Published: June 1, 2003; 26 IR 3147
Hearing Held: July 3, 2003
Filed with Secretary of State: July 14, 2003, 10:50 a.m.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Final Rule
LSA Document #03-56(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

511 IAC 1-6-2	**511 IAC 5-3-2**
511 IAC 1-6-3	**511 IAC 6-7-2**
511 IAC 1-6-4	**511 IAC 6-7-4**
511 IAC 4-4-3	**511 IAC 6-7-7**
511 IAC 4-4-4	**511 IAC 6-8-1**
511 IAC 5-1-1	**511 IAC 6-8-2**
511 IAC 5-1-3	**511 IAC 6-8-3**
511 IAC 5-1-4	**511 IAC 6-8-5**
511 IAC 5-1-4.5	**511 IAC 6-8-6**
511 IAC 5-3-1	**511 IAC 6.1-5-3.5**

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

511 IAC 1-6-2	Transfer at request of parents or student
511 IAC 1-6-3	Determination of better accommodation
511 IAC 1-6-4	Relation to state board rule on special education
511 IAC 4-4-3	Organization; cooperative agreement
511 IAC 4-4-4	Membership; participation; services to nonpublic educational units
511 IAC 5-1-1	Definitions
511 IAC 5-1-3	Authority to grant diploma
511 IAC 5-1-4	Testing centers and procedures
511 IAC 5-1-4.5	Time limit
511 IAC 5-3-1	Definitions
511 IAC 5-3-2	Completion of Core 40
511 IAC 6-7-2	Minimum standards; academic honors diploma
511 IAC 6-7-4	Semester requirements; waiver
511 IAC 6-7-7	Correspondence courses; credit
511 IAC 6-8-1	Definitions
511 IAC 6-8-2	Waiver to implement nonstandard courses and curriculum programs
511 IAC 6-8-3	Application procedures; implementation of proposed courses or programs
511 IAC 6-8-5	Relationship with performance-based accreditation
511 IAC 6-8-6	Appeal to the board
511 IAC 6.1-5-3.5	Middle level curriculum

LSA Document #03-56(F)
Intent to Readopt Rules Published: April 1, 2003; 26 IR 2470
Proposed Readopted Rules Published: June 1, 2003; 26 IR 3147
Hearing Held: July 3, 2003
Filed with Secretary of State: July 23, 2003, 10:15 a.m.

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

Final Rule
LSA Document #03-43(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

804 IAC 1.1-3-2

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

804 IAC 1.1-3-2	Cost of examination

LSA Document #03-43(F)
Intent to Readopt Rules Published: March 1, 2003; 26 IR 2132
Proposed Readopted Rules Published: June 1, 2003; 26 IR 3148
Hearing Held: July 9, 2003
Filed with Secretary of State: July 15, 2003, 5:15 p.m.

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#03-228(APCB)

DEVELOPMENT OF AMENDMENTS TO AND NEW RULES CONCERNING THE DEFINITION OF PARTICULATE MATTER AND AMBIENT AIR QUALITY STANDARDS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules 326 IAC 1-2-52 concerning the definition of particulate matter and 326 IAC 1-3-4 concerning ambient air quality standards. This rulemaking proposes to add ambient air quality standards for $PM_{2.5}$ and a revised PM_{10} standard to state rules and add new rules concerning definitions for $PM_{2.5}$, PM_{10}, particulate matter emissions, PM_{10} emissions, and total suspended particulate (TSP). IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 1-2; 326 IAC 1-2-52; 326 IAC 1-3-4.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

On July 18, 1997, U.S. EPA announced revisions to the national ambient air quality standards (NAAQS) for particulate matter (PM). The current primary PM standards were revised in the following respects: two (2) new $PM_{2.5}$ standards were established, and the current PM_{10} standard was revised. The new annual standard for $PM_{2.5}$ is 15 micrograms/cubic meter (ug/m^3) and the new 24-hour standard is 65 micrograms/cubic meter (65 ug/m^3).

The $PM_{2.5}$ standards focus on microscopic soot and dust particles that can penetrate deep into the lungs. $PM_{2.5}$ is PM with an aerodynamic diameter less than or equal to two and five-tenths (2.5) micrometers. Studies have demonstrated that inhaled PM affects health and that the smaller the size of the PM the greater the health impact. Currently the indicators used to regulate PM are PM_{10} (PM with an aerodynamic diameter less than or equal to ten (10) micrometers) and $PM_{2.5}$. U.S. EPA refers to PM_{10} as PM coarse and $PM_{2.5}$ as PM fine.

More recent studies have determined that $PM_{2.5}$ is a health risk independent of PM_{10} and should be regulated separately but in addition to PM_{10}. In 1997, U.S. EPA promulgated new ambient air quality standards to regulate PM as $PM_{2.5}$ (in addition to PM_{10}) and to establish levels of $PM_{2.5}$ in the ambient air determined to protect the public health with an adequate margin of safety (67 FR 38651). Recommendations are to be made to U.S. EPA by February 15, 2004, regarding the designation of any area within the state as nonattainment with the $PM_{2.5}$ national ambient air quality standard. U.S. EPA will promulgate the designations by December 2004.

U.S. EPA was sued in 1997 concerning the PM ambient air quality standards. U.S. EPA must make a final decision regarding whether or not to revise the PM standards by December 20, 2005. There are inconsistencies between the state definition of "particulate matter" and the federal definitions of "particulate matter" and related definitions. The current state definition of "particulate matter" is a composite of several federal definitions.

This rulemaking will add a definition of $PM_{2.5}$ to state rules, add the new $PM_{2.5}$ standards, and the revised PM_{10} standard to state rules; clarify the existing definition of particulate matter at 326 IAC 1-2-52; provide separate definitions for "PM_{10}", "$PM_{2.5}$", "TSP", and to add the federal definitions of "particulate emissions" and "PM_{10} emissions" to state rules. The rule, upon promulgation as a final rule, will be submitted to U.S. EPA as a revision to the SIP.

Alternatives To Be Considered Within the Rulemaking

Indiana's air rules need be updated to reflect the new standards for $PM_{2.5.}$ If Indiana does not update the standards, Indiana will not be able to implement the federal standards. This update includes adding the new $PM_{2.5}$ standards and the revised PM_{10} standard as well as the definition for $PM_{2.5}$. Adding the new $PM_{2.5}$ standard may require clarification of existing PM, PM_{10}, and TSP standards.

There are three alternatives to be considered for the draft rule language for the particulate matter standards: 1) direct incorporation by reference; 2) write language directly from the federal standards; or 3) develop new language.

Indiana could choose not to update the current definition of "particulate matter", but the definition of "particulate matter" is in need of clarification.

Applicable Federal Law

This rulemaking assures sources that Indiana's rules are consistent with federal rules. The general public will benefit from this rule since the state will be able to enforce the federal standards that are promulgated to improve the environment, thus providing for increased protection of public health and welfare.

Potential Fiscal Impact

There are no direct costs associated with this rulemaking. However, there will be costs associated with $PM_{2.5}$ implementation measures. Those costs are indeterminate at this time. There should be a decrease in health costs once the state meets the new standards.

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is necessary, please contact Gayla Killough, Rule Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6021 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:
#03-228(APCB) Particulate Matter
Gayla Killough
c/o Rules Section Administrative Assistant
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Hand delivered comments will be accepted by the IDEM receptionist on duty at the 10th floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 1, 2003.

Additional information regarding this action may be obtained from Gayla Killough, Rule Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Janet McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
#03-67(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES AND NEW RULES CONCERNING NEW SOURCE REVIEW RULES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 2 and new rules within 326 IAC 2 concerning New Source Review Reform. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: April 1, 2003, Indiana Register (26 IR 2473).

CITATIONS AFFECTED: 326 IAC 2-1.1-7; 326 IAC 2-2; 326 IAC 2-2.2; 326 IAC 2-2.3; 326 IAC 2-2.4; 326 IAC 2-2.5; 326 IAC 2-2.6; 326 IAC 2-3; 326 IAC 2-3.2; 326 IAC 2-3.3; 326 IAC 2-3.4; 326 IAC 2-5.1; 326 IAC 2-7-10.5; 326 IAC 2-7-11; 326 IAC 2-7-12.

AUTHORITY: IC 13-14-8; IC 13-17-3.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose

The purpose of this rule is to revise Indiana's New Source Review (NSR) rules to address changes published by U.S. EPA in the Federal Register on December 31, 2002 (67 FR 80186).

The new source review program is a critical tool for states to protect air quality. It is intended to ensure that new or modified sources of air emissions are built in a way that uses the most up to date pollution control technology or pollution prevention techniques. Technology that allows manufacturers to continue to produce high quality products while decreasing their impact on the environment is constantly developing. Sometimes progress is incremental and gradual, and other times there are dramatic advances that allow significant decreases in emissions that are cost-effective to implement. The policy behind new source review, therefore, is that as older plants are replaced or upgraded, increasingly effective pollution controls will be used and air quality will improve.

With brand new facilities, application of new source review is fairly straightforward. New plants with potential emissions over a certain threshold should go through the new source review process. A much more complicated part of the NSR program has always been deciding when a project proposed by an existing source ought to be reviewed under this program. Over the years, U.S. EPA has developed hundreds of pages of guidance to help business, the public, and state permitting agencies determine when a modification is subject to NSR. There are complicated provisions that allow companies to track recent increases and decreases at their operations so that the "net" impact of the proposed modification can be determined.

U.S. EPA's NSR reform addressed the issue of when modifications would require new source review under the federal system. It contains two key changes to the method used to determine the emission increase resulting from a physical change or a change to the method of operation. Those changes are further described below. A project that is exempt under any of the tests is exempt from NSR.

IDEM has analyzed the federal changes to determine their potential impact on air emissions and, therefore, air quality in Indiana. This analysis has included reviewing past IDEM permitting decisions to determine whether an environmentally protective outcome would have resulted under the new rules, reviewing similar analysis done by other states, and discussions with permit staff in other states. With a few exceptions addressed below, IDEM believes that adopting the federal changes will not worsen air quality in Indiana. IDEM invites comment on this conclusion and encourages commentors to be as specific as possible.

P.L.231-0003, SECTION 6, passed by Indiana legislators this year, prohibits the environmental boards from adopting a new rule before July 1, 2005, if the new rule would require certain industries to comply with standards of conduct that exceed federal standards. A new rule 326 IAC 2-2.7 has been drafted to comply with this legislation.

Background of Federal Rules

On December 31, 2002, the United States Environmental Protection Agency (U.S. EPA) published a final rule concerning regulations governing New Source Review (NSR) programs mandated by parts C and D of Title I of the Clean Air Act (CAA). U.S. EPA stated that these revisions "are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program and, in certain respects, resulting in greater environmental protection" (67 FR 80186, December 31, 2002). The applicability of the permit program is based on whether a new source or a modification to an existing source results in an increase in emissions above certain amounts. The December 31, 2002, rules change the method for determining the magnitude of the change in emissions resulting from a modification to an existing source. They do not change the federal

provisions regarding applicability to new sources. These changes include how historical, or "baseline," emissions are determined and an actual-to-projected-actual methodology for determining whether the modification will increase emissions. The new rules also provide optional applicability tests for sources that have accepted plantwide applicability limitations (PALs), sources that have designated clean units, and sources engaging in pollution control projects (PCPs). The December 31, 2002, rules revised amendments that were originally proposed in the July 23, 1996, Federal Register. More information regarding the background of the regulations is provided in the December 31, 2002, Federal Register notice.

Part C of Title I of the CAA requires states to include, in their state implementation plan (SIP), emission limitations and other measures that are necessary to prevent significant deterioration of the air quality in each region designated as attainment or unclassifiable for federal air quality health standards. Section 51.166 of Title 40 of the Code of Federal Regulations (40 CFR 51.166) contains the specific minimum requirements for a PSD program. The PSD program is a preconstruction review program that requires review of major new sources of air pollution emissions and major modifications of existing sources located in attainment areas where air quality meets health based standards. If a state does not have a PSD program as an approved part of its SIP, a state may be delegated the authority to implement and enforce the federal PSD program contained in 40 CFR 52.21.

Similar to the PSD program, Part D of Title I of the CAA requires states to include, in their SIP provisions, preconstruction permits for construction and operation of new or modified major sources located in nonattainment areas. Section 51.165 of Title 40 of the Code of Federal Regulations (40 CFR 51.165) and Appendix S of 40 CFR Part 51 contain the specific minimum requirements for a nonattainment new source review program.

The December 31, 2002, rule revisions require states with approved SIPs, including Indiana, to adopt the federal NSR reform amendments or equivalent provisions no later than January 2, 2006. States that have been delegated the authority to implement the federal rules are to implement the federal NSR reform amendments no later than March 3, 2003.

Numerous parties have filed a lawsuit in the D.C. Circuit Court challenging the final NSR rules claiming that they will result in greater air emissions than the current rules. They also requested that the court stay the final NSR rule revisions. The stay was denied, but the lawsuit has been put on an expedited schedule. This legal action may have an impact on Indiana's rulemaking effort.

On July 30, 2003, U.S. EPA published a notice of reconsideration in the Federal Register (68 FR 44620) for specific parts of the December 31, 2002, NSR Reform rule. U.S. EPA must receive comments by August 29, 2003, and will make a final decision on the issues in the notice by October 28, 2003. This timeframe provides plenty of time for IDEM to consider U.S. EPA's final decision of these issues prior to preliminary adoption of the state rules. The notice of reconsideration focuses on U.S. EPA's evaluation of the potential environmental impact of the rule revisions and on five narrow issues. It does not indicate an intent to reconsider the basic policy changes contained in U.S. EPA's revised rule. Interested parties are invited to comment on this reconsideration notice in comments submitted on this Second Notice of Comment Period.

Background of State Rules

Since September 30, 1980, IDEM has been U.S. EPA's delegated authority for implementation of the federal PSD program in Indiana. Beginning in 1999, Indiana conducted state rulemakings to update and correct the state PSD rule at 326 IAC 2-2 so the rule could be submitted to U.S. EPA and approved into the SIP. After working informally with U.S. EPA Region V during the state rulemakings, Indiana submitted the updated and corrected PSD rule to U.S. EPA on February 1, 2002, for approval into the SIP. After a formal review, the U.S. EPA published a notice in the March 3, 2003, Federal Register informing the public that U.S. EPA conditionally approved, as a revision to the Indiana State Implementation Plan (SIP), the Prevention of Significant Deterioration (PSD) rules submitted by Indiana. This approval went into effect on April 2, 2003, at which time the state PSD rule at 326 IAC 2-2 became federally enforceable under the CAA. This means that the PSD program is implemented by Indiana using the state rules in an approved SIP rather than implemented using delegated authority under the federal program. As a condition of the approval, Indiana must make the corrections to the state rule that U.S. EPA specified in the notice within one (1) year of the effective date of the federal rule. IDEM has commenced a rulemaking to correct this deficiency. The rule action to correct the deficiency in the PSD program (LSA #03-68) and this rulemaking on the NSR provisions (LSA #03-67) are completely independent of each other.

Having SIP approval means that Indiana's PSD permits are subject to the same procedure as all other Indiana air permits, including those for new or modified major sources in nonattainment areas and minor new source review anywhere in the state. Draft permits are subject to public review and comments by any affected party, including the U.S. EPA. Indiana's administrative and judicial review process is available to rule on objections to final permit decisions.

Indiana's nonattainment new source review rule in 326 IAC 2-3 has been approved as a portion of the SIP since December 6, 1994.

Any rule changes resulting from this rulemaking will be submitted to U.S. EPA for approval as an amendment to the SIP upon promulgation.

Applicable Federal Law

The Clean Air Act (CAA) mandates a new source review program for major sources of air pollution in parts C and D of Title I. This mandate is located in two (2) programs in the CAA: NSR PSD (part C) and NSR for Nonattainment areas (part D). The purpose of parts C and D is to protect human health and welfare from any actual or potential adverse effects from air pollutants. It also preserves the air quality in national parks, ensures economic growth will occur in a manner consistent with the preservation of existing clean air resources, and provides for careful evaluation of the consequences of permitting decisions both in Indiana and other states.

U.S. EPA, through 67 FR 80186, developed new NSR language regarding applicability at existing major sources. The state, according to 67 FR 80241, must develop or adopt rules in accordance with U.S. EPA's new rules by January 2, 2006. However, according to the CAA section 116 (42 U.S.C. 7416) Indiana may adopt or enforce, "(1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution [but] such state... may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." Therefore, Indiana may adopt its own version of the NSR rules to comply with 67 FR 80241 as long as Indiana's rules are at least as stringent as U.S. EPA's NSR reform rules. U.S. EPA has been asked for clarification on a number of provisions in the new federal NSR rules. Until they are able to provide responses, it is not clear what deviations from the federal language will be approvable by U.S. EPA.

IDEM recognizes the importance as a matter of national environmental policy that the minimum elements of the new source review programs for major sources are established by the federal CAA and by federal regulations. Therefore, these requirements are expected to be generally consistent across the country. Nonetheless, it is not unusual for states to adopt rules that contain provisions that are more stringent

than the minimum federal requirements or contain additional provisions that meld the federally-mandated program with existing state programs. Indiana has long-standing provisions that are more stringent with respect to maximum allowable increases under the PSD rules. In addition, even after the 1990 amendments to the federal Clean Air Act removed the mandate, Indiana has maintained the authority to regulate certain hazardous air pollutants (including mercury) under PSD.

In addition to those longstanding differences in Indiana's rule, IDEM is recommending a change to the retroactive designation of clean units because the federal provisions would result in greater air emissions than the current state program in a manner that is not consistent with the goals of the CAA. IDEM did consider whether to recommend changes to improve the ability to verify compliance, but concluded that relatively minor revisions to the existing nonrule policy document regarding annual compliance certification could accomplish that purpose.

The draft rules in this Second Notice integrate, for the most part, the federal changes into Indiana's permitting rules. It is not possible to incorporate the federal rules either by reference or verbatim, because the federal program relies heavily on state minor source permitting programs. Therefore, IDEM is also recommending changes to rules other than the major new source review rules as necessary to implement the federal provisions, including fees, and other changes that better capture the intent of the U.S. EPA. Following is a discussion of areas where the draft rules differ from, clarify, or supplement the federal rules, or fill a gap in state language.

Key Elements of the Federal NSR Rule and the Draft State NSR Rule

Following is a discussion of the key provisions of the draft rule:

IDEM's draft rule differs from the U.S. EPA's NSR Reform rule as follows:

- Continues to regulate the hazardous air pollutants that are currently regulated under the definition of "significant" in 326 IAC 2-2-1. As a result, the definition of "regulated NSR pollutant" in 326 IAC 2-2-1 has been modified from the federal definition to include asbestos, beryllium, mercury, and vinyl chloride. The federal rule provides less protection to the public in this respect. IDEM recommends that Indiana continue to require preconstruction review of projects that emit these toxic pollutants to prevent backsliding of current requirements.
- Adds language that was not in the federal rule to provide a mechanism to clearly establish the production capacity, throughput, or potential to emit for a unit that is designated as a clean unit. The phrase "such as potential to emit, production capacity, or throughput" was added in the following portions of the rule: 326 IAC 2-2.2-1(g)(4); 326 IAC 2-2.2-2(h)(4); 326 IAC 2-3.2-1(f)(4); and 326 IAC 2-3.2-2(h)(4). In the preamble to the federal NSR reform rules, U.S. EPA clarified that it intended to prohibit increases in the production capacity or throughput from the clean units beyond the limitations specified in the clean unit designation approval. In addition, the initial demonstration to show that the allowable emissions from a clean unit will not cause or contribute to a violation of the NAAQS or PSD increment or an air quality related value (AQRV) will not be preserved throughout the span of the clean unit designation if it is not established in the approval. Therefore, IDEM proposes to establish the production capacity, throughput, or potential to emit as basis for BACT or LAER in the clean unit designation approval to help owners and operators and the public clearly identify the scope of a modification and its impact on the clean unit designation. This will reduce uncertainty and confusion regarding what changes may invalidate a designation. This change from the federal regulations will help with establishing requirements that are consistent with intent stated in the preamble, are beneficial to the environment, and are easier to implement.
- IDEM agrees with the principle of designating certain very well controlled sources as "clean". As long as the source continues to operate in accordance with its permit limit and conditions and does not increase its capacity to emit pollutants, the owner or operator can modify the source without going through review. However, certain specific elements of the federal clean unit designation will result in less environmental protection than the current program. These elements concern the process for retroactively evaluating a unit that did not go through a BACT or LAER permit process at the time of construction, what U.S. EPA calls "comparable." IDEM therefore proposes to adopt the clean unit designation process with the following changes:
  - The federal process relies solely on information in the RACT/BACT/LEAR Clearinghouse (RBLC). That information is only an initial step in a complete BACT or LAER determination. IDEM routinely reviews sources of additional information such as the actual permit documents, the results of performance tests, any subsequent permit modifications, and the compilation of emissions information collected by EPA to develop NESHAPs under Section 112(d) of the Clean Air Act. The federal rule states that a control technology is presumed to be comparable to BACT level if it achieves an emission limitation that is equal to or better than the average of emissions limitations achieved by all the sources documented in the RBLC database for which a BACT or LAER determination has been made within the preceding five years and for which it is technically feasible to apply the BACT or LAER control technology. The federal rule also states that the control technology is presumed to be comparable to a LAER level if it achieves an emission limitation that is at least as stringent as any one of the five best performing similar sources in the RBLC database for which a LAER determination has been made within the preceding five years. This can clearly result in a clean unit designation with emissions that are greater than would have been established under the PSD or nonattainment NSR SIP. While the process for establishing the emission level for a clean unit are less than those required to perform a real BACT or LAER determination, they can still be significant. Additional resources are required of both the applicant and the agency to perform the air quality analyses required under the federal rule. Based on these concerns, IDEM proposes an evaluation equivalent to the BACT or LAER level of control evaluation that the emissions units that are automatically designated clean units must undergo, thus ensuring consistency and improvement in air quality by maximizing emissions reductions.
  - IDEM proposes that emissions units with control technologies that are up to ten years old and were not approved under a major new source review permit program be reviewed under current standards for BACT and LAER. This may require more resources for the units that can qualify under this test, but the units approved would be cleaner and the test would be available for ten years from the determination. Resources would not be expended on emission units that do not qualify under this test. IDEM does not propose to change the federal provisions that provide this test to sources that have obtained major new source review permits in the past or that undergo BACT or LAER review in the future. With these changes, the clean units under the draft state rules will be cleaner than those under federal rules, and less resources will be needed to obtain or approve the clean unit. Also, under IDEM's suggested changes the source would get the clean unit designation for a full ten years.

IDEM draft rule language that is not in U.S. EPA's NSR Reform rule, but is consistent with U.S. EPA's intent and necessary to implement the changes:

- Prohibits the issuance of a plantwide applicability limitation (PAL) for a pollutant for which an area is classified as extreme nonattainment. This prohibition was included in the preamble for the federal NSR reform (refer to 67 FR 80217), but was not included in the rule language. IDEM included the language to clarify that if, in the future, an area of Indiana is designated as extreme nonattainment, IDEM will not issue PALs for that pollutant in that area.
- Includes specific provisions in 326 IAC 2-3.3-1 (g) and (h) to require a source to obtain offsets for a significant net increase in collateral emissions from a pollution control project (PCP) if the area is classified as nonattainment for the collateral pollutant or to obtain offsets for an increase in volatile organic compound (VOC) emissions that is not de minimis in an area that is classified as serious or severe nonattainment for ozone. This requirement was included in the preamble for the federal NSR reform (refer to 67 FR 80237), but was not included in the rule language. IDEM included the language to clarify that sources are required to obtain offsets on a one-to-one ratio to demonstrate that the PCP will not cause or contribute to air quality violations in a nonattainment area.
- Adds provisions for termination/revocation of PALs in 326 IAC 2-2.4-15 and 326 IAC 2-3.4-15. The federal rule did not contain a specific mechanism for terminating or revoking a PAL. IDEM proposes provisions for the termination or revocation of a PAL if a source requests to terminate a PAL before the ten year period expires or if IDEM needs to revoke a PAL before the ten year period expires if a source does not comply with the limitations. These provisions are similar to the federal expiration provisions for a PAL. The state rule includes provisions for reallocating the emissions or reestablishing the limits that applied to the emissions units prior to when the PAL was established. This will ensure that the emissions from these units do not exceed significance levels for applicability and the environmental benefits of a PAL continue after termination.
- References clean unit designations in the air quality analysis section applicability in 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7 and the source information section in 326 IAC 2-2-10. Since IDEM removed the clean unit provisions from 326 IAC 2-2 and included it in a separate new rule, it may no longer be clear that the existing modeling and air quality analysis methods apply to clean unit designations when an air quality analysis is required. Therefore, IDEM clarified that the existing procedures should be followed for any required air quality analyses and that IDEM has the authority to require that the applicant submit this information.
- Revises or adds the following provisions in the Part 70 source modification provisions at 326 IAC 2-7-10.5:

  (1) Revises the significant source modification provisions regarding pollution control project exclusions in 326 IAC 2-7-10.5(d)(8) such that the rule only requires that unlisted projects (i.e., those that are not listed in the definition of "pollution control project" in 326 IAC 2-2-1 or 2-3-1) must get an approval to use the pollution control project exclusion prior to beginning construction, in accordance with the provisions in 326 IAC 2-2.3-1 and 326 IAC 2-3.3-1.

  (2) Adds the provision in 326 IAC 2-7-10.5(d)(10) to provide the approval mechanism for a clean unit designation in accordance with 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2 for a unit that does not go through major NSR.
- Adds a provision to the Part 70 administrative amendment requirements at 326 IAC 2-7-11(a)(8) to clarify that this mechanism may be used to incorporate those changes listed that are exempt from source modification requirements.
- Adds the following provisions to the Part 70 permit modification requirements at 326 IAC 2-7-12:

  (1) Adds a minor permit modification provision at 326 IAC 2-7-12(b)(1)(F) to provide the mechanism for IDEM to incorporate the permit requirements for a clean unit designation for a unit that has gone through major NSR.

  (2) Adds a minor permit modification provision at 326 IAC 2-7-12(b)(1)(G) to provide the mechanism for IDEM to incorporate the applicable permit requirements for a pollution control project exclusion for a listed pollution control project.

  (3) Adds a significant permit modification provision at 326 IAC 2-7-12(d)(1) to provide the mechanism for IDEM to establish, renew, terminate, revoke, or revise a PAL.
- Revises the fee requirements in 326 IAC 2-1.1-7(3)(D) to establish fees for the review and issuance of clean unit designations for units that did not go through major NSR. This review will be similar to the control technology analyses for BACT under 326 IAC 2-2-3, or LAER, therefore IDEM proposes a similar fee. Revisions to 326 IAC 2-1.1-7(3)(C) were not required because the language already requires the appropriate fee for any air quality analysis required by 326 IAC 2-2 or 326 IAC 2-3.
- Adds provisions to the fee requirements in 326 IAC 2-1.1-7 to establish fees for the review and issuance of a PAL. The fee will be based on the limit in tons for each PAL pollutant. The fee is $40 per ton per PAL pollutant, not to exceed $40,000. IDEM believes this level of fee is appropriate given the complexity of developing PAL conditions. IDEM expects these permits to be more difficult to write and enforce than the Title V operating permits, for which the annual fee is $33 per ton.
- Adds the phrase "or LAER" to the language taken from the federal rules in several subsections of 326 IAC 2-2.2-1 and 2-2.2-2. The purpose of this was to clarify that LAER also satisfies BACT because LAER is at least as stringent as BACT.
- Adds the phrase "to the extent quantifiable and to the extent they affect the project" to 326 IAC 2-2-1(e)(1)(A) and (e)(2)(A) and 326 IAC 2-3-1(d)(1)(A) and (d)(2)(A). The purpose of adding the phrase was to clarify that emissions from startups, shutdowns, and malfunctions do not have to be included in certain instances. If such emissions are not quantifiable, sources could not estimate them to include them in calculations. If the emissions are not expected to be affected by the project (e.g., no additional startups or shutdowns or malfunctions are expected due to the implementation of the project), sources do not need to include them in the calculations.

IDEM draft rule language that is not directly from NSR Reform but is a suggested change:

- Adds language from 40 CFR 51.165(a)(3)(ii)(G) to 326 IAC 2-3-3(b). This language was added directly from the federal rule because it is referenced in the new definition of "baseline actual emissions" in 326 IAC 2-3-1, but the language was not included in the current SIP-approved version of 326 IAC 2-3.
- Adds language to the applicability criteria for clean units in 326 IAC 2-3.2-1 and 2-3.2-2 to clarify that the clean unit test can be used when reviewing a modification to determine if it is de minimis in an area that is classified as serious or severe nonattainment for ozone if the modification does not otherwise cause the emission unit to lose clean unit status. Since U.S. EPA never revised the federal rules to include the de minimis provisions from the CAA, this issue was not addressed in the federal rule. Since the purpose of the clean unit designation is to provide flexibility to clean units as long as the clean unit status is preserved, IDEM clarified that the unit would not

have to evaluate a modification at a clean unit to determine if it was de minimis as long as the clean unit status is preserved.

- Adds language to the applicability criteria of 326 IAC 2-3-2 that clarifies that the de minimis test must still be used for increases in VOC emissions in areas that are classified as serious or severe nonattainment for ozone and that the two step test that determines if an increase is significant and a significant net emissions increase should not be used in place of the de minimis test in those areas. Since U.S. EPA never revised the federal rules to include the de minimis provisions from the CAA, this issue was not addressed in the federal rule. The language is necessary because the de minimis test does not use emissions increases and decreases in the same way as the test for a significant net emissions increase.
- Requires new sources that are major stationary sources to get a Part 70 permit immediately instead of a minor source operating permit (MSOP) with the requirement to apply for a Part 70 permit within twelve months of beginning operations. This change was made to 326 IAC 2-5.1 to ensure that new major stationary sources will be able to receive clean unit designations in their Part 70 permit and to avoid past confusion caused by issuing major stationary sources temporary MSOPs.
- Revises 326 IAC 2-3-2(a) to clarify the meaning of the phrase "as of the date of submittal of a complete application". U.S. EPA required that similar language that was in 326 IAC 2-2-2 be changed to clarify the meaning of the phrase when U.S. EPA reviewed 326 IAC 2-2 for SIP approval. Therefore, as a proactive measure, IDEM revised 326 IAC 2-3-2(a) in a similar manner to clarify the phrase's meaning.
- Changes the term "uncontrolled emission rate" to "potential to emit" in 326 IAC 2-3-3(b)(4). This change was made to make the state language consistent with current federal rule language at 40 CFR 51.165(a)(3)(ii)(A).
- Adds language from 40 CFR 51.165(a)(5)(i) to 326 IAC 2-3-3(a) concerning severability. This change was made since this federal language is required by the minimum SIP requirements contained in 40 CFR 51.165.
- Removes the term "federally" from uses of the term "federally enforceable" in the definition of "allowable emissions" in 326 IAC 2-3-1(c) and the definition of "potential to emit" in 326 IAC 2-3-1(ii). IDEM removed this term to make the terms consistent with the PSD definitions and since court decisions in 1995 (Nat. Mining Assoc. v. U.S. EPA, 59 F.3d 1351 (D.C. Cir. 1995) and Chem. Manufacturer's Assoc. v. U.S. EPA, 70 F.3d 637, (D.C. Cir. 1995)) vacated the requirement. The term "enforceable" will now allow terms that are enforceable by the state as well as the U.S. EPA.
- Removes the term "federally" from the current 326 IAC 2-3-2(c). This change was made to make the state language consistent with current federal language at 40 CFR 51.165(a)(5)(ii) to avoid SIP approval issues later since the provision is more stringent in the federal language. It is not related to the court decision in Chemical Manufacturer's Association, et al. v. EPA.
- Adds the definition of "federally enforceable" to 326 IAC 2-2-1 and 326 IAC 2-3-1. Since this term is used in the federal rules, the federal definitions from 40 CFR 51.166 and 40 CFR 51.165 were added to the state rules.
- Changes a reference in the definition of "net emissions increase" in 326 IAC 2-3-1 from "regulations approved under 40 CFR 51.160 through 40 CFR 51.165" to "regulations approved under 40 CFR Part 51, Subpart I." IDEM changed this reference to make the definition consistent with the definition in 40 CFR 51.165. The current reference did not include 40 CFR 51.166, which is also a section included in 40 CFR Part 51, Subpart I.
- Revises the provisions for claiming emissions reductions for offset credit for shutdowns of sources in nonattainment areas in 326 IAC 2-3-3(b)(5). When 326 IAC 2-3-3(b)(5) was originally adopted, a version of the Emission Offset Interpretive Ruling from 1979 was used. On June 28, 1989, U.S. EPA revised the interpretive ruling and 40 CFR 51.165. The provisions restricting the use of prior shutdown credits were relaxed for states that had an approved attainment plan because U.S. EPA stated that there were adequate safeguards to prevent abuses under an approved SIP because the SIP provides independent assurance of reasonable further progress. In addition, the U.S. EPA reasoned that the offset rules should encourage the construction of new sources that result in progress toward attainment by replacing older, dirtier sources. Additional restrictions regarding the timing for the shutdown and the date of the most recent attainment demonstration and emission inventory were included as safeguards. IDEM never revised 326 IAC 2-3-3 to reflect these federal revisions. Therefore, IDEM has proposed to update this portion of the rule during this rulemaking.
- Adds a provision to language taken from the federal rules in 326 IAC 2-2.4-6 and 326 IAC 2-3.4-6 to clarify what level should be added to the baseline actual emissions when establishing the PAL level for VOC emissions in an area that is classified as serious or severe nonattainment for ozone. The federal rules have not been updated to include provisions of Section 182(c)(6) of the 1990 CAA Amendments that require that a de minimis test be used instead of the typical "significant net emissions increase" test in an area that is classified as serious or severe nonattainment for ozone. The state rules include these provisions. Therefore, IDEM clarifies that the de minimis level should be used for these areas in lieu of using the federal language that broadly references the significant levels in the CAA.

Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. The amendments to the federal NSR rules provide options available to sources rather than requirements. The state rules are revised and are more stringent in some areas as described in the previous section, "Differences Between the Federal NSR Rule and the Draft State NSR Rule", in the first list titled, "IDEM's draft rule differs from the U.S. EPA's NSR Reform rule...".

Potential Fiscal Impact

The fiscal impact on regulated sources is expected to be positive. Because the new rules are expected to be neutral or beneficial in terms of environmental impact, no adverse fiscal impact or health care costs is expected.

In the course of the federal rulemaking on NSR Reform, U.S. EPA was required to assess both the costs and the benefits of the intended regulation. This assessment was then submitted for review and comment. Therefore, costs have already been assessed in the federal rulemaking process. In addition, the Public Law 104-4, Unfunded Mandates Reform Act, requires an assessment if the cost of a federal rule will be greater than $100 million dollars on the regulated community and the states and local regulatory agencies. This assessment has been completed for the federal rule and U.S. EPA indicated the rule will provide an opportunity for a savings to the regulated community with no adverse impact on public health.

Regulated entities should see significant savings because many modifications that were subject to PSD and for which the state currently collects fees will be exempt under the new rules. The fees associated with these modifications will no longer be required. This will result in a reduction in fees collected by state government. No

fiscal impact on local government is anticipated.

Currently, the fee associated with a PSD modification review is usually greater than $15,000. Under the new rules, many of these modifications will now be exempt from PSD and only required to get a Part 70 minor source modification at $500, a significant source modification at $3,500, or a permit modification for which there is no cost. A PSD review currently requires payment of a significant source modification fee in addition to the PSD fees.

There will be no fees for automatically designated clean units. If a source otherwise applies for a clean unit designation, IDEM proposes a fee consistent with the current BACT review and air quality analysis fee.

For pollution control projects, the $3,500 fee for the listed projects has been removed, resulting in a savings for the source and a reduction in fee collection by the state.

For a source that applies for a PAL, the fees in 326 IAC 2-1.1-7 are anticipated to be less than the fees associated with ten years of modifications that the PAL would replace. The state would receive fewer fees for this option. IDEM invites comment on the fees associated with a PAL and encourages commentors to provide cost information if possible.

It is unknown how many sources may choose to apply for the option of a clean unit designation, pollution control project, or plantwide applicability limitation. Therefore, it is not clear whether the fiscal impact (cost or savings) of choices made under the new rules will exceed $500,000.

Public Participation and Workgroup Information

IDEM has established an external workgroup to discuss this rulemaking. The workgroup includes a cross section of stakeholders and is open to all interested parties.

Public meetings have been held on March 6, June 30, and July 22, 2003. The minutes from these meetings, any future meetings, and other information regarding this rulemaking can be viewed at IDEM's NSR Reform Information page at http://www.IN.gov/idem/rules/air/apcb0367/index.html. A meeting to discuss this Second Notice is scheduled for September 9, 2003, at 2:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Room C, Indianapolis, Indiana. Future public meetings will be posted to the Web site. IDEM will continue to work with all interested parties throughout this rulemaking process.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Chris Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana), or at cpederse@dem.state.in.us. Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from April 1, 2003, through May 1, 2003, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Citizens Action Coalition of Indiana (CAC)
Eli Lilly and Company (ELC)
Hoosier Environmental Council (HEC)
Indiana Cast Metals Association (ICM)
NiSource (NIS)
Save the Dunes Council (SDC)
Save the Valley (STV)
United States Steel Corporation-Gary Works (USS)
Valley Watch, Inc. (VWI)

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

Comments About Whether Indiana Should Adopt the Federal Changes

IDEM received several general comments regarding adoption of the federal NSR changes ranging from incorporating by reference to not adopting any of the federal changes. IDEM has reviewed the federal rules and made some necessary changes but overall feels the rules will not result in a significant decrease in air quality in Indiana.

Court Challenge to Federal Rules

Comment: Given that the Bush NSR rollbacks are being challenged in court, we believe it is premature for IDEM to be proposing changes to Indiana's NSR rules to comport with the rollbacks. If the litigation challenging the federal rollbacks is successful, Indiana residents would receive less protection than under the current rules until the current rules could be restored. Indiana should reject the Bush NSR rollbacks. (CAC) (HEC) (SDC) (STV) (VWI)

Response: It is unclear when the federal court proceedings will be resolved, though the court has indicated it intends to proceed expeditiously. Briefs are due in the U.S. District Court this fall. Changes to the federal rule that occur during the process of adopting the state rule can be incorporated into this rulemaking effort or, if necessary, a new rulemaking can be initiated to address any future federal changes. IDEM acknowledges that the legal challenge may ultimately result in changes to the federal rules and it is appropriate to monitor this issue very closely as rulemaking proceeds.

Emissions Should Not Increase Under New Rules

Comment: If IDEM proceeds with the NSR rule changes, we believe that an underlying principle that must guide any proposed changes to Indiana's NSR rules is that no change results in increased emissions or authorizes increased emissions when compared with the current NSR rules. IDEM's proposed rules must not allow backsliding in Indiana's efforts to achieve cleaner air. (CAC) (HEC) (SDC) (STV) (VWI)

Response: While there will most likely be situations where a given project may not be regulated as strictly under the new rules, overall, with the specific changes IDEM is suggesting, the revisions will not worsen air quality in Indiana. Briefly summarizing the four basic elements of the new rule, IDEM believes that today's proposal is consistent with IDEM's views of: the goals of the CAA; the goals and requirements of Indiana's air permitting programs; and protecting air quality.

The new rules' approach to basic applicability (projected actual emissions minus baseline emissions) more clearly focuses on emissions increases that are caused by a physical change or change in the method of operation. It takes into account the fact the emissions vary year to year based on the level of production and that not every change directly or indirectly causes emissions to change. It also does not allow for backsliding from the benefits derived from air pollution control requirements that have been put in place since a particular baseline date. New significant emissions units will continued to be reviewed under Indiana's minor new source review program. That program routinely includes a review of the applicability of the major new source review programs and also provides authority to impose additional conditions necessary to prevent the change from contributing to local violations of air quality standards. The new rules require that when a permittee determines that a change at a source is exempt from major new source review, but there is a reasonable possibility that change could cause a significant emissions increase, the permittee must document its analysis and keep records of future emissions. The IDEM plans to revise the Nonrule Policy Document regarding Title V Annual

Compliance Certifications to require that permittees specifically list these types of changes if they did not require approval under Indiana's minor new source review program.

The new rules establish a new applicability test for sources that are subject to a Plant-wide Applicability Limit (PAL). The PAL provisions limit the increase in actual emissions to less than significant levels. The PAL will be adjusted downward if new state or federal control requirements come into effect during the life of the PAL. A PAL is generally more restrictive that the current requirements because emissions are capped regardless of future increases in production and because under the current rule, a source can be modified numerous times with each modification increasing emissions by just less than a significant amount. The IDEM has included provisions to include a different approach in severe ozone nonattainment areas consistent with Indiana's existing rule.

IDEM believes that pollution control projects at existing sources should not generally be subject to major new source review. These are projects whose purpose is to reduce emissions. For instance, a thermal oxidizer controls VOC emissions, but increases NOx emissions. Sometimes these projects increase emissions of pollutants other than the one that will primarily be reduced. Actual significant increases in "collateral" emissions for the types of control devices on the list in almost all cases are increases in NOx resulting from the combustion of VOC and increases in CO due to changes the way that fuel is burned that are intended to limit NOx emissions. Increases in these emissions are not at all likely to cause local air quality violations of NO_2 or CO standards because ambient concentrations are across the state are well below the standards. IDEM plans to address the impact that NOx emissions have on ozone concentrations in the development of the eight hour ozone SIP. IDEM has included a requirement to obtain offsets for increases in nonattainment areas. The rule also provides the opportunity to deny the use of the test if an increase in a pollutant would cause an air quality problem. Indiana's rules currently have special provisions for pollution control projects, but sometimes the approval process is more cumbersome than it needs to be, and can delay the implementation of these beneficial projects. These rule changes further simplify the approval process.

IDEM is concerned that U.S. EPA's provision for "comparable" BACT determinations will result in greater emissions than IDEM's current rules would allow. Therefore, the draft rules recommend a different, more environmentally protective, approach to evaluating this type of source for clean unit status. Emissions units that would qualify for designation as clean units under these draft rules must have under gone a strict control technology and air quality review. The draft rules require IDEM to identify the fundamental characteristics that could affect a BACT or LAER determination for a clean unit. The rule also requires review of any changes to those characteristics; those changes would only be approved if IDEM determines that the changes are consistent with the BACT or LAER determination. Any air quality impact from the change would also be reviewed to prevent air quality problems.

Emission increase in SIPs

Comment: Any action by Indiana to adopt the NSR rollbacks will necessarily require an analysis of the implications for these changes on attainment and maintenance plans, including the impact on future nonattainment areas, across the state. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: The CAA prohibits modification of clean air programs in effect before the Clean Air Act Amendments of 1990 unless the modification results in equal or greater emission controls. Because the current federal NSR rules were in effect prior to the enactment of the Clean Air Act Amendments of 1990, no modification to these rules may be made if those modifications result in greater emissions. (CAC) (HEC) (SDC) (STV) (VWI)

Response: Both attainment and nonattainment SIPs allow for increases in emissions from new and modified sources consistent with the minor and major new source review provisions. Changes that would cause in increase in emissions will continue to be subject to new source review. IDEM has proposed revisions to the PAL and the pollution control project provisions that specifically address issues in nonattainment areas. Increases in emissions will continued to be managed under applicable maintenance plans.

Comment: The Clean Air Act (CAA) prohibits any revision to a State Implementation Plan (SIP) that interferes with attainment of an air quality health standard or other requirements of the CAA. Just as states can and indeed should take appropriate emission reductions credit for federal measures to lower emissions in attainment or maintenance plans, states must likewise assess federal measures that relax CAA requirements. At the time U.S. EPA proposed the 1996 new source review changes, U.S. EPA estimated that the revisions would represent a considerable weakening of the applicability of the new source review program. (CAC) (HEC) (SDC) (STV) (VWI)

Response: While these rules do reduce the applicability of major NSR, they have no impact on the applicability of Title V source modifications or permit modifications. Any source that constructed pursuant to 326 IAC 2-2 or 326 IAC 2-3 is operating in accordance with 326 IAC 2-7. The Title V program includes recordkeeping, reporting, testing, and monitoring requirements that will ensure compliance with applicable requirements. With these measures, IDEM maintains the ability to review changes at the source and determine if they have an impact on air quality. The intent of the federal rule amendments was to ease the burden of major NSR, not to eliminate review of new emission units altogether.

Fully Incorporate the New Federal Rules

Comment: The Indiana NSR program should incorporate all or as much as possible of the recently promulgated amendments to the federal NSR program. In our view, the December 31, 2002 federal NSR regulations will result in NSR being more clearly applicable to projects that merit BACT or LAER controls. Perhaps more importantly, the new federal rules make it easier to determine that NSR does not apply to projects that involve minor operational changes, relatively small capital investments to improve existing equipment, and/or no real increase in emissions. This will eliminate a great deal of confusion and uncertainty about NSR applicability. (ELC)

Response: IDEM believes that major NSR permitting resources should be expended on projects that result in actual significant emissions increases. IDEM proposes to adopt all provisions of the federal amendments, with a few variations that focus on gap filling, implementation issues, preventing backsliding or avoiding decreased air quality protection. These variations are outlined in the "Differences Between the Federal NSR Rule and the Draft State NSR Rule" subsection of the "Subject Matter and Basic Purpose of Rulemaking" section of this notice.

Comment: The final NSR improvements will allow Indiana businesses the regulatory certainty necessary to compete in the world marketplace and provide for a level playing field when decisions must be made regarding plant investment and utilization. Indiana is bordered by two states that operate permitting programs under delegation of U.S. EPA. Both Michigan and Illinois are home to major integrated steel plants that will be granted the certainty and flexibility that these improvements provide. Indiana must not allow plants in other states to gain advantage over the plants located within its own borders. IDEM should adopt the improvements to the NSR rules as they were published in the December 31, 2002 Federal Register as expeditiously

as possible. (USS)

Comment: IDEM should not alter the provisions of the new Federal NSR rule so as not to put Indiana at a competitive economic disadvantage with other states. The only alteration that should be considered is to implement appropriate adjustments to the structure of the federal provisions to match the format of the Indiana rules. We do not recommend incorporation by reference. While incorporation of the federal rules by reference would potentially reduce the volume of the rule language contained in title 326 of the Indiana Administrative Code, we believe having the complete language of the rule available in 326 IAC would be less confusing and more useful to both IDEM and the regulated community and better provide for the coordination of the Federal NSR rules with the other components of Indiana's permitting rules. (NIS)

Comment: The NSR rules should be promptly implemented through use of Indiana's incorporation by reference provisions for rulemaking. IDEM could implement some of the provisions of the NSR reforms with the current rules and further refine reforms with subsequent new rulemaking in those areas. (ICM)

Response: While IDEM agrees these rules should be adopted as expeditiously as possible, a direct incorporation by reference is not appropriate for this rule, both for practical reasons and because of the significant public interest in the rules. There is much public interest in examining the impact these rules will have on air quality in Indiana. IDEM also concurs that the major NSR program in Indiana should not provide a disincentive to industry in the state. IDEM is proposing the adoption of all provisions of the federal amendments, with a few variations that focus on gap filling, implementation issues, or environmental benefit. Changes must be made to the minor NSR program and Title V operating program prior to implementation of the new NSR Reform provisions. The federal amendments will be integrated into our existing SIP-approved PSD and nonattainment NSR programs.

Comment: Lilly has seen no evidence that there is anything unique about Indiana that requires Indiana's NSR program to be different than the new federal rules. The issues that IDEM has raised in the first notice of rule making and in the various issue papers circulated in early April appear to be implementation issues more than conceptual disagreements with the new federal rules. With that in mind, Lilly believes that it would be appropriate for Indiana to adopt and implement the new federal rules as is, but to implement them with a watchful eye. If implementation issues arise after a few years experience, then it would be appropriate to determine whether changes to the basic program rules are necessary. (ELC)

Response: IDEM is proposing to adopt all provisions of the federal amendments, with a few variations that focus on gap filling, implementation issues, or environmental benefit. IDEM concurs that if implementation issues arise, it may be necessary to make changes to the applicable rules.

Comment: We agree with U.S. EPA that the new regulations will improve air quality – not diminish it. The clean unit applicability test, the pollution control project exemption, and the plant wide applicability limit (PAL), all serve as incentives for companies to reduce emissions in order to obtain flexibility. The basic applicability test assures that changes that truly cause emission increases will undergo NSR. Investments in new emitting equipment are still subject to NSR based on potential emissions, which ensures that new operations that are more likely to cause emissions to increase are more likely to undergo NSR. We urge IDEM to review U.S. EPA's analysis of the environmental impacts of the new NSR rules [http://www.epa.gov/air/nsr-review/nsr-analysis.pdf]. This report demonstrates the overall benefit of adopting the federal program. (ELC)

Response: IDEM has reviewed the supplemental analysis prepared by U.S. EPA.

Comment: We respect IDEM's interest in having a robust public discussion about new regulatory requirements. We disagree, however, that such a process is necessary for adoption of the new federal NSR rules. (ELC)

Response: Because of the high level of interest in the impact of the federal NSR rules on air quality in Indiana and the ongoing legal actions at the federal level, IDEM believes it is appropriate to encourage public discussion on this rulemaking. This will help educate the citizens of Indiana about the issue and will encourage feedback to IDEM throughout the rulemaking process.

Comment: Given Indiana's interest in implementing the NSR program as an independent SIP approved state, we believe adopting rules that mirror the federal rules provides the most likely route to retain that status. This was certainly Indiana's approach when seeking SIP approval prior to the federal rule changes, and we see no reason to endanger future SIP approval by deviating from the new federal rules. (ELC)

Response: The state NSR rules must be at least as stringent as the applicable federal requirements. IDEM will be working closely with U.S. EPA throughout the rulemaking process to ensure that any variations in the state rules are still at least as stringent as the federal requirements.

Comment: It is imperative to Lilly that NSR rules in Indiana provide ample flexibility for our research and manufacturing facilities to make changes quickly, efficiently, and with a high degree of certainty. (ELC)

Response: IDEM believes the new rules will provide flexibility that has not previously been available to major sources.

Comment: Under some interpretations, the current Indiana NSR rules can impose unnecessary administrative impediments and create uncertainty for companies making new products, improving existing products, improving operations, and reducing emissions. It can deter process and safety improvements, and it can cause companies to expend time and resources attempting to determine whether NSR applies to a project. (ELC)

Response: In the December 31, 2002 Federal Register, U.S. EPA stated that the changes to the NSR program "will reduce burden, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency." IDEM is proposing the adoption of all provisions of the federal amendments, with a few variations that focus on gap filling, implementation issues, or environmental benefit.

Comment: Perhaps the most frustrating aspect of NSR is that some interpretations (we believe incorrect interpretations) of the rules can draw just about every activity that occurs at a site into the scope of the program. This causes NSR to apply potentially to the types of projects where it simply does not make sense for it to apply. (ELC)

Response: It is not IDEM's intent for the new provisions to draw activities at the site into the program inappropriately. IDEM will work with sources to ensure that applicability of the NSR provisions is handled correctly and that projects that should not be included are identified as such.

Federal Criteria for Approving Alternatives

Comment: Throughout this rulemaking process, we request access to the information provided by U.S. EPA to IDEM regarding the federal criteria for alternative language being approved into the SIP. (ICM)

Response: IDEM will make any information received from U.S. EPA regarding the federal criteria for alternative language available to all interested parties. Specific public records may be requested in accordance with IC 5-14-3.

Capital Investment Test

Comment: For the technology review to be effective, NSR should only apply to projects where there is a significant capital investment in the equipment or activity that causes the emissions. Matching NSR to significant capital investment is crucial because it is most cost-effective for companies to include the cost of BACT or LAER technology within the scope of a large capital investment in new or improved production capabilities. (ELC)

Comment: The amount of time that it takes to prepare an NSR application and obtain the permit affects the type of projects that should be covered by NSR. Because the whole process can take years from initial development of a permit application to final permit issuance, only large capital-intensive projects can easily absorb the NSR timeline into the overall project schedule. A smaller project that ordinarily takes a few months or less to complete cannot accommodate a long permitting process. These projects will be abandoned or substantially altered if NSR becomes a possibility. (ELC)

Response: The CAA requires that NSR be based on the impact to the environment, rather than capital investment. However, in the course of this rulemaking, the fiscal impact will be evaluated. IDEM encourages sources to submit information about costs of compliance with these rules for inclusion in the fiscal impact document.

Comment: It is important to recognize that many capital investments, regardless of whether new emission control systems are involved, have environmental benefits, and NSR should not act as a disincentive to implement them. New investments typically improve production operations, often for safer, more reliable, and more efficient operations. These investments allow companies to use less polluting materials, to manage operations to create less waste or emissions, and to enable greater production rates with fewer raw materials. Environmental regulations should encourage these types of small projects that have intentional or incidental environmental benefits. Unfortunately, NSR has been implemented in a way to discourage these projects. (ELC)

Response: The new federal rules offer flexibility in exchange for better environmental controls. This may provide better incentives for sources to implement them.

Real Emissions Increase Test

Comment: NSR must be designed to capture real emissions increases to assure protection of air quality. The air quality analysis under NSR is extensive, expensive, and time-consuming. The air quality analysis can take more than a year to complete and cost companies $50,000 or more. It should not be required when the emission increases are theoretical, speculative, or unrelated to the changes being proposed. The air quality impact analysis under NSR makes the most sense when there is a real and significant emission increase attributable to the proposed project. (ELC)

Response: IDEM believes the new basic applicability test does focus on "real emissions increases" and therefore reduces some of the burden described in this comment. Many of the proposed modifications will now only be subject to the minor NSR program which is considerably less expensive and time-consuming, yet still allows for agency review and public participation.

Future Rulemaking Issues

Comment: IDEM's attempt to raise the universe of possible issues associated with this anticipated rulemaking is appreciated, but we would like to reserve the right to raise new issues as the debate moves forward. (ICM)

Response: IDEM has presented issues that were identified by industry, citizens, and IDEM staff. These issues serve as a starting point for discussion. IDEM continues to request public input in notices such as this and through public meetings.

Workgroup to Meld Minor and Major NSR

Comment: Revisions to the major new source review requirements will require modification to the existing Indiana minor new source review rules, especially with relation to minor modifications at major sources. We suggest IDEM establish a workgroup to harmonize the new source review rules within the minor new source modification requirements. (NIS)

Response: IDEM concurs that changes are needed to the minor NSR and Title V operating program in order to implement the new federal NSR reform rules. Draft language has been proposed to address this issue. Further comments and suggestions on this draft language are welcomed. IDEM has held several public sessions on the rules, including one meeting to discuss a specific issue. If there is interest in convening one or more meetings to discuss the particular issue of harmonizing the major and minor new source review rules, IDEM will organize them.

Applicability Tests

The applicability test has always been one of the most complicated and controversial elements of NSR. The applicability test is self-executing and can be subject to several interpretations as to which modifications qualify for the program. Many comments were supportive of the new test; other comments were opposed to the new test and looked for assurance that it would not impair air quality. IDEM, having reviewed the federal rules and federal court cases, has incorporated the new applicability test.

Ten Year Look Back for Baseline

Comment: The Bush NSR rollbacks would allow sources to choose their baseline emissions for determining applicability based on the source's most-polluting 24-month period over the previous ten years. If this is adopted in Indiana's rules, it will establish a perpetual grandfathering of excessive emissions at old dirty units, and would allow increases in pollutants from some units above current levels. Such grandfathering and allowance of any increase in emissions should be rejected. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The current state rules allow any 24-month period over the previous five years for electric utility steam generating units (EUSGUs) and the most recent 2-year period preceding the project or another earlier 2-year period that is more representative of normal source operation for non-EUSGUs. The rule revisions do not change the current baseline requirements for EUSGUs, new sources, and new emission units. For modifications to existing units, sources are required to adjust their baseline for enforceable limitations or controls that have went in to effect since their chosen baseline period. EPA believes ten years is a fair and representative time frame for encompassing a normal business cycle. Considering the limited scope of these changes and the required adjustments, IDEM believes that there will not be a significant increase in actual emission caused by this rule change. IDEM proposes to incorporate the new applicability test into the state program.

Comment: We strongly support an allowable look-back of ten years. This period of time is appropriate given the reality of business cycles to truly assess a reasonable baseline for emissions. Support for maintaining the ten year time frame is built via existing requirements including: 1) required data to support emissions baseline, 2) new or voluntary limits that have to be taken into account, and 3) changes in requirements associated with materials used that also must be taken into account. We do have some concerns that start up/shut down activities are not well defined and emissions associated with these processes may be unquantifiable. (ICM)

Response: IDEM proposes to implement the U.S. EPA ten-year look back period as part of the state program. U.S. EPA has required that start up/shut down/malfunction emissions be included, but relies on the state agency to develop a protocol for determining these emissions.

IDEM was also concerned with the ability to quantify such emission. The agency requested input from industry and draft rule language is included in this Second Notice.

Actual-to-Potential v. Actual-to-Projected Actual Emissions

Comment: The Bush NSR rollback proposal to allow the "actual-to-potential" emissions applicability test to be replaced with an "actual-to-projected-actual" test should be rejected. Allowing a polluting source to estimate its future emissions in order to determine applicability opens up the process to abuse resulting in inaccurate projections and essentially allowing the source to control whether the rules apply. Comparing actual to potential emissions is the only objective way of ensuring the applicability test is not abused. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: Lilly strongly supports the adoption of the actual-to-projected-actual emission increase test. Given the potential breadth of the definition of the potential scope of "modifications" under NSR ["…any physical change or change in the method of operation that results in a significant net emission increase…"], this aspect of the new rules exemplifies the notion of capturing the types of modifications that are best candidates for the technology requirements, air quality analysis, and time delays of NSR. (ELC)

Comment: We strongly support the move to an "actual to projected actual" emissions applicability test. Consistent with this position, we believe there should be a clearly stated exemption for emissions that are not attributable to the modification. (ICM)

Response: The court decided in 1990 for electric utility steam generating units (EUSGUs) and EPA has determined for non-EUSGUs, that an actual-to-projected-actual test is the appropriate, more realistic way to determine emissions increases. Under the current major NSR program many sources request synthetic minor limits to avoid major NSR because they know their actual emissions will be significantly lower than their potential and not exceed the significant thresholds. The new rules will enable the sources to make these changes without a limit, however they must record their emissions to ensure there is no exceedance of the projected actual emissions. Many modifications that are not subject to the major NSR program will most likely be subject to the minor NSR program, which is based on the PTE of the modification, or the Part 70 permit modification requirements. If there is a modification that has a reasonable possibility of causing a significant emissions increase and has not been reviewed under the minor NSR program and did not otherwise require a Part 70 permit modification, it should be noted in the Part 70 annual compliance certification. Because of these safeguards, IDEM proposes to incorporate the new applicability test into the state program. Under these rules, sources may choose to use potential to emit to determine post-change emissions.

Actual-to-Actual Under Old Federal Rules

Comment: Lilly objects to IDEM's characterization that the emission increase test under the old NSR rules and current Indiana rules is and always has been an actual-to-potential emission increase test. We believe those rules actually created a preference for an actual-to-actual test, and IDEM should acknowledge this preference. (ELC)

Comment: Given the magnitude of the changes contemplated in the WEPCO decision, Lilly believes that most modifications to existing equipment should be evaluated under an actual-to-actual test. Consequently, the new federal rules change very little about how NSR applicability should be determined. (ELC)

Response: An actual-to-actual test was only specifically applicable to EUSGUs. While IDEM believes that while Indiana's current language regarding non-EUSGUs may be open to interpretation, that does not directly affect this rulemaking.

Applicability of Minor NSR to Projects Exempt from Major NSR

Comment: Lilly is greatly concerned by the suggestion in the April 2, 2003 Issue Papers that sources should be required to obtain minor NSR permits or submit notifications for each modification that a source determines is not subject to NSR by virtue of applying the new emission increase test. Because many sources make hundreds of "physical changes or changes in the method of operation", this type of requirement would result in an overwhelming amount of permitting or paperwork from sources, with no environmental benefit. Major NSR and minor NSR have always been self-implementing programs – sources have always had the primary role in determining whether a change is subject to permitting. We do not think that U.S. EPA's codification of the actual-to-actual emissions test provides any new grounds for changing one of the more effective aspects of the program. (ELC)

Response: U.S. EPA created these provisions to ease the burden of major NSR, not to exempt NSR altogether. IDEM is not suggesting changes to the minor NSR program, other than implementation mechanisms. An increase in the potential to emit will continue to be the basis for the applicability of the minor NSR program.

Comment: We are concerned by the theme expressed throughout the April 1, 2003 notice and the IDEM issue papers that without some sort of IDEM review, sources will make errors in determining NSR applicability. We recognize that IDEM has expertise to offer in making applicability determinations, and sources should always be able to call on IDEM for assistance in making such determinations. It is inefficient, however, to presume that the system needs IDEM involvement in every determination to assure proper application of the program. To impose IDEM involvement in every case will only slow down projects and strain the resources of both the companies and IDEM. (ELC)

Response: IDEM acknowledges that this is largely a self-executing program and there are sources that feel they have the staff and expertise for making applicability decisions. However, many sources prefer the review process, and the compliance assurance they get from the review. In addition, some members of the public would like the opportunity for public review. IDEM is trying to accommodate all views in the proposed rule.

Comment: On the issue of reporting and record keeping, we support IDEM's use of the U.S. EPA proposed list of notification requirements prior to construction when using "actual to projected actual" calculations. (ICM)

Response: IDEM proposes to incorporate the applicability test into the state program. It should be noted that the major NSR sources are subject to the Part 70 operating program. Therefore, it is possible that changes may be subject to the minor NSR or Part 70 permit modification procedures when major NSR does not apply.

Compliance Consequences

Comment: We suggest that if a facility realizes a projection was incorrect associated with "actual to projected actual", BACT analysis should be done retroactively to the date the equipment was installed consistent with U.S. EPA's approach when dealing with clean units. (ICM)

Response: If the source reports or a compliance inspector discovers an exceedance of the projected actual emissions, IDEM has the authority to enforce major NSR requirements if a physical or operational change results in a significant net emissions increase at a major stationary source. This is an implementation and compliance issue and does not need to be addressed in the rule.

Comment: We would like to understand what ramifications are proposed when a facility reports an exceedance of their projected actual emissions. (ICM)

Response: Exceedances of the projected actual emissions may be referred to the Office of Enforcement for further action.

Changes in Applicability of Minor NSR

Comment: We recommend that the projected actual test should be an option for determining a limit on FESOPs and the "actual to projected actual" applicability test should be applicable to minor source modifications. (ICM)

Response: This rulemaking is intended to amend the state air permit rules in response to the amendments to the federal NSR amendments. The only changes being made to the minor NSR program is to create an implementation process for the new major NSR provisions. An increase in the potential to emit will continue to be the basis for the applicability of the minor NSR program.

Data Requirements

Comment: Our members have expressed concerns related to how much data will be adequate to document a twenty-four (24) month period. We would not support stack testing as a requirement, but would support the best available emission factor data including AP-42 when appropriate. (ICM)

Response: The data required to support the twenty-four (24) month period chosen by the source must adequately describe the operation and associated pollution levels for the emissions units being changed. These data should be sufficient to determine the unit's actual emission factors, utilization rate and the relevant information needed to accurately calculate the average annual emissions rate during the period of time selected. This is an implementation issue and does not need to be addressed in the rule any further than it is under U.S. EPA's requirements.

Public Notice for Pollution Control Projects

Comment: When notification is submitted to IDEM for changes, U.S. EPA does not require a public comment period. We recommend IDEM should incorporate this approach given that the public comment period only slows the process and delays environmental benefits that would be derived from pollution control projects and other proactive changes. (ICM)

Response: U.S. EPA does not require a public comment period from the notification, but they do require it when incorporating the change into the Part 70 Permit. Most pollution control projects take some time to procure and install. That can proceed because preconstruction approval is not needed. Operating permit amendments can be received during this time.

Clean Unit Designations

Clean unit designations are the first of the three alternate applicability scenarios available under the federal NSR changes. IDEM received mixed comments on the value of the designation. IDEM has reviewed the clean unit designation provisions and has incorporated much of the federal requirements with some revisions that will provide additional environmental benefits.

Public Notice and Stringency of Clean Unit Designations

Comment: If IDEM proceeds with a Clean Unit Exemption rule, it should require public notice and an opportunity for public comment on all proposed Clean Unit applications and designations. The rule must ensure that only pollution controls that meet or are more stringent than current BACT or LAER limits would qualify. The rules should also include a procedure for periodic review of units granted a Clean Unit Exemption to determine if technology has advanced sufficiently that new BACT or LAER limits would be applicable and a procedure to revoke the Clean Unit Exemption if the controls are deemed out-dated. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM concurs that clean unit designations should be reviewed and established using a permit process that provides an opportunity for public review and comment in accordance with the federal rule requirements. IDEM proposes to require units requesting a clean unit designation that have not gone through major NSR to submit an application for a significant source modification and significant permit modification under sections 326 IAC 2-7-10.5 and 326 IAC 2-7-12, respectively. Units that have gone through major NSR automatically receive a clean unit designation. These would have been subject to the public notice and comment period procedures associated with the major NSR permit and would be available for public comment during the associated Title V permit or permit modification.

IDEM agrees that all clean units should be subject to the same standard of review for control technology assessment. Therefore, IDEM has drafted rule language requiring units that request a clean unit designation that otherwise do not go through major NSR to meet current BACT or LAER requirements, depending on the attainment status for the area where the unit is located as of the date the designation is requested. Based on this change to the federal NSR requirements, IDEM does not propose to periodically review each clean unit designation within the ten-year term to determine if technology has advanced significantly. IDEM is concerned that a period shorter than ten years will not provide the incentive to the sources in terms of flexibility and certainty associated with the investment in BACT or LAER level controls.

Comment: Determination of BACT or LAER emission levels should be made using only the best performing comparable control project, and should not allow averaging of BACT or LAER limits. Averaging such limits can allow a significant deviation from what are truly state-of-the-art pollution controls, and a decreased air quality benefit, because BACT or LAER limits can change significantly over time. Simply, the rules should require the use of the most stringent BACT or LAER limits for determining eligibility for the Clean Unit Exemption. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM concurs and has drafted language to require a current top-down BACT or LAER analysis for clean unit designation requests for units that have not already gone through major NSR.

Affect of Redesignation on Clean Unit Status

Comment: The rules should sunset any Clean Unit designations in an attainment area that is subsequently designated nonattainment to ensure that Clean Units are not exempt from more stringent requirements under the nonattainment designation. (CAC) (HEC) (SDC) (STV) (VWI)

Comment: We are concerned by the suggestion that Clean Unit Designations should only be awarded retroactively to units employing the best of the previous BACT or LAER determinations, and not the average as specified in the federal rules. This serves the purpose of making more facilities ineligible for the designation, even though very little difference may exist between the control levels. The resource and time benefits of the Clean Unit Designation would be lost with little or no environmental gain in many cases. This is particularly true for VOC sources, where BACT and LAER controls have remained relatively static for many years now. (ELC)

Comment: Although Lilly recognizes that the change from attainment to nonattainment means that there is a greater need for emission reductions, we agree with U.S. EPA's position that the Clean Unit designation is not affected by redesignation. Having BACT level controls in nonattainment areas where they may not have existed before still provides a significant air quality benefit – probably more significant than the difference between BACT and LAER controls. Likewise, the loss of operating flexibility and saved administrative resources by terminating a Clean Unit designation may be significant in comparison to the potential difference in emissions from a source using BACT instead of LAER. (ELC)

Response: IDEM agrees with U.S. EPA that the clean unit designation should not be affected by redesignation and has not proposed to change the federal language regarding this provision of the clean unit

designation. IDEM does not currently re-evaluate BACT for units that previously went through major NSR review when an area changes from attainment to nonattainment. The SIP planning process is used to determine what control measures should be implemented to improve air quality. Sometimes the plans require existing sources to implement additional controls. Clean unit designation will not preclude the requirement of additional controls if included in the SIP. Since clean units are by definition well-controlled sources and their potential to emit or physical and operational characteristics cannot be changed such that the basis for the clean unit designation will be altered, it should not be necessary for air quality purposes to revoke clean unit designations if an area is redesignated to nonattainment. These units would still only trigger major NSR review if a major modification is initiated for the unit, and the SIP mechanisms available are more effective tools to help reduce emissions than waiting for a unit to trigger major NSR.

Comment: Lilly supports adoption of the federal clean unit applicability test. (ELC)

Response: IDEM proposes to adopt the clean unit designation process with some modifications to the federal provisions for the reasons described in the previous and subsequent responses.

Fees

Comment: Lilly agrees that IDEM should have authority to establish a separate permit review fee for Clean Unit Designations. If the emission unit has not undergone a BACT or LAER review, a fee similar to that currently assessed for technology reviews in NSR permits would be appropriate since the activity is technically similar. If the emission unit has undergone a BACT or LAER review, the permit fee should be significantly lower. (ELC)

Response: IDEM appreciates the support and is recommending a fee identical to the BACT or LAER and air quality analysis review fees for those units that have not already gone through major NSR review. At this time, IDEM does not believe that it is necessary to charge a Part 70 permit modification fee for units that go through major NSR review; therefore, no additional fees were proposed for those types of clean unit designations.

Retroactive Clean Unit Designations

Comment: We disagree with the presumption in the Issue Paper that the purpose of the Clean Unit designation is to be an incentive to employ state of the art controls and reduce emissions. One benefit of the rule is to eliminate the resource costs and timing costs associated with NSR when effective controls are already used. This supports the concept of applying Clean Unit Designations retroactively. IDEM needs to present strong evidence that retroactive Clean Unit Designations will prevent Indiana communities from attaining the NAAQS. (ELC)

Response: IDEM concurs that one of the benefits of the clean unit designation is to eliminate resource costs and administrative burden associated with major NSR when effective controls are already used. However, IDEM believes that in exchange for reducing these burdens, it is appropriate to expect the installation of state of the art controls to reduce emissions from these units. Retroactive comparisons to a previous year's BACT is a daunting task with limited resources available to conduct exhaustive research, subject to several interpretations and disagreements, and will not result in any new air quality benefit since the controls are already installed. By having an equitable standard for a clean unit designation, IDEM is eliminating inconsistency between the two types of clean unit designations. IDEM proposes to consider controls that were installed at an earlier time as long as they meet current day BACT or LAER or went through major new source review within the previous ten years from the date that the clean unit designation process becomes effective in Indiana.

Comment: The rules should only allow Clean Unit Exemptions to be granted prospectively, and not allow past control projects to be eligible for the exemption. The rules should require an application from a source operator if the operator wishes to modify the Clean Unit. This application process would ensure that modifications do not result in increased emissions. (CAC) (HEC) (SDC) (STV) (VWI)

Response: IDEM concurs that clean unit designations should only be granted prospectively, except in cases where the unit has gone through major NSR and installed BACT or LAER within the last ten years from the date the clean unit designation process becomes effective in Indiana. In these cases, since BACT or LAER level of control was installed already, it is reasonable to designate the unit as a clean unit for whatever timeframe remains out of the ten years available. Since these units went through major NSR, they are well-controlled and should be eligible for flexibility and certainty associated with the clean unit designation.

IDEM disagrees that an application should be submitted for every modification once a unit has been declared clean. In fact, this is not even the case under the current rules. IDEM proposes to include the potential to emit of the unit in the permit designating the clean unit so that the basis for the designation will be specific and clear-cut. This should also help sources and the public know whether a modification will result in increased emissions or change the potential to emit. Those modifications that result in increased emissions, or a change in the potential to emit, will cause the unit to lose clean unit status and are subject to the applicability requirements for non-clean units.

Physical and Operational Characteristics of Clean Units

Comment: We urge Indiana to avoid spelling out in regulation the "physical and operational characteristics" that cannot be altered in order to maintain a Clean Unit Designation. The variety of equipment types and emission controls used in manufacturing operations is significant, and describing the physical and operational characteristics in a general way in a regulation could easily undermine the usefulness of the Clean Unit applicability test. This is a subject that is probably better addressed once IDEM has significant experience in implementing the program. (ELC)

Response: IDEM concurs that it would be difficult to specifically identify "physical and operational characteristics" that cannot be altered in order to maintain a clean unit designation within the rule language. There are too many types of units and applications to make this feasible for rule language. IDEM proposes to require that certain physical or operational characteristics be included as conditions of the clean unit designation. Establishing these conditions clearly identifies the scope of a modification and its impact on the clean unit designation, eliminating uncertainty regarding the status of the modification. In addition, it will help prevent compliance and enforcement issues that may result when the determination of the status of a modification is made without clear criteria. IDEM believes that a limit on potential to emit will be the most important characteristic in most cases. Potential to emit is often a critical characteristic in evaluating the cost effectiveness of control technologies. Potential to emit is also directly tied to environmental impact. A limit on potential to emit would not affect the usefulness of this applicability test with respect to efficiency improvement.

Procedure for Clean Unit Designation

Comment: IDEM requests comment on whether Clean Unit Designations could be accomplished through a combined Title V/minor NSR permit review. Lilly thinks this is appropriate and encourages such a process. This should not be difficult since Indiana's Title V rules and minor NSR rules allow for a combined review. (ELC)

Response: IDEM proposes to issue clean unit designations through the existing streamlined review processes. IDEM proposes that units that request the designation that have not gone through major NSR

submit an application for a significant source modification and significant permit modification that can be completed simultaneously. IDEM proposes that units that have gone or go through major NSR receive the designation in the major NSR permit and associated Title V permit or permit modification.

Pollution Control Project Exclusion

Pollution control project exclusions are the second of the three alternate applicability scenarios available under the federal NSR changes. Prior to the federal changes, IDEM had similar exclusion provisions in 326 IAC 2-2, 2-2.5 and 2-3. Based on the comments received, pollution control project exclusions are the least controversial of the federal NSR changes. Therefore, IDEM has incorporated all of the federal requirements.

Collateral Emission Increases and Air Quality Analysis

Comment: If IDEM proceeds, the rules must not allow collateral emission increases from a project receiving a Pollution Control Project (PCP) exemption. Collateral emission increases must be prohibited, not merely minimized as suggested by IDEM's issue paper. A PCP should simply result in less emissions of all pollutants, not decreases in some and increases in others. A full environmental analysis should also be performed for all PCP applications to determine not only the air quality impacts that would result from the project, but also impacts to water and solid waste streams. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The purpose of this exemption is to encourage companies to install controls to further reduce emissions. To encourage companies to install controls, the incentive provided is to allow an increase in collateral emissions to avoid major new source review. IDEM believes that it is sometimes necessary to allow an increase in one pollutant to achieve a much greater decrease in another. For instance, a thermal oxidizer controls VOC emissions, but increases NOx emissions. If IDEM did not allow any collateral increases in emissions, thermal oxidizers would not be available control technologies for controlling volatile organic compounds. IDEM believes that thermal oxidizers have shown a much greater reduction in volatile organic compounds and volatile organic hazardous air pollutants as compared to the increases in nitrogen oxides caused by the combustion of fuel to maintain the thermal oxidizers. Companies that use the exemption are obligated by the rule to minimize the collateral emissions. IDEM continues to have the authority to require a full air quality analysis for any project that may not be environmentally beneficial based on a collateral increase. IDEM will address projects of concern on a case-by-case basis and can deny the use of the exclusion if it is necessary for environmental protection.

Comment: We believe the currently required Air Quality Analysis should be removed or adequately defined for implementation. This requirement discourages pollution control projects simply because it adds cost. (ICM)

Response: IDEM is recommending adoption of the federal pollution control project exclusion provisions along with the requirement that a pollution control project cannot cause or contribute to a violation of a National Ambient Air Quality Standards (NAAQS), PSD increment, or adversely impact an air quality related value. IDEM reserves the authority to request a full air quality analysis at any time these values could be threatened or the increase in collateral emissions is significant and the consequences to air quality are unknown. An air quality analysis would not be required for PCPs specifically listed in the rule. While IDEM does not wish to discourage pollution control projects, IDEM is responsible for protecting the air quality as well.

Verification and Public Review of PCPs

Comment: The rules must also require verification and approval by IDEM that a PCP will realize true environmental benefits. Granting of exemptions should not be automatic but should follow a thorough application and review process. Such a process should also include public notice and opportunity for public comment. (CAC) (HEC) (SDC) (STV) (VWI)

Response: Only the listed projects known to be environmentally beneficial are granted the automatic exclusion from review. These projects have been previously evaluated by the U.S. EPA and determined to be environmentally beneficial. The listed projects are projects that IDEM is comfortable will result in an overall environmental benefit. However, IDEM is soliciting comments on whether any of these projects should be removed from the list. Since sources must notify IDEM of these projects, IDEM may request more information and thoroughly review any projects that IDEM is concerned may not result in an overall environmental benefit. Requiring verification and approval will be unnecessary in most cases and will not result in any greater environmental benefit. In addition, the review may delay or prevent a beneficial project from occurring if a source has a tight timeframe or budget to implement such an optional project. The unlisted projects are not granted an exclusion automatically, but are required to go through an application and review process with public notice and opportunity for public comment. Finally, the general requirement to operate the pollution control project properly will be an applicable requirement that must be incorporated into the source's permit and will allow IDEM to ensure that true environmental benefits are realized.

Comment: Lilly has long supported the idea of an exclusion from NSR for pollution control projects, and we continue to support it. We urge Indiana to adopt the new federal rules because they provide greater incentives for pollution control projects and impose fewer regulatory procedural requirements, yet still provide the same level of ambient air quality protection. Although we recognize that IDEM may add some value and certainty to pre-approving all pollution control projects, it is not clear that the benefit of this process exceeds the value to a company to implement its project faster. Certainly air quality will not benefit if a source cannot implement a pollution control project because it awaits an administrative approval from IDEM. (ELC)

Comment: We agree with the statements in the Pollution Control Project issue paper that most pollution control projects will not cause an air quality issue, and that IDEM has authority to request additional information and run ambient models to assure there are no NAAQS or increment violations. This philosophy mitigates the need for a full-blown air quality analysis before approving a pollution control project. (ELC)

Response: IDEM concurs and is recommending adoption of the federal pollution control project exclusion provisions.

Comment: We strongly oppose IDEM's designation of pollution control projects as significant source modifications, but strongly support U.S. EPA's approach. (ICM)

Response: IDEM is recommending adoption of the federal pollution control project exclusion provisions along with the federal requirement that unlisted projects be reviewed through a process with public notice and opportunity for public and U.S. EPA comment. This process will be a significant source modification. IDEM does not propose to require the listed projects to obtain prior approval through a significant source modification.

Comment: We oppose the inclusion of pollution control projects as a minor new source review requirement, but instead support the simpler notification requirement for this category. (ICM)

Response: IDEM is recommending the adoption of the federal pollution control project exclusion provisions along with the federal requirements that listed projects go through a notification only process and that unlisted projects be reviewed through a process with public notice and opportunity for public and U.S. EPA comment.

Reporting

Comment: For units granted a PCP exemption, a reporting requirement must be implemented so that IDEM and the public can determine if the project is resulting in an air quality benefit. Such records must be available to the general public. (CAC) (HEC) (SDC) (STV) (VWI)

Response: Sources are required to submit an annual compliance certification every year that states whether or not they are in compliance with every condition in their Title V permit. Sources that use the pollution control project exclusion will have requirements in their permit pursuant to the pollution control project exclusion provisions in the rule. One of the requirements will state that the owner or operator must operate the PCP in a manner consistent with proper practices, consistent with the environmentally beneficial analysis and air quality analysis, and in a way to minimize emissions of collateral pollutants. The source will have to certify compliance with this condition in the annual compliance certification submitted to IDEM, and this report will be available to the public. In addition, IDEM may ask for additional information from the source's records if it is necessary.

Comment: Lilly opposes requirements for sources to report their emission reductions achieved by a pollution control project. While the information is useful, it does not seem important to overall air quality protection. There is no compliance basis for this data. Such reporting raises the specter that the source has somehow violated the rules if the source does not get the level of emission reductions it thought it was going to get. The value of this information is not clear. (ELC)

Response: While IDEM agrees that reporting of emissions reductions related to the pollution control project exclusion should not be required, the annual compliance certification will require certification with the pollution control project exclusion requirements that are incorporated into a source's Title V Operating permit. Therefore, each source will have to comply with those basic requirements regarding minimizing collateral emissions and operating the control device or method properly. Proper operation of the control device or other practice will assure that emissions are reduced. IDEM also has the authority to request information on a case-by-case basis regarding a project if a specific concern arises regarding the validity of a pollution control project exclusion.

Pollution Control Project Reductions as Emission Credits

Comment: Lilly believes that sources should be able to use the emission reductions realized by implementing a pollution control project in future netting or offset transactions. Documentation of emission reductions has always been an issue in these transactions, and whether a source obtained a pollution control project exclusion along the way does not change this aspect of netting or offsets. The loss of potential netting credits or offsets can make a pollution control project much less attractive. (ELC)

Response: IDEM is recommending adoption of the federal pollution control project exclusion provisions along with the federal restrictions on what emissions reductions may be used in netting or offsets. IDEM cannot be less stringent than the federal rules and not include any restrictions on the use of emissions reductions that are otherwise used to obtain the pollution control project exclusion. The initial reductions associated with the PCP exclusion are not available for use in netting or as offsets but IDEM will allow excess reductions to be generated in accordance with the federal requirements.

Listed Projects

Comment: We strongly support the inclusion in the rule of a formal list of projects presumed to be environmentally beneficial. We encourage IDEM to draft a procedure for adding projects to the list. (ICM)

Response: IDEM is recommending adoption of the federal pollution control project exclusion provisions along with a list of specific projects that are presumed to be environmentally beneficial. It is not necessary for IDEM to draft a procedure for adding projects to the list because IDEM does not have the authority to do so, except through rulemaking after the U.S. EPA has added the project to the list in the federal rule (refer to 67 FR 80236, first column).

Plantwide Applicability Limitation (PAL)

Plantwide applicability limitations (PALs) are the third of the three alternate applicability scenarios available under the federal NSR changes. Commentors agreed that the PAL provisions should be incorporated, but commentors disagreed on the implementation of the program. IDEM agreed that the PAL provisions should be incorporated into the state rules and clarified certain aspects of the provisions to address IDEM's and commentors' concerns.

Verification of Compliance

Comment: If IDEM proceeds with a Plantwide Applicability Limit (PAL) or cap, the rules must ensure that increases in emissions are not allowed (see comments on Applicability Tests), that all units under the cap are adequately monitored, and that a PAL can be revoked if IDEM determines the sources is not complying with the cap. (CAC) (HEC) (SDC) (STV) (VWI)

Response: The draft rule on PALs contains specific conditions on what modifications can be made without violating the PAL, extensive monitoring requirements, and provisions that allow IDEM to revoke the PAL. The source is only allowed to increase emissions above the PAL if they can demonstrate that the use of BACT equivalent controls would not be sufficient to maintain emissions below the PAL level. In this case the source will be required to go through major NSR review, including an air quality analysis, for the proposed modification and the PAL limit will be adjusted.

Declining Emissions Cap

Comment: The rules should require that emissions decrease over time (a declining cap) to ensure progress is made towards cleaner air. Applications and determinations for PALs should also be subject to public notice and comment procedures. (CAC) (HEC) (SDC) (STV) (VWI)

Response: U.S. EPA reviewed the concept of a declining cap and decided not to include it in the federal rules. In their studies they found that the emission cap encourages emissions reductions and pollution prevention because sources will want to leave enough emission available for future modification under the PAL. All initial PAL determinations, all PAL increases, and PAL revocations will be subject to the public review.

Comment: Lilly strongly opposes PAL permits that feature declining emission caps. If the Indiana rules were to include declining caps in PALs, few, if any sources would be interested in PALs. Sources that seek PAL permits immediately lose operating margin for increased production – often which could have taken place without triggering NSR. They accept the risk that actual emissions will never go above the emission caps – even though the source could have legally emitted at higher levels prior to operating under the PAL. Sources that seek PAL permits most likely believe they can reduce emissions and increase production – but the value of the PAL permit diminishes significantly if the target decreases over time. (ELC)

Response: IDEM is not proposing a declining cap.

Federal PAL Provisions

Comment: Lilly strongly supports the PAL provisions found in the new federal NSR rules. (ELC)

Response: IDEM proposes to incorporate the federal PAL provisions into the state program.

Availability of PALs

Comment: We do not believe Indiana should limit the availability of

PAL permits to specific source categories that have been described as the best candidates for PALs. Many industries can benefit from the reduced administrative burdens and increased certainty that PAL permits provide – regardless of whether the source is part of an industry characterized by frequent changes. In addition, IDEM retains the ultimate authority over which sources obtain PAL permits. If a permit applicant fails to demonstrate to IDEM that it meets the stringent monitoring, record keeping and reporting requirements described in the PAL rules, then IDEM should not issue a PAL permit. (ELC)

Response: Any major source who can demonstrate an ability to comply with the PAL program may submit an application for a PAL permit. IDEM will review the compliance history and ability to operate under the PAL when determining if a PAL permit should be issued.

Fees

Comment: Lilly agrees that it may be appropriate for IDEM to establish permit fees for the initial issuance of a PAL permit. We recognize that these permits require a significant investment of time by agency staff, and the permit fees should reflect that use of resources. We recommend PAL fees based on a range of factors such as the number of emission caps employed as a simple measure of the resources involved in creating the permit. It will be very difficult for the agency to develop fees that provide a clear correlation between the level of effort to issue the permit and the amount of the fee. If a more simplistic model is used to establish fees, we urge IDEM to set the fees low enough that they will not be a deterrent to obtaining a PAL permit. This is especially important to smaller companies that might be good candidates for a PAL, but might opt not to pursue a PAL due to high fees. (ELC)

Response: IDEM has drafted language in this Second Notice that includes a fee program for PAL permits in 326 IAC 2-1.1-7. IDEM is especially interested in receiving comments on the best way to establish this fee.

Documenting Baseline Actual Emissions

Comment: We strongly support an implementable program for PALs, but encourage IDEM to consider alternatives to stack testing for documenting eligibility for the PAL. As currently drafted, it is cost prohibitive for small businesses to even consider utilizing a PAL. We support the use of a national database such as RBLC to document actual emissions associated with the PAL. AP-42 is frequently outdated and therefore not consistently reliable for this purpose. (ICM)

Response: The basis for determining a PAL level is the baseline actual emissions plus an amount equal to the pollutant PSD significance level. Data requirements needed to support the twenty-four (24) month period selected for the baseline actual determination will be required for the PAL determination in order to set the PAL accurately and then monitor compliance as accurately as possible. IDEM understands that the federal process for establishing a baseline is quite rigorous, but it is necessary in exchange for the flexibility provided by the PAL. IDEM must adopt rules at least as stringent as the federal rules. Therefore, IDEM is proposing to adopt the federal PAL as promulgated.

Comment: IDEM should take advantage of this discussion opportunity to move toward use of a more practical testing approach such as eliminating condensables from tests where emissions units operate near or at ambient temperature. (ICM)

Response: This rulemaking is intended to amend the state air permit rules in response to the amendments to the federal NSR amendments. Changes to the testing requirements are outside the scope of this rulemaking.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#03-67(APCB) NSR Reform
Christine Pedersen
c/o Administrative Assistant
Rules Development Section
Air Programs Branch
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the Tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 1, 2003.

Additional information regarding this action may be obtained from Chris Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 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, **or comparison of control technology to BACT or LAER for purposes of a clean unit designation as described in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2** 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.

(F) Fees for establishing a plantwide applicability limitation (PAL) in a PAL permit shall be assessed as follows:

(i) A separate fee shall be assessed for each pollutant.

(ii) The fee for each PAL pollutant shall be assessed at forty dollars ($40) per ton of the allowable emissions for that PAL pollutant.

(iii) The fee for any individual PAL pollutant shall not exceed forty thousand dollars ($40,000).

(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 **Part** 63, Subpart L* 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 may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-1.1-7; filed Nov 25, 1998, 12:13 p.m.: 22 IR 991; filed May 21, 2002, 10:20 a.m.: 25 IR 3057)*

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

326 IAC 2-2-1 Definitions

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

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Actual emissions" means the actual rate of emissions of a **regulated NSR** pollutant from an emissions unit as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two (2) year~~ **consecutive twenty-four (24) month** period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit ~~other than an electric utility steam generating unit described in subdivision (4), which~~ **that** has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.~~

(4) This definition shall not apply for calculating a significant emissions increase under section 2(d) of this rule or for establishing a PAL under 326 IAC 2-2.4. Instead, subsections (e) and (rr) shall apply for those purposes.

(c) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area as defined in section 13 of this rule. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(1) times of visitor use of the federal Class I area; and

(2) the frequency and timing of natural conditions that reduce visibility.

(d) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless a source is subject to enforceable permit limits ~~which~~ **that** restrict the operating rate or hours of operation, or both) and the most stringent of:

(1) the applicable standards as set forth in 40 CFR **Part** 60* and 40 CFR **Part** 61*;

(2) the state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(e) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

(1) For any existing electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they affect the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(D) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clause (B).

(2) For an existing emissions unit other than an electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-

four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the department for a permit required by this rule, except that the ten (10) year period shall not include any period earlier than November 15, 1990.

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they affect the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had the major stationary source been required to comply with the limitations during the consecutive twenty-four (24) month period. However, if an emission limitation is part of a maximum achievable control technology standard that the U.S. EPA proposed or promulgated under 40 CFR Part 63*, the baseline actual emissions need only be adjusted if the department has applied the emissions reductions to an attainment demonstration or maintenance plan consistent with the requirements of 326 IAC 2-3-3(b)(14).

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clauses (B) and (C).

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero (0), and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated as follows:

(A) For an existing electric utility steam generating unit, in accordance with subdivision (1).

(B) For an existing emissions unit except an existing electric utility steam generating unit, in accordance with subdivision (2).

(C) For a new emissions unit, in accordance with subdivision (3).

~~(e)~~ **(f)** "Baseline area" means the following:

(1) Any intrastate area (and every part thereof) designated as attainment or unclassifiable in accordance with 326 IAC 1-4 in which the major stationary source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter ($\mu g/m^3$) (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under 326 IAC 1-4 and Section 107(d)(1)(D) or 107(d)(1)(E) of the Clean Air Act (CAA) cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(A) establishes a minor source baseline date; or

(B) is subject to 40 CFR **Part** 52.21* and this rule and would be constructed in the same state as the state proposing the redesignation.

(3) Any baseline area established originally for the total suspended particulate (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that ~~such~~ **the** baseline area shall not remain in effect if U.S. EPA rescinds the corresponding minor source baseline date in accordance with 40 CFR **Part** 52.21(b)(14)(iv)*.

~~(f)~~ **(g)** "Baseline concentration" means that ambient concentration level ~~which~~ **that** exists in the baseline area at the time of the applicable minor source baseline date. ~~The~~ **A** baseline concentration is determined for each pollutant for which a **minor source** baseline date is established and shall include the following:

(1) The actual emissions, **as defined in this section,** representative of sources in existence on the applicable minor source baseline date except as provided in subdivision (3).

(2) The allowable emissions of major stationary sources ~~which~~ **that** commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(3) The following will not be included in the baseline concentration and will affect the applicable maximum allowable ~~increase(s):~~ **increase or increases:**

(A) Actual emissions, **as defined in this section,** from any major stationary source on which ~~the~~ construction commenced after the major source baseline date.

(B) Actual emissions increases and decreases, **as defined in this section,** at any stationary source occurring after the minor source baseline date.

~~(g)~~ **(h)** "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to:

(1) installation of building supports and foundations;

(2) laying underground pipework; and

(3) construction of permanent storage structures.

With respect to a change in method of operations, ~~this~~ **the** term refers to those on-site activities other than preparatory activities ~~which~~ **that** mark the initiation of the change.

~~(h)~~ **(i)** "Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA, which~~ **that** would be emitted from any proposed major stationary source or major modification, ~~which~~ **that** the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for ~~such~~ **the** source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of ~~such~~ **the** pollutant. In no event shall application of best available control technology result in emissions of any pollutant ~~which~~ **that** would exceed the emissions allowed by any applicable standard under 40 CFR Part 60* and 40 CFR Part 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the

imposition of an emissions standard not feasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirements for the application of best available control technology. ~~Such~~ **The** standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of ~~such~~ **the** design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

~~(i)~~ **(j)** "Building, structure, facility, or installation" means all of the pollutant-emitting activities ~~which~~ **that** belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group", ~~(i.e.,~~ **for example,** which have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office)*.

~~(j)~~ **(k)** "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~(k)~~ **(l)** "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy–Clean Coal Technology", up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology or similar projects funded through appropriations for U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(m) "Clean unit" means an emissions unit that meets one (1) of the following:

(1) An emissions unit that:

(A) has been issued a major NSR permit that requires compliance with BACT or LAER;

(B) is complying with BACT or LAER requirements; and

(C) qualifies as a clean unit under 326 IAC 2-2.2-1.

(2) An emissions unit that has been designated by the department as a clean unit based on the criteria in 326 IAC 2-2.2-2.

(3) An emissions unit that has been designated as a clean unit by the U.S. EPA in accordance with 40 CFR Part 52.21(y)(3)(i) through 40 CFR Part 52.21(y)(3)(iv)*.

~~(l)~~ **(n)** "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(m)~~ **(o)** "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

~~(n)~~ **(p)** "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, ~~which~~ **that** would result in a change in ~~actual~~ emissions.

(q) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule to:

(1) sample;

(2) condition, if applicable;

(3) analyze; and

(4) provide a record of;

emissions on a continuous basis.

(r) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(s) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) record the average operational parameter value on a continuous basis.

~~(o)~~ **(t)** "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (a) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~(p)~~ **(u)** "Emissions unit" means any part of a stationary source ~~which~~ **that** emits or would have the potential to emit any **regulated NSR** pollutant. ~~regulated under the provisions of the CAA~~. **For purposes of this rule, there are two (2) types of emissions units as follows:**

(1) A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (1).

~~(q)~~ **(v)** "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over ~~such~~ **the** lands.

(w) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including:

(1) those requirements developed pursuant to 40 CFR Part 60* and 40 CFR Part 61*;

(2) requirements within the state implementation plan; and

(3) any permit requirements established pursuant to 40 CFR

Part 52.21* or under regulations approved pursuant to 40 CFR Part 51, Subpart I*, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

~~(r)~~ **(x)** "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~(s)~~ **(y)** "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of the stack of a source.

~~(t)~~ **(z)** "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

~~(u)~~ **(aa)** "Indian reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

~~(v)~~ **(bb)** "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(cc) "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on the following:

(1) The most stringent emissions limitation that is contained in the state implementation plan for the class or category of stationary source unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable.

(2) The most stringent emissions limitation that is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

~~(w)~~ **(dd)** "Low terrain" means any area other than high terrain.

~~(x)~~ **(ee)** "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant ~~net~~ emissions increase of ~~any~~ **a regulated NSR** pollutant ~~that is being regulated under the CAA~~ **and a significant net emissions increase of that pollutant from the major stationary source.** The following shall apply:

(1) Any ~~net~~ **significant** emissions increase ~~that is significant for volatile organic compounds~~ **from any emissions units, or net emissions increase at a major stationary source that is significant for volatile organic compounds** shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(C) Use of an alternative fuel by reason of an order under Section 125 of the CAA.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source ~~which:~~ **that:**

(i) the source was capable of accommodating before January 6, 1975, unless ~~such~~ **the** change would be prohibited under any enforceable permit condition ~~which~~ **that** was established after January 6, 1975, pursuant to 40 CFR **Part** 52.21* or under this rule or 326 IAC 2-3; or

(ii) the source is approved to use under any permit issued under 40 CFR **Part** 52.21* or under this rule.

(F) An increase in the hours of operation or in the production rate unless ~~such~~ **the** change would be prohibited under any enforceable permit condition ~~which~~ **that** was established after January 6, 1975, pursuant to 40 CFR **Part** 52.21* or under this rule or 326 IAC 2-3.

(G) Any change in ownership at a source.

(H) The addition, replacement, or use of a pollution control project ~~as defined in subsection (dd)~~ at an existing ~~electric steam generating~~ **emissions** unit ~~unless:~~

~~(i) the commissioner and U.S. EPA determine that such addition, replacement, or use renders the unit less environmentally beneficial; or~~

~~(ii) the commissioner determines that the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.~~

~~A pollution control project that is exempt under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8) or 326 IAC 2-7-10.5(f)(9).~~ **meeting the requirements of 326 IAC 2-2.3. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.**

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

(J) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(K) The reactivation of a very clean coal-fired electric utility steam generating unit.

(3) This definition shall not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 326 IAC 2-2.4 for a PAL for that pollutant. Instead, the definition at 326 IAC 2-2.4-2(g) shall apply.

(ff) "Major source baseline date" means the following:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975.
(2) In the case of nitrogen dioxide, February 8, 1988.

~~(y)~~ **(gg)** "Major stationary source" means the following:
(1) Any of the following stationary sources of air pollutants ~~which~~ **that** are located or proposed to be located in an attainment or unclassifiable area as designated in 326 IAC 1-4 and ~~which~~ **that** emit or have the potential to emit one hundred (100) tons per year or more of any **regulated NSR** pollutant: ~~subject to regulation under the CAA:~~
(A) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(B) Coal cleaning plants (with thermal driers).
(C) Kraft pulp mills.
(D) Portland cement plants.
(E) Primary zinc smelters.
(F) Iron and steel mill plants.
(G) Primary aluminum ore reduction plants.
(H) Primary copper smelters.
(I) Municipal incinerators capable of charging more than fifty (50) tons of refuse per day.
(J) Hydrofluoric, sulfuric, and nitric acid plants.
(K) Petroleum refineries.
(L) Lime plants.
(M) Phosphate rock processing plants.
(N) Coke oven batteries.
(O) Sulfur recovery plants.
(P) Carbon black plants (furnace process).
(Q) Primary lead smelters.
(R) Fuel conversion plants.
(S) Sintering plants.
(T) Secondary metal production plants.
(U) Chemical process plants.
(V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(W) Taconite ore processing plants.
(X) Glass fiber processing plants.
(Y) Charcoal production plants.
(Z) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels.
(2) Any stationary source with the potential to emit two hundred fifty (250) tons per year or more of ~~any air~~ **a regulated NSR** pollutant. ~~subject to regulation under the CAA.~~
(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:
(A) Primary lead smelters.
(B) Secondary lead smelters.
(C) Primary copper smelters.
(D) Lead gasoline additive plants.
(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.
(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.
(5) Any physical change occurring at a stationary source not qualifying under subdivisions (1) through (4) and this subdivision if the change would by itself qualify as a major stationary source under subdivisions (1) through (4).
(6) Notwithstanding subdivisions (1) through (5), a source or modification of a source shall not be considered a major stationary source if it would qualify under subdivisions (1) through (5) only if fugitive emissions, to the extent quantifiable, are considered in calculating potential to emit of the stationary source or modification and ~~such~~ **the** source does not belong to any of the categories listed in subdivision (1) or any other stationary source category ~~which,~~ **that,** as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA (42 U.S.C. 7411 or 42 U.S.C. 7412).
(7) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

~~(z) "Major source baseline date" means the following:~~
~~(1) In the case of particulate matter and sulfur dioxide, January 6, 1975.~~
~~(2) In the case of nitrogen dioxide, February 8, 1988.~~

~~(aa)~~ **(hh)** "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or major modification subject to the requirements of this rule or to 40 CFR **Part** 52.21* submits a complete application under the relevant regulations, including the following:
(1) The trigger date is the following:
(A) In the case of particulate matter and sulfur dioxide, August 7, 1977.
(B) In the case of nitrogen dioxide, February 8, 1988.
(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 326 IAC 1-4 for the pollutant on the date of its complete application under this rule; and
(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.
(3) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the commissioner may rescind a minor source baseline date where it can be shown, to the satisfaction of the commissioner, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

~~(bb)~~ **(ii)** "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and air quality control laws and regulations that are part of the state implementation plan.

~~(cc)~~ **(jj)** "Net emissions increase" ~~with reference to a significant net emissions increase,~~ means, ~~the tons per year amount by which the sum of the following exceeds zero (0)~~ **with respect to any regulated NSR pollutant emitted by a major stationary source, the following:**
(1) ~~Any~~ **The amount by which the sum of the following exceeds zero (0):**
(A) The increase in ~~actual~~ emissions from a particular physical change or change in the method of operation at a **stationary** source **as calculated under section 2(d) of this rule.**
~~(2)~~ **(B)** Any other increases and decreases in actual emissions at the **major stationary** source that are contemporaneous with the

particular change and are otherwise creditable. ~~as follows:~~ **Baseline actual emissions for calculating increases and decreases under this clause shall be determined as provided in subsection (e), except that subsection (e)(1)(C) and (e)(2)(D) shall not apply.**

~~(A)~~ **(2)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between **the date:**

~~(i)~~ **(A)** ~~the date~~ five (5) years before construction on the particular change commences; and

~~(ii)~~ **(B)** ~~the date~~ that the increase from the particular change occurs.

~~(B)~~ **(3)** An increase or decrease in actual emissions is creditable only if:

(A) the increase or decrease in actual emissions occurs within a reasonable period as determined by the department;

(B) the department has not relied on the increase or decrease in **actual emissions in** issuing a permit ~~for~~ **to** the source under **40 CFR Part 52.21* or** this rule and the permit is in effect when the increase in actual emissions from the particular change occurs; **and**

(C) the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-2.2-1(i) and 326 IAC 2-2.2-2(j).

~~(C)~~ **(4)** An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides ~~which~~ **that** occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. ~~With respect to particulate matter, only PM_{10} emissions shall be used to evaluate the net emissions increase for PM_{10}.~~

~~(D)~~ **(5)** An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

~~(E)~~ **(6)** A decrease in actual emissions is creditable only to the extent that:

~~(i)~~ **(A)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~(ii)~~ **(B)** it is enforceable **as a practical matter** at and after the time that actual construction on the particular change begins; ~~and~~

~~(iii)~~ **(C)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; **and**

(D) the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2. Once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit. However, any new emission reductions that were not relied upon in a PCP excluded under 326 IAC 2-2.3-1 or for a clean unit designation are creditable to the extent they meet the requirements in 326 IAC 2-2.3-1(g)(4) for the PCP and 326 IAC 2-2.2-1(i) and 326 IAC 2-2.2-2(j) for a clean unit.

~~(F)~~ **(7)** An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

(8) Subsection (b)(1) shall not apply for determining creditable increases and decreases.

(kk) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

~~(dd)~~ **(ll)** "Pollution control project" **or "PCP"** means ~~for purposes of this rule, any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to the following:~~

~~(1) The installation of conventional or innovative pollution control technology, including, but not limited to, advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls, and electrostatic precipitators.~~

~~(2) An activity or project to accommodate switching to a fuel that is less polluting than the fuel in use prior to the activity or project, including, but not limited to:~~

~~(A) natural gas or coal reburning; or~~

~~(B) the cofiring of natural gas and other fuels for the purpose of controlling emissions.~~

~~(3) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 42 U.S.C. 5903(d)*, or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000), for commercial demonstration of clean coal technology, or similar projects funded through appropriations for U.S. EPA.~~

~~(4) A permanent clean coal technology demonstration project that constitutes a repowering project.~~

any activity, set of work practices, or project, including pollution prevention undertaken at an existing emissions unit, that reduces emissions of air pollutants from the unit. The qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. 2-2.3-1(c)(1). Projects not listed in this subsection may qualify for a case-specific PCP exclusion under 326 IAC 2-2.3-1(c) and 326 IAC 2-2.3-1(f). The following projects are presumed to be environmentally beneficial under 326 IAC 2-2.3-1(c)(1):

(1) Conventional or advanced flue gas desulfurization or sorbent injection for control of sulfur dioxide.

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.

(3) Flue gas recirculation, low-NOx burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion engines, and oxidation/absorption catalyst for control of nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this rule, "hydrocarbon combustion flare" means either a flare:

(A) used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(B) that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than two hundred thirty (230) mg/dscm hydrogen sulfide.

(5) Activities or projects undertaken to accommodate switching or partially switching to an inherently less polluting fuel to be limited to the following fuel switches:

(A) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five-hundredths percent (0.05%) sulfur diesel.

(B) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal.

(C) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood.

(D) Switching from coal to No. 2 fuel oil with a five-tenths percent (0.5%) maximum sulfur content.

(E) Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths percent (1.2%) sulfur content.

(6) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting substance (ODS) to the use of a substance with a lower or zero (0) ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(A) The productive capacity of the equipment is not increased as a result of the activity or project.

(B) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. This determination shall be made using the following procedure:

(i) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B*.

(ii) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS.

(iii) Calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP.

(iv) If the value calculated in item (ii) is more than the value calculated in item (iii), then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

(mm) "Pollution prevention" means the following:

(1) Any activity that eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal, through:

(A) process changes;

(B) product reformulation or redesign; or

(C) substitution of less polluting raw materials.

(2) The term does not include:

(A) recycling, except certain "in-process recycling" practices;

(B) energy recovery;

(C) treatment; or

(D) disposal.

~~(ee)~~ **(nn)** "Potential to emit" means the maximum capacity of a source or major modification to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(oo) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to, on a continuous basis:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as, gas flow rate, O_2 or CO_2 concentrations; and

(2) calculate and record the mass emissions rate, such as pounds per hour.

(pp) "Prevention of significant deterioration program" or "PSD program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the state implementation plan to implement the requirements of 40 CFR Part 51.166* or the program in 40 CFR Part 52.21*. Any permit issued under the program is a major NSR permit.

(qq) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(rr) "Projected actual emissions" means the following:

(1) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions under this subsection, before beginning actual construction, the owner or operator of the major stationary source:

(A) shall:

(i) consider all relevant information, including, but not limited to:

(AA) historical operational data;

(BB) the company's own representations;

(CC) the company's expected business activity and the company's highest projections of business activity;

(DD) the company's filings with the state or federal regulatory authorities; and

(EE) compliance plans under the approved state implementation plan;

(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions under subsection (e) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(B) in lieu of using the method set out in clause (A), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection (nn).

~~(ff)~~ **(ss)** "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) has not been in operation for the two (2) year period prior to the enactment of the CAA Amendments of 1990, and the emissions from ~~such~~ **the** unit continue to be carried in the department's emissions inventory at the time of enactment;

(2) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five percent (85%) and a removal efficiency for particulates of no less than ninety-eight percent (98%);

(3) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) is otherwise in compliance with the requirements of the CAA.

(tt) "Reasonably available control technology" or "RACT", for purposes of this rule, means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(1) the necessity of imposing the controls in order to attain and maintain a national ambient air quality standard;

(2) the social, environmental, and economic impact of the controls; and

(3) alternative means of providing for attainment and maintenance of the standard.

(uu) "Regulated NSR pollutant", for purposes of this rule, means any of the following:

(1) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the pollutants identified by the U.S. EPA.

(2) Any pollutant that is subject to any standard promulgated under Section 111 of the CAA.

(3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the CAA.

(4) Any pollutant that otherwise is subject to regulation under the CAA, except that any or all hazardous air pollutants either listed in Section 112 of the CAA or added to the list pursuant to Section 112(b)(2) of the CAA, which have not been delisted pursuant to Section 112(b)(3) of the CAA, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the CAA.

(5) Notwithstanding subdivision (4), any pollutant listed in subsection (xx).

~~(gg)~~ **(vv)** "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

(1) Atmospheric or pressurized fluidized bed combustion.

(2) Integrated gasification combined cycle.

(3) Magnetohydrodynamics.

(4) Direct and indirect coal-fired turbines.

(5) Integrated gasification fuel cells.

(6) As determined by U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

~~Repowering~~ **The term** shall also include any oil or gas-fired unit, or both, that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. U.S. EPA shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the CAA.

~~(hh) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions, the department shall do the following:~~

~~(1) Consider all relevant information, including, but not limited to, the following:~~

~~(A) Historical operational data.~~

~~(B) The company's own representations.~~

~~(C) Filings with Indiana or federal regulatory authorities.~~

~~(D) Compliance plans under Title IV of the CAA.~~

~~(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.~~

~~(ii)~~ **(ww)** "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. The term includes emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the source or modification ~~which~~ **that** causes the secondary emissions. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from:

(1) the tailpipe of a motor vehicle;

(2) a train; or

(3) a vessel.

~~(jj)~~ **(xx)** "Significant" means the following:

(1) In reference to a net emissions increase or the potential of the source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(A) Carbon monoxide: one hundred (100) tons per year.

(B) Nitrogen oxides: forty (40) tons per year.

(C) Sulfur dioxide: forty (40) tons per year.

(D) Particulate matter: twenty-five (25) tons per year.

(E) PM_{10}: fifteen (15) tons per year.

(F) Ozone: forty (40) tons per year of volatile organic compounds.
(G) Lead: six-tenths (0.6) ton per year.
(H) Asbestos: seven one-thousandths (0.007) ton per year.
(I) Beryllium: four ten-thousandths (0.0004) ton per year.
(J) Mercury: one-tenth (0.1) ton per year.
(K) Vinyl chloride: one (1) ton per year.
(L) Fluorides: three (3) tons per year.
(M) Sulfuric acid mist: seven (7) tons per year.
(N) Hydrogen sulfide (H_2S): ten (10) tons per year.
(O) Total reduced sulfur (including H_2S): ten (10) tons per year.
(P) Reduced sulfur compounds (including H_2S): ten (10) tons per year.
(Q) Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): thirty-five ten-millionths (0.0000035) or 3.5×10^{-6} ton per year.
(R) Municipal waste combustor metals (measured as particulate matter): fifteen (15) tons per year.
(S) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): forty (40) tons per year.
(T) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): fifty (50) tons per year.
(U) Ozone-depleting substances (ODS): one hundred (100) tons per year.
(V) Any **regulated NSR** pollutant ~~subject to regulation under the CAA,~~ other than the pollutants listed in this subsection: ~~or under Section 112(b) of the CAA*:~~ any emission rate.

(2) Any emissions rate or any net emissions increase associated with a major stationary source or major modification that would be constructed within ten (10) kilometers of a Class I area and has an impact on ~~such~~ **the** area equal to or greater than one (1) microgram per cubic meter (24-hour average).

(yy) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant, as defined in subsection (xx), for that pollutant.

~~(kk)~~ **(zz)** "Stationary source" means any building, structure, facility, or installation that emits or may emit ~~any air~~ **a regulated NSR** pollutant. ~~subject to regulation under the CAA.~~ A stationary source does not include emissions resulting from an internal combustion engine used for transportation purposes, or from a nonroad engine or nonroad vehicle.

~~(ll)~~ **(aaa)** "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that:

(1) is operated for a period of five (5) years or less; and

(2) complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2391; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3022; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2020; filed Nov 25, 1998, 12:13 p.m.: 22 IR 997; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Oct 23, 2000, 9:47 a.m.: 24 IR 668; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2412; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1557)*

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

326 IAC 2-2-2 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 2. **(a) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule apply to the construction of any new major stationary source or the major modification of any existing major stationary source except as this rule otherwise provides.**

~~(a)~~ **(b)** The requirements of this rule ~~shall~~ apply to **the construction of** any **new** major stationary source or **any project at an existing** major ~~modification, as defined in section 1 of this rule, that is being constructed or will be constructed~~ **stationary source** in an area designated as ~~of the submittal date of a complete application in accordance with 326 IAC 2-5.1, as~~ attainment or unclassifiable ~~in 326 IAC 1-4.~~ **under sections 107(d)(1)(A)(ii) or 107(d)(1)(A)(iii) of the CAA.**

~~(b) The owner or operator of a major stationary source or major modification shall not begin actual construction unless the requirements in sections 3 through 8, 10, and 14 through 16 of this rule have been met and a permit has been issued under this rule.~~

(c) No new major stationary source or major modification to which the requirements of sections 3, 4, 5, 7, 8(a), 10, 14, and 15 apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

(d) The requirements of this rule will be applied in accordance with the following:

(1) Except as otherwise provided in subsections (e) and (f), and consistent with the definition of major modification contained in section 1(ee) of this rule, a project is a major modification for a regulated NSR pollutant if it causes a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) Prior to beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified as provided in subdivisions (3) through (6). The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source is contained in section 1(jj) of this rule. Regardless of any preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) For an actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) For an actual-to-potential applicability test for projects that only involve construction of new emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
(5) For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is projected to occur.
(6) For a hybrid test for projects that involve multiple types of emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions (3) through (5), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(e) For any major stationary source for which a PAL has been established for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 326 IAC 2-2.4.

(f) An owner or operator undertaking a PCP shall comply with the requirements under 326 IAC 2-2.3.

~~(c)~~ **(g)** Sources that are located in or proposed to be located in an area designated as nonattainment ~~pursuant to~~ **under** 326 IAC 1-4 for a pollutant shall be exempt from the requirements of this rule for that particular pollutant **and subject to 326 IAC 2-3**.

~~(d)~~ **(h)** A source or modification of a source that **is or** would be a nonprofit health or nonprofit educational institution shall be exempt from the requirements of sections 3, 4, and 7 of this rule.

~~(e) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as otherwise provided in this rule.~~

~~(f)~~ **(i)** The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule do not apply to a particular major stationary source or major modification if the source or modification is a portable stationary source that has previously received a permit under 326 IAC 2-5.1-3 or 326 IAC 2-7 and the permit contains conditions from 40 CFR Part 52.21* or this rule if:

(1) the source proposes to relocate and emissions of the source at the new location would be temporary;

(2) the emissions from the source would not exceed its allowable emissions;

(3) emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(4) ten (10) days advance notice is given to the department prior to the relocation identifying the proposed new location and probable duration of the operation at the new location.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1098; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564)*

SECTION 4. 326 IAC 2-2-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-3 Control technology review; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 3. Any owner or operator of a major stationary source or major modification shall comply with the following requirements:

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard and standard of performance under 40 CFR Part 60* and 40 CFR Part 61*.

(2) A new, major stationary source shall apply best available control technology for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA~~ for which the source has the potential to emit in significant amounts as defined in section 1 of this rule.

(3) A major modification shall apply best available control technology for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA~~ for which the modification would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase of the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time, which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At ~~such~~ **this** time, the owner or operator of the applicable source may be required to demonstrate the adequacy of any previous determination of best available control technology for that source.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564)*

SECTION 5. 326 IAC 2-2-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-4 Air quality analysis; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) Any application for a permit under the provisions of this rule **or for a clean unit designation** shall contain an analysis of ambient air quality in the area that the major stationary source, ~~or~~ major modification, **or clean unit** would affect for each of the following pollutants:

(1) For a source, each pollutant regulated under the provisions of the CAA that the source would have the potential to emit in a significant amount.

(2) For a modification, each pollutant regulated under the provision of the CAA for which the modification would result in a significant net emissions increase.

(3) For a clean unit designation, each pollutant emitted by the unit for which the owner or operator requests the department to designate the unit as a clean unit.

(b) Exemptions are as follows:

(1) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification would:

(A) impact no Class I area and no area where an applicable increment is known to be violated; and

(B) be temporary.

(2) A source or modification shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if:

(A) the emissions increase of the pollutant from a new source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than:

Carbon Monoxide	575 $\mu g/m^3$, 8-hour average;
Nitrogen Dioxide	14 $\mu g/m^3$, annual average;
PM_{10}	10 $\mu g/m^3$, 24-hour average;
Sulfur Dioxide	13 $\mu g/m^3$, 24-hour average;
Ozone	No de minimis air quality level is provided for ozone; however, any net increase of one hundred (100) tons per year or more of volatile organic compounds subject to PSD would be required to provide ozone ambient air quality data;
Lead	0.1 $\mu g/m^3$, 3-month average;
Mercury	0.25 $\mu g/m^3$, 24-hour average;
Beryllium	0.001 $\mu g/m^3$, 24-hour average;
Fluorides	0.25 $\mu g/m^3$, 24-hour average;
Vinyl Chloride	15 $\mu g/m^3$, 24-hour average;
Total Reduced Sulfur	10 mg/m^3, 1-hour average;
Hydrogen Sulfide	0.2 $\mu g/m^3$, 1-hour average;
Reduced Sulfur Compounds	10 $\mu g/m^3$, 1-hour average; or

(B) the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in clause (A) or the pollutant is not listed in clause (A).

(c) All monitoring required by this section shall be done in accordance with the following provisions:

(1) With respect to any pollutant for which no ambient air quality standard designated in 326 IAC 1-3 exists, the analysis shall contain such air quality monitoring data as the commissioner determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(2) With respect to any pollutant (other than nonmethane hydrocarbons) for which an ambient air quality standard as designated in 326 IAC 1-3 does exist, the analysis shall contain continuous air quality monitoring data gathered for the purpose of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(3) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year preceding receipt of the application, except that, if the commissioner determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

(4) The owner or operator of the proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV* may provide postapproval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

(5) The owner or operator of a major stationary source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the commissioner determines is necessary to determine the effect of the emissions ~~which~~ **that** the source or modification may have, or are having, on air quality in any area.

(6) The owner or operator of a major stationary source or major modification shall comply with the requirements of 40 CFR Part 58, Appendix B* during operation of monitoring stations for purposes of complying with this section.

(7) All air quality monitoring shall be done in accordance with state and federal monitoring procedures as set forth in the following references: May 1987 U.S. EPA, "Ambient Air Monitoring Guidelines for Prevention of Significant Deterioration" (EPA 45014-87-007)* and the May 1999, "Indiana Department of Environmental Management, Office of Air Management Quality Assurance Manual*".

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2396; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3026; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1099; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2420; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1565)*

SECTION 6. 326 IAC 2-2-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-5 Air quality impact; requirements

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

Sec. 5. (a) The owner or operator of the proposed major stationary source, ~~or~~ major modification, **or the owner or operator that requests a clean unit designation** shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of **any:**

(1) ~~any~~ ambient air quality standard, as designated in 326 IAC 1-3, in any air quality control region; or

(2) ~~any~~ applicable maximum allowable increase over the baseline concentration in any area.

(b) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the new source or the net emissions increase of that pollutant from the modification would:

(1) impact no Class I area and no area where an applicable increment is known to be violated; and

(2) be temporary.

(c) The requirements of this section do not apply to a major stationary source or major modification with respect to total suspended particulate matter.

(d) Air quality impact analysis required by this section shall be conducted in accordance with the following provisions:

(1) Any estimates of ambient air concentrations used in the demonstration processes required by this section shall be based upon the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W (Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Guideline on Air Quality Models)*.

(2) Where an air quality impact model specified in the guidelines cited in subdivision (1) is inappropriate, a model may be modified or another model substituted provided that all applicable guidelines are satisfied.

(3) Modifications or substitution of any model may only be done in accordance with guideline documents and with written approval from U.S. EPA and shall be subject to public comment procedures set forth in 326 IAC 2-1.1-6.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2024; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1566)*

SECTION 7. 326 IAC 2-2-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-6 Increment consumption; requirements

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

Sec. 6. (a) Any demonstration ~~pursuant to~~ **under** section 5 of this rule ~~should~~ **or 326 IAC 2-2.2-2(c)(2) shall** demonstrate that increased emissions caused by the proposed major stationary source, ~~or~~ major modification, **or clean unit** will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur dioxide, particulate matter, and nitrogen dioxide indicated in subsection (b)(1). Available maximum allowable increases are determined by adjusting the MAI to include impacts from **actual emissions:**

(1) ~~actual emissions~~ from any major stationary source or major modification on which construction commenced after the major source baseline date; and

(2) ~~actual emissions~~ increases and decreases at any source occurring after the minor source baseline date.

On a case-by-case basis, a source may petition the commissioner to use in excess of this eighty percent (80%). The commissioner may authorize such use provided the source adequately demonstrates the need for the same.

(b) Increment consumption shall be in accordance with the following:

(1) The following allowable increments reflect the PSD increments for a Class II area (as defined in the CAA). Indiana has no Class I or Class III areas; however, should some areas of the state be classified as Class I or III, the PSD increments pursuant to 40 CFR Part 52.21* **to which it** must be adhered. ~~to.~~ New permits issued after January 1, 1995, shall use PM_{10} as the indicator for particulate matter. The allowable increments are as follows:

Maximum Allowable Increments

Pollutants	Allowable Increments (Micrograms per Cubic Meter, $\mu g/m^3$ Limits)
(A) Particulate Matter: (PM_{10}):	
Annual arithmetic mean	17
24-hour maximum	30
(B) Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
(C) Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

(3) When an applicant proposes to construct a major stationary source or major modification in an area designated as attainment or unclassified and the increments listed in subdivision (1) have been consumed, the increased emissions from the source or modification may be permitted to be offset by reducing emissions in the affected areas by an equal amount of the pollutant for which the area was designated as attainment or unclassified.

(4) The following pollutant concentrations shall be excluded when determining compliance with a maximum allowable increase:

(A) Concentrations attributable to the increase in emissions from sources ~~which~~ **that** have converted from the use of petroleum products **or** natural gas, or both, by reason of an order in effect under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such an order.

(B) Concentrations attributable to the increase in emissions from sources ~~which~~ **that** have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan.

(C) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources.

(D) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources that are affected by state implementation plan revisions approved by U.S. EPA are excluded provided the following criteria is met:

(i) Such exclusion shall not exceed two (2) years in duration unless a longer time is approved by the commissioner and the U.S. EPA.

(ii) Such exclusion is not renewable.

(iii) Such exclusion shall allow no emissions increase ~~which~~ **that** would impact a Class I area or an area where an applicable increment is known to be violated, or cause or contribute to a violation of an ambient air quality standard as designated in 326 IAC 1-3.

(iv) An emission limitation shall be in effect at the end of the time period specified in accordance with item (i) ~~which~~ **that** will

ensure that the emissions levels will not exceed those levels occurring from such source before the exclusion was granted.

(5) No exclusion of such a concentration ~~pursuant to~~ **under** subdivision (4)(A) through (4)(B) shall apply more than five (5) years after the date the exclusion is granted ~~pursuant to~~ **under** this rule, whichever is later. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the latter of such effective dates.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2025; filed Oct 3, 1995, 3:00 p.m.: 19 IR 185; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1567)*

SECTION 8. 326 IAC 2-2-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-7 Additional analysis; requirements

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

Sec. 7. (a) The owner or operator shall provide an analysis of the following:

(1) Impairment to visibility, soils, and vegetation that would occur as a result of the major stationary source, ~~or~~ major modification, **or clean unit designation** and general commercial, residential, industrial, and other growth associated with the source, ~~or~~ modification, **or clean unit.** The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source, ~~or~~ modification, **or clean unit designation**.

(b) The requirements of this section shall not apply to a major stationary source or major modification as defined in section 1 of this rule, with respect to a particular pollutant, if the allowable emissions of that pollutant from the source or the net emissions increase of the pollutant from the modification would:

(1) impact no Class I area and no area where an applicable increment is known to be violated; and

(2) be temporary.

(Air Pollution Control Board; 326 IAC 2-2-7; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2399; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1568)

SECTION 9. 326 IAC 2-2-8 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-8 Source obligation

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

Sec. 8. **(a)** The following shall apply to any owner or operator who proposes to construct, constructs, or operates a major stationary source or major modification subject to this rule:

(1) Approval to construct, ~~pursuant to~~ **under** section 2(b) of this rule, shall become invalid if construction is not commenced within eighteen (18) months after receipt of ~~such~~ **the** approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The commissioner may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(2) Approval for construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state, or federal law.

(3) At ~~such~~ **the** time ~~as~~ a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(b) The following provisions apply to projects at an existing emissions unit at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in section 1(rr)(2)(A) of this rule for calculating projected actual emissions:

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project.

(B) Identification of any emissions unit whose emissions of a regulated NSR pollutant could be affected by the project.

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

(i) the baseline actual emissions;

(ii) the projected actual emissions;

(iii) the amount of emissions excluded under section 1(rr)(2)(A)(iii) of this rule; and

(iv) an explanation for why the amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall:

(A) monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision (1)(B); and

(B) calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption

of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at the emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within sixty (60) days after the end of each year during which records must be generated under subdivision (3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision (1) exceed the baseline actual emissions, as documented and maintained under subdivision (1)(C), by a significant amount, as defined in section 1(xx) of this rule, for that regulated NSR pollutant and if the emissions differ from the preconstruction projection as documented and maintained under subdivision (1)(C). The report shall be submitted to the department within sixty (60) days after the end of the year. The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source.

(B) The annual emissions as calculated under subdivision (3).

(C) Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection.

(c) The owner or operator of the source shall make the information required to be documented and maintained under subsection (b) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 326 IAC 17.1. *(Air Pollution Control Board; 326 IAC 2-2-8; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2400; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424)*

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

326 IAC 2-2-10 Source information
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 10. The owner or operator of a proposed major stationary source, ~~or~~ major modification, **or an owner or operator that requests a clean unit designation** shall submit all information necessary to perform any analysis or make any determination required under this rule **or under the clean unit designation requirements** as follows:

(1) With respect to a source or modification to which this rule applies, such information shall include:

(A) a description of the nature, location, design capacity, and typical operating schedule of the major stationary source or major modification, including specifications and drawings showing its design and plant layout;

(B) a detailed schedule for construction of the major stationary source or major modification; and

(C) a detailed description as to what system of continuous emission reduction is planned for the major stationary source or major modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the commissioner, the owner or operator shall also provide information on **the air quality impact:**

(A) ~~the air quality impact~~ of the major stationary source or major modification, including meteorological and topographical data necessary to estimate such impact; and

(B) ~~the air quality impact~~ and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline date in the area that the major stationary source or major modification would affect.

(Air Pollution Control Board; 326 IAC 2-2-10; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2425)

SECTION 11. 326 IAC 2-2.2 IS ADDED TO READ AS FOLLOWS:

Rule 2.2. Clean Unit Designations

326 IAC 2-2.2-1 Clean unit designation for emission units subject to BACT or LAER
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-2-2(d)(5) in place of provisions in 326 IAC 2-2-2(d)(3) and 326 IAC 2-2-2(d)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification according to the provisions in this section. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) The provisions of this section apply to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years.

(c) The following provisions apply to a clean unit:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subsection (e), and before the expiration date, as determined in accordance with subsection (f), will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (g)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (g)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit under subsection (d)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of 326 IAC 2-2-2(d)(1) through 326 IAC 2-2-2(d)(4) and 326 IAC 2-2-

2(d)(6) as if the emissions unit is not a clean unit.

(d) An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in subdivisions (1) and (2). After the original clean unit expires in accordance with subsection (f) or is lost under subsection (c)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 2 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new major NSR permit and meet all the criteria in subdivision (3). The clean unit designation applies individually for each pollutant emitted by the emissions unit. The criteria to qualify or requalify to use the clean unit applicability test are as follows:

(1) The emissions unit must have received a major NSR permit within the last ten (10) years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(2) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention as defined under 326 IAC 2-2-1(mm) or work practices, that meets both the following requirements:

(A) The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten (10) years. However, the emissions unit is not eligible for the clean unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT or LAER, and the emissions unit must meet the requirements in subdivisions (1) and (2).

(e) The effective date of an emissions unit's clean unit designation is determined according to the following:

(1) For original clean unit designation and emissions units that requalify as clean units by implementing new control technology to meet current-day BACT, the effective date is the date the emissions unit's air pollution control technology is placed into service or three (3) years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date these provisions become effective in the state implementation plan.

(2) For emissions units that requalify for the clean unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

(f) An emissions unit's clean unit designation expires according to the applicable provision as follows:

(1) For any emissions unit that automatically qualifies as a clean unit under subsection (d)(1) and (d)(2) or requalifies by implementing new control technology to meet current-day BACT under subsection (d)(3), the clean unit designation expires:

(A) ten (10) years after the effective date or the date the equipment went into service, whichever is earlier; or

(B) at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (h).

(2) For any emissions unit that requalifies as a clean unit under subsection (d)(3) using an existing control technology, the clean unit designation expires:

(A) ten (10) years after the effective date; or

(B) any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (h).

(g) After the effective date of the clean unit designation, and in accordance with the provisions for applying for a permit modification in 326 IAC 2-7-12, but no later than when the Part 70 permit is renewed, the Part 70 permit for the major stationary source must include the following terms and conditions related to the clean unit:

(1) A statement indicating that the emissions unit qualifies as a clean unit and identifying any pollutant for which this designation applies.

(2) The effective date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded in the Part 70 permit, the permit must describe the event that will determine the effective date. Once the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded into the Part 70 permit, then the permit must describe the event that will determine the expiration date. Once the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with BACT or LAER, and any physical or operational characteristic that formed the basis for the BACT or LAER determination, such as potential to emit, production capacity, or throughput.

(5) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation as described in subsection (h).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (h).

(h) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The clean unit must do the following:

(1) Comply with all emission limitation and work practice requirements adopted in conjunction with the BACT or LAER that is recorded in the major NSR permit and subsequently reflected in the Part 70 permit. The owner or operator may not

make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT or LAER determination as specified in subsection (g)(4).

(2) Comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(3) Continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(i) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the effective date of the clean unit designation; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(j) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area. *(Air Pollution Control Board; 326 IAC 2-2.2-1)*

326 IAC 2-2.2-2 Clean unit designations for emission units that have not previously received a major NSR permit

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

Sec. 2. (a) An owner or operator of a major stationary source has the option of using the clean unit test in accordance with 326 IAC 2-2-2(d)(5) in place of provisions in 326 IAC 2-2-2(d)(3) and 326 IAC 2-2-2(d)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification according to the provisions in this section. The provisions of this section apply to emissions units that do not qualify as clean units under section 1 of this rule, but that are achieving a level of emissions control comparable to BACT, as determined by the department in accordance with this section. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) The following provisions apply to a clean unit designated under this section:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation as determined in accordance with subsection (e) and before the expiration date as determined in accordance with subsection (f) will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subsection (h)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subsection (h)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit requalifies as a clean unit under subsection (c)(4). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of 326 IAC 2-2-2(d)(1) through 326 IAC 2-2-2(d)(4) and 326 IAC 2-2-2(d)(6) as if the emissions unit is not a clean unit.

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (3). After the original clean unit designation expires in accordance with subsection (f) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (4) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subdivision (4), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subdivision (4). The department shall make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit. The following provisions apply to qualify or requalify to use the clean unit applicability test:

(1) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention as defined under 326 IAC 2-2-1(mm) or work practices, that meets both the following requirements:

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of subsection (d). However, the emissions unit is not eligible for a clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(2) In order to qualify as a clean unit, the department must

determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) An emissions unit may qualify as a clean unit even if the control technology, on which the clean unit designation is based, was installed before the date that this rule became effective in the state implementation plan. However, for these emissions units, the owner or operator must apply for the clean unit designation within two (2) years after this rule is effective in the state implementation plan. For technologies installed on and after this rule became effective in the state implementation plan, the owner or operator must apply for the clean unit designation at the time the control technology is installed.

(4) To requalify for the clean unit designation, the emissions unit must obtain a new permit under subsections (g) and (h) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit must meet the requirements in subdivisions (1)(A) and (2).

(d) The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of subsection (c)(1) in accordance with the following:

(1) The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than BACT, as defined in 326 IAC 2-2-1(i), determined at the time of submission of the clean unit designation application to the department. The department shall also compare this presumption to any additional BACT or LAER determinations of which the department is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

(2) The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under subsection (g). The department shall consider the evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

(3) To qualify for a clean unit designation, the owner or operator of an emissions unit must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

(e) The effective date of an emissions unit's clean unit designation is the date that the approval under 326 IAC 2-7-10.5 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(f) For any emissions units, the clean unit designation expires ten (10) years from the effective date of the clean unit designation as determined according to subsection (e). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (i).

(g) The department shall designate an emissions unit a clean unit only by issuing an approval under 326 IAC 2-7-10.5 that includes requirements for public notice of the proposed clean unit designation and opportunity for public comment. The permit must also meet the requirements in subsection (h).

(h) The approval under 326 IAC 2-7-10.5 must include the terms and conditions set forth in this subsection. The following terms and conditions must be incorporated into the major stationary source's Part 70 permit in accordance with the provisions of 326 IAC 2-7:

(1) A statement indicating that the emissions unit qualifies as a clean unit and identifying any pollutants for which this designation applies.

(2) The effective date of the clean unit designation. If this date is not known when the department issues the permit, then the permit must describe the event that will determine the effective date. Once the effective date is known, then the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the department issues the permit, then the permit must describe the event that will determine the expiration date. Once the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT and any physical or operational characteristic that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation as described in subsection (i).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (i).

(i) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the department has designated the emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The restrictions are as follows:

(1) The clean unit must comply with all emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.

(2) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes

the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT as specified in subsection (h)(4).

(3) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(4) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(j) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective in the state implementaiton plan; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emissions limit if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(k) If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if a clean unit's designation expires or is lost under section 1(c)(3) of this rule and subsection (b)(3), it must requalify under the requirements that are currently applicable. *(Air Pollution Control Board; 326 IAC 2-2.2-2)*

SECTION 12. 326 IAC 2-2.3 IS ADDED TO READ AS FOLLOWS:

Rule 2.3. Pollution Control Project Exclusion Procedural Requirements

326 IAC 2-2.3-1 Pollution control project exclusion procedural requirements

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

Sec. 1. (a) This section applies to an owner or operator that plans to construct or install a pollution control project (PCP). A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department if the project is listed in 326 IAC 2-2-1(ll), or, if the project is not listed in 326 IAC 2-2-1(ll), then the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department under 326 IAC 2-7-10.5 and consistent with the requirements in subsection (f). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection (c), and the notice or permit application must contain the information required in subsection (d).

(c) Any project that relies on the PCP exclusion must meet the following requirements:

(1) The environmental benefit from the emissions reductions of any regulated NSR pollutants must outweigh the environmental detriment of emissions increases in any regulated NSR pollutants. A statement that a technology listed in 326 IAC 2-2-1(ll) is being used shall be presumed to satisfy this requirement.

(2) The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) In the notice or permit application submitted to the department, the owner or operator must include, at a minimum, the following information:

(1) A description of the project.

(2) The potential emissions increases and decreases of any regulated NSR pollutant, the projected emissions increases and decreases using the methodology in 326 IAC 2-2-2(d) that will result from the project, and a copy of the environmentally beneficial analysis required by subsection (c)(1).

(3) A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods shall be sufficient to meet the requirements in 326 IAC 2-7.

(4) A certification by the responsible official, as defined in 326 IAC 2-7-1(34), that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application, and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(5) Demonstration that the PCP will not have an adverse air quality impact as required by subsection (c)(2). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

(e) For projects listed in 326 IAC 2-2-1(ll), the owner or operator may begin actual construction of the project immediately after notice is sent to the department unless otherwise prohibited under requirements of the state implementation plan. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

(f) Before an owner or operator may begin actual construction of a PCP that is not listed in 326 IAC 2-2-1(ll), the project must be approved by the department in an approval under 326 IAC 2-7-10.5. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and

provide at least a thirty (30) day period for the public and the U.S. EPA to submit comments. The department shall address all material comments received by the end of the comment period before taking final action on the permit.

(g) Upon installation of the PCP, the owner or operator must comply with the following requirements:

(1) The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application required by subsection (d), and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(2) The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision (1).

(3) The owner or operator must comply with any provisions in the approval issued under 326 IAC 2-7 related to use and approval of the PCP exclusion.

(4) Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if the reductions are surplus, quantifiable, and permanent.

(Air Pollution Control Board; 326 IAC 2-2.3-1)

SECTION 13. 326 IAC 2-2.4 IS ADDED TO READ AS FOLLOWS:

Rule 2.4. Actuals Plantwide Applicability Limitations

326 IAC 2-2.4-1 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The provisions in this rule govern actuals plantwide applicability limitations (PAL). A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6.

(b) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in this rule.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level meets the requirements in this rule and complies with the PAL permit:

(1) is not a major modification for the PAL pollutant;

(2) does not have to be approved through the PSD program; and

(3) is not subject to the provisions in 326 IAC 2-2-8(a)(3).

(d) Except as provided under subsection (c)(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL. *(Air Pollution Control Board; 326 IAC 2-2.4-1)*

326 IAC 2-2.4-2 Definitions
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) The definitions in this section apply throughout this rule. A term that is not defined in this section shall have the meaning set forth in 326 IAC 2-2-1 or in the CAA.

(b) "Actuals PAL", for a major stationary source, means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(c) "Allowable emissions", for the purposes of this rule, means the following:

(1) The emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both, and the most stringent of the:

(A) applicable standards as set forth in 40 CFR Part 60* and 40 CFR Part 61*;

(B) state implementation plan emissions limitation, including those with a future compliance date; or

(C) emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(3) An emissions unit's potential to emit shall be determined using the definition in this section.

(d) "Major emissions unit" means any emissions unit that emits or has the potential to emit:

(1) one hundred (100) tons per year or more of the PAL pollutant in an attainment area; or

(2) the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas.

(e) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(f) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(g) "PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase in 326 IAC 2-2-1, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(h) "PAL permit" means the permit issued by the department that contains PAL provisions for a major stationary source.

(i) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(j) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a

major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(k) "Potential to emit" means the maximum capacity of a stationary source or major modification to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable as a practical matter. Secondary emissions do not count in determining the potential to emit of a source.

(l) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level as defined in 326 IAC 2-2-1(xx) or in the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection (d).

(m) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant as defined in 326 IAC 2-2-1(xx) or in the CAA, whichever is lower.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2.4-2)*

326 IAC 2-2.4-3 Permit application requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 3. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(1) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13 of this rule.

(Air Pollution Control Board; 326 IAC 2-2.4-3)

326 IAC 2-2.4-4 General requirements for establishing PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) The department may establish a PAL at a major stationary source provided that, at a minimum, the following requirements are met:

(1) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL, a twelve (12) month average, rolled monthly. For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in section 5 of this rule.

(3) The PAL permit shall contain all the requirements of section 7 of this rule.

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one (1) pollutant.

(6) Each PAL shall have a PAL effective period of ten (10) years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, record keeping, and reporting requirements provided in sections 12 through 14 of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 326 IAC 2-3-3 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL. *(Air Pollution Control Board; 326 IAC 2-2.4-4)*

326 IAC 2-2.4-5 Public participation requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 5. PALs for existing major stationary sources shall be established, renewed, increased, terminated, or revoked through a procedure that is consistent with 326 IAC 2-7-17. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment. The department must address all material comments before taking final action on the permit. *(Air Pollution Control Board; 326 IAC 2-2.4-5)*

326 IAC 2-2.4-6 Establishing a ten year actuals PAL level
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 6. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source plus an amount equal to the applicable significant level for the PAL pollutant under 326 IAC 2-2-1(xx) or under the CAA, whichever is lower.

(b) For establishing the actuals PAL level for a PAL pollutant,

only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units. A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(c) Emissions associated with units that were permanently shutdown after this twenty-four (24) month period must be subtracted from the PAL level.

(d) Emissions from units on which actual construction began after the twenty-four (24) month period must be added to the PAL level in an amount equal to the potential to emit of the units.

(e) The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the department is aware of prior to issuance of the PAL permit. *(Air Pollution Control Board; 326 IAC 2-2.4-6)*

326 IAC 2-2.4-7 Contents of the PAL permit
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 7. The PAL permit must contain, at a minimum, the following information:

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL.

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with section 10 of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by a reviewing authority.

(4) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of section 9 of this rule.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total as required by section 13(a) of this rule.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with section 12 of this rule.

(8) A requirement to retain the records required under section 13 of this rule on site. The records may be retained in an electronic format.

(9) A requirement to submit the reports required under section 14 of this rule by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(Air Pollution Control Board; 326 IAC 2-2.4-7)

326 IAC 2-2.4-8 PAL effective period and reopening of the PAL permit
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 8. (a) The department shall specify a PAL effective period of ten (10) years.

(b) For reopening of the PAL permit, the following requirements must be met:

(1) During the PAL effective period, the department shall reopen the PAL permit to:

(A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(B) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 326 IAC 2-3-3; or

(C) revise the PAL to reflect an increase in the PAL as provided under section 11 of this rule.

(2) The department has discretion to reopen the PAL permit to reduce the PAL:

(A) to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

(B) consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major stationary source under the state implementation plan;

(C) if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Except for the permit reopening in subdivision (1)(A) for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be conducted in accordance with the public participation requirements of section 5 of this rule.

(Air Pollution Control Board; 326 IAC 2-2.4-8)

326 IAC 2-2.4-9 Expiration of a PAL
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 9. (a) Any PAL that is not renewed in accordance with the procedures in section 10 of this rule shall expire at the end of the PAL effective period, and the requirements in this section shall apply.

(b) Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(1) Within the time frame specified for PAL renewals in section 10(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if the distribution is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e), the distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(c) Each emissions unit shall comply with the allowable emission limitation on a twelve (12) month rolling basis. To demonstrate compliance with the allowable emission limitation, the department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS.

(d) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (b)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if the change meets the definition of major modification in 326 IAC 2-2-1(ee).

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under 326 IAC 2-2-8(a)(3), but were eliminated by the PAL in accordance with section 1(c)(3) of this rule. *(Air Pollution Control Board; 326 IAC 2-2.4-9)*

326 IAC 2-2.4-10 Renewal of a PAL

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

Sec. 10. (a) The department shall follow the procedures specified in section 5 of this rule in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

(1) The information required in section 3 of this rule.

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in subdivisions (1) and (2). However, in no case may any adjustment fail to comply with subdivision (3). The following provisions apply:

(1) If the emissions level calculated in accordance with section 6 of this rule is equal to or greater than eighty percent (80%) of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subdivision (2).

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department.

(3) Notwithstanding subdivisions (1) and (2):

(i) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL unless the major stationary source has complied with section 11 of this rule.

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or Part 70 permit renewal, whichever occurs first.
(Air Pollution Control Board; 326 IAC 2-2.4-10)

326 IAC 2-2.4-11 Increasing a PAL during the PAL effective period

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

Sec. 11. (a) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions:

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator shall obtain a major NSR permit for all emissions units identified in subdivision (1) regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the major NSR process even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit shall be revised to reflect the increased PAL level after meeting the public notice requirements of section 5 of this rule. *(Air Pollution Control Board; 326 IAC 2-2.4-11)*

326 IAC 2-2.4-12 Monitoring requirements for PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 12. (a) The following general requirements apply:
(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determine plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
(2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subsection (b) and must be approved by the department.
(3) Notwithstanding subdivision (2), an alternative monitoring approach may be employed:
(A) that meets subdivision (1); and
(B) if it is approved by the department.
(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):
(1) Mass balance calculations for activities using coatings or solvents.
(2) CEMS.
(3) CPMS or PEMS.
(4) Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.
(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit if it cannot otherwise be accounted for in the process.
(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B*.
(2) CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.
(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.
(2) The emissions unit shall operate within the designated range of use for the emission factor if applicable.
(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance unless the department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:
(1) establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points; or
(2) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. The testing must occur at least once every five (5) years after issuance of the PAL.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth**

Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2.4-12)*

326 IAC 2-2.4-13 Record keeping requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 13. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(1) A copy of the PAL permit application and any applications for revisions to the PAL.

(2) Each annual certification of compliance pursuant to 40 CFR Part 70* and the data relied on in certifying the compliance.

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326 IAC 2-2.4-14 Reporting and notification requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 14. (a) The owner or operator shall submit semiannual monitoring reports and deviation reports to the department in accordance with 326 IAC 2-7. The reports shall meet the requirements of this section.

(b) A semiannual report shall be submitted to the department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) Total annual emissions in tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded under section 13(a) of this rule.

(3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period.

(5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero (0) and span calibration checks, and any corrective action taken.

(6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by section 12(g) of this rule.

(7) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 326 IAC 2-7-5(3)(C)(ii) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 326 IAC 2-7-5(3)(C)(ii). The reports shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) The PAL requirement that experienced the deviation or that was exceeded.

(3) Emissions resulting from the deviation or the exceedance.

(4) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(d) The owner or operator shall submit to the department the results of any revalidation test or method within three (3) months after completion of the test or method. *(Air Pollution Control Board; 326 IAC 2-2.4-14)*

326 IAC 2-2.4-15 Termination and revocation of a PAL
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 15. (a) This section applies to any PAL that is terminated or revoked prior to the PAL expiration date.

(b) A major stationary source owner or operator may at any time submit a written request to the department to terminate or revoke a PAL prior to the expiration or renewal of the PAL.

(c) Each emissions unit or each group of emissions units that existed under the PAL shall be in compliance with an allowable emission limitation under a revised permit established according to the following procedures:

(1) The major stationary source owner or operator may submit a proposed allowable emission limitation for each emissions unit or each group of emissions units by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate. The determination of distribution of the PAL allowable emissions may be based on the emissions limitations that were eliminated by the PAL in accordance with section 1(c)(3) of this rule.

(d) Each emissions unit shall be in compliance with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(e) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (c)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(f) The department shall follow the procedures specified in section 5 of this rule in terminating or revoking a PAL for a major stationary source and shall provide the proposed distributed allowable emission limitations to the public for review and comment. During such public review, any person may propose a PAL distribution of allowable emissions for the source for consideration by the department. *(Air Pollution Control Board; 326 IAC 2-2.4-15)*

326 IAC 2-2.4-16 Transition requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 16. (a) The department shall not issue a PAL that does not comply with the requirements in this rule after the date this rule is effective in the state implementation plan.

(b) The department may supersede any PAL that was established prior to the date this rule is effective in the state implementation plan with a PAL that complies with the requirements of this rule. *(Air Pollution Control Board; 326 IAC 2-2.4-16)*

SECTION 14. 326 IAC 2-2.6 IS ADDED TO READ AS FOLLOWS:

Rule 2.6. Federal NSR Requirements for Sources Subject to P.L.231-0003, SECTION 6

326 IAC 2-2.6-1 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to any source that meets both of the following criteria in this section:

(1) A source that belongs to industrial categories that function under the following Standard Industrial Classification (SIC) codes:
- **(A) Blast furnaces and steel mills (3312).**
- **(B) Gray and ductile iron foundries (3321).**
- **(C) Malleable iron foundries (3322).**
- **(D) Steel investment foundries (3324).**
- **(E) Steel foundries (3325).**
- **(F) Aluminum foundries (3365).**
- **(G) Copper foundries (3366).**
- **(H) Nonferrous foundries (3369).**

(2) A source belonging to an industry listed in subdivision (1) that experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002.

(Air Pollution Control Board; 326 IAC 2-2.6-1)

326 IAC 2-2.6-2 Procedure for obtaining a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) Until July 1, 2005, the owner or operator of a source under this rule that plans to request a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation shall comply with the following applicable requirements except the substitutions in subsection (b):
- **(1) 326 IAC 2-2.**
- **(2) 326 IAC 2-2.2.**
- **(3) 326 IAC 2-2.3.**
- **(4) 326 IAC 2-2.4.**
- **(5) 326 IAC 2-3.**
- **(6) 326 IAC 2-3.2.**
- **(7) 326 IAC 2-3.3.**
- **(8) 326 IAC 2-3.4.**

(b) The following substitutions shall be made for provisions in the rules in subsection (a):

(1) For the clean unit potential to emit limit:

State rule provision	Substitute with federal rule provision
326 IAC 2-2.2-1(g)(4)	40 CFR Part 52.21(x)(6)(iv)*
326 IAC 2-2.2-1(h)(1)	40 CFR Part 52.21(x)(7)(i)*
326 IAC 2-2.2-2(h)(4)	40 CFR Part 52.21(y)(8)(iv)*
326 IAC 2-2.2-2(i)(2)	40 CFR Part 52.21(y)(9)(ii)*
326 IAC 2-3.2-1(f)(4)	40 CFR Part 51.165(c)(6)(iv)*
326 IAC 2-3.2-1(g)(1)(A)	40 CFR Part 51.165(c)(7)(i)(A)*
326 IAC 2-3.2-2(h)(4)	40 CFR Part 51.165(d)(8)(iv)*
326 IAC 2-3.2-2(i)(2)	40 CFR Part 51.165(d)(9)(ii)*

(2) For the clean unit retroactive designation and comparability analysis:

State rule provision	Substitute with federal rule provision
326 IAC 2-2.2-2(d)(1)	40 CFR Part 52.21(y)(4)(i)*
326 IAC 2-2.2-2 (d)(3)	40 CFR Part 52.21(y)(4)(iii)(A)*, except that "March 3, 2003" should be changed to "the date this rule is effective in the state implementation plan"
326 IAC 2-2.2-2(f)	40 CFR Part 52.21(y)(6)*
326 IAC 2-3.2-2(d)(1)	40 CFR Part 51.165(d)(4)(i)*
326 IAC 2-3.2-2(d)(3)	40 CFR Part 51.165(d)(4)(iii)(A)*
326 IAC 2-3.2-2(f)	40 CFR Part 51.165(d)(6)*

(c) In addition to subsections (a) and (b), the source shall submit to the department evidence that the industry to which the source belongs, based on the Standard Industrial Classification listed in section 1(1) of this rule, experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002.

(d) After July 1, 2005, the owner or operator of a source under this rule that plans to request a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation shall comply with the following applicable requirements:

(1) 326 IAC 2-2.

(2) 326 IAC 2-2.2.
(3) 326 IAC 2-2.3.
(4) 326 IAC 2-2.4.
(5) 326 IAC 2-3.
(6) 326 IAC 2-3.2.
(7) 326 IAC 2-3.3.
(8) 326 IAC 2-3.4.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2.6-2)*

SECTION 15. 326 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-1 Definitions
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "Actual emissions" means the actual rate of emissions of a **regulated NSR** pollutant from an emissions unit as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two (2) year~~ **consecutive twenty-four (24) month** period which precedes the particular date and which is representative of normal source operation. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The commissioner may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit ~~other than an electric utility steam generating unit specified in subdivision (4), which~~ **that** has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.~~

~~(5) When applying for a pollution control project exclusion under subsection (s)(2)(H) for a pollution control project at an existing emissions unit, actual emissions of the unit following the installation of the pollution control project shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the emissions unit resumes regular operation, information demonstrating that the pollution control project and the physical or operational changes to the unit necessary to accommodate the project did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations. This subdivision cannot be used to determine if the pollution control project results in a significant net emissions increase. This subdivision can only be used for an application submitted under the pollution control project exclusion to determine if the project results in a significant net increase in representative actual annual emissions.~~

(4) This definition shall not apply for calculating a significant emissions increase under section 2(c) of this rule or for establishing a PAL under 326 IAC 2-3.4. Instead, subsections (d) and (mm) shall apply for those purposes.

(c) "Allowable emissions" means the emissions rate of a source calculated using the maximum rated capacity of the source unless a source is subject to state ~~or federally~~ enforceable permit limits ~~which~~ **that** restrict the operating rate or hours of operation, or both, and the most stringent of the following:

(1) The applicable standards as set forth in 40 CFR **Part** 60, New Source Performance Standards (NSPS)*, and 40 CFR **Part** 61~~*~~, National Emission Standards for Hazardous Air Pollutants (NESHAPS)*.

(2) The emissions limitation imposed by any rule in this title, including those with a future compliance date.

(3) The emissions rate specified as ~~a federally~~ **an** enforceable permit condition, including those with a future compliance date.

(d) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined as follows:

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The commissioner may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they affect the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(D) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in

tons per year, and for adjusting this amount if required by clause (B).

(2) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the department for a permit required under 326 IAC 2-3, except that the ten (10) year period shall not include any period earlier than November 15, 1990.

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent quantifiable and to the extent they affect the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had the major stationary source been required to comply with the limitations during the consecutive twenty-four (24) month period. However, if an emission limitation is part of a maximum achievable control technology standard that the U.S. EPA proposed or promulgated under 40 CFR Part 63*, the baseline actual emissions need only be adjusted if the state has applied the emissions reduction to an attainment demonstration or maintenance plan consistent with the requirements of section 3(b)(14) of this rule.

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clauses (B) and (C).

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero (0), and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision (1), for other existing emissions units in accordance with the procedures contained in subdivision (2), and for a new emissions unit in accordance with the procedures contained in subdivision (3).

~~(d)~~ **(e)** "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit ~~which~~ **that** are of a permanent nature. ~~Such~~ **These** activities include, but are not limited to, the following:

(1) Installation of building supports and foundations.

(2) Laying underground pipework.

(3) Construction of permanent storage structures.

With respect to a change in method of operations, ~~"begin actual construction"~~ **the term** refers to those on-site activities**,** other than preparatory activities, ~~which~~ **that** mark the initiation of the change.

~~(e)~~ **(f)** "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each **regulated NSR** pollutant ~~subject to regulation under the Clean Air Act which~~ **that** would be emitted from any proposed major stationary source or major modification ~~which~~ **that** the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for ~~such~~ **the** source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of ~~such~~ **the** pollutant. In no event shall application of best available control technology result in emissions of any pollutant ~~which~~ **that** would exceed the emissions allowed by any applicable standard under 40 CFR **Part** 60* ~~and~~ **or** 40 CFR **Part** 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. ~~Such~~ **The** standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of ~~such~~ **the** design, equipment, work practice, or operation and shall provide for compliance by means ~~which~~ **that** achieve equivalent results.

~~(f)~~ **(g)** "Building, structure, facility, or installation" means all of the pollutant-emitting activities ~~which~~ **that** belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group, that is, those ~~which~~ **that** have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement, U.S. Government Printing Office*****.

~~(g)~~ **(h)** "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~(h)~~ **(i)** "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy–Clean Coal Technology", up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(j) "Clean unit" means an emissions unit that meets one (1) of the following:

(1) An emissions unit that:

(A) has been issued a major NSR permit that requires compliance with BACT or LAER;

(B) is complying with BACT or LAER requirements; and

(C) qualifies as a clean unit under 326 IAC 2-3.2-1.

(2) An emissions unit that has been designated by the department as a clean unit based on the criteria in 326 IAC 2-3.2-2.

(3) An emissions unit that has been designated as a clean unit by the U.S. EPA in accordance with 40 CFR Part 52.21(y)(3)(i) through 40 CFR Part 52.21(y)(3)(iv)*.

~~(i)~~ **(k)** "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(j)~~ **(l)** "Complete", in reference to an application for a permit, means that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the commissioner from requesting or accepting additional information.

~~(k)~~ **(m)** "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, ~~which~~ **that** would result in a change in actual emissions.

(n) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule to:

(1) sample;

(2) condition, if applicable;

(3) analyze; and

(4) provide a record of;

emissions on a continuous basis.

(o) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(p) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) record average operational parameter values on a continuous basis.

~~(l)~~ **(q)** "de minimis", in reference to an emissions increase of volatile organic compounds from a modification in a serious or severe ozone nonattainment area, means an increase that does not exceed twenty-five (25) tons per year when the net emissions increases from the proposed modification are aggregated on a pollutant specific basis with all other net emissions increases from the source over a five (5) consecutive calendar year period prior to, and including, the year of the modification.

~~(m)~~ **(r)** "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (a) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~(n)~~ **(s)** "Emissions unit" means any part of a stationary source ~~which~~ **that** emits or would have the potential to emit any **regulated NSR** pollutant. ~~regulated under the provisions of the Clean Air Act.~~ **For purposes of this rule, there are two (2) types of emissions units as described by the following:**

(1) A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (1).

(t) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over the lands.

(u) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(1) those requirements developed pursuant to 40 CFR Part 60* and 40 CFR Part 61*;

(2) requirements within the state implementation plan; and

(3) any permit requirements established pursuant to 40 CFR Part 52.21* or under regulations approved pursuant to 40 CFR Part 51, Subpart I*, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

~~(o)~~ **(v)** "Fugitive emissions" means those emissions ~~which~~ **that** could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~(p)~~ **(w)** "Incidental emissions reductions" means the reductions in emissions of a pollutant achieved as an indirect result of complying with another rule for another pollutant.

~~(q)~~ **(x)** "Internal offset" means to use net emissions decreases from within the source to compensate for an increase in emissions.

~~(r)~~ **(y)** "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on the following:

(1) The most stringent emissions limitation ~~which~~ **that** is contained in the implementation plan of any state for ~~such~~ **the** class or category of stationary source unless the owner or operator of the proposed stationary source demonstrates that ~~such~~ **the** limitations are not achievable.

(2) The most stringent emissions limitation ~~which~~ **that** is achieved in practice by ~~such~~ **the** class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate ~~permit~~ **allow** a proposed new or modified stationary source to emit any pollutant in excess of the

amount allowable under applicable new source standards of performance.

~~(s)~~ **(z)** "Major modification" means any physical change **in,** or change in the method of operation of, a major stationary source that would result in a significant ~~net~~ emissions increase **of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source** or, in an area ~~which~~ **that** is classified as either a serious or severe ozone nonattainment area, an increase in VOC emissions that is not de minimis. ~~of any pollutant which is being regulated under the Clean Air Act.~~ The following provisions apply:

(1) Any **significant emissions increase from any emissions units or** net emissions increase **at a major stationary source** that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan under the Federal Power Act.

(C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source ~~which:~~ **that the source:**

(i) ~~the source~~ was capable of accommodating before December 21, 1976, unless ~~such~~ **the** change would be prohibited under any enforceable permit condition ~~which~~ **that** was established after December 21, 1976, under 40 CFR **Part** 52.21* or regulations approved under 40 CFR **Part** 51.160 through 40 CFR **Part** 51.165* or 40 CFR **Part** 51.166*; or

(ii) ~~the source~~ is approved to use under any permit issued under this rule.

(F) An increase in the hours of operation or in the production rate unless ~~such~~ **the** change would be prohibited under any enforceable permit condition ~~which~~ **that** was established after December 21, 1976, under 40 CFR **Part** 52.21* or regulations approved under 40 CFR **Part** 51.160 through 40 CFR **Part** 51.165* or 40 CFR **Part** 51.166*.

(G) Any change in ownership at a stationary source.

(H) The addition, replacement, or use of a pollution control project at an existing emissions unit ~~if the following conditions are met:~~ **meeting the requirements of 326 IAC 2-3.3. A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.**

~~(i) Upon review, the department does not determine that:~~

~~(AA) such addition, replacement, or use renders the unit less environmentally beneficial; or~~

~~(BB) the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the CAA, if any; and~~

~~(CC) the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.~~

~~During review, the department may request that a source submit an analysis of the air quality impact of the net emissions increase of the pollution control project.~~

~~(ii) If a pollution control project would result in a significant net emissions increase in representative actual annual emissions of a pollutant for which an area is classified as nonattainment, or an emissions increase in VOC that is not de minimis in an area which is classified as either serious or severe ozone nonattainment, then those emissions shall be offset on a one-to-one (1:1) ratio, except that no offsets are required for the following:~~

~~(AA) A pollution control project for an electric utility steam generating unit.~~

~~(BB) A pollution control project that results in a significant net increase in representative actual annual emissions of any criteria pollutant for which the area is classified as nonattainment and current ambient monitoring data demonstrates that the air quality standard for that pollutant in the nonattainment area is not currently being violated.~~

~~(CC) A pollution control project for a NO_x budget unit, as defined in 326 IAC 10-4-2, that is being installed to control NO_x emissions for the purpose of complying with 326 IAC 10-4-2.~~

~~(iii) A pollution control project as described under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8).~~

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(3) This definition shall not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 326 IAC 2-2.4 for a PAL for that pollutant. Instead, the definition at 326 IAC 2-2.4-2(g) shall apply.

~~(t)~~ **(aa)** "Major stationary source" means the following:

(1) Any stationary source of air pollutants, except for those subject to subdivision (2), ~~which~~ **that** emits or has the potential to emit one hundred (100) tons per year or more of any ~~air~~ **regulated NSR** pollutant. ~~subject to regulation under the Clean Air Act.~~

(2) For ozone nonattainment areas, "major stationary source" includes any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit volatile organic compounds that would equal or exceed any of the following rates:

Ozone Classification	Rate
Marginal	100 tons per year
Moderate	100 tons per year
Serious	50 tons per year
Severe	25 tons per year

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

(A) Primary lead smelter.

(B) Secondary lead smelters.

(C) Primary copper smelters.

(D) Lead gasoline additive plants.

(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivision (1) if the change would by itself qualify as a major stationary source under subdivision (1).

~~(u)~~ **(bb)** "Necessary preconstruction approvals or permits" means those permits or approvals required under 326 IAC 2-2, 326 IAC 2-5.1, and 326 IAC 2-7.

~~(v)~~ **(cc)** "Net emissions decrease" means the amount by which the sum of the creditable emissions increases and decreases from any source modification project is less than zero (0).

~~(w)~~ **(dd)** "Net emissions increase" ~~with reference to a significant net emissions increase,~~ means, **with respect to any regulated NSR pollutant emitted by a major stationary source,** the **following:**

(1) The amount by which the sum of the ~~emission increases and decreases at a source~~ **following** exceeds zero (0):

(A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under 326 IAC 2-3-2(c) and 326 IAC 2-3-2(d).

(B) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this clause shall be determined as provided in subsection (d), except that subsection (d)(1)(C) and (d)(2)(D) shall not apply.

(2) For the purpose of determining de minimis in an area classified as serious or severe for ozone, the amount by which the sum of the emission increases and decreases from any source modification project exceeds zero (0).

(3) The following emissions increases and decreases are to be considered when determining net emissions increase:

~~(1)~~ **(A)** Any increase in actual emissions from a particular physical change or change in the method of operation.

~~(2)~~ **(B)** Any of the following increases and decreases in actual emissions that are contemporaneous with the particular change and are otherwise creditable:

~~(A)~~ **(i)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs after January 16, 1979, and between the following:

~~(i)~~ **(AA)** The date five (5) years before construction of the particular change commences.

~~(ii)~~ **(BB)** The date that the increase from the particular change occurs.

~~(B)~~ **(ii)** An increase or decrease in actual emissions is creditable only if the commissioner has not relied on the increase or decrease in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j).

~~(C)~~ **(iv)** An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

~~(D)~~ **(v)** A decrease in actual emissions is creditable only to the extent that:

~~(i)~~ **(AA)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~(ii)~~ **(BB)** it is ~~federally~~ enforceable **as a practical matter** at and after the time that actual construction on the particular change begins;

~~(iii)~~ **(CC)** the commissioner has not relied on it in issuing any permit under regulations approved under ~~40 CFR 51.160 through 40 CFR 51.165*~~ **40 CFR Part 51, Subpart I*** or the state has not relied on it in demonstrating attainment or reasonable further progress; ~~and~~

~~(iv)~~ **(DD)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; **and**

(EE) the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2. Once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit. However, any new emissions reductions that were not relied upon in a PCP excluded under 326 IAC 2-3.3-1 or for a clean unit designation are creditable to the extent they meet the requirements in 326 IAC 2-3.3-1(g)(4) for the PCP and 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j) for a clean unit.

~~(E)~~ **(vi)** An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

(vii) Subsection (b)(1) shall not apply for determining creditable increases and decreases or after a particular change or change in method of operation.

~~(x)~~ **(ee)** "New", in reference to a major stationary source, a modified major stationary source, or a major modification, means one ~~which~~ **that** commences construction after the effective date of this rule.

(ff) "Nonattainment major new source review program" or "NSR program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the state implementation plan to implement the federal requirements of 40 CFR Part 51.165*, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI*. Any permit issued under the program is a major NSR permit.

~~(y)~~ **(gg)** "Pollution control project" **or "PCP"** means any activity, **set of work practices,** or project, **including pollution prevention,** undertaken at an existing emissions unit ~~for purposes of reducing~~ **that reduces** emissions **of air pollutants** from ~~such~~ **the** unit. ~~Such~~ **The qualifying** activities or projects ~~do not~~ **can** include the replacement **or upgrade** of an existing emissions ~~unit~~ **control technology** with a ~~newer or different~~ **more effective** unit. ~~or the reconstruction of an existing emissions unit. Such activities or projects are limited to any of~~ **Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP.**

Projects not listed in this subsection may qualify for a case-specific PCP exclusion under 326 IAC 2-3.3-1(c) and 326 IAC 2-3.3-1(f). The following **projects are presumed to be environmentally beneficial under 326 IAC 2-3.3-1(c)(1):**

(1) ~~The installation of~~ Conventional ~~and~~ **or** advanced flue gas desulfurization ~~and~~ **or** sorbent injection for **control of** sulfur dioxide.

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, ~~and~~ **or** scrubbers for **control of** particulate **matter** or other pollutants.

(3) Flue gas recirculation, low-NO_x burners **or combustors,** selective noncatalytic reduction, ~~and~~ selective catalytic reduction, **low emission combustion for internal combustion engines, and oxidation/absorption catalyst** for **control of** nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, **hydrocarbon combustion** flares, **biofiltration, absorbers** and ~~carbon~~ adsorbers, **and floating roofs for storage vessels** for **control of** volatile organic compounds ~~and~~ **or** hazardous air pollutants. **For the purpose of this rule, "hydrocarbon combustion flare" means either a flare:**

(A) used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(B) that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than two hundred thirty (230) mg/dscm hydrogen sulfide.

(5) ~~An activity or project~~ **Activities or projects undertaken** to accommodate switching, **or partially switching,** to ~~a~~ **an inherently less polluting** fuel, ~~which is less polluting than the fuel in use prior to the activity or project, including, but not~~ **to be** limited to ~~natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions and including any activity that is necessary to accommodate switching to an inherently less polluting~~ **the following** fuel **switches:**

(A) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five-hundredths percent (0.05%) sulfur diesel.

(B) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal.

(C) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood.

(D) Switching from coal to No. 2 fuel oil with a five-tenths percent (0.5%) maximum sulfur content.

(E) Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths percent (1.2%) sulfur content.

~~(6) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 (Sec. 5903(d) of Title 42 of the United States Code), or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA.~~

~~(7) A permanent clean coal technology demonstration project that constitutes a repowering project.~~

~~(8) Pollution prevention projects which the department has determined through a significant source modification to be environmentally beneficial. Pollution prevention projects that may result in an unacceptable increased risk from the release of hazardous air pollutants or that may result in an increase in utilization are not environmentally beneficial.~~

~~(9) Installation of a technology, for the purposes of this subsection, which is not listed in subdivisions (1) through (8) but is determined to be environmentally beneficial by the department through a significant source modification.~~

(6) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting substance (ODS) to the use of a substance with a lower or zero (0) ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(A) The productive capacity of the equipment is not increased as a result of the activity or project.

(B) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. This determination shall be made using the following procedure:

(i) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B*.

(ii) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS.

(iii) Calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP.

(iv) If the value calculated in item (ii) is more than the value calculated in item (iii), then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

(hh) "Pollution prevention" means the following:

(1) Any activity that eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal through:

(A) process changes;

(B) product reformulation or redesign; or

(C) substitution of less polluting raw materials.

(2) The term does not include:

(A) recycling, except certain "in-process recycling" practices;

(B) energy recovery;

(C) treatment; or

(D) disposal.

~~(z)~~ **(ii)** "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is ~~federally~~ enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(jj) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) calculate and record the mass emissions rate on a continuous basis.

(kk) "Prevention of significant deterioration permit" or "PSD permit" means any permit that is issued under 326 IAC 2-2 or under the program in 40 CFR Part 52.21*.

(ll) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(mm) "Projected actual emissions" means the following:

(1) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(A) shall:

(i) consider all relevant information, including, but not limited to:

(AA) historical operational data;

(BB) the company's own representations;

(CC) the company's expected business activity and the company's highest projections of business activity;

(DD) the company's filings with the state or federal regulatory authorities; and

(EE) compliance plans under the approved plan;

(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions under subsection (d) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(B) in lieu of using the method set out in clause (A), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection (ii).

~~(aa)~~ **(nn)** "Reasonable further progress" or "RFP" means the annual incremental reductions in emissions of a pollutant ~~which~~ **that** are sufficient in the judgment of the board to provide reasonable progress towards attainment of the applicable ambient air quality standards established by 326 IAC 1-3 by the dates set forth in the Clean Air Act.

~~(bb) "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:~~

~~(1) Atmospheric or pressurized fluidized bed combustion.~~

~~(2) Integrated gasification combined cycle.~~

~~(3) Magnetohydrodynamics.~~

~~(4) Direct and indirect coal-fired turbines.~~

~~(5) Integrated gasification fuel cells.~~

~~(6) As determined by the U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.~~

~~Repowering shall also include any oil or gas-fired unit, or both, which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. The U.S. EPA shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the Clean Air Act.~~

~~(cc) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the department shall do the following:~~

~~(1) Consider all relevant information, including, but not limited to, the following:~~

~~(A) Historical operational data.~~

~~(B) The company's own representations.~~

~~(C) Filings with Indiana or federal regulatory authorities.~~

~~(D) Compliance plans under Title IV of the CAA.~~

~~(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.~~

(oo) "Regulated NSR pollutant", for purposes of this rule, means the following:

(1) Nitrogen oxides or any volatile organic compounds.

(2) Any pollutant for which a national ambient air quality standard has been promulgated.

(3) Any pollutant that is a constituent or precursor of a general pollutant listed under subdivision (1) or (2) provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

~~(dd)~~ **(pp)** "Secondary emission" means emissions ~~which~~ **that** would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification ~~which~~ **that** causes the secondary emissions. Secondary emissions may include, but are not limited to **emissions from:**

(1) ~~emissions from the~~ ships or trains coming to or from the new or modified stationary source; and

(2) ~~emissions from~~ an off-site support facility ~~which~~ **that** would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

~~(ee)~~ **(qq)** "Significant", in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, means a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM_{10}	15 tpy
Ozone (marginal and moderate areas)	40 tpy of volatile organic compound (VOC)
Lead	0.6 tpy

(rr) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant as defined in subsection (qq) for that pollutant.

~~(ff)~~ **(ss)** "Source modification project" means all those physical changes or changes in the methods of operation at a source ~~which~~ **that** are necessary to achieve a specific operational change.

~~(gg)~~ **(tt)** "Stationary source" means any building, structure, facility, or installation, including a stationary internal combustion engine, ~~which~~ **that** emits or may emit ~~any air~~ **a regulated NSR** pollutant. ~~subject to regulation under the Clean Air Act.~~

~~(hh)~~ **(uu)** "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

*These documents are incorporated by reference. ~~and~~ Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 ~~and~~ **or** are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1106; filed Nov 12, 1993, 4:00 p.m.: 17 IR 725; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1002; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Aug 17, 2001, 3:45 p.m.: 25 IR 6; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1183; errata filed Dec 12, 2002, 3:30 p.m.: 26 IR 1565)*

SECTION 16. 326 IAC 2-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-2 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) This rule applies to new ~~and modified~~ major stationary sources or major modifications constructed in an area designated, ~~in 326 IAC 1-4~~ **as of the date of submittal of a complete application,** as nonattainment ~~as of the date of submittal of a complete application~~ **in 326 IAC 1-4,** for a pollutant for which the stationary source or modification is major.

(b) This rule applies to modifications of major stationary sources of volatile organic compounds (VOC) in serious and severe ozone nonattainment areas as follows:

(1) A modification of a major stationary source with a de minimis increase in emissions shall be exempt from section 3 of this rule.
(2) A modification having an increase in emissions that is not de minimis to an existing major stationary source that does not have the potential to emit one hundred (100) tons or more of volatile organic compounds (VOC) per year will not be subject to section 3(a) of this rule if the owner or operator of the source elects to internal offset the increase by a ratio of one and three-tenths (1.3) to one (1). If the owner or operator does not make ~~such an~~ **the** election or is unable to, section 3(a) of this rule applies, except that best available control technology (BACT) shall be substituted for lowest achievable emission rate (LAER) required by section 3(a)(2) of this rule.
(3) A modification having an increase in emissions that is not de minimis to an existing major stationary source emitting or having the potential to emit one hundred (100) tons of volatile organic compounds (VOC) or more per year will be subject to the requirements of section 3(a) of this rule, except that the owner or operator may elect to internal offset the increase at a ratio of one and three-tenths (1.3) to one (1) as a substitute for lowest achievable emission rate (LAER) required by section 3(a)(2) of this rule.

(c) The requirements of this rule will be applied in accordance with the following:
(1) Except as otherwise provided in subsections (k) and (l) and consistent with the definition of major modification in section 1(z) of this rule, a project is a major modification for a regulated NSR pollutant if it causes a significant emissions increase and a significant net emissions increase except for VOC emissions in a severe or serious nonattainment area for ozone. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
(2) Prior to beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, in accordance with this subsection, except for VOC emissions in a severe or serious nonattainment area for ozone. The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source is contained in section 1(dd) of this rule. Regardless of any preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
(3) For an actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.
(4) For an actual-to-potential applicability test for projects that only involve construction of new emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
(5) For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is deemed to occur.
(6) For a hybrid test for projects that involve multiple types of

emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions (3) through (5), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

~~(c)~~ **(d)** At ~~such~~ **the** time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any ~~federally~~ enforceable limitation ~~which~~ **that** was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this rule applies to the source or modification as though construction had not yet commenced on the source or modification.

~~(d)~~ **(e)** In the case of an area ~~which~~ **that** has been redesignated nonattainment, any source ~~which~~ **that** would not have been required to submit a permit application under 326 IAC 2-2 concerning the prevention of significant deterioration will not be subject to this rule if construction commences within eighteen (18) months of the area's redesignation.

~~(e)~~ **(f)** Major stationary sources or major modifications ~~which~~ **that** would locate in any area designated as attainment or unclassifiable in the state of Indiana and would exceed the following significant impact levels at any locality, for any pollutant ~~which~~ **that** is designated as nonattainment, must meet the requirements specified in section 3(a)(1) through 3(a)(3) of this rule. All values are expressed in micrograms per cubic meter ($\mu g/m^3$):

Pollutant	Annual	24-hour	8-hour	3-hour	1-hour
Sulfur dioxide	1	5	X	25	X
Total suspended particulates	1	5	X	X	X
PM_{10}	1	5	X	X	X
Nitrous oxides	1	X	X	X	X
Carbon monoxide	X	X	500	X	2,000

~~(f)~~ **(g)** This rule does not apply to a source or modification, other than a source of volatile organic compounds in a serious or severe ozone nonattainment area or a source of PM_{10} in a serious PM_{10} area, that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants (with thermal driers).
(2) Kraft pulp mills.
(3) Portland cement plants.
(4) Primary zinc smelters.
(5) Iron and steel mill plants.
(6) Primary aluminum ore reduction plants.
(7) Primary copper smelters.
(8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day.
(9) Hydrofluoric, sulfuric, and nitric acid plants.
(10) Petroleum refineries.
(11) Lime plants.
(12) Phosphate rock processing plants.
(13) Coke oven batteries.
(14) Sulfur recovery plants.
(15) Carbon black plants (furnace process).
(16) Primary lead smelters.
(17) Fuel conversion plants.
(18) Sintering plants.
(19) Secondary metal production plants.
(20) Chemical process plants.
(21) Fossil-fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(22) Petroleum storage and transfer unit with a storage capacity exceeding three hundred thousand (300,000) barrels.
(23) Taconite ore processing plants.
(24) Glass fiber processing plants.
(25) Charcoal production plants.
(26) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

~~(g)~~ **(h)** For purposes of this rule, secondary emissions from a source need not be considered in determining whether the source would qualify as a major source. However, if a source is subject to this rule on the basis of the direct emissions from the source, the applicable conditions must also be met for secondary emissions. However, ~~such~~ **the** secondary emissions may be exempt from the requirements specified in section 3(a)(2) through 3(a)(3) of this rule.

~~(h)~~ **(i)** Hazardous air pollutants listed in and regulated by 326 IAC 14-1 are not exempt from this rule.

~~(i)~~ **(j)** The installation, operation, cessation, or removal of temporary clean coal technology demonstration projects funded under the Department of Energy–Clean Coal Technology Appropriations may be exempt from the requirements of section 3 of this rule. To qualify for this exemption, the project must be at an existing facility, operate for no more than five (5) years, and comply with all other applicable rules for the area.

(k) For any major stationary source operating under a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 326 IAC 2-3.4.

(l) An owner or operator undertaking a PCP shall comply with the requirements under 326 IAC 2-3.3.

(m) The following specific provisions apply to projects at existing emissions units at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in section 1(mm)(2)(A) of this rule for calculating projected actual emissions:

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project.

(B) Identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project.

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

(i) the baseline actual emissions;

(ii) the projected actual emissions;

(iii) the amount of emissions excluded under section 1(mm)(2)(A)(3) of this rule and an explanation for why the amount was excluded; and

(iv) any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall:

(A) monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision (1)(B); and

(B) calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at the emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within sixty (60) days after the end of each year during which records must be generated under subdivision (3) setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision (1), exceed the baseline actual emissions, as documented and maintained under subdivision (1)(C), by a significant amount for that regulated NSR pollutant, and if the emissions differ from the preconstruction projection as documented and maintained under subdivision (1)(C). The report shall be submitted to the department within sixty (60) days after the end of the year. The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source.

(B) The annual emissions as calculated under subdivision (3).

(C) Any other information that the owner or operator wishes to include in the report.

(6) The owner or operator of the source shall make the information required to be documented and maintained under subdivisions (1) through (5) available for review upon a request for inspection by the department or the general public under 326 IAC 17.1.

(Air Pollution Control Board; 326 IAC 2-3-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2404; filed Nov 12, 1993, 4:00 p.m.: 17 IR 728; filed Aug 17, 2001, 3:45 p.m.: 25 IR 11)

SECTION 17. 326 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-3 Applicable requirements

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

Sec. 3. (a) Prior to the issuance of a construction permit to a source subject to this rule, the applicant shall comply with the following requirements:

(1) The proposed major new source or major modification shall demonstrate that the source will meet all applicable requirements of this title, any applicable new source performance standard in 40 CFR **Part** 60*, or any national emission standard for hazardous air pollutants in 40 CFR **Part** 61*. If the commissioner determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct will be denied.

(2) The applicant will apply emission limitation devices or techniques to the proposed construction or modification such that the lowest achievable emission rate (LAER) for the applicable pollutant will be achieved.

(3) The applicant shall either demonstrate that all existing major sources owned or operated by the applicant in the state of Indiana are in compliance with all applicable emission limitations and standards contained in the Clean Air Act and in this title or demonstrate that they are in compliance with a federally enforceable compliance schedule requiring compliance as expeditiously as practicable.

(4) The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for ~~such~~ **the** proposed source ~~which~~ **that** demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) Emissions resulting from the proposed construction or modification shall be offset by a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The emission offset shall be such that there will be reasonable further progress toward attainment of the applicable ambient air quality standards as follows:

(A) Greater than one-for-one unless otherwise specified.

(B) For ozone nonattainment areas, the following table shall determine the minimum offset ratio requirements for major stationary sources of volatile organic compounds:

Ozone Classification	Minimum Offset Requirements
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1

(6) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the CAA shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

~~(6)~~ **(7)** The applicant shall obtain the necessary preconstruction approvals and shall meet all the permit requirements specified in 326 IAC 2-5.1 or 326 IAC 2-7.

(8) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with an applicable provision of the state implementation plan and any other requirements under local, state, or federal law.

(b) The following provisions shall apply to all emission offset evaluations:

(1) Emission offsets shall be determined on a tons per year and, whenever possible, a pounds per hour basis when all facilities requiring offset involved in the emission offset calculations are

operating at their maximum potential or allowed production rate. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets shall be calculated using the allowed or actual annual operating hours, whichever is less.

(2) The baseline for determining credit for emission offsets will be the emission limitations or actual emissions, whichever is lower, in effect at the time the application to construct or modify a source is filed. Credit for emission offset purposes may be allowable for existing control that goes beyond that required by source-specific emission limitations contained in this title.

(3) In cases where the applicable rule under this title does not contain an emission limitation for a source or source category, the emission offset baseline involving ~~such~~ **the** sources shall be the actual emissions determined at their maximum expected or allowable production rate.

(4) In cases where emission ~~limits~~ **limitations** for existing sources allow greater emissions than the ~~uncontrolled emission rate~~ **potential to emit** of the source, emission offset credit shall only be allowed for emissions controlled below the ~~uncontrolled emission rate.~~ **potential to emit.**

(5) A source may receive offset credit from emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels ~~provided, that the work force to be affected has been notified of the proposed shutdown or curtailment. Emission offsets that involve reducing operating hours or production or source shutdowns must be federally enforceable. Emission offsets may be credited for a source shutdown or curtailment provided that the applicant can establish that such shutdown or curtailment occurred less than one (1) year prior to the date of permit application, and the proposed new source is a replacement for the shutdown or curtailment.~~ **if the reductions are permanent, quantifiable, and federally enforceable and if the area has an attainment plan approved by U.S. EPA. Offset credits from emission reductions must be in compliance with the following:**

(A) The shutdown or curtailment is creditable only if it occurred on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns that occurred prior to August 7, 1977. For the purposes of this clause, the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory if the inventory explicitly includes, as current existing emissions, the emissions from such previously shutdown or curtailed sources.

(B) The reductions may be credited in the absence of an approved attainment demonstration only if:

(i) the shutdown or curtailment occurred on or after the date the new source permit application is filed; or

(ii) if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source and the cutoff date provisions in subdivision (5)(A) are observed.

(6) Emission offset credit involving an existing fuel combustion source will be based on the allowable emissions under other rules of this title for the type of fuel being burned at the time the new source application is filed. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is acceptable, provided the permit is conditioned to require the use of a specific alternative control measure ~~which~~ **that** would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The commissioner will grant emission offset credit for fuel switching only after ensuring that adequate supplies of the new fuel are available at least for the next ten (10) years.

(7) In the case of volatile organic compound emissions, no emission offset credit may be allowed for replacing one (1) hydrocarbon compound with another of lesser reactivity, except for those compounds defined as nonphotochemically reactive hydrocarbons in 326 IAC 1-2-48.

(8) No emission reduction may be approved to offset emissions ~~which~~ **that** cannot be federally enforced. Offsetting emissions shall be considered federally enforceable if the reduction is included as a condition in the applicable permit as specified in 326 IAC 2-5.1 or 326 IAC 2-7 if issued under a federally-approved air permit program.

(9) Emission reductions required under any other rule adopted by the air pollution control board shall not be creditable as emission reductions and therefore cannot be used for emission offsets.

(10) Incidental emission reductions that are not otherwise required by any other rule adopted by the air pollution control board shall be creditable as emission reductions for emission offsets if ~~such~~ **the** emission reductions meet all of the other requirements for offsets.

(11) A source may offset by alternative or innovative means emission increases from rocket engine or motor firing and cleaning related to ~~such~~ **the** firing at an existing or modified major source that tests rocket engines or motors under the following conditions:

(A) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test ~~such~~ **the** engines on November 15, 1990.

(B) The source demonstrates to the satisfaction of the department that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(C) The source has obtained a written finding from:

(i) the Department of Defense;

(ii) the Department of Transportation;

(iii) the National Aeronautics and Space Administration; or

(iv) other appropriate federal agency;

that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(D) The source will comply with an alternative measure, imposed by the department, designed to offset any emission increases beyond permitted levels not directly offset by the source.

(12) Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a clean unit or a project as a PCP cannot be used as offsets.

(13) Decreases in actual emissions occurring at a clean unit cannot be used as offsets except as provided in 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j). Decreases in actual emissions occurring at a PCP cannot be used as offsets except as provided in 326 IAC 2-3.3-1(g)(4).

(14) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in:

(A) issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I*; or

(B) a demonstration for attainment or reasonable further progress.

***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 2-3-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2406; filed Nov 12, 1993, 4:00 p.m.: 17 IR 730; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1005; filed Aug 17, 2001, 3:45 p.m.: 25 IR 12)*

SECTION 18. 326 IAC 2-3.2 IS ADDED TO READ AS FOLLOWS:

Rule 3.2. Clean Unit Designations

326 IAC 2-3.2-1 Clean unit designations for emission units subject to LAER

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

Sec. 1. (a) This section applies to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years. An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-3-2(c)(5) in place of provisions in 326 IAC 2-3-2(c)(3), 326 IAC 2-3-2(c)(4), and 326 IAC 2-3-1(q) to determine whether emissions increases at a clean unit are part of a project that is a major modification or greater than de minimis for VOC emissions in severe or serious nonattainment areas for ozone according to this section. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this rule.

(b) The following provisions apply to a clean unit:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subsection (d), and before the expiration date, as determined in accordance with subsection (e), will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of 326 IAC 2-3-2(c)(3), 326 IAC 2-3-2(c)(4), and 326 IAC 2-3-2(c)(6) as if the emissions unit is not a clean unit.

(5) For emissions units that meet the requirements of clauses (A) and (B), the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for clean units under subsections (c) through (h). For these emissions units, all requirements for the LAER determination under subdivisions (2) and (3) shall also apply to the BACT permit terms and conditions. In addition, the requirements of subsection (g)(1)(B) do not apply to emissions units that qualify for clean unit status under this subdivision.

(A) The emissions unit must have received a PSD permit within the last ten (10) years, and the permit must require the emissions unit to comply with BACT.

(B) The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutants after issuance of the PSD permit and before the date this rule is effective in the state implementation plan.

(c) An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in subdivisions (1) and (2). After the original clean unit designation expires in accordance with subsection (e) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 2 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new major NSR permit and meet all the criteria in subdivision (3). The clean unit designation applies individually for each pollutant emitted by the emissions unit. The criteria to qualify or requalify to use the clean unit applicability test are as follows:

(1) The emissions unit must have received a major NSR permit within the past ten (10) years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(2) Air pollutant emissions from the emissions unit must be reduced through the use of an air pollution control technology that includes pollution prevention or work practices and that meets both the following requirements:

(A) The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten (10) years. However, the emissions unit is not eligible for clean unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit must meet the requirements in subdivisions (1) and (2).

(d) The effective date of an emissions unit's clean unit designation is determined according to the following applicable provision:

(1) For original clean unit designation and emissions units that requalify as clean units by implementing a new control technology to meet current-day LAER, the effective date is the date the emissions unit's air pollution control technology is placed into service or three (3) years after the issuance date of the major

NSR permit, whichever is earlier, but no sooner than the date that provisions for the clean unit applicability test are approved by the U.S. EPA for incorporation into the state implementation plan and become effective.

(2) For emissions units that requalify for the clean unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

(e) An emissions unit's clean unit designation expiration date is determined according to the following applicable provisions:

(1) For original clean unit designation and emissions units that requalify by implementing new control technology to meet current-day LAER, for any emissions unit that automatically qualifies as a clean unit under subsection (c)(1) and (c)(2), the clean unit designation expires:

(A) ten (10) years after the effective date or the date the equipment went into service, whichever is earlier; or

(B) at any time the owner or operator fails to comply with the provisions for maintaining clean unit designation in subsection (g).

(2) For any emissions unit that requalifies as a clean unit under subsection (c)(3), the clean unit designation expires:

(A) ten (10) years after the effective date; or

(B) any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(f) After the effective date of the clean unit designation and in accordance with the provisions of 326 IAC 2-7, but no later than when the Part 70 permit is renewed, the Part 70 permit for the major stationary source must include the following terms and conditions related to the clean unit:

(1) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutants for which this clean unit designation applies.

(2) If the effective date of the clean unit designation is not known when the clean unit designation is initially recorded in the Part 70 permit, the permit must describe the event that will determine the effective date. When the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) If the expiration date of the clean unit designation is not known when the clean unit designation is initially recorded into the Part 70 permit, then the permit must describe the event that will determine the expiration date. When the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with the LAER and any physical or operational characteristic that formed the basis for the LAER determination, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation in accordance with subsection (g).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as presented in subsection (g).

(g) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects clean unit designation only for that pollutant. To maintain the clean unit designation, the owner or operator must conform to the following:

(1) The clean unit must comply with the emission limitations and work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit and subsequently reflected in the Part 70 permit, including the following:

(A) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4).

(B) The clean unit may not emit above a level that has been offset.

(2) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(3) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(h) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase or used in a netting analysis or be used for generating offsets unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective in the state implementation plan; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emission limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(i) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area. *(Air Pollution Control Board; 326 IAC 2-3.2-1)*

326 IAC 2-3.2-2 Clean unit designations for emission units that have not previously received a major NSR permit

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

Sec. 2. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-3-2(c)(5) in place of provisions in 326 IAC 2-3-2(c)(3), 326 IAC 2-3-2(c)(4), and 326 IAC 2-3-1(q) to determine whether emissions increases at a clean unit are part of a project that is a major modification or greater than de minimis for VOC emissions in severe or serious nonattainment areas for ozone according to the provisions in this section. This section applies to emissions units that do not qualify as clean units under section 1 of this rule, but that are achieving a level of emissions control comparable to LAER as determined by the department in accordance with this section. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this rule.

(b) The following provisions apply to a clean unit designated under this section:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation as determined in accordance with subsection (e) and before the expiration date as determined in accordance with subsection (f) will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subsection (h)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subsection (h)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit requalifies as a clean unit under subsection (c)(4). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of 326 IAC 2-3-2(c)(3), 326 IAC 2-3-2(c)(4), and 326 IAC 2-3-2(c)(6) as if the emissions unit were never a clean unit.

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (3). After the original clean unit designation expires in accordance with subsection (f) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subsection (c)(4) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subsection (c)(4), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subsection (c)(4). The department shall make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit. The following provisions apply to qualify or requalify to use the clean unit applicability test:

(1) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets both the following requirements:

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of subdivision (d). However, the emissions unit is not eligible for the clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(2) In order to qualify as a clean unit, the department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or any applicable PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) An emissions unit may qualify as a clean unit even if the control technology on which the clean unit designation is based was installed before the effective date of the approval by the U.S. EPA of this provision in the state implementation plan. However, for the emissions units, the owner or operator must apply for the clean unit designation within two (2) years after the plan requirements become effective. For technologies installed after the state implementation plan requirements become effective, the owner or operator must apply for the clean unit designation at the time the control technology is installed.

(4) To requalify for clean unit, the emissions unit must obtain a new permit under subsections (g) and (h) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and the emissions unit must meet the requirements in subsection (c)(1)(A) and (c)(2).

(d) The owner or operator may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of subsection (c)(1) according to either subdivision (1) or (2). Subdivision (3) specifies the time for making this comparison. The following provisions apply:

(1) The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as LAER, as defined in 326 IAC 2-3-1(y), determined at the time of submission of the clean unit designation application to the department. The department shall also compare this presumption to any additional LAER determinations of which it is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

(2) The owner or operator may demonstrate that the emissions

unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under subsection (g). The department shall consider the evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

(3) To qualify for a clean unit designation, the owner or operator of an emissions unit must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.

(e) The effective date of an emissions unit's clean unit designation, which is the date on which the owner or operator may begin to use the clean unit test to determine whether a project involving the emissions unit is a major modification, is the date the approval under 326 IAC 2-7-10.5 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(f) For any emissions units, the clean unit designation expires ten (10) years from the effective date of the clean unit designation as determined according to subsection (e). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (i).

(g) The department shall designate an emissions unit a clean unit only by issuing a permit in accordance with 326 IAC 2-7-10.5 that includes requirements for public notice of the proposed clean unit designation and opportunity for public comment. The permit must also meet the requirements in subsection (h).

(h) The approval under 326 IAC 2-7-10.5 shall include the terms and conditions set forth in this subsection. The following terms and conditions shall be incorporated into the major stationary source's Part 70 permit in accordance with the provisions of 326 IAC 2-7-12:

(1) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutants for which this designation applies.

(2) If effective date of the clean unit designation is not known when the department issues the permit, then the permit must describe the event that will determine the effective date. When the effective date is known, then the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, but in no case later than the next renewal.

(3) If the expiration date of the clean unit designation is not known when the department issues the permit, then the permit must describe the event that will determine the expiration date. When the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER and any physical or operational characteristic that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation in accordance with subsection (i).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as presented in subsection (i).

(i) To maintain clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the department has designated the emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.

(2) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER as specified in subsection (h)(4).

(3) The clean unit may not emit above a level that has been offset.

(4) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(5) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(j) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase or used in a netting analysis or be used for generating offsets unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective in the state implementation plan; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emission limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(k) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if a clean unit's designation expires or is lost under section 1(b)(3) of this rule and

subsection (b)(3), it must requalify under the requirements that are currently applicable. *(Air Pollution Control Board; 326 IAC 2-3.2-2)*

SECTION 19. 326 IAC 2-3.3 IS ADDED TO READ AS FOLLOWS:

Rule 3.3. Pollution Control Project Exclusion Procedural Requirements

326 IAC 2-3.3-1 Pollution control project exclusion procedural requirements

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

Sec. 1. (a) This section applies to an owner or operator that plans to construct or install a pollution control project (PCP). A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this rule.

(b) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department, if the project is listed in 326 IAC 2-3-1(gg), or, if the project is not listed in 326 IAC 2-3-1(gg), the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department under 326 IAC 2-7-10.5 consistent with the requirements in subsection (f). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection (c), and the notice or permit application must contain the information required in subsection (d).

(c) Any project that relies on the PCP exclusion must meet the following requirements:

(1) The environmental benefit from the emission reductions of any regulated NSR pollutants must outweigh the environmental detriment of emissions increases in any regulated NSR pollutants. A statement that a technology from 326 IAC 2-3-1(gg) is being used shall be presumed to satisfy this requirement.

(2) The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) In the notice or permit application submitted to the department, the owner or operator must include, at a minimum, the following information:

(1) A description of the project.

(2) The potential emissions increases and decreases of any regulated NSR pollutant and the projected emissions increases and decreases using the methodology in 326 IAC 2-3-2(c) that will result from the project and a copy of the environmentally beneficial analysis required by subsection (c)(1).

(3) A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods must be sufficient to meet the requirements in 326 IAC 2-7.

(4) A certification by the responsible official, as defined in 326 IAC 2-7-1(34), that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application, and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(5) Demonstration that the PCP will not have an adverse air quality impact as required by subsection (c)(2). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

(e) For projects listed in 326 IAC 2-3-1(gg), the owner or operator may begin actual construction of the project immediately after notice is sent to the department unless otherwise prohibited under requirements of the state implementation plan. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

(f) Before an owner or operator may begin actual construction of a PCP that is not listed in 326 IAC 2-3-1(gg), the project must be approved by the department in an approval issued under 326 IAC 2-7-10.5. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a thirty (30) day period for the public and the U.S. EPA to submit comments. The department must address all material comments received by the end of the comment period before taking final action on the permit.

(g) Upon installation of the PCP, the owner or operator must comply with the following requirements:

(1) The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application required by subsection (d), and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(2) The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision (1).

(3) The owner or operator must comply with any provisions in the approval issued under 326 IAC 2-7 related to use and approval of the PCP exclusion.

(4) Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase or be used for generating offsets unless the emissions unit further reduces emissions after qualifying for the PCP exclusion. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emission limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(h) If the PCP would result in a significant net emissions increase in any regulated NSR pollutant for which the area is classified as nonattainment, the significant net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio, except in an area that is classified as either serious or severe nonattainment for ozone. The emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The significant net emission increase from the PCP shall be offset so that the emissions increase will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(i) If the PCP would result in an increase in VOC emissions that is not de minimis in an area that is classified as either serious or severe nonattainment for ozone, the VOC net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio. The VOC emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The VOC net emissions increase from the PCP shall be offset so that the emissions increase will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public. *(Air Pollution Control Board; 326 IAC 2-3.3-1)*

SECTION 20. 326 IAC 2-3.4 IS ADDED TO READ AS FOLLOWS:

Rule 3.4. Actuals Plantwide Applicability Limitations

326 IAC 2-3.4-1 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) The department may approve the use of an actuals plantwide applicability limitation (PAL) for any existing major stationary source, except as provided in subsection (b), if the PAL meets the requirements in this rule. A source that is subject to P.L.231-0003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6.

(b) The department shall not allow an actuals PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level meets the requirements in this rule and complies with the PAL permit:
(1) is not a major modification for the PAL pollutant;
(2) does not have to be approved through 326 IAC 2-3; and
(3) is not subject to 326 IAC 2-3-2(d) concerning restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program.

(d) Except as provided under subsection (c)(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(e) A PAL shall not be issued to a source in an extreme nonattainment area. *(Air Pollution Control Board; 326 IAC 2-3.4-1)*

326 IAC 2-3.4-2 Definitions
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) The definitions in this section apply throughout this rule. A term that is not defined in this section shall have the meaning set forth in 326 IAC 2-3-1 or in the CAA.

(b) "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(c) "Allowable emissions", for the purposes of this rule, means the following:
(1) The emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both, and the most stringent of the:
(A) applicable standards as set forth in 40 CFR Part 60* and 40 CFR Part 61*;
(B) state implementation plan emissions limitation, including those with a future compliance date; or
(C) emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
(2) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
(3) An emissions unit's potential to emit shall be determined using the definition in 326 IAC 2-3-1.

(d) "Major emissions unit" means any emissions unit that emits or has the potential to emit:
(1) one hundred (100) tons per year or more of the PAL pollutant in an attainment area; or
(2) the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas.

(e) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(f) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(g) "PAL major modification" means, notwithstanding the definitions for major modification in 326 IAC 2-3-1(z) and net emissions increase in 326 IAC 2-3-1(dd), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(h) "PAL permit" means the permit issued by the department that contains PAL provisions for a major stationary source.

(i) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(j) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(k) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level, as defined in 326 IAC 2-3-1 or in the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection (d).

(l) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in 326 IAC 2-3-1(qq) or in the CAA, whichever is lower.

***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 2-3.4-2)*

326 IAC 2-3.4-3 Permit application requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 3. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(1) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13(a) of this rule.

(Air Pollution Control Board; 326 IAC 2-3.4-3)

326 IAC 2-3.4-4 General requirements for establishing PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) The department may establish a PAL at a major stationary source provided that, at a minimum, the following requirements are met:

(1) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL, on a twelve (12) month average, rolled monthly. For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in section 5 of this rule.

(3) The PAL permit shall contain all the requirements of section 7 of this rule.

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one (1) pollutant.

(6) Each PAL shall have a PAL effective period of ten (10) years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, record keeping, and reporting requirements provided in sections 12 through 14 of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 326 IAC 2-3-3 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL. *(Air Pollution Control Board; 326 IAC 2-3.4-4)*

326 IAC 2-3.4-5 Public participation requirement for PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 5. PALs for existing major stationary sources shall be established, renewed, increased, terminated, or revoked through a procedure that is consistent with 326 IAC 2-7-17. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment. The department must address all material comments before taking final action on the permit. *(Air Pollution Control Board; 326 IAC 2-3.4-5)*

326 IAC 2-3.4-6 Establishing a ten year actuals PAL level
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 6. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source plus an amount equal to the least of the following levels:

(1) The applicable significant level in 326 IAC 2-3-1(qq) for the PAL pollutant.

(2) The de minimis level in 326 IAC 2-3-1(q) in case of the PAL for VOC emissions for sources located in severe or serious nonattainment areas.

(3) The level specified under CAA.

(b) For establishing the actuals PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing

emissions units. A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(c) Emissions associated with units that were permanently shutdown after this twenty-four (24) month period must be subtracted from the PAL level.

(d) Emissions from units on which actual construction began after the twenty-four (24) month period must be added to the PAL level in an amount equal to the potential to emit of the units.

(e) The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the department is aware of prior to issuance of the PAL permit. *(Air Pollution Control Board; 326 IAC 2-3.4-6)*

326 IAC 2-3.4-7 Contents of the PAL permit
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 7. The PAL permit shall contain, at a minimum, the following information:

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL effective period including the permit effective date and the expiration date of the PAL.

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with section 10 of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of section 9 of this rule.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13(a) of this rule.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with section 12 of this rule.

(8) A requirement to retain the records required under section 13 of this rule on site. The records may be retained in an electronic format.

(9) A requirement to submit the reports required under section 14 of this rule by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(Air Pollution Control Board; 326 IAC 2-3.4-7)

326 IAC 2-3.4-8 PAL effective period and reopening of the PAL permit
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 8. (a) The department shall specify a PAL effective period of ten (10) years.

(b) For reopening of the PAL permit, the following requirements must be met:

(1) During the PAL effective period, the department shall reopen the PAL permit to:

(A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(B) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 326 IAC 2-3-3; or

(C) revise the PAL to reflect an increase in the PAL as provided under section 11 of this rule.

(2) The department has discretion to reopen the PAL permit to reduce the PAL as follows:

(A) To reflect newly applicable federal requirements with compliance dates after the PAL effective date.

(B) Consistent with any other requirement, which is enforceable as a practical matter, and that the state may impose on the major stationary source under the state implementation plan.

(C) If the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Except for the permit reopening in subdivision (1)(A) for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be conducted in accordance with the public participation requirements of section 5 of this rule.

(Air Pollution Control Board; 326 IAC 2-3.4-8)

326 IAC 2-3.4-9 Expiration of a PAL
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 9. (a) Any PAL that is not renewed in accordance with the procedures in section 10 of this rule shall expire at the end of the PAL effective period, and the requirements in this section shall apply.

(b) Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(1) Within the time frame specified for PAL renewals in section 10(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if the distribution is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, the distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(c) Each emissions unit shall comply with the allowable emission

limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(d) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (b)(1), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if the change meets the definition of major modification in 326 IAC 2-3-1.

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under 326 IAC 2-3-2(d) but were eliminated by the PAL in accordance with the provisions in section 1(c)(3) of this rule. *(Air Pollution Control Board; 326 IAC 2-3.4-9)*

326 IAC 2-3.4-10 Renewal of a PAL

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

Sec. 10. (a) The department shall follow the procedures specified in section 5 of this rule in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

(1) The information required in section 3 of this rule.

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in this subsection. However, in no case may any adjustment fail to comply with subdivision (3). The options are as follows:

(1) If the emissions level calculated in accordance with section 6 of this rule is equal to or greater than eighty percent (80%) of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subdivision (2).

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be appropriate considering:

(A) air quality needs;

(B) advances in control technology;

(C) anticipated economic growth in the area;

(D) desire to reward or encourage the source's voluntary emissions reductions; or

(E) other factors as specifically identified by the department.

(3) Notwithstanding subdivisions (1) and (2):

(A) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(B) the department shall not approve a renewed PAL level higher than the current PAL unless the major stationary source has complied with section 11 of this rule.

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or Part 70 permit renewal, whichever occurs first. *(Air Pollution Control Board; 326 IAC 2-3.4-10)*

326 IAC 2-3.4-11 Increasing a PAL during the PAL effective period

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

Sec. 11. (a) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions:

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator obtains a major NSR permit for all emissions units identified in subdivision (1) regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process, even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the

PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of section 5 of this rule. *(Air Pollution Control Board; 326 IAC 2-3.4-11)*

326 IAC 2-3.4-12 Monitoring requirements for PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 12. (a) The following general requirements apply:
(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
(2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subsection (b) and must be approved by the department.
(3) Notwithstanding subdivision (2), an alternative monitoring approach may be employed:
(A) that meets subdivision (1); and
(B) if it is approved by the department.
(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):
(1) Mass balance calculations for activities using coatings or solvents.
(2) CEMS.
(3) CPMS or PEMS.
(4) Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.
(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit if it cannot otherwise be accounted for in the process.
(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B*.
(2) CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.
(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.
(2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable.
(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance unless the department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:
(1) establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points; or
(2) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. The testing must occur at least once every five (5) years after issuance of the PAL.

***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 2-3.4-12)*

326 IAC 2-3.4-13 Record keeping requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 13. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(1) A copy of the PAL permit application and any applications for revisions to the PAL.

(2) Each annual certification of compliance pursuant to 40 CFR Part 70* and the data relied on in certifying the compliance.

***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 2-3.4-13)*

326 IAC 2-3.4-14 Reporting and notification requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 14. (a) The owner or operator shall submit semiannual monitoring reports and deviation reports to the department in accordance with 326 IAC 2-7. The reports shall meet the requirements of this section.

(b) A semiannual report shall be submitted to the department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) Total annual emissions in tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded under section 13(a) of this rule.

(3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period.

(5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero (0) and span calibration checks, and any corrective action taken.

(6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by section 12(g) of this rule.

(7) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 326 IAC 2-7-5(3)(C)(ii) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 326 IAC 2-7-5(3)(C)(ii). The reports shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) The PAL requirement that experienced the deviation or that was exceeded.

(3) Emissions resulting from the deviation or the exceedance.

(4) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(d) The owner or operator shall submit to the department the results of any revalidation test or method within three (3) months after completion of the test or method. *(Air Pollution Control Board; 326 IAC 2-3.4-14)*

326 IAC 2-3.4-15 Termination and revocation of a PAL
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 15. (a) The section applies to any PAL that is terminated or revoked prior to the PAL effective period as specified in section 8 of this rule.

(b) A major stationary source owner or operator may at any time submit a written request to the department to terminate or revoke a PAL prior to the expiration or renewal of the PAL.

(c) Each emissions unit or each group of emissions units that existed under the PAL shall be in compliance with an allowable emission limitation under a revised permit established according to the following procedures:

(1) The major stationary source owner or operator may submit a proposed allowable emission limitation for each emissions unit or each group of emissions units by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate. The determination of distribution of the PAL allowable emissions may be based on the emissions limitations that were eliminated by the PAL in accordance with section 1(c)(3) of this rule.

(d) Each emissions unit shall be in compliance with the allowable

emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(e) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (c)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(f) The department shall follow the procedures specified in section 5 of this rule in terminating or revoking a PAL for a major stationary source and shall provide the proposed distributed allowable emission limitations to the public for review and comment. During such public review, any person may propose a PAL distribution of allowable emissions for the source for consideration by the department. *(Air Pollution Control Board; 326 IAC 2-3.4-15)*

326 IAC 2-3.4-16 Transition requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 16. (a) The department shall not issue a PAL that does not comply with the requirements in this rule after the date this rule is effective in the state implementation plan.

(b) The department may supersede any PAL that was established prior to the date this rule is effective in the state implementation plan with a PAL that complies with the requirements of this rule. *(Air Pollution Control Board; 326 IAC 2-3.4-16)*

SECTION 21. 326 IAC 2-5.1-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-5.1-4 Transition procedures
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. 4. (a) The commissioner shall include an approval to operate and operating conditions in an initial construction permit. The level of approval shall be as follows:

(1) A source ~~may request~~ **shall obtain** approval to operate under a state operating permit under 326 IAC 2-6.1 if ~~either of the following applies:~~

~~(A)~~ the permit does not include terms and conditions that limit the potential to emit of the source to below thresholds that would require a Part 70 permit.

~~(B) The source is subject to the Part 70 requirements under 326 IAC 2-7 and will submit a Part 70 permit application within twelve (12) months of the date the source is approved to operate.~~

(2) A source will obtain approval to operate as a FESOP under 326 IAC 2-8 if the permit includes terms and conditions that limit the potential to emit of the source to below the thresholds that require the source to obtain a Part 70 permit and is issued in accordance with 326 IAC 2-8-13.

(3) A source ~~may~~ **shall** obtain approval to operate as a Part 70 source under 326 IAC 2-7 if:

(A) the source is constructing under 326 IAC 2-2 or 326 IAC 2-3; or

(B) the potential to emit exceeds the Part 70 major source thresholds as defined in 326 IAC 2-7-1(22).

The permit **must include the permit** content **in accordance with 326 IAC 2-7-5** and compliance requirements ~~conform to 326 IAC 2-7-5 and~~ **in accordance with** 326 IAC 2-7-6 and the permit ~~is~~ **must be** issued in accordance with 326 IAC 2-7-17.

(b) If all terms and conditions of 326 IAC 2-1.1-6 were satisfied in the processing of the construction permit, then the emission limitations may be included in the subsequent operating permit without repeating the public notice requirements in 326 IAC 2-1.1-6. *(Air Pollution Control Board; 326 IAC 2-5.1-4; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1011)*

SECTION 22. 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~~ **The** 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)~~ **(3)** 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)~~ **(4)** 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)~~ **(5)** 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 **Part** 63, Subpart B, 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)~~ **(6)** A change for which a source requests an emission limit to avoid 326 IAC 8-1-6.

~~(8)~~ **(7)** 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)~~ **(8)** 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)~~ **(9)** 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:~~ **greater than or equal to the following:**

(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)~~ **326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg),** 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.~~ **must obtain an exclusion under 326 IAC 2-2.3 or 326 IAC 2-3.3 and is not included in the presumptive list in 326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg).**

(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~~ **the** 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.

(10) The designation of a clean unit that is using control technology comparable to BACT or LAER as defined in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2.

(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) **and (f)(10).**

(B) Within two hundred seventy (270) calendar days from receipt

of an application for a modification under subsection (f)(1) **or (f)(10).**

(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~~ **the** 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~~ **the** amendment is requested by the source and if ~~such~~ **the** 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 23. 326 IAC 2-7-11 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-11 Administrative permit amendments

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

Sec. 11. (a) An administrative permit amendment is a Part 70 permit revision that does any of the following:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address, or telephone number of any person identified in the Part 70 permit or provides a similar minor administrative change at the source.

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

(4) Allows for a change in ownership or operational control of a source where the commissioner determines that no other change in a Part 70 permit is necessary, provided that a written agreement containing a specific date for transfer of a Part 70 permit responsibility, coverage, and liability between the current and new permittee has been submitted to the commissioner.

(5) Incorporates into a Part 70 permit the requirements from preconstruction permits issued under section 10.5 of this rule that have satisfied the requirements of sections 17 and 18 of this rule as appropriate.

(6) Incorporates into a Part 70 permit a general permit issued under section 13 of this rule.

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

(8) Incorporates an exempt unit as described in 326 IAC 2-1.1-3, an insignificant activity as defined in 326 IAC 2-7-1(21), or a PAL small emissions unit as defined in 326 IAC 2-2.4-2(m) or 326 IAC 2-3.4-2(l), that does not otherwise constitute a modification for purposes of section 10.5 or 12 of this rule.

(b) Administrative Part 70 permit amendments, for purposes of the acid rain portion of a Part 70 permit, shall be governed by regulations promulgated under Title IV of the CAA.

(c) An administrative Part 70 permit amendment may be made by the commissioner consistent with the following:

(1) The commissioner shall take no more than sixty (60) days from receipt of a request for an administrative Part 70 permit amendment to take final action on ~~such~~ **the** request and may incorporate ~~such~~ **the** changes without providing prior notice to the public or affected states provided that it designates ~~any such~~ **these** Part 70 permit revisions as having been made under this subsection.

(2) The commissioner shall submit a copy of a revised Part 70 permit to the U.S. EPA.

(3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(Air Pollution Control Board; 326 IAC 2-7-11; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1043; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591)

SECTION 24. 326 IAC 2-7-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-12 Permit modification

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

Sec. 12. (a) A Part 70 permit modification is any revision to a Part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under section 11 of this rule. A permit modification, for purposes of the acid rain portion of the permit, shall be governed by regulations promulgated under Title IV of the CAA.

(b) Minor permit modification procedures shall be as follows:

(1) Minor permit modification procedures may be used only for those permit modifications that meet the following requirements:

(A) Do not violate any applicable requirement.

(B) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the Part 70 permit.

(C) Do not require or change a:

(i) case-by-case determination of an emission ~~limit~~ **limitation** or other standard;

(ii) source specific determination for temporary sources of ambient impacts; or

(iii) visibility or increment analysis.

(D) Do not seek to establish or change a Part 70 permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. ~~Such~~ **The** terms and conditions include the following:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the CAA.

(ii) An alternative emissions limit approved under regulations promulgated under Section 112(i)(5) of the CAA.

(E) Are not modifications under any provision of Title I of the CAA.

(F) The addition of a clean unit that was automatically designated as described in 326 IAC 2-2.2-1 or 326 IAC 2-3.2-1.

(G) The addition of a listed PCP as defined in 326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg).

~~(F)~~ **(H)** Are not required by the Part 70 program to be processed as a significant modification.

(2) Notwithstanding subdivision (1) and subsection (c)(1), minor Part 70 permit modification procedures may be used for Part 70 permit modifications involving the use of economic incentives, marketable Part 70 permits, emissions trading, and other similar approaches to the extent that ~~such~~ **the** minor Part 70 permit modification procedures are explicitly provided for in the applicable implementation plan (SIP) or in applicable requirements promulgated or approved by the U.S. EPA.

(3) An application requesting the use of minor Part 70 permit modification procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit reflecting the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of minor Part 70 permit modification procedures and a request that ~~such~~ **the** procedures be used.

(D) Completed forms for the commissioner to use to notify the U.S. EPA and affected states.

(E) A copy of any previous approval issued by the commissioner under this article.

(4) The public notice provisions of section 17 of this rule shall apply to minor modifications.

(5) Within five (5) working days of receipt of a complete Part 70 permit modification application, the commissioner shall notify the U.S. EPA and affected states of the requested Part 70 permit modification. The commissioner promptly shall send any notice required to the U.S. EPA.

(6) The commissioner may not issue a final Part 70 permit modification until after the U.S. EPA's forty-five (45) day review period or until U.S. EPA has notified the commissioner that U.S. EPA will not object to issuance of the Part 70 permit modification, whichever is first, although the commissioner may approve the Part 70 permit modification prior to that time. Within ninety (90) days of the commissioner's receipt of an application under the minor Part 70 permit modification procedures or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later, the commissioner shall do any of the following:

(A) Issue the Part 70 permit modification as proposed.

(B) Deny the Part 70 permit modification application.

(C) Determine that the requested modification does not meet the minor Part 70 permit modification criteria and should be reviewed under the significant modification procedures.

(D) Revise the draft Part 70 permit modification and transmit to the U.S. EPA the new proposed Part 70 permit modification as required by section 18(b) of this rule.

(7) The source may make the change proposed in its minor Part 70 permit modification application immediately after it files ~~such~~ **the** application. After the source makes the change allowed by this subdivision, and until the commissioner takes any of the actions specified in subdivision (6)(A) through (6)(C), the source must comply with both the applicable requirements governing the change and the proposed Part 70 permit terms and conditions. During this time period, the source need not comply with the existing Part 70 permit terms and conditions it seeks to modify. If the source fails to comply with its proposed Part 70 permit terms and conditions during this time period, the existing Part 70 permit terms and conditions it seeks to modify may be enforced against it.

(8) The Part 70 permit shield under section 15 of this rule is not applicable to minor Part 70 permit modifications until after the commissioner has issued the modification.

(c) Consistent with the following, the commissioner may modify the procedure outlined in subsection (b) to process groups of a source's applications for modifications eligible for minor Part 70 permit modification processing:

(1) Group processing of modifications may be used only for those Part 70 permit modifications that meet the following requirements:

(A) The modifications meet the criteria for minor Part 70 permit modification procedures under subsection (b).

(B) The modifications are exempt from preconstruction or permit revision approval under 326 IAC 2-1.1-3.

(2) An application requesting the use of group processing procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit ~~which~~ **that** reflects the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of group processing procedures and a request that ~~such~~ **the** procedures be used.

(D) A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision (1)(B).

(E) Certification, consistent with section 4(f) of this rule, that the source has notified the U.S. EPA of the proposed modification. ~~Such~~ **The** notification need only contain a brief description of the requested modification.

(F) Completed forms for the commissioner to use to notify the U.S. EPA and affected states as required under section 18 of this rule.

(3) The notice provisions of section 17 of this rule shall apply to modifications eligible for group processing.

(4) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under subdivision (1)(B), whichever is earlier, the commissioner promptly shall notify the U.S. EPA, under section 18(a) of this rule, and affected states, under section 17(4) of this rule, of the requested Part 70 permit modifications. The commissioner shall send any notice required under section 18(b) of this rule to the U.S. EPA.

(5) The provisions of subsection (b)(5) shall apply to modifications eligible for group processing, except that the commissioner shall take one (1) of the actions specified in subsection (b)(5) within one hundred eighty (180) days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later.

(6) The provisions of subsection (b)(6) shall apply to modifications eligible for group processing.

(7) The Part 70 permit shield under section 15 of this rule is not applicable to modifications eligible for group processing until after the commissioner has issued the modifications.

(d) Significant modification procedures shall be as follows:

(1) Significant modification procedures shall be used for applications requesting Part 70 permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring Part 70 permit terms or conditions and every relaxation of reporting or record keeping permit terms or conditions shall be considered significant. **The addition, renewal, termination, revocation, and revision of PAL provisions in accordance with 326 IAC 2-2.4 or 326 IAC 2-3.4 shall be considered significant.** Nothing in this subdivision shall be construed to preclude the permittee from making changes consistent with this rule that would render existing Part 70 permit compliance terms and conditions irrelevant.

(2) Significant Part 70 permit modifications shall meet all requirements of this rule, including those for application, public participation, review by affected states, and review by the U.S. EPA, and availability of the permit shield as they apply to Part 70 permit issuance and Part 70 permit renewal. The commissioner shall complete review of the majority of significant Part 70 permit modifications within nine (9) months after receipt of a complete application.

(Air Pollution Control Board; 326 IAC 2-7-12; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; errata filed Jun 10, 1994, 5:00 p.m.: 17 IR 2358; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1044; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591)

SECTION 25. 326 IAC 2-2.5 IS REPEALED.

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on ***February 4, 2004****, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will*

hold a public hearing on new rules and amendments to 326 IAC 2.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules and amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Chris Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

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

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

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

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

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Office of Water Quality
Notice regarding Publishing
Updated List of Impaired Waters under Section 303(d) of the CWA

The Indiana Department of Environmental Management's (IDEM) Office of Water Quality is preparing to update its List of Impaired Waters, as required by Section 303(d) of the Federal Clean Water Act. The updated List of Impaired Waters is proposed to be published in the October 1, 2003, Indiana Register.

For questions concerning changes to the list, please call Timothy Kroecker, 303(d) List Manager, at (317) 308-3205, or toll free at (800) 451-6027.

OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES
NOTICE OF SIGNIFICANT CHANGES IN MEDICAID METHODS AND STANDARDS FOR SETTING PAYMENT RATES FOR SERVICES

In accordance with the public notice requirements of 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration (FSSA), the Office of Medicaid Policy and Planning (the "office") publishes this notice of significant changes in the Medicaid reimbursement methodology for acute care hospitals.

For the state fiscal years beginning after June 30, 2001, eligible hospitals not eligible for disproportionate share payments in a prior state fiscal year under the Indiana Medicaid state plan will receive disproportionate share payments of 33 1/3 % of their individual hospital–specific limit, subject to the availability of state matching funds. After the state fiscal year ending on June 30, 2003, each time the office redetermines the eligibility of disproportionate share hospitals, if the disproportionate share hospital is eligible and did not have a lapse in eligibility for the prior eligibility period, the office will increase the percentage of the hospital's hospital-specific limit for which the hospital may receive disproportionate share payment by 33 1/3 %, not to exceed 100% of the hospital's hospital-specific limit, subject to the availability of state matching funds. Notwithstanding the foregoing, a hospital eligible for disproportionate share payments that is defined as a historical disproportionate share provider will receive 100% of its hospital-specific limit for state fiscal years beginning July 1, 2001 and July 1, 2002, regardless of whether or not it was eligible for disproportionate share payments in the prior eligibility period. Any such payments shall be subject to the availability of state matching funds for the same state fiscal year in which payment for services are made and the ability of the eligible hospitals to make an intergovernmental transfer of funds or have one made on its behalf.

The purpose of this change is to clarify existing language that is already in the State plan. The proposed amendments are not expected to increase or decrease payments to disproportionate share hospitals, with payments made to these facilities on an annual basis. The payment adjustment is subject to the approval of the Centers for Medicare and Medicaid Services, with a proposed effective date of the date of publication of this notice.

There will be no public hearing.

Copies of the proposed state plan amendment are available and may be inspected by contacting the Director of the local County Division of Family and Children office, except in Marion County, where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana.

Written comments concerning these amendments may be addressed to Pat Nolting, Office of Medicaid Policy and Planning, Room W382, MS-07, Indianapolis, Indiana 46204-2739. Written comments received will be available for public inspection. Detailed analysis of the estimated financial impact is available upon request to the Office of Medicaid Policy and Planning.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services

OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES
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In accordance with the public notice requirements of 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration (FSSA) the Office of Medicaid Policy and Planning (the "office") publishes this notice of significant changes in the Medicaid reimbursement methodology for acute care hospitals.

For the state fiscal years beginning after June 30, 2001, an eligible safety-net hospital not eligible in the prior state fiscal year and not defined as a historical disproportionate share provider under the Indiana Medicaid state plan will receive payments of 33 1/3 % of its inpatient safety-net amount, subject to the availability of state matching funds. Each time the office redetermines the

eligibility of safety-net hospitals, if a hospital is eligible and did not have a lapse in eligibility for the prior eligibility period, the office will increase the percentage of the hospital's inpatient safety-net amount for which the hospital may receive by 33 1/3 %, not to exceed 100% of the hospital's inpatient safety-net amount, subject to the availability of state matching funds. However, a hospital eligible for inpatient safety-net payments that is defined as a historical disproportionate share provider will receive 100% of its inpatient safety-net amount, regardless of whether or not it had a lapse in eligibility for the prior eligibility period. A hospital's inpatient safety-net amount equals the difference between (1) the amount of Medicaid payments paid to the hospital (excluding disproportionate share payments provided pursuant to IC 12-15-16, 12-15-17, 12-15-19) for Medicaid inpatient services provided by the hospital during the hospital's fiscal year, and (2) the lesser of the hospital's customary charges for inpatient services and an amount equal to a reasonable estimate by the office of the amount that would be paid for the inpatient services under Medicare payment principles. Any such payments shall be subject to the availability of state matching funds for the same state fiscal year in which payment for services are made and the ability of an eligible hospital to make an intergovernmental transfer of funds or have one made on its behalf.

The purpose of this change is to limit safety net payments for new DSH eligible hospitals. The proposed amendments are not expected to increase or decrease payments to safety-net hospitals, with payment made to these facilities on an annual basis. The payment adjustment is subject to the approval of the Centers for Medicare and Medicaid Services, with a proposed effective date of the publication date of this notice.

There will be no public hearing.

Copies of the proposed state plan amendment are available and may be inspected by contacting the Director of the local County Division of Family and Children office, except in Marion County, where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana.

Written comments concerning these amendments may be addressed to Pat Nolting, Office of Medicaid Policy and Planning, Room W382, MS-07, Indianapolis, Indiana 46204-2739. Written comments received will be available for public inspection. Detailed analysis of the estimated financial impact is available upon request to the Office of Medicaid Policy and Planning.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services

OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES
NOTICE OF SIGNIFICANT CHANGES IN MEDICAID METHODS AND STANDARDS FOR SETTING PAYMENT RATES FOR SERVICES

In accordance with the public notice requirements of 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration (FSSA), the Office of Medicaid Policy and Planning (the "office") publishes this notice of significant changes in the Medicaid reimbursement methodology for acute care hospitals.

For the state fiscal years beginning after June 30, 2001, an eligible safety-net hospital not eligible in the prior state fiscal year and not defined as a historical disproportionate share provider under the Indiana Medicaid state plan will receive payments of 33 1/3 % of its outpatient safety-net amount, subject to the availability of state matching funds. Each time the office redetermines the eligibility of safety-net hospitals, if a hospital is eligible and did not have a lapse in eligibility for the prior eligibility period, the office will increase the percentage of the hospital's outpatient safety-net amount for which the hospital may receive payment by 33 1/3 %, not to exceed 100% of the hospital's outpatient safety-net amount, subject to the availability of state matching funds. However, a hospital eligible for outpatient safety-net payments that is defined as a historical disproportionate share provider will receive 100% of its outpatient safety-net amount, regardless of whether or not it had a lapse in eligibility for the prior eligibility period. A hospital's outpatient safety-net amount equals the difference between (1) the amount of Medicaid payments paid to the hospital (excluding disproportionate share payments provided pursuant to IC 12-15-16, 12-15-17, 12-15-19) for Medicaid outpatient services provided by the hospital during the hospital's fiscal year, and (2) the lesser of the hospital's customary charges for outpatient services and an amount equal to a reasonable estimate by the office of the amount that would be paid for the outpatient services under Medicare payment principles. Any such payments shall be subject to the availability of state matching funds for the same state fiscal year in which payment for services are made and the ability of an eligible hospital to make an intergovernmental transfer of funds or have one made on its behalf.

The purpose of this change is to limit safety net payments for new DSH eligible hospitals. The proposed amendments are not expected to increase or decrease payments to safety-net hospitals, with payments made to these facilities on an annual basis. The payment adjustment is subject to the approval of the Centers for Medicare and Medicaid Services, with a proposed effective date of the date of publication of this notice.

There will be no public hearing.

Copies of the proposed state plan amendment are available and may be inspected by contacting the Director of the local County Division of Family and Children office, except in Marion County, where public inspection may be made at 402 West Washington Street, Room W382, Indianapolis, Indiana.

Written comments concerning these amendments may be addressed to Pat Nolting, Office of Medicaid Policy and Planning, Room W382, MS-07, Indianapolis, Indiana 46204-2739. Written comments received will be available for public inspection. Detailed analysis of the estimated financial impact is available upon request to the Office of Medicaid Policy and Planning.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services

OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES
OFFICE OF MEDICAID POLICY AND PLANNING
PUBLIC NOTICE REGARDING CHANGES IN STATEWIDE METHODS AND STANDARDS FOR SETTING PAYMENT RATES FOR INTESTINAL AND MULTIVISCERAL TRANSPLANTS

In accordance with the public notice requirements established at 42 CFR 447.205 and Section 1902(a)(13)(A) of the Social Security Act, the Indiana Family and Social Services Administration (FSSA) the Office of Medicaid Policy and Planning (the "office"), publishes this notice of changes to the methods and standards governing Medicaid reimbursement methodology, for intestinal and multivisceral transplants provided by hospitals.

The reimbursement methodology for all covered intestinal and multivisceral transplants shall be ninety percent (90%) of reasonable cost until such time a DRG can be assigned to adequately reimburse these transplants costs.

This payment methodology is expected to result in an increase in Medicaid program expenditures (both state and federal dollars) of approximately $628.2 thousand per state fiscal year. The change in reimbursement methodology will be effective September 1, 2003.

Copies of the proposed state plan amendment and this public notice will be on file beginning September 1, 2003, and open for public inspection by contacting the Director of the local office of the Division of Family and Children, except in Marion County. The inspection material will be maintained for viewing in Marion County at the Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, and will be available from 8:30 am to 4:30 pm, Monday through Friday. Written comments from any source regarding these changes should be sent to the Office of Medicaid Policy and Planning, 402 West Washington Street, Room W382, Indianapolis, IN 46204 to the attention of Pat Nolting. Written comments received will also be available for public review.

John Hamilton
Office of the Secretary of Family and Social Services

INDIANA MEDICAID DRUG UTILIZATION REVIEW BOARD
OFFICE OF MEDICAID POLICY AND PLANNING
INDIANA MEDICAID'S DUR ANNUAL REPORT TO THE CENTERS FOR MEDICARE AND MEDICAID SERVICES–FEDERAL FISCAL YEAR 2002

Section 1927(g)(3)(D) of the Social Security Act requires each State to submit an annual report on the operation of its Medicaid Drug Utilization Review (DUR) program. This report is to include: a description of the nature and scope of the prospective and retrospective DUR programs; a summary of the interventions used in retrospective DUR and an assessment of the education program; a description of the DUR Board activities; and an assessment of the DUR program's impact on quality of care as well as any cost savings achieved by the program. This notice is to advise that copies of the State's DUR annual report for federal fiscal year 2002 are available upon request by writing to:

Office of Medicaid Policy and Planning
Room W382
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204
ATTN.: Ms. Karen Clifton

The report may also be accessed on the Web at http://www.indianamedicaid.com/ihcp/PharmacyServices/hcfa_dur_reports.asp. There will be no formal hearing for this purpose, and the Board has no agency rulemaking authority.

INDIANA STATE BOARD OF ANIMAL HEALTH

Under IC 4-22-7-7, the Indiana State Board of Animal Health is publishing this notice of the following publications used to interpret, supplement, or implement agency statutes and rules governing dairy products (IC 15-2.1-24).

Number	Title	Date Originally Published	Date Revised	Other Policies Affected	Subject Matter
DNPD-01	Board of Animal Health Policy on Drug Residue Monitoring Enforcement, 2-01-96	03/01/97 21 IR 1670	Repealed 5/18/98		
DNPD-02	Methods of Making Sanitation Ratings of Milk Supplies, 1995	03/01/97 21 IR 1669			Sanitation inspections of dairy facilities.
DNPD-03	Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers, 1996	03/01/97 21 IR 1669			Interstate milk shipments sanitation ratings.
DNPD-04	Procedures governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers, 1993	03/01/97 21 IR 1669			Joint state/U.S. Food and Drug Administration milk shipper certification procedures.
DNPD-05	Milk and Dairy Beef Residue Prevention Protocol, 1995	03/01/97 21 IR 1669			Drug residue prevention compilation.
DNPD-06	3-A Accepted Practices for the Design, Fabrication and Installation of Milk Handling Equipment	03/01/97 21 IR 1669	Repealed		
DNPD-07	FDA Guide to Inspections of Dairy Product Manufacturers, 1995	03/01/97 21 IR 1669			Milk manufacturing facility inspection guidelines.
DNPD-08	Standards for the Fabrication of Single Service containers and closures for Milk and Milk Products, 1993	03/01/97 21 IR 1670			Milk container standards.
DNPD-09	Standard Methods for the Examination of Milk Products	03/01/97 21 IR 1670			Milk evaluation procedures.
DNPD-10	Evaluation of Milk Laboratories, 1995	03/01/97 21 IR 1670			Milk laboratory evaluation procedures.
DNPD-11	2400 Series Milk Laboratory Evaluation Procedures, 1995	03/01/97 21 IR 1670	06/01/98		Milk laboratory evaluation procedures.
DNPD-12	On-site Water Supply and Wastewater Disposal for Public and Commercial Establishments (ISDH Bulletin S.E. 13)	03/01/97 21 IR 1670			Water supply and disposal system design standards.
DNPD-13	FDA Investigation Operations Manual (1996)	03/01/97 21 IR 1670			A guide for investigation procedures.
DNPD-14	FDA Compliance Policy Guides (1996)	03/01/97 21 IR 1670			Guidelines for interstate milk policy.
DNPD-15	USDA DA Instruction 918-PS; Instructions for dairy plant surveys (1997)	03/01/97 21 IR 1670			Guidelines for dairy plant survey inspections.
DNPD-16	Manufacturing Grade Dairy Plant Extended Run Qualification Guidance Document (2000)		Adopted 2000		Guidelines for compliance with 345 IAC 8-2-2.5

The following 3-A standards and 3-A accepted practices establish criteria for the sanitary construction and operation of dairy processing equipment that the Board of Animal Health may use in interpreting or establishing dairy processing requirements. The standards are published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc., and the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services. The Board utilizes the latest edition of each publication.

Number	Title	Date Originally Published	Date Revised	Other Policies Affected	
DNPD-17	3-A Sanitary Standards for Storage Tanks for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-18	3-A Sanitary Standards for Centrifugal and Positive Rotary Pumps for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-19	3-A Sanitary Standards for Homogenizers and Pumps of the Plunger Type	03/01/97 21 IR 1670			
DNPD-20	3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Products Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service	03/01/97 21 IR 1670			
DNPD-21	3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products, as amended, Parts I and II (rev.)(Fittings and Plug Type Valves)	03/01/97 21 IR 1670			
DNPD-22	3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products, as amended, Parts I and II (rev.) (Automatic Positive Displacement Sampler.	03/01/97 21 IR 1670			
DNPD-23	3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products, as amended, Parts I and II (rev.)(Inlet and Outlet Leak-Protector Type Valves)	03/01/97 21 IR 1670			
DNPD-24	3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products, as amended, Parts I and II (rev.)(Tank Outlet Valves)	03/01/97 21 IR 1670			
DNPD-25	3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk products, as amended, Parts I and II (rev.) (Rupture Discs)	03/01/97 21 IR 1670			

DNPD-26	3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products (Thermoplastic Plug Type Valves)	03/01/97 21 IR 1670			
DNPD-27	3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products (rev.)(Steam Injection Heaters)	03/01/97 21 IR 1670			
DNPD-28	3-A Sanitary Standards for Hose Assemblies for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-29	Rescinding Amendments to 3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines conducting Milk and Milk Products, Part I and Part II (rev.)	03/01/97 21 IR 1670			
DNPD-30	Amendments to 3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products (Fittings & Plug Type Valves)	03/01/97 21 IR 1670			
DNPD-31	Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products (Compression Type Valves)	03/01/97 21 IR 1670			
DNPD-32	3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines conducting Milk and Milk Products (Diaphragm Type Valves)	03/01/97 21 IR 1670			
DNPD-33	3-A Sanitary Standards for Fittings used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products (Boot-Seal Type Valves)	03/01/97 21 IR 1670			
DNPD-34	Part One of the 3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-35	Rev. Amendments to 3-A Sanitary Standards for Fittings Used on Milk and Milk Products Equipment and Used on Sanitary Lines Conducting Milk and Milk Products, #08-20Rev.	03/01/97 21 IR 1670			
DNPD-36	3-A Sanitary Standards for Instrument Fittings and Connections Used on Milk and Milk Products Equipment, Parts I and II	03/01/97 21 IR 1670			

DNPD-37	Part One of the 3-A Sanitary Standards for Sensors and Sensor Fitting and Connections Used on Milk and Milk Products Equipment	03/01/97 21 IR 1670			
DNPD-38	3-A Sanitary Standards for Milk and Milk Products Filters Using Disposable Filter Media	03/01/97 21 IR 1670			
DNPD-39	3-A Sanitary Standards for Plate Type Heat Exchangers for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-40	3-A Sanitary Standards for Tubular Heat Exchangers for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-41	3-A Sanitary Standard for Farm Milk Cooling and Holding Tanks	03/01/97 21 IR 1670			
DNPD-42	3-A Sanitary Standards for Milk and Milk Products Evaporators and Vacuum Pans	03/01/97 21 IR 1670			
DNPD-43	3-A Sanitary Standards for Fillers and Sealers of Single-Service Containers for Milk and Fluid Milk Products	03/01/97 21 IR 1670			
DNPD-44	3-A Sanitary Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment	03/01/97 21 IR 1670			
DNPD-45	3-A Sanitary Standards for Batch and Continuous Freezers for Ice Cream, Ices and Similarly Frozen Dairy Foods	03/01/97 21 IR 1670			
DNPD-46	3-A Sanitary Standards for Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment	03/01/97 21 IR 1670			
DNPD-47	3-A Sanitary Standards for Silo-Type Storage Tanks for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-48	3-A Sanitary Standards for Equipment for Packaging Frozen Desserts, Cottage Cheese, and Similar Dairy Products	03/01/97 21 IR 1670			
DNPD-49	3-A Sanitary Standards for Non-Coil Type Batch Pasteurizers for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-50	3-A Sanitary Standards for Non-Coil Type Batch Processors for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-51	3-A Sanitary Standards for Sifters for Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-52	3-A Sanitary Standards for Equipment for Packaging Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-53	3-a Sanitary Standards for Flow Meters for Milk and Liquid Milk Products	03/01/97 21 IR 1670			

DNPD-54	3-A Sanitary Standards for Air Eliminators for Milk and Fluid Milk Products	03/01/97 21 IR 1670			
DNPD-55	3-A Sanitary Standards for Farm Milk Storage Tanks	03/01/97 21 IR 1670			
DNPD-56	3-A Sanitary Standards for Scraped Surface Heat Exchangers	03/01/97 21 IR 1670			
DNPD-57	3-A Sanitary Standards for Uninsulated Tanks for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-58	3-A Sanitary Standards for Polished Metal Tubing for Dairy Products	03/01/97 21 IR 1670			
DNPD-59	3-A Sanitary Standards for Portable Bins for Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-60	3-A Sanitary Standards for Continuous Blenders	03/01/97 21 IR 1670			
DNPD-61	3-A Sanitary Standards for Colloid Mills	03/01/97 21 IR 1670			
DNPD-62	3-A Sanitary Standards for Pressure and Level Sensing Devices	03/01/97 21 IR 1670			
DNPD-63	3-A Sanitary Standards for Cottage Cheese Vats	03/01/97 21 IR 1670			
DNPD-64	3-A Sanitary Standards for Pneumatic Conveyors for Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-65	3-A Sanitary Standards for Bag Collectors for Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-66	3-A Sanitary Standards for Mechanical Conveyors for Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-67	3-A Sanitary Standards for In-Line Strainers for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-68	3-A Sanitary Standards for Wet Collectors for Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-69	3-A Sanitary Standards for Air Driven Diaphragm Pumps for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-70	3-A Sanitary Standards for Crossflow Membrane Modules	03/01/97 21 IR 1670			
DNPD-71	3-A Sanitary Standards for Refractometers and Energy Absorbing Optical Sensors for Milk and Milk Products	03/01/97 21 IR 1670			
DNPD-72	3-A Sanitary Standards for Air Driven Sonic Horns For Dry Milk Products	03/01/97 21 IR 1670			
DNPD-73	3-a Sanitary Standards for Level Sensing Devices for Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-74	3-A Accepted Practices for the Sanitary Construction, Installation, Testing and Operation of High-Temperature Short-Time and Higher Heat Shorter Time Pasteurizer Systems	03/01/97 21 IR 1670			

DNPD-75	3-A Accepted Practices for Supplying Air Under Pressure in Contact With Milk, Milk Products and Product Contact Surfaces	03/01/97 21 IR 1670			
DNPD-76	3-A Accepted Practices for Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants	03/01/97 21 IR 1670			
DNPD-77	3-A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment	03/01/97 21 IR 1670			
DNPD-78	3-A Accepted Practices for Milk and Milk Products Spray Drying Systems	03/01/97 21 IR 1670			
DNPD-79	3-A Accepted Practices for Instantizing Systems for Dry Milk and Dry Milk Products	03/01/97 21 IR 1670			
DNPD-80	3-A Accepted Practices for a Method of Producing Steam of Culinary Quality	03/01/97 21 IR 1670			
DNPD-81	3-A Accepted Practices for the Sanitary Construction, Installation and Cleaning of Crossflow Membrane Processing Systems for Milk and Milk Products	03/01/97 21 IR 1670			

INDIANA STATE BOARD OF ANIMAL HEALTH

Under IC 4-22-7-7, the Indiana State Board of Animal Health publishes this notice of the following publications used to interpret, supplement, or implement agency statutes and rules governing meat and poultry products (IC 15-2.1-24).

ID Number	Title	Date Originally Published	Date Revised	Other Policies Repealed or Amended
MNPD-01	Meat and Poultry Inspection Manual, July 1, 1997	09/01/97 21 IR 3524	No longer used	
MNPD-02	Labeling Policy Book	09/01/97 21 IR 3524		
MNPD-03	Meat and Poultry Sanitation Handbook	09/01/97 21 IR 3524	No longer used	
MNPD-04	FSIS Directive 7220.1, Standards and Labeling Policy Memoranda	09/01/97 21 IR 3524		
MNPD-05	SBOAH Meat and Poultry Division, MPI Bulletins; USDA - FSIS Directives	09/01/97 21 IR 3524		
MNPD-06	Indiana Red Meat Slaughtering and/or Processing Plants, Indiana Red Meat Processing Plants, and Indiana Poultry Slaughtering and/or Processing Plants - A Guide to Construction, Operations, and Sanitation	09/01/97 21 IR 3524		
MNPD-07	Ratitae Slaughter Inspection Training Guide	09/01/97 21 IR 3524		

MNPD-08	Performance Based Inspection System - Reference Guide	09/01/97 21 IR 3524		
MNPD-09	9 CFR 352 Exotic Animals; Voluntary Inspection	09/01/97 21 IR 3524		
MNPD-10	USDA - FSIS List of Proprietary Substances and Nonfood Compounds (Publication No. 1419)	09/01/97 21 IR 3524	No longer used.	

INDIANA DEPARTMENT OF INSURANCE
July 29, 2003
Bulletin 118
Filing of Proof of Financial Responsibility with and
Payment of Surcharge to the Indiana Patient's Compensation Fund

This bulletin is addressed to all insurers, risk managers and surplus lines agents that collect and remit surcharge payments under Indiana's Medical Malpractice Act (Act) to the Patient's Compensation Fund (PCF). The Commissioner of the Indiana Department of Insurance is charged with administering the provisions of the Act. It has come to the Commissioner's attention that there is some confusion concerning penalties applicable to delinquent surcharge payments. This Bulletin is intended to clarify existing standards that are already in effect.

Pursuant to IC 34-18-5-3, the insurer, risk manager or surplus lines agent (hereinafter collectively referred to as "insurer") shall collect the surcharge due to the PCF. The surcharge is due to the PCF within thirty (30) days after the premium for the insurance coverage has been received by the insurer. In reviewing this issue the Department will presume that premium was received by the insurer no later than the effective date of the policy. If the surcharge is remitted to the PCF more than thirty (30) days after receipt by the insurer, the insurer is liable for a penalty equal to ten percent (10%) of the amount of surcharge.

A health care provider's status as a qualified health care provider may begin on the first date of coverage under the insurance policy if the PCF receives proof of financial responsibility and the surcharge not later than ninety (90) days after the effective date of the policy. If these items are received by the PCF more than ninety (90) days but not later than one hundred eighty (180) days after the policy effective date, the health care provider's qualification may begin on the effective date of the policy only if the insurer demonstrates to the satisfaction of the Commissioner that the surcharge was timely paid to the insurer and the insurer erred in not forwarding the surcharge to the PCF within ninety (90) days of the policy's effective date. *See* IC 34-18-3-5. In such instances the insurer must submit a request in writing to the Commissioner for an affirmative exercise of this discretion. Such request should be accompanied by documentation indicating the date the insurer received the surcharge payment from the health care provider.

If the Commissioner is satisfied that the conditions have been met for qualification to begin on the effective date of the policy, a progressive penalty for late payment is assessed. For a surcharge that is remitted ninety-one (91) to one hundred twenty (120) days after the policy's effective date a penalty in the amount of ten percent (10%) of the surcharge is owed to the PCF; a twenty percent (20%) penalty is due to the PCF if the surcharge is remitted after one hundred twenty (120) days but before one hundred fifty (150) days; and a penalty of fifty percent (50%) is due to the PCF for surcharge remitted from one hundred fifty (150) days to one hundred eighty (180) days after the policy effective date. If surcharge is received later than one hundred eighty (180) days after the policy effective date, the health care provider begins his/her status as qualified under the Act on the date the surcharge is received by the PCF.

The penalties discussed above are independent of one another. There may be instances where an insurer owes one or both of these penalties. Neither penalty may be used to offset, abate or mitigate the other penalty. The penalties are assessed against the insurer and may not be passed on to the health care provider.

The following are two illustrations:

(1) An insurer receives the surcharge from a health care provider and does not remit the surcharge to the PCF for forty-five (45) days. The insurer shall remit to the PCF the surcharge as well as a penalty of ten percent (10%) of the surcharge amount. The health care provider is qualified under the Act beginning the first day of the insurance policy.

(2) An insurer receives surcharge from a health care provider and does not remit the premium for one hundred (100) days. The insurer has jeopardized the health care provider's ability to coordinate its status as a qualified health care provider with its primary insurance coverage. If the insurer can show that the health care provider paid surcharge to the insurer in a timely fashion and that it was the insurer that failed to remit the surcharge to the PCF, the Commissioner has the discretion to find the surcharge to be timely and may begin the health care provider's status as a qualified health care provider on the effective date of the insurance policy rather than the date the surcharge was received. However, the insurer must remit the surcharge

as well as a penalty in the amount of ten percent (10%) of the surcharge amount under IC 34-18-3-5(c). In addition, the insurer owes an additional penalty of ten percent (10%) of the surcharge amount under IC 34-18-5-3(b) for failing to forward the surcharge to the PCF within thirty (30) days of receipt.

The Commissioner is hereby directing all insurers that collect and remit surcharge payments to the PCF to review coverage for health care providers with effective dates of July 1, 2002, through the present. If any insurer failed to pay the appropriate penalties for untimely payment of surcharge the insurer shall file by October 1, 2003, a report detailing the instances where a penalty should have been remitted and was not. The report shall include the provider's name, the amount of the provider's surcharge, the policy number and the penalty amount and shall be accompanied by payment of the amounts in arrears. Any insurer that complies with this reporting and payment requirement by October 1, 2003, will not be subject to enforcement action by the Department of Insurance. An insurer that does not make payment by October 1, 2003, and is found to have failed to remit the penalties required by IC 34-18-3-5(b) or IC 34-18-5-3(c) may be subject to enforcement action.

INDIANA DEPARTMENT OF INSURANCE
Sally McCarty, Commissioner

INDIANA DEPARTMENT OF INSURANCE
July 29, 2003
Bulletin 119
Indiana Patient's Compensation Fund – Filings

This bulletin is directed to all insurers that provide coverage to health care providers under Indiana's Medical Malpractice Act. Bulletin 30 and Bulletin 68 are hereby withdrawn and replaced by this Bulletin 119.

Pursuant to IC 34-18-3-2 a health care provider may qualify under the Indiana Medical Malpractice Act by filing with the Department of Insurance proof of financial responsibility and payment of a surcharge to the Indiana Patient's Compensation Fund. Attached to this Bulletin as Exhibit A is the certificate that shall be used when filing proof of financial responsibility with the Patient's Compensation Fund.

IC 34-18-9 contains reporting requirements that currently are not being completed by insurers. These reports are necessary for the successful protection, defense and operation of the Patient's Compensation Fund.

IC 34-18-9-2 requires the health care provider's insurer to provide written notice, within thirty (30) days, of the filing of an action under IC 34-18-8-6 (action seeking payment for damages not greater than $15,000) and the final disposition of the action.

IC 34-18-9-3(a) states that the health care provider's insurer shall notify the Insurance Commissioner of any malpractice case upon which the insurer has placed a reserve of at least fifty thousand dollars ($50,000) for occurrences of malpractice before July 1, 1999, or one hundred twenty-five thousand dollars ($125,000) for occurrences of malpractice on or after July 1, 1999. Attached to this Bulletin as Exhibit B is the form to be used for reporting this information to the Patient's Compensation Fund.

IC 34-18-9-3(b) requires the health care provider's insurer or risk manager to report to the department all claims settled or adjudicated to final judgment against the health care provider. The report shall be made within sixty (60) days after the final disposition and shall include the following:

(1) The nature of the claim;
(2) The damages asserted and the alleged injury;
(3) The attorney's fees and expenses incurred in connection with the claim or defense; and
(4) The amount of the settlement or judgment.

Attached to this Bulletin as Exhibit C is the form to be used for reporting this information to the Patient's Compensation Fund.

INDIANA DEPARTMENT OF INSURANCE
Sally McCarty, Commissioner

EXHIBIT A
CERTIFICATE OF INSURANCE

TO: INDIANA PATIENT'S COMPENSATION FUND			Surcharge	Effective Date
MEDICAL MALPRACTICE DIVISION	Cancellation:	□	$_____	_____
311 W. WASHINGTON ST. STE.300	Return/Additional Surcharge	□	$_____	_____
INDIANAPOLIS, IN 46204-2787	Credit	□	_____%	_____

Policy No.:	Occurrence Claims Made Reporting Endors.	□ □ □	 Retro Date _____ Retro Date _____
Health Care Provider: Medical License No.:	Including employees □		Excluding employees □
Address (Street, City, State, Zip):	County:		
Coverage Dates: From: _____ To: _____	Classification Number:		
Limits of Liability $_____ per occurrence	$_____annual aggregate	Premium Amount: Surcharge Amount: Penalty Amount:	

The undersigned Insurance Company hereby certifies limits of liability on behalf of the above referenced Health Care Provider two hundred fifty thousand ($250,000) dollars for each occurrence and with an annual aggregate of seven hundred fifty thousand ($750,000) dollars as required, unless otherwise mandated by statute, for claims against said Health Care Provider as a result of Medical Malpractice, or allegation thereof, within the State of Indiana, and further that said policy of insurance complies in all respects with the provisions of the Indiana Medical Malpractice Act, Indiana Code 34-18-1-1 *et seq*.

It is further certified that the surcharge for the above referenced coverage for the period specified in this policy is at the appropriate Class rate for the named specialty, is based upon the published calculation for a hospital, or is one hundred percent (100%) of the premium for non-physician or non-hospital providers. Said Company also agrees to collect and remit the rated surcharge or a minimum surcharge of one hundred ($100.00) dollars, whichever is larger, for each year of the period of coverage to the Department of Insurance, Patient's Compensation Fund, State of Indiana, within **thirty (30) days and not more than ninety (90) days from the effective date of said policy.**

It is further acknowledged that in the event of termination of the policy herein certified, or any reduction of liability limit, such termination or change shall not be effective unless notice of same has been delivered to the Department of Insurance, State of Indiana, not less than thirty (30) days prior to such change. Notice shall be considered to have been given upon placing same in the United States Mail by First Class Certified Mail, a copy of which shall have been mailed to the health care provider.

Dated this ____ day of _____, 20___ at the insurance office of _____

Signed by: _____
Authorized Signature
Printed: _____
Title: _____

EXHIBIT B
Indiana Patients' Compensation Fund
RESERVE NOTIFICATION
IC 34-18-9-3(a)
(Notice of cases with reserves of $50,000 or more through July 1, 1999, and cases with reserves of $125,000 July 1, 1999, forward)

Policy #	Date of Loss	Insured	Plaintiff's Name	Reserve

EXHIBIT C
Indiana Patients' Compensation Fund
SETTLEMENT NOTIFICATION
IC 34-18-9-3(b)

Policy #	Date of Loss	Insured	Plaintiff's Name	Damages Asserted and Alleged Injury	Settlement	Nature of Claim	Attorney Fees & Expenses

INDIANA DEPARTMENT OF INSURANCE
August 8, 2003
Bulletin 120
PATIENT'S COMPENSATION FUND – SURCHARGE RATES FOR HOSPITALS AND PHYSICIANS

This bulletin is directed to all health care providers electing to be qualified under Indiana's Medical Malpractice Act (IC 34-18-1-1 et seq.) and to insurers that provide coverage to those health care providers. Bulletin 91 and Bulletin 101 are withdrawn and replaced by this Bulletin 120.

Pursuant to IC 34-18-5-2, the Commissioner of the Department of Insurance in her capacity as administrator of the Patient's Compensation Fund hereby notifies physicians and hospitals of the following surcharge for qualification under the Medical Malpractice Act. The rates are the result of a detailed actuarial review and are effective for coverage beginning **August 15, 2003**. While these increases are significant, the surcharge rates have not been increased since July 1, 1999, and the Commissioner feels it is necessary to implement these new rates on August 15, 2003. Directions for implementing the surcharge on the effective date will appear on the Department's website (www.in.gov/idoi) beginning August 11, 2003.

PHYSICIANS

The percentage increase to the physician rates is the same for each specialty class. A complete list of physician specialty class codes is published at 760 IAC 1-60.

CLASS	ANNUAL RATE
0	$2,334
1	3,112
2	4,357
3	5,602
4	7,002
5	9,336
6	14,004
7	21,784
8	26,452

HOSPITALS

The surcharge for a hospital is calculated using the attached worksheet. The completed worksheet shall be submitted to the Department along with the surcharge payment.

INDIANA DEPARTMENT OF INSURANCE
Sally McCarty, Commissioner

HOSPITAL EXPOSURE WORKSHEET FOR SURCHARGE CALCULATION

Name of Hospital:
License No:

List all facilities and/or services operated under the hospital license (as identified on the Department of Health Application for License to Operate a Hospital):

CATEGORY	EXPOSURE	MANUAL	TOTAL
Provide # of Beds			Category x Manual = Total
	Hospital (Acute care and Intensive Care)	523.00	
	Mental Health/Rehabilitation	262.00	
	Extended Care/Intermediate Care/Residential	26.00	
	Nursing Home/Critical Extended Care	262.00	
	Health Institution/Assisted Living/Other	105.00	
	Bassinets	523.00	
# of Visits (in 100s)			
	Emergency Room	52.30	
	Clinics/Others	26.15	
	Mental Health/Rehabilitation	13.08	
	Health Institution	10.46	
	Home Health Care	26.15	
Provide # of Surgeries/Births (in 100s)			
	Births	2,092.00	
	Outpatient Surgeries	52.30	
	Inpatient Surgeries	1,046.00	
Employed Physicians Sharing Limits	50% of Specialty Class Code		
		SUB-TOTAL	
	Lack of Risk Management Program	10% Penalty x sub-total	
	Hospital with > 500 beds	3% multiplier of subtotal	
		TOTAL DUE	

DEPARTMENT OF STATE REVENUE

49-98000001.LOF

LETTER OF FINDINGS NUMBER: 98-000001
Indiana Solid Waste Disposal Fee
For the Period 1994-1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Solid Waste Disposal Fee – Estoppel

Authority: 45 IAC 15-3-2; West Pub. Co. v. Indiana Department of Revenue, 524 N.E.2d 1329 (Ind.Tax 1988); Video Tape Exchange v. Ind. Dept. of State Revenue, 533 N.E.2d 1302 (Ind.Tax 1989); Walgreen Co. v. Gross Income Tax Division, 75 N.E.2d 784 (Ind. 1947).

Taxpayer protests the Department's assessment of the solid waste disposal fee.

II. Tax Administration – Penalty and Interest

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2; IC 6-8.1-10-1

The taxpayer protests the assessment of a negligence penalty and interest.

STATEMENT OF FACTS

The taxpayer was the operator of a solid waste landfill (when necessary, hereinafter referred to as City of X Sanitary Landfill).

The landfill was owned by an Indiana city (hereinafter referred to as "City X").

I. Solid Waste Disposal Fee – Estoppel

DISCUSSION

The taxpayer states that it operated the landfill at the "specific request of and as a favor to the then Mayor of [City X] … from November 1994 until December 1995." The taxpayer further states the following:

- Taxpayer was requested by the Mayor to operate the landfill "due to emergency circumstances resulting from the indictment of the prior operator on various criminal charges related to the operation" of the landfill (thus leaving the landfill without an operator);
- That given the "immediate need of covering up the waste" and "other immediate actions," the taxpayer was "immediately behind in the various tasks necessary to properly operate" the landfill;

The taxpayer has two arguments regarding the solid waste disposal fee: (A) that the taxpayer relied on the alleged oral statements of a Department of Revenue employee (hereinafter John Doe) and therefore, per the taxpayer, the "Department should be estopped from recovering the assessments"; and (B) that the taxpayer "operated the landfill at the complete discretion of and direction of the Mayor, the assessments, if the same are found to stand, and any penalties, if not waived, and interest should be properly collected from the [City of X]…."

With regard to (A) above, the taxpayer states that it was erroneously instructed on how to fill out the SW-100 by John Doe. The taxpayer describes the timeline of events as follows. In January 1995 a letter (dated January 20, 1995, from John Doe, Special Tax Division of the Department of Revenue, and addressed to the City of X Sanitary Landfill) was received by the taxpayer. The letter stated that all solid waste final disposal facilities in Indiana had to file a SW-100 form by the tenth of each month. The letter noted that no SW-100 for November 1994 had been received by the Department. At this point, in order to explicate the taxpayer's argument, the following extensive quotations will be necessary:

> This was a new and unique issue for [the Taxpayer] since [Taxpayer] had just organized to operate the [City of X Sanitary Landfill]. In order to comply with the request in the letter from [John Doe], [Taxpayer's office manager] called [John Doe], on February 10, 1995, to explain that [Taxpayer] was just setting up a method of operation, that the Form SW-100 would be submitted soon and to obtain instruction on the completion of the Form SW-100 in anticipation of becoming fully compliant.

And:

> In a direct conversation with [Doe] on February 10, 1995, [Taxpayer's office manager] learned how to complete the Form SW-100 after [Doe] went through the Form SW-100, line-by-line ….

And further:

> …because of what seemed like odd wording in Line 1 of the Form SW-100, [Taxpayer's office manager] asked [Doe] whether Line 1 required an entry by tons or by units. [Doe] specifically advised [Taxpayer's office manager] that Line 1 of the Form SW-100 did not need to be completed and that only Line 2 needed completion since every vehicle coming in and out of the Landfill was weighed on a qualified scale by [Taxpayer], regardless of weight.

Finally, the taxpayer states that it—

> began reporting exactly as it was instructed by [Doe] and continued to report each month in good faith in the same manner until [the Mayor of City X] abruptly forced [Taxpayer] out of the [City of X Sanitary Landfill] when [Taxpayer] refused to accept a partner in the Landfill."

To buttress its case that the Department should be estopped, the taxpayer provides an affidavit by the office manager, and also telephone records that purport to establish that the office manager spoke with John Doe.

Before unpacking the elements of estoppel, it is worth noting that the alleged conversations between the office manager and John Doe were *oral*. That fact is salient because the Department's regulations state in part:

> *Oral* opinions or advice will *not* be binding upon the department. However, taxpayers may inquire as to whether or not the department will make a ruling or determination based on the facts presented by the taxpayer. If the taxpayer wishes a ruling by the department, the formal request must be in writing. A taxpayer may also *orally* receive technical assistance from the department in preparation of returns. However this advice is advisory only and is *not* binding in the latter examination of returns. (*Emphasis added*)

45 IAC 15-3-2(e). The Department's position is that since the alleged advice was oral (via telephone), the Department is not bound under 45 IAC 15-3-2(e). The taxpayer did not avail itself of the proper procedures for a binding opinion. That said, even if the Department accepted the taxpayer's facts *arguendo*, the taxpayer does not meet the elements of estoppel. In West Pub. Co. v. Indiana Dept. of Revenue, 524 N.E.2d 1329 (Ind.Tax 1988), the court cited the following necessary elements for estoppel:

(1) A representation or concealment of material facts;
(2) made with knowledge of the facts;
(3) and made to a party ignorant of the facts;
(4) which was made with the intention that the other party would act on it;
(5) which induces the other party to act.

Id. at 1334 (quoting State ex rel. Crooke v. Lugar, 354 N.E.2d 755 (Ind.App.1976)). 45 IAC 15-3-2(e) touches upon many of the elements of estoppel. For instance, it goes to element number (1) above. A representation was not made given the fact that the Department has made it publicly known (through the regulation) that oral statements by Departmental employees are not binding and should not be seen as binding. The taxpayer either knew of 45 IAC 15-3-2(e), or if it was not aware of it, then it was negligent (ignorance of Indiana's tax laws and regulations is negligence on the taxpayer's part). The regulation also goes to elements (4) and (5), since the office manager knew (or should have known) that "oral opinions or advice will not be binding on the department" yet claims that the oral opinion is what induced the taxpayer to not fill out line 1 of the SW-100. It is not, however, reasonable to believe that the taxpayer relied on John Doe's alleged oral statements. The Department, via 45 IAC 15-3-2, has in essence given advance notice to taxpayers that oral statements are not to be construed as representations nor should oral statements induce taxpayers to act. The purported oral statements by John Doe cannot change the fact that 45 IAC 15-3-2(e) clearly states that oral advice is not binding.

It also is unclear, even on a reading of the facts favorable to the taxpayer, whether the taxpayer was induced to act as required by element (5). In West the court noted that,

> [T]here is no evidence that West in any way changed its position in reliance on Hunt's [a state employee] letter. This is not a case where West paid the tax and then, upon reviewing Hunt's letter, ceased paying. On the contrary, West paid no tax before receiving the letter, and, until the Department initiated the present proceedings, West paid no tax after receiving the letter. There is nothing which indicates that, but for the letter, West would have paid the tax. In short, West has totally failed to demonstrate reliance.

West at 1334. In the present case the taxpayer was not filling out the SW-100 prior to the letter from John Doe. After the purported telephone conversations with John Doe (beginning on February 10, 1995) the taxpayer was still not filling out line 1 on SW-100. That is to say, before the February 10, 1995, telephone call line 1 of the SW-100 was not filled out; after the telephone calls line 1of the SW-100 was not filled out. Thus, like in West, there is nothing to show "but for" the telephone calls initiated by the taxpayer's office manager that the taxpayer would have filled out line 1 of the SW-100.

It is clear that the taxpayer cannot prevail on its estoppel argument. First, the taxpayer bears the burden to establish all of the facts necessary to constitute estoppel (*See* Video Tape Exchange v. Ind. Dept. of State Revenue, 533 N.E.2d 1302, 1305 (Ind.Tax 1989)). The taxpayer has not shown clear evidence as to the five elements of estoppel (for example: we earlier assumed, for arguments sake, that the conversations between the office manager and John Doe were about line 1 of the SW-100, and we assumed, again for the sake of argument, that the office manager gave true and accurate information of all the material facts, and that nonetheless John Doe gave erroneous information to the office manager. But none of these facts was shown by the taxpayer—our earlier discussion was merely *arguendo*). Additionally, "estoppels against the state are disfavored" as the court in West noted. Id. at 1333. Finally, as the Indiana Supreme Court held long ago—

> The taxing authorities of the state during the period mentioned, could not by failing to do their duty, or by any act or failure to act, waive the right and the duty of the state to assess and collect the taxes ….

Walgreen Co. v. Gross Income Tax Division, 75 N.E.2d 784, 787 (Ind. 1947).

Turning to (B), the taxpayer makes a couple of different arguments to the effect that the City of X should pay any deficiencies. First the taxpayer argues that the Mayor of City X mandated to it that "all citizens of X … entering the landfill for the purpose of depositing their household items/refuse were to do so at 'No Charge.'" Thus "[n]o money in the form of charges or taxes were solicited or collected from these people pursuant to the instruction of [the Mayor of City X]." Regardless of whether the mayor did or did not mandate to the taxpayer the "no charge" rule, the fact of the matter is that it does not absolve the taxpayer from its duties and responsibilities. The Mayor of City X cannot relieve the taxpayer of its obligations under Indiana tax law. The second argument is that the Department of Revenue "may require the owner or operator of a Landfill to file a surety bond. The Department of Revenue did not require a bond of [Taxpayer] but may have required a bond from the City of [X] as the owner of the [City of X Sanitary Landfill]." The statute dealing with surety bonds read in pertinent part as follows for the years 1994 and 1995:

> The department of state revenue *may* require a registrant... to file a surety bond ….

IC 13-9.5-5-3.2 (*Emphasis added*. IC 13-20-22-5, which replaced IC 13-9.5-5-3.2, also states that "The department of state revenue may require a registrant... to file a surety bond ….").

It does not take much parsing of the statute to realize that the word "may" simply means "optional or discretional" (*See* Black's Law Dictionary, Abridged 6th Edition). Any surety bond was not mandatory—it was the Department's choice. (Also, a surety bond does not go to the substantive issue of whether a liability is owed or not, it simply is an additional mechanism the Department can choose to avail itself of to insure payment. As the statute further notes, the state is the "obligee").

FINDING

Taxpayer's protest is denied.

II. Tax Administration – Penalty and Interest

The taxpayer protests the imposition of the ten percent (10%) negligence penalty. The Indiana Code section 6-8.1-10-2.1 imposes a penalty if the tax deficiency was due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2(b) states that negligence is "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable

taxpayer."

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. To establish this the "taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...." 45 IAC 15-11-2(c).

The taxpayer paints a picture that is at cross-purposes with "ordinary business care and prudence" when it states that it was "immediately behind in the various tasks necessary to properly operate" the landfill, and when it characterizes the business as a rather impromptu "favor to the then Mayor of [X]." The taxpayer argues that this was an industry in a "nascent" state, but solid waste disposal, unlike videocassette rental in the early 1980's, can hardly be characterized as a new industry. The letter from John Doe was dated January 20, 1995, and references a law that was four years old ("Effective January 1, 1991, the State Solid Waste Management Law requires that all Solid Waste Final Disposal Facilities in Indiana file a form SW-100, Solid Waste Disposal Fee Return, by the tenth of every month"). Given these facts—taxpayer's characterization of the operation of the business, the fact that this was not a nascent industry, that the law had been on the books for four years—the taxpayer has not met its burden to show that the penalty should be waived.

(The taxpayer also makes a similar estoppel argument with regards to the penalty—*viz.*, an oral telephone conversation between the taxpayer's office manager and John Doe during which Mr. Doe allegedly waived any penalties. That argument fails for the same reason that the above estoppel argument failed—see Roman numeral **I**).

The taxpayer also protests the imposition of interest. Pursuant to IC 6-8.1-10-1(e) the Department may not "waive the interest imposed under this section."

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-990148.LOF

LETTER OF FINDINGS NUMBER: 99-0148
Sales and Use Tax
Calendar Years 1995, 1996, and 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Selling at Retail – Best Information Available

Authority: 45 IAC 2.2-6-8, IC 6-8.1-5-1

Taxpayer protests the tax.

II. Tax Administration - Penalty

Authority: IC 6-8.1-10-1

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The Taxpayer is a sole proprietorship operating a combined tavern and package liquor store. The tavern has a kitchen and serves meals, has pool tables and games, and also has a stage used for strip dancing.

At audit it was determined that the Taxpayer's sales reported for sales tax purposes did not reconcile to sales as reported on its Federal Schedule C for 1995. Adjustments for door cover charges, lottery sales, and items that included sales tax were made.

At audit the Taxpayer informed the auditor that it would protest this issue and file amended federal income tax returns. No federal return has been filed to the Department's knowledge. This alone would not resolve the discrepancy as the 1995 cost of goods sold remains near the amount of sales reported which would leave little margin on the cost of goods sold. It is noted that the margin on cost of goods sold was much larger in 1996 and 1997 on lower sales volume.

Audit also determined that the taxpayer made numerous payments by check to credit card companies for which there was no evidence to disclose the nature of the purchases. Auditor states that the Taxpayer states these were cash draws to operate the business but was unable to provide requested support. Taxpayer provided statements from the credit card company but the detail showed no tax paid. Taxpayer did not retain the original charge slips that would have shown all charges.

After discussion with the Taxpayer on April 24, 2003, he was informed the Letter of Findings would be written based upon his protest letter dated March 9, 1999, and the discussion on April 24, 2003.

I. Selling at Retail – Best Information Available

DISCUSSION

Taxpayer simply maintains that the assessment is too high and has provided no documentation to rebut the assessment.

In reviewing the audit report and the file, it is noted that the assessment, with which the Taxpayer disagrees, stems from the difference in its federal reported income versus the ST-103's filed with the Department.

IC 6-8.1-5-4(a) states:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer provided nothing to aid in the resolution of the audit.

FINDING

Taxpayer's protest is denied.

II. Tax Administration - Penalty

DISCUSSION

Taxpayer states that it had difficulty with previous records/bookkeeping and this is a first time audit.

Taxpayer's assessment in 1995 amounted to 24.23% of its total sales that were not reported for sales tax purposes. In addition, taxpayer had no use tax accrual system in place as required.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied for Issues I and II.

DEPARTMENT OF STATE REVENUE

02990516.LOF

LETTER OF FINDINGS NUMBER: 99-0516
Gross Income Tax
Tax Year 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax – Agency

Authority: IC 6-2.1-2-2; 45 IAC 1-1-54; Policy Management Systems Corp. v Indiana Department of State Revenue, 720 N.E.2d 20 (Ind. Tax Ct. 1999); Universal Group Ltd. v. Indiana Dep't of State Revenue, 609 N.E.2d 48 (Ind. Tax 1993); Western Adjustment and Inspection Co. v. Gross Income Tax Division, 142 N.E.2d 630 (Ind. 1957); Monarch Steel Co. v. State Bd. Of Tax Comm'r, 699 N.E.2d 809, 811 (Ind. Tax Ct. 1998); Trinity Episcopal Church v. State Bd. Of Tax Comm'r, 694 N.E.2d 816, 818 (Ind. Tax. Ct. 1998); Department of Treasury v. Ice Service, Inc., 41 N.E.2d 201,203 (1942); Johnson v. Blankenship, 679 N.E.2d 505, 507 (Ind. Ct. App. 1997).

Taxpayer protests the imposition of state gross income tax on amounts allegedly received in an agency capacity.

II. Gross Income Tax – Health Maintenance Organizations and "Gross Premiums"

Authority: 45 IAC 1-1-68

Taxpayer protests the imposition of state gross income tax on amounts characterized as "gross premiums."

III. Tax Administration: Negligence Penalty

Authority: IC 6-8-10-2.1; 45 IAC 15-11-2

Taxpayer protests the assessment of a negligence penalty.

STATEMENT OF FACTS

M HMO provides a variety of prepaid healthcare plans. Covered services may be paid directly by plan enrollees, paid indirectly by private insurance companies or, paid by Medicaid. In providing coverage of Medicaid paid services, M HMO contracted with the State of Indiana "to administer a risk-based managed care program for certain Medicaid recipients." M HMO, though, did not directly provide medical services to its program enrollees. Rather, M HMO contracted with a number of hospitals and other healthcare providers to provide for these covered services. Taxpayer was one such provider.

With regard to the Medicaid managed care program, M HMO and Taxpayer (a "participating provider") reached an agreement

("the AGREEMENT") to "facilitate the provision of cost effective, covered health care services" to M HMO enrollees. (The AGREEMENT characterized the legal relationship between M HMO and Taxpayer as one for the provision of "personal services.") Specifically, M HMO, as the administrator of prepaid healthcare plans, contracted with Taxpayer and its Participating Providers to provide "Covered Services" to M HMO program enrollees. In exchange for Taxpayer's provision (or arrangement) of "Covered Services," M HMO agreed to pay Taxpayer certain fees in accordance with a predetermined fee schedule.

With regard to the adopted "reimbursement" scheme, [TAXPAYER] received from [M HMO] a **monthly** fixed amount for each program ENROLLEE. This fixed amount was a function of the designated AFDC AID CATEGORY. From these payments, seven dollars ($7.00) per ENROLLEE per month was allocated to TAXPAYER for administrative services.

Taxpayer provided [M HMO] with a **quarterly** reconciliation statement. The reconciliation statement was used to compare (1) the amount of payments made by TAXPAYER to providers of covered medical services under the AGREEMENT with (2) the reimbursement amounts paid to TAXPAYER by [M HMO]. "If [TAXPAYER] payments for [covered services] exceed[ed]…payments [made] to [TAXPAYER], then [M HMO] shall fund to [TAXPAYER] the amount of the difference."

The AGREEMENT also required an **annual** reconciliation. The annual reconciliation served, functionally, to apportion certain types of accumulated surplus or deficit.

> Medical Pool Costs shall be compared to the Medical Pool Budget. If Medical Pool Costs are less than the Medical Pool Budget, [M HMO] and [TAXPAYER] shall share equally in the loss up to the point at which [TAXPAYER'S] share of the loss is equal to seven dollars ($7.00) per ENROLLEE per month allocated to [TAXPAYER] for administrative services. Thereafter, [M HMO] shall bear 100% of any loss.

The AGREEMENT also contained a STOP LOSS PROVISION. "[M HMO] and [TAXPAYER] shall share the cost of certain high cost cases."

Audit and Taxpayer disagree as to the characterization—for Indiana gross income tax purposes—of the "reimbursements" Taxpayer received from M HMO. Audit characterized the reimbursements as gross receipts derived from "the provision of services." These receipts, according to Audit, should have been included in Taxpayer's high-rated taxable gross receipts (see IC 6-2.1-1-2, IC 6-2.1-2-3, and IC 6-2.1-2-5(9).) Taxpayer, on the other hand, insists the reimbursements could not have represented taxable gross income because taxpayer lacked a beneficial interest in them. Taxpayer explains:

> It is [Taxpayer's] position that because it was merely acting on behalf of, and at the direction of M HMO with respect to those Medicaid funds and because it had no right, title, or interest in those Medicaid funds, it had no gross income tax liability on those funds.

The disagreement as to the proper characterization of the "reimbursements" resulted in assessments of Indiana gross income tax. Taxpayer protested the additional assessments. An administrative hearing was held. The results of which now follow.

I. Gross Income Tax – Agency

DISCUSSION

Indiana imposes a gross income tax upon the entire gross receipts of taxpayers who are residents of, or domiciled, in Indiana. IC 6-2.1-2-2(a)(1). For those taxpayers who are not residents of, or domiciled in, Indiana, the tax is imposed only on the gross receipts derived from business activities conducted within the state. IC 6-2.1-2-2(a)(2). However, pursuant to regulation and case law, gross receipts received in an agency capacity are not included in taxpayer's taxable gross income. Regulation 45 IAC 1-1-54 states that "[t]axpayers are not subject to gross income tax on income they receive in an agency capacity." 45 IAC 1-1-54(a).

Indiana case law reinforces the regulatory regime. "Reimbursements to an agent for amounts advanced or paid to third parties substantively represent 'pass throughs' of income and therefore are not taxable to the agent." Policy Management Systems Corp. v Indiana Department of State Revenue, 720 N.E.2d 20, 23 (Ind. Tax Ct. 1999) quoting Universal Group Ltd. v. Indiana Dep't of State Revenue, 609 N.E.2d 48, 54 (Ind.Tax 1993) (UGL I).

Before taxpayer may exclude income from its taxable gross receipts, taxpayer must show that its reimbursements were not subject to the state's gross income tax. That is, taxpayer bears the burden of proof. *See* Western Adjustment and Inspection Co. v. Gross Income Tax Division, 142 N.E.2d 630, 635 (Ind. 1957). This allocation of the burden of proof is consistent with that of other tax exemptions. Indiana courts consistently have held that tax exemptions are to be strictly construed against the taxpayer and in favor of taxation. Monarch Steel Co. v. State Bd. Of Tax Comm'r, 699 N.E.2d 809, 811 (Ind. Tax Ct. 1998). Trinity Episcopal Church v. State Bd. Of Tax Comm'r, 694 N.E.2d 816, 818 (Ind. Tax. Ct. 1998).

The Indiana Supreme Court has adopted the definition of agency which is found in Section 1 of the *Restatement of Agency*. The *Restatement* defines "agency" as "the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." Universal Group Ltd. v. Indiana Dep't of State Revenue, 642 N.E.2d 553, 556 (Ind.Tax 1994) (UGL III) citing Department of Treasury v. Ice Service, Inc., 41 N.E.2d 201,203 (1942). "Thus, a party claiming the existence of an agency relationship must prove three elements: (1) a manifestation of consent by the principal to the agent, (2) an acceptance of the authority by the agent, and (3) control exerted by the principal over the agent." Policy Management Systems, 720 N.E.2d 20, 23-24, citing Johnson v. Blankenship, 679 N.E.2d 505, 507 (Ind. Ct. App. 1997).

Taxpayer's arguments are silent with regard to the legal requirements characteristic of agency relationships—i.e., (1) consent, (2) authority, and (3) control. Rather than offering a legal narrative, taxpayer has based its plea on equitable notions. Taxpayer reasons:

> This case…should not be about what might have happened, but what actually did happen. … All of the amounts from M HMO…were actually passed through by [Taxpayer] to pay medical and health care claims for Medicaid recipients as was required under [Taxpayer's] agreement with M HMO. … After the medical and health care claims were paid, there were no excess amounts left over for [Taxpayer] and M HMO to share or even to pay [Taxpayer] an administrative fee.

The economic effects of the contract, however, do not, even in hindsight, determine the relationship of the parties to the contract. Rather, it is the language of the contract coupled with the parties' actual performance under the contract that determine the parties' legal relationship. Nothing in the contract, or the way in which the parties performed the contract, suggests an agency relationship existed.

Taxpayer's own statement belies its contention that an agency relationship existed.

> [U]nder no scenario could [Taxpayer] ever keep more than 50% of the surplus. The fact that the auditor would impose tax against [Taxpayer] on 100% of the funds when the absolute most [Taxpayer] could ever keep was 50% of the surplus that remained after all claims were paid illustrates the unreasonableness of the auditor's position.

Taxpayer is mistaken. The auditor's position simply reflects the nature of Indiana's gross income tax. The subject of the tax imposed by IC 6-2.1 et seq. is the "entire taxable gross income" derived from Indiana sources and not, as taxpayer would prefer, one's "Indiana adjusted gross income." That taxpayer was unable to reap the benefit of its bargain does not justify re-characterization of the amounts received pursuant to the contract. Income received for the provision of medical services cannot be re-characterized as reimbursements for expenditures made in an agency capacity.

FINDING

Taxpayer's protest is denied.

II. Gross Income Tax – Health Maintenance Organizations

DISCUSSION

Taxpayer believes that even if the M HMO "reimbursements" were not received in an agency capacity, taxpayer, as an HMO, still would not have incurred additional Indiana gross income tax liabilities. Taxpayer explains:

> Assuming, but certainly not conceding, that the auditor is correct and the amounts received by [Taxpayer] from M HMO are "receipts" to [Taxpayer], then [Taxpayer], as an HMO, which is treated as a health insurance company for gross income tax purposes, does not have any taxable gross income from its contract with M HMO.

As an HMO licensed under IC 27-23, taxpayer argues that it is entitled to exclude from its taxable gross income a portion of its gross fee premium income. Taxpayer opines:

> [I]n DRG 85-1, the Department concluded that HMOs should be treated in the same manner as traditional health insurance carriers and under the authority of Regulation 45 IAC 1-1-68 found that HMOs shall be permitted, in computing their gross income tax liabilities, to exclude from their gross fees…a corresponding amount computed by multiplying the gross fee premium income by the ratio of medical and hospital care payments made by the HMO, to premiums earned by the HMO on an annual basis.
>
> Therefore, if as the auditor contends, the amounts from M HMO were "fees" to [Taxpayer] for prepaid health and medical care provided to the enrollees of the Medicaid program, [Taxpayer] should be permitted to used the gross earnings ratio method set forth in DRG 85-1 in arriving at its gross income tax liability for the Tax Year.

The language of DRG 85-1 (issued January 1985) has no effect with regard to transactions occurring during the 1997 tax period. According to *Tax Policy Directive #9* (issued July 1995), "…all rulings issued by the Department prior to January 1, 1990 [were] declared null and void and of no effect for tax years beginning after December 31, 1995."

Additionally, DRG 85-1 could not apply because the income at issue does not represent "gross fee premium income." The income received by taxpayer pursuant to its contract with M HMO represents fees for health care services performed for M HMO ENROLLEES. DRG 85-1, on the other hand, addresses the characterization (for gross income tax purposes) of premium fee income received by HMOs from its OWN ENROLLEES.

FINDING

Taxpayer's protest is denied.

III. Tax Administration - Penalty

DISCUSSION

The Department may impose, in appropriate situations, a ten percent (10%) negligence penalty. See IC 6-8-10-2.1 and 45 IAC 15-11-2. The Department, though, may waive this penalty if taxpayer can establish that its failure to pay the full amount of tax due "was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). A taxpayer may demonstrate reasonable cause by showing "that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed…." *Id.* In this instance, taxpayer has made such a showing.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220010041.LOF

LETTER OF FINDINGS: 01-0041
Indiana Corporate Income Tax
For the Tax Years 1993 through 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Estimated Rent Expenses – Adjusted Gross Income Property Factor.

Authority: IC 6-8.1-5-1(b); 45 IAC 3.1-1-43.

Taxpayer argues that the audit erroneously included an estimated amount for rent expenses attributable to its Indiana manufacturing site.

II. Property and Inventory Factors – Adjusted Gross Income.

Authority. IC 6-3-2-2(c); IC 6-8.1-5-1(b).

Taxpayer disagrees with the audit's calculation of the amount of inventory maintained at an Indiana distribution site which was closed in 1994 and sold in 1995. Taxpayer similarly disagrees with the value the audit attached to the distribution site property.

III. Installation and Delivery Receipts – Gross Income Tax.

Authority: IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); IC 6-2.1-2-3; IC 6-2.1-2-5(9); 45 IAC 1.1-1-2; 45 IAC 1.1-6-10.

Taxpayer argues that the audit erred in assessing high rate gross income tax on receipts obtained for the delivery and installation of carpet and floor coverings because the taxpayer received the money while acting in an agency capacity.

IV. Deduction for Interest on Federal Obligations.

Authority: IC 6-3-2-2; Allied-Signal, Inc. v. Director, Div. Of Taxation, 504 U.S. 768 (1992); Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159 (1983); ASARCO, Inc. v. Idaho State Tax Comm'n., 458 U.S. 307 (1982); Hunt Corp. v. Indiana Dept. of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999); 45 IAC 3.1-1-8; 45 IAC 3.1-1-8(1); 45 IAC 3.1-1-153; 45 IAC 3.1-1-153(b).

Taxpayer challenges the audit's decision to disallow a deduction for interest attributable to federal obligations.

V. Losses Attributable to Non-Unitary Partnerships.

Authority: IC 6-3-2-2; Hunt Corp. v. Indiana Dept. of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999).

Taxpayer maintains that the audit erred in excluding, as non-business income, certain business losses attributable to partnerships.

VI. Business / Non-Business Income – Adjusted Gross Income Tax.

Authority: IC 6-3-1-20; IC 6-3-1-21; May Department Store Co. v. Indiana Dept. of State Revenue, 749 N.E.2d 651 (Ind. Tax Ct. 2001); 45 IAC 3.1-1-29; 45 IAC 3.1-1-30.

Taxpayer argues that money received from the sale of a business division, money received from a settlement agreement with its insurance providers, and money received in the form of royalty payments, is "non-business" income.

VII. Calculation of Taxpayer's Foreign Source Income – Exclusion of Related Expenses.

Authority: IC 6-3-1-3.5(b); IC 6-3-2-12; IC 6-3-2-12(b); IC 6-3-2-12(c) to (e).

Taxpayer challenges the audit's calculation of the expenses related to taxpayer's acquisition of foreign source income; taxpayer maintains that the audit overstated the amount of those expenses.

VIII. Apportionment Sales Factor – Adjusted Gross Income.

Authority: Sherwin-Williams Co. v. Indiana Dept. of State Revenue, 673 N.E.2d 849 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-50(5); 45 IAC 3.1-1-55(e);

Taxpayer maintains that, for purposes of the calculating the sales denominator, the receipts generated by intangible personal property should be included.

IX. Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer argues that it is entitled to request the Department to abate the ten-percent negligence penalty because it acted with

reasonable care in determining its tax liability; taxpayer states that it cooperated fully with the audit and that the grounds for its subsequent protest were supported by a reasonable interpretation of the law.

STATEMENT OF FACTS

Taxpayer is in the business of manufacturing, distributing, and selling various paints and paint coatings. It sells these products to professional, industrial, commercial, and retail customers. Taxpayer operates a manufacturing facility in Indiana. An audit was conducted during which taxpayer's business records and tax returns were reviewed. The audit determined taxpayer owed additional corporate income tax. Taxpayer disagreed with certain of the audit's conclusions and submitted a protest to that effect. An administrative hearing was held during which taxpayer explained the basis for its protest, and this Letter of Findings follows.

DISCUSSION

I. Estimated Rent Expenses – Adjusted Gross Income Property Factor.

Pursuant to 45 IAC 3.1-1-43, the numerator in the property factor includes the average value of taxpayer's Indiana property used to produce business income. Accordingly, the audit estimated the capitalized rent expense associated with taxpayer's Indiana manufacturing plant in determining the taxpayer's numerator used in turn to calculate taxpayer's adjusted gross income tax.

Taxpayer argued that the audit's estimate of rent expense was excessive and requests that the "doubling up of an incorrect rent expense amount be excluded from the property factor information for all years." To that end, taxpayer has provided one page of a lease agreement purporting to establish that the amount of actual rent expense was substantially less than the amount estimated by the audit.

Under IC 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has provided a single page of a multi-page lease agreement. The document does not identify the leased property nor set out the terms of the lease. Taxpayer fails to meet its burden of demonstrating that the proposed assessment is incorrect.

FINDING

Taxpayer's protest is respectfully denied.

II. Property and Inventory Factors – Adjusted Gross Income.

The audit adjusted the property numerator to reflect the value of a distribution center and the inventory contained at that center. Taxpayer's distribution center was closed in 1994 and was later sold. Taxpayer maintains that the "amount by which the factors were increased appears to be too high, due to the fact that the entire amount was added to the average balance calculated on the return."

IC 6-3-2-2(c) states in part that, "The average of property shall be determined by averaging the values at the beginning and ending of the taxable year but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property." The audit determined the value of the property based upon the ten months during which taxpayer owned the distribution center. The audit determined the value of the inventory based upon the five months during which inventory was maintained at the distribution center. Taxpayer has suggested no alternative method for determining the value of the distribution center and its inventory but merely suggests that the amounts "appear to be too high."

Under IC 6-8.1-5-1(b), taxpayer has failed to demonstrate whatsoever that the audit erred in its assessment of the distribution center's property value and has failed to propose an alternate, justifiable valuation.

FINDING

Taxpayer's protest is respectfully denied.

III. Installation and Delivery Receipts – Gross Income Tax.

Taxpayer operates retail stores. Customers can purchase carpeting and other floor covering materials from these retail stores. When they do so, the customers can also make arrangements for the delivery and installation of the floor coverings directly with the retail stores. The customers pay the retail stores for the delivery and installation charges. Thereafter, the retail stores arrange with independent contractors to undertake the actual delivery and installation work. The retail stores then pay the independent contractors for the completed work.

The audit determined that the money received from the retail customers was subject to the state's gross income tax at the high rate. Taxpayer disagrees arguing that the delivery and installation receipts were merely "pass through" income.

Indiana imposes a gross income tax upon the entire gross receipts of a taxpayer who is a resident or domiciliary or Indiana. IC 6-2.1-2-2(a)(1). For the taxpayer who is not a resident or domiciliary of Indiana, the tax is imposed on the gross receipts which are derived from business activities conducted within the state. IC 6-2.1-2-2(a)(2). However, 45 IAC 1.1-6-10 exempts that portion of a taxpayer's income which the taxpayer receives when acting in an agency capacity. 45 IAC 1.1-1-2 defines an "agent" as follows:

(a) "Agent" means a person or entity authorized by another to transact business on its behalf.

(b) A taxpayer will qualify as an agent if it meets both of the following requirements:

(1) The taxpayer must be under the control of another. An agency relationship is not established unless the taxpayer is under the control of another in transacting business on its behalf. The relationship must be intended by both parties and may be established by contract or implied from the conduct of the parties. The representation of one (1) party that it is

the agent of another party without the manifestation of consent and control by the alleged principal is insufficient to establish an agency relationship.

(2) The taxpayer must not have any right, title, or interest in the money or property received from the transaction. The income must pass through, actually or substantively, to the principal or a third party, with the taxpayer being merely a conduit through which the funds pass between a third party and the principal.

Taxpayer maintains that the audit's decision to count as gross receipts the money received for delivery and installation charges was made "arbitrarily" and that "the original return accurately calculated the gross income based on Indiana law." However, taxpayer has provided nothing which would warrant a conclusion that this money was accepted by the retail stores while acting in an agency capacity on behalf of the various independent contractors. There is nothing to indicate that taxpayer's retail stores were "under the control of" the independent contractors or that the parties ever intended to enter into an agency relationship; there is nothing to establish that the retail stores did 'not have [a] right title, or interest in the money or property received from the transaction. Id. The taxpayer's bare assertion to the contrary "is insufficient to establish an agency relationship." Id.

The retail stores received money for the delivery and installation of carpeting and floor coverings. The audit correctly determined that income obtained from the provision of these services was subject to the gross income tax at the high rate pursuant to IC 6-2.1-2-3 and IC 6-2.1-2-5(9).

FINDING

Taxpayer's protest is respectfully denied.

IV. Deduction for Interest on Federal Obligations.

The audit made an adjustment to reduce to zero amounts taxpayer deducted as government interest. Taxpayer disagrees arguing that, pursuant to U.S. Const. art. VI, § 2, the interest from the federal obligations is immune from Indiana taxes and that the deduction should be reinstated.

With respect to corporate taxpayers, 45 IAC 3.1-1-8 states that "Adjusted Gross Income" is taxable income as defined in I.R.C. § 63 but specifies certain adjustments including the requirement to "Subtract income exempt from tax under the Constitution and Statutes of the United States." 45 IAC 3.1-1-8(1).

The audit determined that certain of this interest income could not be deducted because the interest was received by "non-unitary partnerships." In part, these partnerships represent investments in low-income housing, in an "environmental" partnership, and in an executive benefit trust.

The Indiana Tax Court has stated that a corporate partner's income is determined by apportionment at the corporate partner's level when the corporate partner and the partnership have a unitary relationship. Hunt Corp. v. Indiana Dept. of State Revenue, 709 N.E.2d 766, 778 (Ind. Tax Ct. 1999). The court made its decision based on the application of IC 6-3-2-2 and appeared to find that 45 IAC 3.1-1-153 was a reasonable application of the apportionment statute. Id. at 777. In applying IC 6-3-2-2 to corporate partnerships, the court stated:

> If the income from the partnerships constitutes business income (i.e. if the affiliated group and the partnerships are engaged in a unitary business) under section 6-3-2-2, all of that income would be subject to apportionment based on an application of the affiliated group's property, payroll, and sales factors. If the income from the partnerships constitutes non-business income for the affiliated group *(i.e. if the affiliated group and the partnerships are not engaged in a unitary business), that income would be allocated to a particular jurisdiction.* Id at 776. (*Emphasis added*).

The court plainly states that all of a corporate partner's income from a partnership with a unitary relationship to that partner is business income and further states that all of a corporate partner's income from a partnership with a non-unitary relationship is non-business income. This means that there is no business / non-business distinction at the partnership level regardless of the relationship between the partner and the partnerships. While the income from a non-unitary partnership will be non-business income, it is not wholly allocated to a single state. The allocation is based on an apportionment of all partnership income at the partnership level. Although 45 IAC 3.1-1-153(c) uses the term "business income" to describe the partnership income to be allocated through a factor apportionment, this description does not result in a characterization of that income as "business income" that flows through to the corporate partner. Such an interpretation would contradict the Court's findings in Hunt. Id. at 776.

It is unnecessary to determine whether taxpayer would be entitled to benefit from the exempt character of this income if taxpayer enjoyed a unitary relationship with the partnerships. Rather, the question can be resolved by determining the threshold unitary/non-unitary question. Does taxpayer have a unitary relationship with the low-income housing, environmental, and executive benefit partnerships?

45 IAC 3.1-1-153 is determinative of whether or not a unitary relationship exists. "If the corporate partner's activities and the partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula...." 45 IAC 3.1-1-153(b). Therefore, in order to establish a unitary operation, the taxpayer must demonstrate that the relationship between itself and the partnership meet the established standards of a unitary relationship.

The unitary principal has been addressed repeatedly by the Supreme Court; while no single definition exists, one characteristic

appears to be essential – day-to-day operational control. Allied-Signal, Inc. v. Director, Div. Of Taxation, 504 U.S. 768 (1992); Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 166 (1983); ASARCO, Inc. v. Idaho State Tax Comm'n., 458 U.S. 307 (1982). To establish that taxpayer does have a unitary relationship with the partnerships, taxpayer must establish taxpayer has operational control of the partnerships or that management of the partnerships is centralized with the taxpayer.

Taxpayer has provided nothing to establish that it has a unitary relationship with the low-income housing, "environmental," and executive benefit trust partnerships. Taxpayer is not entitled to deduct the federal interest amounts attributable to those partnerships.

Taxpayer also claims it is entitled to deduct government interest attributable to a fourth partnership. Taxpayer identifies this partnership and its interest income as "T-X." However, taxpayer has provided nothing which establishes this income was received in the form of exempt government interest or that it has a unitary relationship with "T-X." Taxpayer has failed to meet its burden of demonstrating the audit erred in its conclusion that taxpayer was not entitled to deduct the interest income received from the four categories of partnership interests.

FINDING

Taxpayer's protest is respectfully denied.

V. Losses Attributable to Partnerships.

Taxpayer included in its federal adjusted gross income losses attributable to the "environmental" and low-income housing partnerships. The audit made an adjustment to taxpayer's federal adjustment gross income which deducted the results of these two partnerships.

In order for taxpayer to bring the partnership losses within the apportionment provisions of IC 6-3-2-2, the taxpayer must first demonstrate the income (or losses) are attributable to a partnership with which it has a unitary relationship. Hunt, 709 N.E.2d at 776. Taxpayer merely asserts that the audit erred in its "classification of [taxpayer's] partnership interest as nonbusiness." The Department has no basis for disagreeing with the audit's conclusion that the losses attributable to the "environmental" and low-income housing partnerships were received from non-unitary sources. The losses are not attributable to Indiana but are allocated elsewhere.

FINDING

Taxpayer's protest is respectfully denied.

VI. Business / Non-Business Income – Adjusted Gross Income Tax.

Taxpayer maintains that the audit erred in classifying three specific categories of income as "business income." Specifically, taxpayer argues that money received from the sale of a business subsidiary, money received from insurance settlements, and money received in the form of royalty payments should be classified as "non-business income."

The audit reclassified the income received from these three sources as "business income" subjecting the income to apportionment and taxation. IC 6-3-1-21.

"Business income" and "non-business income" are defined by the Indiana Code as follows:

> The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operation. IC 6-3-1-20.

"Non-business income," in turn, "means all income other than business income." IC 6-3-1-21. For purposes of calculating an Indiana corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while non-business income is allocated to Indiana or another state in which the taxpayer is doing business. May Department Store Co. v. Indiana Dept. of State Revenue, 749 N.E.2d 651, 656 (Ind. Tax Ct. 2001). In that decision, the Tax Court determined that IC 6-3-1-20 incorporates two tests for determining whether the income is business or non-business: a transactional test and a functional test. Id. at 662-63. Under the transactional test, gains are classified as business income when they are derived from a transaction in which the taxpayer regularly engages. The particular transaction from which the income derives is measured against the frequency and regularity of similar transactions and practices of the taxpayer's business. Id. at 658-59.

Under the functional test, the gain arising from the sale of an asset will be classified as business income if the acquisition, management, and disposition of the property generating income constitutes an integral part of the taxpayer's regular trade or business operations. *See* IC 6-3-1-20.

Department regulations 45 IAC 3.1-1-29 and 45 IAC 3.1-1-30 provide guidance in determining whether income is business or non-business under the transactional test. 45 IAC 3.1-1-29 states in relevant part that, "Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is 'business income' or 'non-business income' is the identification of the transactions and activity which are the elements of a particular trade or business." 45 IAC 3.1-1-30 provides that, "[f]or purposes of determining whether income is derived from an activity which is in the regular course of the taxpayer's trade or business, the expression 'trade or business' is not limited to the taxpayer's corporate charter purpose of its principal business activity. A taxpayer may be in more than one trade or business, and derive business therefrom depending upon but not limited to some or all

of the following:

(1) The nature of the taxpayer's trade or business.

(2) The substantiality of the income derived from the activities and the percentage that income is of the taxpayer's total income for a given tax period.

(3) The frequency, number of continuity of the activities and transactions involved.

(4) The length of time the property producing income was owned by the taxpayer.

(5) The taxpayer's purpose in acquiring and holding the property producing income.

A. Insurance Settlement.

Taxpayer owns and operates certain manufacturing locations. A number of its insurance carriers proposed – and taxpayer accepted – to offer an amount of money in order to settle anticipated claims for environmental property damage at these manufacturing locations. Taxpayer maintains that it is in the business of manufacturing and selling paint and not in the business of accepting insurance settlements. Accordingly, taxpayer argues that the settlement money was "non-business" income and should be allocated elsewhere.

Taxpayer owned and operated the sites in order to manufacture paint. Any environmental damages – which may or may not have occurred at these locations – presumably occurred because of the manufacturing activities. Taxpayer purchased insurance in order to assure that it would be compensated in the event this property was damaged or in the eventuality taxpayer would be held liable for that damage in the future. Taxpayer and its insurance carriers, for whatever reason, chose to anticipatorily settle any undiscovered property loss claims. The fact that taxpayer does not regularly receive insurance settlements and that taxpayer is not in the business of accepting insurance settlements is of no consequence. *See* May, 749 N.E.2d at 665; 45 IAC 3.1-1-30. The money received from the insurance settlements was "income arising from transactions and activity in the regular course of the taxpayer's trade or business business...." IC 6-3-1-20.

B. Royalty Payments.

Taxpayer develops and owns proprietary paint formulas. Taxpayer owns various foreign subsidiaries and participates in joint ventures with other paint manufacturers. Taxpayer licenses paint formulas for use by these subsidiaries and joint ventures. Taxpayer also licenses the formulas to independent foreign entities. In addition, taxpayer licenses trademarks and trade names to the subsidiaries, joint ventures, and independent entities.

The audit determined that the money received in the form of royalty payments was properly classified as business income and imposed additional tax liability accordingly.

Taxpayer disagrees stating that it does not have a unitary relationship with these foreign businesses or with its own licensing division and that the royalty payments are not business income.

Taxpayer is correct in its assertion that, in order to quality as business income, the money must be received by an entity with which it has a unitary relationship. "[I]f the taxpayer's activities carried on with the state are not unitary with its activities carried on elsewhere, the state is constitutionally constrained from including the property, income, or receipts arising from those out-of-state activities in the taxpayer's apportionable tax base." May, 749 N.E.2d at. 657 n.8.

Taxpayer misapprehends the relevance of its unitary relationship with the foreign licensees. The issue is not whether taxpayer has a unitary relationship with the related foreign businesses. The income received by the foreign licensees is irrelevant to the issue raised by taxpayer because there is no contention that the money received *by* the foreign businesses constitutes taxpayer's own income. Instead, the issue is whether or not the money *taxpayer* received in the form of royalty payments is business income.

Taxpayer maintains that the paint formulas and related trademarks are unique to each particular foreign market and are not used in its domestic market. For example, taxpayer points to the fact that certain of the paint formulas contain ingredients which are not permitted for use in the United States. Other paint formulas are adapted for to meet the unique weather conditions in the foreign markets. As taxpayer states, "these formulas were of no value in the United States and did not further domestic business." Taxpayer arrives at the conclusion that the royalty income should be "characterized as investment assets rather than operational assets."

Taxpayer is in the business of manufacturing and selling paint. Ancillary to those activities, taxpayer adapted or developed paint formulas and related proprietary trademarks. Taxpayer entered into licensing agreements with various foreign businesses to permit the businesses to make use of the formulas and trademarks. In return, taxpayer received royalty payments. The royalty income falls squarely within the definition of "business income" because the royalty income "[arose] from transactions and activity in the regular course of the taxpayer's trade or business." IC 6-3-1-20. Under the statute, "business income" specifically "includes income from tangible and intangible property [when] the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations."

C. Sale of Subsidiary's Stock.

Taxpayer acquired a parent company and its subsidiaries. According to taxpayer, in acquiring the parent company, it was required to purchase all of the parent company's subsidiaries; it could not pick-and-choose those subsidiaries which it wished to acquire and retain. Thereafter, taxpayer sold the stock of one of these subsidiaries thereby divesting itself of ownership of this particular subsidiary.

The audit determined that the money received from the sale of this subsidiary's stock constituted "business income." Taxpayer disagrees maintaining that the stock sales constituted "non-business income." To that end, taxpayer points out that it never intended to retain ownership of this subsidiary. The subsidiary was never incorporated into taxpayer's own business operations but continued to be operated as a separate business. The subsidiary retained its original employees, retained the original management staff, and continued operations at the subsidiary's original location.

In May, the court found that the transactional test was not met when the retailer taxpayer sold a retailing division to a competitor because the retailer taxpayer was not in the business of selling entire divisions. May, 749 N.E.2d at. 664. Under the taxpayer's own circumstances, it is not in the business of buying and selling unrelated subsidiary companies. Therefore, the sale of the subsidiary's stock does not meet the transactional test.

The functional test focuses on the property being disposed of by the taxpayer. Id. Specifically, the functional test requires examining the relationship of the property at issue with the business operations of the taxpayer. Id. In order to satisfy the functional test, the property generating income must have been acquired, managed, and disposed by the taxpayer in a process integral to taxpayer's regular trade or business operations. Id. In May, the Tax Court defined "integral" as "part of or [a] constituent component necessary or integral to complete the whole." Id. at 664-65. The court concluded that petitioner retailer's sale of one of its retailing divisions was not "necessary or essential" to the petitioner's regular trade or business because the sale was executed pursuant to a court order that benefited a competitor and not the petitioner. Id. at 665. In effect, the court determined that because the petitioner was forced to sell the division in order to reduce its competitive advantage, the sale was not integral to the petitioner's own business operations. Id. Therefore, the proceeds from the division's sale were not business income under the functional test. Id.

Taxpayer is in the business of manufacturing and selling paint. Taxpayer did not specifically intend to acquire this particular subsidiary and disposed of the asset less than one year after having done so. The subsidiary was never incorporated into taxpayer's own business operation but remained an independent entity until it was sold. The taxpayer's acquisition and subsequent sale of the subsidiary's stock was not a constituent function necessary or integral to complete the whole of taxpayer's business. Therefore, the sale of the subsidiary's stock is not business income under the functional test.

The Department agrees with taxpayer and concludes that the income derived from the sale of the subsidiary should be classified as non-business income.

FINDING

Taxpayer's protest is sustained in part and denied in part. The money received from the sale of the subsidiary's stock constitutes non-business income; the remainder of the income at issue is properly classified as business income.

VII. Calculation of Taxpayer's Foreign Source Income – Exclusion of Related Expenses.

Taxpayer maintains that the audit overestimated the amount of expenses it incurred in earning foreign source dividend income.

In calculating taxpayer's state adjusted gross income tax liability, the starting point is the taxpayer's own federal adjusted gross income. IC 6-3-1-3.5(b) states that Indiana adjusted gross income is same as "taxable income" as defined in I.R.C. § 63. Thereafter, the amount of federal "taxable income" is subject to certain adjustments. Specifically, IC 6-3-2-12(b) states:

> A corporation that includes any foreign source dividend includes in the corporation's adjusted gross income for the taxable year; multiplied by the percentage prescribed in subsection (c), (d), or (e), as the case may be.

The aforementioned subsections (c), (d), and (e) allow corporate taxpayers to receive a one hundred (100%) deduction for foreign source dividends received from corporations in which a taxpayer has an eighty (80%) or larger ownership interest; an eighty-five percent (85%) deduction for dividends received from corporations in which a taxpayer has a fifty to seventy-nine percent (50% to 79%) ownership interest; and a fifty percent (50%) deduction for dividends received from corporations in which a taxpayer has less than a fifty percent (50%) ownership interest. IC 6-3-2-12(c) to (e).

The statutory language is cogent and clear. IC 6-3-2-12 authorizes pro rata deductions – based on the percentage ownership of the payor by the payee – of certain foreign source dividend income.

FINDING

Taxpayer's protest is sustained.

VIII. Apportionment Sales Factor – Adjusted Gross Income.

Taxpayer argues that the audit erred in excluding certain income from the sales factor. According to taxpayer, receipts "generated by intangible personal property that produced business income" should have been included in the numerator and denominator of the sales factor. In support of its position, taxpayer cites to 45 IAC 3.1-1-55(e) which states that, "Gross receipts from intangible personal property shall, if classified as business income, be attributed to this state based upon the ratio which the total property and payroll factors in this state bears to the total of the property and payroll factors everywhere...." In effect, taxpayer argues that gross receipts equals the amount received on the sale of investment securities including both the interest earned and the principal.

The audit excluded from the sales denominator the "principal returned in short term securities transactions." The audit was correct in doing so. 45 IAC 3.1-1-50(5) states that, "In some cases, certain gross receipts should be disregarded in determining the sales factor to effectuate an equitable apportionment." Taxpayer may not include the return of principal realized each time it sells

investment securities because the inclusion of both the principal and interest in each rollover amount would distort the sales factor by giving extra weight to its out-of-state sales.

The Indiana Tax Court has previously addressed this legal argument and ruled that, "'Gross Receipts' for the purpose of the sales factor includes only the interest income, and not the rolled over capital or return of principal, realized from the sale of investment securities." Sherwin-Williams Co. v. Indiana Dept. of State Revenue, 673 N.E.2d 849, 853 (Ind. Tax Ct. 1996). The Tax Court spoke clearly and definitively, and the Department will not re-weigh its decision.

FINDING

Taxpayer's protest is denied.

IX. Ten-Percent Negligence Penalty.

The audit concluded with the recommendation that a ten-percent negligence penalty be assessed. Taxpayer argues that the Department should exercise its discretion to abate the penalty because it paid the correct amount of tax due in a timely manner, cooperated fully with the audit, and that its legal positions represented by the tax returns were supported by a reasonable interpretation of the applicable law and regulations.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

The Department is unable to agree with taxpayer's argument that its original returns represented a reasonable interpretation of the law and that, in preparing those original returns, it "exercised ordinary business care." Its decision to include the principal received from the sale of investments accounted for more than 60 percent of its additional tax liability. The question of whether the gross proceeds generated by investment activity should be included in the sales factor has twice been protested, twice denied, and unsuccessfully litigated at the appellate court level. Nonetheless, during a third audit cycle, taxpayer proceeded to include the gross investment receipts in its sales factor. This decision, coupled with the fact that taxpayer now raises the identical issue in yet a third protest, is not indicative of the "reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420010108.LOF

LETTER OF FINDINGS: 01-0108
Use Tax
For the Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sampling Methodology - Use Tax.

Authority: IC 6-2.5-1-1 et seq.; IC 6-2.5-3-2(a); IC 6-2.5-3-2(c); IC 6-2.5-3-2(c)(1); IC 6-8.1-5-1(b); Great American Lines, Inc. v. Ind. Dept. of State Revenue, 2000 Ind. Tax LEXIS 55 (Ind. Tax Ct. Dec. 28, 2000).

Taxpayer argues that the method used by the audit to determine its use tax liability was flawed.

STATEMENT OF FACTS

Taxpayer is an Indiana construction contractor. It provides services and materials to commercial, industrial, and government customers. The Department of Revenue (Department) conducted an audit of taxpayer's business records. The audit found that taxpayer owed use tax on particular items for which it should originally have paid sales tax. Accordingly, the Department sent taxpayer notices of "Proposed Assessment." Taxpayer decided that the amounts were excessive and submitted a protest to that effect. An administrative hearing was held during which taxpayer explained the basis for its protest, and this Letter of Findings results.

FINDINGS

I. Sampling Methodology - Use Tax.

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC 6-2.5-1-1 et seq. The use tax "is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC 6-2.5-3-2(a). Use tax must be paid when a contractor – such as the taxpayer – buys materials it intends to use to construct a building for one of its customers. "The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on which the structure or facility is located." IC 6-2.5-3-2(c). However, a contractor is not required to pay the use tax if "the state gross retail or use tax has been previously imposed on the sale or use of that property." IC 6-2.5-3-2(c)(1).

Taxpayer agrees that it should have been assessed use tax on certain items it purchased for which it did not originally pay sales. However, taxpayer challenges the specific methodology used by the audit to calculate its three-year use tax liability. The audit did not examine in detail the purchase records for all three years. Instead, the audit chose one year – 1999 – examined all of taxpayer's purchases for that year, and made a determination as to which of those 1999 purchases were subject to use tax. Thereafter, "The auditor and the taxpayer agreed that an error ratio of additional variable taxable purchases, to a variable such as sales per Federal Form 1120, would be used to project the additional variable taxable purchases for the years [1998] and [2000]." Assuming, for example, that 10 percent of taxpayer's 1999 purchases were subject to use tax, the audit and taxpayer agreed that 10 percent of taxpayer's 1998 and 2000 purchases would also be subject use tax without the necessity of examining each and every one of the purchases made during 1998 and 2000.

Taxpayer does not challenge the use of this method of calculating its three-year use tax liability because taxpayer plainly agreed to the method. Taxpayer signed an "Agreement for Projecting Audit Results" to that effect. Instead taxpayer challenges the accuracy of the final result because the 1999 base year percentage was skewed to reflect a greater than typical percentage of taxable purchases to total purchases. Taxpayer points out that the audit included – as subject to use tax – two specific 1999 purchases it made from a steel vendor. Taxpayer bought fabricated steel from this steel vendor which taxpayer then used to complete construction projects for one of its regular customers, a steel manufacturer.

Plainly, the two purchases from the steel vendor were subject to use tax because the fabricated steel was tangible personal property later incorporated into a structure on the steel manufacturer's real estate. IC 6-2.5-3-2(c).

Nevertheless, taxpayer maintains that these two specific purchases should be deleted from the 1999 base calculation or, at least, discounted in arriving at the 1999 base. Taxpayer explains stating that, in the normal course of its dealings with this particular steel manufacturer, the steel manufacturer typically supplied to its own fabricated steel for construction projects at its location. Therefore, taxpayer concludes that the two 1999 purchases from the steel vendor were atypical, did not represent the normal course of dealings with the steel manufacturer, and the inclusion of the two purchases into the 1999 base resulted in an over assessment of 1998 and 2000 use tax.

The taxpayer's 1998, 1999, and 2000 proposed use tax assessments are presumed correct, and the burden is on the taxpayer to prove that these assessments are wrong. IC 6-8.1-5-1(b). Taxpayer has not demonstrated that the assessments are wrong; taxpayer has demonstrated that the two 1999 purchases are "outliers," statistical observations which – their face – appear to deviate markedly from other members of the 1999 base sample and are not representative of the sampled year. *See* Great American Lines, Inc. v. Ind. Dept. of State Revenue, 2000 Ind. Tax LEXIS 55 (Ind. Tax Ct. Dec. 28, 2000). Accordingly, the audit is requested to reconsider the 1999 base determination and issue a revised 1998, 1999, and 2000 use tax assessment.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420020023.LOF

LETTER OF FINDINGS NUMBER: 02-0023
Sales and Use Tax
For the Years 1998-1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax- Computer Software

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-8.1-5-1 (b), Sales Tax Information Bulletin # 8, February 9, 1990.

The taxpayer protests the imposition of the use tax on computer software**.**

II. Sales and Use Tax-Graphics Design Purchases

Authority: IC 6-2.5-5-4, 45 IAC 2.2-5-8 (c).

The taxpayer protests the imposition of tax on certain graphics design purchases.

III. Sales and Use Tax- Labels and Labeling Equipment

Authority: IC 6-2.5-5-6, IC 6-2.5-5-3 (b), 45 IAC 2.2-5-14(e).

The taxpayer protests the imposition of tax on certain labels and labeling equipment.

IV. Sales and Use Tax-Materials Handling System

Authority: IC 6-2.5-5-3, 45 IAC 2.2-5-8 (d), 45 IAC 2.2-5-8 (f)(1).

The taxpayer protests the imposition of tax on the materials handling system.

V. Tax Administration- Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

The taxpayer operates a manufacturing facility producing a variety of injection-molded plastic products. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested this assessment and a hearing was held.

I. Sales and Use Tax- Computer Software

DISCUSSION

Indiana imposes a sales tax on retail transactions made in Indiana. IC 6-2.5-2-1. A complementary use tax is imposed on personal property purchased in a retail transaction and used in Indiana when no sales tax has been paid. IC 6-2.5-3-2. All assessments made by the department are presumed to be correct. Taxpayers bear the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b).

Sales Tax Information Bulletin # 8, February 9, 1990, in effect during the audit, clarified the departmental policy concerning the sales and use taxation of computers and related issues. The Information Bulletin addresses the issue of the taxability of software programs as follows:

> Pre-written programs, not specifically designed for one purchaser, developed by the seller for sale or lease on the general market in the form of tangible personal property and sold or leased in the form of tangible personal property are subject to tax irrespective of the fact that the program may require some modification for a purchaser's particular computer. Pre-written or canned computer programs are taxable because the intellectual property contained in the canned program is no different than the intellectual property in a videotape or a textbook.

The department assessed use tax on two computer software programs and maintenance agreements, one concerning financial accounting and one concerning human resources, purchased by the taxpayer. Both programs are sold to many consumers. Since neither program could be used straight out of the box, they both required customization. The sellers own the copyright on the programs. The taxpayer protests the assessment of tax on the use of these computer programs.

The taxpayer's computer software purchases fit the description of pre-written or canned software programs and is taxable.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax-Graphics Design Purchases

DISCUSSION

The taxpayer has an arts and graphics automation department. The taxpayer's clients deliver completed artwork for application onto the plastic products to the taxpayer. The arts and graphics automation department separate the colors and digitally modify the artwork so that it will look like the original after it is printed on the plastic product. This department does not create any original artwork. The color separated and digitally modified artwork is used to produce the proofs and color separations in order to generate negatives and printing plates. The plates are then placed on a printing press to print the desired image on the plastic container. The department assessed use tax on the computers and related equipment used in this pre-press graphics department.

The taxpayer protests this assessment contending that the items qualify for exemption pursuant to IC 6-2.5-5-4 as follows:

> Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for his direct use in the direct production of the machinery, tools, or equipment described in section 2 or 3 of this chapter.

The plate is a tool directly used in the direct production of the final plastic product. The issue to be determined is whether the computer and related equipment is directly used in the direct production of the tool, the printing plate.

There is no Regulation on point describing the directly used in direct production rule for a tool to be exempt. There is, however, a Regulation clarifying the parallel exemption for items directly used in direct production of tangible personal property.

That Regulation, 45 IAC 2.3-5-8(c) states as follows:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

The computers and related items in issue perform the first step in transforming the customer's image into a printable image on the printing plate. The contested items are used in manipulating the customer's image in a way that allows it to be photographed and processed into a negative which is used to produce the tool used to actually print the final image on the plastic containers produced by the taxpayer. The use of the computer and the related equipment has an immediate effect on the manufacture of the printing plate.

FINDING

The taxpayer's protest is sustained.

III. Sales and Use Tax- Labels and Label Printing Equipment

DISCUSSION

During the tax period, the taxpayer purchased barcode, printing ribbons and labels. The taxpayer printed and applied bar-coded labels to the boxes containing plastic sleeves of the taxpayer's product. The department assessed use tax on these items. The taxpayer protests these assessments.

The labels are used for internal inventory and quality control purposes within the taxpayer's facility. Subsequently the labels are used to provide information that allows customers to identify the enclosed product and retrieve from storage the correct plastic containers for the day's production run. The labels also impart information necessary for the taxpayer's customers to exercise quality control. The taxpayer's customers require this information and will not accept any product without this bar code label on the box. The taxpayer packages its products, such as decorated plastic tubs or glasses, by stacking them and then encasing the stacks in plastic sleeves. Several sleeves of product are then placed in a cardboard box. During the tax period, the taxpayer printed the labels and then attached them to the cardboard boxes.

The taxpayer contends that the bar-coded labels qualify for exemption as property acquired "for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business" pursuant to IC 6-2.5-5-6. To be incorporated in the product, the labels must become part of the product during the production process.

This exemption is explained at 45 IAC 2.2-5-14(e) as follows:

... incorporated as a material or an integral part into tangible personal property for sale means:

(1) The material must be incorporated into and become a component of the finished product.

(2) The material must constitute a material or integral part of the finished product.

(3) The tangible property must be produced for sale by the purchaser.

The taxpayer's argument that its customers require the information contained on the labels and therefore they become part of the product is not persuasive. The required packaging for the taxpayer's product is the plastic sleeves. The labels are affixed to the cardboard boxes used to store and ship the product packaged in the plastic sleeves. These cardboard boxes are not an essential part of the final product. Further, the labels contain inventory and quality control information used to benefit the taxpayer in the administration of its facility rather than as an integral part of the production of taxpayer's product. The addition to the labels of information required by the taxpayer's customers does not transform the labels to exempt status.

The taxpayer also contends that the ribbons and ink used to print the bar code labels are exempt pursuant to IC 6-2.5-5-3(b) because they are directly used in the direct production of the taxpayer's product. Since the labels have been determined to not be part of the finished product, the ribbons and ink used in producing the labels do not impact the finished product. Therefore they are not exempt from the use tax.

FINDING

The taxpayer's protest is denied.

IV. Sales and Use Tax-Materials Handling System

DISCUSSION

The taxpayer also protests the assessment of use tax on certain materials handling equipment purchased during the tax period. This equipment is used in the process of unloading resin and blowing it to the production area. The taxpayer contends that this equipment qualifies for exemption pursuant to IC 6-2.5-5-3 which provides for the exemption of "manufacturing machinery, tools and equipment which is to be directly used by the purchaser in the direct production, manufacture, fabrication... of tangible personal property."

To qualify for this exemption, the item must be used in the production process. The production process is defined at 45 IAC 2.2-5-8 (d) as follows:

Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation

or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

The protested materials handling equipment actually blows the resin from trains into the production area. The taxpayer argues that the production process begins at the train and the blowing equipment actually is part of the manufacturing process because the blowing action sometimes changes the angle of repose of piles of the resin and fluidizes the resin. This fluidizing removes some of the clumps and removes some dust particles from the resin.

The department finds this argument unpersuasive. The blowing equipment actually transports the resins to the place in the plant where the manufacturing begins. As such the materials handling machine fits the example of taxable transportation equipment at 45 IAC 2.2-5-8 (f)(1) since it is "used for moving raw materials to the plant prior to their entrance into the production process."

FINDING

The taxpayer's protest is denied.

V. Tax Administration- Penalty

DISCUSSION

The taxpayer also protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Negligence is defined at 45 IAC 15-11-2(b) as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2 (c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed... "

The taxpayer did not provide sufficient evidence that it exercised the level of care expected of the reasonable businessman in the filing and remittance of its taxes.

FINDING

The taxpayer's protest to the imposition of the penalty is denied.

DEPARTMENT OF STATE REVENUE

0420020074.LOF

LETTER OF FINDINGS: 02-0074
Sales and Use Tax
For 1999 and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Public Transportation Exemption – Aircraft.

Authority: IC 6-2.5-3-2; IC 6-2.5-5-27; IC 6-6-6.5-8; IC 6-6-6.5-8(d); IC 6-8.1-5-1(b); Panhandle Eastern Pipeline Co. v. Ind. Dept. of State Revenue, 741 N.E.2d 816 (Ind. Tax Ct. 2001); Indiana Dept. of State Revenue v. Indianapolis Transit System, Inc., 356 N.E.2d 1204 (Ind. Ct. App. 1976).

Taxpayer challenges the decision of the Department of Revenue (Department) assessing sales tax on the taxpayer's purchase of an airplane. Taxpayer maintains that it is entitled to an exemption because the airplane is being used as a support vehicle in taxpayer's transportation business.

STATEMENT OF FACTS

Taxpayer is a commercial trucking firm operating under authority of the Interstate Commerce Commission. Taxpayer bought an airplane in 1999. During October of 2000, the Department sent taxpayer a "Notice of Proposed Assessment" stating that taxpayer's airplane had not been properly registered with the state and that taxpayer was required to pay sales or use tax on the original 1999 purchase. In addition, the Department assessed late fees and interest penalties for the year 2000. Taxpayer disagreed and submitted a protest. An administrative hearing was held during which taxpayer explained the basis for its protest. This Letter of Findings follows.

DISCUSSION

I. Public Transportation Exemption – Aircraft.

The Department maintains that taxpayer should have paid sales or use tax on the purchase price of the aircraft. Taxpayer

disagrees stating that the aircraft is exempt from the tax because the vehicle is used in its transportation business.

Indiana imposes an excise tax at the time a taxpayer acquires an airplane. IC 6-2.5-3-2 provides as follows:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

(1) is acquired in a transaction that is an isolated or occasional sale; and

(2) is required to be titled, licensed, or registered by this state for use in Indiana.

IC 6-6-6.5-8 requires the aircraft purchaser to pay sales or use tax shortly after the aircraft is sold or transferred in Indiana. "A person shall pay the gross retail tax or use tax to the department on the earlier of: (1) the time the aircraft is registered; or (2) not later than thirty-one (31) days after the purchase date." IC 6-6-6.5-8(d).

It is not disputed that taxpayer acquired the airplane for use within this state. It is not disputed that taxpayer is engaged in the transportation business. The only question is whether or not taxpayer is entitled to the claimed exemption. The exemption to which taxpayer refers is found at IC 6-2.5-5-27 which states that, "Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property."

Taxpayer is in the trucking business. It claims that its acquisition of the airplane was not subject to tax because the airplane is used and "reasonably necessary" for the operation of its trucking business. Specifically, taxpayer indicates that the airplane is used to pick-up and return drivers, and it is used to transport employees to contract negotiations, seminars, meetings, and instructional classes. In addition, taxpayer states that the airplane is used to visit locations to inspect vehicles it is considering purchasing and visit potential parking locations. Further, taxpayer states that the airplane is used to transport spare truck parts in emergency situations.

The Indiana Tax Court has held that the transportation exemption may not be used to prorate a taxpayer's liability. Panhandle Eastern Pipeline Co. v. Ind. Dept. of State Revenue, 741 N.E.2d 816, 818-19 (Ind. Tax Ct. 2001). Rather, the court has held that the transportation exemption "is an all or nothing exemption." Id. at 819. "If a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption." Id.

Therefore, in order to obtain the benefit of the exemption for a specific purchase, the taxpayer must meet two entirely distinct qualifications; the taxpayer must demonstrate that it is predominately engaged in the business of providing public transportation, and it must also establish that the particular item of personal property is predominately used in providing public transportation. In other words, even if a company is predominately involved in providing transportation, not every particular item it buys qualifies for the exemption.

Assuming for the moment that taxpayer is predominately engaged in providing public transportation, taxpayer has not demonstrated that the aircraft itself is predominately engaged in providing public transportation. Although it may be reasonably assumed that a certain category of purchases – tires, truck parts, repair tools – are "predominately" used by a company predominately involved in providing transportation services, the Department finds no reason to conclude that an aircraft falls within this same category. The Department has no reason to doubt taxpayer's contention that the airplane is used in its truck business. However, the information taxpayer has provided and the activities taxpayer describes do not inescapably lead to the conclusion that this aircraft is *predominately* used in transportation related activities.

In Indiana Dept. of State Revenue v. Indianapolis Transit System, Inc., 356 N.E.2d 1204 (Ind. Ct. App. 1976), the court agreed that respondent transportation company's purchase of various items was not subject to sales tax pursuant to the transportation exemption. However, unlike the respondent in Indianapolis Transit, there is no reasonable contention that taxpayer "could not continue operating without the purchases it claimed should be exempted." Id. at 1209. Based on the information provided, the Department is unable to conclude taxpayer would be prevented from providing transportation services to its customers unless it had purchased and owned the airplane.

The Department is bound by the statute which states, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b). The Department must conclude that taxpayer has not met that burden.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220020098.LOF

LETTER OF FINDINGS: 02-0098
ADJUSTED GROSS INCOME TAX
For the Tax Year 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Allocation of Taxpayer's Income Received from Indiana Partnership Interests – Adjusted Gross Income Tax.

Authority: IC 6-3-2-2; Hunt Corp. v. Indiana Dept. of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999); 45 IAC 3.1-1-153; 45 IAC 3.1-1-153(b); 45 IAC 3.1-1-153(c); 45 IAC 3.1-1-153(c)(2); 45 IAC 3.1-1-153(e).

Taxpayer argues that income received from the disposition of Indiana partnership interests should be allocated to California and that the audit erred in determining the income should be allocated to Indiana.

II. Partnership Net Operating Losses.

Authority: IC 6-3-2-2; Hunt Corp. v. Indiana Dept. of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999)

Taxpayer argues that it is entitled to carry forward net operating losses from the tax years 1992 through 1997.

III. Abatement of the Ten-Percent Negligence Penalty.

Authority. IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer maintains that it had a reasonable basis for the decisions it reached with respect to its Indiana tax liabilities. As a result, the taxpayer argues that the Department should exercise its discretion to abate the ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a California corporation which owned an interest in two partnerships. The two partnerships directly or indirectly owned an Indiana hotel. First Partnership directly owned the hotel. Second Partnership's sole business purpose was to own an interest in First partnership.

During 1997, First Partnership sold the Indiana hotel property. Subsequently both First Partnership and Second Partnership were liquidated, and taxpayer received "distributive shares" of the partnerships' income.

Prior to 1997, First and Second Partnerships' income was 100 percent allocated to Indiana. After the hotel was sold, the Department of Revenue (Department) issued notices of "Proposed Assessment" based upon the income taxpayer derived from the partnership liquidations. Subsequently, taxpayer filed amended federal and state returns to report changes in the allocation of the distributive shares. In reporting that income, taxpayer carried forward a substantial net operating loss (NOL) from 1992 through 1995 with the result that taxpayer claimed it owed "no adjusted gross income tax and supplemental net income" for 1997.

The Department conducted a review of taxpayer's amended return and disagreed with taxpayer's position. The taxpayer challenged the Department's decision, an administrative hearing was held, and this Letter of Findings results.

FINDINGS

I. Allocation of Taxpayer's Income Received from Indiana Partnership Interests – Adjusted Gross Income Tax.

Taxpayer maintains that the money it received from the liquidation of the two partnerships should be allocated outside Indiana. The Department determined that because the partnerships' income was derived from the sale of Indiana property, the income should be allocated to Indiana.

The Indiana Tax Court has stated that a corporate partner's income is determined by apportionment at the corporate partner's level when the corporate partner and the partnership have a unitary relationship. Hunt Corp. v. Indiana Dept. of State Revenue, 709 N.E.2d 766, 778 (Ind. Tax Ct. 1999). The court made its decision based on the application of IC 6-3-2-2 and appeared to find that 45 IAC 3.1-1-153 was a reasonable application of the apportionment statute. Id. at 777. In applying IC 6-3-2-2 to corporate partnerships, the court stated:

> If the income from the partnerships constitutes business income (i.e. if the affiliated group and the partnerships are engaged in a unitary business) under section 6-3-2-2, all of that income would be subject to apportionment based on an application of the affiliated group's property, payroll, and sales factors. If the income from the partnerships constitutes non-business income for the affiliated group *(i.e. if the affiliated group and the partnerships are not engaged in a unitary business), that income would be allocated to a particular jurisdiction.* Id at 776. (*Emphasis added*).

The court plainly states that all of a corporate partner's income from a partnership with a unitary relationship to that partner is business income and further states that all of a corporate partner's income from a partnership with a non-unitary relationship is non-business income. This means that there is no business / non-business distinction at the partnership level regardless of the relationship between the partner and the partnerships.

45 IAC 3.1-1-153 governs the manner in which taxpayer's partnership income is treated for adjusted gross income tax

purposes. 45 IAC 3.1-1-153(c) states that, "If the corporate partner's activities and the partnership's activities do not constitute a unitary business under established standards, disregarding ownership requirements, the corporate partner's share of the partnership income attributable to Indiana shall be determined as follows."

It is not disputed that taxpayer and the two partnerships did not share a unitary relationship. It is not disputed that the two partnerships' income was derived from the sale of the Indiana hotel property. It is not disputed that taxpayer received its share of this income – at the time the partnerships were liquidated – in the form of "distributive shares" in the former partnerships. Accordingly, the distributive share income is governed under 45 IAC 3.1-1-153(c)(2) which states that, "If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to formula apportionment." In regards to taxpayer's distributive share income, the rule states, "After determining the amount of business income attributable to Indiana... the corporate partner's distributive share of such income shall be added to the corporate partner's other business income apportioned to Indiana and its nonbusiness income, if any, allocable to Indiana, in determining the corporate partner's total taxable income." 45 IAC 3.1-1-153(e).

Taxpayer received partnership distributions of income derived from the sale of the Indiana hotel property. This income was "entirely derived from sources within Indiana." 45 IAC 3.1-1-153(c)(2). Therefore, the total amount of the partnership distributions is added to taxpayer's "other business income apportioned to Indiana and its nonbusiness income, if any, allocable to Indiana." 45 IAC 3.1-1-153(e). The audit review correctly determined that taxpayer's distributive share income derived from the two partnerships should be used "in determining the corporate partner's total taxable income." 45 IAC 3.1-1-153(e). Under Indiana law, there is no basis for taxpayer's assertion that the state should allocate this income elsewhere.

FINDING

Taxpayer's protest is respectfully denied.

II. Partnership Net Operating Losses.

Taxpayer argues that it is entitled to carry forward NOLs from 1992 through 1995. As a result of that carry-forward, taxpayer concludes that it has no tax liability for 1997.

The 1992 through 1995 losses were attributable to partnerships with which taxpayer – by its own admission – did not have a unitary relationship. As stated by taxpayer, "[Taxpayer] had no connections to Indiana other than [the] partnerships. [Taxpayer] did not share any centralized management, executive force, centralized purchasing, advertising, accounting, or other controlled interaction with [partnerships]."

In order for the taxpayer to bring the 1992 through 1995 partnership losses within the apportionment provisions of IC 6-3-3-2, the taxpayer must first demonstrate that the income (or losses) are attributable to a partnership with which it has a unitary relationship. Hunt Corp. v. Indiana Dept. of State Revenue, 709 N.E.2d 766, 776 (Ind. Tax Ct. 1999). "[I]f the affiliated group and partnerships are not engaged in a unitary business that income will be allocated to a particular jurisdiction." Id. Because the losses were incurred by partnerships with which it did not have a unitary relationship, the losses are irrelevant in determining the taxpayer's own adjusted gross income tax liability.

FINDING

Taxpayer's protest is respectfully denied.

III. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer asks the Department to exercise its discretion and abate the ten-percent negligence penalty.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayer asserts that it prepared its amended returns based upon a good faith interpretation of Indiana statutes, that it was not negligent, and that it did not intentionally disregard the law. In sum, taxpayer maintains that it had a reasonable basis for the decisions it made in regard to its Indiana tax liability.

The Department agrees with taxpayer that the positions it took in regard to its Indiana tax liabilities – however erroneous – were indicative of "reasonable cause and not due to willful neglect."

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220020309.LOF

LETTER OF FINDINGS: 02-0309
Indiana Corporate Income Tax
For the Tax Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Money Received by Taxpayer While Acting in an Agency Capacity – Gross Income Tax.

Authority: IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); Policy Management Systems Corp. v. Indiana Department of State Revenue, 720 N.E.2d 20 (Ind. Tax Ct. 1999); Universal Group Limited v. Indiana Department of State Revenue, 642 N.E.2d 553 (Ind. Tax Ct. 1994); 45 IAC 1.1-1-2; 45 IAC 1.1-6-10.

Taxpayer argues that certain money it received was actually received on behalf of its customers. Because taxpayer was acting as an agent for the customers, taxpayer maintains that the money received on behalf of these customers was not subject to gross income tax.

II. Money Received from the Sale of Inventory Stored at Customer Locations – Gross Income Tax.

Authority: IC 6-2.1-2-2; IC 6-2.1-2-3; IC 6-2.1-2-4.

Taxpayer argues that the income received from the sale of inventory items sold at various Indiana customer locations was not subject to gross income tax.

III. Business / Non-business Classification – Adjusted Gross Income Tax.

Authority: IC 6-3-1-20; IC 6-3-1-21; IC 6-3-2-2(b); IC 6-3-2-2(g) to (k); May Department Store Co. v. Indiana Dept. of State Revenue, 749 N.E.2d 651 (Ind. Tax Ct. 2001); 45 IAC 3.1-1-29; 45 IAC 3.1-1-30; I.R.C. § 338(h)(10).

Taxpayer maintains that the audit erred in reclassifying certain income as "business income." Specifically, taxpayer states that interest received on short term-deposits, rent from the lease of unused corporate property, license fee royalties, and money received from the "deemed sale of [stock] assets" should be classified as "non-business" income.

STATEMENT OF FACTS

Taxpayer was an out-of-state entity in the business of developing and supplying coatings to the electro-plating, electronics, and surface finishing industries. Taxpayer had Indiana employees which solicited business on taxpayer's behalf.

The Department of Revenue (Department) conducted an audit of taxpayer's federal returns, state income tax work-papers, and various other business records. The audit resulted in a determination that taxpayer owed additional Indiana corporate income tax. Taxpayer disagreed with the audit's decision and submitted a protest to that effect. An administrative hearing was held during which taxpayer was provided an opportunity to explain the basis for its protest; this Letter of Findings results.

DISCUSSION

I. Money Received by Taxpayer While Acting in an Agency Capacity – Gross Income Tax.

After performing "chemical management services" for Indiana customers, taxpayer was reimbursed for expenses it incurred on behalf of those customers. The audit determined that these reimbursed expenses were part of taxpayer's gross income and taxed the income at the state's high rate gross income tax.

Taxpayer maintains that the reimbursed expenses are not true income but reflected loans made to its customers. Therefore, when the customer paid back these loans to taxpayer, it was simply receiving the money in an agency capacity.

Indiana imposes a gross income tax upon the entire gross receipts of a taxpayer who is a resident or domiciliary of Indiana. IC 6-2.1-2-2(a)(1). For the taxpayer who is not a resident or domiciliary of Indiana – such as taxpayer – the tax is imposed on the gross receipts which are derived from business activities conducted within the state. IC 6-2.1-2-2(a)(2). However 45 IAC 1.1-6-10 exempts that portion of the taxpayer's income which the taxpayer receives when acting in an agency capacity. 45 IAC 1.1-1-2 defines an "agent" as follows:

(a) "Agent" means a person or entity authorized by another to transact business on its behalf.

(b) A taxpayer will qualify as an agent if it meets both of the following requirements:

(1) The taxpayer must be under the control of another. An agency relationship is not established unless the taxpayer is under the control of another in transacting business on its behalf. The relationship must be intended by both parties and may be established by contract or implied from the conduct of the parties. The representation of one (1) party that it is the agent of another party without the manifestation of consent and control by the alleged principal is insufficient to establish an agency relationship.

(2) The taxpayer must not have any right, title, or interest in the money or property received from the transaction. The income must pass through actually or substantively, to the principal or a third party, with the taxpayer being merely a

conduit through which the funds pass between a third party and the principal.

The Indiana Tax Court in Policy Management Systems Corp. v. Indiana Department of State Revenue, 720 N.E.2d 20 (Ind. Tax Ct. 1999) and Universal Group Limited v. Indiana Department of State Revenue, 642 N.E.2d 553 (Ind. Tax Ct. 1994) reviewed the relationship between imposition of the state's gross income tax and agency principles, echoed the standards set out in 45 IAC 1.1-1-2 and 45 IAC 1.1-6-10, and held that an agency relationship required consent by the principal, acceptance and authority by the agent, and control of the agent by the principal.

Assuming that a true agent/principal relationship is established, the agent will not be responsible for paying gross income tax on money it receives on behalf of the principal. The agent has no gross income tax liability because it never actually controls the money. The agent is simply collecting the money on behalf of the principal and passes that identical amount over to the principal. The agent never has any possessory right to the money because the agent is always acting on behalf of the principal and at all times, the money belongs to the principal; the agent is merely a financially disinterested intermediary between the payor and the principal.

Taxpayer was not acting as an agent when it was reimbursed for expenses incurred initially on behalf of its customers. There simply is no agent/principal relationship here. The taxpayer was not "passing along" this money to anyone. Taxpayer may have incurred these expenses on behalf of and for the convenience of its customers and it may have simply been reimbursed on a dollar-for-dollar basis, but there is no agent/principal relationship between any of the parties involved in these transactions.

In addition, there is a total absence of the hallmarks that would signal taxpayer is acting as another entity's agent. There is no indication taxpayer is under the control of another entity; there is no indication that taxpayer did not ultimately have control of the reimbursed expenses. For taxpayer, the reimbursement of the expenses incurred on behalf of the customers may have been no-gain/no-loss transactions. However, taxpayer mistakes financially transparent exchanges for transactions in which it receives money while acting in a true agency capacity.

FINDING

Taxpayer's protest is respectfully denied.

II. Money Received from the Sale of Inventory Stored at Customer Locations – Gross Income Tax.

The audit adjusted taxpayer's gross income tax in order to reflect receipts obtained from the sale of inventory stored at customer locations. Taxpayer's argument is that it "disagrees with the adjustment."

Taxpayer stored inventories of goods at customer locations within Indiana. At various times during 1998, 1999, and 2000, taxpayer sold those goods to the customer.

Indiana's gross income tax "is imposed upon the receipt of: (1) the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana; and (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domciliary of Indiana." IC 6-2.1-2-2.

A taxpayer's gross receipts are subject to either the "high rate" (1.2 percent) or the "low rate (0.3 percent). IC 6-2.1-2-3. The audit determined that the sale of inventoried goods to the Indiana customers was subject to the low rate set out under IC 6-2.1-2-4. The statute provides that, "The receipt of gross income from the following is subject to the [low] rate of tax prescribed in section 3(a) of this chapter: (1) wholesale sales... (4) selling at retail."

Under IC 6-2.1-2-2, IC 6-2.1-2-3, IC 6-2.1-2-4 the audit was correct in determining that money received from the sale of goods – temporarily stored an Indiana customer's location – to that particular customer was subject to Indiana gross income tax at the low rate.

Other than disagreeing with this adjustment, taxpayer has provided no substantive basis upon which the Department is justified in reconsidering the audit's original determination.

FINDING

Taxpayer's protest is respectfully denied.

III. Business / Non-business Classification – Adjusted Gross Income Tax.

In reviewing taxpayer's adjusted gross income tax returns, the audit reclassified certain of taxpayer's income. The audit concluded that taxpayer incorrectly classified interest income, income derived from renting unused corporate property, and royalty income as "non-business income." The audit reclassified all three of these income categories as "business income."

In addition, the audit made an adjustment to reflect taxpayer's correct federal taxable income in order to properly represent a sale of stock which was treated as a sale of assets under I.R.C. § 338(h)(10). The audit concluded that the money received from the sale of stock should be treated as "business income." Again, taxpayer disagrees concluding that the money should be treated as "non-business income."

For purposes of determining a taxpayer's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three factor formula. IC 6-3-2-2(b). In contrast, non-business income is allocated to Indiana or it is allocated to another state. IC 6-3-2-2(g) to (k). Therefore, "whether income is deemed business income or non-business income determines whether it is allocated to a specific state or whether it is apportioned between Indiana and other states [in which] the taxpayer is conducting its trade or business." May Department Store Co. v. Indiana Dept. of State Revenue, 749 N.E.2d 651, 656 (Ind. Tax Ct. 2001).

Taxpayer's argument, that all four of these income categories are "non-business income," is significant because if taxpayer is correct, all this income is allocated elsewhere and is not relevant in calculating taxpayer's Indiana adjusted gross income tax.

The benchmark for determining whether income can be apportioned is the distinction between "business income" and "non-business income." That distinction is defined by the Indiana Code as follows:

> The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operation. IC 6-3-1-20.

"Non-business income," in turn, "means all income other than business income." IC 6-3-1-21. For purposes of calculating an Indiana corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while non-business income is allocated to Indiana or another state in which the taxpayer is doing business. May, 749 N.E.2d at 656. In that decision, the Tax Court determined that IC 6-3-1-20 incorporates two tests for determining whether the income is business or non-business: a transactional test and a functional test. Id. at 662-63. Under the transactional test, gains are classified as business income when they are derived from a transaction in which the taxpayer regularly engages. The particular transaction from which the income derives is measured against the frequency and regularity of similar transactions and practices of the taxpayer's business. Id. at 658-59.

Under the functional test, the gain arising from the sale of an asset will be classified as business income if the acquisition, management, and disposition of the property generating income constitutes an integral part of the taxpayer's regular trade or business operations. *See* IC 6-3-1-20.

Department regulations 45 IAC 3.1-1-29 and 45 IAC 3.1-1-30 provide guidance in determining whether income is business or non-business under the transactional test. 45 IAC 3.1-1-29 states in relevant part that, "Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is 'business income' or 'non-business income' is the identification of the transactions and activity which are the elements of a particular trade or business." 45 IAC 3.1-1-30 provides that, "[f]or purposes of determining whether income is derived from an activity which is in the regular course of the taxpayer's trade or business, the expression 'trade or business' is not limited to the taxpayer's corporate charter purpose of its principal business activity. A taxpayer may be in more than one trade or business, and derive business therefrom depending upon but not limited to some or all of the following:

(1) The nature of the taxpayer's trade or business.

(2) The substantiality of the income derived from the activities and the percentage that income is of the taxpayer's total income for a given tax period.

(3) The frequency, number of continuity of the activities and transactions involved.

(4) The length of time the property producing income was owned by the taxpayer.

(5) The taxpayer's purpose in acquiring and holding the property producing income.

The functional test focuses on the property being disposed of by the taxpayer. Id. Specifically, the functional test requires examining the relationship of the property at issue with the business operations of the taxpayer. May, 749 N.E.2d at 664. In order to satisfy the functional test, the property generating income must have been acquired, managed, and disposed by the taxpayer in a process integral to taxpayer's regular trade or business operations. Id. In May, the Tax Court defined "integral" as "part of or [a] constituent component necessary or integral to complete the whole." Id. at 664-65. The court concluded that petitioner retailer's sale of one of its retailing divisions was not "necessary or essential" to the petitioner's regular trade or business because the sale was executed pursuant to a court order that benefited a competitor and not the petitioner. Id. at 665. In effect, the court determined that because the petitioner was forced to sell the division in order to reduce its competitive advantage, the sale was not integral to the petitioner's own business operations. Id. Therefore, the proceeds from the division's sale were not business income under the functional test. Id.

A. Interest, Rent, Royalty Income.

Taxpayer receives money from the investment of "excess corporate cash" in short term deposit accounts. Taxpayer receives money from "the rental of unused corporate property." Taxpayer receives money in the form of "copyright[] and patent[]" license royalties.

Under the "transactional" test, these three categories of income are properly classified as business income because this income is derived from activities in which taxpayer regularly engages. There is nothing especially extraordinary about a company investing its excess cash in short-term, interest-bearing accounts; to the contrary, it would be decidedly irregular for any business entity – having access to unused cash assets – to allow those assets to remain dormant and unexploited. Similarly, taxpayer's practice of renting underutilized corporate property and licensing its copyrights and patents are also activities which occur in the regular course and operation of the taxpayer's business. Taxpayer argues that it is in the business of "producing and selling high performance specialty chemicals" and that it is not in the business of investing cash, renting property, or licensing intellectual property. However, the issue is not whether this income is or is not high-performance chemical income; the issue is whether or not receipts in the form

of interest, rental, and royalties are *business* income. Under the "transactional test," this income is.

These first three income categories are also properly classified as business income under the functional test. The property to which this income is attributable – excess cash, underutilized property, and intellectual property – were all acquired and managed by the taxpayer "in a process integral to taxpayer's regular trade or business operations." May, 749 N.E.2d at 664. Taxpayer did not stumble across these assets by sheer happenstance. The cash, rental property, and intellectual property are each essential components within taxpayer's diverse but integrated business operation.

B. Deemed Sale of Assets.

Taxpayer and parent company entered into an agreement, pursuant to I.R.C. § 338(h)(10), whereby taxpayer sold its stock in the form of a "deemed asset sale." Under I.R.C. § 338(h)(10), the taxpayer was deemed to have sold all of its assets to the "new target" on the date of acquisition and immediately distribute the proceeds from this deemed asset sale to its parent corporation in complete liquidation.

Taxpayer is in the business of selling "high performance chemicals," providing "chemical management services," and in managing the assets related to those particular business activities. The deemed sale of assets was an extraordinary and nonrecurring transaction for the taxpayer. Therefore, the deemed sale does not meet the transactional test because it was not activity which occurred "in the regular course of the taxpayer's trade or business." 45 IAC 3.1-1-30.

Taxpayer chose to enter into a "deemed sale" of its assets thereby generating a substantial gain. Taxpayer's independent decision to dispose of its assets was a decision necessarily integral to the taxpayer's property and meets the requirements set out under the functional test. Accordingly, the proceeds resulting from the sale of its assets were appropriately classified as business income.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04-20020431.LOF

LETTER OF FINDINGS NUMBER: 02-0431
SALES/USE TAX
For The Tax Periods: 1999 through 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales Tax – Unitary Transactions

Authority: IC 6-2.5-2-1, IC 6-8.1-3-1, IC 6-8.1-1-1, IC 6-8.1-3-12, IC 6-8.1-4-2, IC 6-2.5-4-9, 45 IAC 2.2-4-25, 45 IAC 2.2-3-12, 50 IAC 4.3-4-10. 45 IAC 2.2-1-1.

Taxpayer protests the Department's assessment of sales tax after they reported tax due in a manner prescribed by an auditor who conducted a previous audit.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation which manufactures and installs signs. The manufacturing is completed at Taxpayer's out-of-state headquarters. The signs are prepared to custom order or to the specifications of various chain store clients. The installation and the associated preparation work is performed at the customer's location. Taxpayer also provides repair services for its clients and the work is usually performed at the client's location by Taxpayer's out-of-state employees.

Taxpayer was audited by the Department of Revenue in 1987 for the periods of 1982 through 1985. During the audit, the auditor determined that Taxpayer was a contractor making improvements to realty and instructed Taxpayer to collect sales tax on only the materials portion of its sign sales/installation transactions.

In the current sales/use tax audit for the periods of 1999 through 2001, the auditor determined that the signs are not considered realty and that Taxpayer is required to collect sales tax on all elements of the unitary transaction. The auditor "grossed up" the material cost to arrive at a total manufactured cost and assessed sales tax on the difference between the manufactured costs and the cost of materials which Taxpayer remitted. Taxpayer now protests the recent assessments. More facts supplied as necessary.

I. Sales Tax: Unitary Transactions

DISCUSSION

Taxpayer, an out-of-state corporation, is in the business of manufacturing and installing outdoor signs. The signs are prepared to custom order or to the specifications of various chain store clients. The installation and the associated preparation work is

performed at the customer's location. Taxpayer also provided repair service for its clients and the work is performed at the client's location by Taxpayer's out-of-state employees.

Taxpayer was audited for the periods of 1982 through 1985. During that audit, the auditor determined that Taxpayer was a contractor based on the assumption that the signs became improvements to realty. Taxpayer reported Indiana contracts which were subject to tax as "sales" instead of reporting them as "contractor's materials". The auditor accepted Taxpayer's method of reporting due to the record keeping system of Taxpayer, however, the auditor advised Taxpayer how to report sales/use tax as a contractor. The auditor made adjustments assessing sales/use tax on "materials" used on Indiana jobs which Taxpayer did not report.

Subsequently, Taxpayer was audited for the periods of 1999 through 2001. During this audit, the auditor found that the signs were not improvements to realty and that tangible personal property including fabrication and assembly were subject to tax as a unitary transaction.

"An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana." IC 6-2.5-2-1. Also, the Department of Revenue has the primary responsibility for the administration, collection, and enforcement of listed taxes. IC 6-8.1-3-1. Sales and use taxes are included in the listed taxes. IC 6-8.1-1-1. Consequently, the Department of Revenue may audit any returns filed with respect to sales/use tax. IC 6-8.1-3-12. Specifically, IC 6-8.1-4-2(a) states:

The division of audit may:

(1) have full prompt access to all local and state official records;

(2) have access, through the data processing offices of the various state agencies, to information from government and private sources that is useful in performing its functions;

(3) inspect any books, records, or property of any taxpayer which is relevant to the determination of the taxpayer's tax liabilities;

(4) detect and correct mathematical errors on taxpayer returns;

(5) detect and correct tax evasion; and

(6) employ the use of such devices and techniques as may be necessary to improve audit practices.

Regarding contractors, IC 6-2.5-4-9 states:

(a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:

(1) is to be added to a structure or facility by the purchaser; and

(2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

In addition, 45 IAC 2.2-4-25 defines a contractor as "any person engaged in converting construction material into realty. The term 'contractor' refers to general or prime contractors, subcontractors, and specialty contractors, including but not limited to persons engaged in building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction."

As a contractor, Taxpayer would be liable for sales tax only on the materials used. 45 IAC 2.2-3-12 states in relevant part:

(d) A person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchaser price of all material so used.

(e) A person selling tangible personal property to be used as an improvement to real estate may enter into a completely separate contract to furnish the labor to install or construct such improvement, in which case the sales tax shall be collected and remitted by such seller on the materials sold for this purpose. Such sale of materials must be identifiable as a separate transaction from the contract for labor. The fact that the seller subsequently furnished information regarding the charges for labor and material used under a flat bid quotation shall not be considered to constitute separate transactions for labor and material.

From the aforementioned statutes, it is clear that in order to be considered a contractor, Taxpayer must be making an improvement to realty. Specifically, the signs Taxpayer installs must be considered real property. 50 IAC 4.3-4-10(e) (*formerly* 50 IAC 2.2-3-1(69)) states that signs including supports and foundations are considered personal property. Although the regulation is not definitive for sales tax purposes, it is influential. The signs that Taxpayer installs are specific to the businesses to whom they are sold. Typically, business owners do not intend to leave the sign in place beyond the life of the business and are removed when the business leaves in much the same way as booths or shelves. Here, the signs are considered personal property for sales/use tax purposes.

During the current audit, the auditor correctly realized Taxpayer was not a contractor and made adjustments in keeping with 45 IAC 2.2-1-1(a) to assess sales tax on the taxable but untaxed amounts. 45 IAC 2.2-1-1(a) states: "For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price."

Taxpayer argues that the current assessments are unreasonable because they relied on the previous auditor's recommendations. The current auditor was simply ensuring that Taxpayer was in compliance with the sales tax laws of Indiana pursuant to IC 6-8.1-3-1 and IC 6-8.1-3-12. The assessments in the first audit were the result of unreported sales whereas the current audit assessments resulted in the manner Taxpayer invoiced their Indiana customers. Taxpayer was assessed in the first audit only on the unreported materials from their sales and not assessed for the combined selling charge. Nevertheless, in the Explanation of Adjustments for the 1982 through 1985 audit, the auditor stated that "[t]axpayer is a contractor" and "[t]he taxpayer was advised of the correct method of reporting for the future." Taxpayer complied with these directions. Consequently, Taxpayer's protest of the assessments is sustained. However, Taxpayer is not a contractor and should collect and remit sales/use tax accordingly.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest of the current liabilities is sustained, however, Taxpayer is not considered a contractor and will prospectively collect and remit sales/use accordingly.

DEPARTMENT OF STATE REVENUE

0420020432P.LOF

LETTER OF FINDINGS NUMBER: 02-0432P
Sales/Use Tax
For the Years 1987-2000

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ISSUE

I. Tax Administration- Fraud Penalty

Authority: IC 6-8.1-10-4, 45 IAC 15-5-7 (3).

The taxpayer protests the imposition of the one hundred percent (100%) fraud penalty.

STATEMENT OF FACTS

The taxpayer is a husband and wife who operate a small business. The Indiana Department of Revenue, hereinafter referred as the "department," determined that the taxpayer had collected but not remitted sales taxes to Indiana from 1987 through 2000. The department assessed the sales taxes, interest, and the one hundred percent (100%) fraud penalty. The taxpayer protested the assessment of the fraud penalty and a hearing was held. The husband appeared at the hearing.

I. Tax Administration- Fraud Penalty

DISCUSSION

The taxpayer protests the imposition of the one hundred per cent (100%) fraud penalty.

The fraud penalty is imposed pursuant to IC 6-8.1-10-4 as follows:

If a person fails to file a return or to make a full tax payment with that return with the fraudulent intent of evading the tax, the person is subject to a penalty.

The Regulations set out five required elements for establishing fraud. These five elements are found at 45 IAC 15-5-7 (3) as follows:

(A) Misrepresentation of a material fact: A person must truthfully and correctly report all information required by the Indiana Code and the department's regulations. Any failure to correctly report such information is a misrepresentation of a material fact. Failure to file a return may be a misrepresentation.

(B) Scienter: This is a legal term meaning guilty knowledge or previous knowledge of a state of facts, such as evasion of tax, which it was a person's duty to guard against. A person must have actual knowledge of the responsibility of reporting the information under contention. However, the reckless making of statements without regard to their truth or falsity may serve as an imputation of scienter for purposes of proving fraud.

(C) Deception: Deception operates on the mind of the victim of the fraud. If a person's actions or failure to act causes the department to believe a given set of facts which are not true, the person has deceived the department.

(D) Reliance: Reliance also concerns the state of mind of the victim and is generally considered along with deception. If the person's actions, failure to act, or misrepresentations cause the department to rely on these acts to the detriment or injury of the department, the reliance requirement of fraud will be met.

(E) Injury: The fraud instituted upon the department must cause an injury. This can be satisfied simply by the fact that the misrepresentation(s) caused the department not to have collected the money which properly belongs to the state of Indiana.

In this case, the taxpayer misrepresented to the department that it did not have sales tax to remit by failing to file the required returns. The taxpayer had filed returns and remitted the tax correctly prior to 1987 which shows that the taxpayer understood its duty to remit the collected sales taxes to the state. Further, the taxpayer admitted at the hearing that he always knew that he was supposed to remit the collected sales taxes. The department was deceived by the taxpayer's actions in that the department did not know that the proper amount of taxes were not being remitted. The department relied on the taxpayer's indication that no taxes were due. This reliance caused injury to the state in that it did not collect the proper amount of taxes. The facts of this case meet the requirements for the imposition of the one hundred percent (100%) fraud penalty.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

4220030003.LOF

LETTER OF FINDINGS NUMBER: 03-0003
Motor Carrier Tax
Penalty
For the Years 1999, 2000, 2001

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Motor Carrier Fuel Tax—Adequate Documentation

Authority: IC § 6-6-4.1-1; IC § 6-6-4.1-4; IC § 6-6-4.1-10; IC § 6-6-4.1-20; IC § 6-8.1-5-4; 45 IAC 13-2-1; 45 IAC 13-4-1; 45 IAC 13-4-3.

Taxpayer protests the proposed assessment of Indiana's motor carrier fuel tax.

II. Penalty—Negligence

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the proposed assessment of the 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer is a common carrier that transports general freight, mostly pharmaceuticals, in trucks with refrigerator units. During the audit period (January of 1999 through December of 2001), taxpayer had approximately 39 vehicles subject to Indiana's Motor Carrier Fuel Tax. Some of the trucks are company owned, and some are operator owned. Drivers complete mileage and fuel information from stations and also withdraw fuel from taxpayer's bulk storage tank. Owner operators purchase all fuel from stations. During the audit period, an outside contractor compiled fuel and mileage information for the IFTA reports from trip envelopes that taxpayer submitted.

DISCUSSION

I. Motor Carrier Fuel Tax—Adequate Documentation

Taxpayer protests the proposed assessment of Indiana's Motor Carrier Fuel Tax, IC § 6-6-4.1-1 *et seq*. (MCT). The audit determined that taxpayer had not properly recorded all fuel withdrawals from the bulk fuel tank. Therefore, there was "unaccounted for fuel" found by comparing beginning and ending amounts in the bulk fuel tank. This fuel had not been properly taxed pursuant to IC § 6-6-4.1-4. *See also*, 45 IAC 13-2-1, 45 IAC 13-4-1, and 45 IAC 13-4-3, the applicable regulations. IC § 6-6-4.1-20 imposes a penalty for failure to keep records required by IC § 6-8.1-5-4.

In the Letter of Protest submitted to the Department, taxpayer originally argued that truck owner operators could have stolen the "unaccounted for fuel." At the hearing, taxpayer explained that he thought the outside contractor was reconciling the appropriate reports on the bulk fuel tank in order to account for all fuel dispensed. Taxpayer only became aware that the outside contractor was ignorant of the fact that taxpayer had a bulk fuel tank when the audit was performed. The outside contractor had not been compiling and reconciling the proper records in order to determine taxpayer's liability under the MCT. Taxpayer fired the outside contractor immediately and hired someone to do all metering, key locking, and recordkeeping in house. This person completely revamped and modernized taxpayer's recordkeeping system and fuel security systems, and spends several hours everyday keeping records up-to-date.

Pursuant to IC § 6-6-4.1-10, taxpayer is required at all times to keep accurate records of fuel disbursed and taxes remitted on the disbursed fuel. Taxpayer admittedly did not ensure that proper records were kept; instead, he relied on the expertise of the outside contractor whose services he engaged to do the job for him. Taxpayer asserts it is currently in compliance with the record keeping

provisions of MCT. He was not in compliance during the audit period. Therefore, the audit's proposed assessment of the tax is proper.

FINDING

Taxpayer's protest concerning the proposed assessment of Indiana's Motor Carrier Fuel Tax is denied.

II. Penalty—Negligence

Taxpayer protests the imposition of the 10% negligence penalty. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayer stated at the hearing that there was no intent to defraud the state, and that his failure to pay the proper amount of tax was due to his reliance on the expertise of the independent contractor he specifically hired to maintain proper records.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Taxpayer failed to keep proper fuel records related to the bulk fuel tank withdrawals, which caused inadequate records for several mileage categories; the contractor's negligence caused the bulk fuel recordkeeping error. And while a taxpayer cannot avoid tax liability based on a contract, given the totality of the circumstances, waiver of the penalty is appropriate in this instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is sustained.

DEPARTMENT OF STATE REVENUE

0220030078.LOF

LETTER OF FINDINGS: 03-0078
Corporate Income Tax
For the Periods 1999 and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Pre-Merger Special Corporation Status.

Authority: IC 6-2.1-3-24; IC 6-2.1-3-24.5; IC 6-3-2-2.8(2); 45 IAC 1.1-3-11; I.R.C. § 1361(b); I.R.C. § 1361(b)-(d); I.R.C. § 1361(b)(3); I.R.C. § 1361(b)(3)(A); I.R.C. § 1361(b)(3)(B)(ii); I.R.C. § 1363.

Taxpayer, as a subsidiary of parent corporation qualified to file as an S-Corporation prior to its merger in May of 1999, argues that it was itself entitled to file tax returns as a SC (Special Corporation) return.

II. Post-Merger Special Corporation Status.

Authority: IC 6-2.1-3-24.5; 45 IAC 1.1-3-11; I.R.C. § 1361(b).

Taxpayer maintains that, having merged with its parent company in May of 1999, it was thereafter entitled to file tax returns as an S-Corporation.

III. Equitable Estoppel – Special Corporation Status.

Authority: Hi-Way Dispatch, Inc. v. Indiana Dept. of State Revenue, 756 N.E.2d 587 (Ind. Tax Ct. 2001); 45 IAC 15-3-2(d)(3); 45 IAC 15-3-2(e); Black's Law Dictionary (7th ed. 1999).

Taxpayer maintains that the Department of Revenue is equitably estopped from disallowing its pre-merger claim to Special Corporation status.

STATEMENT OF FACTS

Taxpayer performed several construction contracts within the state. Taxpayer filed an Indiana income tax return as an SC-Corporation. During an audit of taxpayer business records and tax returns, the Department of Revenue (Department) determined taxpayer did not qualify for SC-Corporation status and assessed corporate income taxes accordingly. The taxpayer disagreed with the Department's interpretation and application of the law and submitted a protest to that effect. An administrative hearing was conducted, and this Letter of Findings results.

DISCUSSION

I. Pre-Merger Special Corporation Status.

Taxpayer merged with its parent company May 1, 1999. Previous to that date, taxpayer operated as a subsidiary of the parent company completing construction projects within the state. Taxpayer maintains that because – prior to the merger – the parent company could have made an S-Corporation election, taxpayer itself could also have made an S-Corporation election. There is no dispute that during the pre-merger period, neither parent company nor taxpayer had made an S-Corporation election. Nonetheless, taxpayer maintains that because it *could* have made the election, it was entitled to submit an SC-Return.

IC 6-2.1-3-24 states that "Gross income received by a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2) is exempt from gross income tax." In turn, IC 6-3-2-2.8(2) provides an exemption for the state's adjusted gross income tax to "Any corporation which is exempt from income tax under Section 1363 of the Internal Revenue Code...." I.R.C. § 1363 sets out the tax treatment afforded S-Corporations and its shareholders.

Taxpayer maintains that it was qualified to file as an S-Corporation during the pre-merger period. According to taxpayer, it was a domestic corporation, it had no more than 75 shareholders, the shareholders were all individuals or "qualified shareholders," and taxpayer had only one class of stock. *See* I.R.C. § 1361(b)-(d).

In effect, taxpayer argues that it is a qualified subchapter S subsidiary (QSSS). A QSSS is a wholly-owned subsidiary of a parent S-Corporation that the parent corporation decides to treat as a QSSS. *See* I.R.C. § 1361(b)(3). For federal and state purposes, a QSSS is not treated as a separate entity, and all of its assets, liabilities, and tax items are treated as the assets liabilities, and tax items of the parent S-Corporation. I.R.C. § 1361(b)(3)(A). Therefore, for federal and state tax purposes, the QSSS is disregarded as an entity separate from the parent S-Corporation, and all of the QSSS's tax information is reported on the parent S-Corporation's informational tax returns.

In addition, Indiana exempts from adjusted gross income tax the income of a "Special Corporation." Under IC 6-2.1-3-24.5 and 45 IAC 1.1-3-11, a "Special Corporation" is a corporation which otherwise qualifies as an S-Corporation as defined in I.R.C. § 1361(b) but which has *not* made the required federal election. Presumably, under IC 6-2.1-3-24.5, taxpayer's parent company could have qualified to submit an Indiana tax return as a "Special Corporation."

However, the issue is not whether the parent company could have qualified to file as a Special Corporation. Taxpayer argues that as a putative QSSS, it also could have filed – without making a federal election – as a "Special Corporation." Taxpayer maintains that it met the qualifications set out in I.R.C. § 1361(b) and "[a]s a result [taxpayer] could have made a valid S election and therefore would have qualified as a special corporation for Indiana tax purposes for the [pre-merger] period."

The Department is unable to agree with taxpayer's conclusion. Under I.R.C. § 1361(b)(3), the tax treatment and the qualifications of a subsidiary owned by an S-Corporation, are not the same. In order for a putative QSSS to qualify for S-Corporation status, I.R.C. § 1361(b)(3)(B)(ii) requires the parent company to make a second federal election to treat the subsidiary as a QSSS. Under the IRC provision, only a parent-corporation which has itself made an election to file as a S-Corporation may make the second federal election to treat the subsidiary as a QSSS. Taxpayer urges the Department not to read the federal regulations so narrowly as to deny taxpayer's request for relief based upon the parent company's failure to make such an election. According to taxpayer, because the parent company *could* have made the election, it was not necessary to actually do so. The Department declines taxpayer's invitation to so interpret the Indiana and federal codes and ignore the explicit election requirement specified in I.R.C. § 1361(b)(3)(B)(ii).

FINDING

Taxpayer's protest is respectfully denied.

II. Post-Merger Special Corporation Status.

The Department's audit of taxpayer's business records and tax returns covered the periods ending April 30, 1999, and April 30, 2000. According to taxpayer, it completed a merger with the parent company on May 1, 1999. As a result, "there no longer was a parent corporation and a subsidiary C corporation situation."

Taxpayer has submitted documentation substantiating its merger with the parent company and that the merger was effective on April 30, 1999. Taxpayer has also submitted information documenting that it submitted a federal Form 2553 by which the combined corporation (taxpayer) elected to be treated as an S-Corporation. In addition, taxpayer supplied a copy of an acknowledgement by the Internal Revenue Service accepting taxpayer's "election to be treated as an S corporation with an accounting period of Jan. 31, 2001, beginning May 01, 2000."

Taxpayer argues that it was entitled to S-Corporation status after May 1, 1999 because the parent / subsidiary relationship

ended and the combined entity qualified as an S-Corporation. Taxpayer's argument is based on IC 6-2.1-3-24.5 and 45 IAC 1.1-3-11, defining "Special Corporation. A "Special Corporation" is a corporation which otherwise qualifies as an S-Corporation as defined in I.R.C. § 1361(b) but which has not made the federal election. The Department agrees that – based upon the information supplied – the combined entity would have qualified as a Special Corporation under IC 6-2.1-3-24.5 as of the day the two predecessor entities merged.

FINDING

Subject to a determination by the supplemental audit, taxpayer's protest is sustained.

III. Equitable Estoppel – S-Corporation Status.

Taxpayer argues that the Department is estopped from denying its claim to S-Corporation status during the pre-merger period. According to taxpayer, taxpayer's representative sought the Department's opinion regarding its QSSS status. Taxpayer states that a representative of the Department confirmed its own conclusion that taxpayer – as a subsidiary of a qualifying parent – was a "special corporation" because the only requirement was that taxpayer "could have made the election."

Equitable estoppel is a defensive doctrine which "prevents one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way...." Black's Law Dictionary 571 (7th ed. 1999). Taxpayer maintains that, after having relied upon statements of a competent Department representative, the Department may not afterwards back-track on its position to the taxpayer's detriment.

"Equitable estoppel cannot ordinarily be applied against government entities." Hi-Way Dispatch, Inc. v. Indiana Dept. of State Revenue, 756 N.E.2d 587, 598 (Ind. Tax Ct. 2001). However, application of the doctrine against a government entity is not absolutely prohibited. Id. The exception to this general rule is where "the public interest would be threatened by the government's conduct." Id.

Even accepting taxpayer's assertion, that it relied on incorrect guidance from the Department to its detriment, the Department does not conclude that the incorrect advice threatened the public's interest.

A taxpayer does have the right to rely upon the written opinions offered by the Department in response to specific requests made by a taxpayer. "In respect to rulings issued by the department, based on a particular situation which may affect the tax liability of the taxpayer, only the taxpayer to whom the ruling was issued is entitled to rely on it." 45 IAC 15-3-2(d)(3). However, the rules specifically state that "Oral opinions or advice will not be binding upon the department." 45 IAC 15-3-2(e). Where written questions inquire as to the tax consequences of a particular transactions, "[T]he department may consider such letters as rulings that may bind the department to the position stated in respect to that taxpayer only." Id.

Taxpayer sought advice from a Department representative. At this point, it is not possible to fully understand the particular question taxpayer tendered to the representative; it is not possible to know if the representative fully and correctly understood the taxpayer's question or taxpayer's particular business circumstances; it is not possible to know precisely how the representative responded to the taxpayer's questions. The advice offered was not provided in the form of a written ruling which would thereafter bind the Department. There is no indication that the oral advice offered to the taxpayer – correct or incorrect – threatened the larger public interest.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

02-20030129P.LOF

LETTER OF FINDINGS NUMBER: 03-0129P
Income Tax
Calendar Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late payment penalty, and, penalty on underpayment of estimated tax.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The late payment penalty and interest, and, penalty and interest for underpayment of estimated tax, was assessed on an income tax return for the calendar year 2001.

The taxpayer is an insurance company headquartered out-of-state.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be waived as the error was the result of unintentional oversight. The taxpayer has the option of paying a premium tax or an income tax each year. This election is to be made in November of the tax year. The taxpayer normally paid the premium tax, but for 2001 decided to pay the income tax instead. However, this information was not communicated to the taxpayer's premium tax department, and therefore, the premium tax department continued to make the estimated tax payments to the Indiana Insurance Department instead on the Indiana Department of Revenue. As the Indiana Department of Revenue did not get the estimated payments, the resultant income tax computation resulted in penalty and interest assessed for the underpayment of estimated tax, and, penalty and interest for late payment.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

II. Tax Administration – Interest

DISCUSSION

The taxpayer protests the interest assessment.

IC 6-8.1-10-1 does not allow the waiver of interest. As such, the Department finds the assessment of interest proper and denies the interest protest.

FINDING

The taxpayer's interest protest is denied.

DEPARTMENT OF STATE REVENUE

4220030138.LOF

LETTER OF FINDINGS: 03-0138
International Fuel Tax Agreement (IFTA)
For the Tax Periods 1999, 2000, and 2001

NOTICE: Under 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Fuel Tax Assessment.

Authority: IC 6-8.1-3-14; IC 6-8.1-5-1(b); IC 6-8.1-5-4(a); IFTA Articles of Agreement, R1210.200 (1998); IFTA Procedures Manual, P540, 550 (1996); IFTA Audit Manual, A100 (1998).

Taxpayer argues that the Department of Revenue (Department) audit of taxpayer's fuel purchase records resulted in an erroneous assessment of additional fuel tax; according to taxpayer, the additional assessment was based upon incorrect information.

STATEMENT OF FACTS

Taxpayer is in the business of hauling general freight. It owns a number of trucks and occasionally leases others. The Department conducted an audit of taxpayer's fuel records and determined that it owed additional fuel tax. The taxpayer argued that the assessment of additional tax was incorrect. Taxpayer submitted a protest, an administrative hearing was held, and this Letter of Findings results.

DISCUSSION

I. Fuel Tax Assessment.

IFTA is an agreement between various United States jurisdictions and Canada allowing for the apportionment of previously collected motor fuel taxes. The agreement's goal is to simplify the tax, licensing, and reporting requirements of interstate motor carriers such as taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority granted under IC 6-8.1-3-14.

As taxpayer's home jurisdiction, Indiana audited taxpayer's records to determine the amount of fuel taxpayer used, the amount of taxes paid on that fuel, the states in which taxpayer operated its trucks, and the number of miles driven in each of those states. Thereafter, the amount of fuel tax paid was apportioned among the states in which taxpayer operated its trucks based upon the number of miles driven in each of those state taxing jurisdictions.

Taxpayer's drivers buy fuel two different ways. The first way is to buy fuel from an authorized local supplier. Each driver is assigned authorization cards. These authorization cards allow the driver to buy fuel from two different "fuel networks." The fuel networks are groups of associated suppliers which provide taxpayer a centralized billing service. As far as the driver is concerned, the authorization card works like a credit card. After each purchase, the local supplier gives the driver a copy of the invoice. When the driver returns to taxpayer's location, the driver collects the invoices and places them into a "trip envelope."

After the driver turns in a trip envelope, taxpayer's "log audit clerk" enters the fuel purchase information into the taxpayer's own computer system. However, taxpayer pays the fuel networks on the basis of a faxed invoice received directly from the fuel network.

The second way a driver can buy fuel is to pay for cost from his own pocket and turn the bill over to the log audit clerk. The clerk enters that amount on taxpayer's computer system and arranges for the driver to be reimbursed. According to taxpayer, this happens rarely because of the inconvenience to the driver.

The amount of purchased fuel recorded on taxpayer's computer system should equal the amount of invoices received from the fuel networks plus the amounts reimbursed to the drivers. In a perfect world, it would be possible to justify all these amounts, determine the total amount of fuel purchased, determine the jurisdictional miles, and determine the exact amount of any tax due.

During the audit of taxpayer's 1999 through 2001 records, it was determined that the faxed invoices received from the fuel networks, the invoices received from the individual drivers, the information written on the trip envelope, and the information contained within taxpayer's computer system could not be reconciled.

The issue raised by taxpayer stems from 76 fuel purchases recorded on taxpayer's computer system. The audit's assessment of additional fuel tax is based on these 76 purchases. Taxpayer argues that the 76 fuel purchases should be removed from the audit report because there is no record of these purchases elsewhere. According to taxpayer, the 76 purchases are simply "entry errors." Taxpayer argues that the 76 entries should be deleted because none of the entries correspond to any of the invoices received from the fuel networks and do not correspond to any of the recorded reimbursements paid individual drivers. According to taxpayer, none of the 76 entries have an invoice number and it cannot find any documentation which corresponds to these particular 76 entries.

Taxpayer comes to the conclusion that the 76 entries should be deleted because, "An audit that improperly includes purchases of fuel that the vendor generated purchase records don't include is not an accurate audit conducted in a professional manner as required by IFTA standards." *See* IFTA Audit Manual, A100.

IFTA Articles of Agreement, R1210.200 (1998) provides the standard for determining whether a proposed assessment may successfully be challenged by the licensee. "The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden of proof shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive."

It is the taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases. As set out in IC 6-8.1-5-4(a):

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. *See also* IFTA Procedures Manual, P540, 550 (1996).

The Department does not agree with taxpayer's conclusion that it has established, by a preponderance of the evidence, that the 76 entries should be deleted from the audit report. The 76 entries were not invented by the audit; the entries were obtained from taxpayer's own records. There is nothing inherently incredible or plainly erroneous about the information contained within the 76 entries; the dates, gallons purchased, state jurisdictions, vehicle numbers are all entirely credible and comport substantively with information accepted by both taxpayer and the audit. Although taxpayer has not been able obtain documents which further substantiates the 76 entries, neither has it been able to produce information which would explain where these entries came from or information which confirms that the purchases did not occur.

Taxpayer asks the Department to choose between different sets of conflicting fuel purchase records, ignore entirely certain of those records, and select those records which provide taxpayer the most beneficial result. The Department is unable to accept taxpayer's invitation to do so because it is not up to the Department to refute, corroborate, or explain the information contained within taxpayer's own records. The proposed assessment of additional fuel tax is "prima facie evidence that the department's claim

for the unpaid tax is valid." IC 6-8.1-5-1(b). "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Id. *See also* IFTA Articles of Agreement, R1210.200. Taxpayer has not met this burden.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

02-20030178P.LOF

LETTER OF FINDINGS NUMBER: 03-0178P
Income Tax
Calendar Years 1999 & 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late payment penalty, and, penalty on underpayment of estimated tax.

STATEMENT OF FACTS

The taxpayer was assessed penalty as a result of a Department audit conducted for the calendar years 1999 and 2000.

The taxpayer is a large hair care franchiser. The taxpayer has 55 locations in Indiana. The taxpayer is domiciled out-of-state.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was the result of an inadvertent misclassification of income at the low rate instead of the proper high rate for gross income tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

04-20030180P.LOF

LETTER OF FINDINGS NUMBER: 03-0180P
Sales & Use Tax
Calendar Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The taxpayer was assessed penalty and interest on a sales and use tax audit conducted by the Department for the calendar year 2000.

The taxpayer is a contractor engaged in the underground installation of cable for utility company contractors. The taxpayer is domiciled in Indiana with one business location.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty and interest be waived as the company is a new company and the penalty and interest represent substantial amounts.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

II. Tax Administration – Interest

DISCUSSION

The taxpayer protests the interest assessment.

IC 6-8.1-10-1 does not allow the waiver of interest. As such, the Department finds the assessment of interest proper and denies the interest protest.

FINDING

The taxpayer's interest protest is denied.

DEPARTMENT OF STATE REVENUE

02-20030185P.LOF

LETTER OF FINDINGS NUMBER: 03-0185P
Income Tax
For the Years 1998-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is in the business of performing testing services and upgrading construction of storage tanks to comply with environmental laws and regulations. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. The taxpayer was given ample opportunity to schedule a hearing on the protest and/or submit additional information. Since the taxpayer did neither, this finding is based on the information in the file.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be

expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

This taxpayer has filed Indiana income taxes since 1991. During the period of the audit, the taxpayer ignored the law and departmental instructions for the payment of Indiana corporate income taxes. The taxpayer did not report any withholding on out of state contractors as clearly required by the law. Also, it did not file a return or pay taxes for the 2001 year. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

10-20030212P.LOF

LETTER OF FINDINGS NUMBER: 03-0212P
FOOD AND BEVERAGE TAX
For Years 1999, 2000, 2001 and 2002

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration - Interest

Authority: IC 6-8.1-10.1

Taxpayer requests waiver of the interest imposed.

II. Tax Administration - Penalty

Authority: IC 6-8.1- 10-2.1(d); 45 IAC 15-11-2(c).

Taxpayer requests waiver of the 10% negligence penalty imposed for failure to use ordinary business care.

STATEMENT OF FACTS

Taxpayer is protesting the imposition of the interest and 10% negligence penalty imposed because it was the victim of employee theft and because it is experiencing difficult financial times that may preclude it from being capable of paying the accrued penalties and interest.

I. Tax Administration - Interest

DISCUSSION

Pursuant to IC 6-8.1-10.1, the department has no authority to waive interest.

FINDINGS

The taxpayer is respectfully denied.

II. Tax Administration – Penalty

DISCUSSION

IC 6-8.1-10-2.1(d) provides:

If a person subject to penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit the tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

Furthermore, in order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. 45 IAC 15-11-2(c). Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;

(2) judicial precedents set by Indiana courts;

(3) judicial precedents established in jurisdictions outside Indiana;

(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case. Employee theft of the magnitude in this situation, absent any civil or criminal liability against the perpetrators, does

not show reasonable care and therefore does not relieve a taxpayer of its duty to collect and remit taxes as they become due.

FINDINGS

The taxpayer is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420020014.SLOF

SUPPLEMENTAL LETTER OF FINDINGS: 02-0014
Indiana Sales and Use Tax
For the Tax Years 1996 Through 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Integrated Production Process – Sales and Use Tax.

Authority: IC 6-2.5-1-1 et seq.; IC 6-2.5-5-3; IC 6-2.5-5-3(b); Rotation Products Corp. v. Dept. of State Revenue, 690 N.E.2d 795 (Ind. Tax Ct. 1998); Harlan Sprague Dawley, Inc. v. Dept. of State Revenue, 605 N.E.2d 1222 (Ind. Tax Ct. 1992); General Motors Corp. v. Indiana Dept. of State Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991); Indiana Dept. of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983).

Taxpayer maintains that its "integrated production process" begins at the point where it first obtains waste oil from its suppliers and ends at the point where the fully processed oil is delivered to its customers.

II. Sales and Use Tax Refund Claim.

Authority: IC 6-8.1-9-1(a).

Taxpayer argues that it was entitled to submit a claim for refund of sales and use taxes paid by a predecessor company.

III. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1(a); IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(c).

Taxpayer repeats its assertion that the audit's assessment of the ten-percent negligence penalty was unwarranted and that it is entitled to relief from that penalty.

STATEMENT OF FACTS

Taxpayer is in the business of acquiring, processing, and reselling petroleum products. Taxpayer purchases waste oil from various suppliers and – in some circumstances – is paid by suppliers who wish to dispose of their waste oil.

Taxpayer treats the waste oil at three distinct stages. When taxpayer first picks up the oil, it is filtered as it is being pumped into one of the taxpayer's trucks in order to remove certain contaminants. Thereafter, this partially filtered oil is transferred to taxpayer's central processing facility. At this facility, the waste oil undergoes additional filtration. In addition – during the period of time considered by the audit – taxpayer employed two supplementary methods of treating the oil at the central facility. Depending upon the nature of the contaminants contained within the waste oil, taxpayer used either a heat treating process or a chemical process. After treatment at the central facility, the oil is transported to one of the taxpayer's customers. As the partially treated oil is off-loaded, the oil is once again filtered.

Taxpayer's customers are uniquely equipped to burn this fully treated oil. Those customers include asphalt companies, steel mills, papers mills, and electric utilities. Unless the waste oil was properly treated to remove the offending contaminants, these customers would be unable to use the waste oil as fuel.

Taxpayer is also engaged in the business of cleaning up, treating, and appropriately disposing of contaminated water and contaminated solids.

The audit found that taxpayer's field-filtering activities, which occurred before the oil reached the central processing facility, were "preproduction" activities. The audit found that taxpayer's field-filtering activities, which occurred after the treated oil left that same facility, were "post-production" activities. In both instances, the audit determined that taxpayer's equipment employed during these "preproduction" and "post-production" activities was not entitled to an exemption from the state's gross retail tax. Therefore, the audit concluded that taxpayer's field-filtering equipment was not entitled to the exemption.

The taxpayer disagreed with the audit's conclusion. In effect, taxpayer argued that processing of the waste oil – from the point at which the waste oil was first acquired to the point where the processed oil was delivered to one of its customers – constituted one, unbroken production process.

At least in part, the original Letter of Findings (LOF) agreed with taxpayer's argument. The LOF agreed that taxpayer's "field-filtering" activity altered the nature and composition of the oil both at the time the waste oil was pumped on-board taxpayer's truck

and at the point where the fully-processed oil was off-loaded at the customers' location. Therefore, the LOF concluded that the taxpayer was entitled to purchase the field-filtering equipment without paying sales tax. However, the Department explicitly disagreed with taxpayer's implication that its exempt activities activity extended in one unbroken, indivisible process from the point at which it first acquired the waste oil to the point where it made the final delivery of the processed oil. The Department concluded that taxpayer was entitled to an exemption for the field-filtering equipment. However, it was not entitled to an exemption on the trucks used to transport the oil to the central facility, and it was not entitled to an exemption on the trucks used to deliver the treated oil to the customers.

Thereafter, taxpayer requested that the Department revisit the issue. An opportunity was provided for taxpayer to explain its position during an administrative hearing, and this Supplemental Letter of Findings follows.

DISCUSSION

I. Integrated Production Process – Sales and Use Tax.

Indiana imposes a sales tax on retail transactions and a complimentary use tax on tangible personal property that is stored, used, or consumed in the state. IC 6-2.5-1-1 et seq. In its original protest, taxpayer argued that it was entitled to a sales tax exemption on the field-filtering equipment installed on its trucks pursuant to IC 6-2.5-5-3(b). That exemption statute reads as follows:

> Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for *direct* use in the *direct* production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. (*Emphasis added*).

Taxpayer filters the waste oil at the time the waste oil is first acquired from the supplier; in order to remove coarse contaminants, the oil is filtered at the point the oil is pumped on-board the taxpayer's truck. The oil is then transported to taxpayer's central location where further processing – including additional filtration – occurs. After the processing at the central location is complete, taxpayer transports the oil to the customer's site. As taxpayer pumps the oil out of its delivery truck, the oil is once again filtered in order to assure that the oil may be used by the customer.

The original LOF determined that taxpayer was entitled to a sales tax exemption for the field-filtering equipment because the equipment was one step in the process whereby taxpayer changed the "form, composition, and character of the waste oil" producing a marketable product.

However, taxpayer argues that – having determined the field-filtering equipment was exempt – the trucks upon which this equipment is installed are also entitled to the same exemption.

To that end taxpayer cites to General Motors Corp. v. Indiana Dept. of State Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991) *aff'd* 599 N.E.2d 588 (Ind. 1992).

In General Motors, the automobile manufacturer shipped component automobile parts to its plants and claimed an exemption for the purchase of items employed in the interdivisional transfer of those components parts. The court held that the automobile manufacturer's packing materials were part of the integral process whereby the manufacturer produced its finished product. Therefore, the automobile manufacturer's packing materials were exempt under IC 6-2.5-5-3. The court reached that decision after finding the automobile manufacturer's widely separated production facilities formed a cohesive, singular production unit in which the claimant's "manufacture of finished marketable automobiles [was] accomplished by one continuous integrated production process within which the transport of parts from component plants to assembly plants [was] an essential and integral part." General Motors, 578 N.E.2d at 404.

In finding that the automobile manufacturer's production process encompassed manufacturing activities performed at multiple sites, the court identified a number of significant facts. Specifically, the court found that "[t]he facts in the case [FN3] as well as previous judicial findings [FN4] indicate GM's production process is by nature highly integrated. The court's sole concern, however, is whether GM's manufacturer of finished automobiles qualifies as one continuous integrated production process for the purpose of exemption from sales/use tax." Id. at 402.

Footnote three gives some indication of the evidence which the court relied in arriving at a conclusion that GM's production was both "continuous" and "integrated." Specifically, the court found that "GM's component plant personnel collaborate with the assembly plant personnel (1) to develop new product concepts, (2) to individually design, engineer, and test the performance of new parts and packing materials, (3) to plan the layout and production processes for new parts, (4) to coordinate production schedules because delays at one plant would have an immediate effect on the other plants, and (5) to solve problems and ensure quality control." Id. at n.3. In addition, the court noted that a "continuity of production exists between GM's different plants [which is] demonstrated by the standard practice of shifting certain production operations back and forth between component and assembly plants when necessary for more efficient operation." Id.

It was in the context of these particularized facts and findings that the court held that GM's manufacture of automobiles represented one "continuous integrated production process." Id. at 404. It was in the context of these particularized facts and findings that the court held that GM's assembled automobiles, and not the automobile's component parts, constituted the taxpayer's most marketable product and that the production of the that "most marketable product" constituted the conclusion of GM's integrated but physically discontinuous manufacturing process.

In addition, taxpayer cites to Indiana Dept. of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983) to support its contention that its trucks are exempt from sales tax. In that case, the court found that appellee taxpayer's trucks – used to transport unfinished stone from one stage of production to another – were exempt from sales tax because the equipment was being used within that taxpayer's own on-site production process whereby it manufactured crushed stone. Cave Stone 457 N.E.2d at 521, 523.

Nonetheless, the Department must disagree with the taxpayer's contention that its trucks are exempt from sales tax because the trucks are not used to move the waste oil and the semi-processed oil *within* an integrated, continuous, indivisible, product whereby taxpayer transforms the waste oil into usable, fully processed oil.

Unlike the automobile manufacturer in General Motors, there is no indication that the initial filtering, which occurs at the time the waste oil is first loaded on-board its trucks, is inextricably linked to the processing activities which take place at taxpayer's central location. In addition, there is no indication that the filtering which occurs at the point where the semi-processed oil is off-loaded is in anyway integrated with the processing activities which occur back at the central processing facility. Instead, the fact that taxpayer has chosen to conduct certain of its filtering activities off-site – whether by happenstance, necessity, or design – does not serve to bring each and every item of equipment within the "integrated" process whereby taxpayer produces usable, processed oil.

The Department is aware of the requirement that the legislature's intent in creating the exemption must not be so narrowly defined as to preclude from exemption those items which properly belong with the ambit of the exemption. Harlan Sprague Dawley, Inc. v. Dept. of State Revenue, 605 N.E.2d 1222, 1225 (Ind. Tax Ct. 1992). However, "it is [also] well-settled that exemptions are strictly construed against the taxpayer." Rotation Products Corp. v. Dept. of State Revenue, 690 N.E.2d 795, 798 (Ind. Tax Ct. 1998).

Taxpayer is entitled to the exemption for the field-filtering equipment which acts directly upon the waste oil and the semi-processed oil. Nonetheless, the Department must give effect to the requirement that, in order to qualify for an exemption pursuant to IC 6-2.5-5-3(b), the equipment must be one of the constituent elements within "an integrated process which produces tangible personal property," Rotation Product, 690 N.E.2d at 799, and must be "an essential and integral part of an integrated production process." General Motors, 578 N.E.2d at 401. Unlike appellee taxpayer's trucks in Cave Stone, taxpayer's own trucks are not "an essential and integral part of the procedures by which the [product] is transformed into a marketable product." Cave Stone, 457 N.E.2d at 523. Taxpayer's field-filtering activities are not an indivisible, component of the taxpayer's production process because the field-filtering activities and the processing which occurs at the central location to do not together form "one continuous integrated process." General Motors, 578 N.E.2d at 402. The Department is unable to accept taxpayer's expansive construction of the exemption statute and the relevant case law.

FINDING

Taxpayer's protest is respectfully denied.

II. Sales and Use Tax Refund Claim.

At the time the original audit report was prepared, taxpayer submitted a request for refund of 1996-1999 sales and use taxes purportedly paid in error. The audit concluded – in part – that the taxpayer was not entitled to make the claim because "it had filed claim for payment of tax on purchases made by another entity and prior to the creation of taxpayer corporation." The original LOF agreed and denied the taxpayer's protest of this issue.

The relevant statute provides that, "If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for refund with the department." IC 6-8.1-9-1(a). Because taxpayer was incorporated in August of 1997, taxpayer's request for refund of taxes paid in 1996 and 1997 was denied because taxpayer had initially failed to demonstrate that it was the same "person" as the predecessor company which had originally paid the taxes. As stated in the original LOF, "the only thing which is certain is that taxpayer sprang into existence on August 4, 1997, and that taxpayer and the predecessor share similar names."

Pursuant to its request that the Department reconsider this issue within the Supplemental Letter of Findings, taxpayer has provided information documenting taxpayer's acquisition of predecessor company's assets. In a "Written Action of the Company Managers," predecessor company was directed to "transfer all of its assets, real and personal, tangible and intangible, to [taxpayer]." In a copy of the "Bill of Sale," predecessor company agreed to sell all of its "assets, tangible, and intangible, of whatever kind and nature" to taxpayer. In that Bill of Sale, predecessor company promised that it was the owner of the transferred property, that the property was free of any undisclosed encumbrances, and that the predecessor company would protect taxpayer's interest in the property if any future claims were made against that property. An examination of the Secretary of State's records indicates that predecessor company survived the sale of the assets and did not become inactive until September 2000 approximately three years after predecessor company sold taxpayer its assets.

Taxpayer has not established that it is the same "person" as predecessor company. Under IC 6-8.1-9-1(a), it is not entitled to submit a claim for refund of taxes paid by predecessor company because taxpayer is a different "person" than predecessor company. The documentation reveals that taxpayer entered into an asset sale with predecessor company; taxpayer did not merge with or subsume predecessor company evidenced by the fact that predecessor company maintained a separate business existence until three

years after the date of the asset sale. In addition, the parties' own agreement indicates that taxpayer expected predecessor company would survive the asset sale in order to defend taxpayer against any future challenge to taxpayer's ownership rights to the transferred assets. Predecessor company was entitled to submit a claim for a refund of taxes. There is no indication taxpayer, by purchasing the assets of predecessor company, succeeded to that entitlement.

FINDING

Taxpayer's protest is respectfully denied.

III. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer repeats its assertion that it is entitled to abatement of the ten-percent negligence penalty imposed pursuant to IC 6-8.1-10-2.1(a).

Under IC 6-8.1-10-2.1(d) the Department is authorized to waive the penalty if the taxpayer demonstrates that its failure to pay the tax deficiency was based on "reasonable cause and not due to willful neglect." 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

In the original LOF, the department declined to abate the penalty concluding that taxpayer's "bare assertion that it 'demonstrated reasonable cause for the Department to waive the negligence penalty' [was] insufficient to establish that it exercised the 'ordinary business care and prudence' required of an 'ordinary reasonable taxpayer.'" Taxpayer has presented nothing which would permit the Department to depart from that original conclusion.

FINDING

Taxpayer's protest is respectfully denied.

INDIANA DEPARTMENT OF STATE REVENUE
REVENUE RULING #2003-01 ST
June 27, 2003

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Application of Sales/Use Tax to Sales of Not-For-Profit Organizations

Authority: IC 6-2.5-5-26b, Rule 45 IAC 2.2-5-58

The taxpayer requests the Department to rule whether or not the sales of the taxpayer are subject to sales/use tax.

STATEMENT OF FACTS

The taxpayer is a not-for-profit organization that provides a benefit to its members through the services it offers. The taxpayer is affiliated with a national not-for-profit organization. The mission of the taxpayer is to prepare young people to make ethical and moral choices (2002 Official Retail Catalog). The chief function of the taxpayer's organization is education (2002 Official Retail Catalog).

The taxpayer operates five stores in Indiana. The taxpayer states that the stores are not operated as free-market businesses. The taxpayer states that for example, one of the stores is located in the taxpayer's headquarters which is situated in a predominately business office setting. Moreover, the store maintains traditional office hours (8:30 a.m. – 6:00 p.m. M-F, 9:00 a.m. – 3:00 p.m. Sat.) and does not participate in any advertising or marketing campaigns.

Each store sells various items that can be classified into five broad categories:

1. Member and Leader Necessities – uniforms, uniform insignia and accessories such as badges and neckerchiefs, flags, and handbooks, guidebooks, pamphlets and program guides (taxpayer books) exclusively marketed by the taxpayer.
2. Crafts –
    a. Taxpayer kits: kits exclusively marketed by the taxpayer such as Pinewood Derby Car kit; and
    b. General craft kits: birdhouse kits, acrylic paint sets and other general craft items and kits that are not exclusively marketed by the taxpayer, but are used by members and leaders in completing requirements for various taxpayer badges and/or other skill ranks.
3. Awards – medals, trophies, plaques and sculptures specifically designed for taxpayer for recognition of members and their leaders.
4. Custom Design: awards, name plates and articles of clothing with an embroidered taxpayer design or logo intended to recognize individuals who further the taxpayer's mission or who participate in a taxpayer event e.g. summer camp, day camp.
5. Camping:

a. Taxpayer camping items: camping items exclusively marketed by the taxpayer such as taxpayer wall tents (used by members and leaders participating in taxpayer summer camp) and the taxpayer official camping gear which includes items such as taxpayer book bag, belt pack and canteen (used by members and leaders participating in day camp or resident camp); and

b. General camping items: tents, packs, sleeping bags, duffel bags and various camping utensils and general camping items that are not exclusively marketed by the taxpayer, but are purchased and used by members and leaders.

DISCUSSION

IC 6-2.5-5-26b (a) & (b) state:

(a) Sales of tangible personal property are exempt from the state gross retail tax, if:

(1) the seller is an organization that is described in section 21(b)(1) of this chapter;

(2) the organization makes the sale to make money to carry on a not-for-profit purpose; and

(3) the organization does not make those sales during more than thirty (30) days in a calendar year.

(b) Sales of tangible personal property are exempt from the state gross retail tax, if:

1. the seller is an organization described in section 21(b) of this chapter;

2. the seller is not operated predominantly for social purposes;

3. the property sold is designed and intended primarily either for the organization's educational, cultural, or religious purposes, or for improvement of the work skills or professional qualifications of the organization's members; and

4. the property sold is not designed or intended for use in carrying on a private or proprietary business.

Rule 45 IAC 2.2-5-58, interpreting IC 6-2.5-5-26b, provides in part:

(a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designated and intended primarily for the educational, cultural or religious purposes of such qualified not-for-profit organization and not used in carrying out a private or proprietary business.

(b) The gross receipts from each sale of tangible personal property by a qualified not-for-profit organization are exempt under this rule only if:

(1) The nature of the property sold will further the educational, cultural or religious purposes of the organization; and

(2) The organization is not carrying on a private or proprietary business with respect to such sales.

(c) Furthering the educational, cultural or religious purpose. The primary purpose of the property sold must be to further the educational, cultural or religious purpose of the qualified not-for-profit organization.

Firstly, it should be noted that the "thirty (30) day sales rule" exemption from collecting sales/use tax contained in IC 6-2.5-5-26b (a) is not applicable to the taxpayer as the taxpayer makes sales for more than thirty (30) days in a calendar year.

Secondly, it is clear from the above statute and regulation that for the taxpayer's sales of tangible personal property to be exempt from sales/use tax the sales must be both made in furtherance of the educational purpose of the taxpayer's organization and not sold in the "carrying on" of a private or proprietary business.

Here, all the tangible personal property sold by the taxpayer, i.e., member and leader necessities, taxpayer craft kits and general craft kits, awards, custom design items, and taxpayer camping items and general carrying items, is used for educational purposes, hence, consistent with the taxpayer's purpose of organization. Further, all items are predominantly sold to members, leaders and others involved with the taxpayer's organization, therefore, the taxpayer is not carrying on a private or proprietary business. This being the case, the taxpayer's sale of the above listed items is not subject to sales/use tax.

RULING

The Department rules that member and leader necessities, taxpayer craft kits and general craft kits, awards, custom design items, and taxpayer camping items and general camping items sold by the taxpayer are not subject to sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection

INDIANA DEPARTMENT OF STATE REVENUE

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

10 IAC 1.5	RA	03-102	26 IR 3425	
10 IAC 1.5-1-2				*ERR (26 IR 3046)
10 IAC 1.5-1-7				*ERR (26 IR 3046)
10 IAC 1.5-2-2				*ERR (26 IR 3046)
10 IAC 1.5-2-3				*ERR (26 IR 3046)
10 IAC 1.5-2-5				*ERR (26 IR 3046)
10 IAC 1.5-3-5				*ERR (26 IR 3046)
10 IAC 1.5-3-7				*ERR (26 IR 3046)
10 IAC 1.5-3-8				*ERR (26 IR 3046)
10 IAC 1.5-4-7				*ERR (26 IR 3046)
10 IAC 1.5-6	N	03-101	26 IR 3374	
10 IAC 3-1-1	A	03-167	26 IR 3909	
10 IAC 3-1-2	A	03-167	26 IR 3911	

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

11 IAC 1-1-3.5	N	02-238	26 IR 420	*AROC (26 IR 883) **26 IR 2300**
11 IAC 2-5-4				*ERR (26 IR 35)
11 IAC 2-5-5	N	02-324	26 IR 1598	*AROC (26 IR 2134)
11 IAC 2-6-1	A	02-110	25 IR 3213	**26 IR 6**
11 IAC 2-6-5	A	02-110	25 IR 3213	**26 IR 6**
11 IAC 2-6-6	N	02-110	25 IR 3213	**26 IR 6**
11 IAC 3	N	03-165	26 IR 3911	

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

25 IAC 2-19	R	02-150	26 IR 86	*ARR (26 IR 3047) **26 IR 3313**
25 IAC 2-20	R	02-150	26 IR 86	*ARR (26 IR 3047) **26 IR 3313**
25 IAC 5	N	02-150	26 IR 67	*ARR (26 IR 3047) **26 IR 3296**

TITLE 31 STATE PERSONNEL DEPARTMENT

31 IAC 1-9-3	A	02-10	25 IR 3214	
31 IAC 1-9-4	A	02-10	25 IR 3215	
31 IAC 1-9-4.5	A	02-10	25 IR 3215	
31 IAC 1-12.1	R	02-10	25 IR 3219	
31 IAC 2-11-3	A	02-10	25 IR 3216	
31 IAC 2-11-4	A	02-10	25 IR 3217	
31 IAC 2-11-4.5	A	02-10	25 IR 3217	
31 IAC 2-17.1	R	02-10	25 IR 3219	
31 IAC 4	R	02-10	25 IR 3219	
31 IAC 5	N	02-10	25 IR 3218	

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

35 IAC 8-1-1	A	02-163	25 IR 4134	
35 IAC 8-1-2	A	02-163	25 IR 4134	
35 IAC 8-2-1	A	02-163	25 IR 4135	
35 IAC 9-1-1	A	02-163	25 IR 4136	
35 IAC 9-1-2	A	02-163	25 IR 4136	
35 IAC 9-1-3	A	02-163	25 IR 4136	
35 IAC 9-1-4	A	02-163	25 IR 4136	
35 IAC 10	N	02-163	25 IR 4137	
35 IAC 11	N	03-131	26 IR 3678	

TITLE 45 DEPARTMENT OF STATE REVENUE

45 IAC 3.1-1-99.1	N	02-305	26 IR 817	*ARR (26 IR 2376)
45 IAC 18-1-2	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-1-3	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-1-4	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-1-5	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-1-6	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-1-7	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-1-8	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-1-9	N	02-40	25 IR 3220	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2300** *AROC (26 IR 2472)
45 IAC 18-1-10	N	02-40	25 IR 3220	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2301** *AROC (26 IR 2472)
45 IAC 18-1-11	N	02-40	25 IR 3220	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2301** *AROC (26 IR 2472)
45 IAC 18-1-12	N	02-40	25 IR 3220	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2301** *AROC (26 IR 2472)
45 IAC 18-1-13	N	02-40	25 IR 3220	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2301** *AROC (26 IR 2472)
45 IAC 18-1-14	N	02-40	25 IR 3221	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2301** *AROC (26 IR 2472)
45 IAC 18-1-15	N	02-40	25 IR 3221	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2301** *AROC (26 IR 2472)
45 IAC 18-1-16	N	02-40	25 IR 3221	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2302** *AROC (26 IR 2472)
45 IAC 18-1-17	N	02-40	25 IR 3221	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2302** *AROC (26 IR 2472)
45 IAC 18-1-18	N	02-40	25 IR 3221	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2302** *AROC (26 IR 2472)
45 IAC 18-1-19	N	02-40	25 IR 3221	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2302** *AROC (26 IR 2472)
45 IAC 18-1-20	N	02-40	25 IR 3221	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2302** *AROC (26 IR 2472)

45 IAC 18-1-21	N	02-40	25 IR 3222	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2302** *AROC (26 IR 2472)
45 IAC 18-1-22	N	02-40	25 IR 3222	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2302** *AROC (26 IR 2472)
45 IAC 18-1-23	N	02-40	25 IR 3222	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2303** *AROC (26 IR 2472)
45 IAC 18-1-24	N	02-40	25 IR 3222	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2303** *AROC (26 IR 2472)
45 IAC 18-1-25	N	02-40	25 IR 3222	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2303** *AROC (26 IR 2472)
45 IAC 18-1-26	N	02-40	25 IR 3222	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2303** *AROC (26 IR 2472)
45 IAC 18-1-27	N	02-40	25 IR 3222	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2303** *AROC (26 IR 2472)
45 IAC 18-1-28	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2303** *AROC (26 IR 2472)
45 IAC 18-1-29	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2304** *AROC (26 IR 2472)
45 IAC 18-1-30	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2304** *AROC (26 IR 2472)
45 IAC 18-1-31	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2304** *AROC (26 IR 2472)
45 IAC 18-1-32	N	02-40	25 IR 3223	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2304** *AROC (26 IR 2472)
45 IAC 18-1-33	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-34	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-35	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-36	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-37	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-38	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-39	N	02-40	25 IR 3224	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2305** *AROC (26 IR 2472)
45 IAC 18-1-40	N	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-1-41	N	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-1-42	N	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-1-43	N	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-2-1	A	02-40	25 IR 3225	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2306** *AROC (26 IR 2472)
45 IAC 18-2-2	A	02-40	25 IR 3226	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-2-3	A	02-40	25 IR 3227	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-2-4	A	02-40	25 IR 3228	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-3-1	A	02-40	25 IR 3228	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-3-2	A	02-40	25 IR 3229	*CPH (25 IR 4129) *ARR (26 IR 2376) *AROC (26 IR 2472)
45 IAC 18-3-3	R	02-40	25 IR 3238	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2313** *AROC (26 IR 2472)
45 IAC 18-3-4	N	02-40	25 IR 3231	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2307** *AROC (26 IR 2472)
45 IAC 18-3-5	N	02-40	25 IR 3232	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2307** *AROC (26 IR 2472)
45 IAC 18-3-6	N	02-40	25 IR 3232	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2308** *AROC (26 IR 2472)
45 IAC 18-3-7	N	02-40	25 IR 3232	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2308** *AROC (26 IR 2472) *ERR (26 IR 2375)
45 IAC 18-3-8	N	02-40	25 IR 3233	*CPH (25 IR 4129) *ARR (26 IR 2376) **26 IR 2308** *AROC (26 IR 2472)

45 IAC 18-4-1	A	02-40	25 IR 3233	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2309
				*AROC (26 IR 2472)
45 IAC 18-4-2	A	02-40	25 IR 3234	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2309
				*AROC (26 IR 2472)
45 IAC 18-5-2	A	02-40	25 IR 3235	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2310
				*AROC (26 IR 2472)
45 IAC 18-6-1	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-6-2	R	02-40	25 IR 3238	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2313
				*AROC (26 IR 2472)
45 IAC 18-6-3	A	02-40	25 IR 3235	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2310
				*AROC (26 IR 2472)
45 IAC 18-7	N	02-40	25 IR 3236	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				*AROC (26 IR 2472)
45 IAC 18-8	N	02-40	25 IR 3236	*CPH (25 IR 4129)
				*ARR (26 IR 2376)
				26 IR 2311
				*AROC (26 IR 2472)

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

50 IAC 2.3-1-1	A	01-305	25 IR 835	**26 IR 6**
	A	01-402	26 IR 86	*AROC (26 IR 183)
				*AROC (26 IR 184)
				26 IR 2314
	A	02-240	26 IR 88	**26 IR 2315**
50 IAC 2.3-1-2	A	01-366	25 IR 1200	*ARR (25 IR 3760)
				*AWR (26 IR 39)
	A	01-402	26 IR 87	*AROC (26 IR 183)
				*AROC (26 IR 184)
				26 IR 2314
50 IAC 3.1-1	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-1	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-5	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-6	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-7	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-8	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.1-2-9	R	01-367	25 IR 2550	**26 IR 328**
50 IAC 3.2	N	01-367	25 IR 2548	**26 IR 326**
				*ERR (26 IR 382)
50 IAC 12-16-30				*ERR (26 IR 793)
50 IAC 14-3-1				*ERR (26 IR 3046)
50 IAC 14-4-1				*ERR (26 IR 382)
				*ERR (26 IR 3046)
50 IAC 14-5-1				*ERR (26 IR 3046)
50 IAC 14-5-3				*ERR (26 IR 3046)
50 IAC 14-6-1				*ERR (26 IR 382)
50 IAC 14-7-1				*ERR (26 IR 382)
50 IAC 14-8-1				*ERR (26 IR 3046)
50 IAC 15-1-1.5	N	01-266		††**26 IR 1516**
50 IAC 15-1-2.5	N	01-266	25 IR 410	*AROC (25 IR 2591)
				26 IR 1516
50 IAC 15-1-2.6	N	01-266	25 IR 410	*AROC (25 IR 2591)
				26 IR 1516
50 IAC 15-1-3	R	01-266	25 IR 416	*AROC (25 IR 2591)
				26 IR 1522
50 IAC 15-1-5	R	01-266	25 IR 416	*AROC (25 IR 2591)
				26 IR 1522
50 IAC 15-1-6	N	01-266	25 IR 410	*AROC (25 IR 2591)
50 IAC 15-3-1	A	01-266	25 IR 410	*AROC (25 IR 2591)
				26 IR 1516
50 IAC 15-3-2	A	01-266	25 IR 410	*AROC (25 IR 2591)
				26 IR 1516
50 IAC 15-3-3	A	01-266	25 IR 411	*AROC (25 IR 2591)
				26 IR 1517
50 IAC 15-3-4	A	01-266	25 IR 411	*AROC (25 IR 2591)
				26 IR 1517
50 IAC 15-3-5	A	01-266	25 IR 411	*AROC (25 IR 2591)
				26 IR 1517
50 IAC 15-3-6	N	01-266	25 IR 411	*AROC (25 IR 2591)
				26 IR 1518
50 IAC 15-4-1	A	01-266	25 IR 412	*AROC (25 IR 2591)
				26 IR 1518
50 IAC 15-5-1	A	01-266	25 IR 413	*AROC (25 IR 2591)
				26 IR 1519
50 IAC 15-5-2	A	01-266	25 IR 414	*AROC (25 IR 2591)
				26 IR 1520
50 IAC 15-5-4	A	01-266	25 IR 414	*AROC (25 IR 2591)
				26 IR 1520
50 IAC 15-5-5	A	01-266	25 IR 414	*AROC (25 IR 2591)
				26 IR 1520
50 IAC 15-5-6	A	01-266	25 IR 415	*AROC (25 IR 2591)
				26 IR 1521
50 IAC 15-5-7	A	01-266	25 IR 415	*AROC (25 IR 2591)
				26 IR 1521
50 IAC 15-5-8	A	01-266	25 IR 415	*AROC (25 IR 2591)
				26 IR 1521
50 IAC 18	N	02-81	26 IR 1117	*AROC (26 IR 1263)
50 IAC 19	N	02-342	26 IR 2397	*ARR (26 IR 3885)

TITLE 52 INDIANA BOARD OF TAX REVIEW

52 IAC 1	N	02-206	26 IR 89	**26 IR 2316**
52 IAC 2	N	03-179	26 IR 3915	
52 IAC 3	N	03-179	26 IR 3926	

TITLE 60 OVERSIGHT COMMITTEE ON PUBLIC RECORDS

60 IAC 2-1-1	A	02-261	26 IR 1118	**26 IR 2604**
60 IAC 2-1-2	R	02-261	26 IR 1121	**26 IR 2607**
60 IAC 2-1-3	R	02-261	26 IR 1121	**26 IR 2607**
60 IAC 2-2-1	A	02-261	26 IR 1118	**26 IR 2604**
60 IAC 2-2-2	A	02-261	26 IR 1118	**26 IR 2604**
60 IAC 2-2-3	A	02-261	26 IR 1119	**26 IR 2605**
60 IAC 2-2-3.1	N	02-261	26 IR 1120	**26 IR 2605**
60 IAC 2-2-4	A	02-261	26 IR 1120	**26 IR 2605**
60 IAC 2-2-5	A	02-261	26 IR 1120	**26 IR 2606**
60 IAC 2-2-5.1	N	02-261	26 IR 1121	**26 IR 2606**
60 IAC 2-2-6	R	02-261	26 IR 1121	**26 IR 2607**
60 IAC 2-2-7	R	02-261	26 IR 1121	**26 IR 2607**

TITLE 65 STATE LOTTERY COMMISSION

65 IAC 3-3-3	A	02-252	*ER (26 IR 40)
65 IAC 3-3-10	A	02-252	*ER (26 IR 40)
65 IAC 3-4-4	A	02-252	*ER (26 IR 41)
65 IAC 3-4-5	A	02-252	*ER (26 IR 42)
65 IAC 4-2-4	A	02-253	*ER (26 IR 42)
65 IAC 4-2-8	A	02-253	*ER (26 IR 43)
65 IAC 4-206	N	03-121	*ER (26 IR 3348)
65 IAC 4-319	N	03-148	*ER (26 IR 3360)
65 IAC 4-452	N	02-353	*ER (26 IR 1585)
65 IAC 4-453	N	02-350	*ER (26 IR 1580)
65 IAC 5-2-4	A	02-253	*ER (26 IR 43)
65 IAC 5-2-8	A	02-253	*ER (26 IR 43)
65 IAC 5-5-5	A	03-113	*ER (26 IR 3057)
65 IAC 5-12-2	A	02-254	*ER (26 IR 44)
65 IAC 5-12-3	A	02-254	*ER (26 IR 45)
65 IAC 5-12-4	A	02-254	*ER (26 IR 45)
65 IAC 5-12-5	A	02-254	*ER (26 IR 46)

65 IAC 5-12-6	A	02-254		*ER (26 IR 46)
65 IAC 5-12-7	A	02-254		*ER (26 IR 47)
65 IAC 5-12-9	A	02-254		*ER (26 IR 47)
65 IAC 5-12-10	A	02-254		*ER (26 IR 47)
65 IAC 5-12-11	A	02-254		*ER (26 IR 48)
65 IAC 5-12-12	A	02-254		*ER (26 IR 49)
65 IAC 5-12-12.5	A	02-254		*ER (26 IR 49)
65 IAC 5-12-14	A	02-254		*ER (26 IR 51)
65 IAC 5-15-10	N	03-14		*ER (26 IR 1946)
65 IAC 5-15-11	N	03-14		*ER (26 IR 1946)
65 IAC 6-1-1.1	N	02-255		*ER (26 IR 51)
65 IAC 6-1-1.2	N	02-255		*ER (26 IR 51)
65 IAC 6-1-2.1	N	02-255		*ER (26 IR 51)
65 IAC 6-1-2.2	N	02-255		*ER (26 IR 51)
65 IAC 6-1-4.1	N	02-255		*ER (26 IR 51)
65 IAC 6-1-10	N	02-255		*ER (26 IR 52)
65 IAC 6-2-3	A	02-255		*ER (26 IR 52)
65 IAC 6-2-4	A	02-255		*ER (26 IR 52)
65 IAC 6-2-5	A	02-255		*ER (26 IR 52)
65 IAC 6-2-8	A	02-255		*ER (26 IR 53)
65 IAC 6-2-9	A	02-255		*ER (26 IR 53)
65 IAC 6-3-2	A	02-255		*ER (26 IR 53)
65 IAC 6-3-3	R	02-255		*ER (26 IR 54)
65 IAC 6-4-6	R	02-255		*ER (26 IR 54)
65 IAC 6-4-7	R	02-255		*ER (26 IR 54)
65 IAC 6-4-8	R	02-255		*ER (26 IR 54)
65 IAC 6-4-9	R	02-255		*ER (26 IR 54)
65 IAC 6-4-10	R	02-255		*ER (26 IR 54)
65 IAC 6-4-11	R	02-255		*ER (26 IR 54)
65 IAC 6-4-12	R	02-255		*ER (26 IR 54)

TITLE 68 INDIANA GAMING COMMISSION

68 IAC 3	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 4	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
68 IAC 4-1-1	RA	03-132	26 IR 3750	
68 IAC 4-1-2	RA	03-132	26 IR 3751	
68 IAC 4-1-3	RA	03-132	26 IR 3751	
68 IAC 4-1-4	RA	03-132	26 IR 3751	
68 IAC 4-1-5	RA	03-132	26 IR 3752	
68 IAC 4-1-6	RA	03-132	26 IR 3752	
68 IAC 4-1-7	RA	03-132	26 IR 3752	
68 IAC 4-1-8	RA	03-132	26 IR 3753	
68 IAC 4-1-9	RA	03-132	26 IR 3753	
68 IAC 4-1-10	RA	03-132	26 IR 3754	
68 IAC 5	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 10	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 11	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 12	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 13	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 14	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 15	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 16	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 17	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 18	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261
68 IAC 19	RA	01-418	25 IR 2589	*CPH (25 IR 3208)
				26 IR 1261

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 1-1-41.5	N	02-282	*ER (26 IR 394)
71 IAC 1.5-1-37.5	N	02-282	*ER (26 IR 394)
			*ERR (26 IR 793)
71 IAC 3-2-9	A	03-52	*ER (26 IR 2380)
71 IAC 3.5-2-9	A	03-52	*ER (26 IR 2380)
71 IAC 4-2-4	A	03-52	*ER (26 IR 2380)
71 IAC 4-2-5	A	03-52	*ER (26 IR 2381)
71 IAC 4-3-1	A	03-52	*ER (26 IR 2381)
71 IAC 4.5-2-4	A	03-52	*ER (26 IR 2381)
71 IAC 4.5-2-5	A	03-52	*ER (26 IR 2382)
71 IAC 4.5-3-1	A	03-52	*ER (26 IR 2382)
71 IAC 5.5-4-4	A	03-52	*ER (26 IR 2382)
71 IAC 5.5-5-3	A	02-250	*ER (26 IR 55)
71 IAC 6.5-1-4	A	02-250	*ER (26 IR 55)
71 IAC 7-1-15	A	03-52	*ER (26 IR 2383)
71 IAC 7-1-28	A	03-52	*ER (26 IR 2383)
71 IAC 7-1-37	R	03-52	*ER (26 IR 2388)
71 IAC 7.5-1-4	A	03-52	*ER (26 IR 2383)
71 IAC 7.5-1-14	N	03-52	*ER (26 IR 2383)
71 IAC 7.5-6-1	A	03-52	*ER (26 IR 2384)
71 IAC 7.5-10	N	02-250	*ER (26 IR 56)
71 IAC 8-1-1	A	03-52	*ER (26 IR 2384)
71 IAC 8-4-1	A	03-52	*ER (26 IR 2385)
71 IAC 8-6-2	N	03-52	*ER (26 IR 2385)
71 IAC 8.5-1-1	A	03-52	*ER (26 IR 2385)
71 IAC 8.5-3-1	A	03-52	*ER (26 IR 2386)
71 IAC 8.5-4-8	N	02-250	*ER (26 IR 57)
71 IAC 8.5-5-2	N	02-250	*ER (26 IR 57)
	N	03-52	*ER (26 IR 2386)
71 IAC 8.5-10-6	A	02-250	*ER (26 IR 58)
71 IAC 10-2-9	A	03-52	*ER (26 IR 2387)
71 IAC 12-2-15	A	02-251	*ER (26 IR 58)
	A	02-282	*ER (26 IR 394)
	A	03-52	*ER (26 IR 2387)
71 IAC 12-2-18	A	03-52	*ER (26 IR 2388)
71 IAC 12-2-19	A	02-251	*ER (26 IR 59)
			*ERR (26 IR 382)
71 IAC 12-2-20	A	02-282	*ER (26 IR 395)
71 IAC 13.5-3-3	A	03-25	*ER (26 IR 1952)
71 IAC 14.5-1-3	A	03-25	*ER (26 IR 1952)

TITLE 80 STATE FAIR COMMISSION

80 IAC 4-3-3	A	02-200	26 IR 420	**26 IR 3536**
80 IAC 4-3-5	A	02-200	26 IR 420	**26 IR 3536**
80 IAC 4-4	N	02-243	26 IR 2398	**26 IR 3537**

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

105 IAC 9-1-1	A	03-17	26 IR 2400
105 IAC 9-1-2	A	03-17	26 IR 2400
105 IAC 9-2-1	A	02-231	26 IR 421
105 IAC 12-1-2	A	03-58	26 IR 3077
105 IAC 12-1-5	A	03-58	26 IR 3077
105 IAC 12-1-14.5	N	03-58	26 IR 3077
105 IAC 12-1-14.6	N	03-58	26 IR 3077
105 IAC 12-1-18	A	03-58	26 IR 3077
105 IAC 12-1-22	A	03-58	26 IR 3077
105 IAC 12-1-23	A	03-58	26 IR 3078
105 IAC 12-2-4	A	03-58	26 IR 3078
105 IAC 12-2-6	A	03-58	26 IR 3078
105 IAC 12-2-7	A	03-58	26 IR 3078
105 IAC 12-2-10	A	03-58	26 IR 3078
105 IAC 12-2-11	A	03-58	26 IR 3078
105 IAC 12-2-13	A	03-58	26 IR 3079
105 IAC 12-2-14	A	03-58	26 IR 3079
105 IAC 12-2-16	A	03-58	26 IR 3079
105 IAC 12-2-17	A	03-58	26 IR 3080
105 IAC 12-2-18	N	03-58	26 IR 3080
105 IAC 12-2-19	N	03-58	26 IR 3080

105 IAC 12-2-20	N	03-58	26 IR 3080	
105 IAC 12-2-21	N	03-58	26 IR 3081	
105 IAC 12-3-1	A	03-58	26 IR 3082	
105 IAC 12-3-2	A	03-58	26 IR 3082	
105 IAC 12-3-4	A	03-58	26 IR 3082	
105 IAC 12-3-5	A	03-58	26 IR 3083	
105 IAC 12-4-3	A	03-58	26 IR 3084	
105 IAC 12-4-4	A	03-58	26 IR 3084	
105 IAC 12-4-5	A	03-58	26 IR 3084	

TITLE 135 INDIANA TRANSPORTATION FINANCE AUTHORITY

135 IAC 2	RA	02-175	25 IR 4219	**26 IR 882**
135 IAC 2-1-1	A	02-171	25 IR 4138	
135 IAC 2-2-1	A	02-171	25 IR 4140	
135 IAC 2-2-3	A	02-171	25 IR 4140	
135 IAC 2-2-5	A	02-171	25 IR 4140	
135 IAC 2-2-10	A	02-171	25 IR 4141	
135 IAC 2-2-12	A	02-171	25 IR 4141	
135 IAC 2-3-1	A	02-171	25 IR 4141	
135 IAC 2-3-2	A	02-171	25 IR 4141	
135 IAC 2-4-1	A	02-171	25 IR 4141	
135 IAC 2-4-4	A	02-171	25 IR 4142	
135 IAC 2-5-1	A	02-171	25 IR 4142	
135 IAC 2-5-2	A	02-171	25 IR 4142	
135 IAC 2-6-1	A	02-171	25 IR 4148	
135 IAC 2-7-1	A	02-171	25 IR 4148	
135 IAC 2-7-3	A	02-171	25 IR 4148	
135 IAC 2-7-7	A	02-171	25 IR 4148	
135 IAC 2-7-11	A	02-171	25 IR 4149	
135 IAC 2-7-15	A	02-171	25 IR 4149	
135 IAC 2-7-18	A	02-171	25 IR 4149	
135 IAC 2-7-19	R	02-171	25 IR 4151	
135 IAC 2-7-20	A	02-171	25 IR 4149	
135 IAC 2-7-23	A	02-171	25 IR 4149	
135 IAC 2-8-1	A	02-171	25 IR 4149	
135 IAC 2-8-3	A	02-171	25 IR 4150	
135 IAC 2-8-5	A	02-171	25 IR 4150	
135 IAC 2-8-7	A	02-171	25 IR 4150	
135 IAC 2-8-11	A	02-171	25 IR 4150	
135 IAC 2-10-1	A	02-171	25 IR 4151	
135 IAC 2-10-2	A	02-171	25 IR 4151	
135 IAC 3	RA	02-175	25 IR 4219	**26 IR 882**

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

170 IAC 4-1-26	A	02-44	25 IR 2751	**26 IR 328**
170 IAC 7-1.2				*ERR (26 IR 382)
170 IAC 7-1.3				*ERR (26 IR 382)
170 IAC 7-1.3-2				*ERR (26 IR 1565)
				*ERR (26 IR 2375)

TITLE 210 DEPARTMENT OF CORRECTION

210 IAC 1-6-1	A	02-259	26 IR 817	**26 IR 3538**
210 IAC 1-6-2	A	02-259	26 IR 818	**26 IR 3539**
210 IAC 1-6-3	R	02-259	26 IR 829	**26 IR 3550**
210 IAC 1-6-4	A	02-259	26 IR 818	**26 IR 3539**
210 IAC 1-6-5	A	02-259	26 IR 819	**26 IR 3540**
210 IAC 1-6-6	A	02-259	26 IR 820	**26 IR 3541**
210 IAC 1-6-7	A	02-259	26 IR 821	**26 IR 3542**
210 IAC 1-10	N	02-259	26 IR 821	**26 IR 3542**
210 IAC 5-1-1	A	02-259	26 IR 823	**26 IR 3544**
210 IAC 5-1-2	A	02-259	26 IR 824	**26 IR 3545**
210 IAC 5-1-3	A	02-259	26 IR 824	**26 IR 3545**
210 IAC 5-1-4	A	02-259	26 IR 827	**26 IR 3548**
210 IAC 6-1-1	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-2-1	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-2	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-3	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-2-4	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-2-5	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-2-6	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-7	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-8	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-9	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-10	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-11	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-12	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-2-13	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-3-1	A	02-173	25 IR 4152	**26 IR 1064**
210 IAC 6-3-2	A	02-173	25 IR 4153	**26 IR 1065**
210 IAC 6-3-3	A	02-173	25 IR 4153	**26 IR 1065**
210 IAC 6-3-4	A	02-173	25 IR 4154	**26 IR 1066**
210 IAC 6-3-5	A	02-173	25 IR 4155	**26 IR 1067**
210 IAC 6-3-6	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-3-7	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-3-8	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 6-3-9	A	02-173	25 IR 4155	**26 IR 1067**
210 IAC 6-3-10	A	02-173	25 IR 4155	**26 IR 1068**
210 IAC 6-3-11	A	02-173	25 IR 4155	**26 IR 1068**
210 IAC 6-3-12	RA	02-174	25 IR 4219	**26 IR 882**
210 IAC 7	RA	03-54	26 IR 3147	**26 IR 3960**

TITLE 240 STATE POLICE DEPARTMENT

240 IAC 1-4-3	RA	03-98	26 IR 3425	
240 IAC 1-4-24.1	RA	03-98	26 IR 3425	
240 IAC 7-1-6	RA	02-139	25 IR 3882	**26 IR 546**

TITLE 250 LAW ENFORCEMENT TRAINING BOARD

250 IAC 1-1.1	RA	02-149	25 IR 3882	
250 IAC 1-2	RA	02-149	25 IR 3882	
250 IAC 1-3-1	RA	02-149	25 IR 3882	
250 IAC 1-3-3	RA	02-149	25 IR 3882	
250 IAC 1-3-6	RA	02-149	25 IR 3882	
250 IAC 1-3-7	RA	02-149	25 IR 3882	
250 IAC 1-3-8	RA	02-149	25 IR 3882	
250 IAC 1-3-9	RA	02-149	25 IR 3882	
250 IAC 1-3-10	RA	02-149	25 IR 3882	
250 IAC 1-3-11	RA	02-149	25 IR 3882	
250 IAC 1-3-12	RA	02-149	25 IR 3882	
250 IAC 1-3-13	RA	02-149	25 IR 3882	
250 IAC 1-5	RA	02-149	25 IR 3882	
250 IAC 1-5.l	RA	02-149	25 IR 3882	
250 IAC 1-5.2	RA	02-149	25 IR 3882	
250 IAC 1-5.3	RA	02-149	25 IR 3882	
250 IAC 1-5.4	RA	02-149	25 IR 3882	
250 IAC 1-5.5	RA	02-149	25 IR 3882	
250 IAC 1-6-1	RA	02-149	25 IR 3882	
250 IAC 1-6-2	RA	02-149	25 IR 3882	
250 IAC 1-6-3	RA	02-149	25 IR 3882	
250 IAC 1-6-4	RA	02-149	25 IR 3882	
250 IAC 1-6-5	RA	02-149	25 IR 3882	
250 IAC 1-6-6	RA	02-149	25 IR 3882	
250 IAC 1-7	RA	02-149	25 IR 3882	
250 IAC 2	N	02-339	26 IR 3679	

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2-6	A	02-328	26 IR 1598	
305 IAC 1-3-4	A	02-328	26 IR 1599	
305 IAC 1-4-1	A	02-328	26 IR 1599	
305 IAC 1-4-2	A	02-328	26 IR 1599	
305 IAC 1-5	N	02-328	26 IR 1600	

TITLE 307 INDIANA BOARD OF REGISTRATION FOR SOIL SCIENTISTS

307 IAC	N	03-32	26 IR 2652	

TITLE 312 NATURAL RESOURCES COMMISSION

312 IAC 2	RA	02-72	25 IR 3461	**26 IR 546**
312 IAC 2-4-1	A	02-236	26 IR 1126	**26 IR 3318**

312 IAC 2-4-2	A	02-236	26 IR 1126	**26 IR 3318**
312 IAC 2-4-4	A	02-236	26 IR 1127	**26 IR 3318**
312 IAC 2-4-6	A	02-236	26 IR 1127	**26 IR 3319**
312 IAC 2-4-7	A	02-236	26 IR 1127	**26 IR 3319**
312 IAC 2-4-8	R	02-236	26 IR 1131	**26 IR 3323**
312 IAC 2-4-9	A	02-236	26 IR 1128	**26 IR 3319**
312 IAC 2-4-9.5	A	02-236	26 IR 1128	**26 IR 3320**
312 IAC 2-4-10	R	02-236	26 IR 1131	**26 IR 3323**
312 IAC 2-4-12	A	02-236	26 IR 1128	**26 IR 3320**
312 IAC 2-4-13	N	02-236	26 IR 1129	**26 IR 3321**
312 IAC 3	RA	02-72	25 IR 3461	**26 IR 546**
312 IAC 3-1-1	A	02-2	25 IR 2552	**26 IR 7**
312 IAC 3-1-2	A	02-2	25 IR 2553	**26 IR 8**
312 IAC 3-1-3	A	02-2	25 IR 2553	**26 IR 8**
312 IAC 3-1-8	A	02-2	25 IR 2553	**26 IR 8**
312 IAC 3-1-12	A	02-294	26 IR 1131	**26 IR 3323**
312 IAC 3-1-14	A	02-2	25 IR 2554	**26 IR 9**
312 IAC 3-1-18	A	02-2	25 IR 2554	**26 IR 9**
312 IAC 5-2-47	A	03-24	26 IR 2401	**26 IR 3868**
312 IAC 5-3-1	A	02-236	26 IR 1130	**26 IR 3321**
312 IAC 5-3-2	A	02-236	26 IR 1130	**26 IR 3322**
312 IAC 5-3-3	A	02-236	26 IR 1130	**26 IR 3322**
312 IAC 5-6-6	A	02-162	25 IR 4165	**26 IR 1900**
	A	03-29	26 IR 2660	
312 IAC 5-13-2	A	03-24	26 IR 2401	**26 IR 3869**
312 IAC 6	RA	02-331	26 IR 2133	
312 IAC 7	RA	02-331	26 IR 2133	
312 IAC 8-1-2	A	03-50	26 IR 3085	
312 IAC 8-1-4	A	03-50	26 IR 3085	
312 IAC 8-2-3	A	03-50	26 IR 3086	
312 IAC 8-2-6	A	03-50	26 IR 3088	
312 IAC 8-2-9	A	03-50	26 IR 3088	
312 IAC 8-2-11	A	03-50	26 IR 3088	
312 IAC 9	RA	02-331	26 IR 2133	
312 IAC 9-2-11	A	03-50	26 IR 3089	
312 IAC 9-2-13	A	02-68	25 IR 2751	**26 IR 1068**
312 IAC 9-6-1	A	02-318	26 IR 1966	**26 IR 3866**
312 IAC 9-6-7	A	02-318	26 IR 1967	**26 IR 3868**
312 IAC 9-10-3	A	03-35	26 IR 3374	
312 IAC 9-10-4	A	02-232	26 IR 1602	*AWR (26 IR 3347)
312 IAC 9-10-6	A	02-68	25 IR 2752	**26 IR 1069**
312 IAC 9-10-11	A	01-444	25 IR 2551	**26 IR 692**
312 IAC 9-11-14	A	02-322	26 IR 1603	**26 IR 3324**
312 IAC 11-5-1	A	03-30	26 IR 2661	
312 IAC 12-3-2				*ERR (26 IR 1565)
312 IAC 14	RA	02-331	26 IR 2133	
312 IAC 15	RA	02-331	26 IR 2133	
312 IAC 16-3-2	A	02-73	25 IR 4156	**26 IR 1896**
312 IAC 16-3.5	N	02-73	25 IR 4158	**26 IR 1898**
312 IAC 16-4-1	A	02-73	25 IR 4158	**26 IR 1898**
312 IAC 16-4-2	A	02-73	25 IR 4159	**26 IR 1898**
312 IAC 16-4-5	A	02-73	25 IR 4159	**26 IR 1899**
312 IAC 18	RA	02-72	25 IR 3461	**26 IR 546**
312 IAC 18-3-8	A	02-202	26 IR 1123	**26 IR 3315**
312 IAC 18-3-12	A	02-201	26 IR 1121	**26 IR 3313**
312 IAC 18-5-4	A	03-91	26 IR 3375	
312 IAC 20-2-1.7	N	03-12	26 IR 3084	
312 IAC 20-2-4.3	N	03-12	26 IR 3084	
312 IAC 20-2-4.7	N	03-12	26 IR 3085	
312 IAC 20-3-3	N	03-12	26 IR 3085	
312 IAC 20-5	N	02-329	26 IR 2658	
312 IAC 22.5				*ERR (26 IR 383)
312 IAC 24	RA	02-331	26 IR 2133	
312 IAC 25-1-45.5	N	02-104	25 IR 4160	*AROC (26 IR 1736) **26 IR 3860**
312 IAC 25-1-60.5	N	02-104	25 IR 4160	*AROC (26 IR 1736) **26 IR 3860**
312 IAC 25-1-109.5	N	02-104		**††26 IR 3860**
312 IAC 25-4-43	A	02-104	25 IR 4160	*AROC (26 IR 1736) **26 IR 3860**
312 IAC 25-4-47	A	02-104	25 IR 4161	*AROC (26 IR 1736) **26 IR 3861**
312 IAC 25-4-85	A	02-104	25 IR 4162	*AROC (26 IR 1736) **26 IR 3862**
312 IAC 25-4-93	A	02-104	25 IR 4163	*AROC (26 IR 1736) **26 IR 3863**
312 IAC 25-6-12.5	N	02-104	25 IR 4164	*AROC (26 IR 1736) **26 IR 3864**
312 IAC 25-6-76.5	N	02-104	25 IR 4164	*AROC (26 IR 1736) **26 IR 3865**

TITLE 326 AIR POLLUTION CONTROL BOARD

326 IAC 1-1-3	A	02-337	26 IR 1997	
326 IAC 1-1-3.5	A	02-337	26 IR 1997	
326 IAC 1-2-65	A	02-337	26 IR 1997	
326 IAC 1-2-90	A	02-337	26 IR 1998	
326 IAC 1-3-4	A	03-69	26 IR 3376	
326 IAC 1-4-1	A	02-88	25 IR 3240	**26 IR 1077**
	A	03-70	26 IR 3092	
326 IAC 1-5-2				*ERR (26 IR 1565)
326 IAC 2-2-13				*ERR (26 IR 1565)
	A	02-337	26 IR 1998	
326 IAC 2-2-16				*ERR (26 IR 1565)
	A	02-337	26 IR 1999	
326 IAC 2-3-1				*ERR (26 IR 1565)
	A	02-337	26 IR 2000	
326 IAC 2-6-1	A	01-249	24 IR 3700	*CPH (24 IR 4012)
326 IAC 2-6-2	A	01-249	24 IR 3700	*CPH (24 IR 4012)
326 IAC 2-6-3	A	01-249	24 IR 3702	*CPH (24 IR 4012)
326 IAC 2-6-4	A	01-249	24 IR 3703	*CPH (24 IR 4012)
				*ERR (26 IR 1566)
	A	02-337	26 IR 2005	
326 IAC 2-6-5	N	01-249	24 IR 3705	*CPH (24 IR 4012)
326 IAC 2-7-3				*ERR (26 IR 1566)
	A	02-337	26 IR 2006	
326 IAC 2-7-8				*ERR (26 IR 1566)
	A	02-337	26 IR 2006	
326 IAC 2-7-18				*ERR (26 IR 1566)
	A	02-337	26 IR 2007	
326 IAC 2-8-3				*ERR (26 IR 1566)
	A	02-337	26 IR 2008	
326 IAC 2-9-7				*ERR (26 IR 1566)
	A	02-337	26 IR 2009	
326 IAC 2-9-8				*ERR (26 IR 1566)
	A	02-337	26 IR 2010	
326 IAC 2-9-9				*ERR (26 IR 1566)
	A	02-337	26 IR 2012	
326 IAC 2-9-10				*ERR (26 IR 1566)
	A	02-337	26 IR 2013	
326 IAC 2-9-13				*ERR (26 IR 1566)
	A	02-337	26 IR 2014	
326 IAC 3-4-1				*ERR (26 IR 1566)
	A	02-337	26 IR 2016	
326 IAC 3-4-3				*ERR (26 IR 1566)
	A	02-337	26 IR 2016	
326 IAC 3-5-2				*ERR (26 IR 1566)
	A	02-337	26 IR 2017	
326 IAC 3-5-3				*ERR (26 IR 1567)
	A	02-337	26 IR 2019	
326 IAC 3-5-4				*ERR (26 IR 1567)
	A	02-337	26 IR 2019	
326 IAC 3-5-5				*ERR (26 IR 1567)
	A	02-337	26 IR 2020	
326 IAC 3-6-1				*ERR (26 IR 1567)
	A	02-337	26 IR 2022	
326 IAC 3-6-3				*ERR (26 IR 1567)
	A	02-337	26 IR 2022	
326 IAC 3-6-5				*ERR (26 IR 1567)
	A	02-337	26 IR 2023	

326 IAC 3-7-2				*ERR (26 IR 1567)
	A	02-337	26 IR 2024	
326 IAC 3-7-4				*ERR (26 IR 1567)
	A	02-337	26 IR 2025	
326 IAC 4-1-4.1	A	02-88	25 IR 3240	**26 IR 1077**
326 IAC 4-1-8				*ERR (26 IR 1567)
326 IAC 4-2-1	A	00-44	24 IR 2754	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1071
326 IAC 4-2-2	A	00-44	24 IR 2754	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1071
326 IAC 5-1-2				*ERR (26 IR 1567)
	A	01-407	26 IR 2026	*CPH (26 IR 2391)
326 IAC 5-1-4				*ERR (26 IR 1567)
	A	02-337	26 IR 2026	
326 IAC 5-1-5				*ERR (26 IR 1567)
	A	02-337	26 IR 2027	
326 IAC 6-1-1				*ERR (26 IR 383)
326 IAC 6-1-10.1	A	01-407	26 IR 1970	*CPH (26 IR 2391)
326 IAC 6-1-10.2	A	01-407	26 IR 1994	*CPH (26 IR 2391)
326 IAC 6-1-14	A	02-122	26 IR 98	*CPH (26 IR 811)
				26 IR 2318
326 IAC 6-2-3				*ERR (26 IR 1567)
326 IAC 6-4-5				*ERR (26 IR 1567)
326 IAC 6-5-7				*ERR (26 IR 1568)
326 IAC 6-6-2				*ERR (26 IR 1568)
326 IAC 6-6-4				*ERR (26 IR 1568)
326 IAC 7-2-1				*ERR (26 IR 1565)
	A	02-337	26 IR 2028	
326 IAC 7-4-10				*ERR (26 IR 1568)
	A	02-337	26 IR 2029	
326 IAC 7-4-14				*ERR (26 IR 1568)
326 IAC 8-1-2	A	01-251	25 IR 2754	**26 IR 1073**
326 IAC 8-1-4				*ERR (26 IR 1565)
	A	02-337	26 IR 2030	
326 IAC 8-2-9	A	02-88	25 IR 3241	**26 IR 1078**
326 IAC 8-4-6	A	02-337	26 IR 2032	
326 IAC 8-4-9				*ERR (26 IR 1568)
	A	02-337	26 IR 2035	
326 IAC 8-7-7				*ERR (26 IR 1568)
	A	02-337	26 IR 2036	
326 IAC 8-7-10				*ERR (26 IR 1568)
326 IAC 8-8.1-1				*ERR (26 IR 1568)
326 IAC 8-9-2				*ERR (26 IR 1568)
	A	02-337	26 IR 2037	
326 IAC 8-9-3				*ERR (26 IR 1568)
	A	02-337	26 IR 2037	
326 IAC 8-9-4				*ERR (26 IR 1568)
	A	02-337	26 IR 2038	
326 IAC 8-9-5				*ERR (26 IR 1568)
	A	02-337	26 IR 2040	
326 IAC 8-9-6				*ERR (26 IR 1568)
	A	02-337	26 IR 2042	
326 IAC 8-10-5				*ERR (26 IR 1568)
326 IAC 8-10-6				*ERR (26 IR 1568)
326 IAC 8-10-7				*ERR (26 IR 1568)
	A	02-337	26 IR 2044	
326 IAC 8-11-2				*ERR (26 IR 1568)
	A	02-337	26 IR 2044	
326 IAC 8-11-3				*ERR (26 IR 1568)
326 IAC 8-11-6				*ERR (26 IR 1568)
	A	02-337	26 IR 2046	
326 IAC 8-11-7				*ERR (26 IR 1569)
	A	02-337	26 IR 2050	
326 IAC 8-12-3				*ERR (26 IR 1569)
	A	02-337	26 IR 2050	
326 IAC 8-12-5				*ERR (26 IR 1569)
	A	02-337	26 IR 2052	
326 IAC 8-12-6				*ERR (26 IR 1565)
	A	02-337	26 IR 2053	
326 IAC 8-12-7	A	02-337	26 IR 2054	
326 IAC 8-13-5				*ERR (26 IR 1569)
	A	02-337	26 IR 2055	
326 IAC 9-1-1	A	00-44	24 IR 2777	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1072
326 IAC 9-1-2	A	00-44	24 IR 2777	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1072
326 IAC 10-1-2				*ERR (26 IR 1569)
	A	02-337	26 IR 2056	
326 IAC 10-1-4				*ERR (26 IR 1569)
	A	02-337	26 IR 2057	
326 IAC 10-1-5				*ERR (26 IR 1569)
	A	02-337	26 IR 2059	
326 IAC 10-1-6				*ERR (26 IR 1569)
	A	02-337	26 IR 2059	
326 IAC 10-3-1	A	02-54	26 IR 1134	*CPH (26 IR 2391)
				26 IR 3550
326 IAC 10-3-3				*ERR (26 IR 1569)
326 IAC 10-4-1	A	02-54	26 IR 1134	*CPH (26 IR 2391)
				26 IR 3551
326 IAC 10-4-2	A	02-54	26 IR 1136	*CPH (26 IR 2391)
				26 IR 3552
326 IAC 10-4-3				*ERR (26 IR 1569)
326 IAC 10-4-4				*ERR (26 IR 1569)
326 IAC 10-4-8				*ERR (26 IR 1569)
326 IAC 10-4-9	A	02-54	26 IR 1142	*CPH (26 IR 2391)
				26 IR 3558
326 IAC 10-4-10	A	02-54	26 IR 1148	*CPH (26 IR 2391)
				26 IR 3565
326 IAC 10-4-12				*ERR (26 IR 1569)
326 IAC 10-4-13	A	02-54	26 IR 1152	*CPH (26 IR 2391)
				26 IR 3568
326 IAC 10-4-14	A	02-54	26 IR 1155	*CPH (26 IR 2391)
				26 IR 3572
326 IAC 10-4-15	A	02-54	26 IR 1156	*CPH (26 IR 2391)
				26 IR 3572
326 IAC 11-3-4				*ERR (26 IR 1569)
	A	01-407	26 IR 2060	*CPH (26 IR 2391)
326 IAC 11-4-5	A	00-43	25 IR 2285	**26 IR 10**
326 IAC 11-5	R	99-177	25 IR 1984	**26 IR 10**
326 IAC 11-7-1	A	02-337	26 IR 2061	
326 IAC 13-1.1-1				*ERR (26 IR 1570)
	A	02-337	26 IR 2062	
326 IAC 13-1.1-8				*ERR (26 IR 1570)
	A	02-337	26 IR 2063	
326 IAC 13-1.1-10				*ERR (26 IR 1570)
	A	02-337	26 IR 2063	
326 IAC 13-1.1-13				*ERR (26 IR 1570)
	A	02-337	26 IR 2064	
326 IAC 13-1.1-14				*ERR (26 IR 1570)
	A	02-337	26 IR 2065	
326 IAC 13-1.1-16				*ERR (26 IR 1570)
	A	02-337	26 IR 2066	
326 IAC 13-2.1-3				*ERR (26 IR 1570)
326 IAC 13-3-1	A	02-88	25 IR 3242	**26 IR 1079**
326 IAC 13-3-2				*ERR (26 IR 1570)
326 IAC 13-3-5				*ERR (26 IR 1570)
326 IAC 13-3-6				*ERR (26 IR 1570)
326 IAC 14-1-1	A	02-337	26 IR 2066	
326 IAC 14-1-2	A	02-337	26 IR 2067	
326 IAC 14-1-4	R	02-337	26 IR 2099	
326 IAC 14-3-1				*ERR (26 IR 1570)
	A	02-337	26 IR 2067	
326 IAC 14-4-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2067	

326 IAC 14-5-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2068	
326 IAC 14-6-1				*ERR (26 IR 1571)
326 IAC 14-7-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2068	
326 IAC 14-8-1	A	02-337	26 IR 2068	
326 IAC 14-8-3	A	02-337	26 IR 2069	
326 IAC 14-8-4	A	02-337	26 IR 2069	
326 IAC 14-8-5	A	02-337	26 IR 2069	
326 IAC 14-9-5	A	02-337	26 IR 2070	
326 IAC 14-9-7				*ERR (26 IR 1571)
326 IAC 14-9-8	A	02-337	26 IR 2071	
326 IAC 14-9-9				*ERR (26 IR 1571)
	A	02-337	26 IR 2071	
326 IAC 14-10-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2072	
326 IAC 14-10-2				*ERR (26 IR 1571)
	A	02-337	26 IR 2074	
326 IAC 14-10-3				*ERR (26 IR 1571)
	A	02-337	26 IR 2076	
326 IAC 14-10-4				*ERR (26 IR 1571)
	A	02-337	26 IR 2078	
326 IAC 15-1-2				*ERR (26 IR 1565)
	A	02-337	26 IR 2080	
326 IAC 15-1-4				*ERR (26 IR 1571)
	A	02-337	26 IR 2083	
326 IAC 16-2-3				*ERR (26 IR 1571)
326 IAC 16-3-1				*ERR (26 IR 1571)
	A	02-337	26 IR 2084	
326 IAC 18-1-2				*ERR (26 IR 1572)
	A	02-337	26 IR 2084	
326 IAC 18-1-5				*ERR (26 IR 1572)
	A	02-337	26 IR 2086	
326 IAC 18-1-7				*ERR (26 IR 1572)
	A	02-337	26 IR 2087	
326 IAC 18-1-8	A	02-337	26 IR 2088	
326 IAC 18-2-2				*ERR (26 IR 1572)
	A	02-337	26 IR 2088	
326 IAC 18-2-3				*ERR (26 IR 1572)
	A	02-337	26 IR 2090	
326 IAC 18-2-6	A	02-337	26 IR 2096	
326 IAC 18-2-7	A	02-337	26 IR 2097	
326 IAC 19-1	R	00-44	24 IR 2791	*CPH (25 IR 2542)
				*CPH (25 IR 3208)
				26 IR 1073
326 IAC 20-25-1	A	02-55	26 IR 92	*CPH (26 IR 811)
				26 IR 2607
326 IAC 20-25-3	A	02-55	26 IR 92	*CPH (26 IR 811)
				26 IR 2607
326 IAC 20-25-4	A	02-55	26 IR 94	*CPH (26 IR 811)
				26 IR 2609
326 IAC 20-25-5	A	02-55	26 IR 94	*CPH (26 IR 811)
				26 IR 2610
326 IAC 20-25-7	A	02-55	26 IR 95	*CPH (26 IR 811)
				26 IR 2610
326 IAC 20-48	N	02-55	26 IR 95	*CPH (26 IR 811)
				26 IR 2611
326 IAC 20-49	N	02-336	26 IR 3090	
326 IAC 20-50	N	02-336	26 IR 3090	
326 IAC 20-51	N	02-336	26 IR 3090	
326 IAC 20-52	N	02-336	26 IR 3091	
326 IAC 20-53	N	02-336	26 IR 3091	
326 IAC 20-54	N	02-336	26 IR 3091	
326 IAC 20-55	N	02-336	26 IR 3091	
326 IAC 22-1-1				*ERR (26 IR 1572)
	A	02-337	26 IR 2098	
326 IAC 23-1-4	A	02-189	26 IR 2407	
326 IAC 23-1-5	A	02-189	26 IR 2408	
326 IAC 23-1-5.5	N	02-189	26 IR 2408	
326 IAC 23-1-6.5	N	02-189	26 IR 2408	
326 IAC 23-1-7.5	N	02-189	26 IR 2408	
326 IAC 23-1-7.6	N	02-189	26 IR 2408	
326 IAC 23-1-9	A	02-189	26 IR 2408	
326 IAC 23-1-10	A	02-189	26 IR 2409	
326 IAC 23-1-11	A	02-189	26 IR 2409	
326 IAC 23-1-11.5	N	02-189	26 IR 2409	
326 IAC 23-1-12.5	N	02-189	26 IR 2409	
326 IAC 23-1-17	A	02-189	26 IR 2409	
326 IAC 23-1-21	A	02-189	26 IR 2410	
326 IAC 23-1-21.5	N	02-189	26 IR 2410	
326 IAC 23-1-22	R	02-189	26 IR 2437	
326 IAC 23-1-23	R	02-189	26 IR 2437	
326 IAC 23-1-26.5	N	02-189	26 IR 2410	
326 IAC 23-1-27	A	02-189	26 IR 2410	
326 IAC 23-1-27.5	N	02-189	26 IR 2410	
326 IAC 23-1-31	A	02-337	26 IR 2099	
326 IAC 23-1-32.1	N	02-189	26 IR 2410	
326 IAC 23-1-32.2	N	02-189	26 IR 2411	
326 IAC 23-1-34	A	02-189	26 IR 2411	
326 IAC 23-1-34.5	N	02-189	26 IR 2411	
326 IAC 23-1-34.8	N	02-189	26 IR 2411	
326 IAC 23-1-37	R	02-189	26 IR 2437	
326 IAC 23-1-40	R	02-189	26 IR 2437	
326 IAC 23-1-42	R	02-189	26 IR 2437	
326 IAC 23-1-43	R	02-189	26 IR 2437	
326 IAC 23-1-44	R	02-189	26 IR 2437	
326 IAC 23-1-45	R	02-189	26 IR 2437	
326 IAC 23-1-46	R	02-189	26 IR 2437	
326 IAC 23-1-47	R	02-189	26 IR 2437	
326 IAC 23-1-48.5	N	02-189	26 IR 2411	
326 IAC 23-1-52	A	02-189	26 IR 2411	
326 IAC 23-1-52.5	N	02-189	26 IR 2411	
326 IAC 23-1-54.5	N	02-189	26 IR 2412	
326 IAC 23-1-55.5	N	02-189	26 IR 2412	
326 IAC 23-1-58.5	N	02-189	26 IR 2412	
326 IAC 23-1-58.7	N	02-189	26 IR 2412	
326 IAC 23-1-60.1	N	02-189	26 IR 2412	
326 IAC 23-1-60.5	N	02-189	26 IR 2412	
326 IAC 23-1-60.6	N	02-189	26 IR 2413	
326 IAC 23-1-61.5	N	02-189	26 IR 2413	
326 IAC 23-1-62.5	N	02-189	26 IR 2413	
326 IAC 23-1-62.6	N	02-189	26 IR 2413	
326 IAC 23-1-63	A	02-189	26 IR 2413	
326 IAC 23-1-64	A	02-189	26 IR 2414	
326 IAC 23-1-69.5	N	02-189	26 IR 2414	
326 IAC 23-1-69.6	N	02-189	26 IR 2414	
326 IAC 23-1-69.7	N	02-189	26 IR 2414	
326 IAC 23-1-71	N	02-189	26 IR 2414	
326 IAC 23-2-1	A	02-189	26 IR 2414	
326 IAC 23-2-3	A	02-189	26 IR 2415	
326 IAC 23-2-4	A	02-189	26 IR 2416	
326 IAC 23-2-5	A	02-189	26 IR 2418	
326 IAC 23-2-6	A	02-189	26 IR 2419	
326 IAC 23-2-6.5	N	02-189	26 IR 2419	
326 IAC 23-2-7	A	02-189	26 IR 2420	
326 IAC 23-2-8	A	02-189	26 IR 2421	
326 IAC 23-2-9	A	02-189	26 IR 2422	
326 IAC 23-3-1	A	02-189	26 IR 2422	
326 IAC 23-3-2	A	02-189	26 IR 2422	
326 IAC 23-3-3	A	02-189	26 IR 2423	
326 IAC 23-3-5	A	02-189	26 IR 2426	
326 IAC 23-3-7	A	02-189	26 IR 2426	
326 IAC 23-3-11	A	02-189	26 IR 2428	
326 IAC 23-3-12	A	02-189	26 IR 2428	
326 IAC 23-3-13	A	02-189	26 IR 2428	
326 IAC 23-4-1	A	02-189	26 IR 2429	
326 IAC 23-4-2	A	02-189	26 IR 2429	
326 IAC 23-4-3	A	02-189	26 IR 2429	

326 IAC 23-4-4	A	02-189	26 IR 2430	
326 IAC 23-4-5	A	02-189	26 IR 2431	
326 IAC 23-4-6	A	02-189	26 IR 2432	
326 IAC 23-4-7	A	02-189	26 IR 2434	
326 IAC 23-4-9	A	02-189	26 IR 2434	
326 IAC 23-4-11	A	02-189	26 IR 2435	
326 IAC 23-4-12	A	02-189	26 IR 2435	
326 IAC 23-4-13	A	02-189	26 IR 2435	
326 IAC 23-5	N	02-189	26 IR 2436	

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327 IAC 5-1-1.5	A	02-327	26 IR 3097	*CPH (26 IR 3366)
327 IAC 5-2-9	A	00-136	26 IR 427	**26 IR 2613**
327 IAC 5-2-11.6				*ERR (26 IR 3884)
327 IAC 5-2.1	N	00-136	26 IR 427	**26 IR 2613**
327 IAC 5-4-3	A	01-51	26 IR 3698	
327 IAC 5-4-6	A	01-96	26 IR 845	*CPH (26 IR 1113)
				26 IR 3575
327 IAC 6.1-1-1	A	01-238	26 IR 1165	**26 IR 3596**
327 IAC 6.1-1-3	A	01-238	26 IR 1166	**26 IR 3596**
327 IAC 6.1-1-4	A	01-238	26 IR 1166	**26 IR 3597**
327 IAC 6.1-1-5	A	01-238	26 IR 1167	**26 IR 3597**
327 IAC 6.1-1-7	A	01-238	26 IR 1167	**26 IR 3597**
327 IAC 6.1-2-3	A	01-238	26 IR 1167	**26 IR 3597**
327 IAC 6.1-2-6	A	01-238	26 IR 1167	**26 IR 3597**
327 IAC 6.1-2-6.5	N	01-238		**††26 IR 3598**
327 IAC 6.1-2-7	A	01-238	26 IR 1167	**26 IR 3598**
327 IAC 6.1-2-7.5	N	01-238	26 IR 1167	**26 IR 3598**
327 IAC 6.1-2-8	A	01-238	26 IR 1168	**26 IR 3598**
327 IAC 6.1-2-10	R	01-238	26 IR 1201	**26 IR 3632**
327 IAC 6.1-2-12	R	01-238	26 IR 1201	**26 IR 3632**
327 IAC 6.1-2-13	A	01-238	26 IR 1168	**26 IR 3598**
327 IAC 6.1-2-14	A	01-238	26 IR 1168	**26 IR 3599**
327 IAC 6.1-2-20.5	N	01-238	26 IR 1168	**26 IR 3599**
327 IAC 6.1-2-28	A	01-238	26 IR 1169	**26 IR 3599**
327 IAC 6.1-2-30	A	01-238	26 IR 1169	**26 IR 3599**
327 IAC 6.1-2-31.5	N	01-238	26 IR 1169	**26 IR 3599**
327 IAC 6.1-2-35	A	01-238	26 IR 1169	**26 IR 3600**
327 IAC 6.1-2-42	A	01-238	26 IR 1169	**26 IR 3600**
327 IAC 6.1-2-43	A	01-238	26 IR 1170	**26 IR 3600**
327 IAC 6.1-2-54	A	01-238	26 IR 1170	**26 IR 3600**
327 IAC 6.1-2-55	A	01-238	26 IR 1170	**26 IR 3600**
327 IAC 6.1-2-55.3	N	01-238		**††26 IR 3601**
327 IAC 6.1-2-55.5	N	01-238	26 IR 1170	**26 IR 3601**
327 IAC 6.1-2-61	R	01-238	26 IR 1201	**26 IR 3632**
327 IAC 6.1-3-1	A	01-238	26 IR 1170	**26 IR 3601**
327 IAC 6.1-3-2	A	01-238	26 IR 1171	**26 IR 3602**
327 IAC 6.1-3-3	A	01-238	26 IR 1172	**26 IR 3602**
327 IAC 6.1-3-4	A	01-238	26 IR 1172	**26 IR 3602**
327 IAC 6.1-3-7	A	01-238	26 IR 1172	**26 IR 3603**
327 IAC 6.1-3-8	N	01-238	26 IR 1173	**26 IR 3603**
327 IAC 6.1-4-1	A	01-238	26 IR 1173	**26 IR 3604**
327 IAC 6.1-4-3	A	01-238	26 IR 1173	**26 IR 3604**
327 IAC 6.1-4-4	A	01-238	26 IR 1174	**26 IR 3605**
327 IAC 6.1-4-5	A	01-238	26 IR 1175	**26 IR 3605**
327 IAC 6.1-4-5.5	N	01-238	26 IR 1175	**26 IR 3606**
327 IAC 6.1-4-6	A	01-238	26 IR 1176	**26 IR 3607**
327 IAC 6.1-4-7	A	01-238	26 IR 1177	**26 IR 3608**
327 IAC 6.1-4-8	A	01-238	26 IR 1178	**26 IR 3609**
327 IAC 6.1-4-9	A	01-238	26 IR 1179	**26 IR 3610**
327 IAC 6.1-4-10	A	01-238	26 IR 1181	**26 IR 3612**
327 IAC 6.1-4-11	A	01-238	26 IR 1182	**26 IR 3613**
327 IAC 6.1-4-13	A	01-238	26 IR 1182	**26 IR 3613**
327 IAC 6.1-4-16	A	01-238	26 IR 1184	**26 IR 3615**
327 IAC 6.1-4-17	A	01-238	26 IR 1186	**26 IR 3617**
327 IAC 6.1-4-18	A	01-238	26 IR 1187	**26 IR 3618**
327 IAC 6.1-4-19	A	01-238	26 IR 1187	**26 IR 3618**
327 IAC 6.1-5-1	A	01-238	26 IR 1187	**26 IR 3618**
327 IAC 6.1-5-2	A	01-238	26 IR 1187	**26 IR 3618**
327 IAC 6.1-5-3	A	01-238	26 IR 1188	**26 IR 3619**
327 IAC 6.1-5-4	A	01-238	26 IR 1188	**26 IR 3619**
327 IAC 6.1-6-1	A	01-238	26 IR 1189	**26 IR 3620**
327 IAC 6.1-6-2	A	01-238	26 IR 1189	**26 IR 3620**
327 IAC 6.1-6-3	A	01-238	26 IR 1190	**26 IR 3621**
327 IAC 6.1-7-1	A	01-238	26 IR 1191	**26 IR 3622**
327 IAC 6.1-7-2	A	01-238	26 IR 1191	**26 IR 3622**
327 IAC 6.1-7-3	A	01-238	26 IR 1192	**26 IR 3623**
327 IAC 6.1-7-4	A	01-238	26 IR 1193	**26 IR 3624**
327 IAC 6.1-7-5	A	01-238	26 IR 1193	**26 IR 3625**
327 IAC 6.1-7-6	A	01-238	26 IR 1194	**26 IR 3625**
327 IAC 6.1-7-9	A	01-238	26 IR 1195	**26 IR 3626**
327 IAC 6.1-7-10	A	01-238	26 IR 1195	**26 IR 3626**
327 IAC 6.1-7-11	A	01-238	26 IR 1196	**26 IR 3627**
327 IAC 6.1-7.5	N	01-238	26 IR 1197	**26 IR 3628**
327 IAC 6.1-8-1	A	01-238	26 IR 1198	**26 IR 3629**
327 IAC 6.1-8-2	A	01-238	26 IR 1199	**26 IR 3630**
327 IAC 6.1-8-3	A	01-238	26 IR 1199	**26 IR 3630**
327 IAC 6.1-8-4	A	01-238	26 IR 1199	**26 IR 3630**
327 IAC 6.1-8-5	A	01-238	26 IR 1200	**26 IR 3631**
327 IAC 6.1-8-6	A	01-238	26 IR 1200	**26 IR 3631**
327 IAC 6.1-8-7	A	01-238	26 IR 1200	**26 IR 3632**
327 IAC 6.1-8-8	A	01-238	26 IR 1201	**26 IR 3632**
327 IAC 8-2-1	A	01-348	26 IR 101	*CPH (26 IR 812)
				26 IR 2808
327 IAC 8-2-5	A	01-348	26 IR 105	*CPH (26 IR 812)
				26 IR 2812
327 IAC 8-2-5.3	A	01-348	26 IR 107	*CPH (26 IR 812)
				26 IR 2814
327 IAC 8-2-6	R	01-348	26 IR 152	*CPH (26 IR 812)
327 IAC 8-2-8.5	A	01-348	26 IR 109	*CPH (26 IR 812)
				26 IR 2816
327 IAC 8-2-13	A	01-348	26 IR 110	*CPH (26 IR 812)
				26 IR 2817
327 IAC 8-2-29	R	01-348	26 IR 152	*CPH (26 IR 812)
				26 IR 2859
327 IAC 8-2-30	A	01-348	26 IR 110	*CPH (26 IR 812)
				26 IR 2817
327 IAC 8-2-31	A	01-348	26 IR 111	*CPH (26 IR 812)
				26 IR 2818
327 IAC 8-2-48	N	01-348	26 IR 111	*CPH (26 IR 812)
				26 IR 2818
327 IAC 8-2.1-3	A	01-348	26 IR 112	*CPH (26 IR 812)
				26 IR 2818
327 IAC 8-2.1-4	A	01-348	26 IR 114	*CPH (26 IR 812)
				26 IR 2821
327 IAC 8-2.1-6	A	01-348	26 IR 115	*CPH (26 IR 812)
				26 IR 2822
327 IAC 8-2.1-8	A	01-348	26 IR 121	*CPH (26 IR 812)
				26 IR 2828
327 IAC 8-2.1-16	A	01-348	26 IR 122	*CPH (26 IR 812)
				26 IR 2829
327 IAC 8-2.1-17	A	01-348	26 IR 126	*CPH (26 IR 812)
				26 IR 2833
327 IAC 8-2.5	N	01-348	26 IR 133	*CPH (26 IR 812)
				26 IR 2840
327 IAC 8-2.6	N	01-348	26 IR 146	*CPH (26 IR 812)
				26 IR 2854
327 IAC 15-2-3	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-2-6	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-2-8	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-2-9	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)

327 IAC 15-3-1	A	01-95	26 IR 1616	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-3-2	A	01-95	26 IR 1616	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
	A	02-327	26 IR 3098	*CPH (26 IR 3366)
327 IAC 15-3-3	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-1	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-2	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-3	A	01-95	26 IR 1618	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-4	A	01-95	26 IR 1619	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-5	A	01-95	26 IR 1620	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-6	A	01-95	26 IR 1621	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-6.5	N	01-95	26 IR 1622	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-7	A	01-95	26 IR 1625	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-7.5	N	01-95	26 IR 1627	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-8	A	01-95	26 IR 1628	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-10	A	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-11	R	01-95	26 IR 1646	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-5-12	N	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-1	A	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-2	A	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-4	A	01-95	26 IR 1632	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-5	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-6	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-7	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-7.3	N	01-95	26 IR 1641	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-7.5	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-8.5	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-10	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-11	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-6-12	N	01-95	26 IR 1644	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
327 IAC 15-13	N	01-96	26 IR 847	*CPH (26 IR 1113)
				26 IR 3577
327 IAC 15-14	N	02-327	26 IR 3098	*CPH (26 IR 3366)
327 IAC 15-15	N	01-51	26 IR 3701	

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329 IAC 3.1-1-7	A	02-235	26 IR 1240	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
329 IAC 3.1-4-1	A	02-235	26 IR 1240	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
329 IAC 3.1-7-2	A	02-235	26 IR 1240	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
329 IAC 3.1-7-15				*ERR (26 IR 3046)
329 IAC 3.1-9-2	A	02-235	26 IR 1241	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
329 IAC 3.1-10-2	A	02-235	26 IR 1242	*CPH (26 IR 1962)
				*CPH (26 IR 2647)
				*CPH (26 IR 3074)
				*CPH (26 IR 3367)
				*CPH (26 IR 3672)
329 IAC 3.1-12-2				*ERR (26 IR 3046)
329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-4	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-10.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
329 IAC 9-1-10.2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)

329 IAC 9-1-10.4	N	01-161	26 IR 1209	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-10.6	N	01-161	26 IR 1209	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-10.8	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14.3	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14.5	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-25	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-27	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-29.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-36	A	01-161	26 IR 1210	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-39.5	N	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-41.5	N	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-42.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-47	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-1-47.1	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2-1	A	01-161	26 IR 1211	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2-2	A	01-161	26 IR 1214	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-2.1-1	A	01-161	26 IR 1215	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3-1	A	01-161	26 IR 1216	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3-2	N	01-161	26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-1	A	01-161	26 IR 1218	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-2	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-3	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-3.1-4	A	01-161	26 IR 1219	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)

329 IAC 9-4-3	A	01-161	26 IR 1220	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-4-4	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-1	A	01-161	26 IR 1221	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-2	A	01-161	26 IR 1223	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-3.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-3.2	N	01-161	26 IR 1223	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-4.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-4.2	N	01-161	26 IR 1224	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-5.1	A	01-161	26 IR 1224	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-6	A	01-161	26 IR 1226	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-5-7	A	01-161	26 IR 1227	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-1	A	01-161	26 IR 1229	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-2	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-2.5	N	01-161	26 IR 1230	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-3	A	01-161	26 IR 1234	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-4	A	01-161	26 IR 1234	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-6-5	A	01-161	26 IR 1235	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-7-1	A	01-161	26 IR 1235	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-7-2	A	01-161	26 IR 1236	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-7-4	A	01-161	26 IR 1237	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 9-7-6	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671)
329 IAC 10-1-4	A	00-185	26 IR 432	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-1-4.5	N	00-185	26 IR 433	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-6	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-11	A	00-185	26 IR 433	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-29	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-29.5	N	01-288	26 IR 1653	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-32	A	01-288	26 IR 1653	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-33	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-41	A	00-185	26 IR 433	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)

329 IAC 10-2-41.1	A	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-53	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-60	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-63.5	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-64	A	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-66.1	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-66.2	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-66.3	N	00-185	26 IR 434	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-69	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-72.1	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-74	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-75	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-75.1	N	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-76	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-96	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-97.1	A	00-185	26 IR 435	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-99	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-100	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-105.3	N	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-106	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3366) *CPH (26 IR 3073) *CPH (26 IR 3671)
329 IAC 10-2-109	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-111.5	N	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-112	A	00-185	26 IR 436	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-115	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-116	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-117	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-121.1	A	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-127	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-128	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-130	A	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-132.2	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-132.3	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-135.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-135.5	N	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-142.5	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-147.2	N	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-149	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)

329 IAC 10-2-158	A	00-185	26 IR 437	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-165.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-172.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-174	A	01-288	26 IR 1655	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-177	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-179	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-181.2	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-181.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-181.6	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-187.5	N	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-197.1	A	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-199.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-201.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-2-203	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-2-205	R	00-185	26 IR 511	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-3-1	A	00-185	26 IR 438	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-3-2	A	00-185	26 IR 439	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-3-3	A	00-185	26 IR 439	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-5-1	A	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-6-4	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-7.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-7.2	N	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-8.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-8.2	N	01-288	26 IR 1657	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-9-2	A	01-288	26 IR 1659	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-9-4	A	01-288	26 IR 1659	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-10-1	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-10-2	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-11-2.1	A	00-185	26 IR 440	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-11-2.5	A	00-185	26 IR 441	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-11-5.1	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-11-6	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-12-1	A	00-185	26 IR 443	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-13-1	A	00-185	26 IR 445	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-13-5	A	00-185	26 IR 445	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-13-6	A	00-185	26 IR 446	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-14-1	A	00-185	26 IR 446	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-14-2	A	01-288	26 IR 1661	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)

329 IAC 10-15-1	A	00-185	26 IR 447	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-15-2	A	00-185	26 IR 448	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-15-5	A	00-185	26 IR 449	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-15-8	A	00-185	26 IR 450	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-15-12	N	00-185	26 IR 451	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-16-1	A	00-185	26 IR 452	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-16-8	A	00-185	26 IR 453	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-16-12				*ERR (26 IR 3046)
329 IAC 10-17-2	A	00-185	26 IR 453	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-17-7	A	00-185	26 IR 454	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-17-9	A	00-185	26 IR 456	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-17-12	A	00-185	26 IR 457	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-17-18	A	00-185	26 IR 458	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-19-1	A	00-185	26 IR 458	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-3	A	00-185	26 IR 459	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-8	A	00-185	26 IR 460	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-11	A	00-185	26 IR 461	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-12	A	00-185	26 IR 462	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-13	A	00-185	26 IR 463	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-14.1	A	01-288	26 IR 1662	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-20-20	A	00-185	26 IR 463	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-24	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-26	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-28	A	00-185	26 IR 464	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-20-29	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-21-1	A	00-185	26 IR 465	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-2	A	00-185	26 IR 468	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-4	A	00-185	26 IR 474	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-6	A	00-185	26 IR 477	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-7	A	00-185	26 IR 479	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-8	A	00-185	26 IR 480	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-9	A	00-185	26 IR 481	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-10	A	00-185	26 IR 482	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-13	A	00-185	26 IR 484	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-15	A	00-185	26 IR 488	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-21-16	A	00-185	26 IR 488	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)

329 IAC 10-22-2	A	00-185	26 IR 493	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-22-3	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-22-5	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-22-6	A	00-185	26 IR 494	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-22-7	A	00-185	26 IR 495	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-22-8	A	00-185	26 IR 496	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-23-2	A	00-185	26 IR 496	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-23-3	A	00-185	26 IR 497	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-23-4	A	00-185	26 IR 498	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-24-4	A	00-185	26 IR 499	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-28-21	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-28-24	A	01-288	26 IR 1664	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-29-1	A	00-185	26 IR 499	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-30-4	A	00-185	26 IR 500	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-36-19	A	01-288	26 IR 1665	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 10-37-4	A	00-185	26 IR 501	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-39-1	A	00-185	26 IR 501	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-39-2	A	00-185	26 IR 502	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-39-3	A	00-185	26 IR 508	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-39-7	A	00-185	26 IR 509	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-39-9	A	00-185	26 IR 509	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 10-39-10	A	00-185	26 IR 510	*CPH (26 IR 2392) *CPH (26 IR 3073) *CPH (26 IR 3366) *CPH (26 IR 3671)
329 IAC 11-2-19.5	N	01-288	26 IR 1665	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-2-39	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-2-44	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-3-2	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-6-1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-7	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-8-2	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-8-2.5	N	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-8-3	A	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-9-6	N	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-13-4	A	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-13-6	A	01-288	26 IR 1668	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-15-1	A	01-288	26 IR 1668	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-19-2	A	01-288	26 IR 1669	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-19-3	A	01-288	26 IR 1670	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-20-1	A	01-288	26 IR 1670	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-21-4	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)
329 IAC 11-21-5	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903)

329 IAC 11-21-6	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-7	A	01-288	26 IR 1671	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 11-21-8	A	01-288	26 IR 1672	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 12-8-4	A	01-288	26 IR 1672	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
329 IAC 13-3-1	A	01-288	26 IR 1673	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)

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345 IAC 1-3-3	A	02-107	25 IR 4170	**26 IR 1523**
345 IAC 1-3-4	A	02-107	25 IR 4171	**26 IR 1524**
345 IAC 1-3-8	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 1-3-11	A	02-107	25 IR 4171	**26 IR 1524**
345 IAC 1-3-12	A	02-107	25 IR 4172	**26 IR 1525**
345 IAC 1-3-13	A	02-107	25 IR 4172	**26 IR 1525**
345 IAC 1-3-14	A	02-107	25 IR 4173	**26 IR 1526**
345 IAC 1-3-15	A	02-107	25 IR 4173	**26 IR 1527**
345 IAC 1-3-16	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 1-3-16.5	N	02-107	25 IR 4174	**26 IR 1527**
345 IAC 1-3-22	A	03-9	26 IR 3108	
345 IAC 1-3-30	A	01-413	25 IR 2774	**26 IR 345**
	A	02-323	26 IR 3102	
345 IAC 1-3-31	N	02-323	26 IR 3104	
345 IAC 1-3-32	N	02-323	26 IR 3104	
345 IAC 1-5-1	A	03-9	26 IR 3108	
345 IAC 1-6-2	A	02-323	26 IR 3105	
345 IAC 1-6-3	A	02-323	26 IR 3105	
345 IAC 2-7-1	A	01-413	25 IR 2775	**26 IR 346**
345 IAC 2-7-2.4	N	02-323	26 IR 3106	
345 IAC 2-7-2.5	N	02-323	26 IR 3107	
345 IAC 2-7-3	A	01-413	25 IR 2776	**26 IR 347**
	A	02-323	26 IR 3107	
345 IAC 2-7-4	A	01-413	25 IR 2777	**26 IR 348**
345 IAC 2-7-5	A	01-413	25 IR 2778	**26 IR 349**
345 IAC 3-5.1-1.2	A	02-107	25 IR 4175	**26 IR 1528**
345 IAC 3-5.1-1.5	A	02-107	25 IR 4176	**26 IR 1529**
345 IAC 3-5.1-2	A	02-107	25 IR 4176	**26 IR 1529**
345 IAC 3-5.1-3	A	02-107	25 IR 4176	**26 IR 1530**
345 IAC 3-5.1-3.5	N	02-107	25 IR 4177	**26 IR 1530**
345 IAC 3-5.1-4	A	02-107	25 IR 4177	**26 IR 1530**
345 IAC 3-5.1-6	A	02-107	25 IR 4177	**26 IR 1531**
345 IAC 3-5.1-7	A	02-107	25 IR 4178	**26 IR 1531**
345 IAC 3-5.1-8.5	A	02-107	25 IR 4179	**26 IR 1533**
345 IAC 3-5.1-8.7	A	02-107	25 IR 4180	**26 IR 1533**
345 IAC 3-5.1-8.8	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-8.9	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-9	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-10	A	02-107	25 IR 4181	**26 IR 1535**
345 IAC 3-5.1-12	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-14	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 3-5.1-15	R	02-107	25 IR 4182	**26 IR 1535**
345 IAC 7-5-1	A	02-126	25 IR 4182	**26 IR 1535**
345 IAC 7-5-2.1	N	02-126	25 IR 4183	**26 IR 1536**
345 IAC 7-5-2.5	A	02-126	25 IR 4183	**26 IR 1536**
345 IAC 7-5-3	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-4	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-5	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-6	A	02-126	25 IR 4184	**26 IR 1537**
345 IAC 7-5-7	A	02-126	25 IR 4184	**26 IR 1537**
345 IAC 7-5-8	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-9	A	02-126	25 IR 4184	**26 IR 1538**
345 IAC 7-5-11	A	02-126	25 IR 4185	**26 IR 1538**
345 IAC 7-5-15.1	A	02-126	25 IR 4185	**26 IR 1539**
345 IAC 7-5-16	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-16.1	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-21	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-22	A	02-126	25 IR 4186	**26 IR 1539**
345 IAC 7-5-24	A	02-126	25 IR 4186	**26 IR 1539**
345 IAC 7-5-25.7	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-26	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-27	R	02-126	25 IR 4187	**26 IR 1540**
345 IAC 7-5-28	A	02-126	25 IR 4186	**26 IR 1540**
345 IAC 7-7-1.5	N	01-377	25 IR 1991	*ARR (25 IR 3770)
			25 IR 4166	**26 IR 693**
345 IAC 7-7-2	A	01-377	25 IR 1991	*ARR (25 IR 3770)
			25 IR 4166	**26 IR 694**
345 IAC 7-7-3	A	01-377	25 IR 1992	*ARR (25 IR 3770)
			25 IR 4167	**26 IR 694**
345 IAC 7-7-3.5	N	01-377	25 IR 1993	*ARR (25 IR 3770)
			25 IR 4168	**26 IR 695**
345 IAC 7-7-4	A	01-377	25 IR 1993	*ARR (25 IR 3770)
			25 IR 4168	**26 IR 695**
345 IAC 7-7-5	A	01-377	25 IR 1993	*ARR (25 IR 3770)
			25 IR 4168	**26 IR 696**
345 IAC 7-7-6	R	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 7-7-7	A	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 7-7-8	R	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 7-7-9	R	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 7-7-10	A	01-377	25 IR 1994	*ARR (25 IR 3770)
			25 IR 4169	**26 IR 696**
345 IAC 8-2-1.1	A	01-392	25 IR 2758	**26 IR 329**
345 IAC 8-2-1.5	N	01-392	25 IR 2760	**26 IR 331**
345 IAC 8-2-1.7	N	01-392	25 IR 2760	**26 IR 331**
345 IAC 8-2-1.9	N	01-392	25 IR 2761	**26 IR 332**
345 IAC 8-2-2	A	01-392	25 IR 2762	**26 IR 333**
345 IAC 8-2-3	A	01-392	25 IR 2764	**26 IR 335**
345 IAC 8-2-3.5	N	01-392	25 IR 2766	**26 IR 337**
345 IAC 8-2-4	A	01-392	25 IR 2767	**26 IR 338**
345 IAC 8-3-1	A	01-392	25 IR 2769	**26 IR 340**
345 IAC 8-3-2	A	01-392	25 IR 2770	**26 IR 341**
345 IAC 8-3-3	N	01-392	25 IR 2770	
345 IAC 8-3-4	N	01-392	25 IR 2771	
345 IAC 8-3-9	N	01-392		**††26 IR 341**
				*ERR (26 IR 793)
345 IAC 8-3-10	N	01-392		**††26 IR 342**
				*ERR (26 IR 793)
345 IAC 8-4-1	A	01-392	25 IR 2771	**26 IR 342**
345 IAC 9-2.1-1	A	02-127	25 IR 4187	**26 IR 1540**
345 IAC 10-2.1-1	A	02-127	25 IR 4188	**26 IR 1541**

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-10	N	02-292	26 IR 1243	**26 IR 2859**
				*AROC (26 IR 3149)
357 IAC 1-11	N	02-332	26 IR 3109	*CPH (26 IR 3673)

TITLE 370 STATE EGG BOARD

370 IAC 1-1-1	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-1-2	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-1-3	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-1-4	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-1-5	A	01-419	26 IR 153	**26 IR 1542**
370 IAC 1-2-1	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-2-2	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-2-3	N	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-3-1	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-3-2	A	01-419	26 IR 154	**26 IR 1543**

370 IAC 1-3-3	A	01-419	26 IR 154	**26 IR 1543**
370 IAC 1-3-4	A	01-419	26 IR 155	**26 IR 1544**
370 IAC 1-4-1	A	01-419	26 IR 155	**26 IR 1544**
370 IAC 1-4-2	A	01-419	26 IR 155	**26 IR 1545**
370 IAC 1-4-3	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-5-1	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-6-1	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-8-1	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-9-1	A	01-419	26 IR 156	**26 IR 1545**
370 IAC 1-10-1	A	01-419	26 IR 156	**26 IR 1546**
370 IAC 1-10-2	A	01-419	26 IR 157	**26 IR 1546**

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-8-2	A	03-164	26 IR 3929	
405 IAC 1-8-3	A	03-164	26 IR 3929	
405 IAC 1-10.5-2	A	03-164	26 IR 3930	
405 IAC 1-10.5-3	A	03-18	26 IR 3378	
	A	03-164	26 IR 3932	
405 IAC 1-12-1	A	02-16	25 IR 2791	*NRA (25 IR 4128)
				26 IR 718
405 IAC 1-12-2	A	02-16	25 IR 2791	*NRA (25 IR 4128)
				26 IR 718
405 IAC 1-12-4	A	02-16	25 IR 2793	*NRA (25 IR 4128)
				26 IR 720
405 IAC 1-12-5	A	02-16	25 IR 2794	*NRA (25 IR 4128)
				26 IR 721
405 IAC 1-12-6	A	02-16	25 IR 2795	*NRA (25 IR 4128)
				26 IR 722
405 IAC 1-12-7	A	02-16	25 IR 2796	*NRA (25 IR 4128)
				26 IR 723
405 IAC 1-12-8	A	02-16	25 IR 2796	*NRA (25 IR 4128)
				26 IR 723
405 IAC 1-12-9	A	02-16	25 IR 2797	*NRA (25 IR 4128)
				26 IR 724
405 IAC 1-12-12	A	02-16	25 IR 2797	*NRA (25 IR 4128)
				26 IR 724
405 IAC 1-12-13	A	02-16	25 IR 2798	*NRA (25 IR 4128)
				26 IR 725
405 IAC 1-12-14	A	02-16	25 IR 2799	*NRA (25 IR 4128)
				26 IR 726
405 IAC 1-12-15	A	02-16	25 IR 2799	*NRA (25 IR 4128)
				26 IR 726
405 IAC 1-12-16	A	02-16	25 IR 2800	*NRA (25 IR 4128)
				26 IR 727
405 IAC 1-12-17	A	02-16	25 IR 2801	*NRA (25 IR 4128)
				26 IR 728
405 IAC 1-12-19	A	02-16	25 IR 2802	*NRA (25 IR 4128)
				26 IR 729
405 IAC 1-12-24	A	02-16	25 IR 2802	*NRA (25 IR 4128)
				26 IR 730
405 IAC 1-12-26	A	02-16	25 IR 2803	*NRA (25 IR 4128)
				26 IR 730
405 IAC 1-14.5-13	A	02-144	25 IR 3826	*NRA (26 IR 415)
				26 IR 1080
405 IAC 1-14.5-14	A	02-144	25 IR 3827	*NRA (26 IR 415)
				26 IR 1081
405 IAC 1-14.5-15	A	02-144	25 IR 3827	*NRA (26 IR 415)
				26 IR 1081
405 IAC 1-14.6-2	A	02-13	25 IR 2779	*NRA (26 IR 61)
				26 IR 707
	A	02-340	26 IR 2099	*NRA (26 IR 3365)
				26 IR 3869
405 IAC 1-14.6-4	A	02-13	25 IR 2782	*NRA (26 IR 61)
				26 IR 709
405 IAC 1-14.6-6	A	02-13	25 IR 2784	*NRA (26 IR 61)
				26 IR 712
	A	02-340	26 IR 2102	*NRA (26 IR 3365)
				26 IR 3872
405 IAC 1-14.6-7	A	02-13	25 IR 2785	*NRA (26 IR 61)
				26 IR 712
				*ERR (26 IR 2375)
	A	02-340	26 IR 2103	*NRA (26 IR 3365)
				26 IR 3873
405 IAC 1-14.6-9	A	02-13	25 IR 2786	*NRA (26 IR 61)
				26 IR 714
	A	02-340	26 IR 2104	*NRA (26 IR 3365)
				26 IR 3874
405 IAC 1-14.6-12	A	02-13	25 IR 2787	*NRA (26 IR 61)
				26 IR 715
405 IAC 1-14.6-16	A	02-13	25 IR 2788	*NRA (26 IR 61)
				26 IR 716
	A	02-340	26 IR 2105	*NRA (26 IR 3365)
				26 IR 3875
405 IAC 1-14.6-22	A	02-13	25 IR 2788	*NRA (26 IR 61)
				26 IR 716
	A	02-340	26 IR 2106	*NRA (26 IR 3365)
				26 IR 3876
405 IAC 1-16-2	A	02-214	26 IR 158	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3634
405 IAC 1-16-4	A	02-214	26 IR 159	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3635
405 IAC 1-17-1	A	03-61	26 IR 3111	*NRA (26 IR 3670)
405 IAC 1-17-2	A	03-61	26 IR 3111	*NRA (26 IR 3670)
405 IAC 1-17-3	A	03-61	26 IR 3112	*NRA (26 IR 3670)
405 IAC 1-17-4	A	03-61	26 IR 3113	*NRA (26 IR 3670)
405 IAC 1-17-5	A	03-61	26 IR 3113	*NRA (26 IR 3670)
405 IAC 1-17-6	A	03-61	26 IR 3114	*NRA (26 IR 3670)
405 IAC 1-17-7	A	03-61	26 IR 3114	*NRA (26 IR 3670)
405 IAC 1-17-9	A	03-61	26 IR 3115	*NRA (26 IR 3670)
405 IAC 1-18-2	A	02-121	25 IR 3243	*NRA (26 IR 61)
				26 IR 1079
405 IAC 1-18-3	R	02-121	25 IR 3243	*NRA (26 IR 61)
				26 IR 1080
405 IAC 1-19	N	02-184	26 IR 511	*NRA (26 IR 1960)
				26 IR 2865
405 IAC 1-20	N	02-184	26 IR 512	*NRA (26 IR 1960)
				26 IR 2866
405 IAC 2-3-1.2				*ERR (26 IR 35)
405 IAC 2-3-17	A	02-234	26 IR 516	*NRA (26 IR 1960)
				26 IR 2868
405 IAC 2-3-21	A	02-234	26 IR 517	*NRA (26 IR 1960)
				26 IR 2868
405 IAC 2-3-23	N	02-45	25 IR 2555	*NRA (25 IR 3804)
				26 IR 731
405 IAC 2-8-1	A	02-87	25 IR 2804	*NRA (26 IR 61)
				26 IR 731
	A	03-134	26 IR 3706	
405 IAC 2-8-1.1	N	02-87	25 IR 2805	*NRA (26 IR 61)
				26 IR 732
	A	03-134	26 IR 3707	
405 IAC 2-9				*ERR (26 IR 35)
405 IAC 2-10	N	02-145	25 IR 3829	*NRA (26 IR 415)
				26 IR 1547
405 IAC 2-10-3	A	03-134	26 IR 3707	
405 IAC 2-10-7	A	03-134	26 IR 3707	
405 IAC 2-10-7.1	N	03-134	26 IR 3707	
405 IAC 2-10-8	A	03-134	26 IR 3708	
405 IAC 2-10-9	A	03-134	26 IR 3708	
405 IAC 2-10-10	R	03-134	26 IR 3709	
405 IAC 2-10-11	N	03-134	26 IR 3709	
405 IAC 4-1	RA	02-275	26 IR 544	**26 IR 1261**
405 IAC 4-1-1				*ERR (26 IR 383)
405 IAC 5-3-13	A	03-66	26 IR 3381	*NRA (26 IR 3902)
405 IAC 5-12-1	A	02-49	25 IR 2555	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)

405 IAC 5-12-2	A	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)
				26 IR 2861
405 IAC 5-12-3	A	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)
				26 IR 2861
405 IAC 5-12-4	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)
405 IAC 5-12-5	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)
405 IAC 5-12-6	R	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)
				26 IR 2862
405 IAC 5-12-7	A	02-49	25 IR 2556	*AROC (26 IR 884)
				*NRA (26 IR 1960)
				*ARR (26 IR 2625)
				*NRA (2644)
				26 IR 2862
405 IAC 5-14-1	A	02-50	25 IR 2556	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 415)
				26 IR 1546
405 IAC 5-14-2	A	02-140	25 IR 3823	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
				26 IR 2862
	A	02-277	26 IR 864	**26 IR 2862**
405 IAC 5-14-2.5	N	02-140	25 IR 3823	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
405 IAC 5-14-3	A	02-140	25 IR 3824	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
				26 IR 2863
	A	02-277	26 IR 865	**26 IR 2863**
405 IAC 5-14-4	A	02-140	25 IR 3824	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
				26 IR 2863
405 IAC 5-14-6	A	02-140	25 IR 3824	*NRA (26 IR 61)
				*ARR (26 IR 384)
				*NRA (26 IR 809)
				*ARR (26 IR 1573)
				*NRA (26 IR 1960)
				26 IR 2863
	A	02-277	26 IR 865	**26 IR 2863**
405 IAC 5-14-10	R	02-277	26 IR 866	**26 IR 2865**
405 IAC 5-14-11	A	02-277	26 IR 865	**26 IR 2864**
405 IAC 5-14-15	A	02-277	26 IR 865	**26 IR 2864**
405 IAC 5-14-16	A	02-277	26 IR 866	**26 IR 2864**
405 IAC 5-14-17	A	02-277	26 IR 866	**26 IR 2864**
405 IAC 5-14-18	A	02-277	26 IR 866	**26 IR 2864**
405 IAC 5-19-1	A	01-301	25 IR 3811	*NRA (26 IR 809)
				26 IR 1901
405 IAC 5-19-3	A	02-207	26 IR 514	*NRA (2644)
405 IAC 5-21-1	A	03-66	26 IR 3381	*NRA (26 IR 3902)
405 IAC 5-21-7	A	03-66	26 IR 3382	*NRA (26 IR 3902)
405 IAC 5-21-8	N	03-66	26 IR 3382	*NRA (26 IR 3902)
405 IAC 5-24-4				*ERR (26 IR 35)
405 IAC 5-24-7	A	02-141	25 IR 3825	*NRA (26 IR 62)
				26 IR 732
405 IAC 5-24-13	N	02-207	26 IR 515	*NRA (2644)
				26 IR 3633
405 IAC 5-31-4	A	02-207	26 IR 515	*NRA (2644)
				26 IR 3633
405 IAC 5-34-1	A	02-214	26 IR 159	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3635
405 IAC 5-34-2	A	02-214	26 IR 159	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3635
405 IAC 5-34-3	A	02-214	26 IR 160	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3636
405 IAC 5-34-4	A	02-214	26 IR 160	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3636
405 IAC 5-34-4.1	N	02-214	26 IR 162	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3638
405 IAC 5-34-4.2	N	02-214	26 IR 162	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3638
405 IAC 5-34-5	A	02-214	26 IR 162	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3638
405 IAC 5-34-6	A	02-214	26 IR 162	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3639
405 IAC 5-34-7	A	02-214	26 IR 163	*NRA (2644)
				*AROC (26 IR 2695)
				26 IR 3640
405 IAC 6-2-3	A	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
405 IAC 6-2-5	A	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
405 IAC 6-2-5.3	N	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
405 IAC 6-2-5.5	N	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 697
405 IAC 6-2-9	A	01-373	25 IR 3813	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-12	A	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-12.5	N	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-14	A	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-16.5	N	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698
405 IAC 6-2-18	A	01-373	25 IR 3814	*AROC (25 IR 3885)
				*NRA (26 IR 61)
				26 IR 698

405 IAC 6-2-20	A	01-373	25 IR 3814	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 698**
405 IAC 6-2-20.5	N	01-373	25 IR 3814	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 699**
405 IAC 6-2-21	A	01-373	25 IR 3815	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 699**
405 IAC 6-2-22.5	N	01-373	25 IR 3815	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 699**
405 IAC 6-3-2	A	01-373	25 IR 3815	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 699**
405 IAC 6-3-3	A	01-373	25 IR 3815	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 699**
405 IAC 6-4-2	A	01-373	25 IR 3815	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 699**
405 IAC 6-5-1	A	01-373	25 IR 3816	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 700**
405 IAC 6-5-2	A	01-373	25 IR 3816	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 700**
405 IAC 6-5-3	A	01-373	25 IR 3816	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 700**
405 IAC 6-5-4	A	01-373	25 IR 3816	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-5-5	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-5-6	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-6-2	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-6-3	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 701**
405 IAC 6-6-4	A	01-373	25 IR 3817	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 702**
405 IAC 6-8	N	01-373	25 IR 3818	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 702**
405 IAC 6-9	N	01-373	25 IR 3818	*AROC (25 IR 3885) *NRA (26 IR 61) **26 IR 702**
405 IAC 7	N	02-234	26 IR 518	*NRA (26 IR 1960) **26 IR 2869**

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

407 IAC 2-3-1				*ERR (26 IR 383)

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 1-2.3-47	A	03-4	26 IR 3131	
410 IAC 1-2.3-48	A	03-4	26 IR 3134	
410 IAC 1-2.3-97.5	N	03-4	26 IR 3135	
410 IAC 3-3-7.1	A	03-19	26 IR 3385	
410 IAC 6-2	R	02-142	25 IR 4197	*CPH (26 IR 812) *AROC (26 IR 3149) **26 IR 3334**
410 IAC 6-2.1	N	02-142	25 IR 4188	*CPH (26 IR 812) *AROC (26 IR 3149) **26 IR 3325**
410 IAC 6-7.1				*ERR (26 IR 36)
410 IAC 6-7.2				*ERR (26 IR 36)
410 IAC 6-7.2-17	A	02-295	26 IR 2662	
410 IAC 6-7.2-29	A	02-295	26 IR 2662	
410 IAC 6-7.2-30	A	02-295	26 IR 2663	
410 IAC 6-8.1	R	02-321	26 IR 3131	*CPH (26 IR 3368)
410 IAC 6-8.2	N	02-321	26 IR 3116	*CPH (26 IR 3368)
410 IAC 6-9-3				*ERR (26 IR 3884)
410 IAC 6-10	R	02-321	26 IR 3131	*CPH (26 IR 3368)
410 IAC 7-19	R	02-317	26 IR 3385	
410 IAC 7-22	N	02-266	26 IR 1245	**26 IR 3334**
410 IAC 7-23	N	02-317	26 IR 3383	
410 IAC 15-1.5-4	A	02-43	26 IR 164	**26 IR 1550**
410 IAC 15-1.5-5	A	02-43	26 IR 166	**26 IR 1551**
410 IAC 16.2-1-0.5	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-1	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-2	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-2.1	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-2.2	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-3	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-3.5	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-5	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-6	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-6.5	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-7	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-8	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-9	R	02-89	25 IR 3276	**26 IR 1936**
410 IAC 16.2-1-10.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-10.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-11	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-12.5	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-14	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-14.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-14.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-15	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-15.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-15.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-15.3	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-16	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-17	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-18	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-18.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-18.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-19	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-19.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-20	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-21	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-22	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-22.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-22.2	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-23	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-24	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-25	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-26	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-26.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-27	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-27.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-28	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-29	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-29.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-30	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-31	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-31.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-32	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-32.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-32.2	R	02-89	25 IR 3277	**26 IR 1936**

410 IAC 16.2-1-33	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-34	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-35	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-36	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-37	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-38	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-39	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-39.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-41.1	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-42	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-44	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-45	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-46	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-47	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1-48	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-1.1	N	02-89	25 IR 3244	**26 IR 1902**
410 IAC 16.2-5-0.5	N	02-89	25 IR 3252	**26 IR 1911**
410 IAC 16.2-5-1.1	A	02-89	25 IR 3252	**26 IR 1912**
410 IAC 16.2-5-1.2	A	02-89	25 IR 3254	**26 IR 1914**
410 IAC 16.2-5-1.3	A	02-89	25 IR 3259	**26 IR 1919**
410 IAC 16.2-5-1.4	A	02-89	25 IR 3261	**26 IR 1921**
410 IAC 16.2-5-1.5	A	02-89	25 IR 3263	**26 IR 1923**
410 IAC 16.2-5-1.6	A	02-89	25 IR 3265	**26 IR 1925**
410 IAC 16.2-5-1.7	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-2	A	02-89	25 IR 3269	**26 IR 1929**
410 IAC 16.2-5-3	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-4	A	02-89	25 IR 3270	**26 IR 1929**
410 IAC 16.2-5-5	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-5.1	N	02-89	25 IR 3271	**26 IR 1931**
410 IAC 16.2-5-6	A	02-89	25 IR 3272	**26 IR 1932**
410 IAC 16.2-5-7	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-7.1	N	02-89	25 IR 3274	**26 IR 1933**
410 IAC 16.2-5-8	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-8.1	N	02-89	25 IR 3274	**26 IR 1934**
410 IAC 16.2-5-9	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-10	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-11	R	02-89	25 IR 3277	**26 IR 1936**
410 IAC 16.2-5-11.1	N	02-89	25 IR 3275	**26 IR 1935**
410 IAC 16.2-5-12	N	02-89	25 IR 3276	**26 IR 1935**

TITLE 412 INDIANA HEALTH FACILITIES COUNCIL

412 IAC 2				*ERR (26 IR 36)
				*ERR (26 IR 1572)
412 IAC 2-1-1	A	02-41	25 IR 4198	**26 IR 1937**
412 IAC 2-1-2.1	N	02-41	25 IR 4198	**26 IR 1937**
				*ERR (26 IR 2375)
412 IAC 2-1-2.2	N	02-41	25 IR 4198	**26 IR 1937**
				*ERR (26 IR 2375)
412 IAC 2-1-6	A	02-41	25 IR 4199	**26 IR 1937**
412 IAC 2-1-8	A	02-41	25 IR 4199	**26 IR 1938**
412 IAC 2-1-10	N	02-41	25 IR 4199	**26 IR 1938**
412 IAC 2-1-11	N	02-41	25 IR 4200	**26 IR 1939**
412 IAC 2-1-12	N	02-41	25 IR 4200	**26 IR 1939**
412 IAC 2-1-13	N	02-41	25 IR 4200	**26 IR 1939**
412 IAC 2-1-14	N	02-41	25 IR 4200	**26 IR 1939**

TITLE 431 COMMUNITY RESIDENTIAL FACILITIES COUNCIL

431 IAC 1.1-1-2				*ERR (26 IR 36)
431 IAC 7	N	02-211	26 IR 2108	**26 IR 3640**

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

440 IAC 1-1.5	R	02-42	25 IR 3289	*NRA (26 IR 62)
				26 IR 745
440 IAC 1.5	N	02-42	25 IR 3277	*NRA (26 IR 62)
				26 IR 733
440 IAC 4-3-1	A	02-218	26 IR 519	*NRA (26 IR 2390)
				26 IR 2616
440 IAC 4.1-2-1	A	02-218	26 IR 519	*NRA (26 IR 2390)
				26 IR 2616
440 IAC 4.1-2-4	A	02-218	26 IR 520	*NRA (26 IR 2390)
				26 IR 2617
440 IAC 4.1-2-5	A	02-218	26 IR 521	*NRA (26 IR 2390)
				26 IR 2618
440 IAC 4.1-2-9	A	02-218	26 IR 521	*NRA (26 IR 2390)
				26 IR 2618
440 IAC 4.1-3	N	02-218	26 IR 522	*NRA (26 IR 2390)
				26 IR 2619
440 IAC 5-1-1	A	02-105	25 IR 3289	*NRA (26 IR 62)
				26 IR 745
440 IAC 5-1-2	A	02-105	25 IR 3290	*NRA (26 IR 62)
				26 IR 746
440 IAC 5-1-3.5	N	02-105	25 IR 3290	*NRA (26 IR 62)
				26 IR 747
440 IAC 5.2	N	03-57	26 IR 3386	*NRA (26 IR 3902)
440 IAC 6-2-2				*ERR (26 IR 1572)
440 IAC 9-2-10	N	02-106	25 IR 4201	*NRA (26 IR 1112)
				26 IR 1940
440 IAC 9-2-11	N	02-106	25 IR 4202	*NRA (26 IR 1112)
				26 IR 1941
440 IAC 9-2-12	N	02-106	25 IR 4203	*NRA (26 IR 1112)
				26 IR 1942
440 IAC 9-2-13	N	02-265	26 IR 867	**26 IR 3337**

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 1-3-1	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-2	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-3	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-4	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-5	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-6	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-7	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-8	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-9	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-10	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-11	R	02-319		**††26 IR 3644**
460 IAC 1-3-12	RA	02-262	26 IR 544	**26 IR 1261**
	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-13	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-14	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3-15	R	02-319	26 IR 2112	**26 IR 3644**
460 IAC 1-3.3	N	02-319	26 IR 2111	**26 IR 3643**
460 IAC 1-8	N	01-337	25 IR 2557	**26 IR 350**
460 IAC 2-3-1	A	02-9	25 IR 2286	**26 IR 747**
460 IAC 2-3-2	A	02-9	25 IR 2286	**26 IR 747**
460 IAC 2-3-3	A	02-9	25 IR 2287	**26 IR 748**
460 IAC 3.5	RA	02-237	26 IR 2694	
460 IAC 5-1-13	A	02-151	26 IR 524	
460 IAC 6	N	02-46	25 IR 3832	**26 IR 749**
				*AROC (26 IR 883)
460 IAC 6-2-2	A	03-123	26 IR 3935	
460 IAC 6-2-3	A	03-123	26 IR 3935	
460 IAC 6-3-2.1	N	02-326	26 IR 2664	
460 IAC 6-3-5.1	N	02-326	26 IR 2665	
460 IAC 6-3-5.2	N	02-326	26 IR 2665	
460 IAC 6-3-6.1	N	02-326	26 IR 2665	
460 IAC 6-3-10.1	N	02-326	26 IR 2665	
460 IAC 6-3-15.1	N	02-326	26 IR 2665	
460 IAC 6-3-15.2	N	03-123	26 IR 3935	
460 IAC 6-3-15.3	N	02-326	26 IR 2665	
460 IAC 6-3-18	A	02-326	26 IR 2666	
460 IAC 6-3-25	A	02-326	26 IR 2666	
460 IAC 6-3-29.5	N	02-326	26 IR 2666	
460 IAC 6-3-31	A	02-326	26 IR 2666	
460 IAC 6-3-32	A	02-326	26 IR 2666	

460 IAC 6-3-38.5	N	02-326	26 IR 2666	
460 IAC 6-3-38.6	N	02-326	26 IR 2667	
460 IAC 6-3-41.1	N	02-326	26 IR 2667	
460 IAC 6-3-52.1	N	02-326	26 IR 2667	
460 IAC 6-3-56	A	02-326	26 IR 2667	
460 IAC 6-4-1	A	02-326	26 IR 2667	
460 IAC 6-5-4	A	02-326	26 IR 2668	
460 IAC 6-5-7	A	02-326	26 IR 2669	
460 IAC 6-5-21	A	02-326	26 IR 2669	
460 IAC 6-5-32	N	02-326	26 IR 2669	
460 IAC 6-5-33	N	02-326	26 IR 2670	
460 IAC 6-5-34	N	02-326	26 IR 2670	
460 IAC 6-5-35	N	02-326	26 IR 2670	
460 IAC 6-5-36	N	02-326	26 IR 2670	
460 IAC 6-6-2	A	02-326	26 IR 2670	
460 IAC 6-6-3	A	02-326	26 IR 2670	
460 IAC 6-7-2	A	02-326	26 IR 2671	
460 IAC 6-7-3	A	02-326	26 IR 2671	
460 IAC 6-9-5	A	02-326	26 IR 2672	
460 IAC 6-9-7	N	02-326	26 IR 2673	
460 IAC 6-10-5	A	02-326	26 IR 2673	
460 IAC 6-10-8	A	02-326	26 IR 2674	
460 IAC 6-10-13	A	02-326	26 IR 2674	
460 IAC 6-13-2	A	02-326	26 IR 2675	
460 IAC 6-14-4	A	02-326	26 IR 2675	
460 IAC 6-14-6	N	03-123	26 IR 3935	
460 IAC 6-14-7	N	03-123	26 IR 3935	
460 IAC 6-15-2	A	03-123	26 IR 3935	
460 IAC 6-17-3	A	02-326	26 IR 2675	
460 IAC 6-17-4	A	02-326	26 IR 2676	
460 IAC 6-19-6	A	02-326	26 IR 2676	
	A	03-123	26 IR 3936	
460 IAC 6-24-1	A	02-236	26 IR 2677	
460 IAC 6-24-2	A	02-326	26 IR 2677	
460 IAC 6-25-10	A	02-326	26 IR 2677	
460 IAC 6-29-4	A	02-326	26 IR 2678	
460 IAC 6-29-9	N	02-326	26 IR 2678	
460 IAC 6-31-1	A	03-123	26 IR 3936	
460 IAC 6-35	N	02-326	26 IR 2678	
460 IAC 6-36	N	03-123	26 IR 3937	
460 IAC 7	N	02-210	26 IR 525	*ARR (26 IR 1110)
			26 IR 1247	*AROC (26 IR 2472)
				26 IR 2870
460 IAC 8	N	03-99	26 IR 3392	

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-4.1	R	02-298	26 IR 1719	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
470 IAC 3-4.2	R	02-298	26 IR 1719	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
470 IAC 3-4.7	N	02-298	26 IR 1675	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
470 IAC 3.1-12-2	A	02-74	26 IR 167	*NRA (26 IR 1112)
				*AROC (26 IR 1264)
				26 IR 2320
470 IAC 3.1-12-7	N	02-74	26 IR 168	*NRA (26 IR 1112)
				*AROC (26 IR 1264)
				26 IR 2320
470 IAC 6-2-1	A	03-136	26 IR 3709	
470 IAC 6-2-13	A	03-136	26 IR 3709	
470 IAC 6-4.1-4	A	03-136	26 IR 3710	
470 IAC 8.1-2-12	A	02-152	26 IR 530	
470 IAC 10.1-3-4	R	03-33	26 IR 2682	*NRA (26 IR 3670)
470 IAC 10.1-3-4.1	R	03-33	26 IR 2682	*NRA (26 IR 3670)
470 IAC 10.1-3-5	R	03-33	26 IR 2682	*NRA (26 IR 3670)
470 IAC 10.2	N	03-33	26 IR 2680	*NRA (26 IR 3670)
470 IAC 11.1-1-5	A	02-203	26 IR 169	*NRA (26 IR 1112)
				26 IR 2321

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 1-6-2	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 1-6-3	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 1-6-4	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 4-4-3	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 4-4-4	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-1	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-2	A	02-67	25 IR 2807	**26 IR 786**
511 IAC 5-1-3	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-3.5	A	02-67	25 IR 2807	**26 IR 787**
511 IAC 5-1-4	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-4.5	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-1-5	A	02-67	25 IR 2807	**26 IR 787**
511 IAC 5-1-6	A	02-67	25 IR 2807	**26 IR 787**
511 IAC 5-2-3	A	02-170	25 IR 4204	**26 IR 3645**
511 IAC 5-2-4	A	02-170	25 IR 4205	**26 IR 3645**
511 IAC 5-3-1	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 5-3-2	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-7-2	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-7-4	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-7-6.1	A	03-150	26 IR 3938	
511 IAC 6-7-6.5	A	02-177	25 IR 4205	**26 IR 3646**
511 IAC 6-7-7	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-1	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-2	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-3	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-5	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6-8-6	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6.1-1-11.5				*ERR (26 IR 36)
511 IAC 6.1-5-3.5	RA	03-56	26 IR 3147	**26 IR 3960**
511 IAC 6.1-5.1-5	A	02-177	25 IR 4206	**26 IR 3646**
	A	02-178	25 IR 4207	**26 IR 3647**
511 IAC 6.1-5.1-8	A	02-274	26 IR 1252	**26 IR 3648**
511 IAC 6.1-5.1-9	A	03-151	26 IR 3939	
511 IAC 6.1-5.1-10.1	A	03-151	26 IR 3940	
511 IAC 6.2-6-4	A	02-264	26 IR 1719	
511 IAC 6.2-6-6.1	N	02-264	26 IR 1720	
511 IAC 6.2-6-8	A	02-264	26 IR 1720	
511 IAC 6.2-6-12	A	02-264	26 IR 1720	
511 IAC 6.2-7	N	02-264	26 IR 1720	

TITLE 515 PROFESSIONAL STANDARDS BOARD

515 IAC 1-3	R	02-314	26 IR 1257	*ARR (26 IR 3346)
515 IAC 1-4-1	A	02-75	25 IR 4207	**26 IR 2322**
515 IAC 1-4-2	A	02-75	25 IR 4208	**26 IR 2323**
515 IAC 1-6				*ERR (26 IR 36)
515 IAC 1-7	N	02-314	26 IR 1254	*ARR (26 IR 3346)
515 IAC 3				*ERR (26 IR 37)
515 IAC 4	N	02-8	25 IR 2292	*ARR (25 IR 3183)
				*ARR (25 IR 3770)
515 IAC 5	N	02-80	25 IR 2808	**26 IR 2325**
515 IAC 8	N	03-10	26 IR 2437	
515 IAC 9	N	03-11	26 IR 2451	*CPH (26 IR 2648)
515 IAC 12	N	03-65	26 IR 3943	

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

540 IAC 1-1-1	RA	03-112	26 IR 3754	
540 IAC 1-1-2	RA	03-112	26 IR 3754	
540 IAC 1-1-5	RA	03-112	26 IR 3754	
540 IAC 1-1-8	RA	03-112	26 IR 3754	
540 IAC 1-1-10	RA	03-112	26 IR 3754	
540 IAC 1-1-15	RA	03-112	26 IR 3754	
540 IAC 1-1-18	RA	03-112	26 IR 3754	
540 IAC 1-2	RA	03-112	26 IR 3754	
540 IAC 1-3-1	RA	03-112	26 IR 3754	
540 IAC 1-4-1	RA	03-112	26 IR 3754	
540 IAC 1-4-2	RA	03-112	26 IR 3754	
540 IAC 1-7-2	A	02-287	26 IR 1257	*CPH (26 IR 1593)
				26 IR 3338

540 IAC 1-8-2	A	02-287	26 IR 1258	*CPH (26 IR 1593) **26 IR 3338**
540 IAC 1-8-8	RA	03-112	26 IR 3754	
540 IAC 1-9-2.6	R	02-287	26 IR 1258	*CPH (26 IR 1593) **26 IR 3338**
540 IAC 1-10-1	A	02-287	26 IR 1258	*CPH (26 IR 1593) **26 IR 3338**
540 IAC 1-10-2	RA	03-112	26 IR 3754	
540 IAC 1-11	RA	03-112	26 IR 3754	
540 IAC 1-12-1	RA	03-112	26 IR 3754	
540 IAC 1-12-3	RA	03-112	26 IR 3754	
540 IAC 1-12-4	RA	03-112	26 IR 3754	

TITLE 550 BOARD OF TRUSTEES OF THE INDIANA STATE TEACHERS' RETIREMENT FUND

550 IAC 2-2-7	A	03-155	26 IR 3944	
550 IAC 3-1-1	A	02-325	26 IR 2112	**26 IR 3877**
550 IAC 3-1-2	A	02-325	26 IR 2113	**26 IR 3878**
550 IAC 3-1-3	A	02-325	26 IR 2113	**26 IR 3878**
550 IAC 3-2-1	A	02-325	26 IR 2113	**26 IR 3878**
550 IAC 3-2-2	A	02-325	26 IR 2114	**26 IR 3879**
550 IAC 5	N	02-325	26 IR 2114	**26 IR 3879**
550 IAC 6	N	02-325	26 IR 2115	**26 IR 3880**
550 IAC 7	N	03-100	26 IR 3710	

TITLE 570 INDIANA COMMISSION ON PROPRIETARY EDUCATION

570 IAC 1-14	N	02-233	26 IR 867	**26 IR 3338**

TITLE 575 STATE SCHOOL BUS COMMITTEE

575 IAC 1-1-4.6	N	02-315	26 IR 1723	**26 IR 3341**

TITLE 610 DEPARTMENT OF LABOR

610 IAC 4-2-1	A	03-36	26 IR 2463	
610 IAC 4-2-11	R	03-36	26 IR 2464	
610 IAC 4-4	R	01-340	25 IR 891	*ARR (25 IR 3770) **26 IR 370** *AROC (26 IR 547)
610 IAC 4-6	N	01-340	25 IR 874	*ARR (25 IR 3770) **26 IR 353** *AROC (26 IR 547)
610 IAC 4-6-11	A	03-37	26 IR 2464	

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1				*ERR (26 IR 383)
655 IAC 1-2.1	RA	02-128	25 IR 3883	*CPH (26 IR 416) **26 IR 1262**

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

675 IAC 12-3-13	N	02-90	25 IR 2573	**26 IR 1556**
675 IAC 12-3-14	N	02-90	25 IR 2574	**26 IR 1557**
675 IAC 12-3-15	N	02-90		**††26 IR 1558**
675 IAC 13-1-4	RA	03-48	26 IR 2693	
675 IAC 13-1-5	RA	03-48	26 IR 2693	
675 IAC 13-1-8	A	02-51	25 IR 2561	**26 IR 1095**
675 IAC 13-1-9.5	RA	03-48	26 IR 2693	
675 IAC 13-1-9.6	RA	03-48	26 IR 2693	
675 IAC 13-1-10	A	02-51	25 IR 2564	**26 IR 1098**
675 IAC 13-1-28	RA	03-48	26 IR 2693	
675 IAC 13-2.3	R	02-115	25 IR 3366	*ARR (26 IR 2376) **26 IR 2951**
675 IAC 13-2.4	N	02-115	25 IR 3291	*ARR (26 IR 2376) **26 IR 2975**
675 IAC 14-4.2-1	A	03-71	26 IR 3712	
675 IAC 14-4.2-2	A	03-71	26 IR 3712	
675 IAC 14-4.2-3	A	03-71	26 IR 3714	
675 IAC 14-4.2-6	A	03-71	26 IR 3715	
675 IAC 14-4.2-7	A	03-71	26 IR 3719	
675 IAC 14-4.2-9	A	03-71	26 IR 3719	
675 IAC 14-4.2-13.5	N	03-71	26 IR 3719	
675 IAC 14-4.2-15.5	N	03-71	26 IR 3719	
675 IAC 14-4.2-19.5	N	03-71	26 IR 3720	
675 IAC 14-4.2-20.5	A	03-71	26 IR 3720	
675 IAC 14-4.2-21	A	03-71	26 IR 3720	
675 IAC 14-4.2-22	A	03-71	26 IR 3721	
675 IAC 14-4.2-26.5	N	03-71	26 IR 3722	
675 IAC 14-4.2-27.5	A	03-71	26 IR 3722	
675 IAC 14-4.2-29	A	03-71	26 IR 3722	
675 IAC 14-4.2-31	A	03-71	26 IR 3722	
675 IAC 14-4.2-34	A	03-71	26 IR 3723	
675 IAC 14-4.2-37.5	N	03-71	26 IR 3724	
675 IAC 14-4.2-45.3	N	03-71	26 IR 3724	
675 IAC 14-4.2-46.8	N	03-71	26 IR 3724	
675 IAC 14-4.2-49.1	N	03-71	26 IR 3724	
675 IAC 14-4.2-49.3	N	03-71	26 IR 3724	
675 IAC 14-4.2-52	A	03-71	26 IR 3725	
675 IAC 14-4.2-53	A	03-71	26 IR 3725	
675 IAC 14-4.2-53.7	N	03-71	26 IR 3725	
675 IAC 14-4.2-61	A	03-71	26 IR 3726	
675 IAC 14-4.2-63	A	03-71	26 IR 3726	
675 IAC 14-4.2-69.5	N	03-71	26 IR 3726	
675 IAC 14-4.2-71	A	03-71	26 IR 3726	
675 IAC 14-4.2-73.5	N	03-71	26 IR 3727	
675 IAC 14-4.2-77.6	N	03-71	26 IR 3727	
675 IAC 14-4.2-77.7	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.2	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.3	N	03-71	26 IR 3727	
675 IAC 14-4.2-81.7	N	03-71	26 IR 3727	
675 IAC 14-4.2-82	A	03-71	26 IR 3727	
675 IAC 14-4.2-83	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.2	N	03-71	26 IR 3728	
675 IAC 14-4.2-89.6	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.7	R	03-71	26 IR 3737	
675 IAC 14-4.2-89.8	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.9	A	03-71	26 IR 3728	
675 IAC 14-4.2-89.10	R	03-71	26 IR 3737	
675 IAC 14-4.2-89.11	R	03-71	26 IR 3737	
675 IAC 14-4.2-95	A	03-71	26 IR 3729	
675 IAC 14-4.2-96.2	N	03-71	26 IR 3729	
675 IAC 14-4.2-97.5	N	03-71	26 IR 3729	
675 IAC 14-4.2-97.9	N	03-71	26 IR 3729	
675 IAC 14-4.2-107	A	03-71	26 IR 3729	
675 IAC 14-4.2-112.5	N	03-71	26 IR 3735	
675 IAC 14-4.2-117	A	03-71	26 IR 3736	
675 IAC 14-4.2-171.5	N	03-71	26 IR 3736	
675 IAC 14-4.2-174.5	N	03-71	26 IR 3736	
675 IAC 14-4.2-177.5	N	03-71	26 IR 3736	
675 IAC 14-4.2-181.1	N	01-376		**††26 IR 11**
675 IAC 14-4.2-182.1	N	01-376	25 IR 1248	**26 IR 11**
675 IAC 14-4.2-185.1	N	01-376	25 IR 1248	**26 IR 11**
675 IAC 14-4.2-187	A	01-376	25 IR 1248	**26 IR 11**
675 IAC 14-4.2-187.1	N	01-376	25 IR 1248	**26 IR 12**
675 IAC 14-4.2-187.2	N	01-376	25 IR 1248	**26 IR 12**
675 IAC 14-4.2-187.3	N	01-376	25 IR 1248	**26 IR 12**
675 IAC 14-4.2-187.4	N	01-376	25 IR 1248	**26 IR 12**
675 IAC 14-4.2-189	A	03-71	26 IR 3736	
675 IAC 14-4.2-189.2	N	03-71	26 IR 3736	
675 IAC 14-4.2-190.1	N	01-376	25 IR 1249	**26 IR 12**
675 IAC 14-4.2-190.2	N	01-376	25 IR 1249	**26 IR 12**
675 IAC 14-4.2-190.3	N	01-376	25 IR 1249	**26 IR 12**
675 IAC 14-4.2-190.4	N	01-376	25 IR 1249	**26 IR 12**
675 IAC 14-4.2-190.5	N	01-376	25 IR 1249	**26 IR 13**
675 IAC 14-4.2-191.1	N	01-376	25 IR 1249	**26 IR 13**
675 IAC 14-4.2-191.2	N	01-376	25 IR 1249	**26 IR 13**
675 IAC 14-4.2-191.3	N	01-376	25 IR 1249	**26 IR 13**
675 IAC 14-4.2-191.4	N	01-376		**††26 IR 13**
	A	03-71	26 IR 3736	

675 IAC 14-4.2-191.5	N	01-376		**††26 IR 13**
675 IAC 14-4.2-192	R	03-71	26 IR 3737	
675 IAC 14-4.2-192.1	N	01-376	25 IR 1250	**26 IR 13**
675 IAC 14-4.2-192.2	N	01-376	25 IR 1251	**26 IR 13**
675 IAC 14-4.2-192.3	N	01-376	25 IR 1250	**26 IR 14**
675 IAC 14-4.2-192.4	N	01-376	25 IR 1250	**26 IR 14**
675 IAC 14-4.2-192.5	N	01-376	25 IR 1250	**26 IR 14**
675 IAC 14-4.2-192.6	N	01-376	25 IR 1250	**26 IR 14**
675 IAC 14-4.2-193.1	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-193.2	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-193.3	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-193.4	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-193.5	N	01-376	25 IR 1251	**26 IR 14**
675 IAC 14-4.2-194.1	N	01-376	25 IR 1251	**26 IR 15**
675 IAC 14-4.2-194.2	N	01-376	25 IR 1251	**26 IR 15**
675 IAC 14-4.2-194.3	N	01-376	25 IR 1251	**26 IR 15**
675 IAC 14-4.2-194.4	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 14-4.2-194.5	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 14-4.2-194.6	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 14-4.2-194.7	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 17-1.5	R	01-376	25 IR 1255	**26 IR 19**
675 IAC 17-1.6	N	01-376	25 IR 1252	**26 IR 15**
675 IAC 17-1.6-12	A	03-71	26 IR 3737	
675 IAC 17-1.6-16	A	03-71	26 IR 3737	
675 IAC 18-1.3	R	02-116	25 IR 3381	*ARR (26 IR 2376) **26 IR 2967**
675 IAC 18-1.4	N	02-116	25 IR 3366	*ARR (26 IR 2376) **26 IR 2952**
675 IAC 19-3-4	A	03-71	26 IR 3737	
675 IAC 20-2-17	A	02-52	25 IR 2566	**26 IR 1100**
675 IAC 20-2-20	A	02-52	25 IR 2566	**26 IR 1101**
675 IAC 20-2-24	A	02-52	25 IR 2567	**26 IR 1102**
675 IAC 20-2-26	A	02-52	25 IR 2567	**26 IR 1102**
675 IAC 20-3-5	A	02-52	25 IR 2568	**26 IR 1102**
675 IAC 20-3-6	A	02-52	25 IR 2568	**26 IR 1103**
675 IAC 20-3-7	A	02-52	25 IR 2569	**26 IR 1103**
675 IAC 21-1-1	A	01-430	25 IR 2031	*ARR (26 IR 38) **26 IR 1083**
675 IAC 21-1-1.5	N	01-430	25 IR 2031	*ARR (26 IR 38) **26 IR 1084**
675 IAC 21-1-2	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-2.1	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-3	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-3.1	A	01-430	25 IR 2032	*ARR (26 IR 38) **26 IR 1085**
675 IAC 21-1-4	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-6	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-1-7	A	01-430	25 IR 2033	*ARR (26 IR 38) **26 IR 1085**
675 IAC 21-1-8	R	01-430		**††26 IR 1095**
675 IAC 21-1-9	A	01-430	25 IR 2033	*ARR (26 IR 38) **26 IR 1086**
675 IAC 21-1-10	N	01-430	25 IR 2034	*ARR (26 IR 38) **26 IR 1086**
675 IAC 21-2	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-3-1	A	01-430	25 IR 2034	*ARR (26 IR 38) **26 IR 1087**
675 IAC 21-3-2	A	01-430	25 IR 2034	*ARR (26 IR 38) **26 IR 1087**
675 IAC 21-4-1	A	01-430	25 IR 2037	*ARR (26 IR 38) **26 IR 1090**
675 IAC 21-4-2	A	01-430	25 IR 2037	*ARR (26 IR 38) **26 IR 1090**
675 IAC 21-5-1	A	01-430	25 IR 2039	*ARR (26 IR 38) **26 IR 1092**
675 IAC 21-5-3	N	01-430	25 IR 2039	*ARR (26 IR 38) **26 IR 1092**
675 IAC 21-6	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-7	R	01-430	25 IR 2042	*ARR (26 IR 38) **26 IR 1095**
675 IAC 21-8	N	01-430	25 IR 2040	*ARR (26 IR 38) **26 IR 1093**
675 IAC 22-2.2	R	02-117	25 IR 3442	*ARR (26 IR 2376) **26 IR 3031**
675 IAC 22-2.2-14	A	02-53	25 IR 2569	**26 IR 1553**
675 IAC 22-2.3	N	02-117	25 IR 3382	*ARR (26 IR 2376) **26 IR 2968**
675 IAC 25	N	02-118	25 IR 3444	*ARR (26 IR 2376) **26 IR 3032**

TITLE 760 DEPARTMENT OF INSURANCE

760 IAC 1-5	R	01-399	25 IR 2582	*AROC (26 IR 183) *ARR (26 IR 38) **26 IR 26**
760 IAC 1-5.1	N	01-399	25 IR 2575	*AROC (26 IR 183) *ARR (26 IR 38) **26 IR 19** *ERR (26 IR 3345)
760 IAC 1-14	R	01-399	25 IR 2582	*AROC (26 IR 183) *ARR (26 IR 38) **26 IR 26**
760 IAC 1-21-2	A	02-299	26 IR 1724	*AROC (26 IR 3427)
760 IAC 1-21-5	A	02-299	26 IR 1724	*AROC (26 IR 3427)
760 IAC 1-21-8	A	02-299	26 IR 1724	*AROC (26 IR 3427)
760 IAC 1-57-1	A	03-7	26 IR 3398	
760 IAC 1-57-2	A	03-7	26 IR 3398	
760 IAC 1-57-3	A	03-7	26 IR 3398	
760 IAC 1-57-4	A	03-7	26 IR 3399	
760 IAC 1-57-5	A	03-7	26 IR 3399	
760 IAC 1-57-6	A	03-7	26 IR 3400	
760 IAC 1-57-7	R	03-7	26 IR 3408	
760 IAC 1-57-8	A	03-7	26 IR 3401	
760 IAC 1-57-9	A	03-7	26 IR 3405	
760 IAC 1-57-10	A	03-7	26 IR 3407	
760 IAC 1-59-1	A	02-124	26 IR 170	**26 IR 2326**
760 IAC 1-59-2	A	02-124	26 IR 170	**26 IR 2326**
760 IAC 1-59-3	A	02-124	26 IR 171	**26 IR 2327**
760 IAC 1-59-4	A	02-124	26 IR 171	**26 IR 2327**
760 IAC 1-59-5	A	02-124	26 IR 171	**26 IR 2327**
760 IAC 1-59-6	A	02-124	26 IR 172	**26 IR 2328**
760 IAC 1-59-7	A	02-124	26 IR 172	**26 IR 2329**
760 IAC 1-59-8	A	02-124	26 IR 173	**26 IR 2329**
760 IAC 1-59-9	A	02-124	26 IR 174	**26 IR 2330**
760 IAC 1-59-10	A	02-124	26 IR 174	**26 IR 2330**
760 IAC 1-59-11	A	02-124	26 IR 174	**26 IR 2330**
760 IAC 1-59-12	A	02-124	26 IR 175	**26 IR 2331**
760 IAC 1-59-13	R	02-124	26 IR 177	**26 IR 2333**
760 IAC 1-59-14	A	02-124	26 IR 175	**26 IR 2331**
760 IAC 1-68	N	02-137	26 IR 531	*AROC (26 IR 883) **26 IR 3035**
760 IAC 1-69	N	03-8	26 IR 3945	

TITLE 762 INDIANA POLITICAL SUBDIVISION RISK MANAGEMENT COMMISSION

762 IAC 2	N	02-24	25 IR 2301	*ARR (25 IR 4114) **26 IR 27**

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

804 IAC 1.1-1-1	A	03-20	26 IR 3136	
804 IAC 1.1-3-1	A	02-20	25 IR 3446	**26 IR 370** *ERR (26 IR 793)
804 IAC 1.1-3-2	RA	03-43	26 IR 3148	**26 IR 3960**

TITLE 808 STATE BOXING COMMISSION

808 IAC 2-6-1	A	02-120	25 IR 4210	**26 IR 1104**

TITLE 816 BOARD OF BARBER EXAMINERS

816 IAC 1-3-1	A	02-320	26 IR 1725	**26 IR 3648**

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-1-11	A	03-21	26 IR 3137	*AROC (26 IR 3426)
820 IAC 4-4-5				*ERR (26 IR 1109)
820 IAC 4-4-14				*ERR (26 IR 1109)
820 IAC 6-1-3	A	03-21	26 IR 3137	*AROC (26 IR 3426)
820 IAC 6-2-1				*ERR (26 IR 1109)
820 IAC 6-3	N	03-21	26 IR 3137	*AROC (26 IR 3426)

TITLE 825 INDIANA GRAIN INDEMNITY CORPORATION

825 IAC 1	RA	02-176	25 IR 4220	**26 IR 1262**
825 IAC 1-1-5	R	02-179	25 IR 4211	
825 IAC 1-5-1	R	02-179	25 IR 4211	
825 IAC 1-5-2	R	02-179	25 IR 4211	

TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 0.5-2-3	A	02-114	25 IR 3452	**26 IR 376**
828 IAC 0.5-2-4	A	02-114	25 IR 3453	**26 IR 376**
828 IAC 0.5-2-6	N	02-112	25 IR 3447	**26 IR 371**
828 IAC 1-1-3	A	03-73	26 IR 3408	*CPH (26 IR 3904)
828 IAC 1-1-6	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-1-7	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-1-12	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-2-3	A	03-73	26 IR 3409	*CPH (26 IR 3904)
828 IAC 1-2-6	A	03-73	26 IR 3410	*CPH (26 IR 3904)
828 IAC 1-2-7	A	03-73	26 IR 3410	*CPH (26 IR 3904)
828 IAC 1-2-12	A	03-73	26 IR 3410	*CPH (26 IR 3904)
828 IAC 1-3-1	R	02-113	25 IR 3452	**26 IR 375**
828 IAC 1-3-1.1	N	02-113	25 IR 3450	**26 IR 373**
				*ERR (26 IR 383)
828 IAC 1-3-1.5	N	02-113	25 IR 3451	**26 IR 374**
828 IAC 1-3-2	A	02-113	25 IR 3452	**26 IR 375**
	A	02-270	26 IR 3411	
828 IAC 1-3-3	A	02-113	25 IR 3452	**26 IR 375**
839 IAC 1-4-5	A	02-270	26 IR 3411	
828 IAC 1-5-1	A	02-112	25 IR 3448	**26 IR 371**
	A	02-270	26 IR 3412	
828 IAC 1-5-1.5	N	02-112	25 IR 3448	**26 IR 371**
	N	02-270	26 IR 3414	
828 IAC 1-5-2	A	02-112	25 IR 3448	**26 IR 372**
828 IAC 1-5-2.5	N	02-112	25 IR 3449	**26 IR 372**
828 IAC 1-6-1	A	02-112	25 IR 3449	**26 IR 373**
828 IAC 1-7-1	A	02-114	25 IR 3453	**26 IR 376**
828 IAC 1-7-2	N	02-114	25 IR 3453	**26 IR 377**

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-2-1	RA	03-55	26 IR 3755	
830 IAC 1-2-2	RA	03-55	26 IR 3755	
830 IAC 1-2-3	RA	03-55	26 IR 3755	
830 IAC 1-2-4	RA	03-55	26 IR 3755	
830 IAC 1-2-5	RA	03-55	26 IR 3755	
830 IAC 1-3	RA	03-55	26 IR 3755	
830 IAC 1-4	RA	03-55	26 IR 3755	
830 IAC 1-5	RA	03-55	26 IR 3755	

TITLE 832 STATE BOARD OF FUNERAL AND CEMETERY SERVICE

832 IAC 2-1-2	A	02-147	26 IR 870	**26 IR 2622**

TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

836 IAC 1-1-1	A	02-91	25 IR 2810	*CPH (25 IR 3807)
				26 IR 2333
836 IAC 1-1-2	N	02-91	25 IR 2812	*CPH (25 IR 3807)
				26 IR 2335
836 IAC 1-1-3	N	02-91	25 IR 2812	*CPH (25 IR 3807)
				26 IR 2336
836 IAC 1-2-1	A	02-91	25 IR 2813	*CPH (25 IR 3807)
				26 IR 2337
836 IAC 1-2-2	A	02-91	25 IR 2814	*CPH (25 IR 3807)
				26 IR 2338
836 IAC 1-2-3	A	02-91	25 IR 2815	*CPH (25 IR 3807)
				26 IR 2339
836 IAC 1-2-4	R	02-91	25 IR 2848	*CPH (25 IR 3807)
				26 IR 2372
836 IAC 1-3-5	A	02-91	25 IR 2818	*CPH (25 IR 3807)
				26 IR 2342
836 IAC 1-3-6	N	02-91	25 IR 2819	*CPH (25 IR 3807)
				26 IR 2343
836 IAC 1-8-1	R	02-91	25 IR 2848	*CPH (25 IR 3807)
				26 IR 2372
836 IAC 1-11-1	A	02-91	25 IR 2819	*CPH (25 IR 3807)
				26 IR 2343
836 IAC 1-11-2	A	02-91	25 IR 2820	*CPH (25 IR 3807)
				26 IR 2344
836 IAC 1-11-4	A	02-91	25 IR 2821	*CPH (25 IR 3807)
				26 IR 2345
836 IAC 1-11-5	R	02-91	25 IR 2848	*CPH (25 IR 3807)
				26 IR 2372
836 IAC 2	RA	01-40	24 IR 2580	
836 IAC 2-1-1	A	02-91	25 IR 2821	*CPH (25 IR 3807)
				26 IR 2345
836 IAC 2-2-1	A	02-91	25 IR 2824	*CPH (25 IR 3807)
				26 IR 2348
				*ERR (26 IR 2624)
836 IAC 2-7.1-1	A	02-91	25 IR 2826	*CPH (25 IR 3807)
				26 IR 2350
836 IAC 2-7.2	N	02-91	25 IR 2828	*CPH (25 IR 3807)
				26 IR 2353
836 IAC 2-12-1	R	02-91	25 IR 2848	*CPH (25 IR 3807)
				26 IR 2372
836 IAC 2-13-1	R	02-91	25 IR 2848	*CPH (25 IR 3807)
				26 IR 2372
836 IAC 2-14-5	A	02-91	25 IR 2833	*CPH (25 IR 3807)
				26 IR 2357
836 IAC 3	RA	01-40	24 IR 2580	
836 IAC 3-2-4	A	02-91	25 IR 2834	*CPH (25 IR 3807)
				26 IR 2358
836 IAC 3-2-5	A	02-91	25 IR 2835	*CPH (25 IR 3807)
				26 IR 2360
836 IAC 3-2-8	R	02-91	25 IR 2848	*CPH (25 IR 3807)
				26 IR 2372
836 IAC 3-3-4	A	02-91	25 IR 2836	*CPH (25 IR 3807)
				26 IR 2360
836 IAC 3-3-5	A	02-91	25 IR 2837	*CPH (25 IR 3807)
				26 IR 2362
836 IAC 3-3-8	R	02-91	25 IR 2848	*CPH (25 IR 3807)
				26 IR 2372
836 IAC 3-4-1	R	02-91	25 IR 2848	*CPH (25 IR 3807)
				26 IR 2372
836 IAC 4-1-1	A	02-91	25 IR 2838	*CPH (25 IR 3807)
				26 IR 2362
836 IAC 4-2-1	A	02-91	25 IR 2840	*CPH (25 IR 3807)
				26 IR 2364
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*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
I:	Document Ineffective
N:	New Text
NRA:	Notice of Rule Adoption
OAC:	Objection to Errata
ON:	Other Notices of Administrative Action
R:	Repealed Text
RA:	Readopted Rule
SAC:	Solicitation of Advance Comment
SPE:	Statutory Period for Promulgation Expired
SPE-SE:	Statutory Period for Promulgation Expired; Signed After Expiration
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