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IN THIS ISSUE

INDIANA REGISTER

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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) 2004 Indiana Administrative Code (CD-ROM version).

(2) Volume 27 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 2003 Edition of the Indiana Administrative Code and other volumes of the Indiana Register may be discarded. (Please consider recycling.)

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:
April 8, 2004	May 1, 2004	November 10, 2004	December 1, 2004
May 10, 2004	June 1, 2004	December 10, 2004	January 1, 2005
June 10, 2004	July 1, 2004	January 10, 2005	February 1, 2005
July 9, 2004	August 1, 2004	February 10, 2005	March 1, 2005
August 10, 2004	September 1, 2004	March 10, 2005	April 1, 2005
September 10, 2004	October 1, 2004	April 11, 2005	May 1, 2005
October 12, 2004	November 1, 2004	May 10, 2005	June 1, 2005

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 repealed, transferred, or otherwise voided.

NUMERICAL LIST

TITLE NUMBER

GENERAL GOVERNMENT

10 Office of Attorney General for the State
11 Consumer Protection Division of the Office of the Attorney General
†15 State Election Board
18 Indiana Election Commission
20 State Board of Accounts
25 Indiana Department of Administration
28 State Information Technology Oversight Commission
†30 State Personnel Board
31 State Personnel Department
33 State Employees' Appeals Commission
35 Board of Trustees of the Public Employees' Retirement Fund
40 State Ethics Commission
45 Department of State Revenue
50 Department of Local Government Finance
52 Indiana Board of Tax Review
55 Department of Commerce
58 Enterprise Zone Board
60 Oversight Committee on Public Records
62 Office of the Public Access Counselor
65 State Lottery Commission
68 Indiana Gaming Commission
†70 Indiana Horse Racing Commission
71 Indiana Horse Racing Commission
75 Secretary of State
80 State Fair Commission
85 Budget Agency

TRANSPORTATION AND PUBLIC UTILITIES

†100 Department of Transportation
105 Indiana Department of Transportation
†110 Aeronautics Commission of Indiana
†120 Department of Highways
130 Indiana Port Commission
135 Indiana Transportation Finance Authority
140 Bureau of Motor Vehicles
145 Reciprocity Commission of Indiana
†150 Office of Traffic Safety
†160 Department of Vehicle Inspection
170 Indiana Utility Regulatory Commission

CORRECTIONS, POLICE, AND MILITARY

203 Victim Services Division
205 Indiana Criminal Justice Institute
207 Coroners Training Board
210 Department of Correction
220 Parole Board
†230 Indiana Clemency Commission
240 State Police Department
250 Law Enforcement Training Board
260 State Department of Toxicology
270 Adjutant General
280 Public Safety Training Institute
290 State Emergency Management Agency

NATURAL RESOURCES, ENVIRONMENT, AND AGRICULTURE

305 Indiana Board of Licensure for Professional Geologists
307 Indiana Board of Registration for Soil Scientists
†310 Department of Natural Resources
†311 State Soil and Water Conservation Committee
312 Natural Resources Commission
315 Office of Environmental Adjudication
†320 Indiana Environmental Management Board
†320.1 Solid Waste Management Board
323 Indiana Hazardous Waste Facility Site Approval Authority
†325 Air Pollution Control Board of the State of Indiana
†325.1 Air Pollution Control Board
326 Air Pollution Control Board
327 Water Pollution Control Board
328 Underground Storage Tank Financial Assurance Board
329 Solid Waste Management Board
†330 Stream Pollution Control Board of the State of Indiana
†330.1 Water Pollution Control Board
†340 Commissioner of Agriculture
341 Indiana Standardbred Board of Regulations
345 Indiana State Board of Animal Health
350 Agricultural Experiment Station
355 State Chemist of the State of Indiana
357 Indiana Pesticide Review Board
360 State Seed Commissioner
365 Creamery Examining Board
370 State Egg Board
375 Commissioner of Agriculture

HUMAN SERVICES

405 Office of the Secretary of Family and Social Services
407 Office of the Children's Health Insurance Program
410 Indiana State Department of Health
412 Indiana Health Facilities Council
414 Hospital Council
415 Commission on Forensic Sciences
430 Developmental Disabilities Residential Facilities Council
431 Community Residential Facilities Council
440 Division of Mental Health and Addiction
†450 Department on Aging and Community Services
460 Division of Disability, Aging, and Rehabilitative Services
470 Division of Family and Children
480 Violent Crime Compensation Division
490 Interdepartmental Board for the Coordination of Human Service Programs

TITLE NUMBER

EDUCATION AND LIBRARIES

†510 Commission on General Education
511 Indiana State Board of Education
514 Indiana School for the Deaf Board
515 Professional Standards Board
†520 Commission on Textbook Adoptions
†530 Commission on Teacher Training and Licensing
540 Indiana Education Savings Authority
550 Board of Trustees of the Indiana State Teachers' Retirement Fund
560 Indiana Education Employment Relations Board
570 Indiana Commission on Proprietary Education
†572 Indiana Commission on Vocational and Technical Education
575 State School Bus Committee
580 Indiana Medical and Nursing Distribution Loan Fund Board of Trustees
585 State Student Assistance Commission
590 Indiana Library and Historical Board
595 Library Certification Board

LABOR AND INDUSTRIAL SAFETY

610 Department of Labor
615 Board of Safety Review
620 Occupational Safety Standards Commission
†630 Industrial Board of Indiana
631 Worker's Compensation Board of Indiana
†635 Wage Adjustment Board
†640 Indiana Unemployment Insurance Board
†645 Department of Employment and Training Services
646 Department of Workforce Development
650 State Fire Marshal
655 Board of Firefighting Personnel Standards and Education
†660 Administrative Building Council of Indiana
†670 Elevator Safety Board
675 Fire Prevention and Building Safety Commission
680 Boiler and Pressure Vessel Rules Board
685 Regulated Amusement Device Safety Board

BUSINESS, FINANCE, AND INSURANCE

710 Securities Division
750 Department of Financial Institutions
760 Department of Insurance
762 Indiana Political Subdivision Risk Management Commission
770 Indiana Agricultural Development Corporation

OCCUPATIONS AND PROFESSIONS

804 Board of Registration for Architects and Landscape Architects
808 State Boxing Commission
812 Indiana Auctioneer Commission
816 Board of Barber Examiners
820 State Board of Cosmetology Examiners
824 Indiana Grain Buyers and Warehouse Licensing Agency
825 Indiana Grain Indemnity Corporation
828 State Board of Dentistry
830 Indiana Dietitians Certification Board
832 State Board of Funeral and Cemetery Service
836 Indiana Emergency Medical Services Commission
839 Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board
840 Indiana State Board of Health Facility Administrators
844 Medical Licensing Board of Indiana
845 Board of Podiatric Medicine
846 Board of Chiropractic Examiners
848 Indiana State Board of Nursing
852 Indiana Optometry Board
856 Indiana Board of Pharmacy
857 Indiana Optometric Legend Drug Prescription Advisory Committee
858 Controlled Substances Advisory Committee
860 Indiana Plumbing Commission
862 Private Detectives Licensing Board
864 State Board of Registration for Professional Engineers
865 State Board of Registration for Land Surveyors
868 State Psychology Board
872 Indiana Board of Accountancy
876 Indiana Real Estate Commission
880 Speech-Language Pathology and Audiology Board
884 Board of Television and Radio Service Examiners
888 Indiana Board of Veterinary Medical Examiners
†892 Indiana State Board of Examiners in Watch Repairing
896 Board of Environmental Health Specialists
898 Indiana Athletic Trainers Board

MISCELLANEOUS

905 Alcohol and Tobacco Commission
910 Civil Rights Commission
915 Veterans' Affairs Commission
920 Indiana War Memorials Commission
925 Meridian Street Preservation Commission
930 Indiana Housing Finance Authority

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

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #03-204(F)

DIGEST

Adds 68 IAC 6-3 to govern the commission's administration of a Voluntary Exclusion Program in the state of Indiana, which will allow individuals to voluntarily request to have his or her name placed on an exclusion list and be excluded from Indiana riverboats. In addition, riverboat licensees may not cash checks for, issue credit to, or send direct marketing to persons who are identified by this list. Effective 30 days after filing with the secretary of state.

68 IAC 6-3

SECTION 1. 68 IAC 6-3 IS ADDED TO READ AS FOLLOWS:

Rule 3. Voluntary Exclusion Program

68 IAC 6-3-1 General provisions
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 1. (a) This rule applies to riverboat licensees, riverboat license applicants, operating agents, operating agent applicants, owners of facilities under the jurisdiction of the commission, and all persons on riverboats where gambling operations are conducted.

(b) The following definitions apply throughout this rule:
(1) "Request for removal" means a request submitted by a voluntarily excluded individual stating that the individual wishes to be removed from the voluntary exclusion list.
(2) "Request for voluntary exclusion" means a request completed by an individual for placement on the voluntary exclusion list.
(3) "Voluntarily excluded person" means a person who has successfully completed the procedures outlined in this rule to effectuate his or her own exclusion from the gaming areas of facilities under the jurisdiction of the commission.
(4) "Voluntary exclusion list" means a list of names of persons and necessary identifying information of individuals who have elected to voluntarily exclude themselves from the gaming areas of facilities under the jurisdiction of the commission.

(c) Nothing in this rule shall prohibit anyone on the voluntary exclusion list from accessing the gaming areas of a facility under the jurisdiction of the commission for the purpose of carrying out the duties of their employment. An individual who is on the voluntary exclusion list who is hired by a facility under the jurisdiction of the commission must notify the commission office in Indianapolis prior to starting the job. The individual must provide the following information:
(1) Name.
(2) Date of birth.
(3) Name of the facility with which the voluntarily excluded individual will be employed.

(d) Nothing in this rule shall prohibit a riverboat licensee or operating agent from following the procedures outlined in 68 IAC 6-2 to evict a voluntarily excluded person. *(Indiana Gaming Commission; 68 IAC 6-3-1; filed Mar 22, 2004, 3:30 p.m.: 27 IR 2440)*

68 IAC 6-3-2 Request for placement on the voluntary exclusion list
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2. (a) Except as provided in section 1(c) of this rule, a person who participates in the voluntary exclusion program agrees to refrain from entering a gaming area under the jurisdiction of the commission.

(b) Any person may make a request to have his or her name placed on the voluntary exclusion list by following the procedures set forth in this section. The request may be made only by the individual and not by any other person. An individual must not be under the influence of alcohol or drugs at the time he or she makes a request for placement on the voluntary exclusion list.

(c) Any person requesting placement on the voluntary exclusion list must submit a completed request for voluntary exclusion as outlined in subsection (d). The individual must appear in person at a commission office or another location designated by the executive director to complete the request for voluntary exclusion. Commission offices are located on the property of each facility under the jurisdiction of the commission in addition to an office located in Indianapolis that is not located on the property of a facility under the jurisdiction of the commission.

(d) A request for voluntary exclusion must be on a form prescribed by the commission and shall include the following information:
(1) Identifying information, including, but not limited to, the following:
(A) Name, including any aliases or nicknames.
(B) Date of birth.
(C) Current residential address.
(D) Current telephone number.
(E) Social Security number.
(F) A physical description, including height, weight, gender, hair color, eye color, and any other physical characteristic that may assist in the identification of the person.

(G) A photograph of the individual that will be taken by commission agents at the time the request for voluntary exclusion is submitted.

(H) Driver's license number.

(I) Any other information deemed necessary by the commission.

(2) As part of the request for voluntary exclusion, a person must elect the time period for which he or she wishes to be voluntarily excluded. An individual may select any of the following time periods as a minimum length of exclusion:

(A) One (1) year.

(B) Five (5) years.

(C) Lifetime.

After an individual's request for voluntary exclusion has been processed by the commission staff and the individual's name is added to the voluntary exclusion list, that individual may not apply to decrease the length of exclusion. A voluntarily excluded individual who elected to participate in the program for a period of one (1) year or five (5) years may resubmit a request for voluntary exclusion at any time to increase the minimum length of exclusion. An individual who voluntarily excluded for a period of one (1) year or five (5) years will continue to appear on the list after the expiration of that time period until such time as he or she completes a request for removal under section 5 of this rule.

(3) The form shall also include a waiver and release, which shall release and forever discharge the state, the commission, and its employees and agents from any liability to the person requesting placement on the voluntary exclusion list and his or her heirs, administrators, executors, and assigns for any harm, monetary or otherwise, that may arise out of or by reason of any act or omission relating to the request for placement on the voluntary exclusion list or request for removal from the voluntary exclusion list including the following:

(A) The list's processing or enforcement.

(B) The failure of a riverboat licensee or operating agent to withhold direct marketing, check cashing, or extension of credit to a voluntarily excluded individual.

(C) Disclosure of information contained in the voluntary exclusion request or list, except for willfully unlawful disclosure of such information to persons other than entities under the jurisdiction of the commission.

(D) The dissemination of confidential information contained on the exclusion list by facilities under the jurisdiction of the commission to any party not authorized to receive the information.

(4) The form must also contain the signature of the person submitting the request for voluntary exclusion indicating acknowledgement of the following statement: "I am voluntarily requesting exclusion from the gaming areas at all facilities under the jurisdiction of the Indiana Gaming Commission. I certify that the information that I have provided above is true and accurate, and that I have read and understand and agree to the waiver and release included in this request for placement on the voluntary exclusion list. I am aware that my signature below authorizes the commission to direct all Indiana riverboat licensees and operating agents to restrict my gaming activities in accordance with this request. If I have requested to be excluded for life, I am aware that I will be unable to cause my name to be removed from the voluntary exclusion list. If I have elected to be placed on the list for a period of one (1) or five (5) years, I am aware that I will remain on the list until such time as the commission removes my name from the voluntary exclusion list in response to my written request certifying that I do not suffer from a gambling problem. I am aware and agree that during any period of exclusion, I shall not collect any winnings or recover any losses resulting from any gaming activity at all gaming facilities under the jurisdiction of the commission. I understand that any money or thing of value obtained by me from, or owed to me by, a riverboat licensee or operating agent as a result of wagers made by me while on the voluntary exclusion list shall be subject to forfeiture.".

(5) The form will also contain as an attachment a copy of the identification credentials or driver's license examined by a commission agent at the time the request for voluntary exclusion is made, containing the signature of the person requesting placement on the self-exclusion list.

(6) The signature of a commission agent, employee, or other person authorized by the executive director to accept the request for voluntary exclusion, indicating that the signature, physical description, and identity of the person on the request for voluntary exclusion agrees with the identification provided by that individual.

(e) The personal information of a person who participates in the voluntary exclusion program is confidential. An individual who elects to participate in the program must agree that in order to enforce the voluntary exclusion program, facilities under the jurisdiction of the commission must have access to the individual's personal information. Prior to placement on the voluntary exclusion list, an individual shall authorize the commission staff to provide the following necessary identifying information to the facilities under the jurisdiction of the commission on his or her behalf and for purposes of enforcement:

(1) Name, including any aliases or nicknames.

(2) Date of birth.

(3) Current residential address.

(4) Current telephone number.

(5) A physical description, including height, weight, gender, hair color, eye color, and any other physical characteristic that may assist in the identification of the person.

(6) A photograph of the individual that will be taken by commission agents at the time of voluntary exclusion.
(7) Driver's license number.

(f) A voluntarily excluded individual shall have the following ongoing obligations regarding the voluntary exclusion list:
(1) Refrain from entering the gaming areas of riverboats and other facilities under the jurisdiction of the commission until such time as a request for removal has been processed by the commission.
(2) Each time the personal information of a voluntarily excluded individual changes, he or she must provide the commission with the updated information.
(3) Notify the commission if direct mailing items are received addressed to a voluntarily excluded person at his or her residence.

(g) A voluntarily excluded individual who violates the terms of the voluntary exclusion list and enters the gaming area of a facility under the jurisdiction of the commission agrees to forfeit any jackpot or thing of value won as a result of a wager made at a facility under the jurisdiction of the commission. The forfeited jackpots or items will be withheld by the riverboat licensee or operating agent and remitted to the commission. The commission shall collect such items and funds as a fine levied against the voluntarily excluded individual for violating this rule. Voluntarily excluded individuals may appeal a forfeiture under this rule by following the procedures outlined in 68 IAC 7.

(h) Voluntarily excluded individuals agree to forfeit all points or complimentaries earned by the individual on or before the individual completes his or her request for placement on the voluntary exclusion list. Points or complimentaries refer to credits earned by a person under the terms of a riverboat licensee's or operating agent's marketing program as approved by the commission, and shall include, but shall not be limited to:
(1) food coupons;
(2) coupons or vouchers for chips or tokens;
(3) hotel complimentaries; or
(4) any other such noncash benefit owing to the individual.
However, if at the time an individual makes a request for placement on the voluntary exclusion list he or she is owed a cash amount from a riverboat licensee or operating agent, the individual shall have the right to receive that amount from the riverboat licensee or operating agent after placement on the voluntary exclusion list. To the extent that complimentaries or points described above may be redeemed for cash under the riverboat licensee *[sic., licensee's]* **or operating agent's marketing program, the individual shall be entitled to receive that amount.**

(i) Nothing in this rule shall prohibit a riverboat licensee or operating agent from alerting local law enforcement authorities of a voluntarily excluded person's presence in a facility under the jurisdiction of the commission to effect an arrest for trespassing. *(Indiana Gaming Commission; 68 IAC 6-3-2; filed Mar 22, 2004, 3:30 p.m.: 27 IR 2440)*

68 IAC 6-3-3 Voluntary exclusion list
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 3. (a) The executive director or his designee shall maintain the voluntary exclusion list, which shall contain the names and personal information of the persons participating in the program. Such persons shall be excluded from gaming areas at all facilities under the jurisdiction of the commission. The executive director or his designee shall notify each riverboat licensee or operating agent of each facility under the jurisdiction of the commission of each addition to the list or deletion from the list in a timely manner.

(b) The voluntary exclusion list is confidential and may be disseminated only to a riverboat licensee or operating agent for purposes of enforcement or to any other entity designated by statute. *(Indiana Gaming Commission; 68 IAC 6-3-3; filed Mar 22, 2004, 3:30 p.m.: 27 IR 2442)*

68 IAC 6-3-4 Rights and duties of riverboat licensees and operating agents
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 4. (a) Each riverboat licensee, riverboat license applicant, operating agent, and operating agent applicant shall establish internal control procedures for compliance with this rule, which shall be submitted and approved by the commission under 68 IAC 11-1-3.

(b) The internal controls must, at a minimum, address the following:
(1) Procedures must provide a plan for distributing the list of persons who have voluntarily excluded and their personal information to appropriate personnel of the facility for purposes of enforcing the program. The plan must allow, to a reasonable extent, appropriate employees of a riverboat licensee or operating agent to identify a voluntarily excluded person when that person is present in a casino or other facility under the jurisdiction of the commission. Such information shall not be released to casinos in other jurisdictions. However, nothing in this rule shall prohibit a riverboat licensee or operating agent from effectuating the eviction of a voluntarily excluded person from other properties within their corporate structure so that the person will be denied gaming privileges at casinos under the same parent company in other jurisdictions.

(2) Must provide a process whereby commission agents and security and surveillance are notified immediately when a voluntarily excluded person is detected in the gaming area of a facility.

(3) Must refuse wagers from and deny gaming privileges to any individual who the casino knows to be a voluntarily excluded person.

(4) Make all reasonable attempts to ensure that voluntarily excluded persons do not receive direct marketing. A riverboat licensee or operating agent will satisfy this requirement if the riverboat licensee or operating agent removes the individual's name from the list of patrons to whom direct marketing materials are sent, and the individual does not receive direct marketing materials more than forty-five (45) days after the riverboat licensee receives notice, under section 3(a) of this rule, that the individual has appeared on the voluntary exclusion list.

(5) Ensure that voluntarily excluded persons do not receive check cashing privileges or extensions of credit, whether directly through the riverboat licensee or operating agent, or through a supplier contracting with a riverboat licensee or operating agent on property hired for the purpose of check cashing or extension of credit, or both.

(c) Nothing in this rule shall prohibit a riverboat licensee or operating agent from seeking payment of a debt from a voluntarily excluded person if the debt was accrued by a person before his or her name was placed on the voluntary exclusion list.

(d) A riverboat licensee or operating agent shall post signs at the turnstiles marking the entrance to the gaming area that will inform and educate patrons about the voluntary exclusion program. The text that will appear on the signs must be submitted to the commission staff for approval prior to posting.

(e) A riverboat licensee or operating agent shall be subject to disciplinary action under 68 IAC 13 for failure to comply with the requirements of this section and the internal control procedures outlined pursuant to this section, including, but not limited to, the following:

(1) Release of confidential information for a purpose other than enforcement.

(2) Knowingly refusing to withhold direct marketing, check cashing, and credit privileges.

(3) Failure to follow internal control procedures adopted under this rule.

(Indiana Gaming Commission; 68 IAC 6-3-4; filed Mar 22, 2004, 3:30 p.m.: 27 IR 2442)

68 IAC 6-3-5 Removal from voluntary exclusion list

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 5. (a) This section does not apply to those voluntarily excluded individuals who elected lifetime exclusion under section 2(d) of this rule.

(b) A person may, upon the expiration of the selected term of voluntary exclusion, request removal of his or her name from the voluntary exclusion list. A person making a request for removal must do so by presenting to a commission office or other location designated by the executive director and declaring, in writing, on a form provided by the commission, the intent to remove his or her name from the voluntary exclusion list.

(c) A request for removal from the voluntary exclusion list shall contain the following information:

(1) Name, including aliases or nicknames.

(2) Date of birth.

(3) Address of current residence.

(4) Telephone number of current residence.

(5) The signature of the person requesting removal from the voluntary exclusion list indicating acknowledgement of the following statement: "I certify that the information that I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previous request for placement on the voluntary exclusion list, and I authorize the commission to permit all Indiana riverboat licensees or other facilities under the jurisdiction of the commission to reinstate my gaming privileges.".

(6) The signature of the commission agent or other individual authorized by the executive director to accept a request for removal, verifying that the individual requesting removal is the voluntarily excluded individual.

(d) Upon receipt of a request for removal, the commission shall effectuate the removal of the name of the individual requesting removal from the voluntary exclusion list. The commission shall act upon a request for removal within thirty (30) days of receipt of such request.

(e) The commission shall notify each riverboat licensee or operating agent each time an individual is removed from the voluntary exclusion list. Once an individual's name has been removed from the voluntary exclusion list, nothing in this rule shall prohibit a riverboat licensee or operating agent from marketing directly to that individual, cashing checks of such a person, or extending credit to the individual. *(Indiana Gaming Commission; 68 IAC 6-3-5; filed Mar 22, 2004, 3:30 p.m.: 27 IR 2443)*

LSA Document #03-204(F)
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Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-93(F)

DIGEST

Amends 312 IAC 25 that assists in the administration of IC 14-34 (sometimes referred to as the "Indiana Surface Control and Reclamation Act" or "Indiana SMCRA"), which governs surface coal mining and reclamation activities. Makes numerous changes to help assure conformance with state and federal law including new definitions for "land eligible for remining" and "unanticipated event or condition", references to ponds would be modified to describe siltation structures, designated regulations of the Mine Safety and Health Administration would be incorporated by reference, refuse piles would be addressed with greater specificity, references to the former Soil Conservation Service are updated to identify the Natural Resources Conservation Service, new standards address consultation with the Secretary of Agriculture, permits on prime farmland, permits on lands eligible for remining, certifications by a permittee who seeks a bond release, the development of baselines for hydrologic information, and the frequency of inspections of abandoned sites, provides for the confidentiality of information and location of archaeological resources on public and Indian lands, specifies that, in addition to the director of the department of natural resources, the Secretary of the Interior may perform mine inspections. Makes numerous other substantive and technical changes. 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 25-1-8
312 IAC 25-1-75.5
312 IAC 25-1-155.5
312 IAC 25-4-17
312 IAC 25-4-45
312 IAC 25-4-49
312 IAC 25-4-87
312 IAC 25-4-102
312 IAC 25-4-105.5
312 IAC 25-4-113
312 IAC 25-4-114
312 IAC 25-4-115
312 IAC 25-4-118
312 IAC 25-5-7
312 IAC 25-5-16
312 IAC 25-6-17
312 IAC 25-6-20
312 IAC 25-6-23
312 IAC 25-6-25
312 IAC 25-6-66
312 IAC 25-6-81
312 IAC 25-6-84
312 IAC 25-6-130
312 IAC 25-7-1
312 IAC 25-7-20

SECTION 1. 312 IAC 25-1-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-1-8 "Affected area" defined

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

Sec. 8. **(a)** "Affected area" means ~~a~~ **any** land or water surface area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The term includes any of the following:

(1) The disturbed area.

(2) ~~An~~ **Any** area upon which surface coal mining and reclamation operations are conducted.

(3) **Any** adjacent land the use of which is incidental to surface coal mining and reclamation operations.

(4) ~~An~~ **Any** area covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, **except as provided in this section.**

(5) ~~A site~~ **Any area** covered by:

(A) surface excavations;
(B) workings;
(C) impoundments;
(D) dams;
(E) ventilation shafts;
(F) entryways;
(G) refuse banks;
(H) dumps;
(I) stockpiles;
(J) overburden piles;
(K) spoil banks;
(L) culm banks;
(M) tailings;
(N) holes or depressions;
(O) repair areas;
(P) storage areas; or
(Q) shipping areas.

(6) ~~An~~ **Any** area upon which are sited structures, facilities, or other **property** material on the surface resulting from, or ~~incidental~~ **incident** to, surface coal mining **and** reclamation operations.

(7) The area located above underground workings. ~~of a mine.~~

(b) The term includes every road used for purposes of access to, or for hauling coal to or from, any surface coal mining and reclamation operation unless:

(1) the road is designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(2) the road is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction;

(3) there is substantial (more than incidental) public use; and

(4) the extent and the effect of mining-related uses of the road by the permittee do not warrant regulation as part of the surface coal mining and reclamation operations.

(c) The director shall determine, on a case-by-case basis, whether a particular road satisfies the requirements of subsection (b)(4) based upon the mining-related use of the road and consistent with the definition of surface coal mining operation found in section 145 of this rule. *(Natural Resources Commission; 312 IAC 25-1-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2444, 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 25-1-75.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-75.5 "Land eligible for remining" defined

Authority: IC 14-34-2-1
Affected: IC 14-34-19

Sec. 75.5. "Lands eligible for remining" means, for the purposes of 312 IAC 25-4-105.5, 312 IAC 25-4-114, 312 IAC 25-4-115, and 312 IAC 25-5-7, those lands eligible for funding under IC 14-34-19 or 30 U.S.C. 1232(g)(4). *(Natural Resources Commission; 312 IAC 25-1-75.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, 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 25-1-155.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-1-155.5 "Unanticipated event or condition" defined

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

Sec. 155.5. "Unanticipated event or condition" means, for the purposes of 312 IAC 25-4-114, an event or condition that is encountered in a remining operation and was not contemplated by the applicable surface mining and reclamation permit. *(Natural Resources Commission; 312 IAC 25-1-155.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, 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 25-4-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-17 Surface mining permit applications; identification of interests

Authority: IC 14-34-2-1
Affected: IC 14-34; 30 CFR 778.13

Sec. 17. (a) An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a:

(A) corporation;

(B) partnership;

(C) single proprietorship;

(D) association; or

(E) other business entity.

(2) The name, address, telephone number, and, as applicable, the Social Security number and employer identification number of the following:

(A) The applicant.

(B) The applicant's resident agent.

(C) The person who will pay the abandoned mine land reclamation fee.

(b) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94, the following information shall be submitted with the application, where applicable:

(1) The person's name, address, Social Security number, and employer identification number.

(2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(3) The title of the person's position, the date the position was assumed, and, if submitted under 312 IAC 25-7-5, the date of departure from the position.

(4) Each additional name and identifying number, including the following:

(A) The employer identification number.

(B) The federal or state permit number.

(C) The MSHA number with the date of issuance under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application.

(5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(c) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94, the following information concerning the operation shall be submitted with the application:

(1) The name, address, and identifying numbers, including the following:

(A) The employer identification number.

(B) The federal or state permit number and the regulatory authority.

(C) The MSHA number with the date of issuance.

(2) The ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(d) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined **shall be submitted with the application.**

(e) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area **shall be submitted with the application.**

(f) The MSHA numbers for all mine-associated structures that require MSHA approval **shall be submitted with the application.**

(g) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application shall be submitted with the application. If requested by the applicant, any information required by this section that is not on public file under Indiana law shall be held in confidence by the director as provided under section 15(b) of this rule.

(h) After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (a) through (d).

(i) The applicant shall submit the information required by this section and section 18 of this rule in any prescribed format that is issued by the commission, which shall conform to the format requirements of the Office of Surface Mining Reclamation and Enforcement. *(Natural Resources Commission; 312 IAC 25-4-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3443, eff Dec 1, 2001, except subsections (d), (e), and (f); filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, 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 25-4-45 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-45 Surface mining permit applications; reclamation and operations plan; reclamation plan; general requirements

Authority: IC 14-34-2-1
Affected: IC 14-34-10

Sec. 45. (a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with IC 14-34-10, 312 IAC 25-6, and the environmental protection standards of IC 14-34 and this article. The plan shall include, at a minimum, all information required under sections 40 and 44 of this rule, this section, and sections 46 through 56 of this rule.

(b) Each plan shall contain the following information for the proposed permit area:

(1) A detailed timetable for the completion of each major step in the reclamation plan.

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 312 IAC 25-5, with supporting calculations for the estimates.

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps, topographical maps, or cross sections that show the anticipated final surface configuration of the proposed permit area in accordance with 312 IAC 25-6-48 through 312 IAC 25-6-53 and 312 IAC 25-6-144.

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 312 IAC 25-6-11. A demonstration of the suitability of topsoil substitutes or supplements under 312 IAC 25-6-11(c) shall be based upon analysis of the:

(A) thickness of soil horizons;
(B) total depth;
(C) pH;
(D) buffer pH;
(E) phosphorous;
(F) potassium;
(G) percent coarse fragments and texture; and
(H) areal extent;

of the different kinds of soils. The requirement to determine percent coarse fragments may be waived by an authorized representative of the director if he or she determines that the alternate material is a type of silt-blown, alluvial soil for which the analyses of percent coarse fragments would be unnecessary. The director may require other chemical and physical analyses, field-site trials, or greenhouse tests if necessary to demonstrate suitability.

(5) A plan for revegetation as required in 312 IAC 25-6-54 through 312 IAC 25-6-61, including descriptions of the following:

(A) Schedule of revegetation.
(B) Species and amounts per acre of seeds and seedlings to be used.
(C) Methods to be used in planting and seeding.
(D) Mulching techniques.
(E) Irrigation, if appropriate, and pest and disease control measures, if any.
(F) Measures proposed to be used to determine the success of revegetation as required in 312 IAC 25-6-59 through 312 IAC 25-6-61.
(G) Methods for evaluating the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 312 IAC 25-6-7.

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 312 IAC 25-6-12, 312 IAC 25-6-19, 312 IAC 25-6-36, 312 IAC 25-6-42, and 312 IAC 25-6-50 and a description of the contingency plans that have been developed to preclude sustained combustion of such materials.

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the proposed permit area, in accordance with 312 IAC 25-6-8 through 312 IAC 25-6-10.

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), ~~and~~ the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

(Natural Resources Commission; 312 IAC 25-4-45; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001, except subsection (b)(4); errata, 27 IR 1890; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2446, 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 25-4-49 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-49 Surface mining permit applications; reclamation and operations plan; reclamation plan for siltation structures, impoundments, dams, and embankments, and refuse piles

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

Sec. 49. (a) Each application shall include a **general** plan **and a detailed design plan** for each proposed siltation structure, water impoundment, and coal processing waste dam, ~~or~~ embankment, **or refuse pile** within the proposed permit area. The information required shall be provided as follows:

(1) Each general plan shall do the following:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.

(B) Contain a description, map, and cross section of the structure and its location.

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(E) Contain a certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall do the following:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, with assistance from experts in related fields, such as geology, land surveying, and landscape architecture.

(B) Include any geotechnical investigation, design, and construction requirements for the structure.

(C) Describe the operation and maintenance requirements for each structure.

(D) Describe the timetable and plans to remove each structure, if appropriate.

(E) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a), and include a copy of the plans for design and construction that has been approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-17. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-20.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of 312 IAC 25-6-20 **and the requirements of the Mine Safety and Health Administration at 30 CFR 77.216-1 and 30 CFR 77.216-2.**

(d) Refuse piles shall be designed to comply with 312 IAC 25-6-36 through 312 IAC 25-6-39.

~~(d)~~ **(e)** Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-34, 312 IAC 25-6-36, and 312 IAC 25-6-43 through 312 IAC 25-6-45. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 30 CFR 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

(1) The number, location, and depth of boring and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to:

(A) Strength parameters.

(B) Pore pressures.

(C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

~~(e)~~ **(g)** If **the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:**

(1) ~~the~~ structure is twenty (20) feet or higher;

(2) ~~the~~ drainage area above the structure is one (1) square mile or larger; or

(3) ~~the~~ volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, in the department of natural resources, and approval shall be obtained from the director before construction of the structure begins. ~~If necessary to protect the health or safety of persons, property, or the environment even though the volume of water impounded is less than one hundred (100) acre-feet, the director may require an application to be made.~~ *(Natural Resources Commission; 312 IAC 25-4-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3457, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2447, 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 25-4-87 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-87 Underground mining permit applications; reclamation plan for siltation structures, impoundments, dams, embankments, and refuse piles

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

Sec. 87. (a) Each application shall include a general plan **and a detailed design plan** for each proposed siltation structure, water impoundment, and coal processing waste dam, ~~or~~ embankment, **or refuse pile** within the proposed permit area. The information required shall be provided as follows:

(1) Each general plan shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.

(B) Contain a description, map, and cross section of the structure and its location.

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(E) Contain a certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as geology, land surveying, and landscape architecture.

(B) Include any geotechnical investigation, design, and construction requirements for the structure.

(C) Describe the operation and maintenance requirements for each structure.

(D) Describe the timetable and plans to remove each structure if appropriate.

(E) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a) and include a copy of the plans for design and construction approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-81. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-84.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of 312 IAC 25-6-84, **30 CFR 77.216-1, and 30 CFR 77.216-2.**

(d) Refuse piles shall be designed to comply with 312 IAC 25-6-98 through 312 IAC 25-6-102.

~~(d)~~ **(e)** Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-98 and 312 IAC 25-6-106 through 312 IAC 25-6-108. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 30 CFR 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to:

(A) Strength parameters.

(B) Pore pressures.

(C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

~~(e)~~ **(g)** If **the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:**

(1) ~~the~~ structure is twenty (20) feet or higher;

(2) ~~the~~ drainage area above the structure is one (1) square mile or larger; or

(3) ~~the~~ volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, department of natural resources, and prior approval shall be obtained from the director before construction of the structure begins. If necessary to protect the health or safety of persons or property or the environment, even though the volume of water impounded is less than one hundred (100) acre-feet, the director may require an application to be made. *(Natural Resources Commission; 312 IAC 25-4-87; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3473, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2448, 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 25-4-102 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-102 Special categories of mining; prime farmland

Authority: IC 14-34-2-1
Affected: IC 4-21.5; IC 14-34; 30 CFR 785.17

Sec. 102. (a) In an initial permit application under this article for an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date, the applicant shall set forth the geographical area that is encompassed by the operation. The permit applied for, however, need only cover the area to be affected during the period of the permit for which the application is made. The director shall determine the geographical areas that are exempt from the prime farmland provisions of IC 14-34 and this article. In making the determination, the director shall consider all relevant factors bearing upon the extent of the geographical area upon which the applicant intended to conduct surface coal mining operations as of August 3, 1977, including the following:

(1) A map showing the geographical location of the area for which the determination is requested and the area previously affected by surface coal mining and reclamation operations.

(2) Information concerning the contractual coal sales commitments that existed before August 4, 1977, for the mining operation.

(3) Maps and other documents that identify the location and extent of the applicant's surface and mineral rights control for all properties within the area upon which the determination is requested and whether the applicant:

(A) acquired the rights before August 4, 1977;

(B) acquired the rights after August 3, 1977; or

(C) does not control the rights currently.

(4) Mining plans, maps, or other documents prepared before August 4, 1977, that identify the area intended to be mined by the existing operations.

(5) Maps or other documents identifying the extent of coal exploration activity performed by the applicant in the area before August 4, 1977.

(6) Copies of any other permits issued to the applicant by governmental agencies before August 4, 1977, with respect to those operations upon those lands for which this determination is sought.
(7) The legal and financial commitments made by the applicant in connection with the mining operation as of August 3, 1977, with respect to those lands for which this determination is requested.
(8) Any other relevant information.

(b) In making the determination required under subsection (a), no one (1) or group of factors is controlling. The determination shall be made by the director based upon all relevant factors of the particular surface coal mining operation for which the permit and determination is sought. The determination applies to all subsequent and continuous permits for the existing surface coal mining operation or until the director determines the operations have permanently ceased.

(c) The requirements of subsection (d) apply to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. Subsection (d) does not apply to an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date.

(d) If land within the proposed permit area is identified as prime farmland under section 39 or 80 of this rule, the applicant shall submit a plan for the mining and restoration of the land. Each plan must include the following:
(1) A soil survey of the permit area under the standards of the National Cooperative Soil Survey and under the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States ~~Soil~~ **Natural Resources** Conservation Service, including, but not limited to:
(A) soil horizon depths;
(B) pH; and
(C) the range of soil densities;
for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the state conservationist, United States ~~Soil~~ **Natural Resources** Conservation Service. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technical capability to restore the prime farmland within the permit area to the soil reconstruction standards of 312 IAC 25-6-139 through 312 IAC 25-6-143.
(2) The proposed method and type of equipment to be used for removal, storage, and replacement of soil under 312 IAC 25-6-139 through 312 IAC 25-6-143.
(3) The location of areas to be used for the separate stockpiling of the soil and a plan for soil stabilization before redistribution.
(4) Applicable agricultural school studies, scientific data from comparable areas, or similar documentation that supports the use of suitable material other than the A horizon, B horizon, or C horizon to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management.
(5) A plan describing the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime during the period from completion of regrading until release of the performance bond under 312 IAC 25-5. Proper adjustments must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.
(6) A demonstration based on soil surveys, scientific data, or standard agronomic practices that the applicant using the proposed method of reclamation has the capability, within a reasonable time, to achieve equivalent or higher levels of yield after mining as existed before mining.
(7) Current estimated level of yields under high levels of management of prime farmland.

(e) Before any permit is issued for areas that include prime farmland, the director shall consult with the state conservationist of the Natural Resources Conservation Service. The state conservationist shall do the following:
(1) Provide for the review of and comment on the proposed method of soil reconstruction in the plan submitted under subsection (d).
(2) Suggest revisions resulting in more complete and adequate reconstruction if the state conservationist considers the soil reconstruction methods to be inadequate. The state conservationist has fifteen (15) days after consultation with the director to respond.
(3) Provide to the director a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland descriptions.
(4) Assist the director in determining the adequacy of all soil surveys required in subsection (d)(1) through (d)(3).

(f) A permit for the mining and reclamation of prime farmland may be granted by the director if the director finds, in writing, upon the basis of a complete application, the following:
(1) The approved proposed postmining land use of prime farmland will be cropland.
(2) The permit incorporates as specific conditions the contents of the plan submitted under subsection (d), after consideration of any revisions to that plan suggested by the state conservationist under subsection (e).

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.

(4) The proposed operations will be conducted in compliance with the requirements of 312 IAC 15-6-139 *[sic., 312 IAC 25-6-139]* **through 312 IAC 15-6-143** *[sic., 312 IAC 25-6-143]* **and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.**

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Waterbodies, if any, to be constructed during mining and reclamation must be located within the postreclamation nonprime farmland portions of the permit area. The creation of any waterbody must be approved by the director, and the consent of all affected property owners within the permit area shall be obtained.

(Natural Resources Commission; 312 IAC 25-4-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3481, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2449, 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 25-4-105.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 25-4-105.5 Special categories of mining; lands eligible for remining

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

Sec. 105.5. (a) This section contains permitting requirements to implement section 114(d) of this rule. Any person who submits a permit application to conduct surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this rule applicable to surface coal mining and reclamation operations. The application shall contain the following:

(1) To the extent not otherwise addressed in the permit application, an identification of potential environmental and safety problems related to prior mining activity at the site that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation that shall include the following:

(A) Visual observation at the site.

(B) A record review of past mining at the site.

(C) Environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred to in subdivision (1), a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

(c) The requirements of this section shall not apply after September 30, 2004. *(Natural Resources Commission; 312 IAC 25-4-105.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2451, 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. 312 IAC 25-4-113 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-113 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; public availability

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3-5; IC 5-14-3; IC 14-34

Sec. 113. (a) Information contained in a permit application on file with the director is a public record under IC 5-14-3, except as provided in this section.

(b) Information in a permit application that pertains only to the analysis of chemical and physical properties of the coal to be mined (except information regarding mineral or elemental contents of the coal that are potentially toxic in the environment) is confidential.

(c) Unless otherwise provided in this article, information contained in the reclamation plan required under sections 40 through 56 and 81 through 97 of this rule that is not on public file under Indiana law is a trade secret.

(d) The director shall provide for procedures to separate the information that is a public record from the information that is a trade secret.

(e) An applicant must clearly identify information ~~which~~ **that** the applicant wishes to protect as a trade secret and must submit that information separately from other portions of the application.

(f) Information on the nature and location of archaeological resources on public and Indian land, as required under 16 U.S.C. 470aa through 16 U.S.C. 470mm, is confidential.

~~(f)~~ **(g)** A person who opposes or seeks disclosure of information ~~which~~ **that** pertains to the analysis of chemical and physical properties of the coal to be mined, **confidential information,** or information claimed as a trade secret may submit the request under section 110 of this rule. The person

seeking or opposing disclosure and the applicant shall be notified, in writing, of an order made by the director with respect to that request. The order is subject to administrative review under IC 4-21.5-3-5 and sections 122 through 123 of this rule. *(Natural Resources Commission; 312 IAC 25-4-113; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3487, 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; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2451, 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 11. 312 IAC 25-4-114 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-114 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; review of permit applications

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3-5; IC 4-21.5-5; IC 5-15-3; IC 14-34-4-6; IC 14-34-17

Sec. 114. (a) The director shall review the complete application for a permit, revision or renewal, written comments, written objections submitted, and records of any informal conference or hearing held on the application and issue a written decision either granting, requiring modification of, or denying the application within the following times:

(1) If:

(A) an informal conference is held under section 112 of this rule or a hearing under IC 14-34-4-6, the decision shall be made within sixty (60) days of the close of the conference or hearing unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(2); or

(B) no informal conference is held under section 112 of this rule, or no hearing is held under IC 14-34-4-6, the decision shall be made within one hundred eighty (180) days from the date the administratively complete application is submitted to the director.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all requirements of this article and the approved regulatory program.

(b) The director shall conduct a review of violations as follows:

(1) Based on available information concerning federal and state failure to abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under 312 IAC 25-7, delinquent civil penalties issued under Section 518 of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), or any state's equivalent counterpart, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), or any other law, rule, or regulation referred to in this subdivision. In the absence of a failure to abate a cessation order, the director may presume that a notice of violation issued under 312 IAC 25-7 or a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to do either of the following:

(A) Submit to the director proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation.

(B) Establish to the director that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the initial judicial review authority under IC 14-34-17 and IC 4-21.5-5, or a federal or state counterpart to IC 14-34-17 or IC 4-21.5-5, affirms the violation, then the applicant shall, within thirty (30) days of the judicial action, submit the proof required under clause (A).

(2) Any permit that is issued on the basis of proof submitted under subdivision (1)(A) that a violation is in the process of being corrected or pending the outcome of an appeal described in subdivision (1)(B) shall be conditionally issued.

(c) If the director makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violation of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.

Section 1201 et seq.), no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for a hearing on the determination as provided in IC 4-21.5 and 312 IAC 3.

(d) After October 24, 1992, the following apply:

(1) The prohibitions of subsection (b) regarding the issuance of a new permit shall not apply to any violation that:

(A) occurs after October 24, 1992;

(B) is unabated; and

(C) results from an unanticipated event or condition that arises form *[sic., from]* **a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:**

(i) issued before September 30, 2004, or any renewals thereof; and

(ii) held by the person making application for the new permit.

(2) A permit issued under section 105.5 of this rule, an event or condition shall be presumed to be unanticipated for the purposes of this subsection if the event or condition:

(A) arose after permit issuance;

(B) was related to prior mining; and

(C) was not identified in the permit.

(Natural Resources Commission; 312 IAC 25-4-114; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3488, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2452, 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 12. 312 IAC 25-4-115 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-115 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial

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

Sec. 115. (a) No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates, and the director makes written findings on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The permit application is accurate and complete and in compliance with all requirements of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and this article.

(2) The applicant has demonstrated that reclamation, as required by IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and this article, can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is shown **not within an area:**

(A) ~~not within an area~~ under study or administrative proceedings under a petition filed under 312 IAC 25-3-6 through 312 IAC 25-3-12 to have an area designated as unsuitable for surface coal mining operations unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments had been made in relation to the operation covered by the permit application; or

(B) ~~not within an area~~ designated as unsuitable for mining under 312 IAC 25-3.

(4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the director the documentation required under section 19(b) or 60(b) of this rule.

(5) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in sections 47(c) and 85(c) of this rule, has been made by the director, and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(6) The applicant has demonstrated that any existing structure will comply with the applicable performance standards of 312 IAC 25-6-5 through 312 IAC 25-6-148 and section 116 of this rule.

(7) The applicant has paid all reclamation fees required by 312 IAC 25-10 and all reclamation fees from previous and existing operations as required by 30 CFR 870.12.

(8) The applicant has satisfied the applicable requirements of section 98 of this rule with respect to special categories of mining.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long term, intensive agricultural postmining land use, in accordance with the requirements of 312 IAC 25-6-54 or 312 IAC 25-6-115.

(10) The operation would not affect the continued existence of endangered or threatened species, or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(11) The effect has been taken into account of the proposed mining operation on properties or sites eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures. This finding may be supported in part by the inclusion of appropriate permit conditions or changes in the operation plan to protect these properties or sites or by a documented decision that no additional protection measures are necessary. In making this finding, the director shall take into account the following:

(A) The relative importance of the property or site to other properties or sites of a similar nature in Indiana that are listed on or eligible for listing on the National Register of Historic Places or on the Indiana state register of historic sites and structures based upon information available from the division of historic preservation and ~~archaeology~~ **archeology** of the department.

(B) The estimated cost of any treatment or mitigation measures required by the director. The estimate shall be provided by the applicant and shall be prepared by a person qualified as a principal investigator at 312 IAC 21-3-4. The estimate shall be accompanied by the scope of work and any other documents that provide the basis for that estimate. A decision that treatment or mitigation measures are not required shall not be based on cost alone.

(12) For a proposed remining operation where the applicant intends to reclaim under 312 IAC 25-6-53 or 312 IAC 25-6-114, the site of the operation is a previously mined area as defined in 312 IAC 25-1-107.

(13) For permits to be issued under section 105.5 of this rule, the permit application must contain the following:

(A) Lands eligible for remining.

(B) An identification of any potential environmental and safety problems related to prior mining activity that could reasonably be anticipated to occur at the site.

(C) Mitigation plans to sufficiently address potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

(b) If the director decides to approve the application, the applicant will submit the performance bond or other equivalent guarantee required under 312 IAC 25-5 prior to the issuance of the permit.

(c) After an application is approved, but before the permit is issued, the director shall reconsider the decision to approve the application based on the compliance review required by section 114(b)(1) of this rule in light of any new information submitted under sections 17 and 18 of this rule. *(Natural Resources Commission; 312 IAC 25-4-115; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3489, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2453, 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 13. 312 IAC 25-4-118 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-4-118 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit conditions

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3; IC 14-34-13; IC 14-34-15-1; IC 14-34-15-2; 30 CFR 773.17

Sec. 118. Each permit issued by the director shall be subject to the following conditions:

(1) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and are subject to the performance bond or other equivalent guarantee in effect under 312 IAC 25-5.

(2) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the director otherwise directs in the permit.

(3) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of IC 14-34, and the requirements of this article.

(4) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the director **and the Secretary of the Interior** to:

(A) have the right of entry provided for in IC 14-34-15-1; and

(B) be accompanied by private persons for the purpose of conducting an inspection in accordance with IC 14-34-15-2 when the inspection is in response to an alleged violation reported to the director by a private person.

(5) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to, the following:

(A) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of noncompliance.

(B) Immediate implementation of measures necessary to comply.

(C) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(6) As applicable, the permittee shall comply with the requirements of section 41 of this rule and 312 IAC 25-6-5 through 312 IAC 25-6-132 for compliance, modification, or abandonment of existing structures.

(7) The operator shall pay all reclamation fees required by IC 14-34-13 for coal produced under the permit for sale, transfer, or use in the manner required by 312 IAC 25-10.

(8) Within thirty (30) days after a cessation order is issued under 312 IAC 25-7-5, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to the director the ~~following~~ information **in clauses (A) and (B),** current to the date the cessation order was issued, or notify the director, in writing, that there has been no change since the immediately preceding submittal of such information:

(A) any new information needed to correct or update the information previously submitted to the director by the permittee under ~~section~~ **sections** 17(c) and 58(a)(4) of this rule; or

(B) if not previously submitted, the information required from a permit applicant by ~~section~~ **sections** 17(c) and 58(a)(4) of this rule.

(Natural Resources Commission; 312 IAC 25-4-118; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3491, eff Dec 1, 2001, except subdivision (4); errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2454, 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 14. 312 IAC 25-5-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-5-7 Period of liability

Authority: IC 14-34-2-1
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 7. (a) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in 312 IAC 25-6-59 through 312 IAC 25-6-61, 312 IAC 25-6-120, and 312 IAC 25-6-122, except, with the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under sections 8 and 9 of this rule. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) The period of liability shall commence after the last year of augmented seeding, fertilizing, irrigation, or other work and shall continue for not less than five (5) years. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release, except as provided in 312 IAC 25-6-59. **On lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, the liability period is two (2) years. To the extent that success standards are established by 312 IAC 25-6-59(c)(1) or 312 IAC 25-6-120(c)(1), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.**

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the department. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that such portion:

(1) is not significant in extent in relation to the entire area under the bond; and

(2) is limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area.

(d) If the department approves a long term intensive agricultural postmining land use, in accordance with 312 IAC 25-6-64 or 312 IAC 25-6-128, the applicable five (5) year or ten (10) year period of liability shall commence at the date of initial planting.

(e) The bond liability of the permittee shall include only those actions that the operator is obliged to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 312 IAC 25-6-64 or 312 IAC 25-6-128. *(Natural Resources Commission; 312 IAC 25-5-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3503, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, 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 15. 312 IAC 25-5-16 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-5-16 Performance bond release; requirements

Authority: IC 14-34-2-1
Affected: IC 4-21.5-3-27; IC 14-34-10-2; 30 CFR 800.40

Sec. 16. (a) A permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within thirty (30) days after an application for bond or deposit release is filed with the department, the operator shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement must be part of any bond release application and shall include the following:

(1) The precise location of the land affected.

(2) The number of acres.

(3) The permittee's name.

(4) The permit number and the date approved.

(5) The amount of the bond filed and the portion sought to be released.

(6) The type and appropriate dates of reclamation work performed.

(7) A description of the results achieved relative to the operator's approved reclamation plan.

The advertisement shall also state that any person with a valid legal interest that might be adversely affected by release of the bond, or the responsible officer or head of any federal, Indiana, or local governmental agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operations, may file written comments or objections or may request a public hearing or informal conference concerning the proposed release from bond with the department within thirty (30) days after the last publication of notice. The notice shall contain the address of the division for submission of comment and the calendar date for the close of the comment

period. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the surface coal mining and reclamation activities took place, providing notification of the request to seek release from the bond.

(b) The permittee shall include in the application for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of this article and the approved reclamation plan. The certification shall be submitted for each application or phase of bond release.

~~(b)~~ **(c)** Within thirty (30) days after receipt of the notification and request, or as soon afterwards as weather conditions permit, the department shall conduct an inspection and evaluation of the reclamation work. The evaluation shall consider, among other things:

(1) the degree of difficulty to complete any remaining reclamation;

(2) whether pollution of surface and subsurface water is occurring;

(3) the probability pollution will continue; and

(4) the estimated cost of abating the pollution.

The surface owner, agent, or lessee shall be given notice of the inspection by the director and may participate with the department in the inspection. The department shall notify, in writing, the permittee and any other interested person of a decision whether to release all or part of the performance bond or deposit within sixty (60) days after receipt of the request if no public hearing is held under subsection (f). If a public hearing is held under subsection (f), an administrative law judge shall enter an order under IC 4-21.5-3-27 within thirty (30) days after the hearing is completed.

~~(c)~~ **(d)** The department may release the bond or deposit, in whole or in part, upon a determination the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by IC 14-34 according to the following schedule:

(1) Phase I. After the operator completes the backfilling, regrading, and drainage control of a bonded area under the approved reclamation plan, sixty percent (60%) of the bond or collateral for the applicable permit may be released.

(2) Phase II. After the operator establishes revegetation on the regraded mined lands under the approved reclamation plan, an additional twenty-five percent (25%) of the total original bond amount may be released. No part of the bond or deposit shall be released under this subdivision if the lands to which the release would be applicable are contributing suspended solids to the streamflow or run-off outside the permit area in excess of the limitations in IC 14-34 and until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area as determined from the soil survey performed under IC 14-34. If a siltation structure is to be retained as a permanent impoundment, a bond release may occur under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the department.

(3) Phase III. The department may release the remaining bond only after:

(A) the operator has successfully completed all surface coal mining and reclamation activities required in IC 14-34, this article, or the permit; and

(B) the expiration of the period specified for operator responsibility in IC 14-34-10-2.

~~(d)~~ **(e)** If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in section 12 of this rule, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

~~(e)~~ **(f)** If an application is made for total or partial bond release, the department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days before granting the release.

~~(f)~~ **(g)** Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local government agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release with the department within thirty (30) days after the last publication of the notice under subsection (a). If written objections are filed, and a hearing requested, the department shall inform all the interested parties of the time and place of the hearing and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty (30) days of the request for such hearing (or, at the option of the person filing the hearing request, in Indianapolis or Jasonville). The date, time, and location of the hearing shall also be advertised by the department in a newspaper of general circulation in the locality of the mine for two (2) consecutive weeks.

~~(g)~~ **(h)** The department may set a dispute under this section for an informal conference. Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of a permittee, a person who files objections, the department, or another interested person.

~~(h)~~ **(i)** For the purpose of such hearing, the department shall have the authority to:

(1) administer oaths;

(2) subpoena witnesses or written or printed materials;

(3) compel the attendance of witnesses or production of the materials; and

(4) take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity.

A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or by order of the department. *(Natural Resources Commission; 312 IAC 25-5-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, 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 16. 312 IAC 25-6-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-17 Surface mining; hydrologic balance; siltation structures

Authority: IC 14-34-2-1
Affected: IC 14-34; IC 25-31

Sec. 17. (a) Siltation structures shall be constructed according to the following:

(1) Additional contributions of suspended solids sediment to stream flow or run-off outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area except as provided in subdivision (5) or section 13 of this rule.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer ~~or qualified registered professional land surveyor~~ to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure that impounds water shall be designed, constructed, and maintained in accordance with section 20 of this rule.

(5) Siltation structures shall be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated in accordance with the reclamation plan and sections 48 through 61 of this rule so that the following requirements are met:

(A) Removal of the structure will not result in violations of applicable water quality standards in the receiving stream.

(B) Postmining drainage is shown to be of the approximate quality of the drainage from the area prior to mining.

(C) If baseline data is unavailable concerning the quality of drainage before mining, it is shown to be of the approximate quality of drainage from similar areas of unmined land.

In no case shall the structure be removed sooner than two (2) years after the last augmented seeding.

(6) When the siltation structure is removed, the land on which it is located shall be regraded and revegetated in accordance with the reclamation plan and sections 54 through 61 of this rule. Siltation structures approved by the director for retention as permanent impoundments shall meet all the requirements for permanent impoundments of sections 20 through 27 of this rule.

(7) Any point source discharge of water from underground workings to surface waters that does not meet the effluent limitations of section 77 of this rule shall be passed through a siltation structure before leaving the permit area.

(b) Siltation structures, where utilized individually or in series, shall be as follows:

(1) Located as near as possible to the disturbed area and out of perennial streams unless approved by the director.

(2) Designed, constructed, and maintained to achieve each of the following:

(A) Provide adequate sediment storage volume.

(B) Provide adequate detention time to allow the effluent from the ponds to meet Indiana and federal effluent limitations.

(C) Contain or treat the ten (10) year, twenty-four (24) hour precipitation event (design event) unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of section 13 of this rule will be met.

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under clause (B).

(E) Minimize, to the extent possible, short circuiting.

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(G) Ensure against excessive settlement.

(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming coal processing waste.

(I) Be compacted properly.

(J) For impoundments with embankments, achieve a minimum of two (2) feet of freeboard above pool stage and one (1) foot of freeboard above the design peak discharge elevation ~~which~~ **that** is in response to the design storm specified in subsection (d)(2), or greater amount of freeboard as specified by the director.

(c) The design, construction, and maintenance of a siltation structure or other sediment control measures under this section do not relieve the permittee from compliance with applicable effluent limitations as contained in section 13 of this rule.

(d) A siltation structure shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (1), designed and constructed to safely pass the applicable design precipitation event specified

in subdivision (2), except as set forth in subdivision (3). Spillway construction shall be as follows:

(1) The director may approve a single open channel spillway that is:

(A) of nonerodible construction and designed to carry sustained flows; or

(B) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(2) Except as specified in subdivision (3), the required design precipitation event for a ~~sedimentation pond~~ **siltation structure** meeting the spillway requirements of this section is as follows:

(A) For a ~~sedimentation pond~~ **siltation structure** meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(B) For a siltation structure meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

~~(B)~~ **(C)** For a ~~sedimentation pond~~ **siltation structure** not meeting the size or other criteria of 30 CFR 77.216(a), **or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in subdivision (1), the director may approve a ~~sedimentation pond~~ **siltation structure** that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the siltation structure will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such a ~~sedimentation pond~~ **siltation structure** shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) in the case of a ~~sedimentation pond~~ **siltation structure meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or** meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(B) in the case of a ~~sedimentation pond~~ **siltation structure** not meeting the size or other criteria of 30 CFR 77.216(a) **or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(e) Other treatment facilities shall be designed as follows:

(1) To treat the ten (10) year, twenty-four (24) hour precipitation event unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of section 13 of this rule will be met.

(2) Designed in accordance with the applicable requirements of subsection (b).

(Natural Resources Commission; 312 IAC 25-6-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3515, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2457, 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 17. 312 IAC 25-6-20 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-20 Surface mining; hydrologic balance; permanent and temporary impoundments

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

Sec. 20. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:

(1) An **impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an** impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this ~~section.~~ **rule.**

(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-49 as designed to meet the requirements of this rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Impoundments must meet the following criteria for stability:

(A) An **impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an** impoundment meeting the size or other criteria of 30 CFR 77.216(a) ~~located where failure would be expected to cause loss of life or serious property damage or impounding coal mine waste~~ shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting **the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting** the size or other criteria of 30 CFR 77.216(a), **except for a coal mine waste impounding structure,** and located where failure would not be expected to cause loss of life or serious property damage

shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting **the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting** the size or other criteria of 30 CFR 77.216(a) ~~and located where failure would not be expected to cause loss of life or serious property damage,~~ to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. **Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.**

(5) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a) **or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed, if necessary, to ensure stability.

(6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(7) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

(ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

(i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

~~(ii)~~ **(iii)** For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) **or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

(A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer ~~or qualified registered professional land surveyor~~ shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed ~~and/or~~ **or** maintained, **or both,** as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:

(i) Any appearance of instability, structural weakness, or other hazardous condition.

(ii) Depth and elevation of any impounded waters.

(iii) Existing storage capacity.

(iv) Any existing or required monitoring procedures and instrumentation.

(v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments subject to 30 CFR 77.216 **or meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60)** must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) **or do not meet the Class B or C criteria for dams in the NRCS publication Technical**

Release No. (TR-60) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer ~~or qualified registered professional land surveyor~~ and shall include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this ~~subsection,~~ **clause** following approval by the director:

(i) Impoundments that are completely incised.

(ii) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state, ~~of Indiana,~~ accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director prior to approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself.

(iii) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:

(AA) Sewage lagoons.

(BB) Landscaping ponds.

(CC) Pools or wetlands in replaced stream channels.

(DD) Existing impoundments not yet used to facilitate mining.

(EE) Ephemeral water bodies.

(FF) Active mining pits.

(GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundments will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundments will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

(7) Final grading will provide for adequate safety and access for proposed water users.

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33 a %) or the lesser slope needed to do the following:

(A) Protect the public health and safety.

(B) Enable the permittee to place topsoil on the slope under section 11 of this rule and to revegetate the slope under sections 54 through 61 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of a surface coal mining operation. In lieu of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life

or serious property damage, except where in the case of an impoundment:

(1) meeting the **Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the** size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(2) not meeting the size or other criteria of 30 CFR 77.216(a) **or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments and surrounding areas and diversion ditches disturbed or created by construction shall be graded, fertilized, seeded, and mulched under sections 54 through 61 of this rule after the embankment is completed. The active upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated under sections 51 and 54 through 61 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. *(Natural Resources Commission; 312 IAC 25-6-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3517, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2458, 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 18. 312 IAC 25-6-23 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-23 Surface mining; hydrologic balance; surface and ground water monitoring

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

Sec. 23. (a) This subsection establishes standards for maintaining the hydrologic balance of ground water as follows:

(1) Ground water levels and the quality of ground water shall be monitored, through bond release, in a manner approved by the director according to the requirements of 312 IAC 25-4-31 to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the permit and adjacent areas.

(2) When surface mining activities may affect the ground water systems ~~which~~ **that** serve as aquifers that significantly ensure the hydrologic balance of water use on or off the permit area, ground water levels and ground water quality shall be periodically monitored according to the requirements of 312 IAC 25-4-31. Monitoring shall include measurements from a sufficient number of wells and the mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) The director may require additional tests and shall require the reporting of the results of these tests to demonstrate compliance with sections 21 through 22 of this rule and this section.

(4) If the analysis of a ground water sample indicates noncompliance with a permit condition, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(C) Minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit to include, but not be limited to:

(i) accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(ii) immediate implementation of measures necessary to mitigate the noncompliance; and

(iii) as soon as practicable issue warning to any person whose health and safety is in imminent danger due to the noncompliance.

(b) This subsection establishes standards for maintaining the hydrologic balance of surface water as follows:

(1) Surface water monitoring, reporting, and record keeping shall be conducted through bond release, in accordance with the provisions of 312 IAC 25-4-32 and as specified in the effective National Pollutant Discharge Elimination System (NPDES) permit.

(2) Copies of the monitoring reports and any noncompliance notifications shall be provided to the director concurrently with the submissions to the NPDES permit authority.

(3) If the analysis of a surface water sample indicates noncompliance with any permit terms or conditions, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(4) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(5) In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under 312 IAC 25-4-47(b) and the following:

(A) Surface water quality shall be protected by handling earth materials, ground water discharges, and run-off in a manner that accomplishes the following:

(i) Minimizes the formation of acid or toxic drainage.

(ii) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area.

(iii) Otherwise prevents water pollution.

(B) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and section 13 of this rule, the operator shall use and maintain the necessary water treatment facilities or water quality controls.

(6) Surface water quality and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 312 IAC 25-4-47(b).

(c) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. *(Natural Resources Commission; 312 IAC 25-6-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3520, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2461, 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 19. 312 IAC 25-6-25 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-25 Hydrologic balance; water rights and replacement

Authority: IC 14-34-2-1
Affected: IC 14-25-4; IC 14-34-3

Sec. 25. A person who conducts surface mining activities shall ~~pursuant to a lawful order of an agency or court under IC 14-25-4 or another state water rights law,~~ replace the water supply of an owner of interest in real property who obtains all or part of that supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities. ~~Water replacement rights are not determined by this article.~~ **Baseline hydrologic information required in 312 IAC 25-4-28 and 312 IAC 25-4-30 through 312 IAC 25-4-32 shall be used to determine the extent of the impact of mining upon ground water and surface water and other relevant information.** *(Natural Resources Commission; 312 IAC 25-6-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2462, 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 20. 312 IAC 25-6-66 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-66 Surface mining; primary roads

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

Sec. 66. Primary roads shall meet the requirements of section 65 of this rule and the following:

(1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) Each primary road embankment shall ~~meet one (1) of the following:~~

~~(A)~~ **have** a minimum static safety factor of one and three-tenths (1.3)

~~(B) A maximum slope not in excess of 3h:1v (thirty-three and one-third percent (33 a %).~~

~~(C)~~ **and** be designed in compliance with the following design standards:

~~(i)~~ **(A)** The embankment foundation area shall be cleared of all organic material, and the entire foundation surface shall be scarified.

~~(ii)~~ **(B)** If the natural slope of the foundation as measured at right angles to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

~~(iii)~~ **(C)** The embankment fill material shall be free of sod, large roots, and other large vegetative matter.

~~(iv)~~ **(D)** The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

~~(v)~~ **(E)** The moisture content of the fill material shall be sufficient to secure proper compaction.

~~(vi)~~ **(F)** The side slopes of the embankment shall be no steeper than 2h:1v.

~~(vii)~~ **(G)** Maximum fill height shall be twenty-five (25) feet as measured from natural ground at the downstream toe to the top of the embankment.

~~(viii)~~ **(H)** Embankments shall have a minimum top width of (h + 35)/5, where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment, and shall be adequate for the intended use.

(3) The location of primary roads shall be established in accordance with the following provisions:

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords of perennial or intermittent streams that drain a watershed of at least one (1) square mile by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

(4) In accordance with the approved plan, drainage shall be controlled as follows:

(A) Each primary road shall be constructed, or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, the following:

(i) Bridges.

(ii) Ditches.

(iii) Cross drains.

(iv) Ditch relief drains.

(B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event, or greater event as specified by the director as follows:

(i) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

(ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(iii) Culverts shall be installed and maintained to sustain the following:

(AA) The vertical soil pressure.

(BB) The passive resistance of the foundation.

(CC) The weight of vehicles using the road.

(C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with applicable provisions under sections 13 through 19 and 28 of this rule.

(D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.

(5) Primary roads shall be surfaced with nontoxic material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(Natural Resources Commission; 312 IAC 25-6-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3544, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2462, 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 21. 312 IAC 25-6-81 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-81 Underground mining; hydrologic balance; siltation structures

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

Sec. 81. (a) Siltation structures shall be constructed according to the following:

(1) Additional contributions of suspended solids sediment to stream flow or run-off outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area except as provided in subdivision (5) or section ~~13~~ **77** of this rule.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer ~~or qualified professional land surveyor~~ to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure that impounds water shall be designed, constructed, and maintained in accordance with section 84 of this rule.

(5) Siltation structures shall be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated in accordance with the reclamation plan and sections 111 through 122 of this rule so that the following requirements are met:

(A) Removal of the structure will not result in violations of applicable water quality standards in the receiving stream.

(B) Postmining drainage is shown to be of the approximate quality of the drainage from the area prior to mining.

(C) If baseline data is unavailable concerning the quality of drainage before mining, it is shown to be of the approximate quality of drainage from similar areas of unmined land.

In no case shall the structure be removed sooner than two (2) years after the last augmented seeding.

(6) When the siltation structure is removed, the land on which it was located shall be regraded and revegetated in accordance with the reclamation plan and sections 115 through 122 of this rule. Siltation structures approved by the director for retention as permanent impoundments shall meet all the requirements for permanent impoundments of sections 84 and 90 of this rule.

(7) Any point source discharge of water from underground workings to surface waters that does not meet the effluent limitations of section 77 of this rule shall be passed through a siltation structure before leaving the permit area.

(b) Siltation structures, where utilized individually or in series, shall be as follows:

(1) Located as near as possible to the disturbed area and out of perennial streams unless approved by the director.

(2) Designed, constructed, and maintained to achieve each of the following:

(A) Provide adequate sediment storage volume.

(B) Provide adequate detention time to allow the effluent from the ponds to meet Indiana and federal effluent limitations.

(C) Contain or treat the ten (10) year, twenty-four (24) hour precipitation event (design event) unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of section 77 of this rule will be met.

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under clause (B).

(E) Minimize, to the extent possible, short circuiting.

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(G) Ensure against excessive settlement.

(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming coal processing waste.

(I) Be compacted properly.

(J) For siltation structures with embankments, achieve a minimum of two (2) feet of freeboard above pool stage and one (1) foot of freeboard above the design peak discharge elevation which is in response to the design storm specified in subsection (d)(2), or greater amount of freeboard as specified by the director.

(c) The design, construction, and maintenance of a siltation structure or other sediment control measures under this section do not relieve the permittee from compliance with applicable effluent limitations as contained in section 77 of this rule.

(d) A siltation structure shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (1), designed and constructed to safely pass the applicable design precipitation event specified in subdivision (2), except as set forth in subdivision (3). Spillway construction shall be as follows:

(1) The director may approve a single open channel spillway that is:

(A) of nonerodible construction and designed to carry sustained flows; or

(B) earth-lined or grass-lined and designed to carry short term infrequent flows at nonerosive velocities where sustained flows are not expected.

(2) Except as specified in subdivision (3), the required design precipitation event for a ~~sedimentation pond~~ **siltation structure** meeting the spillway requirements of this section is as follows:

(A) For a ~~sedimentation pond~~ **siltation structure** meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(B) For a siltation structure meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

~~(B)~~ **(C)** For a ~~sedimentation pond~~ **siltation structure** not meeting the size or other criteria of 30 CFR 77.216(a) **or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in subdivision (1), the director may approve a ~~sedimentation pond~~ **siltation structure** that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the siltation structure will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such a ~~sedimentation pond~~ **siltation structure** shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) in the case of a ~~sedimentation pond~~ **siltation structure meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or** meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(B) in the case of a ~~sedimentation pond~~ **siltation structure** not meeting the size or other criteria of 30 CFR 77.216(a) **or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(e) Other treatment facilities shall be designed as follows:

(1) To treat the ten (10) year, twenty-four (24) hour precipitation event unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of section 77 of this rule will be met.

(2) Designed in accordance with the applicable requirements of subsection (b).

(Natural Resources Commission; 312 IAC 25-6-81; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3551, eff Dec 1, 2001; filed Apr 1,

2004, 3:00 p.m.: 27 IR 2463, 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 22. 312 IAC 25-6-84 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-84 Underground mining; hydrologic balance; permanent and temporary impoundments

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

Sec. 84. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:

(1) An **impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an** impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this rule.

(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-87 as designed to meet the requirement of ~~his~~ **this** rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Impoundments must meet the following criteria for stability:

(A) An **impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an** impoundment meeting the size or other criteria of 30 CFR 77.216(a) ~~located where failure would be expected to cause loss of life or serious property damage, or impounding coal mine waste~~ shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting **the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting** the size or other criteria of 30 CFR 77.216(a), ~~and located where failure would not be expected to cause loss of life or serious property damage,~~ **except for a coal mine waste impounding structure,** shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting **the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting** the size or other criteria of 30 CFR 77.216(a) ~~and located where failure would not be expected to cause loss of life or serious property damage,~~ to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. **Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.**

(5) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a) **or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed, if necessary, to ensure stability.

(6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(7) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

(ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

(i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway

hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

~~(ii)~~ **(iii)** For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) **or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

(A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer ~~or qualified registered professional land surveyor~~ shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed ~~and/or~~ **or** maintained, **or both,** as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:

(i) Any appearance of instability, structural weakness, or other hazardous condition.

(ii) Depth and elevation of any impounded waters.

(iii) Existing storage capacity.

(iv) Any existing or required monitoring procedures and instrumentation.

(v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments subject to 30 CFR 77.216 **or meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60)** must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) **or do not meet the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60)** shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer ~~or qualified registered professional land surveyor~~ and shall include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, ~~and~~ any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this ~~subsection,~~ **clause,** following approval by the director:

(i) Impoundments that are completely incised.

(ii) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state of Indiana, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director prior to approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself.

(iii) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:

(AA) Sewage lagoons.

(BB) Landscaping ponds.

(CC) Pools or wetlands in replaced stream channels.

(DD) Existing impoundments not yet used to facilitate mining.

(EE) Ephemeral waterbodies.

(FF) Active mining pits.

(GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundment will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundment will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

(7) Final grading will provide for adequate safety and access for proposed water users.

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33 a %) or the lesser slope needed to do the following:

(A) Protect the public health and safety.

(B) Enable the permittee to place topsoil on the slope under section 75 of this rule and to revegetate the slope under sections 115 through 122 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of an underground coal mining operation. In lieu of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:

(1) **meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or** meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event or greater event as specified by the director; or

(2) not meeting the size or other criteria of 30 CFR 77.216(a) **or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60),** it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments, and surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of sections 115 through 122 of this rule after the embankment is completed. The active, upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of sections 115 through 122 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. *(Natural Resources Commission; 312 IAC 25-6-84; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3553, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2465, 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 23. 312 IAC 25-6-130 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-130 Underground mining; primary roads

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

Sec. 130. Primary roads shall meet the requirements of section 129 of this rule and the additional requirements of this section as follows:

(1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) Each primary road embankment shall **be shown to** have a minimum static factor of one and three-tenths (1.3) or ~~a maximum slope not in excess of 3h:1v (thirty-three and one-third percent (33 a %)).~~ **shall be designed in compliance with the following design standards:**

(A) The embankment foundation area shall be cleared of all organic material and the entire foundation surface shall be scarified.

(B) If the natural slope of the foundation as measured at a right angle to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

(C) The embankment fill material shall be free of sod, large roots, and other large vegetative matter.

(D) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

(E) The moisture content of the embankment shall be sufficient to secure proper compaction.

(F) The side slope of the embankment shall be no steeper than 2h:v1.

(G) Maximum fill height shall be twenty-five (25) feet as measured from the natural ground at the downstream toe to the top of the embankment.

(H) The embankment shall have a minimum top with of (h + 35)/5, where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment and shall be adequate for the intended use.

(3) The location of primary roads shall be established in accordance with the following provisions:

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords of intermittent streams that drain a watershed of at least one (1) square mile or perennial streams by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

(4) In accordance with the approved plan, drainage shall be controlled as follows:

(A) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, the following:

(i) Bridges.

(ii) Ditches.

(iii) Cross drains.

(iv) Ditch relief drains.

(B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event, or greater event as specified by the director as follows:

(i) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

(ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(iii) Culverts shall be installed and maintained to sustain each of the following:

(AA) Vertical soil pressure.

(BB) Passive resistance of the foundation.

(CC) The weight of vehicles using the road.

(C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with the applicable portions of sections 77 through 83 and 91 of this rule.

(D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.

~~(E)~~ **(5)** Primary roads shall be surfaced with material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(Natural Resources Commission; 312 IAC 25-6-130; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3582, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2467, 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 24. 312 IAC 25-7-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-7-1 Inspections of sites

Authority: IC 14-34-2-1
Affected: IC 14-34-15; IC 14-34-16-7; IC 14-34-16-8

Sec. 1. (a) The director shall conduct inspections as follows:

(1) Except as provided in ~~subdivision (2)~~ **subsection (f),** on an irregular basis averaging not less frequently than the following:

(A) One (1) partial inspection per month and one (1) complete inspection per calendar quarter for each active surface coal mining and reclamation operation.

(B) One (1) partial inspection as frequently as is necessary to ensure effective enforcement and one (1) complete inspection per calendar quarter for each inactive surface coal mining and reclamation operation.

~~(2) As frequently as necessary to monitor for changes of environmental conditions or operational status on each abandoned site. Before ceasing to perform inspections of an abandoned site as provided in subdivision (1), the director shall complete both of the following:~~

~~(A) Evaluate the environmental conditions and operational status of the site.~~

~~(B) Document, in writing, the inspection frequency necessary to comply with the requirements of this subdivision. The documentation shall include the reasons for selecting the inspection frequency.~~

~~(3)~~ **(2)** Without notice to the person being inspected or any agents or employees of that person except for necessary on-site meetings.

~~(4)~~ **(3)** Include the prompt filing of inspection reports adequate to enforce IC 14-34 and this article.

(b) The director shall conduct any inspections of coal exploration operations that are necessary to ensure compliance with IC 14-34 and this article.

(c) Aerial inspections shall be conducted in a manner that reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(d) Any potential violation observed during an aerial inspection shall be investigated on-site upon the occurrence of earlier of the following:

(1) Within three (3) days after the aerial inspection.

(2) Immediately, if there is an indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under ~~IC 14-34-11-6.~~ **IC 14-34-15-6.**

(e) An on-site investigation conducted under subsection (d) is not an additional partial inspection ~~nor~~ **or** an additional complete inspection under subsection (a).

(f) In lieu of the inspection frequency established in subsection (a), the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one (1) complete inspection per calendar year. In selecting an alternate frequency authorized under this subsection, the regulatory authority shall do the following:

(1) First conduct a complete inspection of the abandoned site.

(2) Provide public notice and opportunity to comment under subsection (g).

(3) Prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. The written finding shall justify the new inspection frequency by affirmatively addressing in detail the following criteria:

(A) How the site meets each of the criteria under the definition of an abandoned site in subsection (h) to qualify for a reduction in inspection frequency.

(B) Whether, and to what extent, there exists on the site an impoundment, an earthen structure, or another condition that poses, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harm to land, air, or water resources.

(C) The extent to which an existing impoundment or earthen structure was constructed and certified in accordance with prudent engineering designs approved in the permit.

(D) The degree to which erosion and sediment control is present and functioning.

(E) The extent to which the site is located near or above an urbanized area, a community, an occupied dwelling, a school, and another public or commercial building or facility.

(F) The extent of reclamation completed prior to abandonment and the degree of stability of an unreclaimed area, taking into consideration any physical characteristic of the land mined and the extent of settlement or revegetation that has occurred naturally.

(G) Based on a review of the complete or partial inspection report record for the site during at least the last two (2) consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(g) The public notice and opportunity to comment required under subsection (f)(2) shall be provided as follows:

(1) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty (30) day period in which to subject written comments.

(2) The public notice shall contain the following:

(A) Name of permittee.

(B) Permit number.

(C) Precise location of the land affected.

(D) Proposed inspection frequency.

(E) General reasons for reducing the inspection frequency.

(F) Bond status of the permit.

(G) Telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted.

(H) Closing date of the comment period.

~~(f)~~ **(h)** As used in this section, the following definitions apply:

(1) "Abandoned site" means a surface coal mining and reclamation operation for which the director has found, in writing, each of the following:

(A) All surface and underground coal mining and reclamation activities at the site have ceased.

(B) The director has issued at least one (1) notice of violation and either:

(i) is unable to serve the notice despite diligent efforts to do so; or

(ii) the notice was served and has progressed to a failure-to-abate cessation order.

(C) The director is taking action:

(i) to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) under IC 14-34-16-7, IC 14-34-16-8, IC 14-34-15-7, or IC 14-34-15-11 to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where, after evaluating the circumstances, the director concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs.

(D) If the site is or was permitted or bonded, both of the following are determined:

(i) The permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently.

(ii) The director has initiated and is diligently pursuing forfeiture of (or has forfeited) ~~the~~ **any available** performance bond.

(2) "Complete inspection" means an on-site review of a person's compliance with all permit conditions and requirements imposed under IC 14-34 and this article within the area disturbed or affected by the surface mining and reclamation operation.

(3) "Inactive surface coal mining and reclamation operation" means a surface coal mining and reclamation operation for which both of the following are satisfied:

(A) The reclamation has been completed that is necessary to obtain release of the portion of bond specified in 312 IAC 25-5-16(c)(2).

(B) The bond has been released.

(4) "Partial inspection" means an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under IC 14-34 and this article.

(Natural Resources Commission; 312 IAC 25-7-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3590, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2468, 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 25. 312 IAC 25-7-20 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-7-20 Civil penalties; hearing request

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

Sec. 20. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the director or the director's authorized delegate (to be held in escrow as provided in section 21(b) of this rule) within thirty (30) days from receipt of the proposed assessment, ~~or~~ reassessment, or ~~fifteen~~ ~~(15)~~ ~~days~~ ~~from~~ ~~the~~ ~~date~~ ~~of~~ ~~service~~ ~~of~~ the conference officer's action. The director, or the director's authorized delegate, shall hold the payment in escrow pending completion of the administrative and judicial review process. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under section 10 of this rule. *(Natural Resources Commission; 312 IAC 25-7-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3601, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2470, 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)*

LSA Document #03-93(F)
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Proposed Rule Published: October 1, 2003; 27 IR 221
Hearing Held: October 27, 2003
Approved by Attorney General: March 10, 2004
Approved by Governor: March 25, 2004
Filed with Secretary of State: April 1, 2004, 3:00 p.m.
Incorporated Documents Filed with Secretary of State: 30 CFR 77.216; 30 CFR 77.216-1; 30 CFR 77.216-2; 16 U.S.C. 470aa through 16 U.S.C. 470mm; NRCS publication Technical Release No. 60 (TR-60).

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-213(F)

DIGEST

Adds 312 IAC 18-3-15 to govern the release of a "beneficial organism" or a "pest or pathogen". Adds 312 IAC 18-3-16 to list and regulate kudzu as a pest or pathogen. Adds 312 IAC 18-3-17 to clarify the authority of the division director (also known as the state entomologist) to establish and dissolve technical committees that assist in evaluating issues pertaining to the release of beneficial organisms or pests or pathogens. Amends 312 IAC 18-5-2 to establish a fee and acreage surcharge for the performance of voluntary certification of florist premises and greenhouses. Effective 30 days after filing with the secretary of state.

312 IAC 18-3-15 **312 IAC 18-3-17**
312 IAC 18-3-16 **312 IAC 18-5-2**

SECTION 1. 312 IAC 18-3-15 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-15 Release of a beneficial organism or a pest or pathogen

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

Sec. 15. (a) A person or a federal agency must not release

a beneficial organism or a pest or pathogen in Indiana without a permit issued by the division director under this section.

(b) Before a permit is issued under this section, a person or a federal agency must demonstrate, to a reasonable certainty, that the release of a beneficial organism or a pest or pathogen would do none of the following:

(1) Harm a nontarget plant or animal.

(2) Interfere with normal management and production practices in agriculture, horticulture, viticulture, silviculture, nursery production, or greenhouse production.

(3) Disturb the ecological stability of an Indiana native organism or its environments.

(c) An application for release must be prepared on a commission form and must include each of the following:

(1) The current scientific name of the beneficial organism or pest or pathogen, as well as prior synonyms and taxonomic placements.

(2) The life stages to be considered for release, including any genetic recombinations.

(3) A listing of all known foods or hosts of the beneficial organism or pest or pathogen. The listing must identify the target organism, if applicable. The listing must be documented by published scientific literature with peer review.

(4) The known distribution of the beneficial organism or pest or pathogen, including habitat preferences and tolerances. This information must be documented by:

(A) scientific literature;

(B) regulatory survey; or

(C) expert testimony.

(5) The method of release of the beneficial organism or pest or pathogen.

(6) The life cycle of the beneficial organism or pest or pathogen.

(7) The place of origin of the beneficial organism or pest or pathogen.

(8) The ecological classification of the beneficial organism or pest or pathogen. Examples of an ecological classification include:

(A) predator;

(B) pollinator;

(C) parasite;

(D) pathogen;

(E) hyperparasite; and

(F) herbivore.

(9) Documentation of any known pest or predator of the beneficial organism or pest or pathogen.

(10) The number of beneficial organisms or pests or pathogens to be released.

(11) The location of the proposed release.

(12) Clearly readable copies of scientific literature regarding the beneficial organism or pest or pathogen. Any literature supporting and not supporting the applicant's application must be made available to the division.

(13) Upon request by the division director, additional information reasonably necessary to demonstrate compliance with this article and IC 14-24. As a prerequisite to the consideration of a permit, the division director may require information consistent with an environmental assessment under 329 IAC 5-1 or an environmental impact statement under 329 IAC 5-2.

(14) The division director shall respond to the applicant within thirty (30) days with one (1) of the following notifications:

(A) Deny the permit.

(B) Approve the permit.

(C) Approve the permit with conditions.

(D) Request the applicant to provide additional information within a stated period with an explanation that, if information is not provided as requested, the permit would be denied.

(15) If the division director fails to make a timely response under subdivision (14), the applicant may treat the application as denied and seek administrative review.

(d) The division director may establish a listing of organisms that are exempted or that may be released under a general license. The division director shall submit the listing to the commission for its approval.

(e) A person must not sell, barter, offer for sale or distribution, or release a beneficial organism or pest or pathogen without first obtaining a permit from the division.

(f) A person must not mislabel a beneficial organism or pest or pathogen.

(g) A person must not misrepresent data or submit incomplete data that could mislead an investigator or the division director in considering the merits of a permit application. *(Natural Resources Commission; 312 IAC 18-3-15; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2470)*

SECTION 2. 312 IAC 18-3-16 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-16 Control of kudzu (Pueraria lobata)

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

Sec. 16. (a) Kudzu (Pueraria lobata) is a pest or pathogen. This section governs the standards for the control of kudzu in Indiana.

(b) A person must not:

(1) sell;

(2) distribute;

(3) offer for sale or distribution;
(4) give away;
(5) barter or exchange; or
(6) plant;
any life stage or reproductive material or recombined genes of kudzu.

(c) The division may enter a property in which kudzu is thought to exist, or in which kudzu has been detected or reported, for the purpose of verifying its presence and the extent to which it has become established.

(d) Data regarding the location, area infested, habitat, and related data about the site may be recorded in a division database.

(e) A site in which kudzu is found to be established may be monitored.

(f) Any property owner who is known to have kudzu on the owner's property must take efforts to eliminate this species in such a manner as is consistent with federal and state law.

(g) This section shall be construed so as not to conflict with the authority of the Indiana state seed commissioner or with the laws administered by that office in regulating noxious weeds.

(h) The division may regulate a site under section 2 of this rule until it is cleared to prevent further infestations.

(i) This section does not preclude the division director from issuing any permit under this rule for the study of kudzu. *(Natural Resources Commission; 312 IAC 18-3-16; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2471)*

SECTION 3. 312 IAC 18-3-17 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-17 Technical committees
Authority: IC 14-10-2-4; IC 14-24-3
Affected: IC 14-24

Sec. 17. The division director may convene and use technical committees in evaluating the release into the environment of a beneficial organism or a pest or pathogen. The committee may include any of the following:
(1) The division director or the division director's designee.
(2) Any technical expert.
(3) A representative of a university, college, or private research institution with expertise in the organism considered.
(4) A representative of an affected industry.
(5) A representative of an affected or participating federal or state agency.
(6) Any other technical representative.
(Natural Resources Commission; 312 IAC 18-3-17; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2472)

SECTION 4. 312 IAC 18-5-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-5-2 Florist or greenhouse stock; voluntary certification
Authority: IC 14-10-2-4; IC 14-24-3
Affected: IC 14-24

Sec. 2. **(a)** The owner or operator of a florist or greenhouse may seek a certification as required by **federal law or by** another state for the shipment into ~~that~~ **another** state of: ~~nursery stock,~~
(1) plants;
(2) corms;
(3) tubers;
(4) field vegetables; or
(5) flower seeds.
This certificate is not required by IC 14-24.

(b) The fee for this certification is fifty dollars ($50) plus three dollars ($3) per acre or any portion of an acre of inspected plants. *(Natural Resources Commission; 312 IAC 18-5-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2472)*

LSA Document #03-213(F)
Notice of Intent Published: 26 IR 3905
Proposed Rule Published: November 1, 2003; 27 IR 559
Hearing Held: November 24, 2003
Approved by Attorney General: March 10, 2004
Approved by Governor: March 25, 2004
Filed with Secretary of State: April 1, 2004, 3:00 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #02-336(F)

DIGEST

Adds 326 IAC 20-49, 326 IAC 20-50, 326 IAC 20-51, 326 IAC 20-52, 326 IAC 20-53, 326 IAC 20-54, and 326 IAC 20-55 concerning national emission standards for hazardous air pollutants (NESHAP) for new and existing plant sites for pulp and paper mills (combustion), some emission units at petroleum refineries, manufacturing of nutritional yeast, cellulose manufacturing, leather finishing operations, wet formed fiberglass mat production, and tire manufacturing. Effective 30 days after filing with the secretary of state.

HISTORY

Second Notice of Comment Period and Notice of First Hearing: January 1, 2003, Indiana Register (26 IR 1266).

Date of First Hearing: April 16, 2003.

Proposed Rule and Notice of Second Hearing: June 1, 2003, Indiana Register (26 IR 3089).

326 IAC 20-49
326 IAC 20-50
326 IAC 20-51
326 IAC 20-52
326 IAC 20-53
326 IAC 20-54
326 IAC 20-55

SECTION 1. 326 IAC 20-49 IS ADDED TO READ AS FOLLOWS:

Rule 49. Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

326 IAC 20-49-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.860* (66 FR 3193, January 12, 2001).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart MM*, (66 FR 3193, January 12, 2001, 66 FR 37591, July 19, 2001, and 66 FR 41086, August 6, 2001), National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

***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 20-49-1; filed Apr 1, 2004, 3:15 p.m.: 27 IR 2473)*

SECTION 2. 326 IAC 20-50 IS ADDED TO READ AS FOLLOWS:

Rule 50. Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

326 IAC 20-50-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.1561* (67 FR 17774, April 11, 2002).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart UUU*, (67 FR 17773, April 11, 2002), National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

***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 20-50-1; filed Apr 1, 2004, 3:15 p.m.: 27 IR 2473)*

SECTION 3. 326 IAC 20-51 IS ADDED TO READ AS FOLLOWS:

Rule 51. Manufacturing of Nutritional Yeast

326 IAC 20-51-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.2131* (66 FR 27884, May 21, 2001).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart CCCC*, (66 FR 27884, May 21, 2001), National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast.

***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 20-51-1; filed Apr 1, 2004, 3:15 p.m.: 27 IR 2473)*

SECTION 4. 326 IAC 20-52 IS ADDED TO READ AS FOLLOWS:

Rule 52. Wet-Formed Fiberglass Mat Production

326 IAC 20-52-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.2981* (67 FR 17835, April 11, 2002).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HHHH*, (67 FR 17835, April 11, 2002), National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.

***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 20-52-1; filed Apr 1, 2004, 3:15 p.m.: 27 IR 2473)*

SECTION 5. 326 IAC 20-53 IS ADDED TO READ AS FOLLOWS:

Rule 53. Leather Finishing Operations

326 IAC 20-53-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.5285* (67 FR 9162, February 27, 2002).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart TTTT*, (67 FR 9162, February 27, 2002), National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.

***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 20-53-1; filed Apr 1, 2004, 3:15 p.m.: 27 IR 2474)*

SECTION 6. 326 IAC 20-54 IS ADDED TO READ AS FOLLOWS:

Rule 54. Cellulose Products Manufacturing

326 IAC 20-54-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.5485* (67 FR 40055, June 11, 2002).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart UUUU*, (67 FR 40055, June 11, 2002), National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing.

***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 20-54-1; filed Apr 1, 2004, 3:15 p.m.: 27 IR 2474)*

SECTION 7. 326 IAC 20-55 IS ADDED TO READ AS FOLLOWS:

Rule 55. Rubber Tire Manufacturing

326 IAC 20-55-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.5981* (67 FR 45599, July 9, 2002).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart XXXX*, (67 FR 45599, July 9, 2002), National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.

***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 20-55-1; filed Apr 1, 2004, 3:15 p.m.: 27 IR 2474)*

LSA Document #02-336(F)
Proposed Rule Published: June 1, 2003; 26 IR 3089
Hearing Held: September 3, 2003
Approved by Attorney General: March 15, 2004
Approved by Governor: March 31, 2004
Filed with Secretary of State: April 1, 2004, 3:15 p.m.
Incorporated Documents Filed with Secretary of State: 40 CFR 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills; 40 CFR 63, Subpart UUU, National Emission Standards for

Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; 40 CFR 63, Subpart CCCC, National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast; 40 CFR 63, Subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production; 40 CFR 63, Subpart TTTT, National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations; 40 CFR 63, Subpart UUUU, National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing; 40 CFR 63, Subpart XXXX, National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-184(F)

DIGEST

Amends 405 IAC 5-20 to add coverage and reimbursement limitations for psychiatric residential treatment services (PRTF) for children under 21 years of age. Adds 405 IAC 1-21 setting forth the reimbursement criteria for PRTF services. Effective 30 days after filing with the secretary of state.

405 IAC 1-21	**405 IAC 5-20-3.1**
405 IAC 5-20-1	**405 IAC 5-20-4**
405 IAC 5-20-2	**405 IAC 5-20-7**

SECTION 1. 405 IAC 1-21 IS ADDED TO READ AS FOLLOWS:

Rule 21. Payments for Psychiatric Residential Treatment Facility Services

405 IAC 1-21-1 Purpose; scope

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

Sec. 1. The purpose of this section is to establish a prospective, cost-based reimbursement methodology for services provided by psychiatric residential treatment facilities that are covered by the state of Indiana Medicaid program. Prospective payment shall constitute full reimbursement. There shall be no year-end cost settlement payments. *(Office of the Secretary of Family and Social Services; 405 IAC 1-21-1; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2475)*

405 IAC 1-21-2 "Psychiatric residential treatment facility" or "PRTF" defined

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

Sec. 2. As used in this rule, "psychiatric residential treatment facility" or "PRTF" means a facility that is licensed under 470 IAC 3-13 as a private secure child caring institution and meets the requirements set forth in 405 IAC 5-20-3.1. *(Office of the Secretary of Family and Social Services; 405 IAC 1-21-2; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2475)*

405 IAC 1-21-3 Reimbursement rates

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

Sec. 3. Covered inpatient psychiatric facility services for individuals under twenty-one (21) years of age provided in PRTFs shall be reimbursed in accordance with the following:

(1) The PRTFs shall be reimbursed for services provided to Medicaid recipients based upon the lower of:

(A) the statewide PRTF prospective per diem rate calculated by the office; or

(B) the usual and customary daily charges billed for the psychiatric treatment of eligible recipients.

(2) The applicable PRTF payment per diem rate determined in subdivision (1) shall provide reimbursement for all Medicaid covered services provided in the psychiatric residential treatment facility except for those costs described in subdivisions (3) and (6). Providers will include, and rates will be determined using, only those allowable costs as listed in Medicaid provider reimbursement manuals and update bulletins.

(3) The per diem rate determined in subdivision (1) shall exclude those costs incurred for the following:

(A) Pharmaceutical supplies and services. Medicaid reimbursement for costs incurred for pharmaceutical supplies and services provided to eligible recipients shall be paid separate and apart from the PRTF per diem rate and in accordance with the reimbursement policies described in 405 IAC 5-24.

(B) Physician services. Medicaid reimbursement for costs incurred for physician services provided to eligible recipients shall be paid separate and apart from the PRTF per diem rate and in accordance with the reimbursement policies described in 405 IAC 5-25.

(4) All costs utilized to determine the statewide prospective per diem rate in subdivision (1)(A) shall be subject to reasonability standards as set forth in the Medicare Provider Reimbursement Manual, CMS-Pub. 15-1, Chapter 25.

(5) The per diem rate determined in subdivision (1) shall exclude such costs unrelated to providing psychiatric residential services, including, but not limited to, the following:

(A) Group education, including elementary and secondary education.

(B) Advertising or marketing.

(C) Nonpsychiatric specialty programs.

(6) Medicaid reimbursement for Medicaid covered psychiatric services provided to recipients residing in a psychiatric residential treatment facility shall be limited to the payments described in this rule. Costs for Medicaid covered services not related to the recipient's psychiatric condition but performed at the PRTF will be included in the PRTF per diem rate. Medicaid reimbursement for Medicaid covered services not related to the recipient's psychiatric condition is available, separate from the PRTF per diem, only in instances where those services are unavailable at the PRTF and are performed at a location other than the PRTF.

(7) The established per diem rate for psychiatric residential treatment facilities shall be reviewed annually by the OMPP or its contractor by using the most recent, reliable claims data and adjusted cost report data to reflect changes in treatment patterns, technology, and other factors that may change the cost of efficiently providing inpatient psychiatric services, and adjusted as necessary, in accordance with this section.

(Office of the Secretary of Family and Social Services; 405 IAC 1-21-3; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2475)

405 IAC 1-21-4 Cost reports and audits

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

Sec. 4. PRTFs shall file a cost report annually using a uniform cost report form prescribed by the office of Medicaid policy and planning (OMPP). The OMPP or its contractor may audit or review the cost reports as it deems necessary. *(Office of the Secretary of Family and Social Services; 405 IAC 1-21-4; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2476; errata filed Apr 8, 2004, 10:35 a.m.: 27 IR 2499)*

SECTION 2. 405 IAC 5-20-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-20-1 Reimbursement limitations

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

Sec. 1. (a) Medicaid reimbursement is available for mental health services provided by licensed physicians, psychiatric hospitals, general hospitals, **psychiatric residential treatment facilities for children under twenty-one (21) years of age,** outpatient mental health facilities, and psychologists endorsed as health service providers in psychology subject to the limitations set out in this rule. **For purposes of this rule, "psychiatric residential treatment facility" or "PRTF" means a facility that meets the requirements set forth in section 3.1 of this rule.**

(b) Reimbursement for inpatient psychiatric services is not available in institutions for mental diseases for a recipient under sixty-five (65) years of age unless the recipient is under twenty-one (21) years of age, or under twenty-two (22) years of age and had begun receiving inpatient psychiatric services immediately before his or her twenty-first birthday.

(c) Medicaid reimbursement is available for inpatient psychiatric services provided to an individual between twenty-two (22) and sixty-five (65) years of age in a certified psychiatric hospital of sixteen (16) beds or less.

(d) Prior authorization is required for all inpatient psychiatric admissions including admissions for substance abuse. *(Office of the Secretary of Family and Social Services; 405 IAC 5-20-1; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3333; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2476)*

SECTION 3. 405 IAC 5-20-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-20-2 Reserving beds in psychiatric hospitals and psychiatric residential treatment facilities

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

Sec. 2. (a) Medicaid reimbursement is available for reserving beds in a psychiatric hospital (and not in a general acute care hospital) for hospitalization of Medicaid recipients at one-half (½) the regular per diem rate when ~~one (1)~~ **all** of the following conditions ~~is~~ **are** present:

(1) Hospitalization is ordered by the physician for treatment of an acute condition that cannot be treated in the facility.

(2) The total length of time allowed for payment of a reserved bed for a single hospital stay is fifteen (15) days. If the recipient requires hospitalization longer than the fifteen (15) consecutive days, the recipient must be discharged from the facility.

(3) A physician's order for the hospitalization must be maintained in the recipient's file at the facility.

(b) Medicaid reimbursement is available for reserving beds in a psychiatric residential treatment facility for hospitalization of Medicaid recipients under twenty-one (21) years of age at one-half (½) the regular per diem rate subject to all of the following conditions:

(1) Hospitalization is ordered by the physician for treatment of an acute condition that cannot be treated in the psychiatric residential treatment facility.

(2) The total length of time allowed for payment of a reserved bed for a single hospital stay is four (4) days. If the recipient requires hospitalization longer than the four (4) consecutive days, the recipient must be discharged from the psychiatric residential treatment facility.

(3) A physician's order for the hospitalization must be maintained in the recipient's file at the psychiatric residential treatment facility.

(4) In no instance will Medicaid reimburse a psychiatric residential treatment facility for reserving beds for Medicaid recipients when the facility has an occupancy rate of less than ninety percent (90%).

~~(b)~~ **(c)** Medicaid reimbursement is available for reserving beds in a psychiatric hospital, but not in a general care hospital, for the therapeutic leaves of absence of Medicaid recipients at one-half (½) the regular per diem rate when ~~one (1)~~ **all** of the following conditions ~~is~~ **are** present:

(1) A leave of absence must be for therapeutic reasons as prescribed by the attending physician and as indicated in the recipient's habilitation plan.

(2) **In a psychiatric hospital,** the total length of time allotted for therapeutic leaves in any calendar year shall be sixty (60) days per recipient. If the recipient is absent **from the psychiatric hospital** for more than sixty (60) days per year, no further Medicaid reimbursement shall be available for reserving a bed for that recipient in that year.

(3) A physician's order for therapeutic leave must be maintained in the recipient's file at the facility.

(d) Medicaid reimbursement is available for reserving beds in a psychiatric residential treatment facility for therapeutic leaves of absence of Medicaid recipients under twenty-one (21) years of age at one-half (½) the regular per diem rate when all of the following conditions are present:

(1) A leave of absence must be for therapeutic reasons as prescribed by the attending physician and as indicated in the recipient's habilitation plan.

(2) A physician's order for therapeutic leave must be maintained in the recipient's file at the facility.

(3) In a psychiatric residential treatment facility, the total length of time allotted for therapeutic leaves in any calendar year shall be fourteen (14) days per recipient. If the recipient is absent from the psychiatric residential treatment facility for more than fourteen (14) days per year, no further Medicaid reimbursement shall be available for reserving a bed for therapeutic leave for that recipient in that year.

(4) In no instance will Medicaid reimburse a psychiatric residential treatment facility for reserving beds for Medicaid recipients when the facility has an occupancy rate of less than ninety percent (90%).

(Office of the Secretary of Family and Social Services; 405 IAC 5-20-2; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3333; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2476)

SECTION 4. 405 IAC 5-20-3.1 IS ADDED TO READ AS FOLLOWS:

405 IAC 5-20-3.1 Psychiatric residential treatment facilities; requirements

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

Sec. 3.1. Psychiatric residential treatment facilities must meet the following conditions in order to be reimbursed for inpatient services:

(1) The facility must be licensed as a private secure care institution under 470 IAC 3-13.

(2) The facility must be accredited by one (1) of the following:

(A) The Joint Commission on Accreditation of Healthcare Organizations.

(B) The American Osteopathic Association.

(C) The Council on Accreditation of Services for Families and Children.

(3) The facility must comply with all requirements in 42 CFR 483, Subpart G governing the use of restraint and seclusion.

(Office of the Secretary of Family and Social Services; 405 IAC 5-20-3.1; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2477)

SECTION 5. 405 IAC 5-20-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-20-4 Individually developed plan of care

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

Sec. 4. (a) Each Medicaid eligible patient admitted to a psychiatric hospital **or psychiatric residential treatment facility** must have an individually developed plan of care. In the case of a person between twenty-two (22) and sixty-five (65) years of age in a psychiatric hospital of sixteen (16) beds or less or a person sixty-five (65) years of age and over, the plan of care must be developed by the attending or staff physician. For a person under twenty-one (21) years of age, the plan of care must be developed by the physician and interdisciplinary team. In all cases, the plans of care must be developed not later than fourteen (14) days after admission. For a patient who becomes eligible for Medicaid after admission to a facility, the plan of care must be prepared to cover all periods for which Medicaid coverage is claimed and as follows:

(1) The individual plan of care for a recipient between twenty-two (22) and sixty-five (65) years of age in a psychiatric hospital of sixteen (16) beds or less and for a recipient sixty-five (65) years of age and over shall set forth treatment objectives and prescribe an integrated program of appropriate therapies, activities, and experiences designed to meet these objectives. The plan shall be based upon a diagnostic evaluation that includes examination of the medical, psychological, social, and behavioral aspects of the patient's situation. It shall include, at an appropriate time, a postdischarge plan and plan for coordination of inpatient services with partial discharge plans and appropriate related services in the patient's community to ensure continuity of care when returned to the patient's family and community upon discharge. The plan of care shall be reviewed and updated at least every ninety (90) days by the patient's attending or staff physician for determinations that the services provided were

and are required on an inpatient basis and for recommendations as to necessary adjustments in the plan as indicated by the patient's overall adjustment as an inpatient. The quarterly plan of care must be in writing and made a part of the patient's record.

(2) The individual plan of care for a recipient under twenty-one (21) years of age shall set forth treatment objectives and prescribe an integrated program of appropriate therapies, activities, and experiences designed to meet these objectives. It shall be formulated in consultation with the child and parents, legal guardians, or others to whose care or custody the individual will be released following discharge. The plan shall be based upon a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the patient's situation. It shall include, at an appropriate time, a postdischarge treatment plan and plan for coordination of inpatient services with partial discharge plans and appropriate related services in the patient's community to ensure continuity of care when returned to the patient's family, school, and community upon discharge. Each plan of care must be reviewed and updated at least every thirty (30) days by the interdisciplinary team for determinations that the services provided were and are required on an inpatient basis and for recommendations as to any necessary adjustments in the plan as indicated by the patient's overall adjustment as an inpatient. The periodic update of the plan of care must be in writing and made a part of the patient's record. Recertification is required at least every sixty (60) days. Initial evaluative examinations are exempt from prior review and authorization.

(b) The interdisciplinary team required to develop the plan of care for an individual under twenty-one (21) years of age shall include at least one (1) of the persons identified in subdivisions (1) through (3) and one (1) of the persons identified in subdivision (4) as follows:

(1) A board certified or eligible psychiatrist.

(2) A psychologist endorsed as a health service provider in psychology (HSPP) and a physician licensed to practice medicine or osteopathy.

(3) A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases and a psychologist endorsed as ~~a~~ **an** HSPP or a licensed psychologist.

(4) One (1) of the following (deemed to be other professionals qualified to make determinations as to mental health conditions and treatments thereof):

(A) A licensed, clinical social worker, a licensed marital and family therapist, a licensed mental health counselor, or a person holding a master's degree in social work, marital and family therapy, or mental health counseling.

(B) An advanced practice nurse or a registered nurse who has specialized training or one (1) year experience in treating the mentally ill.

(C) An occupational therapist registered with the National Association of Occupational Therapists and who has specialized training or one (1) year of experience in treating the mentally ill.

(D) A psychologist endorsed as ~~a~~ **an** HSPP or a licensed psychologist.

(Office of the Secretary of Family and Social Services; 405 IAC 5-20-4; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3334; filed Sep 27, 1999, 8:55 a.m.: 23 IR 314; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2477)

SECTION 6. 405 IAC 5-20-7 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-20-7 Unnecessary services

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

Sec. 7. Medicaid reimbursement will be denied for any days during which the inpatient psychiatric hospitalization **or stay in a psychiatric residential treatment facility** is found not to have been medically necessary. Telephone precertifications of medical necessity will provide a basis for Medicaid reimbursement only if adequately supported by the written certification of need submitted in accordance with section 5 of this rule. If the required written documentation is not submitted within the specified time frame, Medicaid reimbursement will be denied. *(Office of the Secretary of Family and Social Services; 405 IAC 5-20-7; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3335; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2478)*

SECTION 7. **Subject to the conditions set out in 405 IAC 1-21 and 405 IAC 5-20, Medicaid reimbursement is available for psychiatric residential treatment services for individuals under twenty-one (21) years of age provided on or after the effective date of the state plan amendment approved by the Centers for Medicare and Medicaid Services.**

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Incorporated Documents Filed with Secretary of State: None

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-205(F)

DIGEST

Amends 405 IAC 2-3-1.1 to specify that a Medicaid penalty period for the transfer of assets for less than fair market value

will begin in the month after which assets have been transferred for less than fair market value; that if an individual is ineligible for medical assistance due to a transfer penalty, expenses for nursing home services incurred during the penalty period are not allowable medical expenses in calculating an individual's nursing home liability for any month of Medicaid eligibility; that in determining the total, cumulative uncompensated value of assets transferred, transfers made in consecutive months are added together; that for transfers of income-producing real property, $6,000 of the equity value can be transferred without penalty if the transferred property produces at least $360 a year in income; that, in order to establish that a transfer was made exclusively for purposes other than qualifying for medical assistance, the applicant or recipient must submit sufficient evidence to show that the transfer was made exclusively for reasons not related to Medicaid eligibility, estate recovery, or lien. Effective 30 days after filing with the secretary of state.

405 IAC 2-3-1.1

SECTION 1. 405 IAC 2-3-1.1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-3-1.1 Transfer of property; penalty

Authority: IC 12-8-1-9; IC 12-8-6-5; IC 12-13-7-3; IC 12-15-1-10
Affected: IC 12-15-4; IC 12-15-5; IC 12-15-39.6

Sec. 1.1. (a) The following definitions apply throughout this section:

(1) "Assets" includes all income and resources of the applicant or recipient, and of the applicant's or recipient's spouse, including any income or resources ~~which~~ **that** the applicant or recipient or the applicant's or recipient's spouse is entitled to receive but does not receive because of action **by:**

(A) ~~by~~ the applicant or recipient or the applicant's or recipient's spouse;

(B) ~~by~~ a person, including, but not limited to, a court or administrative body with legal authority to act in place of or on behalf of the applicant or recipient or the applicant's or recipient's spouse; or

(C) ~~by~~ a person, including, but not limited to, a court or administrative body acting at the direction or upon the request of the applicant or recipient or the applicant's or recipient's spouse.

The term includes assets that an individual is entitled to receive but does not receive because of failure to take action subject to subsection ~~(i).~~ **(j).**

(2) "Individual" means an applicant or recipient of Medicaid.

(3) "Institutionalized individual" means an applicant or recipient who is:

(A) an inpatient in a nursing facility;

(B) an inpatient in a medical institution for whom payment is made based on a level of care provided in a nursing facility; or

(C) ~~who is~~ receiving home and community-based waiver services.

(4) "Net income" means the income produced by real property after deducting allowable expenses of ownership. Allowable and nonallowable expenses are as follows:

(A) The following are allowable expenses of ownership if the owner is responsible for the expenses:

(i) Property taxes.
(ii) Interest payments.
(iii) Repairs and maintenance.
(iv) Advertising expenses.
(v) Lawn care.
(vi) Property insurance.
(vii) Trash removal expenses.
(viii) Snow removal expenses.
(ix) Utilities.
(x) Any other expenses of ownership allowed by the Supplemental Security Income program.

(B) The following are not allowable expenses of ownership:

(i) Depreciation.
(ii) Payments on mortgage principal.
(iii) Personal expenses of the owner.
(iv) Mortgage insurance.
(v) Capital expenditures.

(5) "Noninstitutionalized individual" means an applicant or recipient receiving any of the services described in subsection (e).

(6) "Qualified long term care insurance policy" has the meaning **set forth** in 760 IAC 2-20-30.

(7) "Uncompensated value" means the difference between the fair market value of the asset and the value of the consideration received by the applicant or recipient in return for transferring the asset.

(b) A transfer of assets includes any cash, liquid asset, or property that is transferred, sold, given away, or otherwise disposed of as follows:

(1) Transfer includes any total or partial divestiture of control or access, including, but not limited to, any of the following:

(A) Converting an asset from individual to joint ownership.

(B) Relinquishing or limiting the applicant's or recipient's right to liquidate or sell the asset.

(C) Disposing of a portion or a partial interest in the asset while retaining an interest.

(D) Transferring the right to receive income or a stream of income, including, but not limited to, income produced by real property.

(E) Renting or leasing real property.

(F) Waiving the right to receive a distribution from a decedent's estate, or failing to take action to receive a distribution that the individual is entitled to receive by law subject to subsection ~~(i).~~ **(j).**

(2) If an applicant or recipient relinquishes ownership or control over a portion of an asset, but retains ownership, control, or an interest in the remaining portion, the portion relinquished is considered transferred.

(3) A transfer of the applicant's or recipient's assets completed by the applicant's or recipient's power of attorney or legal guardian is considered a transfer by the applicant or recipient.

(4) For purposes of this section, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, shall be considered transferred by the applicant or recipient when any action is taken, either by the applicant or recipient or by any other person, that reduces or eliminates the applicant's or recipient's ownership or control of the asset.

(5) This section applies without regard to the exclusion of the home described in 42 U.S.C. 1382b(a)(1).

(6) This section applies without regard to the exclusion of income-producing real property described in section 15 of this rule, except for property used in a trade or business. The transfer of income-producing real property other than property used in a trade or business is subject to penalty under subsections (h) and (l). "Trade or business" means a trade or business that is actively managed or operated by the applicant or recipient.

(c) If an applicant or recipient of Medicaid, or the spouse of an applicant or recipient, disposes of assets for less than fair market value on or after the look-back date specified in this subsection, the applicant or recipient is ineligible for medical assistance for services described in subsections (d) through (e), for a period beginning on the first day of the first month ~~during or~~ after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this section. **If the transfer took place prior to July 1, 2003, the penalty period begins in the month of the transfer.** The ineligibility period is equal to the number of months specified in subsection ~~(f).~~ **(g).** The look-back date is determined as follows:

(1) In the case of transfers that do not involve a trust, the look-back date is determined as follows:

(A) For an institutionalized individual, the look-back date is thirty-six (36) months before the first date as of which the individual both:

(i) is an institutionalized individual; and

(ii) has applied for medical assistance.

(B) For a noninstitutionalized individual, the look-back date is thirty-six (36) months before the later of **the date on which the individual:**

(i) ~~the date on which the individual~~ applies for medical assistance; or

(ii) ~~the date on which the individual~~ disposes of assets for less than fair market value.

(2) In the case of transfers ~~which~~ **that** involve payments from a trust or portions of a trust that are treated as assets disposed of by an applicant or recipient under section 22(b)(3) or 22(c)(2) of this rule, the look-back date is determined as follows:

(A) For an institutionalized individual, the look-back date is sixty (60) months before the first date as of which the individual both:

(i) is an institutionalized individual; and

(ii) has applied for medical assistance.

(B) For a noninstitutionalized individual, the look-back date is sixty (60) months before the later of **the date on which the individual:**

(i) ~~the date on which the individual~~ applies for medical assistance; or

(ii) ~~the date on which the individual~~ disposes of assets for less than fair market value.

(d) During the penalty period, an institutionalized individual is ineligible for medical assistance for the following services:

(1) Nursing facility services.

(2) A level of care in any institution equivalent to that of nursing facility services.

(3) Home or community-based waiver services.

(e) During the penalty period, a noninstitutionalized individual is ineligible for the following services:

(1) Home health care services.

(2) Home and community care services for functionally disabled elderly individuals.

(3) Personal care services as defined in 42 U.S.C. 1396a(a)(24).

(4) Any other long term care services, including, but not limited to, the services listed in subsection (d).

(f) If an individual is ineligible for medical assistance for services under this section, expenses for those services are not allowable medical expenses in calculating an individual's nursing home liability for any month of Medicaid eligibility.

~~(f)~~ **(g)** The number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual, or the individual's spouse, on or after the look-back date specified in subsection (c), divided by the average monthly cost to a private patient of nursing facility services in the geographic area ~~which~~ **that** includes the county where the individual resides at the time of application. As used in this subsection, "geographic area" means the region identified in Section 2640.10.35.20 of the Family and Social Services Administration Program Policy Manual for Cash Assistance, Food Stamps, and Health Coverage. **For transfers taking place on or after July 1, 2003, in determining the total, cumulative uncompensated value of assets transferred, transfers made in consecutive months are added together. The penalty period begins with the month following the first month in which assets were transferred, and that does not occur in any other penalty period.**

~~(g)~~ **(h)** This subsection applies to the transfer of a stream of

income, including, but not limited to, the transfer of the income generated by income-producing real property. ~~The transfer of income-producing real property is a transfer of a stream of income if the transferor does not retain the right to receive the income generated by the property.~~ The uncompensated value of income transferred is determined by calculating the greater of:

(1) the fair market value; or

(2) the actual amount;

of total net income that the property or other source of income is ~~expected to produce~~ **capable of producing** during the lifetime of the transferor, based on life expectancy tables published by the office, and subtracting the income, if any, that the transferor will receive from the property or other source of income after the transfer.

~~(h)~~ **(i)** When an individual accepts a rental payment that is less than the fair market rental value for income-producing property, the uncompensated value of the transfer is determined by:

(1) calculating the difference between the fair market rental value and the amount of rent accepted; and

(2) multiplying the difference by the person's life expectancy based on life expectancy tables published by the office.

~~(i)~~ **(j)** This subsection applies to a transfer of assets that results from failure to take action to receive assets to which one is entitled to receive by law. No penalty will be imposed if any of the following circumstances applies:

(1) The applicant or recipient, or the individual with legal authority to act on behalf of the applicant or recipient, is unaware of his or her right to receive assets or becomes aware of the right to receive assets after the deadline for taking action has passed. If the office notifies the applicant or recipient of his or her right to receive assets prior to the deadline for taking action, the individual will be presumed to be aware of his or her right to receive assets unless subdivision (2) applies.

(2) A physician states that the applicant or recipient is not capable of taking action to receive the assets, and there is no guardian or other individual with the authority to act on the applicant's or recipient's behalf.

(3) The expenses of collecting the assets would exceed the value of the assets.

(4) In the case of a surviving spouse who fails to take a statutory share of a deceased spouse's estate, no penalty will be imposed if the deceased spouse has made other equivalent arrangements to provide for a spouse's needs. "Other equivalent arrangements" includes, but is not limited to, a trust established for the benefit of the surviving spouse.

~~(j)~~ **(k)** An applicant or recipient shall not be ineligible for medical assistance under this section if any of the following apply:

(1) The assets transferred were a home, and title to the home was transferred to any of the following persons:

(A) The spouse of the applicant or recipient.

(B) A child of the applicant or recipient who **is:**

(i) ~~is~~ under twenty-one (21) years of age; or

(ii) ~~is~~ blind or disabled as defined in 42 U.S.C. 1382c.

(C) A sibling of the applicant or recipient who has an equity interest in the home and who was residing in the applicant's or recipient's home for a period of at least one (1) year immediately before the date the applicant or recipient becomes an institutionalized individual.

(D) A son or daughter of the applicant or recipient, other than a child described in clause (B), who was residing in the applicant's or recipient's home for a period of at least two (2) years immediately before the date the applicant or recipient becomes an institutionalized individual and who the office determines has provided care to the applicant or recipient ~~which~~ **that** permitted the applicant or recipient to reside at home rather than in an institution or facility.

(2) The assets were transferred to the applicant's or recipient's spouse or to another for the sole benefit of the applicant's or recipient's spouse.

(3) The assets were transferred from the applicant's or recipient's spouse to another for the sole benefit of the applicant's or recipient's spouse.

(4) The assets were transferred to:

(A) the applicant's or recipient's child who is disabled or blind as defined in 42 U.S.C. 1382c; or

(B) to a trust, including a trust described in section 22(i) of this rule, established solely for the benefit of the applicant's or recipient's child who is disabled or blind as defined in 42 U.S.C. 1382c.

(5) The assets were transferred to a trust, including a trust described in section 22(i) of this rule, established solely for the benefit of an individual under sixty-five (65) years of age who is disabled as defined in 42 U.S.C. 1382c.

(6) The assets transferred are disregarded for eligibility purposes through the use of a qualified long term care insurance policy ~~pursuant to~~ **under** IC 12-15-39.6. If an asset is disregarded through the use of a qualified long term care insurance policy, that asset and any income generated by that asset may be transferred without penalty.

(7) A satisfactory showing is made to the office, in accordance with standards specified under 42 U.S.C. 1396p(c)(2)(C) by the Secretary of Health and Human Services, that:

(A) the applicant or recipient intended to dispose of the assets at fair market value or for other valuable consideration;

(B) the assets were transferred exclusively for a purpose other than to qualify for medical assistance; or

(C) all assets transferred for less than fair market value have been returned to the applicant or recipient.

In order to establish that a transfer was made exclusively for purposes other than qualifying for medical assistance, the applicant or recipient must submit sufficient evidence to show that the transfer was made exclusively for reasons not related to Medicaid eligibility, estate recovery, or lien.

(8) The office may waive the application of this section in cases of undue hardship, but only to the extent required by standards specified under 42 U.S.C. 1396p(c)(2)(D) by the Secretary of Health and Human Services.

(l) For transfers of income-producing real property not used in a trade or business on and after July 1, 2003, six thousand dollars ($6,000) of the equity value can be transferred without penalty if the transferred property produces an annual income of at least three hundred sixty dollars ($360). If the equity value of the property is less than six thousand dollars ($6,000), the property can be transferred without penalty if the property produces an annual income of at least six percent (6%) of the equity. This six thousand dollars ($6,000) exemption is a single, one (1) time exemption that applies to the total value of all income-producing real property transferred by the applicant during the applicant's lifetime. If the property does not produce an annual income of at least six percent (6%) of the lesser of six thousand dollars ($6,000) or the equity value, the entire equity is the uncompensated value.

~~(k)~~ **(m)** In the case of a transfer by the spouse of an applicant or recipient ~~which~~ **that** results in a period of ineligibility for medical assistance, the office shall apportion the period of ineligibility, or any portion of that period, between the applicant or recipient and the applicant's or recipient's spouse, if the spouse otherwise becomes eligible for medical assistance, as specified in regulations promulgated under 42 U.S.C. 1396p(c)(4) by the Secretary of Health and Human Services. *(Office of the Secretary of Family and Social Services; 405 IAC 2-3-1.1; filed May 1, 1995, 10:45 a.m.: 18 IR 2223; errata filed Jun 9, 1995, 2:30 p.m.: 18 IR 2796; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Mar 13, 2002, 10:09 a.m.: 25 IR 2472; filed Apr 8, 2004, 3:16 p.m.: 27 IR 2479)*

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TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-236(F)

DIGEST

Amends 405 IAC 1-10.5-2 and 405 IAC 1-10.5-3 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 group (DRG) as determined by the office can be assigned. Effective 30 days after filing with the secretary of state.

405 IAC 1-10.5-2
405 IAC 1-10.5-3

SECTION 1. 405 IAC 1-10.5-2, AS AMENDED AT 27 IR 2248, SECTION 3, 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~~ **that** 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. The term includes, but 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 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 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.

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 reimburse hospitals for routine and ancillary costs of providing care for an inpatient stay.

(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.

(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.

(o) "Intestinal transplant" means the grafting of either the small or large intestines from a donor into a recipient.

~~(o)~~ **(p)** "Less than one-day stay" means a medical stay of less than twenty-four (24) hours.

~~(p)~~ **(q)** "Level-of-care case" means a medical stay, as defined by the office, that includes psychiatric cases, rehabilitation cases, long term care hospital admissions, and certain burn cases.

~~(q)~~ **(r)** "Level-of-care rate" means a per diem rate that is paid for treatment of a diagnosis or performing a procedure subject to subsection ~~(p).~~ **(q).**

~~(r)~~ **(s)** "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)~~ **(t)** "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)~~ **(u)** "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)~~ **(v)** "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)~~ **(w)** "Medical education costs" means the direct costs associated with the salaries and benefits of medical interns and residents and paramedical education programs.

(x) "Multivisceral transplant" means the grafting of either the small or large intestines and one (1) or more of the following organs from a donor into a recipient:
(1) Liver.
(2) Stomach.
(3) Pancreas.

~~(w)~~ **(y)** "Office" means the office of Medicaid policy and planning of the family and social services administration.

~~(x)~~ **(z)** "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)~~ **(aa)** "Per diem" means an all-inclusive rate per day that includes routine and ancillary costs and capital costs.

~~(z)~~ **(bb)** "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)~~ **(cc)** "Readmission" means that a patient is admitted into the hospital following a previous hospital admission and discharge for a related condition as defined by the office.

~~(bb)~~ **(dd)** "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)~~ **(ee)** "Relative weight" means a numeric value 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)~~ **(ff)** "Routine and ancillary costs" means costs that are incurred in providing services exclusive of medical education and capital costs.

~~(ee)~~ **(gg)** "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)~~ **(hh)** "Transferee hospital" means that hospital that accepts a transfer from another hospital.

~~(gg)~~ **(ii)** "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; filed Feb 24, 2004, 11:15 a.m.: 27 IR 2248; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2482)*

SECTION 2. 405 IAC 1-10.5-3, AS AMENDED AT 27 IR 2249, SECTION 4, 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 **or, in the case of intestinal or multivisceral transplants, as described under subsection (j).** 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) 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) 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 twenty percent (120%) of the statewide base amount for DRG services.

(j) The reimbursement methodology for all covered

intestinal and multivisceral transplants shall be equal to ninety percent (90%) of reasonable cost, until such time an appropriate DRG as determined by the office can be assigned. The office will use the most recent cost report data that has been filed and audited by the office or its contractor to determine reasonable costs.

~~(j)~~ **(k)** 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)~~ **(l)** 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)~~ **(m)** 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)~~ **(n)** 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)~~ **(o)** 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)~~ **(p)** Capital payment rates shall be prospectively determined and shall constitute full reimbursement for capital costs. 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)~~ **(q)** 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)~~ **(r)** 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)~~ **(s)** 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. 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)~~ **(t)** 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)~~ **(u)** 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)~~ **(v)** 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 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)~~ **(w)** Readmissions for ~~a~~ **the same or** related ~~condition as defined by the office~~ **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.

~~(w)~~ **(x)** 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)~~ **(y)** 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).~~ **(v).** The office may establish a separate outlier threshold or marginal cost factor for such cases.

~~(y)~~ **(z)** Special payment policies shall apply to less than twenty-four (24) hour stays. For less than twenty-four (24) ~~hour~~ **hours** *[sic., hour]* stays, hospitals will be paid 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; filed Oct 20, 2003, 10:00 a.m.: 27 IR 863; filed Feb 24, 2004, 11:15 a.m.: 27 IR 2249; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2484)*

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TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-260(F)

DIGEST

Amends 405 IAC 6-2-3, 405 IAC 6-2-5, 405 IAC 6-3-3, 405 IAC 6-4-2, 405 IAC 6-4-3, 405 IAC 6-5-1, 405 IAC 6-5-2, 405 IAC 6-5-3, 405 IAC 6-5-4, 405 IAC 6-5-6 provisions affecting eligibility and enrollment requirements, and policy for the Indiana Prescription Drug Program. Repeals 405 IAC 6-2-21, 405 IAC 6-2-22, 405 IAC 6-6-3, and 405 IAC 6-6-4. Effective 30 days after filing with the secretary of state.

405 IAC 6-2-3	**405 IAC 6-5-1**
405 IAC 6-2-5	**405 IAC 6-5-2**
405 IAC 6-2-21	**405 IAC 6-5-3**
405 IAC 6-2-22	**405 IAC 6-5-4**
405 IAC 6-3-3	**405 IAC 6-5-6**
405 IAC 6-4-2	**405 IAC 6-6-3**
405 IAC 6-4-3	**405 IAC 6-6-4**

SECTION 1. 405 IAC 6-2-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-2-3 "Benefit period" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. "Benefit period" means a specified time frame during which an enrollee ~~accrues or~~ expends the cost of prescription drugs. The benefit ~~periods are~~ **period is** specified in 405 IAC 6-5-3. *(Office of the Secretary of Family and Social Services; 405 IAC 6-2-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2456; filed Nov 4, 2002, 12:13 p.m.: 26 IR 697; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2486)*

SECTION 2. 405 IAC 6-2-5 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-2-5 "Complete application" defined
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 5. "Complete application" means an application ~~which~~ **that** includes the following information about the applicant and applicant's spouse, if applicable:

(1) Name.

(2) Address of domicile.

(3) Date of birth.

(4) Social Security number.

(5) Marital status.

~~(6) Whether the applicant had health insurance with a prescription drug benefit in the past year.~~

~~(7)~~ **(6)** Whether the applicant currently has insurance that includes a prescription drug benefit.

~~(8)~~ **(7)** Whether the applicant is on Medicaid ~~including~~

~~Medicaid~~ with ~~a spend-down;~~ **prescription drug assistance.**
~~(9)~~ **(8)** Whether the applicant ~~has resided~~ **intends to reside** in Indiana ~~for at least ninety (90) days in the past twelve (12) months.~~ **permanently.**
~~(10)~~ **(9)** Proof of income.
~~(11)~~ **(10)** Signature.
(Office of the Secretary of Family and Social Services; 405 IAC 6-2-5; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2457; filed Nov 4, 2002, 12:13 p.m.: 26 IR 697; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2486)

SECTION 3. 405 IAC 6-3-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-3-3 Date of availability
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. ~~(a) The program is available to an enrollee beginning with the benefit period prior to the one in which the enrollee applied for enrollment in the program.~~

~~(b)~~ **(a)** After July 1, 2002, program availability will be no sooner than the date complete application is received and approved.

~~(c)~~ **(b)** Those enrollees applying on or before the tenth of a month will have point of service benefits available on the first day of the following month. Those enrollees applying after the tenth of a month will have point of service benefits available no later than the first day of the second following month.

~~(d)~~ **(c)** The program is not available for prescription drugs purchased prior to the month in which the enrollee turned sixty-five (65) years of age. *(Office of the Secretary of Family and Social Services; 405 IAC 6-3-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2459; filed Nov 4, 2002, 12:13 p.m.: 26 IR 699; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2487)*

SECTION 4. 405 IAC 6-4-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-4-2 Income
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. (a) To be eligible for the program, an applicant's monthly family net income must not exceed the income limit listed below for the applicant's family size:

Family Size	Net Monthly Income Limit
1	~~$997~~ **$1,011**
2	~~$1,344~~ **$1,364**
3	~~$1,690~~ **$1,717**

(b) For each additional family member over three (3), the family member standard shall be added to the net monthly income limit for a family of three **(3)** in order to calculate the net monthly income limit. A child who earns more than the family member standard per month is not included in the calculation of monthly net income or in family size.

(c) The monthly net income limits are determined by multiplying the annual federal poverty guideline amounts for each family size by one hundred thirty-five percent (135%), dividing by twelve (12), and then rounding up to the next whole dollar.

(d) The income standards in subsection (a) shall increase annually in the same percentage (%) amount that is applied to the federal poverty guideline. The increase shall be effective on the first day of the second month following the month of publication of the federal poverty guideline in the Federal Register.

(e) The Social Security cost of living adjustment (COLA) received annually in January is disregarded until subsection (d) occurs.

(f) A general monthly income disregard of twenty dollars ($20) is allowed and applied per household. It is deducted from the total monthly net income. *(Office of the Secretary of Family and Social Services; 405 IAC 6-4-2; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2459; filed Nov 4, 2002, 12:13 p.m.: 26 IR 699; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2487)*

SECTION 5. 405 IAC 6-4-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-4-3 Ineligibility
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. Notwithstanding any other provision of this article, an individual is not eligible for the program if any of the following apply:
(1) ~~The individual had health insurance with a prescription drug benefit during the prior benefit period and, at the time of application,~~ The individual has health insurance with a prescription drug benefit **at the time of application.**
(2) The individual ~~has~~ **is** not ~~resided~~ **domiciled** in Indiana. ~~for ninety (90) days or more during the past twelve (12) months.~~
(3) The individual does not intend to reside permanently in Indiana.
~~(3)~~ **(4)** The individual is an inmate of a correctional facility. *(Office of the Secretary of Family and Social Services; 405 IAC 6-4-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; errata filed May 30, 2001, 10:00 a.m.: 24 IR 3070; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2487)*

SECTION 6. 405 IAC 6-5-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-1 Prescription drug coverage
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 1. ~~(a) The program shall issue a partial refund to an enrollee for the purchase of prescription drugs, as defined under this article, based upon the limitations set forth in this rule if an enrollee submits a refund certificate.~~

~~(b) Rather than submit a refund certificate,~~ An eligible enrollee may go to any participating provider to purchase prescription drugs and present his or her prescription and program identification card at the point of service to receive immediate program benefits. At the point of service, the provider shall determine the following:

(1) Whether the enrollee is eligible.

(2) Whether the individual whose name appears on the identification card is the same as the individual for whom the prescription is written.

(3) Whether the enrollee has benefits available.

(4) The price of a prescription drug in accordance with 405 IAC 6-8-3.

(5) That all prescription discounts, if applicable, are taken after the appropriate drug price has been determined.

(6) The amount of the enrollee's copayment.

(Office of the Secretary of Family and Social Services; 405 IAC 6-5-1; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 700; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2487)

SECTION 7. 405 IAC 6-5-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-2 Benefit defined by family income level
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 2. (a) The ~~refund or~~ benefit at the time of purchase, which is issued to an enrollee per benefit period, is limited by family monthly net income as follows:

Income Guideline	Individual's Monthly Net Income	Couple's Monthly Net Income	Annual Benefit
Up to 135% of federal poverty guideline	Up to ~~$997~~ **$1,011** per month	Up to ~~$1,344~~ **$1,364** per month	50% benefit, up to $500 benefit/year
Up to 120% of federal poverty guideline	Up to ~~$886~~ **$898** per month	Up to ~~$1,194~~ **$1,212** per month	50% benefit, up to $750 benefit/year
Under 100% of federal poverty guideline	Up to ~~$739~~ **$748** per month	Up to ~~$995~~ **$1,010** per month	50% benefit, up to $1,000 benefit/year

(b) An enrollee and spouse who are enrolled in the program will each receive the maximum ~~refund, or~~ benefit at the time of purchase for prescription drug expenses up to the annual benefit in subsection (a) for which they qualify by family income level.

(c) Upon such time as the enrollee exceeds the annual benefit, the enrollee may use the program identification card to access program benefit prescription drug rates as defined by 405 IAC 6-8-3 and 405 IAC 6-8-4 until the enrollee benefit period expires. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-2; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 700; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2488)*

SECTION 8. 405 IAC 6-5-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-3 Benefit period
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 3. ~~(a) The refund certificate program shall consist of four (4) benefit periods per year, defined as follows:~~

~~(1) Benefit period one: October 1 through December 31.~~

~~(2) Benefit period two: January 1 through March 31.~~

~~(3) Benefit period three: April 1 through June 30.~~

~~(4) Benefit period four: July 1 through September 30.~~

~~(b)~~ The point of service benefit shall be one (1) year of continuous eligibility up to the benefit limit in accordance with section 2 of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-3; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 700; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2488)*

SECTION 9. 405 IAC 6-5-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-4 Benefit duration
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 4. ~~(a) The refund certificate program is available to an enrollee for a maximum of four (4) consecutive benefit periods.~~

~~(b)~~ **(a)** The point of service benefit is available to an enrollee for one (1) year **of continuous benefits.**

~~(c) If an enrollee is utilizing both the refund certificate program and the point of service program, the maximum benefit duration to an enrollee is one (1) year of continuous benefits.~~

~~(d) To reenroll in the refund certificate program or~~ **(b) Following the expiration of the enrollee's last benefit period, the individual must reenroll** for **the** point of service ~~benefits~~ **benefit.** A new application must be submitted to the office in accordance with this article. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-4; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR*

701; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2488)

SECTION 10. 405 IAC 6-5-6 IS AMENDED TO READ AS FOLLOWS:

405 IAC 6-5-6 Benefits; program appropriations
Authority: IC 12-10-16-5
Affected: IC 12-10-16

Sec. 6. (a) ~~Upon submission of a completed refund certificate, or~~ At the point of service, benefits are available under this program on a first come, first served basis.

(b) Benefits will exist under this program to the extent that appropriations are available for the program.

(c) The state budget director shall determine if appropriations are available to continue offering and paying benefits to enrollees. *(Office of the Secretary of Family and Social Services; 405 IAC 6-5-6; filed Mar 8, 2001, 11:19 a.m.: 24 IR 2460; filed Nov 4, 2002, 12:13 p.m.: 26 IR 701; filed Mar 22, 2004, 3:15 p.m.: 27 IR 2489)*

SECTION 11. THE FOLLOWING ARE REPEALED: 405 IAC 6-2-21; 405 IAC 6-2-22; 405 IAC 6-6-3; 405 IAC 6-6-4.

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Incorporated Documents Filed with Secretary of State: None

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #03-99(F)

DIGEST

Adds 460 IAC 8 concerning providers of assisted living services under the Medicaid waiver authorized by Public Law 100-2000. Effective 30 days after filing with the secretary of state.

460 IAC 8

SECTION 1. 460 IAC 8 IS ADDED TO READ AS FOLLOWS:

ARTICLE 8. ASSISTED LIVING MEDICAID WAIVER SERVICES

Rule 1. Assisted Living Medicaid Waiver Services

460 IAC 8-1-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-15; IC 16-28

Sec. 1. This rule applies to the provision of assisted living Medicaid waiver services in residential care facilities licensed under IC 16-28 and 410 IAC 16.2-5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-1; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2489)*

460 IAC 8-1-2 Definitions
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-8-6-1; IC 12-9-1-1; IC 12-10-1-1; IC 12-10-1-4; IC 12-10-13-4.5; IC 12-15; IC 16-28; IC 16-36-1-5

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

(1) "Activities of daily living" means those personal functional activities required by a recipient for continued well-being including:
(A) mobility;
(B) dressing;
(C) bathing;
(D) eating;
(E) toileting; and
(F) transferring.

(2) "Aging in place" means being in a care environment that will provide the recipient with a range of care options as the needs of the recipient change. Aging in place does not preclude assisting a recipient in relocating to a new care environment if necessary.

(3) "Applicant" means a natural person or entity that applies to provide assisted living Medicaid waiver services.

(4) "Area agency on aging" means the agency designated by the BAIHS services in each planning and service area under IC 12-10-1-4(18).

(5) "Assessed impairment level" means the level of service needed by a recipient as determined using the level of service assessment form.

(6) "Assisted living Medicaid waiver services" means the array of services provided to a recipient residing in a facility, including any or all of the following:
(A) Personal care services.
(B) Homemaker services.
(C) Chore services.
(D) Attendant care services.
(E) Companion services.
(F) Medication oversight (to the extent permitted under state law). and
(G) Therapeutic social and recreational programming.

(7) "Assisted living Medicaid waiver services provider" means an entity approved to provided *[sic., provide]* **assisted living Medicaid waiver services.**

(8) "Attendant care" means hands-on care, of both a supportive and health-related nature, specific to the needs of a medically stable, physically disabled individual.

(9) "BAIHS" means the bureau of aging and in-home services as created under IC 12-10-1-1.
(10) "Case manager" means the individual or agency enrolled by the office of Medicaid policy and planning chosen by the recipient to provide case management services.
(11) "Choice" means a recipient has viable options that enable him or her to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility to provide opportunities for recipients to select where and how to spend time and receive personal assistance.
(12) "Chore services" means services needed to maintain the recipient's residential unit in a clean, sanitary, and safe environment.
(13) "Companion services" means nonmedical care, supervision, and socialization services. It does not include assisting or supervising the recipient with meal preparation, laundry, or shopping.
(14) "Complaint" means an allegation that an assisted living Medicaid waiver services provider has violated this article or a dissatisfaction relating to the condition of the facility or the recipient(s).
(15) "Dignity" means providing support in such a way as to validate the self-worth of the recipient. Dignity is supported by designing a structure that allows personal assistance to be provided in privacy and delivering services in a manner that shows courtesy and respect.
(16) "Division" means the division of disability, aging, and rehabilitative services created under IC 12-9-1-1.
(17) "Facility" a means facility licensed under IC 16-28 and 410 IAC 16.2-5.
(18) "Homelike" means an environment that has the qualities of a home, including privacy, comfortable surroundings, and the opportunity to modify one's living area to suit one's individual preferences, which promotes the dignity, security, and comfort of recipients through the provision of personalized care and services to encourage independence, choice, and decision making by the recipients. A homelike environment also provides recipients with an opportunity for self-expression and encourages interaction with the community, family, and friends.
(19) "Homemaker services" means services consisting of general household activities, including meal preparation and routine household care.
(20) "Independence" means being free from the control of others and being able to assert one's own will, personality, and preferences within the parameters of the house rules or residency agreement.
(21) "Interdisciplinary team" means a group of individuals, which must include the recipient, and which may be composed of, but is not limited to:
(A) the recipient's family and/or legal representative;
(B) the recipient's case manager;
(C) a licensed nurse; and
(D) the provider(s) of service;
who work together to develop the recipient's individual plan of care.
(22) "Legal representative" means a person who is:
(A) a guardian;
(B) a health care representative;
(C) an attorney in fact; or
(D) a person authorized by IC 16-36-1-5 to give health care consent.
(23) "Level of service" means the specific level of service that an assisted living Medicaid waiver services provider is authorized to provide to a recipient in accordance with the recipient's plan of care and that is based on the assessed impairment level of the recipient.
(24) "Medication oversight services" means personnel operating within the scope of applicable licenses and/or certifications providing reminders or cues to recipients to take medication, open preset medication containers, and handle and/or dispense medication.
(25) "Office of Medicaid policy and planning" means the office of Medicaid policy and planning created by IC 12-8-6-1.
(26) "Ombudsman" means a representative of the office of the state long term care ombudsman as provided in IC 12-10-13-4.5.
(27) "Personal care services" means assistance with:
(A) eating;
(B) bathing;
(C) dressing;
(D) personal hygiene; and
(E) activities of daily living.
(28) "Plan of care" means the written plan developed by the interdisciplinary team, on which the recipient's case manager documents the proposed Medicaid waiver services, the Medicaid state plan services, as well as other medical services and social services and informal community supports that are needed by the recipient to ensure the health and welfare of the recipient.
(29) "Provider" means an entity approved under this article to provider *[sic., provide]* **assisted living Medicaid waiver services.**
(30) "Recipient" means an individual who is receiving assisted living Medicaid waiver services.
(31) "Room and board" means the provision of:
(A) meals;
(B) a place to sleep;
(C) laundry; and
(D) housekeeping.
(32) "Service plan" means a written plan for services to be provided by the provider, developed by the provider, the recipient, and others, if appropriate, on behalf of the recipient, consistent with the services needed to ensure the health and welfare of the recipient. It is a detailed description of the capabilities, needs, choices, measurable goals, and if applicable the measurable goals and man-

aged risk issues, and documents the specific duties to be performed for the recipient, including who will perform the task, when, and the frequency of each task based on the individual's assessed needs and preferences.

(33) "Services" means activities which help a recipient develop skills to increase or maintain level of functioning or which assist the recipient in performing personal care or activities of daily living or individual social activities.

(34) "Supportive services" means services which substitute for the:

(A) absence;

(B) loss;

(C) diminution; or

(D) impairment;

of a physical or cognitive function.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-2; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2489)

460 IAC 8-1-3 Provider approval

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-15; IC 12-15; IC 16-28

Sec. 3. In order to be approved by the division to provide assisted living Medicaid waiver services, an applicant shall do the following:

(1) Complete an application form prescribed by the division.

(2) Submit evidence that the applicant:

(A) Has a license required by IC 16-28 and 410 IAC 16.2-5 for each facility at which assisted living Medicaid waiver services will be provided.

(B) Has registered each facility at which assisted living services will be provided as a housing with services establishment under IC 12-10-15.

(3) Indicate what level of services the applicant will provide.

(4) Submit a written and signed statement that the applicant will comply with the provisions of this article.

(5) Submit a written and signed statement that assisted living Medicaid waiver services will not be provided at a facility that is not licensed pursuant to IC 16-28 and 410 IAC 16.2-5.

(6) Submit a written and signed statement that assisted living Medicaid waiver services will not be provided at a facility that is not registered as a housing with services establishment under IC 12-10-15.

(7) Submit a written and signed statement that the applicant will provide services to a recipient as set out in the recipient's plan of care.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-3; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2491)

460 IAC 8-1-4 Decision on approval; administrative review; provider agreement

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-10-15; IC 12-15; IC 16-28

Sec. 4. (a) The division shall determine whether an applicant meets the requirements under this article.

(b) The division shall notify an applicant in writing of the division's determination within sixty (60) days of submission of a completed application.

(c) If an applicant is adversely affected or aggrieved by the division's determination, the applicant may request administrative review of the determination. Such request shall be made in writing and filed with the director of the division within fifteen (15) days after the applicant receives written notice of the division's determination. Administrative review shall be conducted pursuant to IC 4-21.5.

(d) Once an applicant has been approved by the division to provide assisted living Medicaid waiver services, an applicant cannot provide assisted living Medicaid waiver services until the applicant has completed and submitted a Medicaid waiver assisted living provider agreement.

(e) No person or entity shall represent themselves as operating as an assisted living Medicaid waiver provider or accept placement of a recipient without first being approved to provide assisted living Medicaid waiver services.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-4; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2491)

460 IAC 8-1-5 Facility requirements

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-15-7; IC 12-15; IC 16-28

Sec. 5. (a) Each facility at which assisted living Medicaid waiver services are provided shall meet the following requirements:

(1) Maintain a current residential care facility license as required by IC 16-28 and 410 IAC 16.2-5.

(2) Comply with the requirements of IC 12-10-15.

(3) Provide assisted living Medicaid waiver service recipients with individual residential living units that include the following:

(A) A bedroom.

(B) A private bath.

(C) A substantial living area. and

(D) A kitchenette that contains:

(i) a refrigerator;

(ii) a food preparation area; and

(iii) a microwave or stovetop for hot food preparation.

(b) If a facility was in operation prior to July 1, 2001, and was in compliance with the requirements of IC 12-10-15-7 on June 30, 2001, individual living units provided to recipients shall have a minimum of one hundred sixty (160) square feet of livable floor space including closets and counters, but excluding space occupied by the bathroom.

(c) If a facility was in operation prior to the effective date of this rule and was licensed under 410 IAC 16.2-5, individual living units provided to recipients shall contain the following:

(1) A substantial living area of at least one hundred sixty (160) square feet of livable floor space, including closets and counter space, but excluding space occupied by the bathroom.

(2) A sleeping area, not necessarily designated as a separate bedroom from the living area.

(3) A semiprivate bath or shower.

(4) A kitchenette that contains:

(A) a refrigerator;

(B) a food preparation area; and

(C) a microwave. and

(5) Access to a stovetop/oven for hot food preparation in the common area.

(d) All other facilities shall provide recipients with individual living units meeting the following additional requirements:

(1) Contain a minimum of two hundred twenty (220) square feet of livable space including closets and counters, but excluding space occupied by the bathroom.

(2) Contain a bath that is wheelchair accessible. Fifty percent (50%) of the units available to recipients shall have a roll-in shower. and

(3) Contain individual thermostats.

(e) Residential units provided to recipients must be single units unless the recipient chooses to live in dual-occupied unit and the recipient and the other occupant consent to the arrangement.

(f) Residential units provided to recipients shall be able to be locked at the discretion of the recipient, unless a physician or a mental health professional certifies in writing that the recipient is cognitively impaired so as to be a danger to self or others if given the opportunity to lock the door. This subsection does not apply if this requirement conflicts with applicable fire codes. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-5; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2491)*

460 IAC 8-1-6 Assisted living Medicaid waiver services

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-15; IC 16-28-13-1

Sec. 6. (a) The provider shall provide the following assisted living Medicaid waiver services:

(1) Personal care services.

(2) Homemaker services.

(3) Chore services.

(4) Attendant care services, including supportive services.

(5) Companion services.

(6) Medication oversight services, as permitted by state law. and

(7) Therapeutic, social, and recreational programming.

(b) Assisted living Medicaid waiver services shall be provided to a recipient as outlined in a recipient's plan of care, as developed by the recipient's case manager and interdisciplinary team, as follows:

(1) The provider shall provide the intensity and level of services as outlined in the recipient's plan of care. The intensity and level of services shall range from level 1 for recipients who are the least impaired and require the least intense level of services to level 3 for the most severely impaired recipients who require the most intense level of services.

(2) Should a recipient require more intense assisted living Medicaid waiver services (a higher level of services) than the provider is approved to provide, or require services more intense than level 3, the provider shall assist the recipient in transferring to a more appropriate setting and shall observe all discharge requirements of 410 IAC 16.2-5.

(c) The initial plan of care must be approved by the office of Medicaid policy and planning prior to the initiation of assisted living Medicaid waiver services. It must be updated at least every ninety (90) days and annually or when the recipient experiences a significant change per 410 IAC 16.2-1.1-70.

(d) Provider staff shall provide information to the recipient's interdisciplinary team, as requested by the recipient's interdisciplinary team. If requested by a recipient and/or recipient's case manager, appropriate provider staff shall serve on a recipient's interdisciplinary team.

(e) All direct care shall be provided by personnel specified in IC 16-28-13-1.

(f) As appropriate, services shall be provided to recipients in their own living units.

(g) The physical environment and the delivery of assisted living Medicaid waiver services shall be designed to enhance autonomy in ways which reflect personal and social values of dignity, privacy, independence, individuality, choice, and decision making of recipients. The provider shall provide services in a manner that:

(1) makes the services available in a homelike environment for recipients with a range of needs and preferences;

(2) facilitates aging in place by providing flexible services in an environment that accommodates and supports the recipient's individuality; and

(3) supports negotiated risk, which includes the recipient's right to take responsibility for the risks associated with decision making.

(h) If requested by a recipient, the provider will assist a recipient and a recipient's case manager in obtaining, arranging, and coordinating services outlined in a recipient's plan of care that are not assisted living Medicaid waiver services.

(i) Should other entities furnish care directly, or under arrangement with the provider, that care shall supplement the care provided by the provider but may not supplant it. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-6; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2492)*

460 IAC 8-1-7 Levels of service; level of service assessment/evaluation tool; provider enrollment

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-15

Sec. 7. (a) Assisted living Medicaid waiver services will be provided and paid according to three (3) levels of service, with level one (1) being the least impaired and level three (3) the most impaired/dependent. No assisted living Medicaid waiver services may be provided that meet the skilled level of care as defined in 405 IAC 1-3-1.

(b) The impairment level assessment tool for assisted living Medicaid waiver services will be based on the point system definitions designated on the level of service assessment form and will be documented on forms prescribed by the division. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-7; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2493)*

460 IAC 8-1-8 General service standards

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-15

Sec. 8. (a) A provider shall provide assisted living Medicaid waiver services only to persons approved by the office of Medicaid policy and planning to receive assisted living Medicaid waiver services.

(b) A provider shall:
(1) promote the ability of recipients to have control over their time, space, and lifestyle to the extent that the health, safety, and well-being of other recipients is not disturbed;
(2) promote the recipient's right to exercise decision making and self-determination to the fullest extent possible;
(3) provide services for recipients in a manner and in an environment that encourages maintenance or enhancement of each recipient's quality of life and promotes the recipient's:
(A) privacy;
(B) dignity;
(C) choice;
(D) independence;
(E) individuality; and
(F) decision making ability; and
(4) provide a safe, clean, and comfortable homelike environment allowing recipients to use their personal belongings to the extent possible.

(c) The provider shall complete a service plan within thirty (30) days of move-in or the recipient's receipt of assisted living Medicaid waiver services.

(d) The provider shall ensure the service plan:
(1) includes recognition of the recipient's capabilities and choices and defines the division of responsibility in the implementation of services;
(2) addresses, at a minimum, the following elements:
(A) assessed health care needs;
(B) social needs and preferences;
(C) personal care tasks; and
(D) limited nursing and medication services, if applicable, including frequency of service and level of assistance;
(3) is signed and approved by:
(A) the recipient;
(B) the provider;
(C) the licensed nurse;
(D) the case manager; and
(4) includes the date the plan was approved.

(e) The service plan shall support the principles of dignity, privacy, and choice in decision making, individuality, and independence.

(f) The provider shall provide the recipient, case manager, and area agency on aging with a copy of the service plan and place a copy in the recipient's record.

(g) The provider shall update the plan when there are changes in the services the recipient needs and wants to receive. At a minimum, the provider shall review the service plan every ninety (90) days for assisted living recipients. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-8; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2493)*

460 IAC 8-1-9 Negotiated risk plan appropriate to level of service

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-15

Sec. 9. (a) If deemed appropriate and determined to be necessary by a recipient's interdisciplinary team, the provider shall establish a negotiated risk plan with a recipient.

(b) The negotiated risk plan shall address unusual situations in which a recipient's assertion of a right, preference, or behavior exposes the recipient or someone else to a real and substantial risk of injury.

(c) The negotiated risk plan shall identify and accommodate a recipient's need in a way that is acceptable to both the provider and the recipient.

(d) A negotiated risk plan shall include:
(1) an explanation of the cause(s) of concern;
(2) the possible negative consequences to the recipient and/or others;
(3) a description of the recipient's preferences;
(4) possible alternatives or interventions to minimize the potential risks associated with the recipient's preference/action;
(5) a description of the assisted living Medicaid waiver services the provider will provide to accommodate the recipient's choice or minimize the potential risk and services others *[sic., other]* **entities will provide to accommodate the recipient's choice or minimize the potential risk; and**
(6) the final agreement, if any, reached by all involved parties.

(e) The provider shall involve the recipient and the recipient's interdisciplinary team in developing, implementing, and reviewing a negotiated risk plan.

(f) The provider shall review a negotiated risk plan with a recipient and a recipient's team at least quarterly. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-9; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2493)*

460 IAC 8-1-10 Recipient records
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-13; IC 12-15

Sec. 10. (a) An individual recipient record shall be developed and kept current and available on the premises for each recipient receiving assisted living Medicaid waiver services. In addition to the requirements of 410 IAC 16.2-5-8.1, a recipient's record shall include the following:
(1) Plan of care.
(2) Negotiated risk agreement, if any. and
(3) A written report of all significant incidents relating to the health or safety of a recipient including:
(A) how and when the incident occurred;
(B) who was involved;
(C) what action was taken by provider staff; and
(D) the outcome to the recipient.

(b) Recipient records shall be readily available to all of the following:
(1) Caregivers.
(2) Representatives of the office of Medicaid policy and planning.
(3) Division.
(4) Recipients.
(5) Recipient's authorized representatives.
(6) A recipient's case manager.
(7) Interdisciplinary team members.
(8) The ombudsman, as provided for by IC 12-10-13. and
(9) Other legally authorized persons.

(c) Records shall be kept for the time period required by 410 IAC 16.2-5-8.1 or a minimum of three (3) years, whichever is longer.

(d) If a recipient is transferred, discharged or the provider otherwise ceases to provide services, the recipient's records shall be transferred with the recipient pursuant to 410 IAC 16.2-5-8.1. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-10; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2494)*

460 IAC 8-1-11 Administration
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-3-9; IC 12-10-13; IC 12-15

Sec. 11. The provider shall do the following:
(1) Comply with all requirements of this article.
(2) Ensure all provider staff are knowledgeable about applicable recipient rights.
(3) Not require a recipient to sign any admission contract or agreement that purports to waive any rights of the recipient.
(4) Develop and implement a complaint procedure and process which is responsive to recipient's complaints to assist in resolving agreement disputes between recipients and the provider.
(5) Adopt procedures for securing and recording complaints and endorsements filed by:
(A) recipients;
(B) recipients' designated representatives; and
(C) recipients' family members.
(6) Post in a place and manner clearly visible to recipients and visitors the Indiana state department of health, state and local ombudsman toll-free complaint telephone numbers and telephone numbers for contacting a case manager through the local area agency on aging.
(7) Comply with all federal and state statutory and regulatory requirements regarding nondiscrimination in all aspects of the provider's operation.
(8) Encourage recipients and the recipient council, if there is one, to provide input to the facility about recipients' preferences for food choices, taking into account the cultural and religious needs of recipients.
(9) Ensure all instances of:
(A) suspected abuse;
(B) neglect;
(C) exploitation; or
(D) abandonment;
are reported to the adult protective services program, as required in IC 12-10-3-9 and 460 IAC 1-2-10, and to the local law enforcement agency.

(10) Not have any sexual contact with any recipient and shall ensure that provider staff and students not have sexual contact with any recipient.

(11) Permit the office of Medicaid policy and planning, the division, the ombudsman, and other state representatives to enter the facility without prior notification in order to monitor the provider's compliance with this article and to conduct complaint investigations, including, but not limited to:

(A) observing and interviewing recipients; and

(B) accessing recipient records.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-11; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2494)

460 IAC 8-1-12 Payment for room and board

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-15

Sec. 12. Each recipient is responsible for payment of the room and board services. The provider shall charge recipients room and board rates that are no higher than the SSI rate current at the time room and board services are provided, less the amount of the personal needs allowance for room and board for Medicaid eligible individuals. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 8-1-12; filed Apr 8, 2004, 3:15 p.m.: 27 IR 2495)*

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

LSA Document #03-100(F)

DIGEST

Adds 550 IAC 7 concerning the pickup of additional member contributions to a member's annuity savings account. Effective 30 days after filing with the secretary of state.

550 IAC 7

SECTION 1. 550 IAC 7 IS ADDED TO READ AS FOLLOWS:

ARTICLE 7. ADDITIONAL CONTRIBUTIONS

Rule 1. Elective Payroll Deductions for Additional Contributions

550 IAC 7-1-1 Miscellaneous

Authority: IC 21-6.1-3-6
Affected: IC 5-10.2-3-2

Sec. 1. (a) The purpose of this rule is to provide a pickup of member contributions by participating employers under Section 414(h)(2) of the Internal Revenue Code of 1986 for additional employee contributions made to the member's annuity savings account under IC 5-10.2-3-2(c) and IC 5-10.2-3-2(d). Employers may elect to participate in the pickup of additional employee contributions by a resolution adopting the provisions of this rule.

(b) A member in active covered employment (with an electing employer) who elects to make contributions to the member's annuity savings account in addition to the contributions required under IC 5-10.2-3-2(b) may do so through a binding, irrevocable payroll deduction authorization.

(c) A member in active covered employment, having executed a binding, irrevocable payroll deduction authorization with respect to any such additional contributions, shall not be entitled to any option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the board of trustees of the Indiana state teachers' retirement fund (board). Such contributions shall be remitted to the fund in the same manner as all other contributions and shall be credited to the member's annuity savings account. The salary the employer will use to calculate such contributions will be the same as the salary the employer reports to the board for purposes of determining a member's mandatory contribution and benefit calculation. Such contributions, although designated as employee contributions, will be paid by the employer in lieu of contributions by the employee. The contributions so assumed shall be treated as tax-deferred employer pickup contributions pursuant to Section 414(h)(2) of the Internal Revenue Code of 1986, subject to a favorable letter ruling by the Internal Revenue Service.

(d) A member in active covered employment may elect to pay all or part of any additional contribution through payroll deduction. This election is available for two (2) years beginning on the September 1 following the plan year in which the employee completes five (5) years of creditable service and ending on the August 31 of the second calendar year following the opening of the election period. The amounts to be deducted and the duration of the deduction shall be specified on the authorization form prescribed by the board, and the amounts and duration shall be irrevocable and binding once made. Prepayment of amounts covered by the authorization is not permitted. However,

nothing herein shall prevent a member from paying any amounts not covered by the authorization with after-tax dollars up to the statutory maximum. The investment of the additional contributions shall be made in the same manner and percentage as the investment of the member's mandatory contributions.

(e) If a member terminates and then returns to covered employment with a different employer, when the member has five (5) or more years of creditable service credited or recredited under Indiana statutes, the member shall be entitled to execute a new binding irrevocable payroll deduction authorization within a two (2) year election period beginning on the September 1 following the plan year in which the employee completes or is recredited with five (5) years of creditable service and ending on the August 31 of the second calendar year following the opening of the election period. If a member terminates and then returns to covered employment with the same employer, the member's binding irrevocable payroll deduction authorization (if any) shall be immediately effective upon rehire.

(f) No payroll deduction shall begin unless and until the active member executes the payroll deduction authorization on a form prescribed by the board, which must be received within the election period defined in subsection (d). The board will send such form to the treasurer or other disbursing officer of the employer. After receiving the binding, irrevocable payroll deduction authorization, the treasurer or other disbursing officer of each employer shall add such contributions to the contributions deducted from the member's regular compensation each pay day. The employer shall treat these deductions as picked up contributions.

(g) All such payroll deductions, including the amounts and the duration specified, shall be binding and irrevocable upon the member's execution of the prescribed form. A member may execute and submit the payroll deduction authorization with the election period defined in subsection (d), effective as of the next possible payroll date within the election period. Notwithstanding the above, such deductions will cease only after the authorization has expired by its terms or upon any of the following events:

(1) The member's death.

(2) The termination of the member's employment.

Distribution of the additional contributions shall be made in the same manner as distributions from the member's annuity savings account. In no event shall the member receive a return of the payroll deductions made hereunder except pursuant to the normal disbursement procedures of IC 5-10.2 et seq.

(h) Members with at least five (5) years of creditable service as of June 30, 2003, may elect to make additional contributions to their annuity savings accounts through a payroll deduction pursuant to this provision between September 1, 2003, and August 31, 2005. *(Board of Trustees of the Indiana State Teachers' Retirement Fund; 550 IAC 7-1-1; filed Apr 8, 2004, 3:18 p.m.: 27 IR 2495)*

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

LSA Document #03-155(F)

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 filed Dec 3, 2001, 11:02 a.m.: 25 IR 1731; filed Apr 8, 2004, 3:23 p.m.: 27 IR 2496)*

LSA Document #03-155(F)
Notice of Intent Published: 26 IR 3372
Proposed Rule Published: September 1, 2003; 26 IR 3944
Hearing Held: November 24, 2003
Approved by Attorney General: March 26, 2004
Approved by Governor: April 6, 2004
Filed with Secretary of State: April 8, 2004, 3:23 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #03-96(F)

DIGEST

Adds 905 IAC 1-35.1 to establish rules regulating the sale of alcoholic beverages at auto race tracks under IC 7.1-3-6-16 and IC 7.1-3-14-6 and to provide definitions and procedures to implement said statutes. *NOTE: Under IC 4-22-2-40, LSA Document #03-96, printed at 26 IR 3745, was recalled by the Alcohol and Tobacco Commission, resubmitted for publication, and reprinted at 27 IR 1290.* Effective 30 days after filing with the secretary of state.

905 IAC 1-35.1

SECTION 1. 905 IAC 1-35.1 IS ADDED TO READ AS FOLLOWS:

Rule 35.1. Auto Race Tracks

905 IAC 1-35.1-1 Definitions
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-1-25; IC 7.1-3-6-16; IC 7.1-3-14-6; IC 7.1-5-7-11

Sec. 1. The following definitions apply throughout this rule:
(1) "Auto race track" means an outdoor facility with the main purpose and function being organized sporting competition, but does not include the following:
(A) A facility to which IC 7.1-3-1-25(a) applies.
(B) A tract located in a county containing a consolidated city that contains a premises used in connection with the operation of a paved track more than two (2) miles in length that is used primarily in the sport of auto racing.
(2) "Organized sporting competition" means a sporting event sanctioned by a nationally chartered and recognized governing or regulating body for automobile, motorcycle, or truck racing, including, without limitation, any practices, qualifications, or similar race-related activities open to the public for such events.
(Alcohol and Tobacco Commission; 905 IAC 1-35.1-1; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2497)

905 IAC 1-35.1-2 Basic qualifications
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-6-16; IC 7.1-3-14-6

Sec. 2. In order to qualify as an auto race track, a premises shall meet the following requirements:
(1) Meet all of the requirements of the underlying one-way or two-way alcoholic beverage permit.
(2) Be totally enclosed by some type of finite boundary that prohibits free ingress and egress except for entrances and exits, which must be so designated that they are easily controlled by the permittee.
(3) Be regularly used (at least seasonally) for organized sporting competition.
(Alcohol and Tobacco Commission; 905 IAC 1-35.1-2; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2497)

905 IAC 1-35.1-3 Ownership of the permit
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-4-2

Sec. 3. The holder of the alcoholic beverage permit must

be either the owner or the lessee of the land and of the buildings on which the auto race track is located. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-3; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2497)*

905 IAC 1-35.1-4 Minimum food services required
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-6-16; IC 7.1-3-14-6

Sec. 4. The auto race track must maintain the minimum food requirements of 905 IAC 1-20, except for hot soup. Such food service must be available at all times when alcoholic beverages are being dispensed anywhere upon the licensed premises. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-4; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498)*

905 IAC 1-35.1-5 Floor plan approval
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3

Sec. 5. The floor plan and any changes therein of the auto race track must be approved by the commission. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-5; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498)*

905 IAC 1-35.1-6 Dispensing alcoholic beverages and food
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-6-16; IC 7.1-3-14-6

Sec. 6. (a) Alcoholic beverages, for on-premises consumption only, may be dispensed within the approved boundaries of the auto race track.

(b) The facility shall contain at least one (1) snack stand, which must be a permanent or semipermanent structure or portable food cart and meet the minimum food requirements of 905 IAC 1-20, except for hot soup. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-6; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498)*

905 IAC 1-35.1-7 Sales of alcoholic beverages
Authority: IC 7.1-2-3-7; IC 7.1-3-1-14; IC 7.1-5-8-6; IC 7.1-5-10-1
Affected: IC 7.1-3-4-6

Sec. 7. (a) Alcoholic beverages may be served at any time providing the hours are within the statutory limits of IC 7.1-3-1-14 and IC 7.1-5-10-1.

(b) There shall be no carryout sales allowed from any location at any time. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-7; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498)*

905 IAC 1-35.1-8 Adherence to sporting rules
Authority: IC 7.1-2-3-7
Affected: IC 7.1-2

Sec. 8. The auto race track shall comply with all applicable rules and regulations of the recognized sanctioning body of a given sporting event regarding the service of alcoholic beverages. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-8; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498)*

905 IAC 1-35.1-9 Filing of sanctioning organizations
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-6-16; IC 7.1-3-14-6

Sec. 9. In addition to all other required paperwork for new permits or the renewal of any existing permit, the applicant or permit holder seeking approval to be classified as an auto race track shall file with the commission a list of all sanctioning organizations that will or may be reasonably expected to sanction sporting competition at the auto race track. *(Alcohol and Tobacco Commission; 905 IAC 1-35.1-9; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2498)*

LSA Document #03-96(F)
Notice of Intent Published: 26 IR 2651
Proposed Rule Published: August 1, 2003; 26 IR 2745; and January 1, 2004; 27 IR 1290
Hearing Held: January 26, 2004
Approved by Attorney General: March 26, 2004
Approved by Governor: April 6, 2004
Filed with Secretary of State: April 8, 2004, 3:25 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-87(AC)

Under IC 4-22-2-38, corrects the following clerical error in LSA Document #04-87(E), printed at 27 IR 2514:

In SECTION 1(e), on page 2 of the original document (27 IR 2515), after "subsection", delete "(e)" and insert "(d)".

Filed with Secretary of State: April 6, 2004, 11:15 a.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.

NOTE: This change was incorporated into the printed version of LSA Document #04-87(E) and may be found at 27 IR 2514, as corrected.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-184(AC)

Under IC 4-22-2-38, corrects the following clerical error in LSA Document #03-184(F), printed at 27 IR 2475:

In 405 IAC 1-21-4, on page 2 of the original document (27 IR 2476), after "Medicaid", delete "planning and" and, after "policy", insert "and planning".

Filed with Secretary of State: April 8, 2004, 10:35 a.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.

NOTE: This change was incorporated into the printed version of LSA Document #03-184(F) and may be found at 27 IR 2475, as corrected.

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #02-337

Under IC 4-22-2-40, LSA Document #02-337, printed at 26 IR 1996, is recalled.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #01-161

Under IC 4-22-2-40, LSA Document #01-161, printed at 26 IR 1201, is recalled.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-92

Under IC 4-22-2-41, LSA Document #03-92, printed at 27 IR 220, is withdrawn.

TITLE 327 WATER POLLUTION CONTROL BOARD

#99-58(WPCB)

Under IC 4-22-2-41, #99-58(WPCB), printed at 23 IR 643 and 25 IR 207, is withdrawn.

TITLE 816 BOARD OF BARBER EXAMINERS

LSA Document #03-271

Under IC 4-22-2-41, LSA Document #03-271, printed at 27 IR 552, is withdrawn.

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

LSA Document #03-272

Under IC 4-22-2-41, LSA Document #03-272, printed at 27 IR 553, is withdrawn.

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #03-331

Under IC 4-22-2-41, LSA Document #03-331, printed at 27 IR 1199, is withdrawn.

TITLE 848 INDIANA STATE BOARD OF NURSING

LSA Document #04-72

Under IC 4-22-2-41, LSA Document #04-72, printed at 27 IR 2303, is withdrawn.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #03-94

Under IC 4-22-2-41, LSA Document #03-94, printed at 26 IR 3745, is withdrawn.

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #04-78(E)

DIGEST

Temporarily provides appeal procedures for the Department of Local Government Finance, Cole-Layer-Trumble, and the taxpayers of Lake County, Indiana, to follow during the informal appeal process that may be initiated subsequent to taxpayers receiving notice of their 2002 general reassessment. Authority: IC 4-22-2-37.1; IC 6-1.1-4-33(j). Effective March 11, 2004.

SECTION 1. **These rules are intended to achieve efficiency and fairness in the administrative proceedings conducted by Cole-Layer-Trumble on behalf of the Indiana department of local government finance. The procedural requirements established by this rule shall only apply to proceedings governed by IC 6-1.1-4-33, for which the department of local government finance is the ultimate authority.**

SECTION 2. **Throughout this document, the following words have the following meaning unless the context indicates otherwise:**

(1) "Administrative Correction" is a notice of assessment sent to an individual taxpayer informing them on an objective error discovered by the department through the informal hearing process that results in a new assessment determination being issued against the taxpayer's property.

(2) "Assessment date" means March 1, 2002.

(3) "Assessed value" equals 100% of true tax value assigned to a property.

(4) "Board" means the Indiana board of tax review as defined in IC 6-1.5.

(5) "Contractor" means the appraisal firm the department entered into a contract with under IC 6-1.1-4-33, or Cole-Layer-Trumble. The contractor will serve as an authorized representative of the department of local government finance.

(6) "County" means Lake County, Indiana.

(7) "Day" means calendar day including Saturday, Sunday, and any holiday. If a deadline falls on a Saturday, Sunday, or holiday, the next business day will be considered the due date.

(8) "Department" means the department of local government finance.

(9) "Disclosure statement" is the statement a taxpayer must provide the professional appraiser if a certified tax representative is given authority by the taxpayer to represent the taxpayer in an informal hearing. A copy of the disclosure statement may be located on the state prescribed power of attorney form or in 50 IAC 15-5-5(b).

(10) "Final assessment decision" means a department action as prescribed in IC 6-1.1-4-33(g).

(11) "Formal appeal" means the appeal a taxpayer may initiate under IC 6-1.1-4-34 to be conducted by the board. A formal appeal may be initiated within thirty (30) days of the department's issuance of a final assessment decision.

(12) "Informal hearing" means the process a taxpayer must request within forty-five (45) days from the date the notice is issued. To initiate this process, the taxpayer must telephone the contractor at the telephone number listed on the taxpayer's notice by the prescribed deadline and schedule a date and time to discuss the taxpayer's assessed value.

(13) "Notice" means notice of property tax assessment or Form 11 for Lake County. A taxpayer has forty-five (45) days from the date the notice is issued to initiate an informal hearing.

(14) "Professional appraiser" means the employee designated by the contractor to conduct an informal hearing.

(15) "Recommendation" means the contractor's report to the department following the informal hearing. All recommendations must be submitted to the department for review. The department may base its final assessment decision on the contractor's recommendation and the information submitted by the taxpayer or the taxpayer's authorized representative.

(16) "True tax value" is the market value in use of a property for its current use, as defined in the 2002 Indiana Real Estate Manual. True tax value may be thought of as the ask price of property by its owner. True tax value is established by using fair market data measuring property wealth, but it is not based strictly on fair market value.

(17) "Taxpayer" means any person or entity designated as a person under IC 6-1.1-1-10 and who owns or leases real property in Lake County, Indiana. This includes person liable for taxes under IC 6-1.1-2-4.

(18) "Tax representative" is a person as defined in 50 IAC 15-5-1(3). A tax representative may participate in informal hearings on behalf of a taxpayer if the tax representative is properly certified under 50 IAC 15-5-2.

SECTION 3. **All informal hearings will be conducted by a professional appraiser who shall:**

(1) conduct a fair and impartial review of the taxpayer's assessed value;

(2) adjudicate all issues necessary for resolution of the matter;

(3) maintain accurate and complete records; and

(4) avoid delay in providing the department a recommendation.

SECTION 4. **The contractor shall have the authority to do the following:**

(1) Issue department prescribed notices of assessment to taxpayers. The notice shall include:

(A) the assessed value for assessment year 2002;

(B) a date the notice is issued by the contractor;

(C) a telephone number for the taxpayer to call to initiate an informal hearing;

(D) a forty-five (45) day deadline date the taxpayer has to initiate an informal hearing;

(E) the address for the contractor's office and the site for informal hearings;

(F) an explanation of how the assessed value relates to true tax value; and

(G) any additional information the department deems pertinent.

(2) Schedule informal hearings initiated by the taxpayer in a timely manner.

(3) Designate and assign professional appraisers to conduct informal hearings.

(4) Determine the proper recommendation to provide the department in relation to each informal hearing.

(5) Issue department-prescribed final assessment decisions. The final assessment decision of the department shall include:

(A) the assessed value as of the assessment date;

(B) the reason for a change in assessed value, if one occurred, and whether the change was as a result of the informal hearing;

(C) the amount of either an increase or decrease in assessed value; and

(D) instructions for initiating a formal appeal with the board.

Notice of the decision shall be sent to the taxpayer, the county auditor, the county assessor, and the township assessor.

(6) Issue administrative corrections. An agency correction shall include:

(A) the assessed value the taxpayer received through the Form 11 process;

(B) the amended assessed value as a result of an objective error being discovered;

(C) what objective error was discovered;

(D) a phone number to call to initiate an informal appeal with the contractor.

(i) The taxpayer will have ten (10) days from the date the notice is mailed to either further discuss the assessment with the contractor; or

(ii) initiate a formal appeal with the board.

(7) Represent the department of local government finance in appeals initiated under IC 6-1.1-4-34.

SECTION 5. **The professional appraiser shall have the authority and responsibility to do the following:**

(1) Conduct an informal hearing in accordance with IC 6-1.1-4-33.

(2) Discuss the specifics of the taxpayer's reassessment.

(3) Explain to the taxpayer how the contractor determined the assessed value.

(4) Provide to the taxpayer information about the statutes, rules, and guidelines that govern the determination of the reassessment.

(5) Note and consider any objections of the taxpayer.

(6) Note and consider all errors alleged by the taxpayer.

(7) Explain the contractor's assessment to any taxpayer who initiates an informal hearing. The assessment must reflect the true tax value of the property, and the professional appraiser may use the following documents to explain the basis of the value:

(A) taxpayer's property record card;

(B) sales disclosure forms used in determining the assessed value and neighborhood factor;

(C) property record cards of other properties; and

(D) any additional documentation the professional appraiser deems relevant.

(8) Evaluate the evidence presented by the taxpayer or the taxpayer representative and determine whether it is relevant and probative under 50 IAC 2.3.

(9) Inform the department of any objective errors discovered through the submission of evidence during an informal hearing.

(10) Educate the taxpayer of their appeal rights and the assessment process.

SECTION 6. **The taxpayer may initiate an informal hearing with the contractor within forty-five (45) days from the date the notice is issued. The taxpayer shall initiate this procedure by calling the telephone number listed on the notice during the prescribed time periods. If the taxpayer contacts the department, the department shall refer the call to the contractor and instruct the contractor to schedule an informal hearing if the contact to the department was timely. The taxpayer must initiate an informal hearing and provide the contractor or department with the following information:**

(1) taxpayer name;

(2) proof of identity if requested;

(3) proof of ownership if requested;

(4) parcel or key number;

(5) the 2002 assessed valuation;

(6) address of affected property;

(7) a telephone number the contractor may use as a contact number;

(8) the address to which to send all notices and decisions;

(9) a statement of the particular issue the taxpayer wishes to dispute; and

(10) evidence or documentation supporting the taxpayer's contentions.

SECTION 7. **(a) If the taxpayer has retained the services of a tax representative, a properly executed power of attorney form and disclosure statement must be presented**

to the professional appraiser during the informal hearing.

(b) The taxpayer must present evidence to support a proper assessment. Documents that may be considered relevant evidence include, but are not limited to:

(1) documents reflecting sales of comparable properties;
(2) recent appraisals;
(3) repair estimates;
(4) documents reflecting market value of comparable properties;
(5) closing statements;
(6) photos relating to the condition of the improvement; and
(7) any other pertinent representations of true tax value.

(c) The taxpayer must be able to provide the professional appraiser a copy of all evidence they wish to submit, including photographs.

SECTION 8. **The contractor must provide the department a recommendation of assessed value subsequent to the taxpayer initiating an informal appeal. The contractor's recommendation must include whether or not a change in assessed value is warranted, identify and address any objection made by the taxpayer, address any errors alleged by the taxpayer, and note any procedural error that occurred during the process.**

SECTION 9. **In order for the taxpayer to appeal under IC 6-1.1-4-34, the taxpayer must participate in an informal hearing and receive a final decision of value from the department prior to filing a petition for review with the county assessor not less than thirty (30) days after the department issues their decision.**

SECTION 10. **If the department fails to provide the taxpayer a final assessment determination within two hundred seventy (270) days of sending the Form 11, the taxpayer may appeal their assessment to the Indiana board of tax review by filing a petition with the county assessor.**

SECTION 11. **Informal hearings will be held in a centralized office: 833 W. Lincoln Highway, Suite B20, Schererville, Indiana 46375. If the taxpayer has generalized questions or concerns, the taxpayer may call 219-864-8770.**

SECTION 12. **SECTIONS 1 through 11 of this document expire on the earliest of the following:**

(1) the expiration date of the document under IC 4-22-2-37.1; or
(2) December 31, 2005.

LSA Document #04-78(E)
Filed with Secretary of State: March 11, 2004, 10:27 a.m.

TITLE 52 INDIANA BOARD OF TAX REVIEW

LSA Document #04-108(E)

DIGEST

Temporarily adds provisions establishing procedures to govern proceedings before the Indiana board of tax review with respect to appeals for the 2002 assessment year in Lake County. Authority: HEA 1535, P.L.235-2003; IC 4-22-2-37.1; IC 6-1.1-4-34. Effective April 8, 2004.

SECTION 1. **The purpose of this document is to establish procedures to govern administrative proceedings before the board arising from appeals of assessments of real property in Lake County for the March 1, 2002, assessment date. The definitive procedures, procedural requirements, and evidentiary controls established by this document are deemed essential to assure that the administrative appeals before the board are conducted in the most uniform and objective manner possible.**

SECTION 2. **(a) The provisions of this document apply to and govern all proceedings before the board that arise from appeals of assessments:**

(1) of real property located in Lake County;
(2) completed for the March 1, 2002, assessment date; and
(3) performed by the department of local government finance or the department's authorized contractor pursuant to IC 6-1.1-4-32.

(b) The procedures set forth in 52 IAC 2 apply to petitions filed under IC 6-1.1-15 and do not reflect the unique process of IC 6-1.1-34 (governing appeals from the Lake county reassessment for 2002). However, many of the general rule provisions of 52 IAC 2 are applicable to matters heard under IC 6-1.1-34. Therefore, the definitions and rules found in 52 IAC 2 that are not inconsistent with this document apply to the appeals described in subsection (a). If there is a conflict, the definitions and rules of this document will control.

(c) The provisions of 52 IAC 2-6-6 do not apply to this document.

SECTION 3. **The board shall conduct an impartial review of an appeal from a final assessment decision under IC 6-1.1-4-33(g) issued by the department.**

SECTION 4. **The following definitions apply throughout this document:**

(1) "Appeal petition", as used in this document, means a petition for review of a final assessment decision issued by the department and filed with the board under IC 6-1.1-4-34 on form 139L or such other form as prescribed by the board.

(2) "Contractor" means a firm that entered into a contract with the department to assess property in the county and to conduct informal hearings concerning assessments of real property in the county under IC 6-1.1-4-32 and IC 6-1.1-4-33.
(3) "County" means Lake County, Indiana.
(4) "Department" means the department of local government finance established under IC 6-1.1-30-1.1.
(5) "Final assessment decision" means a final decision issued by the department that serves as notice of a changed reassessment that may be appealed under IC 6-1.1-4-34(c).
(6) "Final order" or "final determination", as used in this document, means any action of the board that is:
(A) designated as final by the board;
(B) the final step in the administrative process before resort may be made to the judiciary; or
(C) subject to appeal to tax court under IC 6-1.1-4-34(m).
(7) "Informal hearing" means the process described in IC 6-1.1-4-33(b).
(8) "Notice of reassessment" means a written notice of the assessed value of real property delivered to the taxpayer by the department pursuant to IC 6-1.1-4-32(f).
(9) "Special master" means a qualified individual designated by the board under IC 6-1.1-4-34(e) to conduct evidentiary hearings and prepare reports in accordance with IC 6-1.1-4-34(g).

SECTION 5. **(a) An appeal petition must be filed with the county assessor within thirty (30) days after the department gives notice of the final assessment decision.**

(b) There is a rebuttable presumption that the final assessment decision is mailed on the date of the final assessment decision.

SECTION 6. **In order to appeal to the board, the taxpayer must:**
(1) request and participate as required in the informal hearing process under IC 6-1.1-4-33 not later than forty-five (45) days after the date of the notice of reassessment;
(2) receive a final assessment decision from the department; and
(3) file an appeal petition with the county assessor not later than thirty (30) days after the notice of the final assessment decision is given to the taxpayer.

SECTION 7. **The hearing shall be scheduled no earlier than thirty (30) days after receipt of the appeal petition unless otherwise agreed by the parties.**

SECTION 8. **(a) Hearings will be conducted by a special master or by a member of the board acting as a special master.**

(b) All testimony shall be under oath or affirmation.

(c) Hearings will be tape-recorded. The recording 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.

(d) The special master may rule on any nonfinal order without the approval of a majority of the board.

(e) In order for a tax representative to participate in the hearing, the tax representative must be certified by the department and follow the rules of 52 IAC 1.

SECTION 9. **(a) Hearings held before a special master shall be held in the county or at such other location as the parties and the designated special master agree.**

(b) Hearings held by a member of the board acting as a special master may be held in the central office.

SECTION 10. **(a) Except as provided in subsection (d), a party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at the informal hearing described in IC 6-1.1-4-33.**

(b) No posthearing submissions will be allowed or accepted unless requested by the board.

(c) 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 hearing. At the commencement of the hearing, the parties shall make available to the presiding special master a copy of all documentary evidence provided to the other parties.

(d) Failure to comply with subsection (c) may serve as grounds to exclude the evidence.

SECTION 11. **A hearing may be continued only upon a showing of extraordinary circumstances.**

SECTION 12. **(a) The board shall conduct a hearing within the time limits set forth in IC 6-1.1-15-4(f) unless the board extends the time under subsection (c).**

(b) The board shall make a final determination within the time limits set forth in IC 6-1.1-15-4(h) unless the board extends the time under subsection (c).

(c) If, due to the volume of pending appeals, it becomes impracticable to either conduct a hearing or make a final

determination within the time frames established by IC 6-1.1-15-4, the board may extend the time frames as necessary.

LSA Document #04-108(E)
Filed with Secretary of State: April 8, 2004, 2:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-80(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 012. Effective March 18, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 012, Fields of Green".**

SECTION 2. **Pull-tab tickets for pull-tab game number 012 shall sell for twenty-five cents ($0.25) per ticket.**

SECTION 3. **Pull-tab game number 012 is a match 3 game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 012 shall contain nine (9) play symbols and play symbol captions arranged in a matrix of three (3) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 012 shall consist of the following possible play symbols:**

(1) A picture of a man
FARMER
(2) A picture of a tractor
TRACTOR
(3) A picture of a barn
BARN
(4) A picture of a truck
TRUCK
(5) A picture of an ear of corn
CORN
(6) A picture of a tire swing
TIRE SWING
(7) A picture of a bale of hay
HAY

SECTION 5. **A row on a pull-tab ticket in pull-tab game number 012 which contains three (3) identical play symbols is not a match 3 winning row unless all of the following are true:**

(1) The play symbols and play symbol captions in the row are consistent with those specified in SECTION 4 of this document.
(2) The three (3) play symbols and play symbol captions in the row are bisected by a pink arrow.
(3) The prize amount appears on the left side of the row in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this document, the holder of a valid pull-tab ticket for pull-tab game number 012 containing a match 3 winning row is entitled to a prize amount the approximate number** *[sic., numbers]* **of which are as follows:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
3 trucks	$0.25	309,258
3 barns	$1.00	85,698
3 tractors	$5.00	11,178
3 farmers	$50.00	3,726

SECTION 7. **A total of approximately two million five hundred thousand (2,500,000) pull-tab tickets will be initially available for pull-tab game number 012. The odds of winning a prize in pull-tab game 012 are approximately 1 in 6.11. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 8. **The last day to claim prizes in pull-tab game number 012 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab ticket retailer.**

LSA Document #04-80(E)
Filed with Secretary of State: March 17, 2004, 3:30 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-89(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 690. Effective April 2, 2004.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 690, Emerald 8s".**

SECTION 2. **Scratch-off tickets in scratch-off game number 690 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 690 shall contain twelve (12) play symbols and play symbol captions in the game play data area arranged in pairs of numbers and prize amounts all**

concealed under a large spot of latex material.

(b) The play symbols and play symbol captions in scratch-off game number 690, 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

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 690 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) $40.00
FORTY
(7) $50.00
FIFTY
(8) $100
ONE HUN
(9) $500
FIVE HUN
(10) $1,000
ONE THOU
(11) $2,000
TWO THOU

SECTION 4. **The holder of a ticket in scratch-off game number 690 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If one (1) or more play symbols and play symbol captions representing the number "8" is exposed, the holder is entitled to the paired prize amounts. A holder can win up to six (6) times on scratch-off game 690. The winning play symbols, prize amounts, and number of winners in scratch-off game number 690 are as follows:**

Winning Prize Symbols	Prize Amount	Approximate Number of Winners
1 – $1.00	$1	600,000
2 – $1.00	$2	200,000
1 – $2.00	$2	200,000
4 – $1.00	$4	120,000
1 – $5.00	$5	20,000
3 – $1.00 + 1 – $2.00	$5	20,000
1 – $10.00	$10	40,000
5 – $1.00 + 1 – $5.00	$10	20,000
4 – $5.00	$20	10,000
2 – $10.00	$20	5,000
1 – $20.00	$20	5,000
4 – $5.00 + 2 – $10.00	$40	2,000
4 – $10.00	$40	2,000
1 – $40.00	$40	2,000
5 – $10.00 + 1 – $50.00	$100	750
1 – $20.00 + 2 – $40.00	$100	750
1 – $100	$100	500
5 – $100 + 1 – $500	$1,000	50
1 – $1,000	$1,000	50
1 – $2,000	$2,000	25

SECTION 5. **(a) There shall be approximately six million (6,000,000) scratch-off tickets initially available in scratch-off game number 690.**

(b) The odds of winning a prize in scratch-off game number 690 are approximately 1 in 4.81.

(c) All reorders of tickets for scratch-off game number 690 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 scratch-off game number 690 is April 30, 2005.**

SECTION 7. **This document shall expire May 31, 2005.**

LSA Document #04-89(E)
Filed with Secretary of State: March 31, 2004, 11:15 a.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-90(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 691. Effective April 2, 2004.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 691, The Cash Zone".**

SECTION 2. **Scratch-off tickets in scratch-off game number 691 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 691 shall contain twenty-two (22) 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". Twenty (20) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" arranged in pairs representing numbers or pictures and prize amounts.**

(b) The play symbols and play symbol captions in scratch-off game number 691, 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
ELVN
(12) 12
TWLV
(13) 13
THRTN
(14) 14
FORTN
(15) 15
FIFTN
(16) 16
SIXTN
(17) 17
SVNTN
(18) 18
EGHTN
(19) 19
NINTN
(20) 20
TWTY
(21) A picture of a coin
WIN
(22) A picture of a money bag
WIN ALL

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 691 shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $40.00
FORTY
(9) $50.00
FIFTY
(10) $100
ONE HUN
(11) $400
FOR HUN
(12) $1,000
ONE THOU
(13) $10,000
TEN THOU

(14) $20,000
TWY THOU

SECTION 4. **The holder of a ticket in scratch-off game number 691 shall remove the latex material covering the twenty-two (22) 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 of a picture of a coin with the play symbol caption "WIN" is exposed in the "YOUR NUMBERS" area, the player is automatically entitled to the paired prize amount. If the play symbol of a picture of a bag of money with the play symbol caption "WIN ALL" is exposed in the "YOUR NUMBERS" area, the player is automatically entitled to all prize amounts exposed. The number of matches, paired prize amount play symbols, total prize amounts, and number of winners in scratch-off game number 691 are as follows:**

Number of Matches and Paired Prize Amount Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	384,000
1 – $4.00 with coin	$4	96,000
1 – $4.00	$4	76,800
1 – $2.00 + 1 – $3.00 with coin	$5	57,600
1 – $5.00	$5	38,400
10 – $1.00 with money bag	$10	38,400
2 – $5.00	$10	19,200
5 – $1.00 + 1 – $5.00 with coin	$10	19,200
1 – $10.00	$10	9,600
10 – $2.00 with money bag	$20	9,600
5 – $4.00	$20	9,600
1 – $10.00 + 1 – $10.00 with coin	$20	9,600
1 – $20	$20	9,600
10 – $4.00 with money bag	$40	3,200
4 – $5.00 + 1 – $20.00 with coin	$40	3,200
1 – $40	$40	3,200
10 – $10.00 with money bag	$100	1,440
9 – $10.00 + 1 – $10.00 with coin	$100	1,440
2 – $50.00	$100	1,440
1 – $100	$100	1,440
4 – $100	$400	288
1 – $400	$400	288
1 – $1,000	$1,000	128
10 – $1,000 with money bag	$10,000	5
1 – $10,000	$10,000	5
1 – $20,000	$20,000	4

SECTION 5. **(a) There shall be approximately three million eight hundred thousand (3,800,000) scratch-off tickets initially available in scratch-off game number 691.**

(b) The odds of winning a prize in scratch-off game number 691 are approximately 1 in 4.84.

(c) All reorders of tickets for scratch-off game number 691 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 scratch-off game number 691 is April 30, 2005.**

SECTION 7. **This document shall expire May 31, 2005.**

LSA Document #04-90(E)
Filed with Secretary of State: March 31, 2004, 11:15 a.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-91(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 014. Effective April 8, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 014, Double Cherry 7s".**

SECTION 2. **Pull-tab tickets for pull-tab game number 014 shall sell for one dollar ($1) per ticket.**

SECTION 3. **Pull-tab game number 014 is a criss-cross game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 014 shall contain fifteen (15) play symbols and play symbol captions arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 014 shall consist of the following possible play symbols:**
(1) A picture of a seven with a red cherry
RED CHERRY 7
(2) A picture of a seven with a cherry
CHERRY 7
(3) A picture of a seven with a diamond
DIAMOND 7
(4) A picture of a seven with a melon
MELON 7

(5) A picture of a seven with a plum
PLUM 7
(6) A picture of a seven with a star
STAR 7
(7) A picture of a seven with a bell
BELL 7
(8) A picture of an *[sic.]* seven with an orange
ORANGE 7
(9) A picture of a seven with a lemon
LEMON 7
(10) A picture of a green seven
GREEN 7
(11) A picture of a seven with a bar
BAR 7

SECTION 5. **A row, column, or diagonal on a pull-tab ticket in pull-tab game number 014 which contains two (2) identical play symbols of "red cherry 7s" with a cherry 7, diamond 7, melon 7, or plum 7 or two (2) identical play symbols of "star 7s" with a bell 7, orange 7, or red cherry 7 is not a criss-cross winning combination unless all of the following are true:**

(1) The play symbols and play symbol captions in the line are consistent with those specified in section 4 of this rule *[SECTION 4 of this document]***.**

(2) The three (3) play symbols and play symbol captions in the line are bisected by a blue arrow.

(3) The prize amount appears on the left side of the line in red ink on a yellow box.

SECTION 6. **Subject to section 5 of this rule** *[SECTION 5 of this document]***, the holder of a valid pull-tab ticket for pull-tab game number 014 containing a match 3 winning row is entitled to a prize the amount and the approximate number of which are as follows:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
2 star 7 + 1 red cherry 7	$1	221,859
2 star 7 + 1 orange 7	$2	35,856
2 star 7 + 1 bell 7	$5	13,446
2 red cherry 7 + 1 plum 7	$10	4,482
2 red cherry 7 + 1 melon 7	$15	4,482
2 red cherry 7 + 1 diamond 7	$25	2,241
2 red cherry 7 + 1 cherry 7	$200	2,241

SECTION 7. **A total of approximately one million five hundred thousand (1,500,000) pull-tab tickets will be initially available for pull-tab game number 014. The odds of winning a prize in pull-tab game 014 are approximately 1 in 5.29. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 8. **The last day to claim prizes in pull-tab game number 014 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull tab retailer.**

LSA Document #04-91(E)
Filed with Secretary of State: March 31, 2004, 11:15 a.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-92(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 013. Effective April 8, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 013, Vegas Vacation".**

SECTION 2. **Pull-tab tickets for pull-tab game number 013 shall sell for fifty cents ($.50) per ticket.**

SECTION 3. **Pull-tab game number 013 is a match 3 game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 013 shall contain fifteen (15) play symbols and play symbol captions arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 013 shall consist of the following possible play symbols:**

(1) A picture of a gold 7
SEVEN
(2) A picture of a diamond
DIAMOND
(3) A picture of two (2) dice
DICE
(4) A picture of a spade
SPADE
(5) A picture of a poker chip
POKER CHIP
(6) ENTRY VEGAS BONUS
VACATION ENTRY
(7) A picture of three (3) bars
BAR-BAR-BAR
(8) A picture of cherries
CHERRIES
(9) A picture of an orange
ORANGE

SECTION 5. **A row on a pull-tab ticket in pull-tab game**

number 013 which contains the play symbol "Vegas Vacation, Bonus Entry" and three (3) identical play symbols of a seven (7), or two (2) identical play symbols of a seven (7), one (1) play symbol of either a diamond, dice, spade, or poker chip is not a match 3 winning row unless all of the following are true:

(1) The play symbols and play symbol captions in the row are consistent with those specified in SECTION 4 of this document.

(2) The three (3) play symbols and play symbol captions in the row are bisected by a pink arrow.

(3) The prize amount appears on the left side of the row in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this document, the holder of a valid pull-tab ticket for pull-tab game number 013 containing a match 3 winning row is entitled to a prize the amount and the approximate number of which are as follows:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
2 sevens + 1 poker chip	$0.50	268,110
2 sevens + 1 spade	$1	53,622
2 sevens + 1 dice	$5	8,937
2 sevens + 1 diamond	$20	5,958
3 sevens	$100	2,979
Vegas Vacation Bonus Entry		148,950
Vegas Vacation	$3,079	4

SECTION 7. **If a valid pull-tab ticket for pull-tab game number 013 contains a "Vegas Vacation Bonus Entry", the holder shall mail a completed "Vegas Vacation" entry form provided by a lottery retailer, the lottery Web site, or any other paper containing the player's name, address, phone number, and signature and a fifty cent ($0.50) "Vegas Vacation" pull-tab ticket to: Hoosier Lottery, Vegas Vacation Promotion, P.O. Box 6092, Indianapolis, IN 46206. Complete details of the official rules and regulations are posted on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab retailer.**

SECTION 8. **A total of approximately two million (2,000,000) pull-tab tickets will be initially available for pull-tab game number 013. The odds of winning a prize in pull-tab game 013 are approximately 1 in 4.10. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 9. **The last day to claim prizes in pull-tab game number 013 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer.**

LSA Document #04-92(E)
Filed with Secretary of State: March 31, 2004, 11:15 a.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-93(E)

DIGEST

Adds 65 IAC 4-343 concerning scratch-off game number 715. Effective April 4, 2004.

65 IAC 4-343

SECTION 1. 65 IAC 4-343 IS ADDED TO READ AS FOLLOWS:

Rule 343. Scratch-Off Game 715

65 IAC 4-343-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this scratch-off game is "Scratch-Off Game Number 715, Spin to Win Doubler". *(State Lottery Commission; 65 IAC 4-343-1; emergency rule filed Mar 31, 2004, 11:15 a.m.: 27 IR 2511)*

65 IAC 4-343-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Scratch-off tickets in scratch-off game number 715 shall sell for two dollars ($2) per ticket. *(State Lottery Commission; 65 IAC 4-343-2; emergency rule filed Mar 31, 2004, 11:15 a.m.: 27 IR 2511)*

65 IAC 4-343-3 Play symbols
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. (a) Each scratch-off ticket in scratch-off game number 715 shall contain fifteen (15) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. There shall be fourteen (14) play symbols representing numbers paired with prizes amounts with each "YOUR NUMBER" area containing one (1) pair. There shall be one (1) play symbol and play symbol caption representing numbers in the game play data area labeled "HOUSE SPIN".

(b) The play symbols and play symbol captions, other that 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) 16
SXT
(17) 17
SVT
(18) 18
ETN
(19) 19
NTN
(20) 20
TWY

(State Lottery Commission; 65 IAC 4-343-3; emergency rule filed Mar 31, 2004, 11:15 a.m.: 27 IR 2511)

65 IAC 4-343-4 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. The holder of a scratch-off ticket in scratch-off game number 715 shall remove the latex material covering the fifteen (15) play symbols and play symbol captions. If any of the "YOUR NUMBER" play symbols and play symbol captions exposed match the play symbols and play symbol captions exposed in the "HOUSE SPIN" play area, the holder is entitled to the corresponding prize amount. If the matching numbers are "RED", the holder is automatically entitled to double the matched prize amount. *(State Lottery Commission; 65 IAC 4-343-4; emergency rule filed Mar 31, 2004, 11:15 a.m.: 27 IR 2512)*

65 IAC 4-343-5 "Pack" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. For purposes of scratch-off game number 715, "pack" means a set of scratch-off tickets each bearing a common pack number, fan-folded in strips of one (1) ticket. *(State Lottery Commission; 65 IAC 4-343-5; emergency rule filed Mar 31, 2004, 11:15 a.m.: 27 IR 2512)*

65 IAC 4-343-6 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. The number of matches, prize amounts, and number of winners in scratch-off game number 715 are as follows:

Number of Matches and Paired Prize Amount Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	163,800
1 – $4.00	$4	141,750
1 – $2.00 (red)	$4	166,950
1 – $8.00	$8	25,200
1 – $4.00 (red)	$8	25,200
4 – $2.00	$8	25,200
1 – $10.00	$10	12,600
1 – $5.00 (red)	$10	12,600
5 – $2.00	$10	12,600
1 – $14.00	$14	9,450
7 – $2.00	$14	9,450
1 – $20.00	$20	3,150
1 – $10.00 (red)	$20	3,150
5 – $2.00 + 2 – $5.00	$20	3,150
1 – $50.00	$50	315
1 – $25.00 (red)	$50	315
1 – $25.00 + 3 – $5.00 +1 – $10.00	$50	315
1 – $100	$100	210
1 – $50.00 (red)	$100	210
5 – $20.00	$100	210
1 – $500	$500	18
1 – $1,000	$1,000	15
1 – $500 (red)	$1,000	15
1 – $10,000	$10,000	10

(State Lottery Commission; 65 IAC 4-343-6; emergency rule

filed Mar 31, 2004, 11:15 a.m.: 27 IR 2512)

65 IAC 4-343-7 Number of tickets; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. (a) There shall be approximately two million five hundred thousand (2,500,000) scratch-off tickets initially available in scratch-off game number 715.

(b) The odds of winning a prize in scratch-off game number 715 are approximately 1 in 4.09.

(c) All reorders of tickets for scratch-off game number 715 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. *(State Lottery Commission; 65 IAC 4-343-7; emergency rule filed Mar 31, 2004, 11:15 a.m.: 27 IR 2513)*

65 IAC 4-343-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. Players will have up to sixty (60) days from the end of scratch-off game 715 within which to claim their prizes. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any scratch-off ticket retailer. *(State Lottery Commission; 65 IAC 4-343-8; emergency rule filed Mar 31, 2004, 11:15 a.m.: 27 IR 2513)*

LSA Document #04-93(E)
Filed with Secretary of State: March 31, 2004, 11:15 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-79(E)

DIGEST

Temporarily modifies 312 IAC 9-4-11, governing hunting and possessing wild turkeys, to prohibit the taking of wild turkeys in designated counties. Effective April 1, 2004.

SECTION 1. **(a) Notwithstanding 312 IAC 9-4-11, this SECTION governs the season for taking and possessing a wild turkey.**

(b) This SECTION is supplemental to 312 IAC 9-4-11(a) and governs the activities of an individual who is issued a license to take a wild turkey under IC 14-22-12-1(20) or IC 14-22-12-1(21).

(c) This SECTION is supplemental to 312 IAC 9-4-11(f). No person shall take a wild turkey under this SECTION, from April 21, 2004, through May 9, 2004, in the following counties:
(1) Adams, south of State Road 124.
(2) Blackford.
(3) Delaware.
(4) Grant, east of Interstate 69.
(5) Hancock, east of State Road 9.
(6) Henry.
(7) Huntington, south of State Road 124 and east of Interstate 69.
(8) Jasper, south of State Highway 114 and west of Interstate 65.
(9) Jay.
(10) Newton, south of State Highway 114.
(11) Randolph, north of State Road 32.
(12) Wells, south of State Road 124.
(13) Whitley, south of U.S. 30.

SECTION 2. **SECTION 1 of this document expires May 15, 2004.**

LSA Document #04-79(E)
Filed with Secretary of State: March 15, 2004, 2:00 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-82(E)

DIGEST

Temporarily amends 312 IAC 5-6-5, governing special watercraft restrictions on Lake James, to establish new restricted watercraft zones for the channel between Lake James and Snow Lake and for Follett Creek between Big Otter Lake and Snow Lake, waterways in the Lake James Chain of Lakes. Effective March 25, 2004.

SECTION 1. **A person must not operate a watercraft in excess of idle speed at either of the following locations:**
(1) In the area separating Lake James from Snow Lake and more particularly described as follows:
(A) Northerly of buoys placed along a line formed by these points:
(i) 2358640.00 north and 498640.00 east; and
(ii) SPC 2358014.99 north and 500882.81 east.
(B) Southerly of buoys placed along a line formed by these points:
(i) SPC 2357538.77 north and SPC 499176.13 east; and

(ii) SPC 2357538.77 north and SPC 500632.12 east.
(2) Along Follett Creek between Big Otter Lake and Snow Lake and more particularly described as follows:
(A) Westerly of buoys placed along a line formed by these points:
(i) SPC 2360938.47 north and 503160.06 east; and
(ii) SPC 2360451.35 north and 503265.57 east.
(B) Easterly of buoys placed along a line formed by these points:
(i) SPC 2359972.56 north and 505744.48 east; and
(ii) SPC 2359897.33 north and 505840.23 east.

SECTION 2. **The restrictions established in SECTION 1** *[of this document]* **are supplemental to special restrictions, applicable to the operation of watercraft on Lake James, that are established by 312 IAC 5-6-5.**

SECTION 3. **The coordinates used in SECTION 1** *[of this document]* **apply the Indiana coordinate system of 1983, east zone, in United States Survey feet as defined in IC 32-19-11 and referenced as "SPC".**

LSA Document #04-82(E)
Filed with Secretary of State: March 25, 2004, 3:00 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-83(E)

DIGEST

Temporarily modifies 312 IAC 5-7-14, governing the operation of watercraft on the Tippecanoe River in White County and Carroll County, including Lake Shafer and Lake Freeman, to establish a ten-mile-per-hour speed limit on the portion of Lake Shafer and the Tippecanoe River where dredging operations are scheduled to take place within the next twelve months. Repeals LSA Document #03-176(E), which identifies another area of Lake Shafer and the Tippecanoe River where dredging operations occurred in 2003. Effective April 1, 2004.

SECTION 1. **A person must not operate a watercraft in excess of ten (10) miles an hour on Lake Shafer or the Tippecanoe River, Liberty Township, White County, from Lowe's Bridge at County Road 550 North, northeasterly a distance of approximately four thousand five hundred (4,500) feet to the confluence of Williams Creek. This area is at the following locations within Township 28 North, Range 3 West:**
(1) The north half (½) of Section 32.
(2) The northwest quarter (¼) of Section 33.
(3) The southwest quarter (¼) of Section 28.

SECTION 2. **The restrictions set forth in SECTION 1 of this document are in addition to those set forth at 312 IAC 5-7-14.**

SECTION 3. **SECTIONS 1 and 2 of this document expire March 31, 2005.**

SECTION 4. LSA Document #03-176(E) IS REPEALED.

LSA Document #04-83(E)
Filed with Secretary of State: March 25, 2004, 3:00 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-86(E)

DIGEST

Temporarily modifies 312 IAC 5-8-4, which establishes special watercraft restrictions on the LaPorte County waters of Lake Michigan and Trail Creek, to establish a no-boat zone in an unnamed channel along Trail Creek in Michigan City that holds the Blue Chip Casino to help assure public safety while a new casino vessel is constructed on site. Effective March 29, 2004.

SECTION 1. **A person must not operate a watercraft in an unnamed channel that enters the east bank of Trail Creek approximately five hundred (500) feet upstream from the U.S. 12 bridge over Trail Creek in Michigan City.**

SECTION 2. **SECTION 1** *[of this document]* **supercedes 312 IAC 5-8-4(b).**

LSA Document #04-86(E)
Filed with Secretary of State: March 29, 2004, 3:25 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-87(E)

DIGEST

Temporarily modifies the rules governing entomology and plant pathology by establishing a quarantine against Phytophthora ramorum (commonly known as "sudden oak death disease"). Effective March 30, 2004.

SECTION 1. **(a) Phytophthora ramorum (commonly known as "sudden oak death disease") is a pest or pathogen not known to occur in Indiana. This document establishes standards to assist with preventing introductions of Phytophthora ramorum into Indiana.**

(b) As used in this document, the following definitions apply:

(1) "CDFA" means the California department of food and agriculture.

(2) "Department" means the Indiana department of natural resources.

(3) "Pest or pathogen" has the meaning set forth in IC 14-8-2-203.

(4) "Plant" includes its bulbs, roots, grafts, scions, buds, logs, bark, mulch, firewood, lumber, sawdust, unprocessed wood or wood products, associated soils, or another related material capable of carrying Phytophthora ramorum.

(5) "PPQ" means the United States Department of Agriculture, Animal Plant Health Inspection Service, Plant Protection Quarantine.

(6) "State entomologist" means the director of the department's division of entomology and plant pathology.

(c) The following areas are infested with Phytophthora ramorum and are regulated under this document:

(1) California.

(2) Any other state or any province determined by the state entomologist to present a threat of introduction of Phytophthora ramorum into Indiana.

(d) Any plant of the following genera that originates from California (or another state or a province determined by the state entomologist) is a regulated article under this document:

(1) Abies (fir).
(2) Acer (maple).
(3) Aesculus (buckeye, horsechestnut).
(4) Arbutus (madrone or strawberry tree).
(5) Arctostaphylos (kinnikinnick or manzanita).
(6) Camellia (camellias, sasanquas).
(7) Castanea (chestnut).
(8) Corylus (hazelnut, filbert).
(9) Fagus (beech).
(10) Hamamelis (witch hazel).
(11) Heteromeles (Christmas berry, toyon, California holly).
(12) Kalmia (mountain laurel).
(13) Leucothoe sp.
(14) Lithocarpus (tanbark oak).
(15) Lonicera (honeysuckle).
(16) Pieris (pieris, andromeda).
(17) Pittosporum (pittosporums, Victorian box).
(18) Pseudotsuga (Douglas-fir).
(19) Quercus (oak).
(20) Rhamnus (buckthorn).
(21) Rhododendron (rhododendron and azalea).
(22) Rhus (sumac).
(23) Rosa (rose).
(24) Rubus (for example, salmonberry, raspberry, or blackberry).
(25) Syringa (lilac).
(26) Taxus (yew).
(27) Trientalis (western starflower).
(28) Umbellulara (California bay or Oregon myrtle).
(29) Vaccinium (for example, blueberry or huckleberry).
(30) Viburnum (arrowwood or nannyberry).
(31) Another plant species identified by the state entomologist as a possible vector of Phytophthora ramorum.

(e) A person must not bring into Indiana a regulated article, described in subsection (d), without a certificate or its equivalent from PPQ or a phytosanitary certificate from the CDFA. The certificate must state the article has been produced and shipped from an area known to be free of Phytophthora ramorum and must be based on certification surveys conducted by agents of CDFA or PPQ that use approved published PPQ protocols regulating the pathogen.

(f) A nursery or dealer within Indiana that has received a shipment of regulated articles identified in subsection (d), or a person who controls a regulated article listed in subsection (d) received before the effective date of this document, must not sell, move, barter, trade, transport, give, or tender a regulated article until the article is released or destroyed by the state entomologist.

(g) A person must notify the state entomologist or a representative regarding receipt or possession of any regulated article. The notification shall include the name, contact information (telephone, cell phone, street address, city, zip code of the persons controlling regulated article and the specific location (including directions) of the regulated article and number and kinds of regulated article). Any regulated article and any intermingled plant materials shall be removed from sale and held until inspected and cleared by an authorized inspector.

(h) This document does not prevent the state entomologist from issuing a permit to a qualified scientist to study Phytophthora ramorum or a regulated article infested by the pest or pathogen.

(i) When conducting an official duty, exempted from this document is any cooperator identified by the state entomologist, employee of the department, or employee of the PPQ.

(j) The state entomologist shall hold any regulated article that is received or moved in violation of this document until the state entomologist determines to destroy or to return the regulated article to the originator.

(k) A violation of this document is a violation of IC 14-24 and 312 IAC 18.

SECTION 2. **SECTION 1 of this document expires ninety (90) days after its effective date unless rescinded,**

extended, or modified by the department's director.

LSA Document #04-87(E)
Filed with Secretary of State: March 30, 2004, 11:00 a.m.

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-81(E)

DIGEST

Temporarily adds provisions to clarify what provisions apply to persons subject to the permit by rule program established under 326 IAC 2-10. Authority: IC 4-22-2-37.1(a)(14). *NOTE: The original emergency document, LSA Document #04-9(E), printed at 27 IR 1608, effective January 8, 2004, expires April 7, 2004.* Effective April 8, 2004. Expires July 7, 2004.

SECTION 1. **The definitions provided in IC 13-11-2, 326 IAC 1-2, and 326 IAC 2-7 shall apply to this document.**

SECTION 2. **The conditions of this document that limit potential to emit are as follows:**

(1) The source limits actual emissions for every twelve (12) month period to less than twenty percent (20%) of any threshold for the following:

(A) A major source of regulated air pollutants.

(B) A major source of hazardous air pollutants, as defined in Section 112 of the Clean Air Act.

(2) The source does not rely on air pollution control equipment to comply with subdivision (1).

SECTION 3. **Not later than thirty (30) days after receipt of a written request by the department or U.S. EPA, the owner or operator shall demonstrate that the source is in compliance with the conditions provided in SECTION 2 of this document. The demonstration of compliance shall be based on actual emissions for the previous twelve (12) months and may include, but is not limited to, fuel or material usage, or production records. No other demonstration of compliance shall be required.**

SECTION 4. **(a) This document does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided in 326 IAC 2-10-1.**

(b) A source subject to this document shall be subject to applicable requirements for a major source, including 326 IAC 2-7, if:

(1) at any time the source is not in compliance with the conditions provided in SECTION 2 of this document; or

(2) the source does not timely or adequately demonstrate compliance with the conditions in SECTION 2 of this document as required under SECTION 3 of this document.

SECTION 5. **Any violation of this document may result in administrative or judicial enforcement proceedings under IC 13-30-3 and penalties under IC 13-30-4, IC 13-30-5, and IC 13-30-6.**

SECTION 6. **SECTIONS 1 through 5 of this document expire on July 7, 2004.**

LSA Document #04-81(E)
Filed with Secretary of State: March 22, 2004, 4:00 p.m.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-85(E)

DIGEST

Temporarily amends 405 IAC 2-3-1.1 regarding the Medicaid penalty for transfers of assets for less than fair market value. Authority: IC 4-22-2-37.1(a)(20); IC 12-8-1-12(c). Effective March 28, 2004.

SECTION 1. (405 IAC 2-3-1.1) (a) The following definitions apply throughout this SECTION:

(1) "Assets" includes all income and resources of the applicant or recipient, and of the applicant's or recipient's spouse, including any income or resources ~~which~~ **that** the applicant or recipient or the applicant's or recipient's spouse is entitled to receive but does not receive because of action **by:**

(A) ~~by~~ the applicant or recipient or the applicant's or recipient's spouse;

(B) ~~by~~ a person, including, but not limited to, a court or administrative body with legal authority to act in place of or on behalf of the applicant or recipient or the applicant's or recipient's spouse; or

(C) ~~by~~ a person, including, but not limited to, a court or administrative body acting at the direction or upon the request of the applicant or recipient or the applicant's or recipient's spouse.

The term includes assets that an individual is entitled to receive but does not receive because of failure to take action subject to subsection ~~(i).~~ **(j).**

(2) "Individual" means an applicant or recipient of Medicaid.

(3) "Institutionalized individual" means an applicant or recipient who is:

(A) an inpatient in a nursing facility;

(B) an inpatient in a medical institution for whom payment is made based on a level of care provided in a nursing facility; or

(C) ~~who is~~ receiving home and community-based waiver services.

(4) "Net income" means the income produced by real property after deducting allowable expenses of ownership. Allowable and nonallowable expenses are as follows:

(A) The following are allowable expenses of ownership if the owner is responsible for the expenses:

(i) Property taxes.

(ii) Interest payments.

(iii) Repairs and maintenance.

(iv) Advertising expenses.

(v) Lawn care.

(vi) Property insurance.

(vii) Trash removal expenses.

(viii) Snow removal expenses.

(ix) Utilities.

(x) Any other expenses of ownership allowed by the Supplemental Security Income program.

(B) The following are not allowable expenses of ownership:

(i) Depreciation.

(ii) Payments on mortgage principal.

(iii) Personal expenses of the owner.

(iv) Mortgage insurance.

(v) Capital expenditures.

(5) "Noninstitutionalized individual" means an applicant or recipient receiving any of the services described in subsection (e).

(6) "Qualified long term care insurance policy" has the meaning **set forth** in 760 IAC 2-20-30.

(7) "Uncompensated value" means the difference between the fair market value of the asset and the value of the consideration received by the applicant or recipient in return for transferring the asset.

(b) A transfer of assets includes any cash, liquid asset, or property that is transferred, sold, given away, or otherwise disposed of as follows:

(1) Transfer includes any total or partial divestiture of control or access, including, but not limited to, any of the following:

(A) Converting an asset from individual to joint ownership.

(B) Relinquishing or limiting the applicant's or recipient's right to liquidate or sell the asset.

(C) Disposing of a portion or a partial interest in the asset while retaining an interest.

(D) Transferring the right to receive income or a stream of income, including, but not limited to, income produced by real property.

(E) Renting or leasing real property.

(F) Waiving the right to receive a distribution from a decedent's estate, or failing to take action to receive a distribution that the individual is entitled to receive by law subject to subsection ~~(i).~~ **(j).**

(2) If an applicant or recipient relinquishes ownership or control over a portion of an asset, but retains ownership, control, or an interest in the remaining portion, the portion relinquished is considered transferred.

(3) A transfer of the applicant's or recipient's assets completed by the applicant's or recipient's power of attorney or legal guardian is considered a transfer by the applicant or recipient.

(4) For purposes of this SECTION, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, shall be considered transferred by the applicant or recipient when any action is taken, either by the applicant or recipient or by any other person, that reduces or eliminates the applicant's or recipient's ownership or control of the asset.

(5) This SECTION applies without regard to the exclusion of the home described in 42 U.S.C. 1382b(a)(1).

(6) This SECTION applies without regard to the exclusion of income-producing real property described in section 15 of this rule *[405 IAC 2-3-15]***, except for property used in a trade or business. The transfer of income-producing real property other than property used in a trade or business is subject to penalty under subsections (h) and (l). "Trade or business" means a trade or business that is actively managed or operated by the applicant or recipient.**

(c) If an applicant or recipient of Medicaid, or the spouse of an applicant or recipient, disposes of assets for less than fair market value on or after the look-back date specified in this subsection, the applicant or recipient is ineligible for medical assistance for services described in subsections (d) through (e), for a period beginning on the first day of the first month ~~during or~~ after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this SECTION. **If the transfer took place prior to July 1, 2003, the penalty period begins in the month of the transfer.** The ineligibility period is equal to the number of months specified in subsection ~~(f).~~ **(g).** The look-back date is determined as follows:

(1) In the case of transfers that do not involve a trust, the look-back date is determined as follows:

(A) For an institutionalized individual, the look-back date is thirty-six (36) months before the first date as of which the individual both:

(i) is an institutionalized individual; and

(ii) has applied for medical assistance.

(B) For a noninstitutionalized individual, the look-back date is thirty-six (36) months before the later of **the date on which the individual:**

(i) ~~the date on which the individual~~ applies for medical assistance; or

(ii) ~~the date on which the individual~~ disposes of assets for less than fair market value.

(2) In the case of transfers ~~which~~ **that** involve payments from a trust or portions of a trust that are treated as assets disposed of by an applicant or recipient under section 22(b)(3) or 22(c)(2) of this rule *[405 IAC 2-3-22(b)(3) or 405 IAC 2-3-22(c)(2)]*, the look-back date is determined as follows:

(A) For an institutionalized individual, the look-back date is sixty (60) months before the first date as of which the individual both:

(i) is an institutionalized individual; and

(ii) has applied for medical assistance.

(B) For a noninstitutionalized individual, the look-back date is sixty (60) months before the later of **the date on which the individual:**

(i) ~~the date on which the individual~~ applies for medical assistance; or

(ii) ~~the date on which the individual~~ disposes of assets for less than fair market value.

(d) During the penalty period, an institutionalized individual is ineligible for medical assistance for the following services:

(1) Nursing facility services.

(2) A level of care in any institution equivalent to that of nursing facility services.

(3) Home or community-based waiver services.

(e) During the penalty period, a noninstitutionalized individual is ineligible for the following services:

(1) Home health care services.

(2) Home and community care services for functionally disabled elderly individuals.

(3) Personal care services as defined in 42 U.S.C. 1396a(a)(24).

(4) Any other long term care services, including, but not limited to, the services listed in subsection (d).

(f) If an individual is ineligible for medical assistance for services under this SECTION, expenses for those services are not allowable medical expenses in calculating an individual's nursing home liability for any month of Medicaid eligibility.

~~(f)~~ **(g)** The number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual, or the individual's spouse, on or after the look-back date specified in subsection (c), divided by the average monthly cost to a private patient of nursing facility services in the geographic area ~~which~~ **that** includes the county where the individual resides at the time of application. As used in this subsection, "geographic area" means the region identified in Section 2640.10.35.20 of the Family and Social Services Administration Program Policy Manual for Cash Assistance, Food Stamps, and Health Coverage. **For transfers taking place on or after July 1, 2003, in determining the total, cumulative uncompensated value of assets transferred, transfers made in consecutive months are added together. The penalty period begins with the month following the first month in which assets were transferred and that does not occur in any other penalty period.**

~~(g)~~ **(h)** This subsection applies to the transfer of a stream of income, including, but not limited to, the transfer of the income generated by income-producing real property. ~~The transfer of income-producing real property is a transfer of a stream of income if the transferor does not retain the right to receive the income generated by the property.~~ The uncompensated value of income transferred is determined by calculating the greater of:

(1) the fair market value; or

(2) the actual amount;

of total net income that the property or other source of income is ~~expected to produce~~ **capable of producing** during the lifetime of the transferor, based on life expectancy tables published by the office, and subtracting the income, if any, that the transferor will receive from the property or other source of income after the transfer.

~~(h)~~ **(i)** When an individual accepts a rental payment that is less than the fair market rental value for income-producing property, the uncompensated value of the transfer is determined by:

(1) calculating the difference between the fair market rental value and the amount of rent accepted; and

(2) multiplying the difference by the person's life expectancy based on life expectancy tables published by the office.

~~(i)~~ **(j)** This subsection applies to a transfer of assets that results from failure to take action to receive assets to which one is entitled to receive by law. No penalty will be imposed if any of the following circumstances applies:

(1) The applicant or recipient, or the individual with legal authority to act on behalf of the applicant or recipient, is unaware of his or her right to receive assets or becomes aware of the right to receive assets after the deadline for taking action has passed. If the office notifies the applicant or recipient of his or her right to receive assets prior to the deadline for taking action, the individual will be presumed to be aware of his or her right to receive assets unless subdivision (2) applies.

(2) A physician states that the applicant or recipient is not capable of taking action to receive the assets, and there is no guardian or other individual with the authority to act on the applicant's or recipient's behalf.

(3) The expenses of collecting the assets would exceed the value of the assets.

(4) In the case of a surviving spouse who fails to take a statutory share of a deceased spouse's estate, no penalty will be imposed if the deceased spouse has made other equivalent arrangements to provide for a spouse's needs. "Other equivalent arrangements" includes, but is not limited to, a trust established for the benefit of the surviving spouse.

~~(j)~~ **(k)** An applicant or recipient shall not be ineligible for medical assistance under this SECTION if any of the following apply:

(1) The assets transferred were a home, and title to the home was transferred to any of the following persons:

(A) The spouse of the applicant or recipient.
(B) A child of the applicant or recipient who **is:**
(i) ~~is~~ under twenty-one (21) years of age; or
(ii) ~~is~~ blind or disabled as defined in 42 U.S.C. 1382c.
(C) A sibling of the applicant or recipient who has an equity interest in the home and who was residing in the applicant's or recipient's home for a period of at least one (1) year immediately before the date the applicant or recipient becomes an institutionalized individual.
(D) A son or daughter of the applicant or recipient, other than a child described in clause (B), who was residing in the applicant's or recipient's home for a period of at least two (2) years immediately before the date the applicant or recipient becomes an institutionalized individual and who the office determines has provided care to the applicant or recipient ~~which~~ **that** permitted the applicant or recipient to reside at home rather than in an institution or facility.
(2) The assets were transferred to the applicant's or recipient's spouse or to another for the sole benefit of the applicant's or recipient's spouse.
(3) The assets were transferred from the applicant's or recipient's spouse to another for the sole benefit of the applicant's or recipient's spouse.
(4) The assets were transferred to:
(A) the applicant's or recipient's child who is disabled or blind as defined in 42 U.S.C. 1382c; or
(B) to a trust, including a trust described in section 22(i) of this rule *[405 IAC 2-3-22(i)]*, established solely for the benefit of the applicant's or recipient's child who is disabled or blind as defined in 42 U.S.C. 1382c.
(5) The assets were transferred to a trust, including a trust described in section 22(i) of this rule *[405 IAC 2-3-22(i)]*, established solely for the benefit of an individual under sixty-five (65) years of age who is disabled as defined in 42 U.S.C. 1382c.
(6) The assets transferred are disregarded for eligibility purposes through the use of a qualified long term care insurance policy ~~pursuant to~~ **under** IC 12-15-39.6. If an asset is disregarded through the use of a qualified long term care insurance policy, that asset and any income generated by that asset may be transferred without penalty.
(7) A satisfactory showing is made to the office, in accordance with standards specified under 42 U.S.C. 1396p(c)(2)(C) by the Secretary of Health and Human Services, that:
(A) the applicant or recipient intended to dispose of the assets at fair market value or for other valuable consideration;
(B) the assets were transferred exclusively for a purpose other than to qualify for medical assistance; or
(C) all assets transferred for less than fair market value have been returned to the applicant or recipient.

In order to establish that a transfer was made exclusively for purposes other than qualifying for medical assistance, the applicant or recipient must submit sufficient evidence to show that the transfer was made exclusively for reasons not related to Medicaid eligibility, estate recovery, or lien.

(8) The office may waive the application of this SECTION in cases of undue hardship, but only to the extent required by standards specified under 42 U.S.C. 1396p(c)(2)(D) by the Secretary of Health and Human Services.

(l) For transfers of income-producing real property not used in a trade or business on and after July 1, 2003, six thousand dollars ($6,000) of the equity value can be transferred without penalty if the transferred property produces an annual income of at least three hundred sixty dollars ($360). If the equity value of the property is less than six thousand dollars ($6,000), the property can be transferred without penalty if the property produces an annual income of at least six percent (6%) of the equity. This six thousand dollars ($6,000) exemption is a single, one (1) time exemption that applies to the total value of all income-producing real property transferred by the applicant during the applicant's lifetime. If the property does not produce an annual income of at least six percent (6%) of the lesser of six thousand dollars ($6,000) or the equity value, the entire equity is the uncompensated value.

~~(k)~~ **(m)** In the case of a transfer by the spouse of an applicant or recipient ~~which~~ **that** results in a period of ineligibility for medical assistance, the office shall apportion the period of ineligibility, or any portion of that period, between the applicant or recipient and the applicant's or recipient's spouse, if the spouse otherwise becomes eligible for medical assistance, as specified in regulations promulgated under 42 U.S.C. 1396p(c)(4) by the Secretary of Health and Human Services.

SECTION 2. **This document expires on the earlier of June 26, 2004, or the effective date of LSA Document #03-205.**

LSA Document #04-85(E)
Filed with Secretary of State: March 26, 2004, 2:00 p.m.

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

LSA Document #04-104(E)

DIGEST

Temporarily amends 407 IAC 3-7-1 and 407 IAC 3-13-1 by revoking coverage for treatment by a psychiatric residential treatment facility with 16 or fewer beds. Authority: IC 4-22-2-37.1; IC 12-17.6-2-11. Effective April 8, 2004.

SECTION 1. (407 IAC 3-7-1) (a) Reimbursement is available for mental health services subject to the limitations set out in the

Medicaid program as well as additional limitations set forth in this rule.

(b) Inpatient mental health and substance abuse services are not covered when provided in an institution for mental diseases with more than sixteen (16) beds.

(c) Psychiatric residential treatment facility (PRTF) services are not covered by the children's health insurance program.

~~(c)~~ **(d)** Outpatient mental health and substance abuse services are limited to a maximum of thirty (30) office visits per rolling twelve (12) month period without prior approval. Up to twenty (20) additional visits up to a maximum of fifty (50) visits per rolling twelve (12) month period may be prior authorized subject to Medicaid prior authorization criteria.

~~(d)~~ **(e)** Reimbursement is not available for reservation of beds in psychiatric hospitals.

~~(e)~~ **(f)** Community mental health rehabilitation services (Medicaid rehabilitation option) are not covered by the children's health insurance program.

SECTION 2. (407 IAC 3-13-1) The following services are not covered by CHIP:

(1) Services that are not covered by the Medicaid program.
(2) Services provided in a nursing facility.
(3) Services provided in an intermediate care facility for the mentally retarded (ICF/MR).
(4) Private duty nursing.
(5) Case management services for the following:
  (A) Persons with HIV/AIDS.
  (B) Pregnant women.
  (C) Mentally ill or emotionally disturbed individuals.
(6) Nonambulance transportation.
(7) Services provided by Christian Science nurses.
(8) Services provided in Christian Science sanatoriums.
(9) Organ transplants.
(10) Over-the-counter drugs (except insulin).
(11) Reserved beds in psychiatric hospitals.
(12) Services provided in inpatient mental health facilities (other than acute care hospitals) with more than sixteen (16) beds.
(13) Psychiatric residential treatment facility (PRTF) services.
~~(13)~~ **(14)** Any other service or supply listed in this ~~article~~ **document** as noncovered.

SECTION 3. **This document expires on July 7, 2004.**

LSA Document #04-104(E)
Filed with Secretary of State: April 8, 2004, 10:35 a.m.

Change in Notice of Public Hearing

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #02-337

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of #02-337, printed at 26 IR 1996, has been changed. The changed 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 ***June 2, 2004,*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 1-1-3, 326 IAC 1-1-3.5, and 326 IAC.*

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 Gayl Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027, press 0, and ask for extension 3-8628 (in Indiana). If the date of this hearing is changed it will be noticed in the Change of Notice section of the Indiana Register. Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

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

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

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Janet McCabe
Assistant Commissioner
Office of Air Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #01-161

The Solid Waste Management Board gives notice that the second meeting/public hearing printed at 27 IR 2300, regarding LSA Document #01-161, has been postponed. The Notice for the postponement of the second meeting/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 the second meeting/public hearing scheduled for April 20, 2004 at 1:30 p.m., in the Adams County Court House Annex, Commissioner's Conference Room, 313 West Jefferson Street, Decatur, Indiana, of the Solid Waste Management Board has been postponed; however, the first meeting/public hearing will take place on April 20, 2004 at 1:30 p.m., in the Adams County Court House Annex, Commissioner's Conference Room, 313 West Jefferson Street, Decatur, Indiana, as noticed at 27 IR 2299. When the date of the second meeting/public hearing is scheduled, it will be noticed with the Proposed Rule or in the Change of Notice Section of the Indiana Register.

Additional information regarding this action may be obtained from Lynn West, Rules, Planning and Outreach Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 28 STATE INFORMATION TECHNOLOGY OVERSIGHT COMMISSION

LSA Document #04-96

Under IC 4-22-2-23, the State Information Technology Oversight Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds 28 IAC to establish information technology accessibility standards for products and services to be procured by state and local governments. Questions and comments may be directed to William Pierce, Systems Consultant, Information Technology Oversight Commission, at (317) 233-2009 or bpierce@itoc.in.gov. Statutory authority: IC 4-23-16-12.

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #04-102

Under IC 4-22-2-23, the Indiana Gaming Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds a new rule to require that manually paid jackpots that exceed a value of $1,199 may not be paid from a pouch or similar method. Adds a new rule that details what must happen in the event that a jackpot is won illegally. Amends the following rules to correct a mistake in an internal cross-reference: 68 IAC 2-7-12, 68 IAC 2-6-49, 68 IAC 5-3-2, 68 IAC 5-3-7, 68 IAC 8-1-11, 68 IAC 8-2-29, 68 IAC 9-4-8, 68 IAC 11-1-8, 68 IAC 12-1-15, 68 IAC 15-1-8, 68 IAC 16-1-16, 68 IAC 17-1-5, 68 IAC 17-2-6, and 68 IAC 18-1-6. Amends 68 IAC 10-1-5 to require that riverboat licensees may not have or display maximum live gaming jackpots. Amends 68 IAC 11-3-1 to provide that the bill validator report shall be generated after the completion of the soft count rather than before the commencement of the soft count. Amends 68 IAC 14-4-8 to provide: (1) that the riverboat licensee shall receive written approval from the commission for all chip destruction, and (2) that the riverboat licensee shall coordinate the movement and shipment of chips to be destroyed with commission agents. Amends 68 IAC 14-5-6 to provide: (1) that the riverboat licensee shall receive written approval from the commission for all token destruction, and (2) that the riverboat licensee shall coordinate the movement and shipment of tokens to be destroyed with commission agents. Amends 68 IAC 15-8-4 to specify the number of electronic gaming devices whose hoppers must be tested quarterly. Amends 68 IAC 15-9 to provide that riverboat licensees shall allow the redemption of chips and tokens by employees at one cage located on the riverboat and one location in the pavilion. Amends 68 IAC 15-10-4.1 to require that cage variances be reported on a form approved by the commission and to require: (1) that the accounting director or designee must investigate all unresolved variances, and (2) the results of the investigation must be documented on the paperwork provided by the cage department. Amends 68 IAC 18-1-2 to: (1) redefine the time frame within which patrons can expect to receive responses to complaints they have made, and (2) change the requirement that patrons must file a copy of their complaints with the riverboat licensee at the same time they file the complaint with the gaming commission. Questions concerning the proposed rule may be directed to the following telephone number: (317) 233-0046. Statutory authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-5.

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #04-103

Under IC 4-22-2-23, the Indiana Gaming Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 68 IAC 1-5-1 to require a riverboat licensee to notify a commission agent and the executive director when the riverboat licensee becomes aware that criminal activity is taking place on riverboat property. Amends 68 IAC 2-3-5(c)(9) to require an applicant to hold a valid merchant marine document only when required by the United States Coast Guard. Amends 68 IAC 2-3-6(1) to eliminate the provision requiring the signature of the executive director on identification badges. Amends 68 IAC 2-3-9 to require occupational licensees to provide truthful information to commission agents and staff during an investigation. Public comments are invited. Questions concerning the proposed rule may be directed to the following number: (317) 233-0046. Statutory authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-5.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-84

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 5-6-5, governing special watercraft restrictions on Lake James, to apply to other lakes in the Lake James Chain of Lakes and to add new restricted watercraft zones for the channel between Lake James and Snow Lake and for Follett Creek between Big Otter Lake and Snow Lake. Questions concerning the proposed rule amendments may be directed to the following telephone number: (317) 232-4699 or e-mail jkane@dnr.state.in.us. Statutory authority: IC 14-10-2-4; IC 14-15-7-3.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-94

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds a new definition for a "group pier" on a public freshwater lake. Disqualifies a group pier from treatment as a general license. A person seeking to place a group pier would be required to complete the license application procedures of IC 14-26-2 (sometimes referred to as the "Lakes Preservation Act"). Questions or comments may be directed to slucas@dnr.state.in.us or by telephone at 317-233-3322. Statutory authority: IC 14-10-2-4; IC 14-26-2.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-105

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 25-6-31 to remove a requirement that revised blasting schedules be approved by the director before publication while retaining all requirements concerning the contents of the notice. Amends 312 IAC 25-9-5 to require individuals seeking blaster certification who fail the examination three times to retake the training course for certification. Amends 312 IAC 25-9-8 to add continuing education requirements to maintain and to provide that individuals who had certifications that have been expired for more than five years must complete the entire certification and training process as a new applicant. (This subject matter was previously considered in LSA Document #03-169.) Public questions and comments may be sent to the Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204, by e-mail at jkane@dnr.state.in.us, or by telephone at (317) 232-4699. Statutory authority: IC 14-34-2-1.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-95

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 6, provisions affecting eligibility and benefits under the Indiana prescription drug program; amends the definition and duration of eligibility and the benefits for enrollees. Statutory authority: IC 12-10-16-5.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #04-99

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Adopt rules to specify a system of civil penalties and other sanctions for a WIC vendor contract under the WIC program or federal regulations under 7 CFR 246. Written comments may be submitted to the Indiana State Department of Health, Community and Family Health Services Commission, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-35-1.5-6.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #04-100

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: The rule will establish reporting, monitoring, and prevention procedures for data collected related to symptoms and health syndromes from outbreaks or suspected outbreaks of diseases or other health conditions that may be a danger to public health. Written comments may be submitted to the Indiana State Department of Health, Public Health Preparedness and Emergency Response, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-19-10-5; IC 16-19-10-8.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #04-101

Under IC 4-22-2-23, the Indiana State Board of Education intends to adopt a rule concerning the following:

OVERVIEW: Amends 511 IAC 1-3-1 to add an additional average daily membership or ADM count to be taken on December 1 for all students and an additional count of students enrolled in special education programs be taken on April 1. Effective 30 days after filing with the secretary of state. Statutory authority: IC 20-1-1-6; IC 21-3-1.6-1.1.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #04-88

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: The Department intends to amend 760 IAC 1-50 regarding the number of questions required on an examination, the minimum number of credit hours for a course, and any other items necessary to achieve reciprocity under the National Association of Insurance Commissioners' Continuing Education Reciprocity Initiative. 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 27-1-15.7-4(e); IC 27-1-15.7-7.

TITLE 848 INDIANA STATE BOARD OF NURSING

LSA Document #04-97

Under IC 4-22-2-23, the Indiana State Board of Nursing intends to adopt a rule concerning the following:

OVERVIEW: Amends 848 IAC 1-1-6 concerning requirements for licensure by examination. Amends 848 IAC 1-1-7 concerning requirements for licensure by endorsement. Repeals 848 IAC 6 concerning the Interstate Nurse Licensure Compact and Multistate License Privileges. Effective 30 days after filing with the secretary of state. Questions or comments concerning the proposed rules may be directed to: Indiana State Board of Nursing, ATTENTION: Kristen Kelley, 402 West Washington Street, Room W066, Indianapolis, IN 46204-2700 or by electronic e-mail at krkelley@hpb.state.in.us. Statutory authority: IC 25-23-1-7; IC 25-23.2.

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #04-98

Under IC 4-22-2-23, the Indiana Board of Accountancy intends to adopt a rule concerning the following:

OVERVIEW: Amends 872 IAC 1-3-3.3 to revise the requirements for continuing professional education credit granted for college courses. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Board Director, 302 West Washington Street, Room E034, Indianapolis, Indiana 46204-2700 or by electronic mail at pla11@pla.state.in.us. Statutory authority: IC 25-2.1-2-15.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #04-110

Under IC 4-22-2-23, the Alcohol and Tobacco Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 905 IAC 1-15.2-3 to clarify conditions under which minors may be present in permit premises containing restaurants. Questions concerning the proposed rule may be directed to Mark C. Webb, Executive Secretary, Alcohol and Tobacco Commission, at (317) 232-2472. Statutory authority: IC 7.1-2-3-7.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #04-111

Under IC 4-22-2-23, the Alcohol and Tobacco Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 905 IAC 1-5.2-9.1 and 905 IAC 1-5.2-9.2 to allow for the sampling of beer between wholesalers, retailers, and consumers. Questions concerning the proposed rule may be directed to Mark C. Webb, Executive Secretary, Alcohol and Tobacco Commission, at (317) 232-2472. Statutory authority: IC 7.1-2-3-7.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #04-112

Under IC 4-22-2-23, the Alcohol and Tobacco Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds 905 IAC 1-26-3 to provide that the commission may withdraw or modify a letter of extension at any time either before the extension takes effect or during the time period covered by the extension. Questions concerning the proposed rule may be directed to Mark C. Webb, Executive Secretary, at 232-2472. Statutory authority: IC 7.1-2-3-7.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #04-113

Under IC 4-22-2-23, the Alcohol and Tobacco Commission

intends to adopt a rule concerning the following:

OVERVIEW: Amends 905 IAC 1-40-4 to define what it means to be open to the public within the meaning of the rule. Questions concerning the proposed rule may be directed to Mark C. Webb, Executive Secretary, at 232-2472. Statutory authority: IC 7.1-2-3-7.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #04-114

Under IC 4-22-2-23, the Alcohol and Tobacco Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds 905 IAC 1-47.1 to establish rules defining a municipal riverfront development project under IC 7.1-3-20-16 and IC 7.1-3-20-16.1. Questions concerning the proposed rule may be directed to Mark C. Webb, Executive Secretary, at 232-2472. Statutory authority: IC 7.1-2-3-7; IC 7.1-3-20-16.1.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #04-115

Under IC 4-22-2-23, the Alcohol and Tobacco Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds 905 IAC 1-48 to establish rules regarding the withdrawal of a consent to transfer a permit after the transfer has been filed with the commission up through and including the local board hearing. Questions concerning the proposed rule may be directed to Mark C. Webb, Executive Secretary, at 232-2472. Statutory authority: IC 7.1-2-3-7.

TITLE 203 VICTIM SERVICES DIVISION

Proposed Rule
LSA Document #04-63

DIGEST

Adds 203 IAC to establish procedures for the investigation, review, determination, and appeal of claims for victim assistance filed with the victim services division of the Indiana criminal justice institute. Effective 30 days after filing with the secretary of state.

203 IAC

SECTION 1. 203 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 203 VICTIM SERVICES DIVISION

ARTICLE 1. ADMINISTRATIVE PROCEDURE

Rule 1. Investigation; Review; Determination; Appeal

203 IAC 1-1-1 Definitions
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 1. (a) The definitions in IC 5-2-6.1 and this section apply throughout this title.

(b) "Director" refers to the director of the division.
(Victim Services Division; 203 IAC 1-1-1)

203 IAC 1-1-2 Purpose
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 2. The purpose of this title is to facilitate implementation and compliance with IC 5-2-6.1 by establishing procedures for the investigation, review, determination, and appeal of claims for victim assistance filed with the division.
(Victim Services Division; 203 IAC 1-1-2)

203 IAC 1-1-3 Filing claims
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 3. (a) The time and place of filing claims are as follows:

(1) All claims must be filed within one hundred eighty (180) days of the date the crime was committed; provided, however, that for good cause the director may extend the time for filing for a period not exceeding two (2) years after such occurrence.

(2) All claims shall be filed in the office of the division in person or by certified mail on forms approved by the division.

(b) Contents of a claim are as follows:

(1) The claim shall be signed by the claimant. If the claim is filed by a minor or other incompetent, the claim may be signed and filed on his or her behalf by the parent, guardian, or other individual authorized to administer his or her affairs.

(2) Each claim shall be reviewed to ensure that it is complete. If the claim is not complete, written notice shall be given to the claimant with a brief statement requesting additional information. The claimant, within thirty (30) days of receipt of the request for additional information, shall supply that information to the division or request an extension of time, not to exceed sixty (60) days. The request shall be in writing to the director. If the claimant does not furnish additional information, or an extension granted by the director for good cause, the application shall be denied.
(Victim Services Division; 203 IAC 1-1-3)

203 IAC 1-1-4 Determination of eligibility
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 4. After a claim has been determined to contain sufficient identifying information, a claims analyst or other person designated by the director shall compare the claim to the eligibility standards described in IC 5-2-6.1. The claims analyst shall obtain supporting documentation necessary for the processing of a claim including, but not limited to, the following:

(1) A police report including all supplemental reports and victim and witness statements made to law enforcement personnel.

(2) Copies of charging informations and other prosecutorial data.

(3) Copies of medical, funeral, and psychiatric bills.

(4) Documentation regarding substitute child care expenses, employment, or earnings information.

(5) Documentation concerning the following:

(A) Medical or life insurance benefits, or both.

(B) Social Security, pension, or retirement benefit information.

(C) Worker's compensation or unemployment compensation benefits.

(6) Any other documentation necessary to determine eligibility.
(Victim Services Division; 203 IAC 1-1-4)

203 IAC 1-1-5 Investigation of claims; notice of determinations
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 5. (a) A claim, when accepted as complete or when set for hearing, shall be investigated by the division as to its validity, regardless of whether the alleged perpetrator has

been apprehended for, prosecuted for, or convicted of any crime based upon the same alleged incident.

(b) All claimants under IC 5-2-6.1 shall cooperate with claims analysts and other representatives of the division in order to be eligible for an award. In the event that such cooperation is refused or denied, the division may, in the discretion of the director, deny such claims.

(c) The division shall obtain written verification of all events, claims, and sums of money alleged by the claimant to the greatest degree possible through the following:

(1) Police agencies.
(2) Providers of medical assistance and funeral services.
(3) Employers.
(4) Witnesses.
(5) Any other relevant source.

If discrepancies arise, the division may interview the claimant, or victim if other than the claimant, in order to establish such verifications and consistency of the record of the claim.

(d) After receipt of all information necessary to process a claim, a claims analyst shall prepare a written case report and preliminary determination recommendation on the claim. The case report shall be delivered to the director, or the director's designee, and shall:

(1) contain a statement of the facts alleged by the claimant;
(2) describe the verifications and discrepancies; and
(3) make a recommendation as to whether or not assistance should be provided, the amounts payable, including reasonable attorney's fees, if any, and a rationale of the recommendation.

The director, or the director's designee, shall then review the entire file together with the case report and preliminary determination recommendation. If the director, or the director's designee, disagrees with the claims analyst's preliminary determination recommendation in whole or in part, the director, or the director's designee, shall remand the claim for further investigation or request that the matter be set for hearing.

(e) If the director, or the director's designee, agrees with the claims analyst's recommendation to deny the claim, the director, or the director's designee, shall issue to the claimant a preliminary determination stating the reason or reasons for the denial. The preliminary determination shall be sent by first class United States mail to the claimant's last known address. A claimant who disagrees with the preliminary determination may request a hearing. This request must be made in writing within thirty (30) days from the date of the preliminary determination. The claimant's failure to timely request a hearing shall constitute a waiver of the hearing and a consent to the agency action described in the preliminary determination, and a notice of final determination will then be issued to the claimant. Where timely requested, a hearing will be set and will be limited to the reason or reasons for the denial stated in the preliminary determination.

(f) If the director, or the director's designee, agrees with the claims analyst's recommendation to award the claim, the director, or the director's designee, shall issue a notice of award stating the amount of the award and its allocation. If a claimant disagrees with the notice of award, the claimant may request a hearing. This request must be made in writing within thirty (30) days from the date of the notice of award. *(Victim Services Division; 203 IAC 1-1-5)*

203 IAC 1-1-6 Hearings

Authority: IC 5-2-6.1-46
Affected: IC 4-21.5; IC 5-2-6.1

Sec. 6. (a) When a hearing is ordered, the claimant, counsel, and all parties whose testimony is deemed necessary by the division shall be notified in writing of the time, place, and scope of the hearing in accordance with IC 4-21.5. Any subsequent notices of hearing due to a request for continuation by the claimant or claimant's attorney shall be sent by first class United States mail.

(b) All hearings shall be conducted in an orderly manner. All witnesses shall testify under oath or by affirmation, and all testimony shall be recorded. The hearing officer shall not be bound by common law, statutory rules of evidence, or judicial rules of procedure.

(c) The claimant has the burden of proving his or her right to compensation by a preponderance of the evidence.

(d) The hearing officer may receive as evidence any statement, document, information, or matter that is deemed relevant and of such a nature as to afford the parties a fair hearing. The hearing officer may also accept hospital and physician's records and reports as proof of the injury sustained without requiring the presence of the attending physician at the hearing.

(e) The hearing officer may direct medical examination of the claimant by a physician designated by the hearing officer, having due regard for the convenience of the claimant.

(f) The claimant shall be present at the hearing and will be allowed to present testimony and cross-examine witnesses in person or by counsel.

(g) Hearings may be adjourned on the motion of the hearing officer or upon timely request of any interested party. The failure of the claimant to appear at the time of

the hearing may result in denial of the claim; provided, however, in the discretion of the hearing officer upon good cause shown, such failure to appear may be excused and a new hearing scheduled.

(h) Hearings shall be open to the public except that the hearing officer may exercise discretion to hold the hearing in private in the interest of the victim or society where justice requires.

(i) Upon the application of the claimant or by counsel, submitted in affidavit form, or upon application of the hearing officer, a case may be opened for further investigation. If the hearing officer finds it necessary, further testimony may be taken at any time prior to the final determination of the hearing. The division may, on its own motion, reinvestigate or reopen cases at any time as it deems necessary.

(j) All hearings of the division shall be held at its offices in Indianapolis, Indiana. *(Victim Services Division; 203 IAC 1-1-6)*

203 IAC 1-1-7 Attorneys; representation
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 7. (a) Claimants have the right to be represented before the division or any representatives thereof at all stages of the proceeding by an attorney-at-law duly licensed to practice in the state of Indiana.

(b) The attorney shall file a notice of appearance prior to or at his or her first appearance. Such notice shall contain the name of the party represented and the attorney's name, address, and telephone number.

(c) If any party designates an attorney-at-law and such attorney has executed and filed with the division a notice of appearance in the matter, the notice shall remain in effect until:
(1) the party represented files with the division a written revocation of the attorney's authority;
(2) the attorney files with the division a written statement of his or her withdrawal from the case;
(3) the attorney states on the record at a division hearing that he or she is withdrawing from the case; or
(4) the division receives notice of the attorney's death or disqualification.

(d) After filing of a notice of appearance in accordance with this rule, and so long as it may remain in effect, copies of all written communications or notices to the claimant shall be sent to the attorney in lieu of the party so represented. Service upon the attorney shall be deemed service on the party so represented.

(e) Attorney's fees shall be approved by the division and shall be commensurate with services rendered to the claimant subject to the limitations of IC 5-2-6.1. *(Victim Services Division; 203 IAC 1-1-7)*

203 IAC 1-1-8 Subpoenas; subpoenas duces tecum; depositions
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 8. (a) The division shall issue subpoenas and subpoenas duces tecum, either at its own instance or upon written application of any party made not less than ten (10) days prior to the hearing. The ten (10) day provision may be waived at the discretion of the director. Subpoenas and subpoenas duces tecum shall comply with the Indiana rules of procedure.

(b) The issuance of a subpoena at the application of a party shall depend upon a showing of necessity. A written request shall designate the names and addresses of witnesses and the locations of:
(1) documents;
(2) books;
(3) payrolls;
(4) personal records;
(5) correspondence;
(6) papers; and
(7) any other evidence;
necessary to the claim being heard.

(c) The cost of service, witness, and mileage fees shall be borne by the party at whose request a subpoena is issued.

(d) The division, on its own motion or on application of the claimant, shall take or cause to be taken affidavits or depositions of witnesses residing within or without the state whenever it deems such procedure necessary. The division may set appropriate terms and conditions pertaining to the taking of affidavits or depositions. The requesting party shall bear the expense. *(Victim Services Division; 203 IAC 1-1-8)*

203 IAC 1-1-9 Awards
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1

Sec. 9. (a) No award will be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars ($100).

(b) No award may be made unless the division finds the following:
(1) A violent crime was committed.
(2) The crime occurred within the state though the victim

need not be a resident of the state at the time of occurrence of the crime upon which the claim is based.

(3) The crime directly resulted in personal physical injury or death of the victim.

(4) The crime was reported to a law enforcement officer within forty-eight (48) hours after the occurrence of the crime, and the claimant has cooperated fully with law enforcement personnel to solve the crime, unless the director, for good cause shown, finds such failure to report or cooperate with law enforcement officials to have been justified.

(c) An award made under this rule shall be in an amount not to exceed out-of-pocket expenses, together with loss of actual earnings consistent with this rule and other actual expenses resulting from the bodily injury or death of the victim.

(d) An award made under this rule shall be in an amount not to exceed out-of-pocket medical expenses, together with:

(1) loss of actual earnings consistent with this rule;

(2) reasonable child care expenses not to exceed one thousand dollars ($1,000);

(3) loss of financial support consistent with this rule; and

(4) other actual expenses;

resulting from the bodily injury or death of the victim. In no case shall the total amount of an award exceed fifteen thousand dollars ($15,000) per victim.

(e) In instances of claims based on physical injuries or death, the division shall exercise its discretion in determining whether payments are to be made in a lump sum or periodically.

(f) When disbursing an award, the division shall apply the proceeds of the award in the following order:

(1) Reasonable attorney's fees as determined by the division.

(2) Outstanding medical and funeral expenses.

(3) Reimbursement of compensable out-of-pocket expenses.

(4) Loss of income the victim would have earned had the victim not been injured.

(5) Loss of financial support that the victim would have supplied to legal dependents had the victim not died or been injured.

In the event that the expenses in subdivision (2) exceed the total amount of the award, the division shall prorate the award among the providers in that category.

(g) If there are two (2) or more persons entitled to an award as a result of the death of a person that is the direct result of a crime, the director shall apportion the award among the claimants in the proportion the deceased victim contributed to their support. In the event of a change of dependency of the claimant or any one (1) of them, either by marriage or otherwise, the division may change the proportion and the amount of the payments to the claimant.

(h) If the recipient of an award is a minor, the director may require that a guardianship be established and the award be delivered to the guardian of the minor's estate.

(i) In determining whether to award loss of income to a victim who has died or been injured, the following factors may be considered by the division:

(1) Whether the victim was employed at the time of injury or death.

(2) The victim's employment history, education, and job skills.

(3) The victim's age, life expectancy, and past earnings.

(4) Other relevant factors.

(j) The part of each award covering unpaid expenses of a claimant may be made payable directly to each creditor subject to the claimant's consent.

(k) An emergency award of not more than five hundred dollars ($500) may be made by the director or his or her designee prior to the determination of final award if it is determined by the director that a severe financial hardship exists.

(l) No request for an emergency award shall be considered unless a claim has been filed with the division. The claim and the request for the emergency award may be filed simultaneously.

(m) A request for an emergency award may be made either by mail or in person upon an affidavit setting forth in detail the grounds.

(n) The amount of an emergency award shall be deducted from the final award made by the division, and, if no final award is made or the amount of the emergency award exceeds the amount of the final award, the amount shall be recoverable from the claimant.

(o) Compensation by the division for funeral, burial, or cremation expenses shall not exceed four thousand dollars ($4,000) per victim per claim.

(p) Compensation by the division for outpatient psychological or psychiatric counseling, or both, shall not exceed the following:

(1) One thousand dollars ($1,000) for mental health facilities or counselors who do not use a sliding fee schedule based on the victim's income.

(2) One thousand five hundred dollars ($1,500) for mental health facilities or counselors who use a sliding fee schedule based on the victim's income. Prior to qualifying

under this subdivision, the sliding fee schedule must be submitted to the division for approval.
(Victim Services Division; 203 IAC 1-1-9)

203 IAC 1-1-10 Appeals; board review
Authority: IC 5-2-6.1-46
Affected: IC 4-21.5; IC 5-2-6.1

Sec. 10. (a) The state or claimant may appeal the findings of the hearing officer within twenty-one (21) days after the date of receipt of the hearing officer's determination by filing a written appeal with the director who shall review the written determination of the hearing officer and place the appeal on the docket for review by the victim services division of the institute's board of trustees.

(b) An appeal under this section shall be limited to those facts evidenced in the record of proceedings and may, at the discretion of the victim services division of the institute's board of trustees, be supplemented with a written statement by either the division or the claimant.

(c) A decision by the victim services division of the institute's board of trustees shall be conclusive and binding upon the state and the claimant, subject to judicial review under IC 4-21.5. *(Victim Services Division; 203 IAC 1-1-10)*

Rule 2. Sex Crime Victim Compensation; Application Procedures

203 IAC 1-2-1 Eligibility and cooperation
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1; IC 16-21-8

Sec. 1. (a) Beginning September 1, 1985, a person who seeks hospital emergency room treatment for injuries and trauma resulting from an alleged sexual assault shall be considered an alleged sex crime victim eligible to have the costs of their emergency room treatment paid by the fund to the servicing hospital if:

(1) Within forty-eight (48) hours following the alleged crime:

(A) a police report regarding the incident has been filed; or

(B) the hospital, sex crime victim, or a responsible party has contacted an appropriate law enforcement agency.

(2) A representative of a law enforcement agency must, in writing, confirm that the sex crime victim has cooperated in the initial law enforcement investigation and report.

(b) The sex crime victim must consent to the emergency room treatment and evidence-gathering physical examination, and the treatment must be ordered by the attending physician. If the sex crime victim is a minor or incompetent, the sex crime victim's parent or guardian, an officer of the court, or other authorized individual may sign for the sex crime victim. The sex crime victim or other authorized individual must sign and complete the appropriate sections of the division's claim form. The eligibility requirements in subsection (a)(1) and (a)(2) may be suspended if the director of the division finds a compelling reason to do so. A participating hospital is to treat all alleged sex crime victims and shall render services at no cost to the alleged sex crime victim despite any delays in payment from the fund. A hospital shall provide medical services to all alleged sex crime victims without making any legal determinations as to whether the patient has actually been sexually assaulted or whether the hospital will be eligible for payment when the patient has executed the prescribed fund application for payment.

(c) The fund may deny payment to the hospital where the patient fails to meet the eligibility requirements as listed in subsection (a), in IC 5-2-6.1, or in IC 16-21-8. If payment is denied, the hospital will be notified and may then bill the patient or collateral source for services rendered. *(Victim Services Division; 203 IAC 1-2-1)*

203 IAC 1-2-2 Application for reimbursement; information required
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1; IC 16-21-8

Sec. 2. (a) To receive payment, the hospital, sex crime victim, and, if present, a law enforcement agent must supply information regarding the alleged sex crime on a claim form prescribed by the division completed and filed not later than ninety (90) days from the date of the first emergency room medical services provided. The hospital shall attach to the application the patient's emergency department report of the date of treatment including the following:

(1) A copy of the medical examination report by the attending physician.

(2) A narrative statement describing the alleged sex crime, including the time and place thereof, and a brief description of the injuries sustained.

(3) An itemized statement showing all services provided to the alleged sex crime victim that were a direct and proximate result of the alleged sex crime.

(b) The division may also require additional information as needed to determine eligibility. The hospital shall provide to the patient, at the time of the sex crime victim's release from the hospital, the fund information sheet. Applications for payment for the following subsequent medical procedures shall be filed within thirty (30) days of the services rendered:

(1) Sexually transmitted disease testing.

(2) Pregnancy testing.

(3) Mental health counseling for problems directly related to the sexual assault.

(c) If an application is denied or additional information from the hospital is required, the division shall so notify the hospital in writing. A hospital has thirty (30) days from the date of the division's notification to present the information required to the division. The additional information will then be evaluated.

(d) All applications should be mailed to or filed in person at the division's office located in Indianapolis, Indiana. *(Victim Services Division; 203 IAC 1-2-2)*

203 IAC 1-2-3 Covered services
Authority: IC 5-2-6.1-46
Affected: IC 5-2-6.1; IC 16-21-8

Sec. 3. (a) As used in this rule, "emergency hospital service" means outpatient services rendered in the emergency room that are a direct and proximate result of the alleged sex crime, including, but not limited to, at the division's discretion, the following:

(1) Reasonable costs of counseling services for the sex crime victim directly relating to the assault, rendered within one (1) year following the initial emergency room treatment. At the division's discretion, other persons deemed necessary for the sex crime victim's sex crime crisis counseling may also be eligible for counseling services. The counseling costs are reimbursable only when services are rendered by or through a hospital participating in the fund. Included in the itemized statement of counseling services shall be:

(A) a delineation of the party receiving the service;

(B) the date of the subsequent counseling; and

(C) the date of the initial emergency room treatment.

(2) Evidence-gathering and diagnostic physical examinations.

(3) Initial pregnancy and sexually transmitted disease testing related to the alleged sex crime.

(4) Other itemized laboratory work including the following:

(A) Alcohol and drug testing.

(B) Syphilis testing up to ninety (90) days following the alleged sex crime.

(C) Pregnancy and other sexually transmitted disease testing up to thirty (30) days following the alleged sex crime.

(5) Suturing and care of any wounds, including anesthesia and prescribed medications.

(6) X-rays.

(7) Other limited outpatient emergency treatment at the discretion of the division.

(b) The amounts charged to the division by a hospital or a licensed medical service provider for any qualifying emergency hospital service shall be commensurate with the service actually rendered.

(c) Noncompensable services include the following:

(1) Inpatient hospital services.

(2) Nonsexual assault related services.

(d) If a patient is subsequently admitted to the hospital on an inpatient basis following emergency room treatment, the patient may apply to the division and meet separate eligibility requirements to receive benefits for inpatient treatment. *(Victim Services Division; 203 IAC 1-2-3)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 24, 2004 at 10:00 a.m., at the Indiana Criminal Justice Institute, One North Capitol, Suite 1000, Indianapolis, Indiana the Victim Services Division will hold a public hearing on proposed rules to establish procedures for the investigation, review, determination, and appeal of claims for victim assistance filed with the Victim Services Division. Copies of these rules are now on file at the Indiana Criminal Justice Institute, One North Capitol, Suite 1000 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Micah Cox
Staff Attorney
Indiana Criminal Justice Institute

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #04-23

DIGEST

Amends 312 IAC 16-5-14 to clarify that an owner or operator must obtain written authorization from the division of oil and gas, department of natural resources, before acting upon a permit change. Amends 312 IAC 17-3, governing geophysical survey operations, to provide that a geophysical survey operation is considered a well for oil and gas purposes for purposes of issuing an emergency permit, to exclude open or cased hole geophysical logs from regulation as a geophysical survey operation, to eliminate the requirement that an operator notify each owner of an occupied dwelling that is located within one mile of a geophysical survey operation, to establish minimum distances from structures for the conduct of a geophysical survey operation with separate standards for those activities that do or do not use an explosive energy source, to clarify that the department of natural resources, division of oil and gas, performs a permit revocation or transfer, and to modify bonding and shothole plugging requirements. Makes other clerical and technical changes. Effective 30 days after filing with the secretary of state.

312 IAC 16-5-14 **312 IAC 17-3-4**
312 IAC 17-3-1 **312 IAC 17-3-6**
312 IAC 17-3-2 **312 IAC 17-3-8**
312 IAC 17-3-3 **312 IAC 17-3-9**

SECTION 1. 312 IAC 16-5-14 IS AMENDED TO READ AS FOLLOWS:

312 IAC 16-5-14 Operating requirements for a Class II well

Authority: IC 14-37-3
Affected: IC 14-37

Sec. 14. Operating requirements for a Class II well are as follows:

(1) A Class II well must be completed, equipped, operated, and maintained so the Class II well will do the following:

(A) Not cause the pollution of, endanger, or threaten any underground source of drinking water.

(B) Not damage a source of oil or gas.

(C) Confine injected fluids to the approved interval or intervals.

(2) The injection of a permitted fluid must be through tubing separated from the innermost casing with a corrosion inhibiting annular fluid. The tubing shall be installed with a packer. The packer ~~shall~~ **must** be set inside cemented casing within two hundred (200) feet above the permitted injection zone.

(3) Before operating an injection well, mechanical integrity must be demonstrated for the well under section 15 of this rule, **and the owner or operator must obtain a written authorization to inject from the division.**

(4) The division must be notified in advance of a permit change that may require the alteration of an approved condition. ~~A permit change cannot be effected by~~ The owner or operator **must not implement a permit change** until the change is approved by the division.

(5) Injection piping, valves, and facilities must be used that meet or exceed design standards for the maximum allowable injection pressure and that safely maintain equipment without leakage.

(6) The division director may require additional testing or special equipment if appropriate to the protection of an underground source of drinking water.

(Natural Resources Commission; 312 IAC 16-5-14; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2342; filed Oct 1, 1999, 1:12 p.m.: 23 IR 294)

SECTION 2. 312 IAC 17-3-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 17-3-1 General provisions and application of definitions

Authority: IC 14-37-3
Affected: IC 14-37-4-13

Sec. 1. (a) This rule governs the conduct of geophysical survey operations.

(b) **Except as provided in IC 14-37-4-13(a) for issuance by the department of an emergency permit to address an imminent and substantial danger to the health of persons,** a hole drilled during a geophysical survey is not a well for oil and gas purposes.

(c) In addition to the definitions included in section 2 of this rule, and the exception in subsection (b), the definitions included in 312 IAC 17-1 apply throughout this rule. *(Natural Resources Commission; 312 IAC 17-3-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2352)*

SECTION 3. 312 IAC 17-3-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 17-3-2 Definitions

Authority: IC 14-37-3
Affected: IC 14-37

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

(1) "Geophysical survey" means the use of:

(A) electric;
(B) gravity;
(C) magnetic;
(D) seismic; or
(E) thermal;

techniques in the exploration for oil and gas. **The term does not apply to open or cased hole geophysical logs.**

(2) "Seismic ~~shooting"~~ **surveying"** means a geophysical survey method that involves the ~~firing~~ **use** of explosives **or other means** to produce seismic waves.

(3) "Shothole" means a borehole into which an explosive charge or other energy source is placed for generating seismic waves.

(4) "Shotpoint" means the location of a shothole.

(Natural Resources Commission; 312 IAC 17-3-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2352)

SECTION 4. 312 IAC 17-3-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 17-3-3 Applications

Authority: IC 14-37-3
Affected: IC 14-37

Sec. 3. (a) This section establishes the general application requirements for geophysical survey operations.

(b) An application to conduct a geophysical survey shall be made on a departmental form.

(c) A bond as set forth in section 6 of this rule must accompany the permit application.

~~(d) A person who wishes to conduct seismic shooting must~~

~~provide proof of service of the notification required in subsection (e) and must deliver the proof to the division before a permit can be issued.~~

~~(e) An applicant must serve written notification, describing the nature and approximate time period of the seismic shooting activity, personally or by certified mail, to an occupant of each inhabited dwelling located within one (1) mile of each shotpoint.~~

~~(f) The notification required under subsection (e) shall specify that a person may, within fifteen (15) days of receipt of the notification, submit written comments or request an informal hearing under 312 IAC 16-2-3. The notification shall include the address to which comments or the hearing request must be forwarded and where additional information may be obtained.~~

(d) Before conducting seismic surveying using an explosive energy source, a person refers to the following table to assist in determining the minimum offset distances from objects:

Minimum Distances
(Offset, in Feet, from Certain Objects-Explosive Charge Size in Pounds)

Object	½	1	2	3	5	6 to 10	11-15	16-20
Pipeline less than 6″ diameter	50′	100′	150′	150′	200′	250′	300′	400′
Pipeline 6″ to 12″ diameter	75′	150′	200′	200′	300′	400′	500′	600′
Telephone line	20′	20′	30′	40′	40′	50′	50′	50′
Railroad track or main paved highway	50′	100′	150′	150′	150′	220′	280′	350′
Electric power line (shotholes not to exceed 200′ depth)	75′	100′	200′	200′	200′	200′	250′	300′
Water wells excluding irrigation wells, buildings, underground cisterns, and all other similar objects	225′	300′	400′	450′	700′	800′	1000′	1200′
Brick or concrete block houses	275′	400′	500′	600′	800′	1000′	1200′	1500′
Producing oil and gas	250′	450′	600′	700′	800′	900′	1000′	1000′
Irrigation wells	500′	800′	1000′	1200′	1500′	2000′	2500′	2500′

(This table is adapted from Exhibit "A", International Association of Geophysical Contractors (IAGC) USA Geophysical Contract Manual, Revised May 14, 1998.)

(e) Before conducting seismic surveying using a nonexplosive energy source, a person determines the energy equivalence of the source to the size of an explosive charge. The person applies the calculation to the minimum distances established in the table under subsection (d) to assist in determining the minimum offset distances from objects.

(f) Regardless of the offset distances shown in the table in subsection (d) or the type of energy source used, a seismic surveying operation must not generate a peak particle velocity greater than one (1) inch per second at the point of contact with an object listed in the table. *(Natural Resources Commission; 312 IAC 17-3-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2352)*

SECTION 5. 312 IAC 17-3-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 17-3-4 Permit issuance, expiration, revocation, denial, and review

Authority: IC 14-37-3
Affected: IC 4-21.5; IC 14-37

Sec. 4. (a) A person must not conduct a geophysical survey without a permit issued by the department.

~~(b) No permit shall be issued for a geophysical survey until eighteen (18) days after the service of the notification required under section 3 of this rule. Upon issuance of the permit, IC 4-21.5 and 312 IAC 3 apply.~~

~~(c)~~ **(b)** The original or a copy of the permit must be available for inspection by a commission representative at each location where geophysical survey activities are conducted.

~~(d)~~ **(c)** A permit for a geophysical survey expires one (1) year from the date of issuance.

(d) The division shall condition or deny a permit application as needed to conform a geophysical survey operation to IC 14-37 and this rule.

(e) The ~~commission~~ **division** may revoke ~~deny, or transfer~~ a geophysical survey permit under 312 IAC 16-3-9.

(f) An affected person may, under IC 4-21.5 and 312 IAC 3-1, seek administrative review of an order issued under IC 14-37 or this rule. *(Natural Resources Commission; 312 IAC 17-3-4; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2353)*

SECTION 6. 312 IAC 17-3-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 17-3-6 Bond type
Authority: IC 14-37-3
Affected: IC 14-37

Sec. 6. (a) A person who applies for a geophysical survey permit must execute and file with the department

~~(1)~~ a surety bond, **a certified or cashier's check, or a certificate of deposit** in the **principal** amount of ~~five thousand dollars ($5,000);~~

~~(2) a certified or cashier's check in the amount of five thousand dollars ($5,000); or~~

~~(3) a certificate of deposit in the principal amount of~~

(1) Five thousand dollars ($5,000) **for a permit using a seismic or an electric surveying method.**

(2) One hundred dollars ($100) for a permit not described in subdivision (1).

(b) ~~No~~ **To qualify under subsection (a), a** surety bond ~~shall~~ **must** be ~~approved unless~~ issued by a company holding an applicable certificate of authority from the department of insurance, state of Indiana. A surety bond shall be executed by the operator as principal and by the surety (or for either of them by an attorney-in-fact with certified power of attorney attached).

(c) A certificate of deposit must be assigned in writing to the state and the assignment noted upon the books of the bank issuing the certificate. *(Natural Resources Commission; 312 IAC 17-3-6; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2353)*

SECTION 7. 312 IAC 17-3-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 17-3-8 Shothole plugging; surface reclamation
Authority: IC 14-37-3
Affected: IC 14-37

Sec. 8. (a) An **owner or** operator must plug any hole drilled during a geophysical survey in a manner that prevents the pollution of any underground source of drinking water.

~~(b) The method and materials used to plug a shothole must be approved in advance by the division.~~

~~(c)~~ **(b)** Within thirty (30) days after a ~~seismic shooting operation,~~ **completion of operations,** an **owner or** operator must satisfy each of the following:

(1) Plug any shothole as required by subsection ~~(b).~~ **(a).**

(2) Clear the vicinity ~~of the shooting operation~~ of any refuse **and equipment related to the operation.**

(3) Restore the surface as nearly as practicable to its conditions before the operation.

(Natural Resources Commission; 312 IAC 17-3-8; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2353)

SECTION 8. 312 IAC 17-3-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 17-3-9 Reports
Authority: IC 14-37-3
Affected: IC 4-21.5; IC 5-14-3; IC 14-37-7-1

Sec. 9. (a) Immediately upon the completion of a geophysical survey, an **owner or** operator must file with the division

~~(1)~~ a geophysical ~~survey~~ **surveying completion** final report ~~or~~ **on a form approved by the division.**

~~(2) a geophysical operations progress report.~~

(b) A report filed under subsection (a) is provided ~~pursuant to~~ **under** IC 14-37-7-1(a)(4). The report is confidential for one (1) year from the date of filing.

(c) An **owner or** operator may request that, beyond the period described in subsection (b), any portion of the report be maintained by the division as a trade secret. A request under this subsection applies for a period of five (5) years from filing and may be extended by the operator for the same period upon a written request filed within sixty (60) days of the expiration of the original five (5) year period.

(d) If a person files a request under IC 5-14-3 for information claimed as a trade secret under subsection (c), the division shall make a reasonable attempt to contact the **owner or** operator to determine if consent to disclosure can be obtained.

(e) If consent to disclose cannot be obtained under subsection (d), the division shall inform the person making the request. That person may obtain administrative review under IC 4-21.5 and 312 IAC 3 of the claimed status of the document as a trade secret. The **owner or** operator shall be named as a respondent in a request for administrative review. *(Natural Resources Commission; 312 IAC 17-3-9; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2354)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 24, 2004 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments concerning the operating requirements for a Class II well and geophysical survey operations. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

Proposed Rule
LSA Document #04-35

DIGEST

Amends 407 IAC 3-7-1 to exclude coverage of psychiatric residential treatment facility (PRTF) services for individuals enrolled in the children's health insurance program phase II (Hoosier Healthwise package C). Amends 407 IAC 3-13-1 concerning noncovered services. Effective 30 days after filing with the secretary of state.

407 IAC 3-7-1
407 IAC 3-13-1

SECTION 1. 407 IAC 3-7-1 IS AMENDED TO READ AS FOLLOWS:

407 IAC 3-7-1 Reimbursement limitations
Authority: IC 12-17.6-2-11
Affected: IC 12-17.6

Sec. 1. (a) Reimbursement is available for mental health services subject to the limitations set out in the Medicaid program as well as additional limitations set forth in this rule.

(b) Inpatient mental health and substance abuse services are not covered when provided in an institution for mental diseases with more than sixteen (16) beds.

(c) Psychiatric residential treatment facility (PRTF) services are not covered by the children's health insurance program.

~~(c)~~ **(d)** Outpatient mental health and substance abuse services are limited to a maximum of thirty (30) office visits per rolling twelve (12) month period without prior approval. Up to twenty (20) additional visits up to a maximum of fifty (50) visits per rolling twelve (12) month period may be prior authorized subject to Medicaid prior authorization criteria.

~~(d)~~ **(e)** Reimbursement is not available for reservation of beds in psychiatric hospitals.

~~(e)~~ **(f)** Community mental health rehabilitation services (Medicaid rehabilitation option) are not covered by the children's health insurance program. *(Office of the Children's Health Insurance Program; 407 IAC 3-7-1; filed May 3, 2000, 2:02 p.m.: 23 IR 2236)*

SECTION 2. 407 IAC 3-13-1 IS AMENDED TO READ AS FOLLOWS:

407 IAC 3-13-1 Noncovered services
Authority: IC 12-17.6-2-11
Affected: IC 12-17.6

Sec. 1. The following services are not covered by CHIP:
(1) Services that are not covered by the Medicaid program.
(2) Services provided in a nursing facility.
(3) Services provided in an intermediate care facility for the mentally retarded (ICF/MR).
(4) Private duty nursing.
(5) Case management services for the following:
(A) Persons with HIV/AIDS.
(B) Pregnant women.
(C) Mentally ill or emotionally disturbed individuals.
(6) Nonambulance transportation.
(7) Services provided by Christian Science nurses.
(8) Services provided in Christian Science sanatoriums.
(9) Organ transplants.
(10) Over-the-counter drugs (except insulin).
(11) Reserved beds in psychiatric hospitals.
(12) Services provided in inpatient mental health facilities (other than acute care hospitals) with more than sixteen (16) beds.
(13) Psychiatric residential treatment facility (PRTF) services.
~~(13)~~ **(14)** Any other service or supply listed in this article as noncovered.

(Office of the Children's Health Insurance Program; 407 IAC 3-13-1; filed May 3, 2000, 2:02 p.m.: 23 IR 2237)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 25, 2004 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 4 and 5, Indianapolis, Indiana the Office of the Children's Health Insurance Program will hold a public hearing on proposed amendments to rules governing the children's health insurance coverage for psychiatric residential treatment facilities (PRTFs). 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.

Elizabeth Culp
Director
Office of the Children's Health Insurance Program

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #03-297

DIGEST

Amends 410 IAC 16.2-3.1-2 to require an independent

verification of financial status by a certified public accountant and to clarify applicability of the rule. Amends 410 IAC 16.2-5-1.1 to require an independent verification of financial status by a certified public accountant, to clarify applicability of the rule, and to amend the fine. Effective 30 days after filing with the secretary of state.

410 IAC 16.2-3.1-2
410 IAC 16.2-5-1.1

SECTION 1. 410 IAC 16.2-3.1-2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-2 Licenses

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-18-2-167; IC 16-28-1-10; IC 16-28-2-2; IC 16-28-2-4; IC 16-28-5-7; IC 25-2.1-3

Sec. 2. (a) Any person, in order to lawfully operate a health facility as defined in IC 16-18-2-167, shall first obtain an authorization to occupy the facility or a license from the director. The applicant shall notify the director, in writing, before the applicant begins to operate a facility that is being purchased or leased from another licensee. Failure to notify the director precludes the issuance of a full license.

~~(b) An application shall be submitted on the prescribed form in accordance with IC 16-28-2-2. The application shall include identification of direct or indirect ownership interest of five percent (5%) or more and of corporate officers or partners.~~

~~(c) Any change in direct or indirect corporate ownership of five percent (5%) or more, which occurs during the licensure period, shall be reported to the director, in writing, at the time of the change. The facility must also provide written notice at the time the change occurs in the officers, directors, agents, or managing employees, or the corporation, association, or other company responsible for the management of the facility.~~

(b) The director may approve occupancy and use of the structure pending a final licensure decision.

~~(d)~~ **(c) The director may issue** a **health facility** license for a new facility ~~an existing facility that proposes a change in the number of beds, or a facility that has changed ownership is obtained as follows:~~ **upon receipt, review, and approval of the following requirements:**

~~(1) Prior to the start of construction, detailed architectural and operational plans shall be submitted through the office of the state building commissioner to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.~~

~~(2) Upon receipt of a design release from the state building commissioner and the state fire marshal, an application shall be submitted to the director on the form provided and approved by the department, with the documents required by the application form.~~

(1) The applicant shall submit a license application on the prescribed form in accordance with IC 16-28-2-2. The applicant shall identify direct and indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) Prior to the start of construction, detailed architectural and operational plans shall be submitted to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.

(4) The director shall be notified of the design release from the department of fire and building services.

(5) The director shall be provided with written notification that construction of the building is substantially complete.

(6) The applicant shall submit to the director the following:

(A) Corporate or partnership structure.

(B) A complete list of facilities previously and currently owned or operated by the officers, directors, agents, and managing employees.

(C) A copy of agreements and contracts.

(D) If registration is required by the secretary of state, a copy of the registration.

(E) A staffing plan to include the number, educational level, and personal health of employees.

(F) A disaster plan.

~~(3)~~ **(7) The applicant shall submit** information and supporting documents **required by the director documenting** that the facility will be operated in reasonable compliance with this article and applicable statutes. ~~shall be furnished.~~

~~(4)~~ **(8) The applicant shall submit** a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC). ~~shall be furnished.~~

~~(5) If new construction or remodeling is involved,~~ **(9) The applicant shall submit** information verified by the appropriate building official that the building is in reasonable compliance with the building rules of the fire prevention and building safety commission (675 IAC). ~~shall be furnished.~~

~~(6) A plan of operation shall be submitted to the director. The plan shall include, but is not limited to, the following:~~

~~(A) Corporate or partnership structure.~~

~~(B) Policies and procedures, including personnel, operations, and resident care.~~

~~(C) A disaster plan.~~

~~(D) A copy of agreements and contracts.~~

~~(7) The appropriate licensure fee shall be submitted.~~

(10) The facility shall meet the environmental and physical standards of section 19 of this rule.

(11) The applicant shall submit an independent verification of assets and liabilities demonstrating working capital adequate to operate the facility. The verification shall be performed by a certified public accountant certified by the Indiana board of accountancy under IC 25-2.1-3 et seq. The verification shall be submitted to the director on a form approved by the department. The verification shall be accompanied by documents required by the application form and other documents or information as required by the department to evidence adequate working capital to operate the facility.

~~(e)~~ **(d)** The director may ~~approve occupancy and use of the structure pending a final licensure decision.~~ **issue a health facility license for an existing facility that proposes a change from a previously approved plan review upon receipt, review, and approval of the following requirements:**

(1) The applicant shall submit the appropriate licensure fee.

(2) Prior to the start of construction, detailed architectural and operational plans shall be submitted to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.

(3) The director shall be notified of the design release from the department of fire and building services.

(4) The director shall be provided with written notification that construction of the building is substantially complete.

(5) The applicant shall submit information and supporting documents required by the director that the facility will be operated in reasonable compliance with this article and applicable statutes.

(6) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(7) Information verified by the appropriate building official that the building is in reasonable compliance with the building rules of the fire prevention and building safety commission (675 IAC).

(e) The director may issue a health facility license for an existing facility that proposes a change in beds upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit the appropriate license fee.

(2) The facility shall meet the environmental and physical standards of section 19 of this rule.

(3) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(f) The director may issue a health facility license for a facility that has changed ownership upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit a license application on the prescribed form in accordance with IC 16-28-2-2. The applicant shall identify direct and indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) The applicant shall submit information and supporting documents required by the director documenting that the facility will be operated in reasonable compliance with this article and applicable statutes.

(4) The applicant shall submit to the director the following:

(A) Corporate or partnership structure.

(B) A complete list of facilities previously or currently owned or operated by the officers, directors, agents, and managing employees.

(C) A copy of agreements and contracts.

(D) If registration is required by the secretary of state, a copy of the registration.

(E) A staffing plan to include the number, educational level, and personal health of employees.

(F) A disaster plan.

(5) An applicant for a license shall submit an independent verification of assets and liabilities demonstrating working capital adequate to operate the facility. The verification shall be performed by a certified public accountant certified by the Indiana board of accountancy under IC 25-2.1-3 et seq. The verification shall be submitted to the director on a form approved by the department. The verification shall be accompanied by documents required by the application form and other documents or information as required by the department to evidence adequate working capital to operate the facility.

~~(f)~~ **(g)** The director may issue a provisional license to a new facility or to a facility under new ownership in accordance with IC 16-28-2-4(2).

~~(g)~~ **(h)** For the renewal of a license, the director may issue a full license for any period up to one (1) year, ~~or~~ **issue** a probationary license, or ~~the director may refuse to issue~~ **deny** a license ~~as follows:~~ **application upon receipt and review of the following requirements:**

(1) The facility shall submit a renewal application to the director at least forty-five (45) days prior to the expiration of the license. The renewal application shall be on a form provided and approved by the division. ~~which includes identification of~~ **The applicant shall identify** direct or indirect ownership ~~interest~~ **interests** of five percent (5%) or more and of ~~corporate~~ officers, ~~or~~ **directors, and** partners.

(2) The ~~licensure~~ **applicant shall submit the appropriate license** fee. ~~shall be included with the renewal application.~~

(3) The director shall verify that the facility is operated in reasonable compliance with IC 16-28-2 and this article.

(4) The state fire marshal shall verify that the facility is in reasonable compliance with the applicable fire safety statutes and rules (675 IAC).

~~(h)~~ **(i)** If the director issues a probationary license, the license may be granted for a period of three (3) months. However, no more than three (3) probationary licenses may be issued in a twelve (12) month period. Although the license fee for a full twelve (12) month period has been paid, a new fee shall be required prior to the issuance of a probationary license.

~~(i) If the director denies renewal, reduces, revokes, or issues a probationary license, then a hearing officer will be appointed to hold a hearing. However, a facility may waive its right to a hearing and accept the director recommendation.~~

(j) Any change in direct or indirect corporate ownership of five percent (5%) or more that occurs during the licensure period shall be reported to the director, in writing, at the time of the change. The facility must also provide written notice at the time the change occurs in the officers, directors, agents, or managing employees, or the corporation, association, or other company responsible for the management of the facility.

~~(j)~~ **(k)** For a good cause shown, waiver of any nonstatutory provisions of this rule may be granted by the executive board for a specified period in accordance with IC 16-28-1-10.

~~(k)~~ **(l)** A licensure survey finding or complaint allegation does not constitute a breach for the purposes of IC 16-28-2 until or unless the commissioner makes a specific determination that a breach has occurred. Moreover, the director shall issue a citation only upon a determination by the commissioner that a breach has occurred. Regardless of whether the commissioner makes a determination that a breach has occurred, a licensure survey finding or complaint allegation may be used as evidence as to whether a violation actually occurred for the purposes of licensure hearings or any other proceedings initiated under IC 16-28-2 or this article.

~~(l)~~ **(m)** The classification of rules into the categories that are stated at the end of each section of this rule and 410 IAC 16.2-5 through 410 IAC 16.2-7 shall be used to determine the corrective actions and penalties, if appropriate, to be imposed by the commissioner upon a determination that a breach has occurred, as follows:

(1) An offense presents a substantial probability that death or a life-threatening condition will result. For an offense, the commissioner shall issue an order for immediate correction of the offense. In addition, the commissioner shall:

(A) impose a fine not to exceed ten thousand dollars ($10,000); or

(B) order the suspension of new admissions to the health facility for a period not to exceed forty-five (45) days;

or both. If the offense is immediately corrected, the commissioner may waive up to fifty percent (50%) of any fine imposed and reduce the number of days for suspension of new admissions by one-half (½). The commissioner may also impose revocation by the director of the facility's license or issuance of a probationary license.

(2) A deficiency presents an immediate or direct, serious adverse effect on the health, safety, security, rights, or welfare of a resident. For a deficiency, the commissioner shall issue an order for immediate correction of the deficiency. In addition, the commissioner may:

(A) impose a fine not to exceed five thousand dollars ($5,000); or

(B) order the suspension of new admissions to the health facility for a period not to exceed thirty (30) days;

or both. For a repeat of the same deficiency within a fifteen (15) month period, the commissioner shall order immediate correction of the deficiency and impose a fine not to exceed ten thousand dollars ($10,000) or suspension of new admissions to the facility for a period not to exceed forty-five (45) days, or both. If the deficiency is immediately corrected, the commissioner may waive up to fifty percent (50%) of any fine imposed and reduce the number of days for suspension of new admissions by one-half (½). The commissioner may also impose revocations by the director of the facility license or issuance of a probationary license.

(3) A noncompliance presents an indirect threat on the health, safety, security, rights, or welfare of a resident. For a noncompliance, the commissioner shall require the health facility to comply with any plan of correction approved or directed under IC 16-28-5-7. If the facility is found to have a pattern of noncompliance, the commissioner may suspend new admissions to the health facility for a period not to exceed fifteen (15) days or impose a fine not to exceed one thousand dollars ($1,000), or both. Additionally, if the health facility is found to have a repeat of the same noncompliance in any fifteen (15) month period, the commissioner shall issue an order for immediate correction of the noncompliance. The commissioner may impose a fine not to exceed five thousand

dollars ($5,000) or suspension of new admissions to the health facility for a period not to exceed thirty (30) days, or both.

(4) A nonconformance is any other classified rule that does not fall in the three (3) categories established in subdivisions (1) through (3). For a nonconformance, the commissioner shall require the health facility to comply with any plan of correction approved or directed in accordance with IC 16-28-5-7. For a repeat of the same nonconformance within a fifteen (15) month period, the commissioner shall require the health facility to comply with any plan of correction approved or directed in accordance with IC 16-28-5-7. For a repeat pattern of nonconformance the commissioner may suspend new admissions to the health facility for a period not to exceed fifteen (15) days or impose a fine not to exceed one thousand dollars ($1,000), or both.

~~(m)~~ **(n)** For Medicare ~~and~~ **or** Medicaid certified facilities, or both, the department shall not collect both a civil money penalty under 42 CFR 488 and a fine under IC 16-28 and this article. *(Indiana State Department of Health; 410 IAC 16.2-3.1-2; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1526, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; filed May 16, 2001, 2:09 p.m.: 24 IR 3022; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)*

SECTION 2. 410 IAC 16.2-5-1.1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.1 Licenses

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-18-2-167; IC 16-28-1-10; IC 16-28-2-2; IC 16-28-2-4; IC 16-28-5-7; IC 25-2.1-3

Sec. 1.1. (a) Any person, in order to lawfully operate a health facility as defined in IC 16-18-2-167, shall first obtain an authorization to occupy the facility or a license from the director. The applicant shall notify the director, in writing, before the applicant begins to operate a facility that is being purchased or leased from another licensee. Failure to notify the director precludes the issuance of a full license.

~~(b) An application shall be submitted on the prescribed form in accordance with IC 16-28-2-2. The application shall include identification of direct or indirect ownership interest of five percent (5%) or more and of corporate officers or partners.~~

~~(c) Any change in direct or indirect corporate ownership of five percent (5%) or more of the licensee, which occurs during the licensure period, shall be reported to the director, in writing, at the time of the change. The facility must also provide written notice at the time the change occurs in the corporation, association, or other company responsible for the management of the facility.~~

(b) The director may approve occupancy and use of the structure pending a final licensure decision.

~~(d)~~ **(c) The director may issue** a **health facility** license for a new facility ~~an existing facility that proposes a change in the number of beds, or a facility that has changed ownership is obtained as follows:~~ **upon receipt, review, and approval of the following requirements:**

~~(1) Prior to the start of construction, detailed architectural and operational plans shall be submitted through the office of the state building commissioner to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.~~

~~(2) Upon receipt of a design release from the state building commissioner and the state fire marshal, an application shall be submitted to the director on the form provided and approved by the department, with the documents required by the application form.~~

(1) The applicant shall submit a license application on the prescribed form in accordance with IC 16-28-2-2. The applicant shall identify direct and indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) Prior to the start of construction, detailed architectural and operational plans shall be submitted to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.

(4) The director shall be notified of the design release from the department of fire and building services.

(5) The director shall be provided with written notification that construction of the building is substantially complete.

(6) The applicant shall submit to the director the following:

(A) Corporate or partnership structure.

(B) A complete list of facilities previously and currently owned or operated by the officers, directors, agents, and managing employees.

(C) A copy of agreements and contracts.

(D) If registration is required by the secretary of state,

a copy of the registration.

(E) A staffing plan to include the number, educational level, and personal health of employees.

(F) A disaster plan.

~~(3)~~ **(7) The applicant shall submit** information and supporting documents **required by the director documenting** that the facility will be operated in reasonable compliance with this article and applicable statutes. ~~shall be furnished.~~

~~(4)~~ **(8) The applicant shall submit** a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC). ~~shall be furnished.~~

~~(5) If new construction or remodeling is involved,~~ **(9) The applicant shall submit** information verified by the appropriate building official that the building is in reasonable compliance with the building rules of the fire prevention and building safety commission (675 IAC). ~~shall be furnished.~~

~~(6) A plan of operation shall be submitted to the director. The plan shall include, but is not limited to, the following:~~

~~(A) Corporate or partnership structure.~~

~~(B) Policies and procedures, including personnel, operations, and resident care.~~

~~(C) A disaster plan.~~

~~(D) A copy of agreements and contracts.~~

~~(7) The appropriate licensure fee shall be submitted.~~

(10) The facility shall meet the environmental and physical standards of section 1.6 of this rule.

(11) The applicant shall submit an independent verification of assets and liabilities demonstrating working capital adequate to operate the facility. The verification shall be performed by a certified public accountant certified by the Indiana board of accountancy under IC 25-2.1-3 et seq. The verification shall be submitted to the director on a form approved by the department. The verification shall be accompanied by documents required by the application form and other documents or information as required by the department to evidence adequate working capital to operate the facility.

~~(c)~~ **(d)** The director may ~~approve occupancy and use of the structure pending a final licensure decision.~~ **issue a health facility license for an existing facility that proposes a change from a previously approved plan review upon receipt, review, and approval of the following requirements:**

(1) The applicant shall submit the appropriate licensure fee.

(2) Prior to the start of construction, detailed architectural and operational plans shall be submitted to the division for consideration and approval. The plans shall state the licensure classification sought. Plans for projects involving less than thirty thousand (30,000) cubic feet require suitable detailed plans and sketches. Plans for projects involving more than thirty thousand (30,000) cubic feet require certification by an architect or an engineer registered in Indiana. A plan of operation, in sufficient detail to facilitate the review of functional areas, that is, nursing unit, laundry, and kitchen, shall accompany the submitted plan.

(3) The director shall be notified of the design release from the department of fire and building services.

(4) The director shall be provided with written notification that construction of the building is substantially complete.

(5) The applicant shall submit information and supporting documents required by the director that the facility will be operated in reasonable compliance with this article and applicable statutes.

(6) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(7) Information verified by the appropriate building official that the building is in reasonable compliance with the building rules of the fire prevention and building safety commission (675 IAC).

(e) The director may issue a health facility license for an existing facility that proposes a change in beds upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit the appropriate license fee.

(2) The facility shall meet the environmental and physical standards of section 1.6 of this rule.

(3) The applicant shall submit a report by the state fire marshal that the facility is in reasonable compliance with the fire safety rules of the fire prevention and building safety commission (675 IAC).

(f) The director may issue a health facility license for a facility that has changed ownership upon receipt, review, and approval of the following requirements:

(1) The applicant shall submit a license application on the prescribed form in accordance with IC 16-28-2-2. The applicant shall identify direct and indirect ownership interests of five percent (5%) or more and of officers, directors, and partners.

(2) The applicant shall submit the appropriate license fee.

(3) The applicant shall submit information and supporting documents required by the director documenting that the facility will be operated in reasonable compliance with this article and applicable statutes.

(4) The applicant shall submit to the director the following:

(A) Corporate or partnership structure.

(B) A complete list of facilities previously or currently owned or operated by the officers, directors, agents, and managing employees.

(C) A copy of agreements and contracts.

(D) If registration is required by the secretary of state, a copy of the registration.

(E) A staffing plan to include the number, educational level, and personal health of employees.

(F) A disaster plan.

(5) An applicant for a license shall submit an independent verification of assets and liabilities demonstrating working capital adequate to operate the facility. The verification shall be performed by a certified public accountant certified by the Indiana board of accountancy under IC 25-2.1-3 et seq. The verification shall be submitted to the director on a form approved by the department. The verification shall be accompanied by documents required by the application form and other documents or information as required by the department to evidence adequate working capital to operate the facility.

~~(f)~~ **(g)** The director may issue a provisional license to a new facility or to a facility under new ownership in accordance with IC 16-28-2-4(2).

~~(g)~~ **(h)** For the renewal of a license, the director may issue a full license for any period up to one (1) year, ~~or~~ **issue** a probationary license, or ~~the director may refuse to issue~~ **deny** a license ~~as follows:~~ **application upon receipt and review of the following requirements:**

(1) The facility shall submit a renewal application to the director at least forty-five (45) days prior to the expiration of the license. The renewal application shall be on a form provided and approved by the division. ~~which includes identification of~~ **The applicant shall identify** direct or indirect ownership ~~interest~~ **interests** of five percent (5%) or more and of ~~corporate~~ officers, ~~or~~ **directors, and** partners.

(2) The ~~licensure~~ **applicant shall submit the appropriate license** fee. ~~shall be included with the renewal application.~~

(3) The director shall verify that the facility is operated in reasonable compliance with IC 16-28-2 and this article.

(4) The state fire marshal shall verify that the facility is in reasonable compliance with the applicable fire safety statutes and rules (675 IAC).

~~(h)~~ **(i)** If the director issues a probationary license, the license may be granted for a period of three (3) months. However, no more than three (3) probationary licenses may be issued in a twelve (12) month period. Although the license fee for a full twelve (12) month period has been paid, a new fee shall be required prior to the issuance of a probationary license.

~~(i) If the director denies renewal or reduces, revokes, or issues a probationary license, then a hearing officer will be appointed to hold a hearing. However, a facility may waive its right to a hearing and accept the director recommendation.~~

(j) Any change in direct or indirect corporate ownership of five percent (5%) or more that occurs during the licensure period shall be reported to the director, in writing, at the time of the change. The facility must also provide written notice at the time the change occurs in the officers, directors, agents, or managing employees, or the corporation, association, or other company responsible for the management of the facility.

~~(j)~~ **(k)** For **a** good cause shown, waiver of any nonstatutory provisions of this rule may be granted by the executive board for a specified period in accordance with IC 16-28-1-10.

~~(k)~~ **(l)** A licensure survey finding or complaint allegation does not constitute a breach for the purposes of IC 16-28-2 until or unless the commissioner makes a specific determination that a breach has occurred. Moreover, the director shall issue a citation only upon a determination by the commissioner that a breach has occurred. Regardless of whether the commissioner makes a determination that a breach has occurred, a licensure survey finding or complaint allegation may be used as evidence as to whether a violation actually occurred for the purposes of licensure hearings or any other proceedings initiated under IC 16-28-2 or this article.

~~(l)~~ **(m)** The classification of rules into the categories that are stated at the end of each section of this rule and 410 IAC 16.2-6 through 410 IAC 16.2-7 shall be used to determine the corrective actions and penalties, if appropriate, to be imposed by the commissioner upon a determination that a breach has occurred as follows:

(1) An offense presents a substantial probability that death or a life-threatening condition will result. For an offense, the commissioner shall issue an order for immediate correction of the offense. In addition, the commissioner shall:

(A) impose a fine not to exceed ten thousand dollars ($10,000); or

(B) order the suspension of new admissions to the health facility for a period not to exceed forty-five (45) days;

or both. If the offense is immediately corrected, the commissioner may waive up to fifty percent (50%) of any fine imposed and reduce the number of days for suspension of new admissions by one-half (½). The commissioner may also impose revocation by the director of the facility's license or issuance of a probationary license.

(2) A deficiency presents an immediate or direct, serious adverse effect on the health, safety, security, rights, or welfare of a resident. For a deficiency, the commissioner shall issue an order for immediate correction of the deficiency. In addition, the commissioner may:

(A) impose a fine not to exceed ~~ten~~ **five** thousand dollars ~~($10,000);~~ **($5,000);** or

(B) order the suspension of new admissions to the health facility for a period not to exceed thirty (30) days;

or both. For a repeat of the same deficiency within a fifteen (15) month period, the commissioner shall order immediate correction of the deficiency, and impose a fine not to exceed ten thousand dollars ($10,000), or suspension of new admissions to the facility for a period not to exceed forty-five (45) days, or both. If the deficiency is immediately corrected, the commissioner may waive up to fifty percent (50%) of any fine imposed and reduce the number of days for suspension of new admissions by one-half (½). The commissioner may

also impose revocation by the director of the facility license or issuance of a probationary license.

(3) A noncompliance presents an indirect threat on the health, safety, security, rights, or welfare of a resident. For a noncompliance, the commissioner shall require the health facility to submit a plan of correction approved or directed under IC 16-28-5-7. If the facility is found to have a pattern of noncompliance, the commissioner may suspend new admissions to the health facility for a period not to exceed ten (10) days or impose a fine not to exceed one thousand dollars ($1,000), or both. Additionally, if the health facility is found to have a repeat of the same noncompliance in any eighteen (18) month period, the commissioner shall issue an order for immediate correction of the noncompliance. The commissioner may impose a fine not to exceed five thousand dollars ($5,000) or suspension of new admissions to the health facility for a period not to exceed thirty (30) days, or both.

(4) A nonconformance is any other classified rule that does not fall in the three (3) categories established in subdivisions (1) through (3). For a nonconformance, the commissioner shall require the health facility to comply with any plan of correction approved or directed in accordance with IC 16-28-5-7. For a repeat of the same nonconformance within a fifteen (15) month period, the commissioner shall require the health facility to comply with any plan of correction approved or directed in accordance with IC 16-28-5-7. For a repeat pattern of nonconformance, the commissioner may suspend new admissions to the health facility for a period not to exceed fifteen (15) days or impose a fine not to exceed one thousand dollars ($1,000), or both.

(Indiana State Department of Health; 410 IAC 16.2-5-1.1; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1560, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1912, eff Mar 1, 2003)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 24, 2004 at 1:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed amendments to require an independent verification of financial status by a certified public accountant, to clarify applicability of the rule, and to amend the fine. Copies of these rules are now on file at the Health Care Regulatory Services Commission, Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #04-7

DIGEST

Adds 410 IAC 16.2-1.1-19.3 to define dining assistant. Amends 410 IAC 16.2-3.1-14 to include dining assistant certificate or letter of completion. Adds 410 IAC 16.2-3.1-53 to establish the dining assistant program in comprehensive and residential facilities. Amends 410 IAC 16.2-5-1.4 to include dining assistant certificate or letter of completion. Adds 410 IAC 16.2-5-13 to establish the dining assistant program in comprehensive and residential facilities. Effective 30 days after filing with the secretary of state.

410 IAC 16.2-1.1-19.3 **410 IAC 16.2-5-1.4**
410 IAC 16.2-3.1-14 **410 IAC 16.2-5-13**
410 IAC 16.2-3.1-53

SECTION 1. 410 IAC 16.2-1.1-19.3 IS ADDED TO READ AS FOLLOWS:

410 IAC 16.2-1.1-19.3 "Dining assistant" defined
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28

Sec. 19.3. "Dining assistant" means an individual who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization. *(Indiana State Department of Health; 410 IAC 16.2-1.1-19.3)*

SECTION 2. 410 IAC 16.2-3.1-14, PROPOSED TO BE AMENDED AT 27 IR 2056, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-14 Personnel
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1; IC 16-28-13-3

Sec. 14. (a) Each facility shall have specific procedures written and implemented for the screening of prospective employees. Specific inquiries shall be made for prospective employees. The facility shall have a personnel policy that considers references and any convictions in accordance with IC 16-28-13-3.

(b) A facility must not use any individual working in the facility as a nurse aide for more than four (4) months on a full-time, part-time, temporary, per diem, or other basis unless that individual:

(1) is competent to provide nursing and nursing-related services; and

(2) has completed a:

(A) training and competency evaluation program; ~~approved by the division~~ or ~~a~~

(B) competency evaluation program;
approved by the division.

(c) Each nurse aide who is hired to work in a facility shall have successfully completed a nurse aide training program approved by the division or shall enroll in the first available approved training program scheduled to commence within sixty (60) days of the date of the nurse aide's employment. The program may be established by the facility, ~~or by~~ an organization, or **an** institution. The training program shall consist of at least the following:

(1) Thirty (30) hours of classroom instruction within one hundred twenty (120) days of employment. At least sixteen (16) of those hours shall be in the following areas prior to any direct contact with a resident:

(A) Communication and interpersonal skills.

(B) Infection control.

(C) Safety/emergency procedures, including the Heimlich maneuver.

(D) Promoting residents' independence.

(E) Respecting residents' rights.

(2) The remainder of the thirty (30) hours of instruction shall include the following:

(A) Basic nursing skills as follows:

(i) Taking and recording vital signs.

(ii) Measuring and recording height and weight.

(iii) Caring for residents' environment.

(iv) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor.

(v) Caring for residents when death is imminent.

(B) Personal care skills, including, but not limited to, the following:

(i) Bathing.

(ii) Grooming, including mouth care.

(iii) Dressing.

(iv) Toileting.

(v) Assisting with eating and hydration.

(vi) Proper feeding techniques.

(vii) Skin care.

(viii) Transfers, positioning, and turning.

(C) Mental health and social service needs as follows:

(i) Modifying aides' behavior in response to residents' behavior.

(ii) Awareness of developmental tasks associated with the aging process.

(iii) How to respond to residents' behavior.

(iv) Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity.

(v) Using the resident's family as a source of emotional support.

(D) Care of cognitively impaired residents as follows:

(i) Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

(ii) Communicating with cognitively impaired residents.

(iii) Understanding the behavior of cognitively impaired residents.

(iv) Appropriate responses to the behavior of cognitively impaired residents.

(v) Methods of reducing the effects of cognitive impairments.

(E) Basic restorative services as follows:

(i) Training the resident in self-care according to the resident's abilities.

(ii) Use of assistive devices in transferring, ambulation, eating, and dressing.

(iii) Maintenance of range of motion.

(iv) Proper turning and positioning in bed and chair.

(v) Bowel and bladder training.

(vi) Care and use of prosthetic and orthotic devices.

(F) Residents' rights as follows:

(i) Providing privacy and maintenance of confidentiality.

(ii) Promoting residents' right to make personal choices to accommodate their needs.

(iii) Giving assistance in resolving grievances and disputes.

(iv) Providing needed assistance in getting to and participating in resident and family groups and other activities.

(v) Maintaining care and security of residents' personal possessions.

(vi) Promoting residents' right to be free from abuse, mistreatment, and neglect, and the need to report any instances of such treatment to appropriate facility staff.

(vii) Avoiding the need for restraints in accordance with current professional standards.

(3) Seventy-five (75) hours of supervised clinical experience, at least sixteen (16) hours of which must be in directly supervised practical training. As used in this subdivision, "directly supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under direct supervision of a registered nurse or a licensed practical nurse. These hours shall consist of normal employment as a nurse aide under the supervision of a licensed nurse.

(4) Training that ensures the following:

(A) Students do not perform any services for which they have not trained and been found proficient by the instructor.

(B) Students who are providing services to residents are under the general supervision of a licensed nurse.

(d) A facility must arrange for individuals used as nurse aides, as of the effective date of this rule, to participate in a competency evaluation program approved by the division and preparation necessary for the individual to complete the program.

(e) Before allowing an individual to serve as a nurse aide, a

facility must receive registry verification that the individual has met competency evaluation requirements unless the individual:

(1) is a full-time employee in a training and competency evaluation program approved by the division; or

(2) can prove that he or she has recently successfully completed a training and competency evaluation program approved by the division and has not yet been included in the registry.

Facilities must follow up to ensure that such individual actually becomes registered.

(f) A facility must check with all state nurse aide registries it has reason to believe contain information on an individual before using that individual as a nurse aide.

(g) If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of twenty-four (24) consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new:

(1) training and competency evaluation program; or ~~a new~~

(2) competency evaluation program.

(h) The facility must complete a performance review of every nurse aide at least once every twelve (12) months and must provide regular inservice education based on the outcome of these reviews. The inservice training must be as follows:

(1) Sufficient to ensure the continuing competence of nurse aides but must be no less than twelve (12) hours per year.

(2) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff.

(3) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(i) The facility must ensure that nurse aides and qualified medication aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs as identified through resident assessments and described in the care plan.

(j) Medication shall be administered by licensed nursing personnel or qualified medication aides. If medication aides handle or administer drugs or perform treatments requiring medications, the facility shall ensure that the persons have been properly qualified in medication administration by a state-approved course. Injectable medications shall be given only by licensed personnel.

(k) There shall be an organized ongoing inservice education and training program planned in advance for all personnel. This training shall include, but not be limited to, the following:

(1) Residents' rights.

(2) Prevention and control of infection.

(3) Fire prevention.

(4) Safety and accident prevention.

(5) Needs of specialized populations served.

(6) Care of cognitively impaired residents.

(l) The frequency and content of inservice education and training programs shall be in accordance with the skills and knowledge of the facility personnel as follows. For nursing personnel, this shall include at least twelve (12) hours of inservice per calendar year and six (6) hours of inservice per calendar year for nonnursing personnel.

(m) Inservice programs for items required under subsection (k) shall contain a means to assess learning by participants.

(n) The administrator may approve attendance at outside workshops and continuing education programs related to that individual's responsibilities in the facility. Documented attendance at these workshops and programs meets the requirements for inservice training.

(o) Inservice records shall be maintained and shall indicate the following:

(1) The time, date, and location.

(2) **The** name of the instructor.

(3) The title of the instructor.

(4) The ~~name~~ **names** of the participants.

(5) The program content of inservice.

The employee will acknowledge attendance by written signature.

(p) Initial orientation of all staff must be conducted and documented and shall include the following:

(1) Instructions on the needs of the specialized population or populations served in the facility, for example:

(A) aged;

(B) developmentally disabled;

(C) mentally ill;

(D) children; or

(E) care of cognitively impaired;

residents.

(2) A review of residents' rights and other pertinent portions of the facility's policy manual.

(3) Instruction in first aid, emergency procedures, and fire and disaster preparedness, including evacuation procedures and universal precautions.

(4) A detailed review of the appropriate job description, including a demonstration of equipment and procedures required of the specific position to which the employee will be assigned.

(5) Review of ethical considerations and confidentiality in resident care and records.

(6) For direct care staff, instruction in the particular needs of each resident to whom the employee will be providing care.

(q) Each facility shall maintain current and accurate personnel

records for all employees. The personnel records for all employees shall include the following:

(1) **The** name and address of **the** employee.

(2) Social Security number.

(3) Date of beginning employment.

(4) Past employment, experience, and education if applicable.

(5) Professional licensure, certification, or registration number **or dining assistant certificate or letter of completion** if applicable.

(6) Position in the facility and job description.

(7) Documentation of orientation to the facility and to the specific job skills.

(8) Signed acknowledgement of orientation to residents' rights.

(9) Performance evaluations in accordance with the facility's policy.

(10) Date and reason for separation.

(r) The employee's personnel record shall be retained for at least three (3) years following termination or separation of the employee from employment.

(s) Professional staff must be licensed, certified, or registered in accordance with applicable state laws or rules.

(t) A physical examination shall be required for each employee of a facility within one (1) month prior to employment. The examination shall include a tuberculin skin test, using the Mantoux method (5 TU PPD), administered by persons having documentation of training from a department-approved course of instruction in intradermal tuberculin skin testing, reading, and recording unless a previously positive reaction can be documented. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered. The tuberculin skin test must be read prior to the employee starting work. The facility must assure the following:

(1) At the time of employment, or within one (1) month prior to employment, and at least annually thereafter, employees and nonpaid personnel of facilities shall be screened for tuberculosis. For health care workers who have not had a documented negative tuberculin skin test result during the preceding twelve (12) months, the baseline tuberculin skin testing should employ the two-step method. If the first step is negative, a second test should be performed one (1) to three (3) weeks after the first step. The frequency of repeat testing will depend on the risk of infection with tuberculosis.

(2) All employees who have a positive reaction to the skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis.

(3) The facility shall maintain a health record of each employee that includes:

(A) a report of the preemployment physical examination; and

(B) reports of all employment-related health examinations.

(4) An employee with symptoms or signs of active disease, (symptoms suggestive of active tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss) shall not be permitted to work until tuberculosis is ruled out.

(u) In addition to the required inservice hours in subsection (l), staff who have regular contact with residents shall have a minimum of six (6) hours of dementia-specific training within six (6) months of initial employment, or within thirty (30) days for personnel assigned to the Alzheimer's and dementia special care unit, and three (3) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

(v) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (c), (e), (f), (g), (i), (j), or (s) is a deficiency;

(2) subsection (a), (b), (d), (h), (k), (l), (m), (n), (o), (p), (t), or (u) is a noncompliance; and

(3) subsection (q) or (r) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-14; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1537, eff Apr 1, 1997; errata, 20 IR 1738; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; filed May 16, 2001, 2:09 p.m.: 24 IR 3024; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 3. 410 IAC 16.2-3.1-53 IS ADDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-53 Dining assistants

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1; IC 16-28-13-3; IC 25-23-1-1

Sec. 53. (a) Each dining assistant shall successfully complete a sixteen (16) hour training program for dining assistants that has been approved by the department.

(b) A dining assistant training program must obtain approval from the department prior to providing instruction to individuals.

(c) The facility shall do the following:

(1) Ensure that resident selection for dining assistance is based on the charge nurse's assessment and the resident's most recent assessment and plan of care.

(2) Not allow the dining assistant to assist more than two (2) residents at any one (1) time.

(3) Ensure the dining assistant is oriented to the following:

(A) The resident's diet, likes, and dislikes.

(B) Feeding techniques appropriate to the individual resident.

(4) Document the use of a dining assistant on the resident's care plan and review at each care plan conference.

(5) Check the nurse aide registry prior to training an individual as a dining assistant.

(6) Use only individuals as dining assistants who have

successfully completed a department-approved training program for dining assistants.

(d) The scope of practice for dining assistants is as follows:

(1) A dining assistant shall work under the supervision of a licensed nurse who is on the unit or floor where the dining assistance is furnished and is immediately available to provide assistance as needed.

(2) In an emergency, a dining assistant shall call the supervising nurse using the resident call system or any other method available.

(3) A dining assistant shall assist only residents who do not have complicated eating problems, which include, but are not limited to, the following:

(A) Difficulty swallowing.

(B) Recurrent lung aspirations.

(C) Tube or parenteral/IV feedings.

(e) The dining assistant training program shall consist of, but is not limited to, the following:

(1) Eight (8) hours of classroom instruction prior to any direct contact with a resident that includes the following:

(A) Feeding techniques.

(B) Regular and special diets.

(C) Reporting food and fluid intake.

(D) Assistance with feeding and hydration.

(E) Communication and interpersonal skills.

(F) Infection control.

(G) Safety/emergency procedures including the Heimlich maneuver.

(H) Promoting residents' independence.

(I) Abuse, neglect, and misappropriation of property.

(J) Nutrition and hydration.

(K) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting these changes to the supervising nurse.

(L) Mental health and social service needs including how to respond to a resident's behavior.

(M) Residents' rights including the following:

(i) Privacy.

(ii) Confidentiality.

(iii) Promoting residents' right to make personal choices to accommodate their needs.

(iv) Maintaining care and security of residents' personal possessions.

(v) Dignity.

(2) Eight (8) hours of clinical instruction that consists of, but is not limited to, the following:

(A) Feeding techniques.

(B) Assistance with eating and hydration.

(f) The dining assistant training program and training facility, if applicable, must ensure that clinical instruction provides for the direct supervision of the dining assistant by a licensed nurse.

(g) Each training program shall have a qualified instructor responsible for program oversight who at a minimum:

(1) possesses a valid Indiana registered nurse license under IC 25-23-1-1;

(2) possesses two (2) years of licensed nursing experience, of which at least one (1) year of experience is in the provision of long term care services; and

(3) completed a department-approved training program.

(h) An approved program director of a department nurse aide training program constitutes a qualified instructor under subsection (g) and may conduct dining assistant training without additional training.

(i) Dining assistant training may only be provided by:

(1) a registered nurse;

(2) a licensed practical nurse;

(3) a qualified dietician;

(4) an occupational therapist; or

(5) a speech-language pathologist.

Certified nurse aide and qualified medication aide personnel shall not participate in or provide any dining assistant training.

(j) In order to issue a certificate or letter of completion to the dining assistant, the dining assistant training program shall ensure that the dining assistant demonstrates competency in all areas of instruction using a checklist approved by the department.

(k) Each approved program shall maintain a student file that:

(1) is retained for a minimum of three (3) years; and

(2) contains:

(A) individualized documentation of the:

(i) classroom training that includes dates of attendance and areas of instruction; and

(ii) clinical instruction that includes dates of attendance and areas of instruction including procedures and activities completed during the clinical experience; and

(B) a copy of the certificate or letter confirming successful completion of the dining assistant training program, which shall be signed and dated by the instructor and bear the name and address of the training program.

(l) The department may revoke an approved dining assistant training program if evidence exists that the program has not been administered in accordance with this section.

(m) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (a), (b), (c), (d), (e), (f), (g), or (j) is a deficiency;

(2) subsection (h) or (i) is a noncompliance; and
(3) subsection (k) is a nonconformance.
(Indiana State Department of Health; 410 IAC 16.2-3.1-53)

SECTION 4. 410 IAC 16.2-5-1.4, PROPOSED TO BE AMENDED AT 27 IR 2067, SECTION 10, IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.4 Personnel
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1; IC 16-28-13-3

Sec. 1.4. (a) Each facility shall have specific procedures written and implemented for the screening of prospective employees. Appropriate inquiries shall be made for prospective employees. The facility shall have a personnel policy that considers references and any convictions in accordance with IC 16-28-13-3.

(b) Staff shall be sufficient in number, qualifications, and training in accordance with applicable state laws and rules to meet the twenty-four (24) hour scheduled and unscheduled needs of the residents and services provided. The number, qualifications, and training of staff shall depend on skills required to provide for the specific needs of the residents. A minimum of one (1) awake staff person, with current CPR and first aid certificates, shall be on site at all times. If fifty (50) or more residents of the facility regularly receive residential nursing services or administration of medication, or both, at least one (1) nursing staff person shall be on site at all times. Residential facilities with over one hundred (100) residents regularly receiving residential nursing services or administration of medication, or both, shall have at least one (1) additional nursing staff person awake and on duty at all times for every additional fifty (50) residents. Personnel shall be assigned only those duties for which they are trained to perform. Employee duties shall conform with written job descriptions.

(c) Any unlicensed employee providing more than limited assistance with the activities of daily living must be either a certified nurse aide or a home health aide. Existing facilities that are not licensed on the date of adoption of this rule and that seek licensure within one (1) year of adoption of this rule have two (2) months in which to ensure that all employees in this category are either a certified nurse aide or a home health aide.

(d) Prior to working independently, each employee shall be given an orientation to the facility by the supervisor (or his or her designee) of the department in which the employee will work. Orientation of all employees shall include the following:
(1) Instructions on the needs of the specialized populations:
(A) aged;
(B) developmentally disabled;
(C) mentally ill;
(D) dementia; or
(E) children;
served in the facility.
(2) A review of the facility's policy manual and applicable procedures, including:
(A) organization chart;
(B) personnel policies;
(C) appearance and grooming policies for employees; and
(D) residents' rights.
(3) Instruction in first aid, emergency procedures, and fire and disaster preparedness, including evacuation procedures.
(4) Review of ethical considerations and confidentiality in resident care and records.
(5) For direct care staff, personal introduction to, and instruction in, the particular needs of each resident to whom the employee will be providing care.
(6) Documentation of the orientation in the employee's personnel record by the person supervising the orientation.

(e) There shall be an organized inservice education and training program planned in advance for all personnel in all departments at least annually. Training shall include, but is not limited to, residents' rights, prevention and control of infection, fire prevention, safety, accident prevention, the needs of specialized populations served, medication administration, and nursing care, when appropriate, as follows:
(1) The frequency and content of inservice education and training programs shall be in accordance with the skills and knowledge of the facility personnel. For nursing personnel, this shall include at least eight (8) hours of inservice per calendar year and four (4) hours of inservice per calendar year for nonnursing personnel.
(2) In addition to the above required inservice hours, staff who have contact with residents shall have a minimum of six (6) hours of dementia-specific training within six (6) months and three (3) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents effectively and to gain understanding of the current standards of care for residents with dementia.
(3) Inservice records shall be maintained and shall indicate the following:
(A) **The** time, date, and location.
(B) **The** name of **the** instructor.
(C) **The** title of **the** instructor.
(D) ~~Name~~ **The names** of **the** participants.
(E) **The** program content of inservice.
The employee will acknowledge attendance by written signature.

(f) A health screen shall be required for each employee of a facility prior to resident contact. The screen shall include a tuberculin skin test, using the Mantoux method (5 TU, PPD), unless a previously positive reaction can be documented. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered. The facility must assure the following:
(1) At the time of employment, or within one (1) month prior

to employment, and at least annually thereafter, employees and nonpaid personnel of facilities shall be screened for tuberculosis. The first tuberculin skin test must be read prior to the employee starting work. For health care workers who have not had a documented negative tuberculin skin test result during the preceding twelve (12) months, the baseline tuberculin skin testing should employ the two-step method. If the first step is negative, a second test should be performed one (1) to three (3) weeks after the first step. The frequency of repeat testing will depend on the risk of infection with tuberculosis.

(2) All employees who have a positive reaction to the skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis.

(3) The facility shall maintain a health record of each employee that includes reports of all employment-related health screenings.

(4) An employee with symptoms or signs of active disease, (symptoms suggestive of active tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss) shall not be permitted to work until tuberculosis is ruled out.

(g) The facility must prohibit employees with communicable disease or infected skin lesions from direct contact with residents or their food if direct contact will transmit the disease. An employee with signs and symptoms of communicable disease, including, but not limited to, an infected or draining skin lesion, shall be handled according to a facility's policy regarding direct contact with residents, their food, or resident care items until the condition is resolved. Persons with suspected or proven active tuberculosis will not be permitted to work until determined to be noninfectious and documentation is provided for the employee record.

(h) The facility shall maintain current and accurate personnel records for all employees. The personnel records for all employees shall include the following:

(1) **The** name and address of **the** employee.

(2) Social Security number.

(3) Date of beginning employment.

(4) Past employment, experience, and education, if applicable.

(5) Professional licensure or registration number **or dining assistant certificate or letter of completion,** if applicable.

(6) Position in the facility and job description.

(7) Documentation of orientation to the facility, including residents' rights, and to the specific job skills.

(8) Signed ~~acknowledgment~~ **acknowledgement** of orientation to residents' rights.

(9) Performance evaluations in accordance with facility policy.

(10) Date and reason for separation.

(i) The employee personnel record shall be retained for at least three (3) years following termination or separation of the employee from employment.

(j) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (b), (c), or (g) is a deficiency;

(2) subsection (a), (d), (e), or (f) is a noncompliance; and

(3) subsection (h) or (i) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.4; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1567, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1921, eff Mar 1, 2003)

SECTION 5. 410 IAC 16.2-5-13 IS ADDED TO READ AS FOLLOWS:

410 IAC 16.2-5-13 Dining assistants

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1; IC 16-28-13-3; IC 25-23-1-1

Sec. 13. (a) Each dining assistant shall successfully complete a sixteen (16) hour training program for dining assistants that has been approved by the department.

(b) A dining assistant training program must obtain approval from the department prior to providing instruction to individuals.

(c) The facility shall do the following:

(1) Ensure that resident selection for dining assistance is based on the charge nurse's assessment and the resident's most recent assessment and plan of care.

(2) Not allow the dining assistant to assist more than two
(2) residents at any one (1) time.

(3) Ensure the dining assistant is oriented to the following:

(A) The resident's diet, likes, and dislikes.

(B) Feeding techniques appropriate to the individual resident.

(4) Document the use of a dining assistant on the resident's care plan and review at each care plan conference.

(5) Check the nurse aide registry prior to training an individual as a dining assistant.

(6) Use only individuals as dining assistants who have successfully completed a department-approved training program for dining assistants.

(d) The scope of practice for dining assistants is as follows:

(1) A dining assistant shall work under the supervision of a licensed nurse who is on the unit or floor where the dining assistance is furnished and is immediately available to provide assistance as needed.

(2) In an emergency, a dining assistant shall call the supervising nurse using the resident call system or any other method available.

(3) A dining assistant shall assist only residents who do

not have complicated eating problems, which include, but are not limited to, the following:
(A) Difficulty swallowing.
(B) Recurrent lung aspirations.
(C) Tube or parenteral/IV feedings.

(e) The dining assistant training program shall consist of, but is not limited to, the following:
(1) Eight (8) hours of classroom instruction prior to any direct contact with a resident that includes the following:
(A) Feeding techniques.
(B) Regular and special diets.
(C) Reporting food and fluid intake.
(D) Assistance with feeding and hydration.
(E) Communication and interpersonal skills.
(F) Infection control.
(G) Safety/emergency procedures including the Heimlich maneuver.
(H) Promoting residents' independence.
(I) Abuse, neglect, and misappropriation of property.
(J) Nutrition and hydration.
(K) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting these changes to the supervising nurse.
(L) Mental health and social service needs including how to respond to a resident's behavior.
(M) Residents' rights including the following:
(i) Privacy.
(ii) Confidentiality.
(iii) Promoting residents' right to make personal choices to accommodate their needs.
(iv) Maintaining care and security of residents' personal possessions.
(v) Dignity.
(2) Eight (8) hours of clinical instruction that consists of, but is not limited to, the following:
(A) Feeding techniques.
(B) Assistance with eating and hydration.

(f) The dining assistant training program and training facility, if applicable, must ensure that clinical instruction provides for the direct supervision of the dining assistant by a licensed nurse.

(g) Each training program shall have a qualified instructor responsible for program oversight who at a minimum:
(1) possesses a valid Indiana registered nurse license under IC 25-23-1-1;
(2) possesses two (2) years of licensed nursing experience, of which at least one (1) year of experience is in the provision of long term care services; and
(3) completed a department-approved training program.

(h) An approved program director of a department nurse aide training program constitutes a qualified instructor under subsection (g) and may conduct dining assistant training without additional training.

(i) Dining assistant training may only be provided by:
(1) a registered nurse;
(2) a licensed practical nurse;
(3) a qualified dietician;
(4) an occupational therapist; or
(5) a speech-language pathologist.
Certified nurse aide and qualified medication aide personnel shall not participate in or provide any dining assistant training.

(j) In order to issue a certificate or letter of completion to the dining assistant, the dining assistant training program shall ensure that the dining assistant demonstrates competency in all areas of instruction using a checklist approved by the department.

(k) Each approved program shall maintain a student file that:
(1) is retained for a minimum of three (3) years; and
(2) contains:
(A) individualized documentation of the:
(i) classroom training that includes dates of attendance and areas of instruction; and
(ii) clinical instruction that includes dates of attendance and areas of instruction including procedures and activities completed during the clinical experience; and
(B) a copy of the certificate or letter confirming successful completion of the dining assistant training program, which shall be signed and dated by the instructor and bear the name and address of the training program.

(l) The department may revoke an approved dining assistant training program if evidence exists that the program has not been administered in accordance with this section.

(m) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a), (b), (c), (d), (e), (f), (g), or (j) is a deficiency;
(2) subsection (h) or (i) is a noncompliance; and
(3) subsection (k) is a nonconformance.
(Indiana State Department of Health; 410 IAC 16.2-5-13)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 24, 2004 at 2:30 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed rules to establish the dining assistant program in comprehensive and residential facilities and to include a dining assistant certificate or letter of comple-

tion and a definition of dining assistant. Copies of these rules are now on file at the Health Care Regulatory Services Commission, Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #04-22

DIGEST

Amends 511 IAC 6.1-5.1-10.1 to add new courses to the approved list of high school courses in agricultural science. Effective 30 days after filing with the secretary of state.

511 IAC 6.1-5.1-10.1

SECTION 1. 511 IAC 6.1-5.1-10.1, PROPOSED TO BE AMENDED AT 26 IR 3940, SECTION 2, 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.
(v) Advanced life science: animals (L).
(vi) Advanced life science: plants and soils (L).
(vii) Advanced life science: foods (L).

(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) 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.
(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 June 3, 2004 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 add new courses to the approved list of high school courses in agricultural science. 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 #04-36

DIGEST

Amends 511 IAC 6-7-6.5 to make technical corrections. Amends 511 IAC 6.1-5.1, the lists of approved high school courses, by adding new science and social studies courses, deleting certain courses, creating separate course titles for advanced placement and college credit courses, changing foreign language to world language as the title for that course area, and creating a consistent format across course areas. Effective 30 days after filing with the secretary of state.

511 IAC 6-7-6.5	**511 IAC 6.1-5.1-5**
511 IAC 6.1-5.1-2	**511 IAC 6.1-5.1-6**
511 IAC 6.1-5.1-3	**511 IAC 6.1-5.1-8**
511 IAC 6.1-5.1-4	**511 IAC 6.1-5.1-9**

SECTION 1. 511 IAC 6-7-6.5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6-7-6.5 Academic honors diploma; additional course requirements

Authority: IC 20-1-1-6
Affected: IC 20-5-2-1.1

Sec. 6.5. (a) To be eligible for an academic honors diploma, a student must complete a minimum of forty-seven (47) high school credits. The following areas and courses are required:

(1) Language arts	8 credits
(2) Social studies	6 credits
(3) Mathematics	8 credits
(4) Science	6 credits
(5) ~~Foreign~~ **World** language	6 or 8 credits
(6) Fine arts	2 credits
(7) Health and safety	1 credit
(8) Basic physical education	1 credit

(b) In addition to the minimum course requirements prescribed in section 6 of this rule, courses counting toward an academic honors diploma are subject to the following requirements:

(1) Language arts credits must include **the following:**
(A) Literature.
(B) Composition. ~~and~~
(C) Speech.

(2) In addition to required courses in government and United States history, social studies credits must include courses with a major emphasis on economics and geography or world history.

(3) Mathematics credits must include **the following:**
(A) Geometry and algebra II or integrated mathematics II and integrated mathematics III. ~~and~~
(B) At least one (1) upper level mathematics course from those listed in ~~511 IAC 6.1-5.1-5(2)(H) through 511 IAC 6.1-5.1-5(2)(M)~~ **511 IAC 6.1-5.1-5(3)** or a program of equal rigor. If a student has completed a junior high school curriculum that is equivalent to school algebra I and is placed in high school algebra II or a junior high curriculum that is equivalent to integrated mathematics I and is placed in high school integrated mathematics II, that student must earn only six (6) high school mathematics credits.

(4) Science credits must include **the following:**
(A) Two (2) credits in biology.
(B) Two (2) credits in:
(i) chemistry;
(ii) physics; or
(iii) integrated chemistry-physics.
(C) Two (2) additional credits from:
(i) chemistry, physics, earth and space science, advanced biology, advanced chemistry, advanced environmental science, or advanced physics; or
(ii) a program of equal rigor.

(5) ~~Foreign~~ **World** language credits must include:
(A) six (6) credits in one (1) language; or
(B) four (4) credits in one (1) language and four (4) in another.
If a student has completed a junior high school curriculum that is equivalent to a Level I high school ~~foreign~~ **world** language and is placed in a Level II high school ~~foreign~~ **world** language, that student must earn only four (4) credits in that language or two (2) credits in that language and four (4) credits in another ~~foreign~~ **world** language.
(6) Only courses that have been approved by the department on recommendation of a review committee and in which a student has earned a grade of "C" or above may count toward an academic honors diploma. A student must have a grade point average of "B" or above.

(c) The school corporation shall note the awarding of an academic honors diploma on the student's grade transcript.

(d) The school corporation shall inform students, parents, and guardians of the availability of an academic honors diploma. *(Indiana State Board of Education; 511 IAC 6-7-6.5; filed Mar 24, 1987, 3:00 p.m.: 10 IR 1697; errata, 10 IR 2303; filed Oct 6, 1997, 5:20 p.m.: 21 IR 387; filed Sep 25, 1998, 4:50 p.m.: 22 IR 440; filed Jun 17, 2003, 9:05 a.m.: 26 IR 3646)*

SECTION 2. 511 IAC 6.1-5.1-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-2 Language arts courses
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 2. The following courses may be offered in the language arts area of study:
(1) The following integrated English courses:
(A) English 9.
(B) English 10.
(C) English 11.
(D) English 12.
(E) Language arts lab.
(F) English as a new language.
(2) The following literature studies courses:
(A) American literature.
(B) Biblical literature.
(C) Biographies.
(D) Classical literature.
(E) Dramatic literature.
(F) English literature.
(G) Ethnic literature.
(H) Film literature.
(I) Genres of literature.
(J) Indiana literature.
(K) Literary movements.
(L) Novels.
(M) Poetry.
(N) Short stories.
(O) Themes in literature.
(P) Twentieth century literature.
(Q) World literature.
(R) Contemporary literature.
(S) English literature and composition, advanced placement. ~~or college credit.~~
(3) The following language studies courses:
(A) Etymology.
(B) Grammar.
(C) Linguistics.
(D) English language and composition, advanced placement. ~~or college credit.~~
(4) The following speech studies courses:
(A) Debate.
(B) Advanced speech and communications.
(C) Group discussion.
(D) Speech.
(5) The following media studies courses:
(A) Journalism.
(B) Library media.
(C) Mass media.
(D) Student publications.
(6) The following composition studies courses:
(A) Composition.
(B) Creative writing.
(C) Expository writing.
(D) Technical communication.
(E) Advanced composition.
(7) The following reading courses:
(A) Developmental reading.
(B) Language arts lab.
(8) Advanced English/language arts, college credit.
(Indiana State Board of Education; 511 IAC 6.1-5.1-2; filed Nov 8, 1990, 3:05 p.m.: 14 IR 655; filed Nov 4, 1999, 10:08 a.m.: 23 IR 566, eff Jul 1, 2000)

SECTION 3. 511 IAC 6.1-5.1-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-3 Social studies courses
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 3. The following courses may be offered in the social studies area of study:
~~(1) African studies.~~
~~(2) Anthropology.~~
~~(3) Applied economics.~~
~~(4) Asian studies.~~
~~(5) Citizenship and civics.~~
~~(6) Consumer economics.~~
~~(7) Current problems, issues, and events.~~
~~(8) Economics.~~
~~(9) Ethnic studies.~~
~~(10) Indiana studies.~~

~~(11) International relations.~~
~~(12) Introduction to social science.~~
~~(13) Latin American studies.~~
~~(14) Law education.~~
~~(15) Modern world civilization.~~
~~(16) Political science.~~
~~(17) Psychology.~~
~~(18) Sociology.~~
~~(19) State and local government.~~
~~(20) Topics in history.~~
~~(21) United States government.~~
~~(22) United States history.~~
~~(23) Urban affairs.~~
~~(24) World geography.~~
~~(25) World history and civilization.~~
~~(26) Comparative government and politics, advanced placement or college credit.~~
~~(27) Economics, advanced placement or college credit.~~
~~(28) European history, advanced placement or college credit.~~
~~(29) Psychology, advanced placement or college credit.~~
~~(30) Topics in social science.~~
~~(31) United States government and politics, advanced placement or college credit.~~
~~(32) United States history, advanced placement or college credit.~~

(1) The following economics courses:
(A) Applied economics.
(B) Consumer economics.
(C) Economics.
(D) Macroeconomics, advanced placement.
(E) Microeconomics, advanced placement.
(2) The following geography courses:
(A) Human geography, advanced placement.
(B) World geography.
(C) Geography and history of the world.
(D) Advanced world geography, college credit.
(3) The following government and politics courses:
(A) Citizenship and civics.
(B) International relations.
(C) Political science.
(D) State and local government.
(E) Law education.
(F) United States government.
(G) Comparative government and politics, advanced placement.
(H) United States government and politics, advanced placement.
(4) The following history courses:
(A) Modern world civilization.
(B) Topics in history.
(C) United States history.
(D) World history and civilization.
(E) European history, advanced placement.
(F) United States history, advanced placement.
(5) The following regional studies courses:
(A) African studies.
(B) Asian studies.
(C) Latin American studies.
(6) The following special topics in social sciences courses:
(A) Current problems, issues, and events.
(B) Ethnic studies.
(C) Indiana studies.
(D) Introduction to social science.
(E) Urban affairs.
(F) Advanced social sciences, college credit.
(7) The following other social sciences courses:
(A) Anthropology.
(B) Psychology.
(C) Psychology, advanced placement.
(D) Sociology.
(E) Topics in social science.

(Indiana State Board of Education; 511 IAC 6.1-5.1-3; filed Nov 8, 1990, 3:05 p.m.: 14 IR 655; filed Nov 4, 1999, 10:08 a.m.: 23 IR 567, eff Jul 1, 2000)

SECTION 4. 511 IAC 6.1-5.1-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-4 World language courses
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 4. The following courses may be offered in the ~~foreign~~ **world** language area of study:
(1) The following French courses:
(A) French I.
(B) French II.
(C) French III.
(D) French IV.
(E) French V.
(F) French VI.
(G) French **language,** advanced placement. ~~or college credit.~~
(H) French literature, advanced placement.
(2) The following German courses:
(A) German I.
(B) German II.
(C) German III.
(D) German IV.
(E) German V.
(F) German VI.
(G) German **language,** advanced placement. ~~or college credit.~~
(3) The following Spanish courses:
(A) Spanish I.
(B) Spanish II.
(C) Spanish III.
(D) Spanish IV.
(E) Spanish V.
(F) Spanish VI.

(G) Spanish **language,** advanced placement. ~~or college credit.~~

(H) Spanish literature, advanced placement.

(4) The following Russian courses:

(A) Russian I.

(B) Russian II.

(C) Russian III.

(D) Russian IV.

(E) Russian V.

(F) Russian VI.

~~(G) Russian, advanced placement or college credit.~~

(5) The following Chinese courses:

(A) Chinese I.

(B) Chinese II.

(C) Chinese III.

(D) Chinese IV.

(E) Chinese V.

(F) Chinese VI.

~~(G) Chinese, advanced placement or college credit.~~

(6) The following Japanese courses:

(A) Japanese I.

(B) Japanese II.

(C) Japanese III.

(D) Japanese IV.

(E) Japanese V.

(F) Japanese VI.

~~(G) Japanese, advanced placement or college credit.~~

(7) The following Latin courses:

(A) Latin I.

(B) Latin II.

(C) Latin III.

(D) Latin IV.

(E) Latin V.

(F) Latin VI.

(G) Latin **literature,** advanced placement. ~~or college credit.~~

(H) Latin: Vergil, advanced placement.

(8) Other ~~foreign~~ **world** language courses as follows:

(A) Level I.

(B) Level II.

(C) Level III.

(D) Level IV.

(E) Level V.

(F) Level VI.

(G) American sign language I.

(H) American sign language II.

(I) ~~Other foreign~~ **Advanced world** language, ~~advanced placement or~~ college credit.

(9) Linguistics courses: etymology.

(10) The following nonsequential ~~foreign~~ **world** language courses:

(A) Exploring ~~foreign~~ **world** languages.

(B) English as a new language.

(Indiana State Board of Education; 511 IAC 6.1-5.1-4; filed Nov 8, 1990, 3:05 p.m.: 14 IR 656; filed Nov 4, 1999, 10:08 a.m.: 23 IR 567, eff Jul 1, 2000)

SECTION 5. 511 IAC 6.1-5.1-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-5 Mathematics

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 5. The following courses may be offered in the mathematics area of study:

(1) The following Level I courses:

(A) Mathematics lab.

(B) Prealgebra.

(C) Investigative geometry.

(2) The following Level ~~II–III~~ **II** courses:

(A) Algebra I.

(B) Algebra II.

(C) Geometry.

(D) Integrated mathematics I.

(E) Integrated mathematics II.

(F) Integrated mathematics III.

~~(G) Investigative geometry.~~

(3) The following Level III courses:

~~(H)~~ **(A)** Precalculus/trigonometry.

~~(I)~~ **(B)** Probability and statistics.

~~(J)~~ **(C)** Discrete mathematics.

~~(K)~~ **(D)** Calculus **AB,** advanced placement.

(E) Calculus BC, advanced placement.

~~(L)~~ **(F)** Statistics, advanced placement.

~~(M)~~ **(G) Advanced** mathematics, college credit.

(Indiana State Board of Education; 511 IAC 6.1-5.1-5; filed Nov 8, 1990, 3:05 p.m.: 14 IR 656; filed Aug 15, 1997, 8:50 a.m.: 21 IR 83, eff Jul 1, 1998; filed Nov 4, 1999, 10:08 a.m.: 23 IR 568, eff Jul 1, 2000; filed Jun 17, 2003, 9:05 a.m.: 26 IR 3646; filed Jun 17, 2003, 9:00 a.m.: 26 IR 3647, eff Jul 1, 2004)

SECTION 6. 511 IAC 6.1-5.1-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-6 Science courses

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 6. (a) The following courses may be offered in the science area of study:

(1) The following integrated sciences courses:

~~(A) Science fundamentals (L).~~

~~(B)~~ **(A)** Science ~~projects and techniques~~ **research, independent study** (L).

~~(C) Environmental science (L).~~

~~(D)~~ **(B)** Environmental science, advanced (L).

~~(E)~~ **(C)** Environmental science, advanced placement ~~or college credit~~ (L).

(2) The following biological sciences courses:

(A) ~~First year~~ Biology **I** (L).

(B) Life science (L).
(C) Biology, advanced placement ~~or college credit~~ (L).
(D) ~~Second year~~ Biology ~~general~~ **II** (L).
~~(E) Second year biology, other (L).~~
(3) The following earth and space sciences courses:
(A) ~~First year~~ Earth and space science **I** (L).
~~(B) Earth and space science, advanced placement or college credit (L).~~
~~(C) Second year~~ **(B)** Earth and space science ~~general~~ **II** (L).
~~(D) Earth and space science, other (L).~~
(4) The following physical sciences courses:
(A) The following chemistry courses:
(i) ~~First year~~ Chemistry **I** (L).
(ii) Chemistry, advanced placement ~~or college credit~~ (L).
(iii) ~~Second year~~ Chemistry ~~general~~ **II** (L).
~~(iv) Second year chemistry, other (L).~~
(B) The following physics courses:
(i) ~~First year~~ Physics **I** (L).
(ii) Physics B, advanced placement ~~or college credit~~ (L).
(iii) Physics C, advanced placement (L).
~~(iii) Second year~~ **(iv)** Physics ~~other~~ **II** (L).
(C) Other physical sciences courses as follows:
(i) Physical science (L).
(ii) Integrated chemistry-physics (L).
~~(iii) Principles of flight and space travel (L).~~
(5) Other science courses:
(A) Advanced science, college credit (L).
(B) Advanced science, special topics (L).
(C) Science tutorial.

(b) In order to use the courses listed in this section toward the ~~thirty-eight (38)~~ **forty (40)** credit requirements, any course that is suffixed with a capital "L" in parentheses is to be presented as a laboratory course, as defined at ~~511 IAC 6.1-1-2(l).~~ **511 IAC 6.1-1-2(m).** *(Indiana State Board of Education; 511 IAC 6.1-5.1-6; filed Nov 8, 1990, 3:05 p.m.: 14 IR 657; filed Aug 20, 1997, 7:17 a.m.: 21 IR 83, eff Jul 1, 1999; filed Sep 25, 1998, 4:50 p.m.: 22 IR 441; filed Sep 25, 1998, 4:51 p.m.: 22 IR 442, eff Jul 1, 1999)*

SECTION 7. 511 IAC 6.1-5.1-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-8 Fine arts courses
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 8. (a) The following courses may be offered in the fine arts area of study:
(1) The following art courses:
(A) The following general art courses:
(i) Introduction to two-dimensional art (L).
(ii) Introduction to three-dimensional art (L).
(iii) Advanced two-dimensional art (L).
(iv) Advanced three-dimensional art (L).
(B) The following historical art courses:
(i) Art history.
(ii) Advanced art history.
(iii) Art history, advanced placement.
~~(iii)~~ **(iv)** Fine arts connections.
(C) The following three-dimensional art courses:
(i) Ceramics (L).
(ii) Jewelry (L).
(iii) Sculpture (L).
(iv) Fiber arts (L).
(v) Studio art (drawing ~~or general),~~ **portfolio),** advanced placement. ~~or college credit.~~
(vi) Studio art (2-D design portfolio), advanced placement.
(vii) Studio art (3-D design portfolio), advanced placement.
(D) The following two-dimensional art courses:
(i) Drawing (L).
(ii) Painting (L).
(iii) Printmaking (L).
(iv) Media arts.
(E) The following visual design courses:
(i) Computer graphics (L).
(ii) Visual communication.
(2) The following dance courses:
(A) Dance performance–ballet, modern, jazz, or ethnic-folk (L).
(B) Dance choreography–ballet, modern, jazz, or ethnic-folk (L).
(C) Dance history and appreciation.
(3) The following music courses:
(A) The following instrumental music courses:
(i) Beginning concert band (L).
(ii) Intermediate concert band (L).
(iii) Advanced concert band (L).
(iv) Instrumental ensemble (L).
(v) Jazz ensemble (L).
(vi) Beginning orchestra (L).
(vii) Intermediate orchestra (L).
(viii) Advanced orchestra (L).
(B) The following vocal music courses:
(i) Choral chamber ensemble (L).
(ii) Beginning chorus (L).
(iii) Intermediate chorus (L).
(iv) Advanced chorus (L).
(v) Vocal jazz (L).
(C) Other music courses as follows:
(i) Applied music (L).
(ii) Electronic music (L).
(iii) Piano and electronic keyboard (L).
(iv) Music history and appreciation.
(v) Music theory and composition (L).
(vi) Music theory, advanced placement.
(4) The following theatre arts courses:
(A) Theatre arts (L).
(B) Advanced theatre arts (L).

(C) Theatre production (L).
(D) Theatre arts history.
(E) Advanced acting (L).
(F) Technical theatre (L).
(G) Advanced technical theatre (L).
(H) Theatre arts special topic (L).
(I) Musical theatre (L).

(5) Advanced fine arts, college credit.

(b) In order to use the courses listed in this section toward the ~~thirty-eight (38)~~ **forty (40)** credit requirements, any course that is suffixed with a capital "L" in parentheses is to be presented as a laboratory course, as defined at ~~511 IAC 6.1-1-2(l).~~ **511 IAC 6.1-1-2(m).** *(Indiana State Board of Education; 511 IAC 6.1-5.1-8; filed Nov 8, 1990, 3:05 p.m.: 14 IR 657; filed Nov 4, 1999, 10:08 a.m.: 23 IR 569, eff Jul 1, 2000; filed Jul 7, 2003, 3:45 p.m.: 26 IR 3648)*

SECTION 8. 511 IAC 6.1-5.1-9, PROPOSED TO BE AMENDED AT 26 IR 3939, SECTION 1, 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.
(ix) Marketing.
(x) Business mathematics/personal finance.
(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) Computer science A, advanced placement.
(v) Computer science AB, advanced placement.
~~(iv)~~ **(vi)** Desktop publishing.
~~(v)~~ **(vii)** Entrepreneurship.
~~(vi)~~ **(viii)** Financial services and planning.
~~(vii)~~ **(ix)** Global economics.
~~(viii)~~ **(x)** International business.
~~(ix)~~ **(xi)** 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)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 3, 2004 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 the lists of approved high school courses, new science and social studies courses, the deleting of certain courses, creating separate course titles for advanced placement and college credit courses,

changing foreign language to world language as the title for that course area, creating a consistent format across course areas, and to make technical corrections. 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 #03-320

DIGEST

Amends 515 IAC 1-4-1 and 515 IAC 1-4-2 relating to testing requirements for certain Indiana teaching licenses issued by the professional standards board. Effective 30 days after filing with the secretary of state.

515 IAC 1-4-1
515 IAC 1-4-2

SECTION 1. 515 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

515 IAC 1-4-1 Test requirements and exemptions
Authority: IC 20-1-1.4-7; IC 20-6.1-3-10.1
Affected: IC 20-6.1-3-3

Sec. 1. (a) An applicant for an Indiana initial teaching license must do the following: ~~consistent with 515 IAC 1-2-20:~~

(1) From September 1, 1999, for an applicant who has completed a teacher preparation program during calendar year 2000 or after and who is administered an examination described in IC 20-6.1-3-10.1 on or after September 1, 1999, successfully complete a written examination that demonstrates proficiency in:

(A) basic reading, writing, and mathematics through the Pre-professional Skills Test (PPST or Praxis I) of the Educational Testing Service;

(B) pedagogy; and

(C) knowledge of the areas in which the individual is required to have a license to teach.

(2) Fulfill the academic retention standard established by the institution recommending the applicant.

(b) As an alternative to successfully completing the entire written examination listed under subsection (a), an applicant for an initial license may demonstrate proficiencies in the subject areas required by the examination in the following circumstances:

(1) An applicant may successfully complete an examination ~~which~~ **that** is substantially equivalent to the examination required under subsection (a)(1). The board shall determine what constitutes substantial equivalency.

(2) An applicant who has a disability that would affect the applicant's performance on the examination, for which the applicant has taken the examination with reasonable accommodations and for which the applicant has not successfully passed the entire examination, may not be required to have obtained a passing score in all subject areas required by the examination. To obtain a proficiency review under this subsection, an applicant should submit the following to the board and may submit additional material:

(A) A letter in which the applicant requests a review of the applicant's proficiencies in the pertinent subject areas.

(B) Credible documentation of the disability from an appropriate professional.

(C) Documentation ~~which~~ **that** shows that the applicant has taken the examination with special accommodations.

(D) A written statement from an education professional who has worked with the applicant ~~which~~ **that** attests to the competency of the applicant as a classroom teacher.

(E) A written statement from a college faculty member who has supervised the applicant's clinical experience ~~which~~ **that** attests to the applicant's proficiency in classroom performance.

(F) A statement ~~which~~ **that** outlines any special assistance or accommodations the candidate has had during college.

(G) The applicant's test history.

(H) A transcript copy ~~which~~ **that** shows evidence of completion of a teacher preparation program, including student teaching and degree posted on the transcript.

(I) Any other relevant documentation required by the board.

An applicant with a disability that might affect test performance should notify the testing company of the disability when making application to take the test.

(Professional Standards Board; 515 IAC 1-4-1; filed Nov 26, 1985, 8:20 a.m.: 9 IR 717; filed Jun 11, 1986, 4:00 p.m.: 9 IR 2718; filed May 13, 1987, 9:30 a.m.: 10 IR 2289; filed Dec 15, 1989, 4:45 p.m.: 13 IR 885; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1004; filed Sep 16, 1998, 9:16 a.m.: 22 IR 445; filed Nov 20, 2000, 3:21 p.m.: 24 IR 995; filed Jun 1, 2001, 2:00 p.m.: 24 IR 3030; readopted filed Sep 25, 2001, 9:43 a.m.: 25 IR 529; filed Mar 4, 2003, 4:45 p.m.: 26 IR 2322) NOTE: Transferred from the Indiana State Board of Education (511 IAC 10-4-1) to the Professional Standards Board (515 IAC 1-4-1) by P.L.46-1992, SECTION 19, effective July 1, 1992.

SECTION 2. 515 IAC 1-4-2 IS AMENDED TO READ AS FOLLOWS:

515 IAC 1-4-2 Minimum acceptable scores
Authority: IC 20-1-1.4-7; IC 20-6.1-3-10.1
Affected: IC 4-22-7-7; IC 20-6.1-3-3

Sec. 2. (a) The following are the minimum acceptable scores

for successful completion of the examinations described in section 1(a)(1) of this rule; the number in parentheses is the code number used by the Educational Testing Service for the test:

(1) Mathematics: 320 on computer based test (0731), or 175 on written test (10730), or 175 on computer based test (5730).

(2) Reading: 323 on computer based test (0711), or 176 on written test (10710), or 176 on computer based test (5710).

(3) Writing: 318 on computer based test (0721), or 172 on written test (20720), or 172 on computer based test (5270).

(b) The following are the minimum acceptable scores for successful completion of the various specialty area tests; the number in parentheses is the code number or the last four (4) digits of a code number used by the Educational Testing Service for the test; if two (2) or more tests on the same subject are or may be offered at the same time, the word "replaces" follows the code number of the required test and precedes the code number of the test that is no longer accepted and the effective date of the required test:

National Teachers Examination Specialty Area Tests
or
Praxis II from the Educational Testing Service

Art: Content Knowledge 149
(0133 replaces 10130 after August 1, 2001)
Art Education (10130) 510
Biology: Content Knowledge (0235) 154
(Middle and High School)
(0235 replaces 10230 after August 1, 2001)
Biology and General Science (20030) 560
(Middle School)
Biology (10230) 510
(High School)
Business Education (10100) 480
Chemistry: Content Knowledge (0245) 151
(0245 replaces 20240 after August 1, 2001)
Chemistry (20240) 460
Early Childhood Education (K-3) (10020) 510
Earth Science: Content Knowledge 150
(0571 replaces 20570 after August 1, 2001)
Earth/Space Science (20570) 420
Elementary Education: Curriculum, Instruction, and Assessment (10011) (Effective September 1, 2003) 165
Education of Students with Mental Retardation (10320) 560
English Language, Literature, and Composition: Content Knowledge (10041) 153
(Middle and High School)
Exceptional Needs: Mild Intervention 156
French (10170) 520
(Middle and High School)
French: Content Knowledge (0173) 160
French: Productive Language Skills (0171) 162
(0173 and 0171 replace 10170 after August 1, 2001)
General Science (10430)
For General Science License 450
For Physical Science License 360
German (20180) 490
German: Content Knowledge (0181) 147
(0181 replaces 20180 after August 1, 2003)
(Middle and High School)
Health Education (20550) 420
Home Economics Education (10120) 540
Introduction to the Teaching of Reading (10200) 510
Mathematics (10060) 530
(Middle and High School)
Mathematics: Content Knowledge (0061) 136
(0061 replaces 10060 after August 1, 2001)
Media Specialist (10310) 530
(Library Media Specialist)
Middle School English Language Arts (0049) 152
Middle School Mathematics (0069) 156
Middle School Science (0439) 137
Middle School Social Studies (0089) 153
Music: Content Knowledge **(0113)** 140
(0113 replaces 10110 after August 1, 2001)
Music Education (10110) 510
Physical Education (10090) 540
Physical Education: Content Knowledge (0091) 150
(0091 replaces 10090 after August 1, 2001)
Physical Science (10430) 360
Physics: Content Knowledge (0265) 149
(0265 replaces 30260 after August 1, 2001)
Physics (30260) 400
Prekindergarten Education (20530) 390
(For pre-K/early childhood license)
Reading Specialist (0300) 370
(For elementary teaching after July 1, 2001)
School Leaders Licensure Assessment (1010) 165
Social Studies: Content Knowledge (10081) 147
(Middle and High School)
Spanish (10190) 500
(Middle and High School)
Spanish: Content Knowledge (0191) 159
Spanish: Productive Language Skills (0192) 162
(0191 and 0192 replace 10190 after August 1, 2001)
Special Education: Knowledge-Based Core Principles (0351) 136
Special Education Core Principles: Content Knowledge (0353) 150
Special Education: Teaching Students with Behavioral Disorders/Emotional Disturbance (0371) 139
(0371 replaces 10370 after August 1, 2001)
Special Education: Teaching Students with Learning Disabilities (0381) 139
(0381 replaces 10380 after August 1, 2001)

Special Education: Teaching Students with Mental Retardation (0321) (0321 replaces 10320 after August 1, 2001)	144
Speech Communication (10220)	490
Speech-Language Pathology (0330)	**600**
Teaching Students with Emotional Disturbances (10370)	540
Teaching Students with Learning Disabilities (10380)	430
Technology Education (10050) (Industrial Arts).	590

(c) An applicant for a teaching license in a health occupations specialty area must take the registry or certification examination required by the respective professional association and achieve at least the minimal score accepted by that professional association.

(d) An applicant may repeat any section of an examination on which the applicant does not achieve the minimum score.

(e) If, during the time an applicant for an initial teaching license is enrolled in a teacher preparation program, the applicant achieved the minimum acceptable score required for an examination or test in subsection (b) or (c), the applicant may use that score even if a different score or a different examination or test is required at the time of application for the license. However, an applicant must achieve the minimum acceptable score for any examination or test that has been added as a requirement for an initial teaching license after the applicant completed the preparation program.

(f) In lieu of amending this rule, the professional standards board may publish a "Notice of Test Code Change" policy statement ~~pursuant to~~ **under** IC 4-22-7-7 in the event that the Educational Testing Service changes the name of or a code for a test but does not change either the content of the test or the scoring scale for the test. Upon publication, the professional standards board must simultaneously distribute the notice to the unit head and licensing advisor of each institution preparing educators.

(g) ~~In addition to 515 IAC 1-2-20 regarding limited licenses,~~ A person who is otherwise eligible for an initial standard license in a content area and who has attempted the required assessment examination as required under subsection (b), but who has not achieved the minimum acceptable score, is eligible for a one (1) year, nonrenewable ~~limited license.~~ **instructional emergency permit as described in 515 IAC 9-1-19(g).**

(h) From February 1, 2003, until December 31, 2004, a candidate for an administrator's license must achieve a minimum score of 158 on the assessment.

(i) Candidates for the original administration and supervision license after January 1, 2003, must successfully complete the assessment unless they hold a currently valid standard, provisional, or professional administration and supervision license in Indiana or the equivalent license in another state and can verify three (3) years of full-time experience in an accredited K-12 school in the appropriate position under that license. *(Professional Standards Board; 515 IAC 1-4-2; filed Nov 26, 1985, 8:20 a.m.: 9 IR 717; filed May 13, 1987, 9:30 a.m.: 10 IR 2289; errata filed Jul 17, 1988, 11:00 a.m.: 10 IR 2741; filed Sep 27, 1988, 10:10 a.m.: 12 IR 299; filed Dec 15, 1989, 4:45 p.m.: 13 IR 886; filed Mar 1, 1991, 10:35 a.m.: 14 IR 1436; filed Jan 28, 1992, 5:00 p.m.: 15 IR 1004; filed Apr 26, 1994, 5:00 p.m.: 17 IR 2066; errata filed Jun 7, 1994, 4:00 p.m.: 17 IR 2359; filed May 10, 1999, 12:36 p.m.: 22 IR 2867; filed Nov 20, 2000, 3:21 p.m.: 24 IR 996; filed Jun 1, 2001, 2:00 p.m.: 24 IR 3031; readopted filed Sep 25, 2001, 9:43 a.m.: 25 IR 529; filed Mar 4, 2003, 4:45 p.m.: 26 IR 2323) NOTE: Transferred from the Indiana State Board of Education (511 IAC 10-4-2) to the Professional Standards Board (515 IAC 1-4-2) by P.L.46-1992, SECTION 19, effective July 1, 1992.*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 25, 2004 at 10:00 a.m., at the Professional Standards Board, 101 West Ohio Street, Third Floor, Indianapolis, Indiana the Professional Standards Board will hold a public hearing on proposed amendments concerning certain requirements for the issuance of proficient practitioner licenses issued by the Professional Standards Board. Copies of these rules are now on file at the Professional Standards Board, 101 West Ohio Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Marie Theobald
Executive Director
Professional Standards Board

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #04-39

DIGEST

Adds 760 IAC 1-70 regarding a health maintenance organization's plan for covering outstanding claims in the event the health maintenance organization enters receivership. Effective 30 days after filing with the secretary of state.

760 IAC 1-70

SECTION 1. 760 IAC 1-70 IS ADDED TO READ AS FOLLOWS:

Rule 70. Health Maintenance Organization Plan for Continuation of Benefits in the Event of Receivership

760 IAC 1-70-1 Applicability and scope
Authority: IC 27-13-16-5; IC 27-13-35-1
Affected: IC 27-13

Sec. 1. This rule is intended to prescribe a form and standards for the plan required of all health maintenance organizations to provide for continuation of benefits in the event a health maintenance organization is placed into receivership. *(Department of Insurance; 760 IAC 1-70-1)*

760 IAC 1-70-2 Definitions
Authority: IC 27-13-16-5; IC 27-13-35-1
Affected: IC 27-13-1; IC 27-13-16-1

Sec. 2. The definitions in IC 27-13-1 and the following definitions apply throughout this rule:

(1) "Insurer" means the insurance company that issues an insolvency insurance policy to a health maintenance organization.

(2) "Plan" means the plan for handling receivership required by IC 27-13-16-1.

(3) "Total projected costs" means the amount on line 10 of the form set forth in section 8 of this rule.

(Department of Insurance; 760 IAC 1-70-2)

760 IAC 1-70-3 General requirements
Authority: IC 27-13-16-5; IC 27-13-35-1
Affected: IC 27-13-8-3

Sec. 3. (a) Each health maintenance organization shall maintain a plan acceptable to the commissioner for continuation of benefits in the event of receivership.

(b) The plan must finance the total projected costs in the event of receivership as calculated by the form set forth in section 8 of this rule.

(c) The plan may utilize the following for financing the health maintenance organization's obligation for continuation of benefits in the event of receivership:

(1) Letters of guarantee from a parent company.

(2) Conversion policies.

(3) Insolvency insurance policies.

(4) Additional deposits.

(d) The plan must be filed with the department by March 1 of each year. Any proposed amendment to the plan shall be filed with the department at least thirty (30) days before being adopted.

(e) The form prescribed in section 8 of this rule shall be filed with the department on a quarterly basis with the financial reports required under IC 27-13-8-3(c). *(Department of Insurance; 760 IAC 1-70-3)*

760 IAC 1-70-4 Projected costs
Authority: IC 27-13-16-5; IC 27-13-35-1
Affected: IC 27-13

Sec. 4. The health maintenance organization shall calculate its total projected costs under Part 2 of the form set forth in section 8 of this rule. *(Department of Insurance; 760 IAC 1-70-4)*

760 IAC 1-70-5 Parental guarantee
Authority: IC 27-13-16-5; IC 27-13-35-1
Affected: IC 27-13

Sec. 5. If a health maintenance organization's plan includes a parental guarantee, the health maintenance organization shall submit to the department the most recent audited financial statements of the parent company. The financial statements shall be filed annually and shall be updated within thirty (30) days of any material change to the financial condition of the parent company. *(Department of Insurance; 760 IAC 1-70-5)*

760 IAC 1-70-6 Insolvency insurance policy
Authority: IC 27-13-16-5; IC 27-13-35-1
Affected: IC 27-13

Sec. 6. An insolvency insurance policy shall contain the following provisions:

(1) Any grace period for payment of premium shall not exceed thirty (30) days.

(2) A provision that the department shall be notified in writing within five (5) business days if either of the following occurs:

(A) The health maintenance organization fails to pay the required premium on the date the premium is due without the benefit of any grace period.

(B) The health maintenance organization or the insurer tenders notice to terminate or terminates the policy for any reason.

(3) Coverage under the policy shall include benefits as defined in the evidence of coverage for all eligible enrollees on the date the health maintenance organization is placed into receivership.

(4) The policy shall not contain any deductibles or coinsurance provisions.

(Department of Insurance; 760 IAC 1-70-6)

760 IAC 1-70-7 Deposits
Authority: IC 27-13-16-5; IC 27-13-35-1
Affected: IC 27-13-13-1

Sec. 7. If a health maintenance organization posts an additional deposit to finance its plan, the deposit shall be in the form required by IC 27-13-13-1. Any such deposit shall be in addition to the amount required by IC 27-13-13-1. *(Department of Insurance; 760 IAC 1-70-7)*

760 IAC 1-70-8 Form for calculating the total projected costs
Authority: IC 27-13-16-5; IC 27-13-35-1
Affected: IC 27-13-16-1

Sec. 8. The form required by sections 3 and 4 of this rule is as follows:

Plan for handling receivership in accordance with IC 27-13-16-1

Company Name:_____ NAIC No._____ Completed by: _____

For purposes of calculating, estimated costs will be based on 30 days of continued benefits after an insolvency (IC 27-13-16-1)	**Input Required**
1. Premium Revenue	
(If prepared on a quarterly basis, use annualized premium revenue)	**Financial Statement, Schedule T, line 58, column 3-6**
2. Medical Expense	
(If prepared on a quarterly basis, use annualized medical expense)	**Financial Statement, page 4, Total Hospital and Medical**
3. Administrative Expense	
(If prepared on a quarterly basis, use annualized administrative expense)	**Financial Stmnt, pg 4, Claims Adjustment Expense and General Administrative Expenses**

Assumptions	
A) increased medical expense, as a % of premium	**20%**
B) Admin costs	
Month 1, as a percent of current	**80%**
Month 2, as a percent of current	**60%**
Month 3, as a percent of current	**40%**
C) Costs for Indiana insolvency, legal, and consulting	**$400,000**
D) Premium Collection percentage	**92%**

4. Medical Expense Ratio (Medical Expenses/Premium Revenue)	
5. Administrative Expenses Ratio (Administrative Expenses/Premium Revenue)	
6. Assumed Insolvent Medical Expense Ratio (Medical Expense Ratio + Assumption A)	

Calculation for Costs of Continued Benefits

Medical Expense ((Annualized Premium Revenue * Assumed Insolvent Medical Exp Ratio)/12)	
Less: Premium ((Annualized Premium Revenue * Assumption D)/12)	
7. Net Medical Costs	
Administration	
Month 1 (((Annualized Premium Revenue * Administrative Expense Ratio)/12)*Assumption B)	
Month 2 (((Annualized Premium Revenue * Administrative Expense Ratio)/12)*Assumption B)	
Month 3 (((Annualized Premium Revenue * Administrative Expense Ratio)/12)*Assumption B)	
8. Administrative Costs	
9. Closing Costs (Fixed Costs)	**$400,000**
10. Total Projected Costs (Medical Costs + Administrative Costs + Closing Costs)	

(Department of Insurance; 760 IAC 1-70-8)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 25, 2004 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 regarding health maintenance organizations' plans for insolvency. Copies are available on the Department'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 808 STATE BOXING COMMISSION

Proposed Rule
LSA Document #03-226

DIGEST

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 2-1-5 concerning athletic costumes and protective equipment. 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 2-9-5 to change no decision matches to exhibitions. 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. Repeals 808 IAC 2-8-7. Effective 30 days after filing with the secretary of state.

808 IAC 1-3-6
808 IAC 1-5-1
808 IAC 1-5-2
808 IAC 2-1-5
808 IAC 2-1-12
808 IAC 2-7-14
808 IAC 2-8-7
808 IAC 2-9-5
808 IAC 2-18-1
808 IAC 2-22-1

SECTION 1. 808 IAC 1-3-6 IS AMENDED TO READ AS FOLLOWS:

808 IAC 1-3-6 Security for the purse; forms

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 6. (a) It shall be a condition of any permit issued to a licensed promoter to conduct a match or exhibition that the promoter must, prior to the beginning of the match or exhibition, provide to the **state boxing** commission or its representative an acceptable form of security in an amount not less than the total purse to be paid to each contestant by the terms of the promoter's contract. This may take the form of a certified cashier's check or money order, payable jointly to the **state boxing** commission and to the contestant, or cash. **All methods of payment must be submitted to the state boxing commission not later than two (2) hours before the match or exhibition unless other arrangements have been made and approved by the state boxing commission or its representative.**

(b) There shall be an acceptable form of security for each contestant in a match or exhibition, and no permit to conduct the match shall be valid in the absence of a promoter providing an acceptable form of security meeting the requirements of this rule. The receipt of such security shall be noted on the permit document by the **state boxing** commission or its representative. *(State Boxing Commission; 808 IAC 1-3-6; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1160; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)*

SECTION 2. 808 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

808 IAC 1-5-1 Seats for state boxing commission, judges, timekeepers, and other officials

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 1. **Seating in the area next to the ring apron on all four (4) sides of the ring is under the state boxing commission's jurisdiction. The state boxing commission may request a diagram or plan showing the seating arrangement prior to the contest or exhibition.** At each contest or exhibition, the promoter shall provide ~~near the ring, six (6) seats, each marked "Commission".~~ the following: ~~shall also be provided:~~

(1) Six (6) seats marked "Commission".

~~(1)~~ **(2)** Three (3) seats for the judges, who shall be stationed on three (3) sides of the ring, adjacent thereto.

~~(2)~~ **(3)** Two (2) seats for the official timekeepers near the gong.

~~(3)~~ **(4)** Two (2) seats for physicians, **which allow for an unobstructed view of the ring at all times.**

~~(4)~~ **(5)** One (1) seat for an announcer.

~~(5)~~ **(6)** One (1) seat for each alternate referee.

(State Boxing Commission; PT I,Sec 19; filed Aug 8, 1955, 1:00 p.m.: Rules and Regs. 1956, p. 61; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1161; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)

SECTION 3. 808 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

808 IAC 1-5-2 Bond of promoter license applicant

Authority: IC 25-9-1-2
Affected: IC 25-9-1-22

Sec. 2. Before any license shall be granted to any person or corporation to conduct, hold, or give any boxing or sparring match or exhibition, such applicant therefor shall execute and file with the state ~~treasurer~~ **boxing commission** a bond **or other instrument** as provided by law. *(State Boxing Commission; PT*

I, Sec 20; filed Aug 8, 1955, 1:00 p.m.: Rules and Regs. 1956, p. 61; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1161; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)

SECTION 4. 808 IAC 2-1-5 IS AMENDED TO READ AS FOLLOWS:

808 IAC 2-1-5 Athletic costumes and protective equipment

Authority: IC 25-9-1-2
Affected: IC 25-9-1-16; IC 25-9-1-17

Sec. 5. Contestants must wear proper athletic costumes approved by the **state boxing** commission, including the following:

(1) Boxing trunks of contrasting color.

(2) **Groin** protection. ~~cups.~~

(3) Shoes of soft material and shall not be fitted with spikes, cleats, hard soles, or hard heels.

(4) Bandages and taping, as required in 808 IAC 2-26-1.

(5) Gloves, as required in 808 IAC 2-22-1.

(6) A properly fitted mouthpiece.

(7) A minimum use of cosmetics.

(8) Female contestants must wear a breast protector.

(9) Hair, including facial hair, must be trimmed or secured in a manner so as not to interfere with the vision or safety of the contestants.

(10) No jewelry may be worn by the contestants.

(State Boxing Commission; PT II, Sec 44; filed Aug 8, 1955, 1:00 p.m.: Rules and Regs. 1956, p. 65; filed Dec 28, 1979, 10:40 a.m.: 3 IR 206; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1163; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)

SECTION 5. 808 IAC 2-1-12 IS AMENDED TO READ AS FOLLOWS:

808 IAC 2-1-12 Female boxers

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 12. (a) A negative pregnancy test must be obtained the day prior to or the day of the fight. Results shall be submitted to the state boxing commission prior to the weigh-in. **The state boxing commission will not permit a female contestant to compete if she:**

(1) is determined to be pregnant; or

(2) fails to submit pregnancy test results.

(b) A prefight examination of a female contestant should include abdominal, breast, and pelvic examinations.

~~(b)~~ **(c)** Mammography may be requested by the examining physician.

~~(c)~~ **(d)** The examining physician may request a buccal smear after the physical examination if there is any doubt regarding the contestant's sex.

~~(d) A pelvic exam will be required.~~

~~(e) Contestants must wear adequate breast protection.~~ *(State Boxing Commission; 808 IAC 2-1-12; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1164; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)*

SECTION 6. 808 IAC 2-7-14 IS AMENDED TO READ AS FOLLOWS:

808 IAC 2-7-14 Discontinuation of fight; declaration of winner

Authority: IC 25-9-1-2
Affected: IC 25-9-1-8

Sec. 14. If the referee sees or, if after consultation with the judges, determines that a boxer is accidentally butted in a match so that the boxer cannot continue, the referee shall immediately, following the accidental butt, do the following:

~~(1) Call the match a technical draw if the injured boxer is behind on points.~~

~~(2) Declare the injured boxer the winner on a technical decision if the boxer has a lead in points.~~

(1) A majority vote as disclosed by the scorecards shall prevail in determining the decision if ~~all three (3) scorecards differ,~~ the ~~contest~~ **accidental butt occurs after the completion of four (4) rounds. Partial rounds** shall be ~~declared a technical draw.~~ **scored by the judges.**

~~(3) Call~~ **(2)** The match **shall be declared** a ~~technical draw~~ **no decision** if an accidental butt occurs during the first four (4) rounds of any contest.

~~(4) If both boxers are injured as a result of an accidental butt so that neither is able to continue, then a winner will be declared on the basis of the majority vote as disclosed by the judges' scorecards.~~

(State Boxing Commission; 808 IAC 2-7-14; filed May 24, 1982, 10:25 a.m.: 5 IR 1406; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1167; filed Feb 1, 1999, 10:49 a.m.: 22 IR 2003; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)

SECTION 7. 808 IAC 2-9-5 IS AMENDED TO READ AS FOLLOWS:

808 IAC 2-9-5 Exhibitions

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 5. **(a) In exhibition matches, each participant must wear gloves at least sixteen (16) ounces in weight and head gear approved by the state boxing commission.**

~~(a)~~ **(b)** Both participants must sign contracts stipulating that the match will be **an exhibition, and** a no decision ~~match.~~ **shall be rendered.**

~~(b)~~ **(c)** In the event of a knockout, the announcer will present the results, and the fight will be listed in the record as ~~a no decision~~ **an exhibition** match ending in the round that the match was terminated. Medical suspension for the boxer suffering the knockout will be levied by the **state boxing** commission just as a regular match. *(State Boxing Commission; 808 IAC 2-9-5; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1169; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)*

SECTION 8. 808 IAC 2-18-1 IS AMENDED TO READ AS FOLLOWS:

808 IAC 2-18-1 Weighing-in; attendance

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 1. The contestants in main events and exhibitions shall weigh-in stripped prior to the match in the presence of a representative of the **state boxing** commission **at a time designated by the state boxing commission.** *(State Boxing Commission; PT II, Sec 99; filed Aug 8, 1955, 1:00 p.m.: Rules and Regs. 1956, p. 76; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1173; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)*

SECTION 9. 808 IAC 2-22-1 IS AMENDED TO READ AS FOLLOWS:

808 IAC 2-22-1 Gloves; mouthpiece; inspection; specifications

Authority: IC 25-9-1-2
Affected: IC 25-9-1-5; IC 25-9-1-18

Sec. 1. (a) Gloves shall be examined by the inspector or deputy commissioner before each contest. If padding is found to be misplaced, lumpy, or imperfect, new gloves shall be provided before the contest starts. No breaking, roughing, or twisting of gloves shall be permitted. Gloves for all events shall be furnished by the promoter. All contestants shall wear gloves of standard make weighing not less than eight (8) ounces **for those contestants that weigh one hundred forty-seven (147) pounds or less and at least ten (10) ounces for those contestants that weigh over one hundred forty-seven (147) pounds, unless approved by the state boxing commission,** and the gloves worn by each of the contestants shall be equal in weight.

(b) Each participant shall wear an individually fitted mouthpiece. The mouthpiece shall be in the participant's mouth at all times during the fight period of each round as provided in this section. The referee shall handle the ejection of the mouthpiece from the participant's mouth in the following manner:

(1) If the referee believes that the mouthpiece was ejected from the participant's mouth as a result of a natural fight action, the referee shall not charge the participant with the loss of a point. The referee shall wait until the flurry during which the mouthpiece was ejected has subsided. The referee shall then **do the following:**

(A) Take time out.

(B) Direct the participant whose mouthpiece remains in place to retire to a neutral corner. ~~and~~

(C) Take the other participant to the participant's corner. ~~The referee shall~~

(D) Direct that the mouthpiece be rinsed and replaced in the participant's mouth. ~~The referee shall~~

(E) Direct that the fight period immediately continue.

(2) If the referee believes that the participant spit out or allowed the mouthpiece to fall out of the participant's mouth, the referee shall do the following:

(A) Upon the first occurrence, wait until the flurry during which the mouthpiece was ejected has subsided. The referee shall then **do the following:**

(i) Take time out.

(ii) Direct the participant whose mouthpiece remains in place to retire to a neutral corner. ~~and~~

(iii) Take the other participant to the participant's corner. ~~The referee shall~~

(iv) Direct that the mouthpiece be rinsed and replaced in the participant's mouth. ~~and~~

(v) Warn the participant that a point will be deducted if the participant subsequently spits out or allows the mouthpiece to fall out of the participant's mouth. ~~The referee shall~~

(vi) Direct that the fight period immediately continue.

(B) Upon the second occurrence, wait until the flurry during which the mouthpiece was ejected has subsided. The referee shall then **do the following:**

(i) Take time out.

(ii) Direct the participant whose mouthpiece remains in place to retire to a neutral corner. ~~and~~

(iii) Take the other participant to the participant's corner. ~~The referee shall~~

(iv) Direct that the mouthpiece be rinsed and replaced in the participant's mouth. ~~and~~

(v) Warn the participant that the participant will be disqualified if the participant subsequently spits out or allows the mouthpiece to fall out of the participant's mouth. ~~The referee shall~~

(vi) Direct each judge to deduct a point from the participant's score. ~~The referee shall~~

(vii) Direct that the fight period immediately continue.

(C) Upon the third occurrence, disqualify the participant who spit out or allowed the mouthpiece to fall out of the participant's mouth. The opponent of such participant shall be declared the winner due to disqualification. The **state boxing** commission representative shall immediately advise the promoter that the purse of such participant shall be forfeited and paid over to the **state boxing** commission.

(State Boxing Commission; PT II, Sec 103; filed Aug 8, 1955, 1:00 p.m.: Rules and Regs. 1956, p. 76; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1174; readopted filed Jun 8, 2001, 2:38 p.m.: 24 IR 3236)

SECTION 10. 808 IAC 2-8-7 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 28, 2004 at 9:20 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 6, Indianapolis, Indiana the State Boxing Commission will hold a public hearing on proposed amendments to establish a time for the promoter to provide the commission an acceptable form of security for a match or exhibition, to address the seats provided by the promoter for the commission and for the judges, to require an applicant for a promoter's license to execute and file with the commission a bond, to establish the general requirements for female boxers, to revise the requirements for the discontinuation of a fight following an accidental butt, to change no decision matches to exhibitions, to revise the classifications in the weight schedule and the limitation on weight differences, to allow the commission to determine the weigh-in time for contestants in main events and exhibitions, to revise the weight of gloves worn by each contestant for match or exhibition, and to repeal 808 IAC 2-8-7 regarding the termination of contests. Copies of these rules are now on file at the Professional Licensing Agency, 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

TITLE 808 STATE BOXING COMMISSION

Proposed Rule
LSA Document #03-227

DIGEST

Adds 808 IAC 2-12-0.5, 808 IAC 2-12-2, 808 IAC 2-12-3, 808 IAC 2-12-4, 808 IAC 2-12-5, 808 IAC 2-12-6, 808 IAC 2-12-7, and 808 IAC 2-12-8 to establish the requirements and procedures for prohibited drug testing of licensed contestants. Effective 30 days after filing with the secretary of state.

808 IAC 2-12-0.5	**808 IAC 2-12-5**
808 IAC 2-12-2	**808 IAC 2-12-6**
808 IAC 2-12-3	**808 IAC 2-12-7**
808 IAC 2-12-4	**808 IAC 2-12-8**

SECTION 1. 808 IAC 2-12-0.5 IS ADDED TO READ AS FOLLOWS:

Rule 12. Physician; Testing for the Use of Prohibited Drugs

808 IAC 2-12-0.5 Definitions
Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 0.5. The following definitions apply throughout this rule unless the context clearly indicates otherwise:

(1) "Confirmed positive test result" means a result of a test, conducted in accordance with the procedures in this rule, indicating the presence of a prohibited drug.

(2) "Drug" means a substance that is one (1) of the following:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official national formulary, or a supplement to one (1) or more of them.

(B) Intended for use in the:

(i) diagnosis;

(ii) cure;

(iii) mitigation;

(iv) treatment; or

(v) prevention;

of disease in humans or other animals.

(C) Intended to affect the structure or a function of the body of a human or other animal, not including food.

(D) Intended for use as a component of another substance described in clause (A), (B), or (C).

(3) "Laboratory" means a laboratory to conduct drug testing.

(4) "Prohibited drugs" means a drug that falls within one (1) of the following classes or types of substances:

(A) Opiates.

(B) Methadone.

(C) Barbiturates.

(D) Amphetamines.

(E) Benzodiazepines.

(F) Propoxyphene.

(G) Cocaine.

(H) PCP.

(I) Anabolic steroids.

(J) A drug other than one that has been either of the following:

(i) Purchased legally without a prescription, if a medical professional acting within the scope of his or her license or certification has certified that the drug will not affect the boxer's ability to participate safely in the boxing contest and the attending or ringside physician agrees.

(ii) Obtained by the individual under a valid prescription or order of a licensed or certified medical professional acting within the scope of his or her license or certification if the medical professional has certified that the drug will not affect the boxer's ability to participate safely in the boxing contest and the attending or ringside physician agrees.

(5) "Reasonable cause" means conduct or information

from which a reasonable person could believe that an individual is under the influence of drugs.

(6) "Test" means a urinalysis test designed to detect drugs.

(State Boxing Commission; 808 IAC 2-12-0.5)

SECTION 2. 808 IAC 2-12-2 IS ADDED TO READ AS FOLLOWS:

808 IAC 2-12-2 Use of prohibited drugs

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 2. A contestant is not permitted to participate in a boxing contest if the boxer:

(1) has a prohibited drug in his or her possession or control or in his or her system; or

(2) refuses to submit to a test ordered under this rule.

(State Boxing Commission; 808 IAC 2-12-2)

SECTION 3. 808 IAC 2-12-3 IS ADDED TO READ AS FOLLOWS:

808 IAC 2-12-3 Test for prohibited drugs

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 3. (a) The state boxing commission, or an authorized representative, may, upon random selection or reasonable cause, order a boxer to submit a test for the detection of a prohibited drug.

(b) Reasonable cause will be deemed to exist if one (1) or more of the following exists:

(1) A boxer has been arrested for, or convicted of, an offense involving the:

(A) possession;

(B) sale;

(C) distribution; or

(D) use;

of a drug.

(2) A boxer has previously tested positive for a prohibited drug.

(3) The state boxing commission obtains information that a boxer is under the influence of a drug.

(4) The boxer is observed to be acting under the influence of a drug.

(c) Random selection will be done by a lottery system. Each bout occurring on a given day will be numbered, and the number of each bout will be written on a separate card supplied by the state boxing commission. Cards will then be shuffled, and a state boxing commission representative will randomly select at least one (1) card. A boxer participating in the event or the boxer's representative may witness the selection of the card. The boxers who are the contestants in the selected bout shall submit to a test.

(d) Each boxer participating in a championship bout shall submit to a test.

(e) A test shall be taken by a contestant within thirty-six (36) hours after the end of the contest in which the contestant was a participant. Test results must be submitted by the laboratory directly to the state boxing commission within fourteen (14) days. The state boxing commission may grant an extension of time if the results cannot be obtained within that time. *(State Boxing Commission; 808 IAC 2-12-3)*

SECTION 4. 808 IAC 2-12-4 IS ADDED TO READ AS FOLLOWS:

808 IAC 2-12-4 Testing procedures

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 4. On the day of the contest, a representative of the state boxing commission will inform a contestant that he or she has been selected for a test. The contestant must make arrangements to submit to a urinalysis test within thirty-six (36) hours after the end of the contest in which the contestant was a participant. The contestant must submit an observed urine sample for a urinalysis test at a laboratory of his or her choice, as approved by the state boxing commission. *(State Boxing Commission; 808 IAC 2-12-4)*

SECTION 5. 808 IAC 2-12-5 IS ADDED TO READ AS FOLLOWS:

808 IAC 2-12-5 Refusal to submit to drug test

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 5. A contestant may not refuse to submit to a test ordered under this rule. A contestant will be found to have refused to submit to a test if he or she fails to submit to the testing procedures under section 4 of this rule. *(State Boxing Commission; 808 IAC 2-12-5)*

SECTION 6. 808 IAC 2-12-6 IS ADDED TO READ AS FOLLOWS:

808 IAC 2-12-6 Disciplinary actions

Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 6. (a) Either of the following may result in disciplinary action being taken, after a hearing, against the contestant's license:

(1) A positive drug test reading.

(2) Failure to submit to a drug test upon request.

(b) A contestant who is disciplined under this section and who was the winner of a contest shall be disqualified, and the decision of the contest shall be changed to "no contest".

(c) The results of a contest shall remain unchanged if a contestant who is disciplined under this section was the loser of

the contest. *(State Boxing Commission; 808 IAC 2-12-6)*

SECTION 7. 808 IAC 2-12-7 IS ADDED TO READ AS FOLLOWS:

808 IAC 2-12-7 Costs
Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 7. (a) The promoter shall be responsible for costs incurred with respect to tests performed under this rule.

(b) The boxer shall be responsible for costs incurred with respect to completion of a drug treatment program ordered under this rule. *(State Boxing Commission; 808 IAC 2-12-7)*

SECTION 8. 808 IAC 2-12-8 IS ADDED TO READ AS FOLLOWS:

808 IAC 2-12-8 Confidentiality
Authority: IC 25-9-1-2
Affected: IC 25-9-1

Sec. 8. Information received in the process of performing a test under this rule, including medical information, test results, and reports filed as a result of attending a treatment program, will be treated as confidential, except for use with respect to an order issued by the state boxing commission or judicial hearing with regard to the order. Access to the information on the records of the state boxing commission will be limited to the state boxing commission and tested boxer. Nothing in this section prohibits the disclosure of civil penalty, suspension, or revocation was imposed due to the boxer having a confirmed positive test result. The disclosure shall also include the type of drug, which served as the basis of the confirmed positive test result. *(State Boxing Commission; 808 IAC 2-12-8)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 28, 2004 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 6, Indianapolis, Indiana the State Boxing Commission will hold a public hearing on proposed rules to establish the requirements and procedures for prohibited drug testing of licensed contestants. Copies of these rules are now on file at the Professional Licensing Agency, 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

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

Proposed Rule
LSA Document #03-329

DIGEST

Amends 844 IAC 10-4-1 concerning mandatory registration; renewal of certified occupational therapists and occupational therapy assistants. Effective 30 days after filing with the secretary of state.

844 IAC 10-4-1

SECTION 1. 844 IAC 10-4-1 IS AMENDED TO READ AS FOLLOWS:

844 IAC 10-4-1 Mandatory registration; renewal
Authority: IC 25-23.5-2-6
Affected: IC 25-23.5-5-9; IC 25-23.5-5-12

Sec. 1. Every occupational therapist and occupational therapy assistant holding a certificate issued by the committee shall renew ~~their~~ **his or her** certificate biennially **on or before December 31** of each even-numbered year. *(Medical Licensing Board of Indiana; 844 IAC 10-4-1; filed Dec 28, 1990, 5:00 p.m.: 14 IR 1068; readopted filed Nov 9, 2001, 3:16 p.m.: 25 IR 1325)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 27, 2004 at 9:45 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Medical Licensing Board of Indiana will hold a public hearing on proposed amendments concerning the mandatory registration; renewal of certified occupational therapists and occupational therapy assistants. 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 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

Proposed Rule
LSA Document #03-301

DIGEST

Amends 864 IAC 1.1-2-4 to specify that a senior in an

engineering curriculum in a college or university in Indiana may take the last engineering intern examination prior to graduation to facilitate the outsourcing of the administration of examinations for engineering interns. Amends 864 IAC 1.1-12-1 to revise the fee schedule for examination or reexamination to facilitate the outsourcing of the administration of examinations for professional engineers and engineering interns. Adds 864 IAC 1.1-12-2 to establish that the fees for administration and scoring of the fundamentals of engineering examination and principles and practice of engineering examination be paid directly to the examination services. Effective 30 days after filing with the secretary of state.

864 IAC 1.1-2-4
864 IAC 1.1-12-1
864 IAC 1.1-12-2

SECTION 1. 864 IAC 1.1-2-4 IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-2-4 Engineering intern; education and work experience
Authority: IC 25-31-1-7; IC 25-31-1-8
Affected: IC 25-31-1-12

Sec. 4. (a) The education and experience requirements of section 2 of this rule for professional engineer applicants apply for engineering intern applicants except that **individuals with:**

(1) ~~individuals with~~ a baccalaureate degree meeting the course requirements of section 2(c) of this rule shall only be required to obtain two (2) years of work experience;

(2) ~~individuals with~~ a master of science degree in an engineering discipline following a baccalaureate ~~which~~ **that** is not in an approved engineering curriculum shall only be required to obtain one (1) year of work experience; and

(3) ~~individuals with~~ the other degrees listed in section 2(b) of this rule shall not be required to obtain any work experience.

(b) An individual who is enrolled as a senior in an engineering curriculum in a college or university in Indiana ~~which~~ **that** has at least one (1) approved engineering curriculum may take the last EI examination offered ~~on the individual's campus~~ prior to the individual's scheduled graduation. This subsection does not apply to any individual enrolled in any other baccalaureate degree program. *(State Board of Registration for Professional Engineers; Rule 2, Sec 4; filed Feb 29, 1980, 3:40 p.m.: 3 IR 628; filed Oct 17, 1986, 2:20 p.m.: 10 IR 438; errata filed Mar 8, 1990, 5:00 p.m.: 13 IR 1189 voided by the attorney general filed Apr 18, 1990: 13 IR 1863; errata filed Dec 20, 1990, 5:00 p.m.: 14 IR 1071; filed Sep 24, 1992, 9:00 a.m.: 16 IR 726, eff Jan 1, 1993; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2105, eff Jul 4, 1995; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824; filed Sep 23, 2002, 9:59 a.m.: 26 IR 380, eff Dec 1, 2002)*

SECTION 2. 864 IAC 1.1-12-1 IS AMENDED TO READ AS FOLLOWS:

864 IAC 1.1-12-1 Fees charged by board
Authority: IC 25-1-8-2; IC 25-31-1-7; IC 25-31-1-8
Affected: IC 25-31-1

Sec. 1. The board shall charge and collect the following fees, which shall all be nonrefundable and nontransferable:

(1) **Except for an application for college seniors applying for the fundamental engineering examination under 864 IAC 1.1-2-4 and 864 IAC 1.1-3-3,** for review of an application for examination for certification as an engineering intern, one hundred dollars ($100).

(2) For review of an application for examination for registration as a professional engineer, three hundred dollars ($300).

~~(3) For the examination or reexamination of any applicant under the Act:~~

~~(A) fundamental of engineering examination, one hundred dollars ($100); and~~

~~(B) principles and practice of engineering examination, one hundred fifty dollars ($150).~~

~~(4)~~ **(3)** For the processing and review of qualifications for registration as a professional engineer by comity, five hundred dollars ($500).

~~(5)~~ **(4)** For issuance of the original certificate to practice as a professional engineer following passage of the examination or approval for registration on the basis of comity, **when the certificate is dated between August 1 of an:**

(A) ~~when the certificate is dated between August 1 of an~~ odd-numbered year and July 31 of the following even-numbered year, inclusive, fifty dollars ($50); and

(B) ~~when the certificate is dated between August 1 of an~~ even-numbered year and July 31 of the following odd-numbered year, inclusive, one hundred dollars ($100).

~~(6)~~ **(5)** For biennial renewal of the certificate to practice as a professional engineer, one hundred dollars ($100) payable prior to July 31 of each even-numbered year.

~~(7)~~ **(6)** For renewal of an expired certificate to practice as a professional engineer, fifty dollars ($50), plus all unpaid renewal fees for the four (4) years of delinquency. A certificate may not be renewed after four (4) years of delinquency.

~~(8)~~ **(7)** For a duplicate or replacement certificate to practice as a professional engineer, ten dollars ($10).

~~(9) For an applicant for engineering intern under 864 IAC 1.1-2-4(b) for review of the application, examination, and enrollment as an engineering intern, fifty dollars ($50).~~

~~(10)~~ **(8)** The fee shall be one hundred dollars ($100) for the proctoring of examinations taken in this state for purposes of registration in other states. This fee shall be in addition to the examination fee.

(State Board of Registration for Professional Engineers; Rule 12, Sec 1; filed Feb 29, 1980, 3:40 p.m.: 3 IR 637; filed Oct 14, 1981, 1:30 p.m.: 4 IR 2459; filed Oct 17, 1986, 2:20 p.m.: 10 IR 442; errata, 10 IR 445; filed Sep 24, 1992, 9:00 a.m.: 16 IR 735; filed Mar 28, 1995, 2:00 p.m.: 18 IR 2111; filed Jun 14, 1996, 3:00 p.m.: 19 IR 3109; readopted filed Jun 21, 2001, 9:01 a.m.: 24 IR 3824; filed Sep 23, 2002, 9:59 a.m.: 26 IR

380, eff Dec 1, 2002)

SECTION 3. 864 IAC 1.1-12-2 IS ADDED TO READ AS FOLLOWS:

864 IAC 1.1-12-2 Fee for examination administration
Authority: IC 25-1-8-2; IC 25-31-1-7; IC 25-31-1-8
Affected: IC 25-31-1

Sec. 2. The fees for both the fundamentals of engineering examination and principles and practice of engineering examination are the costs for examination administration and examination scoring, payable to the examination services. *(State Board of Registration for Professional Engineers; 864 IAC 1.1-12-2)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 17, 2004 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 4, Indianapolis, Indiana the State Board of Registration for Professional Engineers will hold a public hearing on proposed amendments to specify that a senior in an engineering curriculum in a college or university in Indiana may take the last engineering intern examination prior to graduation to facilitate the outsourcing of the administration of examinations for engineering interns, to revise the fee schedule for examination or reexamination to facilitate the outsourcing of the administration of examinations for professional engineers and engineering interns, and to establish that the fees for administration and scoring of the fundamentals of engineering examination and principles and practice of engineering examination be paid directly to the examination services. 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

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

Proposed Rule
LSA Document #03-300

DIGEST

Amends 865 IAC 1-11-1 to revise the fees schedule for the examination and reexamination to facilitate the outsourcing of the administration of examinations for land surveyors-in-training and land surveyors. Effective 30 days after filing with the secretary of state.

865 IAC 1-11-1

SECTION 1. 865 IAC 1-11-1 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-11-1 Fees charged by board
Authority: IC 25-1-8-2; IC 25-21.5-2-14
Affected: IC 25-21.5

Sec. 1. The board shall charge and collect the following fees, which shall all be nonrefundable and nontransferable:

(1) For review of an application for examination for registration as a land surveyor other than comity, ~~a fee of~~ ten dollars ($10).

(2) **The fee** for the examination or reexamination of any applicant under the Act ~~a fee in the amount of sixty dollars ($60).~~ **is the payment of the applicant's cost of purchasing the examination, payable to the examination service.**

(3) For the processing and review of qualifications for registration as a land surveyor by comity, ~~a fee of~~ seventy-five dollars ($75).

(4) For issuance of the original certificate to practice as a registered land surveyor following passage of the examination or approval for registration on the basis of comity when the certificate is dated between August 1 of an:

(A) odd-numbered year and July 31 of the following even-numbered year, inclusive, fifty dollars ($50); or

(B) even-numbered year and July 31 of the following odd-numbered year, inclusive, one hundred dollars ($100).

(5) For biennial renewal of the certificate to practice as a registered land surveyor, a renewal fee of one hundred dollars ($100) and a fee of two dollars ($2) for each hour of continuing education required both payable no later than July 31 of each even-numbered year. No fee shall be required to renew a certificate in inactive status under 865 IAC 1-13-13.

(6) For renewal of an expired certificate to practice as a registered land surveyor, ten dollars ($10), plus all unpaid renewal fees for the four (4) years of delinquency. A certificate may not be renewed after four (4) years of delinquency.

(7) For a duplicate or replacement certificate to practice as a registered land surveyor, twenty-five dollars ($25).

(8) For a replacement pocket card to practice as a registered land surveyor, ten dollars ($10).

(9) For ~~examination and~~ enrollment as a land-surveyor-in-training, ~~a fee in the amount of~~ twenty-five dollars ($25).

(10) The fee shall be seventy-five dollars ($75) for the proctoring of examinations taken in this state for purposes of registration in other states. This fee shall be in addition to the examination fee.

(State Board of Registration for Land Surveyors; Rule 12, Sec 1; filed Feb 29, 1980, 3:40 p.m.: 3 IR 637; filed Oct 14, 1981, 1:30 p.m.: 4 IR 2459; filed Oct 17, 1986, 2:20 p.m.: 10 IR 442; errata, 10 IR 445; filed Oct 13, 1992, 5:00 p.m.: 16 IR 884; filed Jun 14, 1996, 3:00 p.m.: 19 IR 3110; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1025; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jul 17, 2002, 3:36 p.m.: 25 IR 4110) NOTE: 864 IAC 1.1-12-1 was renumbered by Legislative Services Agency as 865 IAC 1-11-1.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 11, 2004 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 12, Indianapolis, Indiana the State Board of Registration for Land Surveyors will hold a public hearing on proposed amendments to revise the fee schedule for the examination and reexamination to facilitate the outsourcing of the administration of examinations for land surveyors-in-training and land surveyors. 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

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

Proposed Rule
LSA Document #03-270

DIGEST

Adds 872 IAC 1-6 to establish the requirements and procedures for a quality review program for CPA and PA firms. Effective 30 days after filing with the secretary of state.

872 IAC 1-6

SECTION 1. 872 IAC 1-6 IS ADDED TO READ AS FOLLOWS:

Rule 6. Quality Review

872 IAC 1-6-1 Applicability
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-6

Sec. 1. (a) This rule establishes a quality review program for CPA and PA firms issued a permit under IC 25-2.1-5.

(b) This rule does not apply to AP firms issued a registration under IC 25-2.1-6. *(Indiana Board of Accountancy; 872 IAC 1-6-1)*

872 IAC 1-6-2 "Approved quality review program" defined
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-5-8; IC 25-2.1-5-9

Sec. 2. "Approved quality review program" means a peer review program:
(1) administered by an oversight body established by the board under section 7 of this rule; and
(2) meeting the requirements of this rule, including the:
(A) AICPA document incorporated by reference in section 11 of this rule (applicable to CPA and PA firms); or
(B) NSA document incorporated by reference in section 12 of this rule (applicable to PA firms only).
(Indiana Board of Accountancy; 872 IAC 1-6-2)

872 IAC 1-6-3 "Attest" defined
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-1-3.8

Sec. 3. "Attest" has the meaning set forth in IC 25-2.1-1-3.8. *(Indiana Board of Accountancy; 872 IAC 1-6-3)*

872 IAC 1-6-4 "Compilation" defined
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-1-6.3

Sec. 4. Compilation" has the meaning set forth in IC 25-2.1-1-6.3. *(Indiana Board of Accountancy; 872 IAC 1-6-4)*

872 IAC 1-6-5 "Firm location" defined
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-5-5

Sec. 5. "Firm location" means an individual office location of a CPA or PA firm that is required to be registered under IC 25-2.1-5-5(a)(1) or IC 25-2.1-5-5(b)(1). *(Indiana Board of Accountancy; 872 IAC 1-6-5)*

872 IAC 1-6-6 "Quality review" defined
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-1-12

Sec. 6. "Quality review" has the meaning set forth in IC 25-2.1-1-12. *(Indiana Board of Accountancy; 872 IAC 1-6-6)*

872 IAC 1-6-7 Quality review oversight committee
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-5-8; IC 25-2.1-5-9

Sec. 7. (a) The board shall appoint a quality review oversight committee to assist it in the implementation of the quality review program.

(b) The oversight committee shall consist of three (3) licensees who have an active certificate as a certified public accountant or public accountant.

(c) An appointment under this section is for a term of three (3) years, except for an appointment to fill a vacancy shall be for the remainder of the unexpired term. A committee member may continue to serve until the member's successor is appointed and qualified. An oversight committee member may be reappointed at the end of each term.

(d) Notwithstanding subsection (c), the initial appointment to the committee shall be:
(1) one (1) committee member for the term of one (1) year;

(2) one (1) committee member for the term of two (2) years; and

(3) one (1) committee member for a term of three (3) years. The duration of these terms shall be calculated from July 1, 2004. *(Indiana Board of Accountancy; 872 IAC 1-6-7)*

872 IAC 1-6-8 Responsibilities of oversight committee
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-5-8; IC 25-2.1-5-9

Sec. 8. The quality review oversight committee is responsible for the following:

(1) Monitoring approved quality review programs and reporting periodically to the board on whether these programs meet the requirements of this rule.

(2) Evaluating the determinations and recommendations in each quality review report submitted by the firm.

(3) Submitting an annual report to the board that includes statistics on the impact and effect of the quality review program and a list of firms that have undergone quality reviews under this rule.

(4) Carrying out other duties as delegated by the board necessary for the administration and enforcement of this rule.

(Indiana Board of Accountancy; 872 IAC 1-6-8)

872 IAC 1-6-9 Requirements for firms
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-5

Sec. 9. (a) This section applies to renewal of firm permits that expire on or after June 30, 2006.

(b) During the three (3) year period preceding a firm's application for renewal of a permit under IC 25-2.1-5, a firm shall complete a quality review in compliance with this rule, unless the firm is not required to have a quality review under subsection (d)(2). Failure of a firm to complete a quality review may result in the denial of the renewal of the firm's permit under IC 25-2.1-5.

(c) Each firm where attest or compilation services are performed shall be covered by a quality review. A single quality review report covering all locations may be submitted for firms with multiple firm locations.

(d) Each application for renewal of a permit under IC 25-2.1-5 shall include:

(1) a letter certifying acceptance of the quality review report issued to the firm by the oversight committee; or

(2) a certification that the firm is not required to have a quality review because it has not performed any attest or compilation engagements since the last expiration of the firm permit.

(e) For the 2006 renewal, the period under subsection (d)(2) shall be since June 30, 2005, rather than since the last expiration of the firm permit.

(f) Before commencement of an attest or compilation engagement, a firm that was not required to obtain a quality review under subsection (d)(2) shall notify the board and shall complete a quality review within eighteen (18) months of such notification.

(g) In order to renew an expired firm permit, a firm shall complete a quality review in compliance with this rule. An exemption under subsection (d)(2) shall be calculated as if the firm permit had been renewed before its expiration.

(h) Each firm is responsible for the cost of the quality reviews under this rule.

(i) A quality review obtained after June 30, 2003, but before the effective date of this rule, shall fulfill the requirements for obtaining a quality review for the 2006 renewal as long as the quality review was done in a manner consistent with this rule. *(Indiana Board of Accountancy; 872 IAC 1-6-9)*

872 IAC 1-6-10 Reports; confidentiality
Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1-5-8; IC 25-2.1-5-9

Sec. 10. (a) An approved quality review program administrator shall determine and report the following to the oversight committee with respect to each firm that is reviewed:

(1) Any recommendations concerning the possible improvement of the quality of the firm location's professional services.

(2) Whether the firm is not in general conformity with applicable professional standards.

(3) If the firm is not in general conformity, any significant departures from applicable professional standards.

(b) A firm that is the subject of a quality review may submit to the oversight committee a response to the determinations and recommendations contained in the quality review report.

(c) Quality review reports and related comments and work papers shall be retained by the oversight committee for a period of at least three (3) years from the date of submission or until acceptance by the oversight committee of the firm location's next quality review report, whichever is later.

(d) All proceedings, records, and work papers related to a quality review performed under this rule are privileged as provided in IC 25-2.1-5-8 and are not subject to discovery, subpoena, or other means of legal process or introduction into evidence unto a civil action, arbitration, administrative proceeding, or board proceeding.

(e) Subject to IC 25-2.1-5-9, a member of the review

committee or an individual who was involved with or who performed a quality review may not testify in a civil action, arbitration, administrative proceeding, or board proceeding to matters:

(1) produced, presented, disclosed, or discussed during, or in connection with, the quality review process; or

(2) that involve findings, recommendations, evaluations, opinions, or other actions of the approved quality review program, the oversight committee, or individual reviewers or committee members.

(Indiana Board of Accountancy; 872 IAC 1-6-10)

872 IAC 1-6-11 AICPA standards for peer/quality review program

Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 25-2.1

Sec. 11. (a) That certain document being titled Standards for Performing and Reporting on Peer Reviews (copyright 2000, effective January 1, 2001), as published by the American Institute of Certified Public Accountants (AICPA), 1211 Avenue of the Americas, New York, New York 10036-8775 is hereby incorporated by reference as if fully set out in this rule except for the revision stated in this section. This document applies to quality reviews performed before January 1, 2005.

(b) That certain document being titled Standards for Performing and Reporting on Peer Reviews (copyright 2004, effective January 1, 2005), as published by the American Institute of Certified Public Accountants (AICPA), 1211 Avenue of the Americas, New York, New York 10036-8775 is hereby incorporated by reference as if fully set out in this rule except for the revision stated in this section. This document applies to quality reviews performed after December 31, 2004.

(c) Whenever "should" is used in the Standards for Performing and Reporting on Peer Reviews, it shall be construed as mandatory. However, minor variations from these requirements by the reviewer conducting a quality review are acceptable in the reviewer's professional judgment as long as the basic requirements are met.

(d) The Standards for Performing and Reporting on Peer Reviews is incorporated by reference in this rule to establish substantive standards for quality reviews. Any requirement for membership in the AICPA or other organization or the involvement of any AICPA entity or state CPA society in the quality review process shall not apply. The quality review program under this rule is administered by the board and the quality review oversight committee established under section 7 of this rule. However, this subsection shall not be construed to limit the involvement of either the AICPA or the state CPA society in any quality review activity involving their members as long as the resulting quality review complies with this rule.

(e) If any provision of the Standards for Performing and Reporting on Peer Reviews conflict in any way with IC 25-2.1 or this title, it shall not apply. *(Indiana Board of Accountancy; 872 IAC 1-6-11)*

872 IAC 1-6-12 NSA standards for peer/quality review program

Authority: IC 25-2.1-2-15; IC 25-2.1-5-8; IC 25-2.1-5-9
Affected: IC 4-22-2

Sec. 12. (a) That certain document being titled National Society of Accountants Peer Review Program Manual (copyright 2002), as published by the National Society of Accountants (NSA), 1010 Fairfax Street, Alexandria, Virginia 22314 is hereby incorporated by reference as if fully set out in this rule except for the revision stated in this section. No subsequent editions, amendments, supplements, or releases of this document will be in effect in Indiana or adopted by the board except by following the rulemaking provisions of IC 4-22-2.

(b) The National Society of Accountants Peer Review Program Manual is incorporated by reference in this rule to establish substantive standards for quality reviews. Any requirement for membership in the NSA or the involvement of any NSA entity in the quality review process shall not apply. The quality review program under this rule is administered by the board and the quality review oversight committee established under section 7 of this rule. However, this subsection shall not be construed to limit the involvement of NSA in any quality review activity involving their members as long as the resulting quality review complies with this rule.

(c) If any provision of the National Society of Accountants Peer Review Program Manual conflicts in any way with IC 25-2.1 or this title, it shall not apply. *(Indiana Board of Accountancy; 872 IAC 1-6-12)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 18, 2004 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 5, Indianapolis, Indiana the Indiana Board of Accountancy will hold a public hearing on proposed amendments to establish the requirements and procedures for a quality review program for CPA and PA firms. 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

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

Proposed Rule
LSA Document #04-41

DIGEST

Amends 872 IAC 1-1-6.1 to establish that internships shall not be considered substantial duplication of college course content. Effective 30 days after filing with the secretary of state.

872 IAC 1-1-6.1

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. **This subsection shall not apply to internships.** *(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)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 18, 2004 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Training Center Room 4, Indianapolis, Indiana the Indiana Board of Accountancy will hold a public hearing on proposed amendments to establish that internships shall not be considered substantial duplication of college course content. 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

TITLE 876 INDIANA REAL ESTATE COMMISSION

Proposed Rule
LSA Document #03-255

DIGEST

Amends 876 IAC 3-2-7 to establish a fee for licensed and certified appraisers in an amount to fund the investigative fund established by IC 25-34.1-8-7.5. Effective October 1, 2004.

876 IAC 3-2-7

SECTION 1. 876 IAC 3-2-7, PROPOSED TO BE AMENDED AT 27 IR 1642, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

876 IAC 3-2-7 Fee schedule
Authority: IC 25-1-8-2; IC 25-34.1-3-8; IC 25-34.1-3-9
Affected: IC 25-34.1-8-7.5

Sec. 7. (a) This section establishes the fee schedule for the real estate appraiser licensure and certification program. The fees stated in subsection (b) apply to Indiana licensed trainee appraisers, Indiana licensed residential appraisers, Indiana certified residential appraisers, and Indiana certified general appraisers. However, the fee for licensed trainee appraisers under subsection (b)(2), (b)(3), (b)(5), ~~and~~ (b)(6), **and (b)(7)** shall be one hundred **ten** dollars ~~($100),~~ **($110) (including the**

ten dollars ($10) for the investigative fund under IC 25-34.1-8-7.5), because there is not a requirement under federal law to transmit these amounts for licensed trainee appraisers.

(b) The fee schedule is as follows:
(1) Application for admittance to the examination $100
(2) Fee for license or certificate (after passing the examination) during an even-numbered year (including fifty dollars ($50) required by federal law to be transmitted to the federal government **and ten dollars ($10) for the investigative fund under IC 25-34.1-8-7.5)** ~~$150~~ **$160**
(3) Fee for license or certificate (after passing the examination) during an odd-numbered year (including twenty-five dollars ($25) required by federal law to be transmitted to the federal government **and ten dollars ($10) for the investigative fund under IC 25-34.1-8-7.5)** ~~$125~~ **$135**
(4) Application for licensure by reciprocity $100
(5) Fee for license or certificate by reciprocity (after approval by the board) during an even-numbered year (including fifty dollars ($50) required by federal law to be transmitted to the federal government **and ten dollars ($10) for the investigative fund under IC 25-34.1-8-7.5)** ~~$150~~ **$160**
(6) Fee for license or certificate by reciprocity (after approval by the board) during an odd-numbered year (including twenty-five dollars ($25) required by federal law to be transmitted to the federal government **and ten dollars ($10) for the investigative fund under IC 25-34.1-8-7.5)** ~~$125~~ **$135**
(7) Application for the renewal of a license or certification (including fifty dollars ($50) required by federal law to be transmitted to the federal government **and ten dollars ($10) for the investigative fund under IC 25-34.1-8-7.5)** ~~$150~~ **$160**
(8) Duplicate license or certificate $10
(9) Duplicate pocket card $10
(10) Certification of license to another state $10
(11) Application by a holder of an Indiana trainee appraiser license to be approved for a regular license $25
(12) Application for the issuance of a permit for temporary practice $150
(13) Fee for issuance and renewal of approvals for (prelicensure) real estate appraiser schools and courses under 876 IAC 3-4 $500
(14) Fee for issuance and renewal of approval for real estate appraiser continuing education course providers under 876 IAC 3-5 $250

(c) All fees are nonrefundable and nontransferable. *(Indiana Real Estate Commission; 876 IAC 3-2-7; filed Sep 24, 1992, 9:00 a.m.: 16 IR 737; filed Dec 8, 1993, 4:00 p.m.: 17 IR 772, eff Jan 2, 1994 [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 #93-130 was filed Dec 8, 1993.]; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2791; filed Jun 21, 1996, 10:00 a.m.: 19 IR 3111; filed Apr 12, 2001, 12:30 p.m.: 24 IR 2697; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238; filed Dec 3, 2002, 3:00 p.m.: 26 IR 1107)*

SECTION 2. **SECTION 1 of this document takes effect October 1, 2004.**

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 27, 2004 at 10:40 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 12, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to establish a fee for licensed and certified appraisers in an amount necessary to fund the investigative fund established under IC 25-34.1-8-7.5. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Professional Licensing Agency

TITLE 876 INDIANA REAL ESTATE COMMISSION

Proposed Rule
LSA Document #03-256

DIGEST

Adds 876 IAC 2-18 to establish a fee for real estate brokers and salespersons in an amount necessary to fund the investigative fund established by IC 25-34.1-8-7.5. Effective 30 days after filing with the secretary of state.

876 IAC 2-18

SECTION 1. 876 IAC 2-18 IS ADDED TO READ AS FOLLOWS:

Rule 18. Fee Schedule

876 IAC 2-18-1 Fee schedule
Authority: IC 25-1-8-2; IC 25-34.1-2-5; IC 25-34.1-2-6
Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1; IC 25-34.1-8-7.5

Sec. 1. In addition to the fees required under IC 25-34.1-3-3.1 and IC 25-34.1-3-4.1, the commission shall charge and collect the following fees, which shall be nonrefundable and nontransferable, for the investigative fund under IC 25-34.1-8-7.5 for the issuance and renewal of a:
(1) Real estate salesperson license $10
(2) Real estate broker license $10
(Indiana Real Estate Commission; 876 IAC 2-18-1)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 27, 2004 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 12, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to establish a fee for real estate brokers and salespersons in an amount necessary to fund the investigative fund established under IC 25-34.1-8-7.5. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Professional Licensing Agency

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Proposed Rule
LSA Document #03-319

DIGEST

Amends 905 IAC 1-45-2 and 905 IAC 1-45-3 to clarify the information required to be provided and maintained in the course of the retail sales of beer kegs. Effective 30 days after filing with the secretary of state.

905 IAC 1-45-2
905 IAC 1-45-3

SECTION 1. 905 IAC 1-45-2, AS ADDED AT 27 IR 189, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

905 IAC 1-45-2 Identification markers
Authority: IC 7.1-2-3-7; IC 7.1-3-6.5
Affected: IC 7.1-3-6.5

Sec. 2. The commission shall prescribe the form of the identification marker required by IC 7.1-3-6.5. The marker must:

(1) enable the identification and tracking of the seller of the keg;

(2) be removable or reusable only when the keg is returned to the wholesaler or brewer for refilling;

(3) contain:

(A) the name, address, and commission permit number of the commission wholesale, retail, or dealer permittee who sold the keg;

~~(B) the manufacturer's identification number on the keg itself;~~

~~(C)~~ **(B)** the name of the clerk making the sale;

~~(D)~~ **(C)** the name, address, and date of birth of the purchaser;

~~(E)~~ **(D)** the type of identification card and identification number used to verify the data required by clause ~~(D);~~ **(C);** and

~~(F)~~ **(E)** the dated signature of the purchaser;

(4) be attached to the keg by a material that once removed by a person cannot be reattached to the keg in a manner that could conceal the prior removal; and

(5) be in a form approved by and purchased from the commission at the amount of the commission's cost for producing it.

(Alcohol and Tobacco Commission; 905 IAC 1-45-2; filed Aug 29, 2003, 11:15 a.m.: 27 IR 189)

SECTION 2. 905 IAC 1-45-3, AS ADDED AT 27 IR 189, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

905 IAC 1-45-3 Receipt for the keg
Authority: IC 7.1-2-3-7; IC 7.1-3-6.5
Affected: IC 7.1-3-6.5

Sec. 3. A permittee shall require that a person who purchases a keg for consumption at a place other than a commission-licensed premises sign a receipt for the keg. The commission shall prescribe a form for the receipt. The receipt must contain the following information:

(1) The date of the sale of the keg.

~~(2) The size of the keg in gallons.~~

~~(3) The identification number on the keg itself.~~

~~(4)~~ **(2)** The name, ~~residence~~ **current residential** address, and date of birth of the purchaser.

~~(5)~~ **(3)** A description of the form of identification presented by the purchaser.

(Alcohol and Tobacco Commission; 905 IAC 1-45-3; filed Aug 29, 2003, 11:15 a.m.: 27 IR 189)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 25, 2004 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing on proposed amendments concerning the information required to be provided and maintained in the course of the retail sales of beer kegs. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission

Readopted Rules

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Notice of Intent
LSA Document #04-109

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.

OVERVIEW: Rule to be adopted without changes is as follows:

905 IAC 1-44 Revocation of Denied Permit

Questions or comments on the readoption may be directed to Mark C. Webb, Executive Secretary, Alcohol and Tobacco Commission, at (317) 232-2472. Statutory authority: IC 7.1-2-3-7.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #04-42

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.

410 IAC 1-5

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

410 IAC 1-5 Sanitary Operation of Tattoo Parlors

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on June 16, 2004 at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Myers Conference Room, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to the:

Indiana State Department of Health
Office of Legal Affairs
2 North Meridian Street
Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

Proposed Rule
LSA Document #04-14

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. *NOTE: IC 4-22-2.5-5 authorizes the governor to postpone, by executive order, the expiration of rules for one year. Executive Order #03-53, issued December 30, 2003, and printed at 27 IR 1663, postpones the expiration of the rules in this document until January 1, 2005.* Effective 30 days after filing with the secretary of state.

905 IAC 1-43

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

905 IAC 1-43 Excursion and Adjacent Landsite Permits

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on May 25, 2004 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E114, Indianapolis, Indiana the Alcohol and Tobacco Commission will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission
Indiana Government Center-South
302 West Washington Street, Room E114
Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E114 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mark C. Webb
Executive Secretary
Alcohol and Tobacco Commission

60 Day Requirement (IC 4-22-2-19)

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #03-96

December 8, 2003

Chairman
c/o George Angelone
Administrative Rules Oversight Committee
302 Statehouse
Indianapolis, Indiana 46204

RE: 905 IAC 1-35.1

Dear Mr. Chairman:

This letter is to notify the Administrative Rules Oversight Committee of changes in progress to the above rule, which establishes procedures governing the issuance of annual race track permits in accordance with IC 7.1-3-6-16 and IC 7.1-3-14-6. Under Ind. Code 4-22-2-19, an agency that adopts a rule must begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule.

IC 7.1-3-6-16 (beer) and IC 7.1-3-14-6 (wine) allowing race tracks to sell alcohol were enacted in 1995. At that time, the cost for a 1, 2, or 3-way permit was based on several factors, including whether the location was in a first, second or third class city, as well as the seating capacity of the venue. As a result, many race track operators would have paid in excess of $1000 -$1500 for an annual permit if it had existed at the time. A great number of race track operators benefited from simply purchasing temporary permits at a fee of $25 per event. In 2001, the fee structure was greatly simplified and provided for a separate flat fee for a 1, 2, or 3-way permit which was, in many instances, lower than the total amount of temporary permits purchased on an annual basis. Additionally, the Commission recently decided to increase the cost of a temporary permit from $25 to $50, thus doubling the cost for temporary alcohol permits on an annual basis. That, along with the general lowering of annual permit fees has created a renewed interest in the availability of a race track permit.

Please let me know if further information on this rule is needed. I can be reached directly at (317) 232-2472 or via email at mwebb@atc.state.in.us. Thank you very much for your kind attention in this regard.

Very truly yours,

Mark C. Webb
Executive Secretary

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
#04-43(APCB)

DEVELOPMENT OF AMENDMENTS TO 326 IAC 6-1-12 CONCERNING MODIFICATIONS TO REFERENCES FOR BOILERS AND THEIR CORRESPONDING PARTICULATE MATTER EMISSION LIMITATIONS AT REILLY INDUSTRIES, INC.

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 6-1-12 concerning revisions to the particulate matter emission limitations at Reilly Industries, Inc. 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: March 1, 2004, Indiana Register (27 IR 2081).

CITATIONS AFFECTED: 326 IAC 6-1-12.

AUTHORITY: IC 13-14-8; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Reilly Industries, Inc. (Reilly) has requested that IDEM amend the PM limitations for three (3) boilers, 2722W, 2726S, and 186N to be expressed as a combined annual emission limit or "bubble" limit. The "bubble" limit, in tons per year, will be the sum of the emissions limits for the individual three (3) boilers. Reilly proposes that the "bubble" limit for the three (3) boilers will be twelve and two-tenths tons per year (12.2 tons/year). The short term limits for each boiler, the pound per million Btu limit, will not be combined and will remain assigned to each individual boiler. Reilly requests a "bubble" limit for the three (3) boilers so that the fuel can be burned between the boilers without specifying a limit on each individual boiler and to achieve flexibility in their operation.

Reilly has requested that IDEM make corrections to boilers and their corresponding particulate matter (PM) emission limitations in 326 IAC 6-1-12 and allow a combined limit for three (3) boilers. The first correction is to remove the "100% natural gas" condition for boiler 186N. This boiler combusts oil. In a previous rulemaking, boilers burning only natural gas were regulated as "100% natural gas" and given no numerical emission limits, in 326 IAC 6-1-8.1 through 326 IAC 6-1-18. In this previous rulemaking, the numerical emission limits for 186N were removed erroneously and the boiler regulated as burning "100% natural gas." The twelve and two-tenths tons per year (12.2 tons/year) "bubble" limit includes the nine-tenths ton/year (0.9 ton/year) limit that was erroneously removed in the previous rulemaking. This rulemaking proposes to insert a short term limit of fifteen-hundredths (0.15) pound per million Btu back in the rule for boiler 186N, a numerical emission limit consistent with general limits for liquid fuel-fired steam generators not specifically listed in Article 6.

The second correction is for the PM emission limitations for boiler 112E. The unit is a waste heat boiler and does not combust any fuel, and so has no emissions. The source is proposing that the boiler, along with its corresponding emission limits be removed.

IDEM agrees with the requested corrections and "bubble" limit. IDEM proposes to determine compliance with the annual emissions "bubble" limit, tons/year, by requiring Reilly to keep monthly records of fuel use and to calculate total emissions for each twelve (12) month period as a rolling total. This method is similar to requirements of other sources with "bubble" limits and will provide better assurance of compliance with the annual emission limit.

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 "bubble" limit is not an additional restriction on PM emissions, but rather an alternative format for expressing the PM limits that are already imposed under federal law and will provide the affected party with operational flexibility.

Potential Fiscal Impact

The proposed record keeping requirements to determine compliance with the annual emissions "bubble" limit will have minimal fiscal impact since the source will most likely already be maintaining the necessary records to demonstrate compliance with the combined emission limit.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rules Section, Office of Air Quality at (317) 233-5697 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from March 1, 2004, through March 31, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

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:

#04-43(APCB)Reilly PM SIP
Susan Bem
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 May 31, 2004.

Additional information regarding this action may be obtained from

Susan Bem, Rules Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 6-1-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-1-12 Marion County

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12; IC 13-14-4-3; IC 13-16-1

Sec. 12. (a) In addition to the emission limitations contained in section 2 of this rule, the following limitations apply to sources in Marion County:

MARION COUNTY

Source	NEDS Plant ID	Point Input ID	Process	Emission Limits		
				tons per year	lbs/million Btu	grains/dscf
Asph. Mat. & Const. Inc.	0098	01	Oxid. Tank	.3		.004
Bridgeport Brass	0005	01	Boiler 1	21.5	.350	
	0005	02	Boiler 2	21.5	.350	
	0005	03	Boiler 3	21.5	.350	
Central Soya	0008	09A	Elevator Gallery Belt Trippers (East and West)	0.92		.006
	0008	09B	Elevator Gallery Belt Loaders (East and West)	0.70		.006
	0008	09C	Elevator Grain Dryer Conveying Legs	1.01		.006
	0008	10A	Elevator #1 Truck & Rail Receiving System and Basement	7.23		.006
	0008	10B	Elevator #2 Truck & Rail Receiving System	4.95		.006
Cent. St. Hospital	0009	01	Boilers 7 & 8	22.0	.350	
	0009	02	Boiler 3	17.0	.350	
Chevrolet	0010	0103	Boilers 1-3	65.8	.300	
Chrys. (El.) Shade	0011	01	All Boilers	67.8	.324	
Chrys. (Fdy.) S. Tibbs	0012	01	Cup.-Scrub	34.2		.085
	0012	02	D. Cl. Ck. 4 St.	4.9		.038
	0012	07	Hz. C. Ov. B. Ck.	4.2		.008
	0012	08	Hz. C. Ov. A. Ck.	3.1		.006
	0012	09	Hz. C. Ov. A. By	6.2		.029
	0012	10	Hz. C. Pst. Cr.	less than 1 T/yr		.001
	0012	11	Hz. C. Ov. B. Ry.	.4		.005
	0012	12	Hz. Rv. Ov. Jkt.	less than 1 T/yr		.001
	0012	13	Hz. Ry. Ov. A. CCC	less than 1 T/yr		.002
	0012	14	Bg. Ex. Rb. 1 St.	2.6		.020
	0012	16	Hyd. Fdy. Gre.	1.2		.004
	0012	18	Ck. Unload.	5.9		.021
	0012	19	Flsk. Sk.-Out	50.8		.030
	0012	22	Snd. Trnsfr.	2.6		.019
	0012	25	Cr. Grinding	.01		.001
	0012	26	Cr. Grinding	1.6		.007
	0012	28	Cl. Op. Cr. K. O.	8.2		.034
	0012	29	Cl. Room	6.8		.020
	0012	30	Cl. Room	4.2		.020
	0012	31	Chp. Op.	16.7		.020
	0012	34	Cst. Cl.	57.5		.020
Community Hospital	0014	01	Keller Boiler	.5	.014	

Design Mix	0091	01	Roty. Dry.	9.8		.092
Allison Transmission	0017	01-05	Boilers 1, 2, 3, 4, 5	39.3 combined	.15 each	
Rolls-Royce Corporation	0311	01	Boilers 0070-01 through 0070-04	130.0/yr	.337	
	0311	02	Boilers 0070-58 and 0070-59		.15	
	0311	03	Boilers 0070-62 through 0070-65		.15	
Illinois Cereal Mills, Incorporated	0020	01	Cleaver Brooks Boiler	1.0	.014	
	0020	02	Old Mill–Dust	4.3		.030
	0020	05	Old Mill–Dust	4.3		.030
	0020	06	Warehouse–Dust	5.8		.030
	0020	07	New Mill Dryers	3.0		.030
	0020	08	New Mill Dryers	3.0		.030
	0020	09	New Mill Dryers	3.0		.030
	0020	10	New Mill Dryers	3.0		.030
	0020	11	New Mill Dryers	9.4		.030
	0020	12	New Mill Coolers	3.1		.030
	0020	13	New Mill Cleaner	3.3		.030
	0020	14	Elevator Dust	1.6		.030
	0020	15	Headhouse Suction	3.1		.030
	0020	16	Corn Cleaner	1.0		.131
	0020	17	Corn Cleaner	1.0		.131
	0020	18	Headhouse Suction	6.0		.030
	0020	19	Old Mill Dust	5.9		.030
	0020	20	Large Hammermill	8.2		.030
	0020	03	Old Mill Dust	4.3		.030
	0020	04	Old Mill Dust	4.3		.030
Farm Bureau (Fert.)	0653	02	Gr. Dry Cooler	15.2		.013
	0653	04	Ammoniator	3.9		.047
	0653	05	Cooler Gr.	6.3		.026
	0653	06	Screen Gr.	less than 1 T/yr		.005
	0653	07	Bag. Ship.	.1		.004
FMC Bearing	0025	01	Boilers 1-3	17.0	.300	
FMC Chain	0062	0105	Boilers	7.6	.300	
	0062	07	Anneal. Ov.	.1		.004
Ford Motor Co.	0021	01	Boiler 3	38.6	.270	
	0021	02	Boiler 2	55.1	.270	
	0021	03	Boiler 1	16.5	.270	
Ft. Benjamin Harrison	0022	01	Boiler 1	16.7	.350	
	0022	02	Boiler 2	16.7	.350	
	0022	03	Boiler 3	16.7	.350	
	0022	04	Boiler 4	16.7	.350	
Glass Containers	0293	01	Glass Melting Furnace	43.0		(1 lb/ton)
Indep. Concrete Pipe	0457	01	Ct. St. Bn. 04	.21		.014
	0457	02	Ct. St. Bn. 03	.41		.014
Indpls. Rubber Co.	0064	01	Boilers	70.0	.350	
Ind. Asph. Pav. Co.	0027	01	Roty. Dry. 1	7.8		.074
	0027	02	Roty. Dry. 2	3.9		.066
Ind. Veneers	0031	01	Wd. & Cl. Boil.	13.9	.330	

IPL (Perry K)	0034	01	Boiler 11 (natural gas, coke oven gas)	484.4	*.125	
	0034	01	Boiler 12 (coal)		*.175	
	0034	02	Boiler 13 (natural gas, coke oven gas)		*.082	
	0034	02	Boiler 14 (natural gas, coke oven gas)		*.082	
	0034	03	Boiler 15 (coal)		*.106	
	0034	03	Boiler 16 (coal)		*.106	
	0034	03	Boiler 17 (oil)		*.015	
	0034	03	Boiler 18 (oil)		*.015	
IPL (Stout)	0033	09	Boiler 9	1.9	*.015	
	0033	10	Boiler 10	2.2	*.015	
	0033	11	Boiler 50	82.2	*.135	
	0033	12	Boiler 60	82.2	*.135	
	0033	13	Boiler 70	830.7	*.1	
	0033	14	Gas Turbine 1	.28	*.015	
	0033	15	Gas Turbine 2	.28	*.015	
	0033	16	Gas Turbine 3	.28	*.015	
Nat'l. R.R. (Amtrak)	0646	01	Boiler 1	23.0	.350	
	0646	02	Boiler 2	23.0	.350	
National Starch	0042	06	61-9	4.1		.016
	0042	11	56-2	11.3		0.010
	0042	12	71-2	2.6		.030
	0042	13	61-6	.1		.030
	0042	22	56-1	7.02		0.020
	0042	29	40-4	44.1		0.020
	0042	30	40-3	42.3		0.020
	0042	31	40-2	31.9		0.020
	0042	43A	42-1	.9		.030
	0042	46	61-14A	.6		.029
	0042	47	61-14	1.2		.028
	0042	55	42-8	4.2		.030
	0042	56A	42-7A	1.7		.032
	0042	56B	42-7B	1.7		.032
	0042	56C	42-7C	1.7		.032
	0042	57A	42-3A	1.8		.032
	0042	57B	42-3B	1.8		.032
	0042	57C	42-3C	1.8		.032
	0042	57D	42-3D	1.8		.032
	0042	57E	42-3E	1.8		.032
	0042	57F	42-3F	1.8		.032
	0042	59	42-4	2.3		.029
	0042	60	42-10	2.4		.030
	0042	63	42-6	2.5		.030
	0042	64	71-1	.9		.030
	0042	67A	71-5A	.3		.026
	0042	67B	71-5B	.3		.026
	0042	67C	71-5C	.3		.026
	0042	67D	71-5D	.3		.026
	0042	67E	71-5E	.3		.026
	0042	67F	71-5F	.3		.026
	0042	67G	71-5G	.3		.026
	0042	67H	71-5H	.3		.026
	0042	67I	71-5I	.3		.026

	0042	67J	71-5J	.3		.026
	0042	67K	71-5K	.3		.026
	0042	67L	71-5L	.3		.026
	0042	68A	71-4A	.3		.026
	0042	68B	71-4B	.3		.026
	0042	68C	71-4C	.3		.026
	0042	68D	71-4D	.3		.026
	0042		575-1	32.4		.018
	0042		575-2	32.4		0.011
- 100% natural gas	0042	04	Boiler 4			
Navistar International	0039	1a	E.M. 1 Baghouse	45.7		.019
	0039	1b	E.M. 2 Baghouse	53.5		.020
	0039	02	Boiler 1	14.0	.30	
	0039	03	Boiler 2	13.0	.30	
	0039	04	Boiler 3	34.9	.30	
	0039	05	Phase 1 Baghouse	35.4		.020
	0039	06	Phase 3 Baghouse	55.1		.020
	0039	07	M-3 Baghouse	72.4		.015
	0039	98	Phase 4 Baghouse	99.6		.02
	0039	99	Phase 5 Baghouse	62.0		.02
	0039	08	Cst. Cl. Cr. 1	.0		.0
	0039	09	Pngbrn. Shtb.	.0		.0
	0039	10	Cst. Clg. Cr. 2	.0		.0
Quemetco (RSR Corp)	0079	01	Rev. Fur. 01	5.8		.016
RCA	0047	02	2 Boil Oil	28.7	.15	
Refined Metals	0036	01	Blast Furnace	2.8		.003
	0036	02	Pot Furnace	less than 1 T/yr		.0005
Reilly Industries, Inc.						
~~- 100% natural gas~~	0049	01	186 N		**.15**	
	0049	02	2722 W	~~3.5~~ **12.2**	.15	
	0049	03	2726 S	~~7.8~~	.15	
	0049	04	2728 S	2.2	.15	
- 100% natural gas	0049	05	2607 T			
	0049	06	2714 V	3.1	.15	
	0049	07	2707 V	.4	.011	
	0049	08	2724 W			
- 100% natural gas	0049	09	702611			
- 100% natural gas	0049	10	722804	.2	.011	
	0049	11	732714	7.5	.15	
	0049	12	2706 Q	.1	.011	
- 100% natural gas	0049	13	2713 W			
- 100% natural gas	0049	14	2714 W			
	0049	18	2729 Q	.1	.011	
	0049	20	2740 Q	2.0	.15	
	~~0049~~	~~21~~	~~112 E~~	~~.5~~	~~.15~~	
Richardson Co.	0065	01	Boil. 2 Oil	1.5	.015	
St. Vincent's Hospital	0476	0103	Boilers 1-3	.7	.011	
Sludge Incinerator	0032	01	Incinerator #5	17.9		.030
	0032	02	Incinerator #6	17.9		.030
	0032	03	Incinerator #7	17.9		.030
	0032	04	Incinerator #8	17.9		.030
	0032	05	Incinerators #1-4	72.5		.030
Stokely Van Camp	0056	0103	Boiler	93.3	.350	
Praxair	0060	01	3 Boilers	35.5	.350	

*Compliance shall be determined using 40 CFR 60, Appendix A, Method 5**.

(b) Sources shall be considered in compliance with the tons per year emission limits established in subsection (a) if within five percent (5%) of the emission limit.

(c) Processes 40-4, 40-3, 40-2, 575-1, **and** 575-2 and Boiler 4 at National Starch, identified in subsection (a) as one hundred percent (100%) natural gas burners, shall burn only natural gas.

(d) **In addition to complying with subsections (a) and (b), Reilly Industries shall comply with the following:**

(1) Processes ~~186 N,~~ 2607 T, 702611, 722804, 2713 W, and 2714 W at Reilly Industries, identified in subsection (a) as one hundred percent (100%) natural gas burners, shall burn only natural gas.

(2) Maintain monthly fuel usage records for processes 186 N, 2722 W, and 2726 S that contain sufficient information to estimate emissions including:

(A) boiler identification;

(B) fuel usage for each type of fuel;

(C) heat content of fuel; and

(D) emission factor used to calculate emissions.

(3) Within thirty (30) days of the end of each calendar quarter, a written report shall be submitted to the department and the Indianapolis office of environmental services division of the monthly emissions for each of the previous twelve (12) months for boilers 186 N, 2722 W, and 2726 S, including the information in subdivision (2).

(4) Compliance with the annual tons per year limitation shall be based on the sum of the monthly emissions for each twelve (12) month period.

(5) The fuel usage records shall be maintained at the source for three (3) years and available for an additional two (2) years. The records shall be made available to the department or its designated representative upon request.

(e) In addition to complying with subsections (a) through (b), Navistar International Transportation Corporation shall comply with the following:

(1) The height of each of the two (2) stacks on the M-3 baghouse (Point ID 07) shall be increased by fifty (50) feet by August 31, 1990.

(2) Within thirty (30) days of the effective date of this rule, Navistar shall submit to the department the following:

(A) A certification as to the complete and permanent shutdown of the sources identified as Point ID 8, 9, and 10 of subsection (a) and No. 2 Large Mold Line, M-2 Mold Line, M-4 Mold Line, and the core-making and core-knockout operations for these mold lines.

(B) A written list of sources not identified in subsection (a) with a potential to emit ten (10) or greater tons per year.

(3) Within thirty (30) days of the end of each calendar quarter, a written report shall be submitted to the department of the monthly emissions from each emission point identified in subsection (a) ~~which~~ **that** contains information necessary to estimate emissions, including:

(A) for boilers:

(i) fuel type;

(ii) usage;

(iii) ash content; and

(iv) heat content; and

(B) for other processes, the:

(i) appropriate production data;

(ii) emission factors; and

(iii) proper documentation of the emission factors.

(4) The tons per year limitation shall be met based on the sum of the monthly emissions for each twelve (12) month period.

(5) A written report detailing Navistar's operation and maintenance program to provide for proper operation of and to prevent deterioration of the air pollution control equipment on the emission points identified as Point ID 1a, 1b, 5, 6, 7, 98, and 99 in subsection (a) to be submitted to the department by July 31, 1990.

(f) In addition to complying with subsections (a) through (b), Rolls-Royce Corporation shall comply with the following:

(1) Boilers 0070-01 through 0070-04 may use only:

(A) #2 fuel oil;

(B) #4 fuel oil;

(C) natural gas; or

(D) landfill gas;

as a fuel.

(2) Boilers 0070-58, 0070-59, and 0070-62 through 0070-65 may use only:

(A) #6 fuel oil;

(B) #4 fuel oil;

(C) #2 fuel oil;

(D) natural gas; or

(E) landfill gas;

as a fuel.

(3) Boilers 0070-01 through 0070-04, 0070-58, 0070-59, and 0070-62 through 0070-65 shall have the following limitations depending upon the fuel being used:

(A) When using only #4 fuel oil, the amount used for the listed boilers collectively is not to exceed thirty-seven million one hundred forty-two thousand eight hundred (37,142,800) gallons per year based on a three hundred sixty-five (365) day rolling figure.

(B) When using #6 fuel oil, #2 fuel oil, natural gas, or landfill gas, the limitation listed in clause (A) shall be adjusted as follows:

(i) When using #6 fuel oil, the gallons per year of #4 fuel oil shall be reduced by two and six-tenths (2.6) gallons per gallon used.

(ii) When using natural gas, the gallons per year of #4 fuel oil shall be reduced by eighty-eight hundred-thousandths (0.00088) gallon per cubic foot of natural gas burned.

(iii) When using #2 fuel oil, the gallons per year of #4 fuel oil shall be reduced by twenty-eight hundredths (0.28) gallon per gallon used.

(iv) When using landfill gas, the gallons per year of #4 fuel oil shall be reduced by one hundred sixteen hundred-thousandths (.00116) gallon per cubic foot of landfill gas burned.

(4) A log shall be maintained to document compliance with subdivision ~~(4).~~ **(3).** These records shall be maintained for at least the previous twenty-four (24) month period and shall be made available upon request by the department.

(g) In addition to complying with subsections (a) through (b), Allison Transmission shall comply with the following:

(1) Maintain monthly fuel usage records for each boiler identified in subsection (a) that ~~contains~~ **contain** sufficient information to estimate emissions including:

(A) boiler identification and heat capacity;

(B) fuel usage for each type of fuel; and

(C) heat content of fuel.

(2) Within thirty (30) days of the end of each calendar quarter, a written report shall be submitted to the department and the Indianap-

olis **office of** environmental ~~Resources~~ ~~Management~~ **services** division of the monthly emissions of the boilers identified in subsection (a) and including the information in subdivision (1).

(3) Compliance with the annual tons per year limitation shall be based on the sum of the monthly emissions for each twelve (12) month period.

(4) The fuel usage records shall be maintained at the source for three (3) years and available for an additional two (2) years. The records shall be made available to the department or its designated representative upon request.

*The following is incorporated by reference: 40 CFR 60, Appendix A, Method 5. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue, Washington, D.C. 20401 and is available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 6-1-12; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2472; filed Dec 14, 1989, 9:30 a.m.: 13 IR 868; filed Oct 4, 1995, 10:00 a.m.: 19 IR 186; errata filed Dec 11, 1995, 3:00 p.m.: 19 IR 674; errata filed Mar 19, 1996, 10:20 a.m.: 19 IR 2044; filed Sep 18, 1998, 11:35 a.m.: 22 IR 417; filed Feb 9, 1999, 4:22 p.m.: 22 IR 1954; filed Apr 27, 1999, 9:04 a.m.: 22 IR 2857; errata filed Dec 8, 1999, 12:38 p.m.: 23 IR 812; filed May 26, 2000, 8:33 a.m.: 23 IR 2419; filed May 26, 2000, 8:37 a.m.: 23 IR 2414; errata filed Aug 17, 2000, 2:25 p.m.: 24 IR 26; filed Nov 8, 2001, 2:02 p.m.: 25 IR 748)*

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 September 1, 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 amendments to 326 IAC 6-1-12.

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 Susan Bem, Rules Section, Office of Air Quality, (317) 233-5697 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.

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND SECOND NOTICE OF COMMENT PERIOD
#04-107(APCB)

DEVELOPMENT OF NEW RULES CONCERNING INCORPORATION BY REFERENCE OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING; BRICK AND STRUCTURAL CLAY PRODUCTS MANUFACTURING; CLAY CERAMICS MANUFACTURING; COKE OVENS: PUSHING, QUENCHING, AND BATTERY STACKS; ENGINE TEST CELLS/STANDS; HYDROCHLORIC ACID PRODUCTION; PRINTING, COATING, AND DYEING OF FABRICS AND OTHER TEXTILES; SURFACE COATING OF METAL FURNITURE; AND SURFACE COATING OF WOOD BUILDING PRODUCTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules to incorporate by reference the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asphalt processing and asphalt roofing manufacturing; brick and structural clay products manufacturing; clay ceramics manufacturing; coke ovens: pushing, quenching, and battery stacks; engine test cells/stands; hydrochloric acid production; printing, coating, and dyeing of fabrics and other textiles; surface coating of metal furniture; and surface coating of wood building products. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. 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 20-71; 326 IAC 20-72; 326 IAC 20-73; 326 IAC 20-74; 326 IAC 20-75; 326 IAC 20-76; 326 IAC 20-77; 326 IAC 20-78; 326 IAC 20-79.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13- 14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The 1990 Amendments to the Clean Air Act require the United States Environmental Protection Agency (U.S. EPA) to regulate major sources of hazardous air pollutants (HAPs). A major source is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that has the potential to emit, considering controls, ten (10) tons per year or more of any single hazardous air pollutant or twenty-five (25) tons per year or more of any combination of HAPs. HAPs are listed by U.S. EPA because they are either known or suspected to cause cancer or other serious health effects. There are currently one hundred eighty-eight (188) HAPs listed in the Clean Air Act. On July 16, 1992, (57 FR 311576), U.S. EPA published a list of industrial groups or source categories that emit one (1) or more of the one hundred eighty-eight (188) listed HAPs. The Clean Air Act requires U.S. EPA to develop emission standards, referred to as national emission standards for hazardous air pollutants (NESHAPs), that require the application of air pollution reduction measures based on maximum achievable control technology (MACT) for the listed source categories. The "MACT floor" is the minimum control level allowed for NESHAPs and ensures that the standard is set at a level that assures that all existing major sources achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source.

For most NESHAPs, the final compliance deadline is three (3) years after the rule promulgation date. Most NESHAPs have intermediate compliance dates and require a compliance plan prior to the final compliance deadline. For NESHAPs where only minor changes are required in order to comply with the promulgated NESHAP, the compliance date is less than three (3) years.

IDEM must incorporate the federal requirements into state rules or establish state requirements that are no less stringent than the federal requirements. This rulemaking will incorporate by reference the following NESHAPs:

Asphalt Processing and Asphalt Roofing Manufacturing

Asphalt processing produces blown asphalt for use in the asphalt roofing manufacturing industry and other asphalt industries. Asphalt roofing manufacturing produces shingles and roll roofing products by applying the blown asphalt to fiberglass and felt substances. Air toxics, such as formaldehyde and hexane, will be reduced at numerous emission points that include blowing stills, asphalt storage tanks, asphalt loading operations, coating mixers, coaters, saturators, wet loopers, and applicators. Nationwide, HAP will be reduced by eight-six (86) megagrams (ninety-five (95) tons) annually. Hydrocarbon emission will be reduced by about five hundred twelve (512) tons annually. U.S. EPA has not identified any potential sources in Indiana. Sources must comply by May 1, 2006.

Brick and Structural Clay Products Manufacturing

The brick and structural clay products manufacturing process consists of preparing raw materials, such as clay and shale, forming the processed materials into bricks and other shapes, and drying and firing bricks and clay products. Air toxics that occur during the manufacture of face brick, structural brick, brick pavers, clay pipe, roof tile, extruded floor, and wall tile will be reduced thirty-five percent (35%) from the estimated baseline according to U.S. EPA estimates. Types of potential air toxics that can be emitted are hydrogen fluoride, hydrogen chloride, antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, and lead. There are at least two (2) potential Indiana sources. Sources must comply by May 16, 2006.

Clay Ceramics Manufacturing

Clay ceramics manufacturing was originally included with brick and structural clay product manufacturing, but has been addressed in a separate NESHAP. The clay ceramic manufacturing process consists of processing clay, shale, and other additives, forming the processed materials into tile and sanitaryware shapes, and drying, glazing, and firing clay ceramic products. Source material may contain small amount of metals that can cause adverse health affects. The NESHAP requires that all kilns use natural gas or an equivalent clean-burning fuel. Compliance costs are expected to be minimal. There are at least two (2) potential Indiana sources. Sources must comply by May 16, 2006.

Coke Ovens: Pushing, Quenching, and Battery Stacks

Coke plants produce coke from coal using coke oven batteries. Coke is used in blast furnaces in the conversion of iron ore to iron, which is further reduced to steel. Pushing is the process of removing coke from the oven after the coal has been coked. Quenching is the cooling of coke by deluging it with water. The NESHAP establishes opacity limits and requires operation of continuous opacity monitors for battery stacks. U.S. EPA estimates a forty-three percent (43%) reduction from current levels for various air toxics, such as benzene and naphthalene. There are at least three (3) potential Indiana sources. Sources must comply by April 14, 2006.

Engine Test Cells/Stands

An engine test cell/stand is any apparatus used for testing uninstalled mobile engines. The four subcategories include: internal combustion engines of less than twenty-five (25) horsepower; internal combustion engines of more than twenty-five (25) horsepower; combustion turbine engines; and rocket engines. Engine test cells/stands emit air toxics, such as benzene, toluene, and mixed xylenes, in the exhaust gases from combustion of gaseous and liquid fuels being tested in the engine cell/stand. U.S. EPA estimates the NESHAP will reduce emissions by sixty-six (66) tons per year per test cell/stand. There are at least six (6) potential sources in Indiana. Sources must comply by May 27, 2006.

Hydrochloric Acid Production

Hydrochloric acid is produced to be used in a variety of industrial processes including refining ore, pickling and cleaning of metal products; electroplating, cleaning boilers; neutralizing chemically basic systems; fertilizers; dyes; textiles; rubber; and preparing various food products. The NESHAP will only apply to facilities that produce liquid

hydrochloric acid at a concentration of thirty percent (30%) by weight or greater. U.S. EPA estimates reduction of hydrochloric acid emission by fort-nine percent (49%) compared to current levels. There are at least three (3) potential Indiana sources. Sources were required to submit a notice of compliance by June 26, 2003, or sixty (60) days after beginning of operation for new sources.

Printing, Coating, and Dyeing of Fabrics and Other Textiles

Rolls of fabric are coated and printed on either one (1) or both sides for decorative and functional purposes. Dyeing is the application of color to textile material, such as yarn, thread, cord, fiber, fabric, or other textile material. Finishings are processes performed after dyeing. The NESHAP requires pollution prevention techniques. U.S. EPA estimates a sixty percent (60%) reduction from an estimated 1997 baseline. There is at least one (1) potential Indiana source. Sources must comply by May 29, 2006.

Surface Coating of Metal Furniture

Surface coating is the process of applying a coating that is usually decorative or protective, in this case to the surface of metal furniture. Air toxic emissions, such as VOCs, occur from the coating application, which includes curing and drying of the coating; and from the evaporation of organic cleaning materials used to prepare the surfaces before coating is applied and to clean equipment and tools. Facilities will comply with the NESHAP using powder coating technology or toxics-free liquid coatings. U.S. EPA estimates a seventy-three percent (73%) reduction from 1997-1998 baseline. There are at least two (2) potential Indiana sources. Sources must comply by May 23, 2006.

Surface Coating of Wood Building Products

Surface coating is the process of applying a coating that is usually decorative or protective, in this case to the surface of wood building products. Wood building products include exterior siding and primed door skins; flooring, such as paneling and tileboard; and windows. Air toxics emissions, such as VOCs, occur from the coating application operation, which includes curing and drying of the coating, and from the evaporation of organic cleaning materials used to prepare the surfaces before coating is applied and to clean equipment and tools. U.S. EPA estimates a sixty-three percent (63%) reduction from the 1997 baseline. There at at least five (5) potential Indiana sources. Sources must comply by May 28, 2006.

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. Affected entities must comply with the federal rule, and IDEM does not propose to add more stringent requirements.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Gayl Killough, Rules Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6021 (in Indiana).

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on the incorporation by reference of the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asphalt processing and asphalt roofing manufacturing; brick and structural clay products manufacturing; clay ceramics manufacturing; coke ovens: pushing, quenching, and battery stacks; engine test cells/stands; hydrochloric acid production; printing, coating, and dyeing of fabrics and other textiles; surface coating of metal furniture; and surface coating of wood building products. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) The draft rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(2) Indiana is required by federal law and state law to adopt NESHAPs or adopt rules that are as stringent as the federal regulations.

(3) The citizens and regulated community of Indiana will benefit from prompt adoption of this rule because the state will have the legal authority to enforce these NESHAPs.

(4) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.

(5) The draft rule is hereby incorporated into these findings.

Lori F. Kaplan
Commissioner
Indiana Department of Environmental Management

DRAFT RULE

SECTION 1. 326 IAC 20-71 IS ADDED TO READ AS FOLLOWS:

Rule 71. Asphalt Processing and Asphalt Roofing

326 IAC 20-71-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8681* (68 FR 24578, May 7, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart LLLLL* (67 FR 24578, May 7, 2003, National Emission Standards for Hazardous Air Pollutants for Asphalt Roofing And Processing).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-71-1)*

SECTION 2. 326 IAC 20-72 IS ADDED TO READ AS FOLLOWS:

Rule 72. Brick and Structural Clay Products

326 IAC 20-72-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8385 (68 FR 26722, May 16, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart JJJJJ (68 FR 26722, May 16, 2003, National Emission Standards for Brick and Structural Clay Products)*.

***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 20-72-1)*

SECTION 3. 326 IAC 20-73 IS ADDED TO READ AS FOLLOWS:

Rule 73. Clay Ceramics Manufacturing

326 IAC 20-73-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8535*(68 FR 26738, May 16, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart KKKKK*(68 FR 26738, May 16, 2003, National Emission Standards for Clay Ceramics Manufacturing)*.

***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 20-73-1)*

SECTION 4. 326 IAC 20-74 IS ADDED TO READ AS FOLLOWS:

Rule 74. Coke Ovens: Pushing, Quenching, and Battery Stacks

326 IAC 20-74-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7281 (68 FR 18026, April 14, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart CCCCC*(68 FR 18025, April 14, 2003, National Emission Standards for Coke Ovens: Pushing, Quenching, and Battery Stacks)*.

***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 20-74-1)*

SECTION 5. 326 IAC 20-75 IS ADDED TO READ AS FOLLOWS:

Rule 75. Engine Test Cells/Stands

326 IAC 20-75-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.9285*(68 FR 28785, May 27, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart PPPPP (68 FR 28785, May 27, 2003, National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands)*.

***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 20-75-1)*

SECTION 6. 326 IAC 20-76 IS ADDED TO READ AS FOLLOWS:

Rule 76. Hydrochloric Acid Production

326 IAC 20-76-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8985* (68 FR 19090, April 17, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart NNNNN* (68 FR 19090, April 17, 2003, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-76-1)*

SECTION 7. 326 IAC 20-77 IS ADDED TO READ AS FOLLOWS:

Rule 77. Printing, Coating, and Dyeing of Fabrics and Other Textiles

326 IAC 20-77-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.4281* (68 FR 32188, May 29, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart OOOO* (68 FR 32188, May 29, 2003, National Emission Standards for Hazardous Air Pollutants for Printing, Coating, and Dyeing of Fabrics and Other Textiles).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management,**

Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 20-77-1)*

SECTION 8. 326 IAC 20-78 IS ADDED TO READ AS FOLLOWS:

Rule 78. Surface Coating of Metal Furniture

326 IAC 20-78-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.4881* (68 FR 28620, May 23, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart RRRR* (68 FR 28620, May 23, 2003, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Furniture).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-78-1)*

SECTION 9. 326 IAC 20-79 IS ADDED TO READ AS FOLLOWS:

Rule 79. Surface Coating of Wood Building Products

326 IAC 20-79-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7181* (68 FR 31760, May 28, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart QQQQ* (68 FR 31760, May 28, 2003, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-79-1)*

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 June 2, 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 326 IAC 20-71, 326 IAC 20-72, 326 IAC 20-73, 326 IAC 20-74, 326 IAC 20-75, IAC 20-76, IAC 20-77, 326 IAC 20-78, and 326 IAC 20-79.

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 rule. 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 Gayl Killough, Rules Section, Office of Air Quality, (317) 233-8628 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, Indianapolis, Indiana and are open for public inspection.

TITLE 327 WATER POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#04-106(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING TRANSIENT NONCOMMUNITY PUBLIC WATER SYSTEMS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 327 IAC 8-3 and 327 IAC 8-3.4 concerning transient noncommunity public water systems that serve a population of two hundred fifty (250) or less and that use ground water. The proposed amendments would eliminate the requirement for professional engineer certifications on certain plans that are required as part of construction permit application, and the amendment would provide additional alternative technical standards for affected systems. The commissioner would have the option to discontinue an approved alternative standard if the system is not operated in an approved manner or otherwise violates the rule. The commissioner would also be allowed, if requested, to modify a well isolation area if certain conditions are met. In addition to these changes, IDEM proposes to make minor technical corrections to the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: 327 IAC 8-3; 327 IAC 8-3.4-3; 327 IAC 8-3.4-27.

AUTHORITY: IC 13-14-8; IC 13-18-3; IC 13-18-16.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The main purpose of the amendments to 327 IAC 8-3 and 327 IAC

8-3.4 is to simplify the construction permitting requirements for small systems, which will also reduce the regulatory burden on those same small water systems. The public water systems primarily affected by the proposed amendment are transient noncommunity public water systems that use wells and serve two hundred fifty (250) people or less. Approximately two thousand five hundred (2,500) systems fall into the category. Transient noncommunity public water systems are facilities with their own water supply, usually a well, and regularly serve twenty-five (25) or more people. Examples of transient noncommunity public water systems include: churches, restaurants, gas stations, campgrounds, and parks. The amendment provides regulatory relief by eliminating the requirement for a professional engineer (PE) to prepare plans and specifications and to sign and stamp permit applications for these systems as is currently required. The amendment will change the well siting requirements for transient noncommunity public water systems. The amendment will also provide for the development of alternative construction permitting approaches for transient noncommunity public water systems.

Alternatives To Be Considered Within the Rulemaking

The rulemaking will consider various approaches for ensuring the adequacy of designs without necessarily requiring a PE to approve the plans. Such approaches as preapproved designs, well driller plan preparation, and ongoing construction inspections will be considered. For alternative technical standards, lists of approved equipment, lists of preapproved construction and installation approaches, and simplified permitting requirements will be considered.

This is not an incorporation of federal standards. There are no federal standards for construction of public water systems, and there are no federal laws concerning construction.

Applicable Federal Law

There are no specific federal laws concerning construction. However, IDEM is required to maintain a program to ensure that public water systems are designed properly.

Potential Fiscal Impact

There is no information known about the potential fiscal impact. In fact, it is believed that these amendments will result in a neutral and possibly negative fiscal impact while providing some regulatory relief and still ensuring a safe and adequate supply of drinking water.

Public Participation and Workgroup Information

An external workgroup will be established to discuss issues involved in this rulemaking. The workgroup will be made up of IDEM staff and a cross section of stakeholders. Any interested party will be welcome to attend workgroup meetings. At least three (3) meetings will be held at the IDEM's Shadeland office. Mary Hollingsworth will be the contact person for the workgroup meetings.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 or (800) 451-6027 (in Indiana). 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.

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 or existing water quality, as the case may be.

(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:

#04-106(WPCB) Amendment to Construction Rule
Lawrence Wu
Rules Section Chief
Office of Water Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be delivered by facsimile to (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 30, 2004.

Additional information regarding this action may be obtained from Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 or (800) 451-6027 (in Indiana).

Tim Method
Deputy Commissioner
Indiana Department of Environmental Management

TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD
#03-312(SWMB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING THE 2003 UPDATE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM AT 329 IAC 3.1 AND 329 IAC 13

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM, the department, or we) has developed draft rule language for new rules and amendments to rules in 329 IAC 3.1 and 329 IAC 13 concerning:

! incorporating by reference the July 1, 2003, edition of the federal hazardous waste management regulations in 40 CFR 260 through 40

CFR 273, including adopting three (3) recent federal changes to the hazardous waste management program,

- ! amending 329 IAC 3.1-1-7 to update the incorporation by reference of 40 CFR 146 and the eight (8) appendices to 40 CFR 60 to the most recent editions,
- ! amending 329 IAC 3.1-6-2, 329 IAC 13-3-1, and 329 IAC 13-9-5 and adding a new 329 IAC 13-3-4 to adopt federal changes to the recycled used oil management standards in 40 CFR 279 published by the U.S. Environmental Protection Agency (EPA) on July 30, 2003 (68 FR 44659),
- ! amending 329 IAC 3.1-6-3 to clarify that chemical munitions listed as Indiana hazardous wastes are acute hazardous wastes,
- ! adding a new 329 IAC 3.1-7.5 (or placing the provisions at another appropriate location) to retain procedures for managing hazardous waste loads rejected by a treatment, storage, or disposal facility that are currently found in IC 13-22-5-12, which is due to expire on July 1, 2005,
- ! substituting the Indiana statutory definition of PCB and correcting a reference to federal certification language in 329 IAC 13-12-2,
- ! changing 329 IAC 3.1.12-2(4) to correctly refer to hazardous wastes that are subject to the land disposal restrictions, and
- ! amending 329 IAC 3.1-13-2 to clarify a reference to hazardous waste permits in federal rule language.

By this notice, we are soliciting public comment on the draft rule language. We are requesting comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: January 1, 2004, Indiana Register (27 IR 1387).

Continuation of First Notice of Comment Period: March 1, 2004, Indiana Register (27 IR 2104).

CITATIONS AFFECTED: 329 IAC 3.1-1-7; 329 IAC 3.1-6-2; 329 IAC 3.1-6-3; 329 IAC 3.1-7.5; 329 IAC 3.1-12-2; 329 IAC 3.1-13-2; 329 IAC 13-3-1; 329 IAC 13-3-4; 329 IAC 13-9-5.

AUTHORITY: IC 13-14-8-4; IC 13-14-8-7; IC 13-14-9; IC 13-19-3-1; IC 13-22-2; IC 13-22-5-12; P.L.231-2003, SECTION 6; 40 U.S.C. §6926; 40 U.S.C. §6929; 40 CFR 271.21.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This rule would adopt a number of changes to Indiana's hazardous waste program. Some of these changes adopt federal amendments to the hazardous waste program that occurred between July 24, 2002, through July 30, 2003. Other changes adopt Indiana revisions or additions to the federal program or correct problems in the rules that we have identified since the 2002 annual update (LSA Document #02-235).

FEDERAL REVISIONS INCLUDED IN THE JULY 1, 2003 EDITION: This rulemaking would incorporate by reference the federal hazardous waste management regulations at 40 CFR 260 through 40 CFR 273, revised as of July 1, 2003. The federal rules listed below are amendments to the federal hazardous waste regulations that are incorporated by reference in the Indiana hazardous waste management rules at 329 IAC 3.1. Incorporating the new edition of these regulations adopts all changes that have occurred since the last update. These changes include the following amendments published by the EPA in the Federal Register from July 24, 2002, through December 19, 2002:

- ! Zinc Fertilizers Made from Recycled Hazardous Secondary Materials: Final Rule, published July 24, 2002, at 67 FR 48393.
- ! Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries; Direct Final Rule, published October 7, 2002, at 67 FR 62617.
- ! NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combusters - Corrections, published December 19, 2002, at 67 FR 77687.

Two (2) of these amendments (the zinc fertilizer rule except for the removal of 40 CFR 268.40(i) and the national treatment variance rule for radioactively contaminated batteries) are optional and may be adopted as provided for in Sections 3006 and 3009 of the Resource Conservation and Recovery Act, as amended (RCRA) (42 U.S.C. §6926 and 42 U.S.C. §6929 respectively), and by Indiana statutes.

The hazardous waste combuster NESHAP rule corrects the final standards for hazardous air pollutants for hazardous waste combusters, commonly known as the "MACT rule," published on September 30, 1999 (64 FR 52827), November 19, 1999 (64 FR 63209), July 10, 2000 (65 FR 42292), May 14, 2001 (66 FR 24270), July 3, 2001 (66 FR 35087), and February 14, 2002 (67 FR 6968). The acronym MACT stands for "maximum available control technology." The "MACT rule" is a mixture of required and optional rules and was incorporated by reference in 329 IAC 3.1 on May 4, 2001, at 24 IR 2431. Because this amendment corrects the current federal program and is more stringent than the current federal hazardous waste program, we must adopt it to keep Indiana's hazardous waste program consistent with the federal program and to maintain our hazardous waste program authorization.

ADDITIONAL FEDERAL REVISIONS: In addition to the federal changes included in the July 1, 2003, edition of 40 CFR 260 through 40 CFR 273, this rule would adopt changes to 40 CFR 261.5 and changes to the federal recycled used oil management standards that were published by the EPA on July 30, 2003, at 68 FR 44659 through 68 FR 44665. Because the federal recycled used oil standards (40 CFR 279) are incorporated in full text in 329 IAC 13, these changes would appear in 329 IAC 13-3-1, 329 IAC 13-9-5, and in a new 329 IAC 13-3-4 that adds the language from 40 CFR 761.20(e), making it consistent with Indiana's used oil rules. These changes correct and clarify the scope of certain regulatory requirements to eliminate confusion and are considered by the EPA to be no more stringent than the existing federal standards (see Section III. State Authority in the preamble to the federal rule at 68 FR 44663). Because states are only required to adopt federal amendments to the hazardous waste regulations that are more stringent or broader in scope than the existing federal hazardous waste program, these changes are not imposed under federal law. However, in many cases, federal amendments that are less stringent involve streamlining, clarification, or cost reduction or implement other regulatory reduction initiatives. Because this rule would clarify the standards for used oil containing PCB and may result in cost savings, we decided to make it effective as soon as possible.

INDIANA ADDITIONS AND REVISIONS: This rule would adopt the following Indiana initiated additions or revisions to the federal hazardous waste program:

- ! This rule would amend 329 IAC 3.1-6-3 to clarify that the chemical munitions listed in that section are acute hazardous wastes. P.L.85-1992, SECTION 5, required the Solid Waste Management Board (board) to adopt rules to add six (6) chemical munitions to the lists of hazardous wastes. That rule was adopted by the board effective on June 5, 1994. That rule did not specifically identify these chemical munitions as acute hazardous waste because it was assumed that the United States Government and its contractors would manage these extremely hazardous substances and their byproducts as acute

hazardous wastes during their destruction. Recently, the acute status of chemical munitions has been questioned. In some cases, management standards for acute waste differ from those of nonacute waste. Chemical munitions meet all of the criteria specified in the hazardous waste rules for listing as an acute hazardous waste. This rule would make it clear that the six (6) chemical munitions listed in 329 IAC 3.1-6-3 are acute hazardous wastes and must be managed under the more restrictive requirements for acute hazardous wastes.

! This rule would add a new 329 IAC 3.1-7.5 to retain rules for managing loads of hazardous waste that are rejected by a treatment, storage, or disposal facility that are currently found in IC 13-22-5. These requirements prevent confusion over who is responsible for a rejected load and keep rejected loads from being abandoned. These rules would maintain the "cradle-to-grave" audit trail for a hazardous waste that is the foundation of the hazardous waste program. IC 13-22-5 will expire on July 1, 2005, or on the effective date of EPA regulations for rejected loads of hazardous waste, whichever occurs first. On May 22, 2001 (66 FR 28240), EPA published a proposed rule to modify the uniform hazardous waste manifest that included provisions for rejected loads. That proposed rule was subject to extended notice and comment. EPA intends to publish a final manifest rule in June 2004. That final rule will be effective in December 2005, after the expiration date of IC 13-22-5. Because the EPA rule is being adopted under authority that existed prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), the EPA rule will not become effective in Indiana until the board adopts the federal provisions and we receive authorization from EPA under 40 CFR 271 (see Section IX. "How Would Today's Proposed Regulatory Changes Be Administered and Enforced in the States?" in the preamble to the proposed rule at 66 FR 28298-28299). In this notice, we are providing draft rule language based on the current statutory language. When EPA publishes a final manifest modification rule, we will propose adoption of those changes in a separate rulemaking.

CORRECTIONS AND CLARIFICATIONS: In addition to the federal and state amendments described above, we are proposing the following corrections and clarifications:

! Update 329 IAC 3.1-1-7(a) that incorporates by reference 40 CFR 146, standards and criteria for underground injection wells, and 40 CFR 60, Appendices A-1 through A-8 that provide test methods for boilers and industrial furnaces. This change would adopt the latest version of these standards revised as of July 1, 2003.

! Correct 329 IAC 3.1-12-2 by substituting Indiana's statutory definition of PCB, correct a reference to federal rule language for certifications in 40 CFR 268.7, and remove an outdated reference to 40 CFR 268, Subpart C.

! Amend 329 IAC 3.1-12-2(4) to correctly identify hazardous wastes that are subject to the land disposal restrictions.

! Amend 329 IAC 3.1-13-2 to correct a reference to RCRA hazardous waste permits in 40 CFR 270.32(b)(2).

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

As required by IC 13-14-9-4, the following elements of the draft rule impose either a restriction or a requirement that is "not imposed under federal law" (NIFL elements).

NIFL ELEMENT 1. Zinc fertilizers made from recycled hazardous secondary materials (67 FR 48393; July 24, 2002). This rule conditionally excludes from the definition of solid waste some zinc fertilizers made from recycled hazardous secondary materials. To have these secondary materials excluded, generators, handlers, and manufacturers must make reports, keep records, and meet a number of regulatory requirements. Because this rule is less stringent than the current federal hazardous waste regulations, this rule is optional and is not required to be adopted under 42 U.S.C. §6926. Because this rule is adopted under RCRA authority that existed prior to HSWA, this amendment will not be effective in Indiana until the board adopts it in state rules. However, the removal of the exclusion from land disposal restriction treatment standards for K061 derived fertilizers in 40 CFR 268.40(i) is imposed under federal law (HSWA) and was effective on July 24, 2002.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: Failure to adopt these requirements would prevent persons from obtaining the exclusion, since the exclusion is unavailable for materials that do not meet the conditions of the exclusion.

Examples in which federal law is inadequate: This exclusion does not become effective in Indiana (an authorized state) until it is adopted in Indiana rules.

Estimated fiscal impact and expected benefits: The fiscal impact of this rule is expected to be an annual cost savings of approximately forty-two thousand, eight hundred dollars ($42,800), based on two percent (2%) of the total annual cost savings nationwide of two million, one hundred forty thousand dollars ($2,140,000) estimated by the EPA. (See 67 FR 48409, Section VII.A. Executive Order 12866, Table 1. - Estimated Incremental Costs and Cost Savings by Facility Category.)

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

NIFL ELEMENT 2. Amendments to 329 IAC 3.1-12-2 correcting references to PCBs in 40 CFR 268 and removing an outdated reference to 40 CFR 268, Subpart C. This amendment would substitute Indiana's statutory definition of PCB for the federal definition in 40 CFR 268.2(e), correct a reference in the current federal rule language, and remove an outdated reference to 40 CFR 268, Subpart C. These amendments are not imposed under federal law (42 U.S.C. §6926).

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: The federal definition of "polychlorinated biphenyls or PCBs" in 40 CFR 268.2(e) differs from the Indiana statutory definition in IC 13-11-2-155, creating confusion over which definition to use. The incorrect reference to certification language can cause problems for persons attempting to comply with the rule. The outdated reference to 40 CFR 268, Subpart C, makes the rule inconsistent with and less stringent than the federal hazardous waste program and could result in loss of federal authorization for Indiana's hazardous waste program.

Examples in which federal law is inadequate: See above.

Estimated fiscal impact and expected benefits: Because this provision clarifies existing requirements, we do not anticipate that this provision will result in any fiscal impact.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

NIFL ELEMENT 3. Amendments to 329 IAC 3.1-6-2, 329 IAC 13-3-1, and 329 IAC 13-9-5 and new 329 IAC 13-3-4 adopting federal changes to the recycled used oil management standards published by the EPA on July 30, 2003 at 68 FR 44659 through 68 FR 44665.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: The federal changes are intended to reduce confusion in the regulated community about how used oil containing PCBs or mixtures of conditionally exempt small

quantity generator (CESQG) waste and used oil must be managed. Because this rule potentially benefits regulated entities by making the used oil rules easier to follow, we feel these changes should be adopted with minimal delay. This rule is no more stringent than the existing federal hazardous waste program and is not required to be adopted under 42 U.S.C. §6926.

Examples in which federal law is inadequate: The existing federal hazardous waste program, upon which our current rules at 329 IAC 13 are modeled, does not provide the clarification these changes are intended to provide.

Estimated fiscal impact and expected benefits: The EPA did not provide an economic analysis of this rule, and we do not have enough information to quantify the rule's potential costs or benefits. Because this rule merely clarifies how specific mixtures of used oil must be managed, we do not expect it to result in significant costs or savings. We specifically request any available information on the specific costs or benefits of these changes.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

NIFL ELEMENT 4. Amendments to 329 IAC 3.1-6-3 clarifying that the chemical munitions listed in that section are acute hazardous wastes. This would ensure the highest level of care for management of these extremely hazardous wastes, consistent with Indiana law and the interests of the citizens of Indiana.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: Federal regulations do not list these highly toxic chemical munitions as hazardous wastes. As a result, this provision is broader in scope than the federal hazardous waste regulations. They were listed as hazardous wastes in Indiana in 1994, as required by P.L.85-2001. That listing did not specifically identify these chemical munitions as "acute hazardous wastes." This listing is applicable only to U.S. Army Newport Chemical Depot, in conjunction with the destruction of chemical munitions. Recently, the department's application of management standards for acute waste to some activities involved in the destruction and management of the chemical munitions at Newport have been questioned. We believe that the status of chemical munitions as acute hazardous waste is clear. We also recognize that, due to the unique nature of these munitions, some flexibility in applying the acute management standards is reasonable, yet still protective. Since these munitions are not federal hazardous waste, we can modify requirements as appropriate to ensure that Indiana's requirements do not unnecessarily interfere with prompt, effective destruction of these munitions. The rule language proposed today clarifies the "acute hazardous waste" status of these chemical munitions while at the same time providing us the flexibility to modify regulatory requirements as necessary.

Examples in which federal law is inadequate: Federal law does not list chemical munitions as hazardous waste.

Estimated fiscal impact and expected benefits: The economic impact is not quantifiable at this time. The entity affected by this clarification raised objections to this provision due to anticipated increased costs of compliance but did not provide specific cost information. Because the listing of chemical munitions as acute hazardous waste is broader in scope than the relevant federal regulation, we are not required to follow the corresponding federal requirements to the letter. We are proposing to make alternative requirements where necessary to protect human health and the environment, placing these requirements in permits, orders, or other appropriate vehicles. These requirements would allow us to maintain the necessary level of protection for these operations while minimizing costs and risks resulting from unnecessary handling. We feel that placing such alternative requirements in a rule would make them so broad and inflexible that they could not provide the specific relief requested while maintaining adequate protections.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

NIFL ELEMENT 5. Add a new 329 IAC 3.1-7.5 to establish management requirements for hazardous waste rejected loads. These requirements are currently found in IC 13-22-5. That chapter expires on July 1, 2005, at which time we are required to have rules in place for rejected loads.

Environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement: Hazardous waste treatment, storage, or disposal facilities may reject loads of hazardous waste for a variety of reasons. Such a rejection results in confusion for the generator and transporter and can result in mishandling or loss of control over the load.

Examples in which federal law is inadequate: The EPA proposed rule on rejected loads (May 22, 2001, 66 FR 28240) may not be finalized before IC 13-22-5 expires, leaving resolution of this problem to the department. If it is finalized, we will consider substituting the federal provisions for the language on rejected loads published today.

Estimated fiscal impact and expected benefits: Because this rule replaces the statutory requirements for rejected loads in IC 13-22-5, we do not anticipate that it will result in either significant new costs or savings for hazardous waste generators and transporters. We will continue to study this rule to ensure the economic impact is minimized.

Availability for public inspection of all materials relied on by IDEM in the development of this NIFL element: The materials relied on to develop this element are available for public inspection at the Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor West, Indianapolis, Indiana.

Potential Fiscal Impact

We have estimated the fiscal impact of this rule as follows:

Alternative Identified in First Notice and Continuation of First Notice	Estimated Economic Impact
1. Excludes from the definition of solid waste some zinc fertilizers made from recycled hazardous secondary materials. (Adds 40 CFR 261.4(a)(20) and (a)(21); amends 40 CFR 266.20(b); adds 40 CFR 266.20(d); removes 40 CFR 268.40(i).)	EPA estimates this alternative will result in a total annual cost savings for all facilities nationwide of $2.14 million (in 1999 dollars). Because we do not have information on which facilities would use this exclusion, we have estimated the annual saving to Indiana entities to be approximately $42,800, or 2% of the national annual savings.
2. Adopts the national treatment variance rule for radioactively contaminated batteries and designates new treatment subcategories for these batteries generated by the United States Department of Energy. (Amends entries D006, D009 and D011 in the 40 CFR 268.40 Table.)	We do not expect any regulated entities in Indiana to be affected by this alternative. We estimate this alternative will result in no new costs or savings to regulated entities in Indiana.

3. Corrects technical errors in the hazardous air pollution standards (NESHAP) for hazardous waste combusters published on September 30, 1999. (Amends permit requirements in 40 CFR 270.19(e), 40 CFR 270.22, 40 CFR 270.62, and 40 CFR 270.66.)	This alternative only corrects errors. It does not establish any new regulatory requirements. We estimate this alternative will not result in any new costs or savings to regulated entities in Indiana.
4. Amends 329 IAC 3.1-1-7(a) to incorporate by reference the current versions of 40 CFR 146 and 40 CFR 60, Appendices A-1 through A-8 revised as of July 1, 2003, allowing regulated entities to use the current versions of these rules.	No information is currently available on whether use of the more recent standards would result in new costs or savings to regulated entities.
5. Adds 329 IAC 3.1-6-2(16), 329 IAC 13-3-1(i) through (l), and 329 IAC 13-3-4, and amends 329 IAC 13-9-5(b) to adopt changes to the recycled used oil management standards published by the EPA on July 30, 2003.	This rule clarifies when used oil containing PCB is regulated under 329 IAC 13. It does not impose any new requirements but it may affect actions taken by regulated entities under that article. No information is currently available on whether these clarifications would result in new costs or savings to regulated entities.
6. Amends 329 IAC 3.1-6-3 to clarify that chemical munitions listed in that section are acute hazardous waste.	This alternative codifies existing policies and management practices. While a commentor has asserted that this change will result in increased costs, no specific information has been provided to allow us to estimate the potential costs of this change. We believe that, with appropriate modifications to requirements, this change will not result in increased costs to the regulated entities.
7. Amends 329 IAC 3.1-12-2(5) and (7)(D) to correct references to PCBs in 40 CFR 268. This amendment would substitute the statutory definition of PCB and correct a reference in the current federal rule language.	This alternative reflects current practice and does not establish any new regulatory requirements. We estimate this alternative will not result in any new costs or savings to regulated entities in Indiana.
8. Adds 329 IAC 3.1-13-2(10) to clarify a confusing reference to RCRA hazardous waste permits.	This alternative does not impose a new requirement. It will not result in any new costs or savings.
9. Do not adopt one or more of the above alternatives.	Potential costs or savings from this alternative cannot be estimated until it is clear which alternatives will be adopted. Because the potential costs or savings from any of these alternatives are limited, the potential costs or savings from this alternative is similarly limited.
10. Amends 329 IAC 3.1-12-2(4) to correctly refer to wastes that are subject to the land disposal restrictions.	This alternative would make Indiana's hazardous waste program consistent with and as stringent as the federal hazardous waste program. Because it reflects current practice, it will not result in increased costs or savings to regulated entities in Indiana.
11. Adds a new 329 IAC 3.1-7.5 to establish management standards for rejected loads of hazardous wastes.	This alternative replaces the statutory rejected load requirements in IC 13-22-5 with similar provisions. It is not expected to result in any new costs or savings to regulated entities in Indiana.

We estimate that this rulemaking will not result in an economic impact greater than five hundred thousand dollars ($500,000) to regulated entities in Indiana. This rule will not be submitted to the Legislative Services Agency for analysis under IC 4-22-2-28 at this time. However, if additional information is received that indicates this rule is subject to IC 4-22-2-28, we will submit this rule to the Legislative Services Agency in accordance with IC 4-22-2-28. IDEM is specifically requesting information and comment on the potential economic impact of this rule.

Effect on Industries Listed in Public Law 231-2003, SECTION 6

In accordance with P.L.231-2003, SECTION 6, this rule cannot require a person who engages in any of the following industries (identified by Standard Industry Classification Code (SIC Code) to comply with a standard of conduct that exceeds the standard of conduct established in the related federal regulation or regulatory policy until July 1, 2005:

Blast furnaces and steel mills (SIC 3312);
Gray and ductile iron foundries (SIC 3321);
Malleable iron foundries (SIC 3322);
Steel investment foundries (SIC 3324);
Steel foundries (SIC 3325);
Aluminum foundries (SIC 3365);
Copper foundries (SIC 3366); and
Nonferrous foundries (SIC 3369).

Therefore, because some provisions proposed to be adopted in this rule impose requirements that are not imposed under federal law and that exceed the standard of care established in the related federal regulation, they will not apply to persons who engage in any of the industries listed above until July 1, 2005. The conditional exclusions in 40 CFR 261.4(a)(20) and 40 CFR 261.4(a)(21) from the definition of solid waste for some zinc fertilizers made from recycled hazardous secondary materials will not apply to those industries until July 1, 2005 because those exclusions contain additional requirements that are not imposed under 42 U.S.C. §6926.

Public Participation and Workgroup Information

We requested comment on the need for a workgroup to facilitate public and industry participation in this rulemaking. We received one (1) request for a workgroup in response to this request. On January 30, 2004, the U.S. Army, Newport Chemical Depot, requested formation of a workgroup to assist with development of rule language to clarify that the chemical munitions listed in 329 IAC 3.1-6-3 are acute hazardous wastes. This request raised two (2) issues related to the application of the hazardous waste program to these wastes.

As we developed the draft rule language, we found that we could designate these wastes as acute hazardous wastes and make provisions for the commissioner to set alternative requirements for these wastes to accommodate the unique circumstances of chemical munitions

destruction and disposal. This approach would allow us to set specific, flexible standards for those parts of the operation that require them, when necessary to protect human health and the environment. These standards could be modified or withdrawn as needed without a lengthy administrative process. We feel this approach is preferable to writing specific rule requirements for the Newport Chemical Depot that can only be modified through additional rulemaking. As a result, we do not intend to form a workgroup for this rule at this time. If the need for a workgroup to do additional work on this issue or other specific issues becomes apparent, we will revisit this decision.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from January 1, 2004, through January 31, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. We received comments from the following party by the comment period deadline:

Jeffrey L. Brubaker, Site Project Manager, U.S. Army Newport Chemical Depot (NECD)

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

Comment: If IDEM considers material generated during the decontamination or treatment of chemical munitions related material to be I001 "derived-from" wastes in accordance with 40 CFR 261.3(c)(2)(i), then we would recommend that the proposal be revised to exclude derived-from wastes from the acute hazardous waste listing. Without such an exclusion, the proposed amendment will effectively eliminate the ability of the Army's contractors to utilize satellite accumulation (as allowed by 40 CFR 262.34(c) and incorporated by 329 IAC 3.1-7-1) for derived-from waste from the destruction of chemical agents and the decommissioning of agent production/destruction facilities without any apparent benefit to human health or the environment. The elimination of satellite accumulation would place unnecessary logistical restrictions on the time allotted to accumulate waste at the point of generation and would increase the number of waste transfer operations leading to:

! increased costs for waste management,
! increased air monitoring and sampling requirements to meet Army decontamination requirements,
! increased risks to waste handlers performing additional entries into chemical agent exclusion or limited areas, and
! increased risks of spills with additional waste handling.

In addition, we recommend that the proposal be revised to limit the applicability of the proposed acute waste listing to the handling of containers with the actual chemical agents in accordance with the requirements of 40 CFR 261.7 (Residues of hazardous waste in empty containers) and incorporated by 329 IAC 3.1-6-1. (NECD)

Response: It would be extremely difficult to separate the "acutely hazardous" derived-from waste from the derived-from wastes that are potentially not acutely hazardous, without comprehensive testing of each waste. Such testing increases risks and expenses. Some of these derived-from wastes continue to cause public health concerns, while others can be handled as nonacute hazardous waste. The real issue in this comment is the prohibition on satellite accumulation by a generator of more than one (1) quart of acute hazardous waste. The commentor asserts that this prohibition is triggered by designating these chemical munitions as acute hazardous waste, and that this prohibition will result in unnecessary handling of the waste, increased costs, and increased risk to personnel.

These chemical munitions are not listed as hazardous wastes in the federal hazardous waste program. As a result, the requirement to regulate them in strict consistency with the federal program does not apply. These munitions are highly protected and constantly monitored, and they are being destroyed by highly skilled professionals in a tightly controlled process with extraordinary public oversight. In this context, we agree that there are circumstances where the strict requirements of the RCRA program are counterproductive to the process of destroying these munitions and could be modified. While we are still proposing to designate these chemical munitions as acute hazardous wastes to ensure that all wastes derived from the process receive appropriate scrutiny, we are recognizing the flexibility to modify certain provisions of the state program as needed to help achieve the overall public policy goal of expeditiously destroying these substances, while maintaining an appropriate level of protection. Under this proposal, we would have the flexibility to modify or waive the satellite accumulation restriction as long as the generator can provide assurances that the waiver is appropriate and that adequate protective measures will be maintained.

Comment: Recommend IDEM consider separate listings for unused/unaltered chemical munitions/agents and derived-from wastes generated during the destruction of chemical agents. Recommend IDEM list unused chemical munitions as acute hazardous waste and recommend that IDEM not apply the acute classification to derived-from wastes. A separate listing could allow IDEM to list chemical munitions as acute waste but not eliminate the ability to satellite accumulate wastes that are decontaminated derived-from wastes (e.g., personal protective equipment, ton container valves, broken tools and equipment, etc.) generated during the destruction of the chemical agents. (NECD)

Response: The previous response applies to this comment.

SUMMARY/RESPONSE TO COMMENTS FROM THE CONTINUATION OF THE FIRST COMMENT PERIOD

IDEM requested public comment from March 1, 2004, through March 31, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. We received no comments in response to the continuation of the first notice of comment period.

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.

(3) The submission of specific information on the fiscal impact of the draft rule published in this notice.

Mailed comments should be addressed to:

#03-312(SWMB) [2003 Hazardous Waste Annual Update]
Marjorie Samuel
Rules, Planning and Outreach Section
Office of Land 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 eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor East, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, 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, Planning and Outreach Section at (317) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by **May 31, 2004.**

CONTACT FOR ADDITIONAL INFORMATION ABOUT THIS RULE

Additional information regarding this rulemaking may be obtained from Steve Mojonnier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655.

DRAFT RULE

SECTION 1. 329 IAC 3.1-1-7, AS AMENDED AT 27 IR 1874, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-7 Incorporation by reference

Authority: IC 13-19-3-1; IC 13-22-4
Affected: IC 13-14-8; 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of ~~July 1, 2002.~~ **July 1, 2003.**

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:
(1) 40 CFR 146, ~~(1995).~~ **revised as of July 1, 2003.**
(2) 40 CFR 60, ~~Appendix A (1995).~~ **Appendix A-1, revised as of July 1, 2003.**
(3) 40 CFR 60, Appendix A-2, revised as of July 1, 2003.
(4) 40 CFR 60, Appendix A-3, revised as of July 1, 2003.
(5) 40 CFR 60, Appendix A-4, revised as of July 1, 2003.
(6) 40 CFR 60, Appendix A-5, revised as of July 1, 2003.
(7) 40 CFR 60, Appendix A-6, revised as of July 1, 2003.
(8) 40 CFR 60, Appendix A-7, revised as of July 1, 2003.
(9) 40 CFR 60, Appendix A-8, revised as of July 1, 2003.

~~(b)~~ **(d)** Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in ~~subsection~~ **subsections** (a) **through (c).** Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

~~(c)~~ **(e)** Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

~~(d)~~ **(f)** Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

~~(e)~~ **(g)** The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions ~~which~~ **that** may be effective in Indiana ~~which~~ **that** are not incorporated in this article or are retained as federal authority. *(Solid Waste Management Board; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874)*

SECTION 2. 329 IAC 3.1-6-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-2 Exceptions and additions; identification and listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as follows:

(1) This rule identifies only some of the materials ~~which~~ **that** are solid waste as defined by IC 13-11-2-205(a) and hazardous waste as defined by IC 13-11-2-99(a), including IC 13-22-2-3(b). A material ~~which~~ **that** is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if **in the case of:**

(A) ~~in the case of~~ IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or

(B) ~~in the case of~~ IC 13-14-10-1, the statutory elements are established.

(2) Delete 40 CFR 261.2(f) and substitute the following: Respondents in actions to enforce regulations implementing IC 13 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11 means the SWMB.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2), owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77.

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.

(6) In 40 CFR 261.4(e)(3)(iii), delete the words "in the Region where the sample is collected".

(7) Delete 40 CFR 261, Appendix IX.

(8) In 40 CFR 261.21(a)(3), delete "an ignitable compressed gas as defined in 49 CFR 173.300" and substitute "a flammable gas as defined in 49 CFR 173.115(a)".

(9) In 40 CFR 261.21(a)(4), delete "an oxidizer as defined in 49

CFR 173.151" and substitute "an oxidizer as defined in 49 CFR 173.127".

(10) Delete 40 CFR 261.23(a)(8) and substitute "It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A explosive as defined in 49 CFR 173.54 prior to HM-181, or a Class B explosive as defined in 49 CFR 173.88 prior to HM-181.".

(11) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).

(12) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.

(13) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.

(14) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.

(15) Delete 40 CFR 261.2(e)(1)(i) dealing with use or reuse of secondary materials to make products and substitute section 5 of this rule.

(16) In 40 CFR 261.5(j), delete "if it is destined to be burned for energy recovery" in two (2) places.

(17) The conditional exclusions from the definition of solid waste for some zinc fertilizers made from recycled hazardous secondary materials in 40 CFR 261.4(a)(20) and 40 CFR 261.4(a)(21) do not apply to any of the following industries until July 1, 2005:

Industry	Standard Industry Classification Code
Blast furnaces and steel mills	3312
Gray and ductile iron foundries	3321
Malleable iron foundries	3322
Steel investment foundries	3324
Steel foundries	3325
Aluminum foundries	3365
Copper foundries	3366
Nonferrous foundries	3369

(Solid Waste Management Board; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432)

SECTION 3. 329 IAC 3.1-6-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-3 Indiana additions; listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 3. **(a)** In addition to the ~~list~~ **lists** of hazardous waste incorporated by reference in section 1 of this rule, the following chemical munitions are ~~added to the list of~~ **acute** hazardous ~~waste:~~ **wastes:**

(1) GA (Ethyl-N, N-dimethyl phosphoramidocyanidate).

(2) GB (Isopropyl methyl phosphonoflouridate).

(3) H, HD (Bis(2-chloroethyl) sulfide).

(4) HT (sixty percent (60%) HD and forty percent (40%) T (Bis[2(2-chloroethyl-thio)ethyl]ester)).

(5) L (Dichloro(2-chlorovinyl)arsine).

(6) VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate).

The above listed chemical munitions have the Indiana hazardous waste number I001 **and are subject to all requirements for acute hazardous wastes in this article except as provided in subsection (b).**

(b) The commissioner may establish alternative requirements for wastes listed in this section and for wastes derived from those listed wastes. *(Solid Waste Management Board; 329 IAC 3.1-6-3; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 4. 329 IAC 3.1-7.5 IS ADDED TO READ AS FOLLOWS:

Rule 7.5. Rejection of Hazardous Waste

329 IAC 3.1-7.5-1 Rejection prior to signing manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-1; 40 CFR 262

Sec. 1. A hazardous waste facility owner or operator may reject all of a hazardous waste shipment for any reason before signing the manifest. *(Solid Waste Management Board; 329 IAC 3.1-7.5-1)*

329 IAC 3.1-7.5-2 Rejection after signing manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-2; 40 CFR 262

Sec. 2. After the manifest is signed, a hazardous waste facility owner or operator may reject all or part of a hazardous waste shipment that:

(1) does not conform to the terms of the agreement under which the hazardous waste facility agrees to manage the hazardous waste;

(2) does not conform to the requirements of the hazardous waste facility's permit;

(3) would require a deviation from the hazardous waste facility's standard operating procedures; or

(4) cannot, with reasonable efforts, be removed from the vehicle or the container in which the hazardous waste was transported.

(Solid Waste Management Board; 329 IAC 3.1-7.5-2)

329 IAC 3.1-7.5-3 Rejection after signing manifest; compliance by facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-3; 40 CFR 262

Sec. 3. If a hazardous waste facility owner or operator rejects under section 2 of this rule all or part of a hazardous waste shipment, the hazardous waste facility shall comply with the requirements of this rule. *(Solid Waste Management Board; 329 IAC 3.1-7.5-3)*

329 IAC 3.1-7.5-4 Rejection after signing manifest; facility not generator; facility not liable

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-4; IC 13-25-4; 40 CFR 262

Sec. 4. A hazardous waste facility that rejects all or part of a hazardous waste shipment under section 2 of this rule is not:

(1) considered a generator of the rejected hazardous waste; and

(2) liable for any rejected part of the hazardous waste shipment under IC 13-25-4.

(Solid Waste Management Board; 329 IAC 3.1-7.5-4)

329 IAC 3.1-7.5-5 Rejection after signing manifest; facility owner or operator duty to contact generator and secure waste

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-5; 40 CFR 262

Sec. 5. If a hazardous waste facility owner or operator rejects all or part of a shipment of hazardous waste after the owner or operator has signed the manifest, the hazardous waste facility owner or operator shall contact the generator, who shall direct the owner or operator to:

(1) return the rejected shipment to the generator; or

(2) transport the rejected shipment to an alternate hazardous waste facility selected by the generator.

(Solid Waste Management Board; 329 IAC 3.1-7.5-5)

329 IAC 3.1-7.5-6 Rejected waste; manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-6; 40 CFR 262

Sec. 6. (a) If the rejected load is to be returned to a generator, the generator shall complete a new manifest form in accordance with 40 CFR 262, incorporated by reference in 329 IAC 3.1-7-1, except the following:

(1) Line out the word "generator" in Box 3 of the manifest and insert the words "rejecting facility".

(2) Line out the words "designated facility" in Box 9 of the manifest and insert the word "generator".

(3) In Box 15 of the manifest, write:

(A) the words "REJECTED LOAD" in large block print; and

(B) the manifest document number of the original manifest for the rejected load.

(b) The rejected load manifest must accompany the shipment back to the generator. The generator retains all responsibility for transportation of the rejected waste. *(Solid Waste Management Board; 329 IAC 3.1-7.5-6)*

329 IAC 3.1-7.5-7 Rejected waste; duties of generator and rejecting facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-7; 40 CFR 262

Sec. 7. (a) When the rejected waste and the new manifest created in accordance with section 6 of this rule are received by the generator, the generator shall do the following:

(1) Note any discrepancies in Box 19 of the new manifest.

(2) Line out the words "Facility Owner or Operator" in Box 20 of the new manifest and insert the words "Receiving generator".

(3) Sign Box 20 of the new manifest.

(4) Give a copy of the new manifest to the transporter.

(5) Mail a copy of the new manifest to the rejecting facility not more than five (5) days after receipt of the shipment and the new manifest.

(b) The receiving generator and rejecting facility shall retain copies of the new manifest from the rejected load for not less than three (3) years after the date of receipt. *(Solid Waste Management Board; 329 IAC 3.1-7.5-7)*

329 IAC 3.1-7.5-8 Rejecting facility; nonreceipt of manifest within time limit

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-8; 40 CFR 262

Sec. 8. If the rejecting facility does not receive a copy of the new manifest with the handwritten signature of the generator in Box 20 in not more than thirty-five (35) days from the date the rejected waste was accepted for transport back to the generator, the rejecting facility shall comply with the exception reporting requirements in 40 CFR 264.72, incorporated by reference in 329 IAC 3.1-9-1, or 40 CFR 265.72, incorporated by reference in 329 IAC 3.1-10-1. *(Solid Waste Management Board; 329 IAC 3.1-7.5-8)*

329 IAC 3.1-7.5-9 Generator; temporary retention of rejected waste

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-9; 40 CFR 262

Sec. 9. The generator may retain the hazardous waste at the location of receipt for not more than ninety (90) days following receipt of the rejected load before shipment to a permitted facility. The generator shall manage the waste during the retention period in accordance with 40 CFR 262.34, incorporated by reference in 329 IAC 3.1-9-1. *(Solid Waste Management Board; 329 IAC 3.1-7.5-9)*

329 IAC 3.1-7.5-10 Rejected waste; transfer to alternate facility; generator to forward manifest to rejecting facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-10; 40 CFR 262

Sec. 10. If the rejected load is to be shipped to an alternate hazardous waste management facility, the generator shall complete the manifest form identifying the generator as the generator and specifying the alternate designated facility. The generator shall forward the manifest to the rejecting facility to accompany the shipment to the alternate facility. *(Solid Waste Management Board; 329 IAC 3.1-7.5-10)*

329 IAC 3.1-7.5-11 Mixture of waste from multiple generators by transporter; responsibilities

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-11; 40 CFR 262

Sec. 11. If hazardous waste from more than one (1) generator is mixed together by the transporter before delivery to the hazardous waste facility, the transporter shall assume all responsibility for proper disposition of the rejected waste, including the responsibility to:

(1) designate an alternate hazardous waste facility; and

(2) assure delivery to the designated alternate hazardous waste facility.

(Solid Waste Management Board; 329 IAC 3.1-7.5-11)

SECTION 5. 329 IAC 3.1-12-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-12-2 Exceptions and additions; land disposal restrictions

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-155; IC 13-22-2; 40 CFR 268

Sec. 2. Exceptions and additions to land disposal restrictions are as follows:

(1) Primacy for granting exemptions from land disposal restrictions incorporated in this rule are retained as federal authorities and must be granted by the administrator of the EPA. Exemptions for which federal primacy is retained are described as follows:

(A) Case-by-case extensions to federal effective dates pursuant to 40 CFR 268.5.

(B) Petitions to allow land disposal of a waste prohibited under 40 CFR 268, Subpart C, pursuant to 40 CFR 268.6.

(C) Approval of alternate treatment methods pursuant to 40 CFR 268.42(b).

(D) Exemption from a treatment standard pursuant to 40 CFR 268.44.

(2) For the reason described in subdivision (1), delete the following:

(A) 40 CFR 268.5.

(B) 40 CFR 268.6.

(C) 40 CFR 268.42(b).

(D) 40 CFR 268.44.

(3) Any person requesting an exemption described in subdivision (1) must comply with 329 IAC 3.1-5-6.

(4) Delete 40 CFR 268.1(e)(3) and substitute the following: Hazardous wastes ~~which~~ **that** are not identified or listed in 40 CFR 268, Subpart C **or Subpart D,** as incorporated in this rule.

(5) ~~In~~ **Delete** 40 CFR 268.2(e) ~~delete "40 CFR 761.3" and insert "329 IAC 4.1".~~ **and substitute the following: Polychlorinated biphenyls or PCBs have the meaning set forth in IC 13-11-2-155.**

~~(6) Delete 40 CFR 268.8.~~

~~(7)~~ **(6)** Delete 40 CFR 268.9(d) and substitute the following: Wastes that exhibit a characteristic are also subject to the requirements of 40 CFR 268.7, except that once the waste is no longer hazardous, a one (1) time notification and certification must be placed in the generator's or treater's files and sent to the commissioner. The notification must include the following information:

(A) The name and address of the solid waste facility receiving the waste shipment.

(B) A description of the waste as initially generated, including the applicable EPA hazardous waste number.

(C) The treatment standards applicable to the waste at the initial point of generation.

(D) The certification must be signed by an authorized representative and must state the language found in ~~40 CFR 268.7(b)(5)(i).~~ **40 CFR 268.7(b)(4).**

The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes or if the facility receiving the waste changes.

~~(8)~~ **(7)** Delete 40 CFR 268, Subpart B.

~~(9)~~ **(8)** In 40 CFR 268, Subpart C, all references to effective dates ~~which~~ **that** precede the effective date of this rule shall be replaced with the effective date of this rule.

~~(10)~~ **(9)** Delete 40 CFR 268.33.

(Solid Waste Management Board; 329 IAC 3.1-12-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3366; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1639; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2435; errata filed May 8, 2003, 9:40 a.m.: 26 IR 3046)

SECTION 6. 329 IAC 3.1-13-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-13-2 Exceptions and additions; permit program

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-15; IC 13-22-2; IC 13-22-3; IC 13-30; 40 CFR 270

Sec. 2. Exceptions and additions to federal procedures for the state administered permit program are as follows:

(1) Delete 40 CFR 270.1(a) dealing with scope of the permit program and substitute the following: This rule establishes provisions for the state hazardous waste program pursuant to IC 13-15 and IC 13-22-3.

(2) In addition to the procedures of 40 CFR 270 as incorporated in this rule, sections 3 through 17 of this rule set forth additional state procedures for:

(A) denying;

(B) issuing;

(C) modifying;

(D) revoking and reissuing; and

(E) terminating;

all final state permits other than "emergency permits" and "permits by rule".

(3) Delete 40 CFR 270.1(b).

(4) Delete 40 CFR 270.3.

(5) Delete 40 CFR 270.10 dealing with general permit application requirements and substitute section 3 of this rule.

(6) Delete 40 CFR 270.12 dealing with confidentiality of information and substitute section 4 of this rule.

(7) Delete 40 CFR 270.14(b)(18).

(8) Delete 40 CFR 270.14(b)(20).

(9) In 40 CFR 270.32(a), delete references to "alternate schedules of compliance" and "considerations under federal law". These references in the federal permit requirements are only applicable to federally issued permits.

(10) In 40 CFR 270.32(b)(2), delete "under section 3005 of this act" and substitute "this article".

~~(10)~~ **(11)** Delete 40 CFR 270.32(c) dealing with the establishment of permit conditions and substitute the following: If new requirements become effective, including any interim final regulations, during the permitting process ~~which~~ **that** are:

(A) prior to modification, or revocation and reissuance, of a permit to the extent allowed in this rule; and

(B) of sufficient magnitude to make additional proceeding desirable, the commissioner shall, at **his or** her discretion, reopen the comment period.

~~(11)~~ **(12)** Delete 40 CFR 270.50 dealing with duration of permits and substitute section 15 of this rule.

~~(12)~~ **(13)** Delete 40 CFR 270.51 dealing with continuation of expiring permits and substitute section 16 of this rule.

~~(13)~~ **(14)** Delete 40 CFR 270.64.

~~(14)~~ **(15)** In addition to the criteria described in 40 CFR 270.73, interim status may also be terminated pursuant to a judicial decree under IC 13-30 or final administrative order under IC 4-21.5.

(Solid Waste Management Board; 329 IAC 3.1-13-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 940; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3367; errata filed Aug 7, 1996, 5:01 p.m.: 19 IR 3471; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2436)

SECTION 7. 329 IAC 13-3-1, PROPOSED TO BE AMENDED AT 26 IR 1673, SECTION 39, IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-3-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 1. (a) The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 2 of this rule, this article applies to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material

exhibits any characteristics of hazardous waste identified in 40 CFR 261, Subpart C, revised as of July 1, 2001.

(b) Mixtures of used oil and hazardous waste must be handled as follows:

(1) For mixtures of used oil with a listed hazardous waste, the following shall apply:

(A) Mixtures of used oil and hazardous waste that is listed in 40 CFR 261, Subpart D, revised as of July 1, 2001, are subject to regulation as hazardous waste under 329 IAC 3.1 rather than as used oil under this article.

(B) Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D, revised as of July 1, 2001. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from EPA publication SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII, revised as of July 1, 2001. EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

(i) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in ~~329 IAC 13-4-5(c),~~ **329 IAC 13-4-5(3),** to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261, Subpart C, revised as of July 1, 2001, are subject to 329 IAC 3.1.

(3) Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR 261.5, revised as of July 1, 2001, are subject to regulation as used oil under this article.

(c) Materials containing or otherwise contaminated with used oil must be handled as follows:

(1) Except as provided in subdivision (2), materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(A) are not used oil and thus not subject to this article; and

(B) if applicable, are subject to the hazardous waste regulations under 329 IAC 3.1.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this article.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this article.

(d) Mixtures of used oil with products must be handled as follows:

(1) Except as provided in subdivision (2), mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this article.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 329 IAC 13-4.

(e) Materials derived from used oil must be handled as follows:

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, such as re-refined lubricants, are:

(A) not used oil and thus are not subject to this article; and

(B) not solid wastes and are thus not subject to the hazardous waste regulations under 329 IAC 3.1 as provided in 40 CFR 261.3(c)(2)(A), revised as of July 1, 2001.

(2) Materials produced from used oil that are burned for energy recovery, such as used oil fuels, are subject to regulation as used oil under this article.

(3) Except as provided in subdivision (4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(A) not used oil and thus are not subject to this article; and

(B) are solid wastes and thus are subject to the hazardous waste regulations under 329 IAC 3.1 if the materials are listed or identified as hazardous waste.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this article.

(f) Wastewater, the discharge of which is subject to regulation under either Section 402 or 307(b) of the Clean Water Act, 33 U.S.C. 1342 or 33 U.S.C. 1317(b), respectively, including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of this article. As used in this subsection, "de minimis quantities of used oils" means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility must be handled as follows:

(1) Used oil mixed with crude oil or natural gas liquids, such as in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of this article. The used oil is subject to the requirements of this article prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent (1%) used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this article.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this article provided that the used oil constitutes less than one percent (1%) of

the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(4) Except as provided in subdivision (5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this article only if the used oil meets the specification of section 2 of this rule. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as an article of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this article. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, such as by pouring collected used oil into the wastewater treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this article.

(h) Used oil produced on vessels from normal shipboard operations is not subject to this article until it is transported ashore.

(i) ~~In addition to the requirements of this article, marketers and burners of used oil who market~~ Used oil containing ~~any quantifiable level of polychlorinated biphenyls (PCBs) are~~ **less than fifty (50) parts per million PCB is** subject to the requirements ~~found at 40 CFR 761.20(e), revised as of June 24, 1999.~~ **of this article unless, because of dilution, it is regulated under 329 IAC 4.1 as a used oil containing PCB at fifty (50) parts per million or greater. Used oil containing PCB subject to the requirements of this article may also be subject to the prohibitions and requirements found in 329 IAC 4.1.**

(j) Used oil containing PCB at concentrations of fifty (50) parts per million or greater is not subject to the requirements of this article, but is subject to regulation under 329 IAC 4.1. No person may avoid these provisions by diluting used oil containing PCB, unless otherwise specifically provided for in this article or in 329 IAC 4.1.

(k) The use of waste oil that contains equal to or greater than two (2) parts per million PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to:

(1) road oiling;

(2) general dust control;

(3) use as a pesticide or herbicide carrier; and

(4) use as a rust preventative on pipes.

(l) In addition to any applicable requirements under 329 IAC 13-8 and 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing equal to or greater than two (2) parts per million PCB must comply with section 4 of this rule.

~~(j)~~ **(m)** 40 CFR 261 and 40 CFR 761 are available from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop: SSOP, Washington, D.C. 20402-9328. *(Solid Waste Management Board; 329 IAC 13-3-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1494; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 238)*

SECTION 8. 329 IAC 13-3-4 IS ADDED TO READ AS FOLLOWS:

329 IAC 13-3-4 Marketing used oil containing any quantifiable level of PCB

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 4. (a) In addition to any applicable requirements in 329 IAC 13-8 through 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing greater than or equal to two (2) parts per million PCB are subject to the requirements of this section.

(b) Used oil containing greater than or equal to two (2) parts per million PCB may be marketed only to the following:

(1) Qualified incinerators as defined in 40 CFR 761.3, incorporated by reference in 329 IAC 4.1-2-1.

(2) Marketers who market off-specification used oil for energy recovery only to other marketers who have complied with 329 IAC 13-9-4.

(3) Burners identified in 329 IAC 13-8-2(a)(1) through 329 IAC 13-8-2(a)(2). Only burners in the automotive industry may burn used oil generated from automotive sources in used oil-fired space heaters provided the provisions of 329 IAC 13-4-4 are met. The commissioner may grant a variance for a boiler that does not meet the criteria in 329 IAC 13-8-2(a)(1) through 329 IAC 13-8-2(a)(2) after considering the criteria listed in 40 CFR 260.32(a) through 40 CFR 260.32(f), incorporated by reference in 329 IAC 3.1-5-4. The applicant must address the relevant criteria contained in 40 CFR 260.32(a) through 40 CFR 260.32(f) in an application to the commissioner.

(c) Used oil to be burned for energy recovery is presumed to contain greater than or equal to two (2) parts per million PCB unless the marketer obtains test analyses or other information that the used oil fuel does not contain greater than or equal to two (2) parts per million PCB.

(1) The person who first claims that a used oil fuel does not contain greater than or equal to two (2) parts per million PCB must obtain analyses or other information to support that claim.

(2) Testing to determine the PCB concentration in used oil may be conducted on individual samples, or in accordance with the testing procedures described in 40 CFR 761.60(g)(2), incorporated by reference in 329 IAC 4.1-4-1. However, for purposes of this article, if any PCBs at a concentration of fifty (50) parts per million or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of fifty (50) parts per million or greater for purposes of complying with the disposal requirements of this part.

(3) Other information documenting that the used oil fuel does not contain greater than or equal to two (2) parts per million PCB may consist of either personal, special knowledge of the source and composition of the used oil, or a certification from the person generating the used oil claiming that the oil does not contain greater than or equal to two (2) parts per million PCB.

(d) Persons subject to this section shall comply with the following restrictions on burning:

(1) Used oil containing greater than or equal to two (2) parts per million PCB may be burned for energy recovery only in the combustion facilities identified in subsection (b) when such facilities are operating at normal operating temperatures. Used oil containing greater than or equal to two (2) parts per million

PCB must not be burned during either startup or shutdown operations. Owners and operators of such facilities are burners of used oil fuels.

(2) Before a burner accepts from a marketer the first shipment of used oil fuel containing greater than or equal to two (2) parts per million PCB, the burner must provide the marketer a one-time written and signed notice certifying that the burner:

(A) has complied with any notification requirements applicable to qualified incinerators as defined in 40 CFR 761.3, incorporated in 329 IAC 4.1-2-1, or to burners regulated under 329 IAC 13-8; and

(B) will burn the used oil only in a combustion facility identified in subsection (b) and identify the class of burner he or she qualifies.

(e) The following record keeping requirements are in addition to the record keeping requirements for marketers found in 329 IAC 13-9-3(b), 329 IAC 13-9-5, and 329 IAC 13-9-6, and for burners found in 329 IAC 13-8-6 and 329 IAC 13-8-7:

(1) Marketers who first claim that the used oil fuel contains greater than or equal to two (2) parts per million PCB must include among the records required by:

(A) 329 IAC 13-9-3(b) and 329 IAC 13-9-5(b) through 329 IAC 13-9-5(c), copies of the analysis or other information documenting his or her claim; and

(B) 329 IAC 13-9-5(a), 329 IAC 13-9-5(c), and 329 IAC 13-9-6, a copy of each certification notice received or prepared relating to transactions involving used oil containing PCB.

(2) Burners must include among the records required by 329 IAC 13-8-6 and 329 IAC 13-8-7, a copy of each certification notice required by subsection (d)(2) that the burner sends to a marketer.

(Solid Waste Management Board; 329 IAC 13-3-4)

SECTION 9. 329 IAC 13-9-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-9-5 Tracking

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. (a) Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner.

(2) The name and address of the burner who will receive the used oil.

(3) The EPA identification number of the transporter who delivers the used oil to the burner.

(4) The EPA identification number of the burner.

(5) The quantity of used oil shipped.

(6) The date of shipment.

(b) A generator, transporter, processor or re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under 329 IAC 13-3-2 must keep a record of each shipment of used oil to ~~an on-specification~~ **the facility to which it delivers the** used oil. ~~burner.~~ Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment.

(2) The quantity of used oil fuel delivered.

(3) The date of shipment or delivery.

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under section 3(a) of this rule.

(c) The records described in this section must be maintained for at least three (3) years. *(Solid Waste Management Board; 329 IAC 13-9-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 10. **SECTION 4 of this document takes effect July 1, 2005.**

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 ***August 17, 2004, at 1:30 p.m.,*** *at the Indiana Government Center-South, 302 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on amendments to the rules for the hazardous waste management program at 329 IAC 3.1.*

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. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or dial (800) 451-6027 in Indiana, press "0" and ask for extension 3-1655.

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) 234-1208 (V) or (317) 233-6565 (TT). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file and open for public inspection at the Indiana Department of Environmental Management Central File Room, Indiana Government Center-North, 100 North Senate Avenue, Room N1201, Indianapolis, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-5

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, DANIEL H. BIGGS, was convicted in the Vanderburgh County Superior Court on May 28, 1982, for the offense of Theft, Count I and Theft, Count II, and received a sentenced of four (4) years on each count to run currently. The sentence was suspended to probation and he was ordered to pay restitution in the amount of $3,792.88; and

WHEREAS, the petitioner served in the Marine Corps from 1952 through 1955 and received an Honorable Discharge; and

WHEREAS, the petitioner has support for a pardon from his family and associates; and

WHEREAS, the petitioner requests a pardon so he can improve his employment opportunities; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to DANIEL HENRY BIGGS.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 4th day of March 2004.

BY THE GOVERNOR: Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-6

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, THOMAS E. HAMMONS, was convicted in Hendricks County Superior Court, #3 on September 12, 1995, for the offense of Conspiracy to Deal in A Controlled Substance, for which he received 365 days suspended to probation; and

WHEREAS, the petitioner is an active member of St. Gabriel Church and school, coaches the track team. He is involved with the Leukemia Society; considered to be an outstanding citizen by family and friends; and

WHEREAS, the petitioner has letters and statements in support of a pardon; and

WHEREAS, the petitioner states his reason for a pardon request, "I would like to re-enlist in the U.S. Marine Corps and possibly complete my 20 years of service. I would need to enlist by my 47th birthday which is this year to be eligible to retire at age 60. This is the only thing on my record. I am very ashamed and sorry for having used drugs back in 1995"; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to THOMAS E. HAMMONS.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 9th day of March 2004.

BY THE GOVERNOR: Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-7

FOR: PARDON

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, CATHERINE LAWSON was convicted in Morgan County Superior Court Criminal Division #3 on May 30, 1996, for the offense of Fraud on a Financial Institution. She received a sentence of (4) four years with (2) two years suspended and (3) years of probation; and

WHEREAS, the petitioner is an active member of the East Tenth Street Church of God and is the Director of the Children's Ministry; and

WHEREAS, the petitioner has numerous letters and statements of support for a pardon from her family, friends and co-workers; and

WHEREAS, the petitioner requests a pardon, stating "I have a job at a church daycare as the director, the State recently said that because I have 2 felony convictions I cannot work there, or they will lose funding. That is almost $3,500.00 a month. Not to mention my loss of income. I have paid my time, I am hoping the children won't suffer to."

WHEREAS, the Parole Board, after careful investigation and examination of all the facts in the case, recommend that this pardon be granted.

NOW THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and the laws of said State, hereby issue a pardon to CATHERINE LAWSON.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 9th day of March 2004.

BY THE GOVERNOR: Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

DEPARTMENT OF STATE REVENUE
AUDIT-GRAM NUMBER IR-024
March 2, 2004

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

Combined Return [FN 1] – Financial Institutions Tax

Authority: IC 6-5.5.1-18(a); IC 6-5.5-5-1; 45 IAC 17-3-2(b); 45 IAC 17-3-5

IC 6-5.5-5-1. Combined return...

(a) [A] unitary group... shall file a combined return covering all the operations of the unitary business and including all the members of the unitary business. [1990]

IC 6-5.5-1-18. "Unitary business" and "unitary group" defined [effective until January 1, 2002].

(a) …The term "unitary group" includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana.

IC 6-5.5-1-18. "Unitary business" and "unitary group" defined [effective January 1, 2002].

(a) …The term "unitary group" includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana. However, the term does not include an entity that does not transact business in Indiana.

I. GENERAL STATEMENT

Prior to January 1, 2002 all members of a unitary group were required to be included in the combined Financial Institutions Tax return. Effective January 1, 2002 only those members of the unitary group who have nexus in Indiana are to be included in the filing.

II. TAXPAYER DEFINED [FN 2]

A taxpayer is any corporation transacting the business of a financial institution in Indiana as a holding company, regulated financial corporation (bank, credit union, production credit association, Edge Act corporation), a subsidiary [FN 3] of a holding company or regulated financial corporation or any other corporation carrying on the business of a financial institution. Transacting the business of a financial institution requires that eighty (80) percent or more of the corporation's gross income be derived from:

A. Making, acquiring, selling or servicing loans or extension of credit.
B. Leasing real or personal property that is the economic equivalent of the extension of credit, i.e., financial lease.
C. Operating a credit card, debit card, charge card, or similar business.

III. TRANSACTING BUSINESS IN INDIANA

The Financial Institutions Tax utilizes an economic nexus concept rather than the usual physical presence nexus. Under IC 6-5.5-3-1 a taxpayer is considered to be transacting business within Indiana if any of the following activities are present:

A. Maintains an office in Indiana;
B. Has an employee, representative, or independent contractor conducting business in Indiana;
C. Regularly sells products or services of any kind or nature to customers of Indiana that receive the product or service in Indiana;
D. Regularly solicit business from potential customers in Indiana;
E. Regularly performs services outside of Indiana that are consumed in Indiana;
F. Regularly engages in transactions with customers in Indiana that involve intangible property and result in receipts flowing to the taxpayer from within Indiana;
G. Owns or leases tangible personal property or real property located in Indiana; or,
H. Regularly solicits and receives deposits from customers in Indiana.

IV. UNITARY GROUP – PRIOR TO JANUARY 1, 2002

For purposes of Financial Institutions Tax, a unitary group includes all members of a unitary group [FN 4]. If one member of a unitary group is conducting the business of a financial institution in Indiana, then all members of the unitary group engaged in a unitary business must file a combined return even if some of the members are not transacting business in Indiana. There should be no attempt to limit group membership to only those entities that conduct business in Indiana.

V. UNITARY GROUP – EFFECTIVE JANUARY 1, 2002

The unitary group includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana. The unitary group may include **only** those members that are transacting business in Indiana.

VI. AUDIT PROCEDURE

If a combined return is required and has not been filed, all unfiled periods may be reviewed and adjustments proposed.
If any member of the required combined group has filed an income tax or financial institutions tax return in Indiana and made tax payments, the payment made will be credited against any proposed adjustment to the combined return. [FN 5]

Note, however, that credit can only be given for those payments made by entities on which the statute is open or under Indiana extension. Any payment made that would be out of statute at the time the audit is completed is not refundable.

_____

[FN 1] IC 6-5.5-2-1 and IC 6-5.5-5-1 require at least two (2) taxpayer members before a combined return is required.
[FN 2] IC 6-5.5-1-17
[FN 3] IC 6-5.5-1-14 defines a subsidiary as a corporation who has 50 percent of their voting stock or net worth owned by another corporation.
[FN 4] IC 6-5.5-1-18
[FN 5] IC 6-8.1-9-1(a)

DEPARTMENT OF STATE REVENUE
AUDIT-GRAM NUMBER IR-025
March 17, 2004

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

Property Provided With an Operator

Authority: IC 6-2.5-4-10; IC 6-2.5-1-21; 45 IAC 2.2-4-27(d)(4); *Mason Metals Co.*, Ind. Tax Ct., 1992; Information Bulletin #42, June 1995

IC 6-2.5-4-10. Renting or leasing… to another.

(a) A person… is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person. [1980]

(a) A person…is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease. [2003]

IC 6-2.5-1-21. "Lease or rental" defined [effective January 1, 2004].

(a) …."Lease" or "rental" does not include:

….

(3) providing tangible personal property along with an operator for a fixed or indeterminate period, if:

(A) the operator is necessary for the equipment to perform as designed; and

(B) the operator does more than maintain, inspect, or set up the tangible personal property.

….

(d) This section applies only to leases or rental entered into after June 30, 2003, and has no retroactive effect on leases or rentals entered into before July 1, 2003. [2003]

45 IAC 2.2-4-27(d)(4) Tangible personal property; renting and leasing

….

(d) The rental or leasing of tangible personal property…is taxable.

….

(4) When tangible personal property is rented or leased together with the services of an operator, the gross retail tax or use tax is imposed on the property rentals. The tax is not imposed upon the charges for the operator's services, provided such charges are separately stated on the invoice…. [Temporary Regulations 2004]

I. GENERAL STATEMENT

The income from lease or rental of tangible personal property is subject to the collection of sales tax by the lessor. Income from the performance of services is not subject to sales or use tax.

Prior to January 1, 2004, transactions which include elements of both taxable lease income and exempt service income must be further analyzed to determine the extent of the parties' right to control the property.

Effective January 1, 2004, property rented or leased with an operator is considered to be a service not subject to sales or use tax if:

A. the operator is necessary for the equipment to perform as designed; and,

B. the operator does more than maintain, inspect or set-up the property.

Property rented or leased with an operator is subject to sales or use tax if the operator does no more than set-up, perform maintenance or inspect the property. If the charge for the operator's service is not separately stated, the rental/lease is considered to be a retail unitary transaction subject to sales or use tax on the total amount.

II. DOCUMENTS EVIDENCING LEASE OR SERVICE

The rental/lease agreement is evidence of the intention of the parties. Such evidence can be overcome by proof that the facts and the reality are otherwise. [FN 1] The burden of proving otherwise rests with those seeking to invalidate the written agreement. Unless either party to the transaction can prove that the substance of the transaction is in fact the provision of an exempt service, the rental of tangible personal property is subject to sales tax.

III. PROPERTY PROVIDED WITH AN OPERATOR – Prior to January 1, 2004

A. Control of Leased Property

45 IAC 2.2-4-27. Tangible personal property; renting and leasing.

(3) Renting or leasing property with an operator:

(A) The renting or leasing of tangible personal property, together with the services of an operator shall be subject to the tax when control of the property is exercised by the lessee. Control is exercised when the lessee has exclusive use of the property, and the lessee has the right to direct the manner of the use of the property. If these conditions are present, control is deemed to be exercised even though it is not actually exercised. [1972]

The charge for the lease of tangible personal property including any unstated charge for the services of an operator is entirely subject to sales tax if the lessee maintains "control" over the property during its intended activity.

B. Performance of a Service

45 IAC 2.2-4-27. Tangible personal property; renting and leasing.

(3) Renting or leasing property with an operator:

(B) The rental of tangible personal property together with an operator as part of a contract to perform a specific job in a manner to be determined by the owner of the property or the operator shall be considered the performance of a service rather than a rental or lease provided the lessee cannot exercise control over such property and operator. [1972]

The distinction between A, a taxable transaction for rental of tangible personal property including the unstated charge for the services of an operator and B, an exempt transaction for the performance of a service which requires the services of an operator, is the right of the parties to "control" the operation of the property.

C. Lease of Property with an Operator

45 IAC 2.2-4-27. Tangible personal property; renting and leasing.

(3) Renting or leasing property with an operator:

(C) When tangible personal property is rented or leased together with the service of an operator, the gross retail tax or use tax is imposed on the property rentals. The tax is not imposed upon the charges for the operator's services, provided such charges are separately stated on the invoice rendered by the lessor to the lessee. [1972]

If the lessee maintains "control" over the leased tangible personal property, any separately stated charge for the services of an operator is exempt. If such charge is not separately stated to the lessee, the entire lease charge is a unitary transaction subject to sales tax.

IV. INDICATORS OF "CONTROL" OVER PROPERTY [FN 2]

1. Employment of the driver or operator.
2. Command over the activities of the property including the route (if movable), time of operation, most efficient method of operation, idle time, units of production, et al.
3. Obligation to pay operational costs and required maintenance and repairs.
4. Payment of fuel costs.
5. Responsibility to secure equipment when not in service.
6. Obligation to pay insurance and obtain government permits as required.

A determination of the party possessing "control" over property is not limited to the above factors; however, the existence of any one or more of the factors supports a rebuttable presumption.

V. PROPERTY PROVIDED WITH AN OPERATOR – effective January 1, 2004

A. Property rented or leased along with the services of an operator is not subject to sales or use tax provided:

1. the operator is necessary for the equipment to perform as designed; and,
2. the operator does more than maintain, inspect, or set-up the tangible personal property.

B. When the lessor provides the services of an operator to simply set-up, provide maintenance and/or inspect the property, the rental or lease is considered to be a taxable retail transaction. To be exempt from sales or use tax, the charge for the operator's services must be separately stated on the invoice. If not separately stated, the rental/lease is considered to be a retail unitary transaction subject to the collection of sales or use tax on the total charge.

C. The renting or leasing of a vehicle together with an operator, regardless of extent of control exercised, is not subject to sales or use tax if the vehicle is directly used in the rendering of public transportation. [FN 3]

D. Long-term rentals or leases entered into prior to December 31, 2003 are not subject to the provisions of IC 6-2.5-1-21.

[FN 1] See *Meridian Mortgage Co.*, Indiana Appeals Court, 1979.
[FN 2] See *Mason Metals Company, Inc.*, Ind. Tax Ct., 1992 quoting *Indianapolis Transit Sys.*, Ind. App. 1976.
[FN 3] 45 IAC 2.2-5-27(d)(5)

DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #21
January 2004
(Updated April 2004)

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Streamlined Sales Tax Agreement Provisions

I. INTRODUCTION

In March 2000, a collection of states joined forces to sponsor a national sales tax initiative—the Streamlined Sales Tax Project ("SSTP"). The SSTP represents an effort on the part of its member states to "simplify and modernize sales and use tax collection and administration." To that end, the Streamlined Sales Tax Implementing States ("SSTIS") crafted model legislation—i.e., the Streamlined Sales and Use Tax Agreement. Member states were encouraged to adopt legislation conforming to this model. Effective January 1, 2004, Indiana has enacted legislation to bring Indiana's sales and use tax statutes into conformity with this model legislation.

Temporary regulations have been adopted and are available in the Indiana Register for December 2003. The Department has also updated Sales Tax Information Bulletin #29 to reflect the changes to the definitions of food, candy, soft drinks, alcoholic beverages, and dietary supplements and the application of sales tax to these items.

II. SALES TAX AMENDMENTS

IC 6-2.5-1-5 (amended). "Gross retail income" defined.

- Provides that delivery charges are included in gross retail income. **(Installation charges were included for the period January 1, 2004 through March 17, 2004.)**
- Provides that coupons or other discounts allowed that are not reimbursed by a third party are not part of gross retail income.

IC 6-2.5-1-11 (added). "Alcoholic beverages" defined.

- Defines an alcoholic beverage as a beverage that contains one-half of one percent (0.5%) or more of alcohol by volume.

IC 6-2.5-1-12 (added). "Candy" defined.

- Defines candy to be a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces.
- The term does not include items containing flour or items requiring refrigeration.

IC 6-2.5-1-13; IC 6-2.5-1-14; AND IC 6-2.5-1-15; (added). "Computer," "Computer software," and "Electronically" defined.

- Defines the terms computer, computer software, and delivered electronically.

IC 6-2.5-1-16 (added). "Dietary supplement" defined.

- Defines a dietary supplement as a product that is intended to supplement the diet, contains a vitamin or other mineral, is intended for oral ingestion, and is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required under 21 CFR 101.36.

IC 6-2.5-1-17 (added). "Drug" defined.

- Defines a drug as a substance recognized in the official United States Pharmacopoeia, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease.
- The term does not include food and food ingredients, dietary supplements, or alcoholic beverages.

IC 6-2.5-1-18 (added). "Durable medical equipment" defined.

- Defines durable medical equipment to mean equipment including repair and replacement parts for equipment that can stand repeated use, is used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body.

IC 6-2.5-1-19 (added). "Electronic" defined.

- Defines electronic as relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

IC 6-2.5-1-20 (added). "Food and food ingredients" defined.

- Defines food and food ingredients as substances sold for ingestion or chewing by humans, that are consumed for their taste or nutritional value.
- The term does not include alcoholic beverages, candy, dietary supplements, or soft drinks.

IC 6-2.5-1-21 (added). "Lease" or "rental" defined.

- Defines the terms "lease" and "rental" as any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.
- The term does not include any arrangement whereby title to property subject to a security agreement automatically transfers upon the completion of payments or when title can be gained by the payment of an option price of less the $100 or 1% of the total payments.
- The term also does not include providing tangible personal property along with an operator for a fixed or indeterminate period if the operator is necessary for the equipment to perform as designed and the operator does more than maintain, inspect, or set up the tangible personal property.
- How a transaction is characterized by the Internal Revenue Code, the uniform commercial code, or any other federal, state, or local laws is not a consideration in determining whether an arrangement is a lease.

IC 6-2.5-1-22 (added). "Mobility enhancing equipment" defined.

- Defines mobility enhancing equipment as equipment primarily used to provide or increase the ability to move from one place to another and is not generally used by persons with normal mobility. It does not include a motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

IC 6-2.5-1-23 (added). "Prescription" defined.

- Defines a prescription as an order or formula issued by a licensed practitioner.

IC 6-2.5-1-24 (added). "Prewritten computer software" defined.

- Defines prewritten computer software to mean computer software that is not designed and developed by the author or other creator to the specifications of a specific purchaser.
- Modifications to prewritten computer software where there is a reasonably separately stated charge for modification or enhancement, the modification or enhancement is not prewritten computer software.
- Consistent with existing Department policy concerning the taxation of "canned" and "customized" software.

IC 6-2.5-1-25 (added). "Prosthetic device" defined.

- Defines a prosthetic device as a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing part of the body, prevent or correct physical deformity, or support a weak or deformed part of the body.

IC 6-2.5-1-26 (added). "Soft drinks" defined.

- Defines soft drinks as nonalcoholic beverages that contain natural or artificial sweeteners.
- The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

IC 6-2.5-1-27 (added). "Tangible personal property" defined.

- Defines tangible personal property as something that can be seen, weighed, measured, felt, or touched or in any other manner is perceptible to the senses. The term includes electricity, gas, water, steam, and prewritten computer software.

IC 6-2.5-4-1 (amended). "Selling at retail" defined.

- Includes delivery charges in gross retail income and charges by the seller for the preparation and delivery of the property to a location designated by the purchaser, including but not limited to transportation, shipping, postage, handling, crating, and packing. **(This provision was moved to IC 6-2.5-1-5 effective March 18, 2004. Additionally, this statute now states that transfer of tangible personal property in a retail transaction does not take place until after delivery.)**

IC 6-2.5-4-10 (amended). "Rental or leasing of personal property."

- Provides that subleasing is not classified as the rental or leasing of tangible personal property.

IC 6-2.5-5-1 (amended). "Agricultural exemption."

- Provides an agricultural exemption for the production of "food and food ingredients."

IC 6-2.5-5-2 (amended). "Agricultural machinery, tools, and equipment" exemption.

- Provides an agricultural machinery, tools, and equipment exemption for the production of "food and food ingredients."

IC 6-2.5-5-18 (amended). "Medical equipment, supplies, and devices" exemption.

- Clarifies that the purchase of durable medical equipment and prosthetic devices are exempt from the sales tax, as well as the rental of durable medical equipment and other medical supplies.

IC 6-2.5-5-19 (amended). "Drug" exemption.

- Provides a technical change to the exemption for legend and non-legend drugs.

IC 6-2.5-5-20 (amended). "Food for human consumption" exemption.

- Provides that food and food items are exempt from the sales tax if items are sold without eating utensils provided by the seller and are sold by a seller whose primary NAICS classification is food manufacturing, except for bakeries.
- Food sold in an unheated state by weight or volume as a single item, or bakery items including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas are also exempt.
- Items that are taxable include, (1) candy, (2) alcoholic beverages, (3) soft drinks, (4) food sold through a vending machine, (5) food sold in a heated state or heated by the seller, (6) two or more food ingredients mixed or combined by the seller for sale as a single item, and (7) food sold with eating utensils provided by the seller.

IC 6-2.5-5-21 (amended). "Food; medically necessary deliveries or purchases" exemption.

- Provides an exemption for transactions involving the sales of "food and food ingredients." See IC 6-2.5-1-20.

IC 6-2.5-5-21.5 (amended). "Medically necessary food" exemption.

- Provides an exemption for transactions involving the sales of "food and food ingredients." See IC 6-2.5-1-20.

IC 6-2.5-5-22 (amended). "School meals" exemption.

- Provides an exemption for transactions involving the sales of "food and food ingredients." See IC 6-2.5-1-20.

IC 6-2.5-5-35 (amended). "Tangible personal property transaction" exemption.

- Provides an exemption for transactions involving the sales of "food and food ingredients." See IC 6-2.5-1-20.

IC 6-2.5-6-9 (amended). "Uncollectible receivables" deduction.

- Makes changes in the bad debt deduction for sales tax so that any deduction taken does not include interest and the amount of the deduction shall be determined in the manner provided in Section 166 of the Internal Revenue Code.
- The deduction excludes financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any bad debt, and the value of repossessed property.
- The deduction is claimed during the period for which the receivable is written off. A claimant who is not required to file a federal income tax return may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off in the claimant's records.
- Provides that if the amount of the deduction exceeds the retail merchant's tax liability for the reporting period, the merchant may file a refund claim under IC 6-8.1-9.
- For purposes of reporting a payment received on an uncollectible receivable, any payments made shall be applied proportionally to the taxable price of the property and the sales tax thereon, then to interest, service charges, and any other charges.
- **Effective July 1, 2004, the deduction may only be assigned in writing.**

A NEW chapter, IC 6-2.5-12, "Taxing Situs of Nonmobile Telecommunications Service" is ADDED.

IC 6-2.5-12-10 (added). "Post paid calling service" defined.

- Defines post paid calling service as payment on a call by call basis through the use of a credit card, debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

IC 6-2.5-12-11 (added). "Prepaid calling service" defined.

- Defines prepaid calling service as the right to access telecommunications services, which must be paid for in advance, and with the use of an access number and that is sold in predetermined units or dollars.

IC 6-2.5-12-14 (added). "Telecommunications sourcing rules."

- Provides that services sold on a call-by-call basis shall be sourced to each level of jurisdiction where the call either originates or terminates, and in which the service address is located.
- Sales of mobile telecommunications are sourced to the customer's primary place of primary use as required by the Mobile Telecommunications Sourcing Act.
- Post paid calling services are sourced to the origination point of the telecommunications signal as first identified by the seller's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- Prepaid calling services are sourced in the following manner. When the services are received by the purchaser at a business location of the seller, the sale is sourced to the business location. If it is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs.

IC 6-2.5-4-6 imposes sales tax on "intrastate" telecommunications. With regard to non-mobile telecommunications services, sales tax is not imposed on interstate telecommunications services even though those transactions could be sourced to Indiana pursuant to IC 6-2.5-12. All mobile telecommunications services that are sourced to Indiana pursuant to IC 6-8.1-15 are subject to sales tax.

A NEW chapter, IC 6-2.5-13, "General Sourcing Rules" is ADDED.

IC 6-2.5-13-1 (added). "Definitions; scope, sourcing rules"

- Provides sourcing rules for general personal property and services excluding motor vehicles, trailers, aircraft, watercraft, modular homes, mobile homes, manufactured homes, or telecommunications services.
- The retail sale, except for the lease or rental of a product shall be sourced in the following ways: A sale shall be sourced to the business location of the seller when received by the purchaser at the business location. If the item is received by the purchaser at a location other than that of the seller, the sale is sourced to the location received by the purchaser. If the first two provisions do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller. If none of the previous provisions apply, the location will be determined by the address from which the property was shipped.
- The lease or rental of property other than motor vehicles, trailers, semi-trailers, aircraft, or property used in transportation that requires recurring periodic payments will be sourced in the following manner: The first payment is sourced the same as a retail transaction. Subsequent payments are sourced to the location of the property. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft is sourced to the primary location of the property. The retail sale or lease or rental of transportation equipment shall be sourced the same as a retail sale.

IC 6-2.5-13-2 (added). "Multiple Points of Use" exemption form.

- Provides for a multiple point of use ("MPU") exemption for a business purchaser that knows at the time of purchase that a digital good, computer software delivered electronically or for service that will concurrently be available for use in more than one jurisdiction.
- Presentation of the MPU exemption relieves the seller from all obligations to collect the sales tax from the purchaser. The purchaser is allowed to use any consistent and uniform apportionment method.

IC 6-2.5-13-3 (added). "Direct mail purchases."

- Provides that a direct mailer must provide the seller with a direct mail form, or information to show the jurisdictions to which the direct mail is delivered to recipients. Upon the receipt of the direct mail form, the seller is not obligated to collect the applicable tax, and the purchaser is obligated to remit the applicable tax on a direct pay basis. If the purchaser provides information to the seller of the jurisdictions to which the direct mail is delivered, the seller is required to collect the tax according to the delivery information provided by the purchaser.

IC 6-9-12-3; IC 6-9-20-4; IC 6-9-21-4; IC 6-9-23-4; IC 6-9-14-4; IC 6-9-25-4; IC 6-9-26-7; IC 6-9-27-4; IC 6-9-33-4 (amended).

- Amends the Food and Beverage Tax statutes so that the definition of food sold on a "To Go" or "Take Out" basis corresponds to provisions in the new sales tax statutes.

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Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #22
January 2004

(NOTE: This document is applicable only for transactions that took place during the period of January 1, 2004 through March 17, 2004. See Commissioner's Directive #23 for transactions that take place after March 17, 2004)

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Delivery and Installation Charges Subject to Indiana Sales and Use Tax

I. INTRODUCTION

Effective January 1, 2004, Indiana enacted legislation to bring Indiana's sales and use tax statutes into conformity with the Streamlined Sales and Use Tax Agreement.

II. STATUTORY CHANGES

P.L. 257-2003 amended IC 6-2.5-1-5 concerning the definition of "gross retail income". The amendment includes delivery and installation in the definition of gross retail income.

III. DELIVERY CHARGES

Delivery charges are now included in gross retail income and subject to tax regardless of shipping terms. Delivery that is made

by or on the behalf of the seller of tangible personal property will be taxable whether or not the delivery charge is separately stated.

IV. INSTALLATION CHARGES

A. An installation charge is defined as a charge to add something new or different to tangible personal property. Before January 1, 2004, installation charges that were separately stated were generally not subject to Indiana sales tax. Effective January 1, 2004, installation charges by a seller to install tangible personal property are subject to Indiana sales tax, even if the installation charges are separately stated.

B. Installation charges billed and furnished by a third party are exempt.

C. If the tangible personal property that is sold is not subject to sales tax because of an available exemption, then the installation charges will not be subject to sales tax.

D. Charges to incorporate tangible personal property into a permanent attachment to real property are not subject to sales tax. An improvement to realty takes place whenever tangible personal property is permanently attached to land or attached to a structure that is permanently attached to land. Such charges are not subject to sales tax regardless of whether the contract is a "lump sum" contract or a "time and materials" contract.

1. Examples of non-taxable installations that constitute improvements to realty are: doors, garage doors, garage door openers, windows, cabinets, garbage disposals, water heaters, water softeners, alarms, furnaces, central air conditioning units, gutters, and carpeting.

2. Examples of taxable installations that do not constitute improvements to realty are: personal computers, home stereos, televisions, refrigerators, stoves, dishwashers, garbage compactors, washers, dryers, and window air conditioning units. **NOTE:** The purchase and installation of new home appliances does not constitute repair or replacement per Section V below.

Example 1. A department store sells drapes and charges to install them. The drapes are taxable and the installation charge is also taxable.

Example 2. A department store sells blinds, but an independent contractor does the installation and bills the customer directly. The installation charge is not taxable because it is not part of the sales price.

Example 3. A store sells and installs modular workstations. Two separate contracts are drawn up by the store. One contract is for the sale of the workstations, and one for the installation. Sales tax applies to both the sale and the installation. Separate invoices do not make the installation exempt.

Example 4. An individual purchases running boards for their truck from an auto parts dealer and takes them to an unrelated dealership to have them installed. The charge to install the running boards is not taxable because the transaction between the dealership and the individual did not include the sale of the property being installed.

Example 5. An individual takes their car to a dealership to have a sunroof added to their car. The installation charges are taxable even if they are separately stated because it is an addition to tangible personal property.

V. REPAIR/REPLACEMENT CHARGES

Repair Charges. Repair charges are charges to restore an item so that it can be used for its original purpose. Separately stated charges for repair services are not taxable. Labor charges for replacement items are also not subject to sales tax.

Example 6. The charge to reupholster a sofa is $500 ($200 material, $300 labor). The labor is for removing the old fabric and replacing it with new fabric. Since the sofa is being restored to its original form, tax will only be charged on the $200 for material, if the material and labor charges are separately stated.

Example 7. A person takes their car to be repaired as the result of an automobile accident. The repair or replacement of fenders, auto glass (etc) will require that the sales tax be paid on the materials that are replaced or repaired, but the labor will be exempt if it is separately stated.

Replacement Charges. Replacement charges are charges for replacing an item that is part of another item of tangible personal property. Charges to install replacement items are exempt from tax if they are separately stated. Replacement charges will not be subject to tax even if the replacement item were to be considered an "upgrade." In order to be considered an upgrade, an item must be of the exact same nature as the item it is replacing.

Example 8. A person has the oil and filter changed on their car. The oil and filter are taxable, but the charge to install them is exempt if it is separately stated.

Example 9. A person has the heating element on a clothes dryer replaced. The heating element is taxable, but the labor to install the element is exempt if separately stated.

Example 10. A person has a new set of after market wheels installed on their car. The installation charges are not subject to tax because the wheels are considered an upgrade.

Example 11. A person has a new car stereo with a cd player installed in their car. The original stereo did not have a cd player. The charges to install the new stereo with a cd player would not be subject to sales tax because the new stereo is still of the exact same nature as the car's original stereo even though it has additional capabilities.

Example 12. A person has a subwoofer installed in their car. The charges to install the subwoofer are subject to sales tax because it is additional equipment and not a replacement or upgrade.

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Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #23
April 2004
(Supersedes Commissioner's Directive #22 issued January 2004)

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SUBJECT: Delivery and Installation Charges Subject to Indiana Sales and Use Tax

I. INTRODUCTION

Effective January 1, 2004, Indiana enacted legislation to bring Indiana's sales and use tax statutes into conformity with the Streamlined Sales and Use Tax Agreement. A further change was made effective March 18, 2004 by HEA 1365-2004.

II. STATUTORY CHANGES

P.L. 257-2003 amended IC 6-2.5-1-5 concerning the definition of "gross retail income". That amendment included delivery and installation in the definition of gross retail income. HEA 1365-2004 removed installation from the definition of gross retail income and amended IC 6-2.5-4-1 to state that the transfer of tangible personal property in a retail transaction does not take place until after delivery.

III. DELIVERY CHARGES

Delivery charges are included in gross retail income and subject to tax regardless of shipping terms. Delivery that is made by or on the behalf of the seller of tangible personal property will be taxable whether or not the delivery charge is separately stated.

A. Delivery charges billed and furnished by a third party are exempt.

Example #1 – A company purchases a piece of equipment from the manufacturer. The purchasing company hires a trucking company to pick up the piece of equipment at the manufacturer's facility and deliver it to purchaser's location. The shipping charges are not subject to sales tax because they are not included in a retail transaction.

B. If the tangible personal property that is sold is not subject to sales tax because of an available exemption, then the delivery charges will not be subject to sales tax.

Example #2 – An office supply retailer purchases 500 ballpoint pens from a wholesaler for $1,000. The wholesaler charges the purchaser $100 to deliver the pens to the purchaser. The purchaser issues an exemption certificate to the wholesaler indicating that the pens are being purchased for resale. The entire $1,100 charge is exempt from sales tax.

C. Separately stated charges for delivery of prepared food beyond the seller's location are subject to sales tax.

Example #3 – A pizza parlor imposes a $3.00 charge to deliver pizzas to customer's residence. The $3.00 charge is subject to sales tax.

D. Charges to incorporate tangible personal property into a permanent attachment to real property are not subject to sales tax. However, contractors that enter into time and material contracts are acting as retail merchants with regard to the tangible personal property transferred pursuant to such contracts. Any charges for delivery of tangible personal property included in a time and materials contract are subject to sales tax. Contractors that enter into lump sum contracts must pay sales tax or accrue use tax on any delivery charges incurred by the contractor with regard to the tangible personal property transferred pursuant to such contracts.

Example #4 – A contractor enters into a time and materials contract to replace a driveway. The contractor charges its customer $100 for gravel and $25 to have it delivered to the jobsite. The contractor must collect sales tax on the entire $125 charge.

Example #5 – A contractor enters into a lump sum contract to replace a driveway. The contractor charges his customer a flat fee of $5,000 to replace the driveway. The contractor purchases gravel from the aggregate company for $100 and the aggregate company charges the contractor $25 to deliver the gravel to the jobsite. The contractor must pay sales tax, or accrue use tax if he has given the aggregate company an exemption certificate, on the entire $125 charge.

The Tax Court decision in *Cowden and Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E. 2d 718 (Ind. Tax 1991) is no longer valid due to the statutory changes made by P.L. 257-2003 and HEA 1365-2004. Therefore, transportation companies that purchase tangible personal property for delivery to customers and charge their customers for the tangible personal property will be required to register as retail merchants and collect sales tax on the entire charge for such transactions.

Example #6 – A residential customer orders 3 yards of white rock to be delivered from a hauling company. The hauling company proceeds to an aggregate company and purchases 3 yards of white rock that it delivers and dumps at the customer's residence. The hauling company does not mark up the price of the white rock from the price it paid at the aggregate company and adds that amount to its hauling charges. The hauling company is acting as a retail merchant and must collect sales tax on the entire amount it charges its customer for the white rock and delivery regardless of whether the charges are separately stated on the bill.

IV. INSTALLATION CHARGES

As of March 18, 2004, separately stated installation charges are not subject to sales tax. For the period of January 1, 2004 through March 17, 2004, such charges were subject to sales tax. Sales tax should have been collected on such charges during that period.

Installation charges that are not separately stated from the selling price of an item or the delivery charge for an item will continue to be subject to sales tax.

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Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN # 60
SALES TAX
April 2004
(Replaces Bulletin #60 dated December 2002)

DISCLAIMER: Informational bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Construction Contractors

REFERENCES: IC 6-2.5-1-5, IC 6-2.5-3-3, IC 6-2.5-4-1, IC 6-2.5-4-9, IC 6-2.5-5-3, 45 IAC 2.2-3-7 through 45 IAC 2.2-3-12, 45 IAC 2.2-4-21 through 45 IAC 2.2-4-26

INTRODUCTION

The general rule for the application of sales or use tax is that all sales of tangible personal property are taxable, and all sales of real property are not taxable. This general rule is not changed by the conversion of tangible personal property into realty. Therefore, all construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt.

DEFINITIONS

A. "Construction Contractor" means anyone who is obligated under the terms of a contract to furnish the necessary labor or materials, or both, to convert construction material into realty, including a general or prime contractor, a subcontractor, or a specialty contractor. The term includes a person engaged in the business of: building, cement work, carpentry, plumbing, heating and cooling, electrical work, roofing, wrecking, excavating, plastering, tile work, road construction, landscaping, or installing underground sprinkler systems.

B. "Construction materials" means any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of realty. A "facility" means any additions to the land.

C. "Lump sum contract" means a contract to incorporate construction materials into real estate with the charge for labor and materials being quoted as one price. The contractor may subsequently furnish a breakdown of the charges for labor and materials without changing the nature of the lump sum contract. For example, a typical lump sum contract provides that the contractor will build a structure for a total stated price such as $40,000. A lump sum contractor generally must pay sales tax to the vendor who sells the contractor construction materials. If the vendor is located out-of-state and is not required to collect Indiana sales tax or if the person for whom the structure is being built would be exempt from sales tax for the purchase of the

construction materials, the lump sum contractor would not pay sales tax. Although the contractor may not pay sales tax when purchasing material from an out-of-state vendor, the contractor would be liable for use tax if the construction materials are stored, used or consumed in Indiana for a nonexempt purpose. Unless otherwise exempt, when a lump sum contractor purchases construction materials free of sales tax, the contractor must pay use tax on those materials when they are incorporated into real property in Indiana. To purchase construction materials exempt from sales tax, a lump sum contractor must be registered as a retail merchant.

D. "Time and materials contract" means a contract to incorporate construction materials into real estate with the charge for the labor and materials being separately stated and the final contract price being dependent on the cost of the materials and the amount of labor it actually takes to complete the contract. Time and materials contractors are considered retail merchants making retail transactions with respect to the sale of construction materials and must register as retail merchants with the Department. Contractors that perform time and material contracts must separately state the charge for any construction materials and must collect Indiana sales tax on the full sales price of the construction material including overhead and profit charges. (Effective March 18, 2004, sales tax must also be collected on delivery charges in a time and materials contract.) The construction materials used by a contractor in a time and materials contract should be purchased exempt by the contractor. The sales tax collected by the contractor must be separately stated on the invoice. A time and materials contractor would be entitled to the eighty-three hundredths of one percent (.83%) collection allowance for timely remittances. Exemption certificates and direct pay permits must be retained by time and materials contractors to prove their non-liability for collecting sales tax on a sale of construction materials. If a time and materials contractor purchases construction materials exempt from sales tax and subsequently uses those materials to fulfill a lump sum contract, the contractor would be subject to use tax on those materials.

E. "Improvement to real estate" means that personal property has been incorporated into and becomes a permanent part of the real property. To accomplish this, the personal property generally takes on an immovable character. An immovable fixture is characterized by three elements:

(1) Real or constructive annexation of the article in question to the land.

(2) Adaptation of the personal property as part of the land.

(3) The intention of the party making the annexation to make the personal property a permanent part of the land so that it would pass with the land upon a sale.

Examples of installations that constitute improvements to realty are: doors, garage doors, garage door openers, windows, cabinets, garbage disposals, water heaters, water softeners, alarms, furnaces, central air conditioning units, gutters, and carpeting.

Examples of installations that do not constitute improvements to realty are: personal computers, home stereos, televisions, refrigerators, stoves, dishwashers, garbage compactors, washers, dryers, and window air conditioning units.

Indiana Property Tax regulations concerning commercial property may be consulted as a guideline to determine whether property is real or personal, but it should not be considered determinative.

Tax Consequences

A contractor's purchase of machinery, tools, equipment and supplies that are not incorporated into the structure being built is subject to sales and/or use tax at the time of purchase. No exemption is available to the contractor because of the exempt status of the customer. Rule 45 IAC 2.2-3-12 [c], which is specifically applicable to contractors under contract for an improvement to real estate with an organization entitled to exemption from sales and use tax, states:

(1) Utilities, machinery, tools, forms, supplies, equipment, and any other items used or consumed by the contractor and which do not become part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed.

Note:

In the construction and repair of public roads, bridges, highways and other public infrastructure for a governmental entity, a contractor may be specifically required to provide certain items of tangible personal property for the safety of the public, for traffic control, or to enable the government to perform its responsibilities. Such items include, but are not limited to, traffic signals; signs; barrels; barricades; temporary pavement markings; materials to construct temporary traffic lanes, roads and bridges; erosion control and drainage materials; aggregates used to set grades; and field offices and communications equipment, provided such offices and equipment are exclusively for government representatives. The purchase, lease or use of such items by a contractor or its subcontractor to comply with the requirements of a government construction contract are not subject to sales or use tax, provided the item is used solely, in connection with the construction and/or repair of public roads, bridges, highways or other public infrastructures that will be paid for by a governmental entity and is not used for any other purpose.

Direct Payment Permits

A contractor holding a direct payment permit may issue it to his suppliers, but when acting as a contractor should remember that he must obtain an exemption certificate—not a direct payment permit—from any exempt customer for whom he is making an improvement to real estate as a result of a lump sum contract.

A lump sum contractor does not sell tangible personal property or collect sales tax as a result of the contract and may not accept a direct payment permit. If the organization, for which the contractor is constructing the improvement, is entitled to an exemption, it must give the contractor an exemption certificate (Form ST-105) -- not a direct payment permit—certifying the exemption.

A prime contractor receiving an exemption certificate for a particular job should issue exemption certificates to subcontractors. Contractors and subcontractors must be registered as retail merchants in order to issue exemption certificates (ST-105 or ST-134).

Asphalt Manufacturers

The manufacturing exemption will apply to an asphalt plant and paver, including repair parts and fuel for the respective equipment. Asphalt manufacturers/contractors will be granted an exemption for dump trucks used to transport "hot mix asphalt" from their asphalt plant to the job site. No exemption is available to the extent the respective dump trucks are used to haul "raw materials". Additionally, no exemption for dump trucks is available to contractors who do not produce "hot mix asphalt". Actual records must be maintained to document the exempt usage, if any. Graders, rollers, distributors, front-end loaders and other construction equipment are not exempt and will be subject to Indiana sales and use tax.

Streets and Sewers

Contractors acquiring material for incorporation as an integral part of a public street or of a public water, sewage or other utility service system are exempt from sales tax on the purchase of the construction material. The public street or public utility service system must be required under an approved subdivision plot and must be accepted by the appropriate Indiana political subdivision to be publicly maintained after its completion.

_____

Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
AMVETS POST NO. 332
DOCKET NO. 29-2003-0426

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER

An administrative hearing was held on Tuesday, December 16, 2003 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, AMVETS #332, was represented by John T. Wilson, Attorney at Law, 403 W. 8th Street, Anderson, Indiana 46016. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On October 20, 2003, the Petitioner's application to conduct charity gaming was denied. The Petitioner protested in a timely manner.

FINDINGS OF FACTS

1) Petitioner submitted a CG-1 (Indiana Department of Revenue Charity Gaming Qualification Application) dated August 8, 2003 to the Indiana Department of Revenue. (Department's Exhibit B).

2) Petitioner's CG-1 was received by the Compliance Division of the Indiana Department of Revenue on August 8, 2003. (Department's Exhibit B).

3) On September 1, 2003 Petitioner received notice that it had been approved as a qualified organization. (Department's Exhibit B).

4) Petitioner's CG-1 was signed by its Post Commander Rich Ulrey and Harold Barkdull its Treasurer. Above their signatures is a certification which states, "We certify under penalty of perjury that the organization applying is a qualified organization and that there is no misrepresentation or falsification in the information stated. We certify that to the best of our knowledge the operators of the charity gaming events have not been convicted of any felonies. We understand that false or misleading statements will be cause for rejection of this application or revocation of future licenses." (Department's Exhibit B).

5) Lori Broadwater is listed on Petitioner's CG-1 as a proposed operator of Petitioner's charity gaming events and a member of Petitioner's organization. Ms. Broadwater was listed as having been an active member for two (2) years. (Department's Exhibit B).

6) Wendy Jones is listed on Petitioner's CG-1 as a proposed operator of Petitioner's charity gaming events and a member of

Petitioner's organization. Ms Jones was listed as having been an active member for one (1) year. (Department's Exhibit B).
7) Petitioner submitted a CG-2 (Indiana Department of Revenue Annual Bingo and/or Pull Tab Application) dated September 4, 2003 to the Indiana Department of Revenue. (Department's Exhibit A).
8) Petitioner's CG-2 was received by the Compliance Division of the Indiana Department of Revenue on September 5, 2003. (Department's Exhibit A).
9) Petitioner's CG-2 was signed by its Post Commander Rich Ulrey and Harold Barkdull its Treasurer. Above their signatures is a certification which states, "We certify under penalty of perjury that the organization applying is a qualified organization, and that there are no misrepresentation or falsification in the information stated. We understand that false or misleading statements will cause rejection of this application or revocation of future license(s)." (Department's Exhibit A).
10) Lori Broadwater is listed on Petitioner's CG-2 as a bingo operator who will supervise, manage, and be responsible for the operation and conduct of the gaming event. Ms. Broadwater was listed not only as a member of Petitioner's organization but also an active member for two (2) years. (Department's Exhibit A).
11) Wendy Jones is listed on Petitioner's CG-2 as a bingo operator who will supervise, manage, and be responsible for the operation and conduct of the gaming event. Ms. Jones was listed as a not only as a member of Petitioner's organization but also an active member for one (1) year. (Department's Exhibit A).
12) Line 9 on Department Form CG-2 states, "Is any tangible personal property (i.e. tables, chairs, bingo blowers, etc.) being leased or donated to you for this event." Petitioner answered "Yes." (Department's Exhibit A).
13) Line 9 continues, "If you answered yes, list the name and address of the lessor or donor. Attach a signed copy of the lease agreement or donation statement from the donor." Petitioner listed only ARC Promotions (Department's Exhibit A).
14) Line 10 on Department Form CG-2 states, "Does your organization own bingo equipment?" Petitioner answered "No." (Department's Exhibit A).
15) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner on September 19, 2003. (Record at 7).
16) A check of the membership department of the National AMVETS organization indicated that no record of membership for Lori Broadwater and Wendy Jones existed. (Record at 12).
17) A review of Petitioner's Auxiliary dues remittance form dated July 15, 2002 shows Lori Broadwater and Wendy Jones as new members. (Department's Exhibit C).
18) The Petitioner conducted two (2) raffles without obtaining a raffle license. (Record at 14-15).
19) According to Department's Exhibit C both raffle events, if held after Petitioner's qualification date of September 1, 2003, could have qualified for the single event exclusion as the value of the prizes awarded was less than $1,000. Nevertheless, a qualified organization is still required to send the Department written notice of the planned event (See IC 4-32-9-3).
20) ARC Promotions is not licensed as either a manufacturer or distributor to sell, distribute, or manufacture bingo equipment. (Record at 16-17).
21) The Department then notified Petitioner by letter that its Indiana Charity Gaming License application was denied. (Department's Exhibit D).
22) According to the Department's letter dated October 20, 2003, the Petitioner's application to conduct charity gaming was denied (Record at 17).
23) The Petitioner contends that there are sufficient members that would qualify as operators or workers. (Record at 24).
24) Petitioner stated that they had not purchased any equipment from ARC Promotions and they have made arrangements with Lancaster Bingo a licensed distributor. (Record at 24-25).
25) Petitioner argues that the only reason they listed ARC Promotions on its application is that the equipment already in place at the location to be used for gaming purposes belongs to ARC Promotions. (Record at 25).
26) In reviewing Petitioner's CG-2, there was no signed copy of the lease agreement or donation statement from the donor concerning the tangible personal property to be used by the Petitioner in conducting its gaming operation. (Department's Exhibit A).
27) ARC Promotion's equipment was being used at the location Petitioner had chosen to run it gaming operation. (Record at 31).
28) An organization called Hoop Shooters had been using ARC Promotion's gaming equipment and had been conducting gaming operations in the location to be used by the Petitioner. (Record at 32).
29) The owners of ARC Promotions are Auxiliary and Sons members of Petitioner's organization. (Record at 32-33).
30) Petitioner admitted at hearing that they had two raffles and that they did not possess a license for either, and that they did not try to hide the raffles in any way. (Record at 26-27).
31) Petitioner asks that it be granted a license to conduct charity gaming, and be given an opportunity to amend its application that was denied by the department. (Record at 38).

STATEMENT OF LAW

1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.

2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).

3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).

4) "It is reasonable…to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).

5) IC 4-32-9-3 states, "(a) A qualified organization is not required to obtain a license from the department if the value of all prizes awarded at the bingo event, charity game night, raffle event, or door prize event, including prizes from pull tabs, punchboards, and tip boards, does not exceed one thousand dollars ($1,000) for a single event and not more than three thousand dollars ($3,000) during a calendar year.

(b) A qualified organization described in subsection (a) that plans to hold a bingo event more than one (1) time a year shall send an annual written notice to the department informing the department of the following:

(1) The estimated frequency of the planned bingo events.

(2) The location or locations where the qualified organization plans to hold the bingo events.

(3) The estimated amount of revenue expected to be generated by each bingo event.

(c) The notice required under subsection (b) must be filed before the earlier of the following:

(1) March 1 of each year.

(2) One (1) week before the qualified organization holds the first bingo event of the year.

(d) A qualified organization described in subsection (a) shall maintain accurate records of all financial transactions of an event conducted under this section. The department may inspect records kept in compliance with this section."

6) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event."

7) IC 4-32-7-4 provides, "The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:

(1) Bingo cards.

(2) Bingo boards.

(3) Bingo sheets.

(4) Bingo pads.

(5) Any other supplies, devices, or equipment designed to be used in playing bingo designated by rule of the department.

(6) Pull tabs.

(7) Punchboards.

(8) Tip boards.

(b) Qualified organizations must obtain the materials described in subsection (a) only from an entity licensed by the department.

(c) The department may not limit the number of qualified entities licensed under subsection (a).

8) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event."

9) IC 4-32-12-1 provides in pertinent part, "The department may suspend or revoke the license of or levy a civil penalty against a qualified organization or an individual under this article for any of the following:

(1) Violation of a provision of this article or of a rule of the department.

(2) Failure to accurately account for:

(A) bingo cards;

(B) bingo boards;

(C) bingo sheets;

(D) bingo pads;

(E) pull tabs;

(F) punchboards; or

(G) tip boards.

(3) Failure to accurately account for sales proceeds from an event or activity licensed or permitted under this article.

(4) Commission of a fraud, deceit, or misrepresentation.

(5) Conduct prejudicial to public confidence in the department.

(b) If a violation is of a continuing nature, the department may impose a civil penalty upon a licensee or an individual for each day the violation continues."

CONCLUSIONS OF LAW

1) On October 20, 2003, the Petitioner's application to conduct charity gaming was denied.

2) Petitioner appealed the denial in a timely manner.

3) The issue at hearing was whether the Department's denial was proper.

4) Petitioner's two raffles must have been held after Petitioner's qualification date of September 1, 2003, for the single event exclusion in IC 4-32-9-3 to apply.

5) Petitioner failed to inform the Department pursuant to IC 4-32-9-3 of its two raffles.

6) Petitioner listed two operators whose term of membership was in violation of IC 4-32-9-28.

7) Petitioner's officers signed the CG-1 and CG-2 stating that they understood that false statements on its application would cause the rejection of the application.

8) Petitioner's violation of Indiana charity gaming laws was sufficient to warrant a denial of its license application.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied. However, Petitioner may correct/amend its application and resubmit it to the Department. If Petitioner chooses to amend its application for resubmission, the Department is directed to expedite its review.

1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).

2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____ _____

Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
HAMILTON TOWNSHIP
VOLUNTEER FIRE COMPANY
DOCKET NO. 29-2003-0459

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER

An administrative hearing was held on Thursday, February 12, 2004 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge, acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Hamilton Township Volunteer Fire Company, was represented by Eric Baty. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On November 20, 2003, the Petitioner's application to conduct charity gaming was denied. The Petitioner protested in a timely manner.

FINDINGS OF FACTS

1) Petitioner submitted a CG-2 (Indiana Department of Revenue Annual Bingo and/or Pull Tab Application) dated July 11, 2003 to the Indiana Department of Revenue. (Department's Exhibit A).

2) Petitioner's CG-2 was received by the Compliance Division of the Indiana Department of Revenue on July 22, 2003 and August 27, 2003. (Department's Exhibit A).

3) Petitioner's CG-2 was signed by Charles F. Rife and Tim Baty. Above their signatures is a certification which states, "We certify under penalty of perjury that the organization applying is a qualified organization, and that there are no misrepresentation or falsification in the information stated. We understand that false or misleading statements will cause rejection of this

application or revocation of future license(s)." (Department's Exhibit A).
4) Line 8 on Department Form CG-2 states, "Does your organization own, lease (rent), or use a donated facility where the licensed event will be conducted? (Check one)." Petitioner checked lease (rent).
5) Line 8 continues, "**If leased** (rented), enter name and address of lessor and attach a copy of your signed lease agreement. **If donated**, attach a **notarized** statement from the donor that the facility is being offered rent free." Petitioner listed Network Agency.
6) Line 9 on Department Form CG-2 states, "Is any tangible personal property (i.e. tables, chairs, bingo blowers, etc.) being leased or donated to you for this event." Petitioner answered "Yes." (Department's Exhibit A).
7) Line 9 continues, "If you answered yes, list the name and address of the lessor or donor. Attach a signed copy of the lease agreement or donation statement from the donor." Petitioner listed only Network Agency (Department's Exhibit A).
8) Line 10 on Department Form CG-2 states, "Does your organization own bingo equipment?" Petitioner answered "No." Line 10 continues, "If you answered yes, list the seller's name, date of purchase, purchase price, and the type of equipment purchased." However, even though Petitioner checked "No" it listed "Shawn Dyer" under the name of the seller and under date of purchase put "donated when needed." (Department's Exhibit A).
9) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner on September 25, 2003. (Department's Exhibit H).
10) Petitioner provided the Department with two (2) leases.
11) The first lease, submitted with its Form CG-2, was between the Petitioner and Network Agency dated July, 1, 2003. (Department's Exhibit B).
12) The second lease, dated September 24, 2003, submitted to the Department's Criminal Investigation Agent was between the Petitioner and Susie Lambert. (Department's Exhibit C).
13) After reviewing all the leases submitted into evidence (specifically Department's Exhibits B, C, D, and E) it is impossible to tell who actually has the valid lease to the property to be used by the Petitioner for its charity gaming.
14) It is evident that the lease dated September 24, 2003, was created in the hopes of satisfying the Department, and does not reflect the true intentions of the parties.
15) A review of Petitioner's 2003 membership roster does not show a Shawn Dyer as a member. (Department's Exhibit F).
16) Petitioner stated that Shawn Dyer is a member of its organization. (Record at 23).
17) Shawn Dyer is not licensed as either a manufacturer or distributor to sell, distribute, or manufacture bingo equipment. (Department's Exhibit G).
18) Petitioner stated that they had not purchased any equipment from Shawn Dyer and they have now made arrangements with Lancaster Bingo a licensed distributor. (Record at 20).
19) Petitioner argues that the only reason they listed Shawn Dyer on its application is that the equipment already in place at the location to be used for gaming purposes belongs to Shawn Dyer. (Record at 20).
20) In reviewing Petitioner's CG-2, there was no signed copy of the lease agreement or donation statement from the donor concerning the tangible personal property to be used by the Petitioner in conducting its gaming operation. (Department's Exhibit A).

STATEMENT OF LAW

1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.
2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
4) "It is reasonable…to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
5) IC 4-32-7-4 provides, "(a) The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:

(1) Bingo cards.
(2) Bingo boards.
(3) Bingo sheets.
(4) Bingo pads.
(5) Any other supplies, devices, or equipment designed to be used in playing bingo designated by rule of the department.
(6) Pull tabs.
(7) Punchboards.

(8) Tip boards.

(b) Qualified organizations must obtain the materials described in subsection (a) only from an entity licensed by the department.

(c) The department may not limit the number of qualified entities licensed under subsection (a).

6) IC 4-32-12-1 provides in pertinent part, "The department may suspend or revoke the license of or levy a civil penalty against a qualified organization or an individual under this article for any of the following:

(1) Violation of a provision of this article or of a rule of the department.

(2) Failure to accurately account for:

(A) bingo cards;

(B) bingo boards;

(C) bingo sheets;

(D) bingo pads;

(E) pull tabs;

(F) punchboards; or

(G) tip boards.

(3) Failure to accurately account for sales proceeds from an event or activity licensed or permitted under this article.

(4) Commission of a fraud, deceit, or misrepresentation.

(5) Conduct prejudicial to public confidence in the department.

(b) If a violation is of a continuing nature, the department may impose a civil penalty upon a licensee or an individual for each day the violation continues."

CONCLUSIONS OF LAW

1) On November 20, 2003, the Petitioner's application to conduct charity gaming was denied.

2) Petitioner appealed the denial in a timely manner.

3) The issue at hearing was whether the Department's denial was proper.

4) Petitioner's officers signed CG-2 stating that they understood that false statements on its application would cause the rejection of the application.

5) The Petitioner's did not have a properly executed CG-2.

6) A valid lease for the premises, to be used by the Petitioner, did not accompany its CG-2 application.

7) Petitioner's gaming equipment, allegedly owned by Shawn Dyer, and which was to be used for charity gaming purposes violates the provisions of IC 4-32-7-4.

8) Petitioner's inability to properly fill out its charity gaming application, and obvious misunderstanding of the charity gaming laws, produced inconsistencies in its application amounting to sufficient provocation to warrant the denial of its application.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied. However, Petitioner may correct/amend its application and resubmit it to the Department. If Petitioner chooses to amend its application for resubmission, the Department is directed to expedite its review.

1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).

2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

_____

Bruce R. Kolb / Administrative Law Judge

DEPARTMENT OF STATE REVENUE

03990529.LOF

LETTER OF FINDINGS: 99-0529
Indiana Gross Retail Tax
For the Years 1996, 1997, and 1998

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. Exempt Sales Transactions – Gross Retail Tax.

Authority: IC 6-2.5-2-1(a); IC 6-2.5-2-1(b); IC 6-2.5-5-27; IC 6-2.5-8-8(a); IC 6-8.1-5-1(b); Panhandle Eastern v. Dept. of State Revenue, 741 N.E.2d 816 (Ind. Tax Ct. 2001).

Taxpayer argues that it was not required to collect sales tax on transactions in which the purchaser provided either an exemption certificate or an Interstate Commerce Commission operating number.

STATEMENT OF FACTS

Taxpayer is in the business of buying and selling axles. It sells axles to recreational vehicle manufacturers and to companies which convert vans. Taxpayer also sells axles to the public and makes axle repairs for members of the public.

The Department of Revenue conducted an audit review of taxpayer's 1996, 1997, and 1998 business records. The final audit report determined that taxpayer failed to collect sales tax on a number of transactions and assessed taxpayer for those uncollected taxes. Thereafter, taxpayer submitted a protest of the assessment in which it requested "review by the Legal Division." An administrative hearing was conducted during which taxpayer explained that it had obtained tax exemption certificates and Interstate Commerce Commission operating numbers from a number of its customers. This Letter of Findings results.

DISCUSSION

I. Exempt Sales Transactions – Gross Retail Tax.

Taxpayer argues that it was not required to collect sales tax on transactions for which he customer provided an exemption certificate or the customer provided an Interstate Commerce Commission operating number.

IC 6-2.5-2-1(a) imposes "[a]n excise tax, known as the state gross retail tax... on transactions made in Indiana." Under IC 6-2.5-2-1(b), the retail merchant is required to "collect the tax as agent for the state."

A. Exemption Certificates.

Under certain circumstances, the retail merchant is not required to collect sales tax. For example, under IC 6-2.5-8-8(a), "A person... who makes a purchase in a transaction which is exempt from the state gross retail tax and use taxes, may issue an exemption certificate to the seller instead of paying the tax." Once the purchaser provides the exemption certificate, the retail merchant is under no obligation to collect sales tax on the transaction. IC 6-2.5-8-8(a) states that, "A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase."

Taxpayer has provided exemption certificates which purportedly relieve taxpayer from responsibility for collecting sales tax on certain transactions for which the audit review otherwise assessed the tax. The assessments contained in the original audit review report are presumed correct. IC 6-8.1-5-1(b) states that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." Once the assessment has been made, "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Id.

Because taxpayer has belatedly provided exemption certificates relevant to certain of the challenged assessments, taxpayer has met its burden of demonstrating that certain of the original sales tax assessments may be incorrect. Therefore, the audit division is respectfully requested to review the newly submitted exemption certificates and to make whatever adjustments as may be found appropriate.

B. Interstate Commerce Commission Operating Numbers.

In addition to the exemption certificates, taxpayer has provided "Interstate Commerce Commission operating numbers" for certain of its customers. Taxpayer is of the opinion that evidence of these numbers relieves it of the responsibility for collecting sales tax from the customers which provided the numbers. However, taxpayer has offered no explanation as to how these numbers are relevant in determining whether a particular customer or transaction is exempt from the state's gross retail tax. Nevertheless, it will be presumed that taxpayer believes possession of the operating number entitles the customer to claim the public transportation exemption.

IC 6-2.5-5-27 provides a specific sales tax exemption specifying 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 apparently argues that there is a direct corollary between a customer which possesses an Interstate Commerce Commission operating number and a customer which is entitled to make purchases exempt from the state's gross retail tax. However, taxpayer's proposition is flawed because there is no blanket public transportation exemption.

In Panhandle Eastern v. Dept. of State Revenue, 741 N.E.2d 816, 819 (Ind. Tax Ct. 2001), the court stated that the "public transportation exemption provided by section 6-2.5-5-27 is an all or nothing exemption." The tax court interpreted this "all or nothing" language to mean that, "If a taxpayer acquires tangible personal property for predominate use in providing public transportation, 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. A customer may have an Interstate Commerce Commission operating number but may not

be entitled to the sales tax exemption because it is not providing "public" transportation – i.e. it is engaged in transporting its own property – or because the customer is not "predominately" engaged in public transportation. In such cases, the customer falls within the "nothing" category. Under other circumstances, a customer which provides an Interstate Commerce Commission operating number may be entitled to the sales tax exemption because, pursuant to IC 6-2.5-5-27, that particular customer is providing "public" transportation and because it is "predominately" engaged in providing that service. That particular customer falls under the "all" category, and the customer is entitled to make purchases exempt from the state's gross retail tax.

The Department finds no support for taxpayer's argument that its customers which have an Interstate Commerce Commission operating number are exempt from sales tax. Absent any indication that a particular customer is predominately engaged in providing public transportation, the operating numbers are irrelevant.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer is entitled to a review of the exemption certificates submitted following completion of the audit report. Taxpayer is not entitled to claim an exemption on the basis that a particular customer possesses an Interstate Commerce Commission operating number.

DEPARTMENT OF STATE REVENUE

04-990580.LOF

LETTER OF FINDINGS NUMBER: 99-0580
Gross Retail & Use Taxes
Penalty
For Years 1996, 1997 & 1998

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. Gross Retail and Use Taxes—Miscellaneous

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-3-7; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4

Taxpayer protests the assessment of gross retail and use taxes on purchases where no invoices or exemption certificates were produced during the audit.

II. Penalty—Request for Waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer, a corporation formed in 1995 when four different corporations merged, is in the business of retailing two-way radio equipment, setting up, installing, and servicing communications equipment. Taxpayer had cellular and paging sales operations in Illinois, as well as other sales operations in Indiana and Missouri. The cellular and paging operations were sold in 1997. Taxpayer in 1997 also sold towers, which had "repeaters" on them. During the audit, taxpayer was given ample opportunity to provide documentation to support its claim that no gross retail or use taxes were owed to the Department of Revenue. However, taxpayer had kept incomplete records from the time of the merger until the audit, and was unable to locate invoices and exemption certificates. The Department issued its proposed assessment of use tax liability for the years at issue, and taxpayer protested. Protest review on numerous occasions over a lengthy period of time attempted to obtain information from taxpayer. The Hearing Officer assigned to the protest also gave taxpayer ample opportunity to provide documents supporting its protest of the proposed assessment of Indiana gross retail and use taxes. Taxpayer did not provide such documentation and has had no further contact with any Department representative since filing its protest in November of 1999. Taxpayer has not responded to the Department's repeated requests for documents, and for taxpayer's appearance at a hearing on the protest. Additional facts will be added as necessary.

I. Gross Retail and Use Tax—Purchases

DISCUSSION

Taxpayer protests the gross retail and use tax assessment on purchases for its business. As discussed in the Statement of Facts *supra*, taxpayer has had ample opportunity to provide the necessary documentation supporting the protest of the proposed assessment of Indiana gross retail and use taxes. Taxpayer has also had ample opportunity to schedule a hearing on its protest. Taxpayer has neither provided the Department with documents, nor contacted the Hearing Officer to schedule a hearing on the protest.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "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 assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-1 through 6-2.5-3-7, 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." An exemption is provide in IC § 6-2.5-3-4 if "the property was acquired in a retail transaction and the state gross retail tax" was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a "person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;" therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4. In this case, taxpayer has not rebutted the presumption that it owes the state of Indiana the assessed gross retail and use taxes.

FINDING

Taxpayer's protest concerning the assessment of gross retail and use taxes on purchases where invoices and exemption certificates were not produced during the audit is denied.

II. Penalty—Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty on the assessment.

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 has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the 10% negligence penalty on the entire assessment is inappropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

01-20010081.LOF

LETTER OF FINDINGS NUMBER: 01-0081
Individual Income Tax
For The Period: 1996 through 1998

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. Income Tax: Residence/Domicile

Authority: IC 6-3-2-1(a); IC 6-3-1-12; 45 IAC 3.1-1-21; 45 IAC 3.1-1-22; State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

The taxpayers protest the proposed assessment of state income tax on earnings for 1996, 1997, and 1998.

II. Income Tax: Issuance of Proposed Assessments

Authority: IC 6-8.1-5-2

The taxpayers protest the proposed assessments issued on August 4, 2003, and September 19, 2000.

III. Tax Administration: Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayers protest the imposition of a 10% penalty.

STATEMENT OF FACTS

Taxpayers filed Form IT-40 PNR (Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return) for the years at issue. The taxpayers claim that they were non-residents, living and working in a foreign country (hereinafter country X), for the tax years at issue. More facts will be provided as needed below.

I. Income Tax: Residence/Domicile

DISCUSSION

The Indiana Code 6-3-2-1(a) states the following:

> Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every *resident* person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person. (*Emphasis added)*

The statutory definition of "Resident" can be found at IC 6-3-1-12:

> The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

Also of import is the Indiana Administrative Code. 45 IAC 3.1-1-21 states in part that an Indiana resident is "Any individual who was domiciled in Indiana during the taxable year" or "Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state...." Domicile is defined at 45 IAC 3.1-1-22. The definition notes "a person has only one domicile at a given time even though that person maintains more than one residence at that time." It goes on in pertinent part to note:

> Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.
>
> In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.
>
> The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case.

Finally, the Indiana Supreme Court weighed in on domicile in State Election Board v. Bayh, 521 N.E.2d 1313, 1318 (Ind. 1988), stating, "Intent and conduct must converge to establish a new domicile."

Turning to the taxpayers' arguments, they note the following. First, the taxpayers claim they were physically present in country "X" and that they were not present in Indiana the requisite number of days required under IC 6-3-1-12(b). Regarding their Indiana home, they explain that after they failed to sell it that they rented it out. Taxpayers state that they "properly reported the rental income on tax returns from this [the home] for the years 1996, 1997, and 1998." The taxpayers further explain that when the home did eventually sell, it was reported as "business property" and not a "sale of residence." With respect to their tax filings, the taxpayers note that they filed IT-40 PNR. The taxpayers state they filed Federal Form 2555, which contains the "Bona Fide Residence Test." According to the taxpayers, they had no intent to return to Indiana to live. They rented an apartment in country "X". They obtained International Drivers' licenses. They also state that they did not vote in Indiana during the years at issue. When their employer was sold to another company, the taxpayers returned to the United States.

The Department's position is that the taxpayers never lost their Indiana domicile, thus the taxpayers remained residents under Indiana Code 6-3-1-12(a). The taxpayers had Indiana Drivers' licenses for the periods of time at issue (in fact, one of the two taxpayers renewed his Indiana driver's license on December 30, 1997). The taxpayers respond that to "obtain [an] International Drivers License you must have a valid drivers license previously. Therefore, to keep valid International Drivers license taxpayers elected to keep their Indiana Drivers license." The Department also notes that on tax returns the taxpayers used Indiana addresses (P.O. Box addresses in Indiana for two of the years and an actual Indiana address for the other year). The taxpayers contend that the use of an Indiana "P.O. Box" was because the mail in the country they were living in was not as reliable as U.S. mail. The taxpayers also had W-2's that indicated Indiana wages. The taxpayers stated on their returns that those W-2's were incorrect/erroneous.

The taxpayers were assigned to live in foreign country "X" for three (3) years. The taxpayers claim that they "had no intent at the time of leaving Indiana to return to Indiana to live." The taxpayers further state the following:

> Taxpayers expected not only for the ["X"] stay to be extended, but to very probably be assigned to other parts of the world when ["X"] responsibilities were completed.

As 45 IAC 3.1-1-22 states, in pertinent part, "if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established." That is, the taxpayers had expected to "very probably" be assigned to yet another location in another part of the world, thus not establishing new domicile in country "X".

The facts, when viewed in their totality, show that the taxpayers did not lose their Indiana domicile—they had Indiana Drivers

licenses; they used Indiana addresses on tax returns; there were W-2's that indicated Indiana wages; they owned what they characterize as "investment property" in Indiana; the foreign work assignment in country "X" was for a period of time (i.e., three years—though, according to the taxpayers, they thought it might be extended longer) and the taxpayers expected to be assigned to yet another location after country "X"; and lastly, the fact that they did return to Indiana.

FINDING

The taxpayers' protest is denied.

II. Income Tax: Issuance of Proposed Assessments

DISCUSSION

The taxpayers also argue the following:

The Department issued Proposed Assessment for the year 1996 on August 4, 2003. This is long after the statute of limitations had passed. Taxpayer had received a prior proposed assessment for the year 1996.

And further:

[H]ow can it be considered valid when taxpayer receives two Proposed Assessments, almost three (3) years apart .....

The date issued for the two proposed assessments for 1996 were September 19, 2000, and August 4, 2003. Taxpayers' 1996 IT-40 PNR was mailed to the Department in January of 1998.

The statute at issue, IC 6-8.1-5-2, states in pertinent part "Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed ...."

Thus the September 19, 2000 proposed assessment would be within the statute. The August 4, 2003, one would not be.

FINDING

The taxpayers are sustained regarding the proposed assessment issued on August 4, 2003; they are denied regarding the proposed assessment issued on September 19, 2000.

III. Tax Administration: Penalty

DISCUSSION

The taxpayers protest 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 taxpayers state that they do not "believe that a valid dispute of alleged taxable income is willful negligence and believes the proposed penalty should be waived ...." Given the fact sensitive nature of the issue residence/domicile (*See supra* I.), the taxpayers' position was incorrect but not unreasonable.

FINDING

The taxpayers' protest is sustained.

DEPARTMENT OF STATE REVENUE

0420010100.LOF

LETTER OF FINDINGS NUMBER: 01-0100
Responsible Officer
Periods 1996 through 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.

ISSUES

I. Sales and Withholding Tax: Responsible Officer Liability

Authority: IC 6-2.5-9-3; IC 6-3-4-8; IC 6-8.1-5-1 (b); Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270, 273 (Ind.1995).

The taxpayer protests the proposed assessment of responsible officer liability for unpaid sales and withholding taxes.

STATEMENT OF FACTS

The taxpayer was the president of a company (hereinafter referred to as Company X). On Company X's "Business Tax Application Form" (i.e., Form BT-1) the taxpayer is listed as "President."

In addition, the BT-1 form asks who is the "Person responsible for filing tax forms" for Company X—the taxpayer named himself as that person. At the bottom of the BT-1, below the signature line (which the taxpayer signed as "President"), the following language can be found:

The partners or corporate officers are each *personally*, jointly and severally liable for the sales tax collected and the income tax withheld. The taxes are trust fund taxes and not discharged in bankruptcy proceedings. (*Emphasis added*)

I. Sales and Withholding Tax: Responsible Officer Liability

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

The proposed withholding taxes were assessed against taxpayer pursuant to IC 6-3-4-8. Also of import is Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270, 273 (Ind.1995), which states "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid."

Finally, the Indiana Department of Revenue's "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." IC 6-8.1-5-1(b). That statute also states the burden of proof rests with the taxpayer.

The taxpayer makes a number of arguments: (1) the taxpayer disagrees with when the proposed assessment period should have ended; (2) the taxpayer contends that he did not have a remitting duty after a certain date; and (3) the taxpayer disagrees with the Department's proposed assessment amounts.

(1) The taxpayer argues that the business, which was administratively dissolved, actually stopped doing business in late November/early December of 1997. In support of that argument, the taxpayer provided copies of Company X's bank records for November and December of 1997. The records for December show a series of overdraft fees and a nominal balance, indicating that the business had in fact wound down.

(2) The taxpayer next states that he in fact left the business in August 1997. No evidence to that end was presented (e.g., company minutes; copy of a resignation letter). In correspondence with the Department the taxpayer stated that he "left the business in August 1997." During the hearing the taxpayer repeated that he left the company in August 1997.

(3) Finally, the taxpayer takes issue with the amounts assessed by the Department. As he states in a letter,

The tax liability figures provided to me are totally unrealistic. The business … closed prior to Thanksgiving in 1997 and during the last five months, we failed to earn enough money to pay basic costs and in fact were able to only meet payroll for the employees that did not share in ownership.

And in another letter the taxpayer stated that he disputed the amounts for the periods of time April 1996 through November 1997. The Department early on informed the taxpayer the following:

The liabilities for the months of April 1996 through June 1997 are based on returns actually filed. These returns were received by the department without the appropriate amount of tax. The amounts of tax due stated on these returns are deemed correct by the department unless documentation can be presented to the contrary.

And further in the same letter the Department stated:

The liabilities for the months of July 1997 and thereafter are based upon the best information available. If you wish to file sales tax returns for these months at this time, the department will consider them, and (subject to verification) possibly adjust the liabilities accordingly.

Since the taxpayer disputes the proposed assessment amounts, the Department has extended time for the taxpayer to provide his calculations and photocopies of relevant source documents that buttress and support those calculations. The time period elapsed without the taxpayer submitting his documentation.

FINDING

The taxpayer's protest is denied with regards to issues (2) and (3). With regards to issue (1), the bank records do indicate that the business closed at the end of November 1997, and thus the taxpayer is sustained on that issue.

DEPARTMENT OF STATE REVENUE

04-20010147.LOF

LETTER OF FINDINGS NUMBER: 01-0147
Responsible Officer
Periods 1996 through 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. Sales Tax: Responsible Officer Liability

Authority: IC 6-2.5-9-3; IC 6-8.1-5-1 (b); Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270, 273 (Ind.1995).

The taxpayer protests the proposed assessment of responsible officer liability for unpaid sales taxes.

STATEMENT OF FACTS

The taxpayer owned 13% of the stock of an auto repair business (hereinafter referred to as "Company X"), and was a corporate officer. In an affidavit, the taxpayer describes his duties as doing the mechanical work necessary to repair customer cars. Additional facts will be provided below.

I. Sales Tax: Responsible Officer Liability

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

Also of import is Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270, 273 (Ind.1995), which states "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid."

Finally, the Indiana Department of Revenue's "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." IC 6-8.1-5-1(b). That statute also states the burden of proof rests with the taxpayer.

The taxpayer argues that his duties were to fix and repair cars, and that he would only occasionally accept a payment from a customer (and then only if no one was in the office). When he did accept payment from customers, he states he would put the money in the cash register. He states that the President of Company X was the person who in fact held the managerial duties, and that the President of Company X was the "person with control of the checkbook and wrote the majority of the checks. He [the President] had access to the checkbook. He would take the checkbook home with him at night."

The taxpayer also supplied supporting documentation to show that he did not have check writing responsibilities or office duties.

In Safayan the Indiana Supreme Court considered "whether the person actually exercised control over the finances of the business." Id. at 273. From the facts presented at hearing, it is apparent that the taxpayer did not have actual control over the finances of the company.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0120020139.LOF

LETTER OF FINDINGS NUMBER: 02-0139
Adjusted Gross Income Tax
For the Tax Years 1994-1999

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. Adjusted Gross Income Tax-Calculation of Tax

Authority: IC 6-3-2-1, IC 6-3-1-3.5.

The taxpayer protests the calculation of her adjusted gross income tax for 1999.

STATEMENT OF FACTS

After an investigation, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional

adjusted gross income tax, interest, and penalty for the tax years 1994 through 1999. The taxpayer first protested all the assessments. She later withdrew her protests to all but the 1999 assessment. This Letter of Findings is based upon the documentation in the file.

I. Adjusted Gross Income Tax-Calculation of Tax

DISCUSSION

Indiana imposes an adjusted gross income tax on residents. IC 6-3-2-1. Pursuant to Indiana adjusted gross income tax is calculated by starting with the federal adjusted gross income and making certain adjustments. IC 6-3-1-3.5. The taxpayer submitted documentation indicating that the Internal Revenue Service amended her federal adjusted gross income for 1999. The amended 1999 federal adjusted gross income must be used as the basis for calculating her 1999 Indiana adjusted gross income tax.

FINDING

The taxpayer's protest is sustained. Her 1999 Indiana adjusted gross income tax will be recalculated based upon the amended 1999 federal adjusted gross income tax.

DEPARTMENT OF STATE REVENUE

0220020242.LOF

LETTER OF FINDINGS: 02-0242
Indiana Gross Income 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.

ISSUES

I. Mutual Fund Commissions Received 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 1.1-1-2(b)(1); 45 IAC 1.1-1-2(b)(2); 45 IAC 1.1-6-10.

Taxpayer argues that it was not subject to Indiana gross income tax on commission payments attributable to the sale of mutual fund shares to Indiana customers.

II. 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 reasonable cause for initially believing that the commission payments it received were not subject to Indiana gross income tax and that – as a result – the ten-percent negligence penalty should be abated in its entirety.

STATEMENT OF FACTS

Taxpayer is an out-of-state licensed mutual fund broker registered with the Securities and Exchange Commission (SEC) to sell mutual fund shares. However, it does not itself sell mutual fund shares to individual customers but operates through a network of independent agents who deal directly with the individual customers.

The parties' mutual fund business works like this. There are five parties to each sale of a mutual fund share: 1. the Indiana customer; 2. the independent agent; 3; the insurance company 4; taxpayer (mutual fund broker and licensee); and 5; the agency/broker. The independent agent sells a mutual fund share to an Indiana customer. The customer sends the money to the insurance company which has the capacity to assemble and manage the mutual fund. The insurance company sends a portion of the money – in the form of a commission – to taxpayer which, by virtue of its SEC registration, has the authority to market the mutual fund share. Taxpayer keeps one portion of the commission for itself but sends another portion of the commission amount to the agency/broker. The agency/broker – which deals with the individual independent agents – keeps a portion of the commission but also pays a portion of that amount to the independent agent who originated the sale.

The Department of Revenue conducted an audit review of taxpayer's 1998, 1999, and 2000 business records. The audit determined that taxpayer should have been paying Indiana gross income tax on the commissions it received from the insurance company including that portion of the commissions which it did not retain but which it paid over to the agency/broker. Accordingly, the audit concluded that it owed additional tax and assessed the amounts accordingly.

Taxpayer disagreed with the audit's determination on the ground that the commissions – that portion paid over to the agency/broker and thence to the independent agents – was "received in an agency capacity and should be excluded from [taxpayer's] gross income." Taxpayer submitted a protest setting forth that argument, an administrative hearing was conducted during which taxpayer's representatives further explained the basis for the protest, and this Letter of Findings results.

DISCUSSION

I. Mutual Fund Commissions Received in an Agency Capacity – Gross Income Tax.

Taxpayer's position is that it is not subject to gross income tax on that portion of the commissions it receives from the insurance company but pays over to the agency/broker and the independent agents. To illustrate; an Indiana customer purchases a mutual fund share and pays $100 to the insurance company. The insurance company retains $70 of that amount and pays $30 to taxpayer as a cumulative, three-stage commission amount. Taxpayer receives the $30, keeps $10 for itself, and pays $20 to the agency/broker. The agency/broker receives the $20, keeps $15 for itself – its own commission – and pays $5 to the independent agent who originally sold the mutual fund share to the Indiana customer.

Originally, taxpayer reported none of these commissions – the $30 cited above – as gross income. However, taxpayer now admits that the commission amount which it retains for itself – the $10 cited above – should have been reported as subject to gross income tax. However, it argues that not *all* of the commission amount it receives from the insurance company is part of its gross income. Taxpayer maintains that the amount which it pays over to the agency/broker – $20 in the example above – was received in an agency capacity and should not be included in its gross income.

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, 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 while 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 the 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 found that an agency relationship required consent by the principal, acceptance and authority by the agent, and control of the agent by the principal.

Taxpayer has provided a copy of a "selling agreement." The "selling agreement" sets out the relationship between the insurance company, taxpayer, and the agency/broker. These three parties are collectively referred to as the "selling entities." Taxpayer's contention is that the commission money which it receives from the insurance company and then forwards to the agency/broker is received in an agency capacity for gross income tax purposes. Taxpayer points to the terms of the "selling agreement" as supporting this assertion. In particular, taxpayer points to that portion of the "selling agreement" labeled "compensation." That section of the agreement states, "[Insurance company], through [taxpayer], will remit to [agency broker] compensation as set forth the applicable Compensation Schedule hereto, which payments or termination thereof shall be governed by the administrative rules established by the administrative rules established by [insurance company] in its sole discretion."

It is apparent that taxpayer is required to forward to the agency/broker certain commissions earned from the sale of the mutual fund shares. Clearly, taxpayer would be in violation of the parties' agreement if taxpayer were to unilaterally decide to retain for itself the commissions due to agency/broker. It is also clear that the insurance company – and not the taxpayer – has the "sole discretion" to establish the "administrative rules" governing the procedures by which the commission payments are forwarded to the agency/broker. However, taxpayer falls far short of establishing that the commission payments intended for the agency/broker – and thence to the individual, independent agents – were received while it was acting in an agency capacity for the insurance company.

The regulation defining the agency relationship has two components. The first requires that the taxpayer, as the putative agent, establish that is under the control of the principal and that the parties intend to create an agency relationship by that control. 45 IAC 1.1-1-2(b)(1). Taxpayer has provided nothing which establishes that taxpayer (the putative agent) and the insurance company (the putative principal) intended to create an agency/principal relationship and that these two parties were anything more that two distinct business entities which entered into an agreement which made it possible for the insurance company to sell shares of its mutual fund to Indiana customers. The argument fails because taxpayer has introduced nothing which demonstrates that taxpayer was under the control of the insurance company or that the insurance company made itself liable for the taxpayer's business decisions.

Even if it could be established that taxpayer and the insurance company intended to create an agent/principal relationship, the regulation defining that relationship for gross income tax purposes has two components. The second requirement is that the taxpayer not have any right to money received in the transaction but that the income received from the principal "pass through" to the third party. 45 IAC 1.1-1-2(b)(2). The Indiana Tax Court has described that requirement as follows.

> The lesson of Ice Service, Associated Telephone, and Western Adjustment, as discussed in UGL I, is that there is no gross income tax liability for an agent when: 1) the agent, acting in an agency capacity, receives income in which the agent has no right, title, or interest, and; 2) the agent subsequently "passes through" the income to a principal or a third party. Universal Group, 642 N.E.2d 553, 555-56.

Clearly, all the parties to the "selling agreement" intended that the insurance company would pay commissions to the sellers when shares of its mutual funds were sold to Indiana customers. The "selling agreement" also makes it plain that the commissions would be paid "through" the taxpayer. However, there is nothing which establishes that taxpayer had "no right, title, or interest" in the commissions which were owed to the agency/broker. Taxpayer owed the agency/broker the commission payments; however, taxpayer at some point took control over those amounts, and – however briefly – exercised control and dominion over those same amounts.

In sum, taxpayer's argument fails because there is no indication that the insurance company and taxpayer ever intended to create an agency/principal relationship and because there is no indication that the commissions passed through to the agency/broker without taxpayer having some – albeit transitory – degree of beneficial interest in those amounts. "To be outside the gross income tax, there must be *both* and agency and pass through, actual or constructive." Universal Group, 642 N.E.2d at 557 (*Emphasis added*).

FINDING

Taxpayer's protest is respectfully denied.

II. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer failed to report any of the commission income it received from the insurance company as subject to gross income tax. Taxpayer argues that it had good cause for failing to report the commission income and that its decision not to report the income was 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..."

Taxpayer has set forth a facially valid argument that it was not subject to gross income on the commissions that it forwarded to the agency/broker and the individual, independent agents. However, taxpayer's apparent determination that it did not owe gross income tax on *any* of the commissions is entirely unwarranted. The decision that it did not owe gross income tax on its own portion of the commissions attributable to the sale of mutual fund shares to Indiana customers 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 respectfully denied.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS: 02-0308
Indiana Corporate Income Tax
For 1998 and 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Applicability of the Throw-Back Rule – Adjusted Gross Income Tax.

Authority: 15 U.S.C.S. § 381; 15 U.S.C.S. § 381(a), (c); 15 U.S.C.S. § 381(a)(1); 15 U.S.C.S. § 381(c); 15 U.S.C.S. §§ 381 to 384; Public Law 86-272; IC 6-3-1-25; IC 6-3-2-2; IC 6-3-2-2(e); IC 6-3-2-2(n); IC 6-3-2-2(n)(1); IC 6-3-2-2(n)(2); Wisconsin Dept. of

Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992); First Chicago NBD Corp. v. Dept. of State Revenue, 708 N.E.2d 631 (Ind. Tax Ct. 1999); Kennametal, Inc. v. Commissioner of Revenue, 686 N.E.2d 436 (Mass. 1997); 45 IAC 3.1-1-53(5); 45 IAC 3.1-1-64; Jerome R. Hellerstein and Walter Hellerstein, State and Local Taxation: Cases and Materials (7th ed. 2001); Personal Income Tax – Nexus Standards (Ohio Dept. of Taxation, Sept. 2001).

Taxpayer argues that the Department of Revenue (Department) erred when it determined that money earned from sales of its truck parts to out-of-state customers was subject to Indiana's adjusted gross income tax.

II. 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 is entitled to an abatement of the ten-percent negligence penalty. Taxpayer concludes that the assessments of additional tax, upon which the penalty is based, were the results of the Department's own incorrect application of the throw-back rule.

STATEMENT OF FACTS

Taxpayer is an Indiana business which sells truck parts. Taxpayer sells truck parts to Indiana customers, to out-of-state customers, and to customers outside the United States. The Department conducted a review of taxpayer's business records and tax returns determining that the receipts obtained from sales to out-of-state customers should be "thrown back" to Indiana. This decision resulted in the assessment of additional corporate income tax. Taxpayer disagreed with the audit's decision regarding the throw-back sales along with the consequent assessment of additional corporate income tax; taxpayer submitted a protest to that effect. Two administrative hearings were conducted during which taxpayer explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Applicability of the Throw-Back Rule – Adjusted Gross Income Tax.

The audit concluded that the receipts taxpayer obtained from sales to its out-of-state and foreign customers should be included in the numerator of the sales factor. The audit made this decision because it found that all of taxpayer's property, inventory, and payroll were located in Indiana and because taxpayer "do[es] not file tax returns in any other state." Taxpayer disagrees maintaining that the receipts earned from the out-of-state and foreign customers should not have been thrown-back to Indiana.

The audit determined that, for purposes of calculating taxpayer's Indiana tax liability, the receipts from sales to out-of-state customers and foreign customers should be thrown back to Indiana because the sales were made within jurisdictions where the taxpayer was not subject to another jurisdiction's income tax. The audit based its decision on 45 IAC 3.1-1-53(5) which states that "[i]f the taxpayer is not taxable in the state of the purchaser, the sale is attributed to [Indiana] if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state." Such sales are designated as "throw-back" sales. Id.

The basic rule is found at IC 6-3-2-2. IC 6-3-2-2(e) provides that "[s]ales of tangible personal property are in this state if... (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and... (B) the taxpayer is not taxable in the state of the purchaser." IC 6-3-2-2(n) provides that "[f]or purposes of allocation and apportionment of income... a taxpayer is taxable in another state if: (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not." Therefore, in order to properly attribute income to a foreign state, taxpayer must show that one of the taxes listed in IC 6-3-2-2(n)(1) has been levied against him or that the state has the jurisdiction to impose a net income tax regardless of "whether, in fact, the state does or does not." Id.

Therefore, whether or not Indiana can tax receipts an Indiana resident has received from non-Indiana customers depends on whether another jurisdiction subjects that same taxpayer to that foreign jurisdiction's own income tax. However, Congress passed a law which restricts the states' authority to tax income received from interstate business activities. The law is codified at 15 U.S.C.S. §§ 381 to 384 but is generally referred to as Public Law 86-272. Public Law 86-272 prohibits states from imposing a net income tax on an out-of-state taxpayer if that foreign taxpayer's only business activity within the state is the solicitation of sales. A state may not impose an income tax on income derived from business activities within that state unless those in-state activities exceed the "mere solicitation" of sales. 15 U.S.C.S. § 381(a), (c). The effect of the throw-back rule is to revert sales receipts back to the state from where the goods were shipped in those instances where 15 U.S.C.S. § 381 deprives the purchaser's own home state of the power to impose a net income tax. 45 IAC 3.1-1-64. In effect, 15 U.S.C.S. § 381 permits Indiana to tax out-of-state business, without violating the Commerce Clause and without the possibility of subjecting taxpayer to double taxation, because Indiana's right to tax those out-of-state activities is derivative of the foreign state's own taxing authority. In every sales transaction, at least one state has the authority to tax the receipts obtained from the sale of the tangible personal property; if the state wherein the sale occurred is forbidden to do so by 15 U.S.C.S. § 381, then the income is "thrown-back" to the originating state.

Taxpayer's argument is based on the premise that its activities outside Indiana exceed the solicitation activities described in 15 U.S.C.S. § 381(a). 15 U.S.C.S. § 381(a)(1) confers immunity from state income taxes on any taxpayer whose "only business activities" in that state consists of "solicitation of orders" for interstate sales. Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447, 2453 (1992). If taxpayer's activity in a particular state consists of more than the "solicitation of sales," then Indiana may not tax the income received from customers located within that particular foreign state.

Taxpayer does business by means of independent agents in numerous foreign states. According to taxpayer, its agents conduct the following activities:

The independent agents, solicit, secure, and accept orders for truck parts. According to taxpayer, the agent has the final authority to "accept" the orders; taxpayer's Indiana office will only intervene in an order acceptance if there has been a previous "problem with receivables."

The independent agents handle customer complaints.

The independent agents "get involved with collection issues if a customer is delinquent in paying its invoices."

The independent agents are involved with issues stemming from defective merchandise. The independent agents are authorized see that the defective item is repaired or returned. In addition, the independent agents become involved if a customer credit needs to be issued to the complaining customer.

In addition, taxpayer has provided correspondence from a number of its out-of-state independent sales agents to bolster its argument that the activities of those agents exceed the bounds of "mere solicitation." The correspondence describes how the agents deal with certain credit issues, provide customers with sales literature, become involved with delinquent customers, answer customer complaints, and act as taxpayer's "eyes, ears, and arms in [the salesperson's] defined territory." As one of the sales agents puts it, "We contact customers to sell [taxpayer's] products and perform all detail tasks necessary to complete the sale and continue the relationship successfully."

Public Law 86-272 does not define what constitutes "solicitation of orders." The Supreme Court concluded that the solicitation of orders "covers more than what is strictly essential to making request for purchases." Wrigley 112 S.Ct. at 2456. As such, some activities within the state may involve more than a direct request for the purchase of goods but, nonetheless, are still protected from state tax under Public Law 86-272. However, the Court in Wrigley drew a "clear line... between those activities that are entirely ancillary to requests for purchase--those that serve no independent business function apart from their connection to the soliciting of orders--and those activities that the company would have reason to engage in anyway but chooses to allocate to its in-state sales force." Id. Nevertheless, the Court also stated that "employing salesmen to repair or service the company's products is not part of the 'solicitation of orders,' since there is good reason to get that done whether or the not the company has a sales force. Repair and servicing may help to increase purchases; but it is not ancillary to requesting purchases, and cannot be converted into 'solicitation' by merely being assigned to salesmen." Id.

In addition, the Wrigley Court also held that Public Law 86-272 could protect any activity from state taxation if the activity qualified under a de minimis exception. Id. at 2457-58. To qualify for this de minimis exception, the court must consider the activities of the taxpayer within the state as a whole. Id. Specifically, "[W]hether in-state activity other than 'solicitation of orders' is sufficiently de minimis to avoid loss of the tax immunity conferred by [Public Law 86-272] depends on whether that activity constitutes a nontrivial additional connection with the taxing State." Id. at 2458.

There is no bright-line test to determine whether taxpayer's activities within the foreign state are entirely ancillary to the solicitation of orders from those activities that serve an independent business function. Id. at 2456-57. There is no bright-line test to determine whether taxpayer's activities – other than the solicitation of sales – come within the definition of "de minimis." Id. at 2458. The activities of its independent agents – handling complaints, dealing with credit problems, resolving problems stemming from defective merchandise – occur along a continuum between those activities which are plainly related to the solicitation of orders and those activities which are clearly ancillary to solicitation. "In the end, business activities conducted with a State must be considered on an individual basis." Kennametal, Inc. v. Commissioner of Revenue, 686 N.E.2d 436, 441 (Mass. 1997).

Taxpayer has provided information which demonstrates that its independent agents perform activities which are outside the textbook definition of "solicitation." However, the Department is unable to conclude that these activities – when considered as a whole – are such that these activities would constitute a waiver of Public Law 86-272 immunity and subject taxpayer to another state's taxing authority. Some of the activities noted by taxpayer – providing literature and acting as the taxpayer's "eyes and ears" – are activities closely related to the solicitation of customer sales. Other activities such as resolving problems related to defective merchandise or billing and shipping problems are either closely related to the solicitation of the original sale or are sufficiently de minimis that taxpayer could reasonably argue that it is not subject to that state's income tax.

In addition, although it is not dispositive on the question, it should be noted that there is no indication that taxpayer has been subjected to any other state's net income tax. The Indiana law states that Indiana may tax receipts from out-of-state sales if the foreign "state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not." IC 6-3-2-2(n)(2). However, in determining whether Indiana may or may not throw back these sales receipts, it is noteworthy that no other state has determined that taxpayer's activities with that foreign state abrogate taxpayer's Public Law 86-272 immunity. It may reasonably assumed that a foreign state – having presumably superior knowledge of taxpayer's activity within that particular state – is in a better position to judge whether taxpayer is subject to that state's own net income tax.

The audit was correct in concluding that the receipts from these sales should be thrown back to Indiana.

A. Ohio Sales Income.

Taxpayer maintains that there is "further support for nexus with Ohio." Taxpayer argues that its independent representative's

activities inside Ohio bring taxpayer within the orbit of Ohio's income tax scheme. To that end, taxpayer recites from Ohio's "Information Release" stating that an entity – such as taxpayer – "does not have protection from [Public Law] 86-272 if the following activities are conducted in Ohio: having a sales representative or independent contractor conducting activities to establish or maintain the market for the entity; making repairs to the items sold; resolving customer complaints; accepting orders; handling collections; and issuing credits."

The Department defers to Ohio's interpretation of its own income tax laws. However, as the Ohio's Information Release states, "The limitations and extent of [Ohio's] jurisdiction to impose tax is an evolving area and this information release is not intended to be an all encompassing or all inclusive description of this subject." Personal Income Tax – Nexus Standards (Ohio Dept. of Taxation, Sept. 2001).

The Department agrees that taxpayer – by virtue of its independent agents – may bring itself within Ohio's taxing authority. However, a determination of whether taxpayer is or is not subject to that state's net income tax does not hinge on whether taxpayer's independent agents sell its truck parts to Ohio customers. "The immunity statute [Public Law 86-272] extends to the use of sales representatives, that is persons who are not employees but are independent contractors soliciting orders or making sales of tangible property for the out-of-state vendor." Jerome R. Hellerstein and Walter Hellerstein, State and Local Taxation: Cases and Materials 385 (7th ed. 2001).

Ohio's taxing authority is circumscribed by the same Public Law 86-272 limitations as any other state. In order for Ohio to tax these receipts, it must demonstrate that taxpayer's activities within the state exceed the solicitation of sales, that these activities are not simply ancillary to the sales solicitations, and that the activities go beyond the de minimis standard. There is little indication that taxpayer's Ohio activity exceeds these standards. Again, it is noteworthy that Ohio's taxing authority would seem to agree because there is no evidence that Ohio has deemed these receipts subject to Ohio's net income tax. There seems little likelihood that Ohio would have the authority to subject taxpayer to Ohio's income tax; taxpayer's Ohio sales receipts were correctly "thrown-back" to Indiana pursuant to IC 6-3-2-2.

B. Michigan Sales Income.

Taxpayer argues that its Michigan sales income should not have been thrown back to Indiana because it was subject to Michigan's Single Business Tax (MSBT). Accordingly, taxpayer argues that it "has independent and additional support for nexus with the State of Michigan."

The Department must disagree with taxpayer's conclusion that imposition – or the likelihood of imposition – of the MSBT precludes Indiana from throwing back its Michigan sourced sales receipts. IC 6-3-2-2(n) precludes the state from throwing back sales receipts in those states in which "taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege for doing business, or a corporate stock tax." As the Indiana Tax Court has stated, "The MSBT is a type of value added tax VAT." First Chicago NBD Corp. v. Dept. of State Revenue, 708 N.E.2d 631, 632 (Ind. Tax Ct. 1999). "Although taxable income is one portion of the tax base formula, *the MSBT is not measured by or based on income*." Id. at 634 (*Emphasis added*). "The law [Public Law 86-272] applies only to net income taxes... and does not apply to the general business of taxes of states that do not employ a net income measure, such as Michigan's Single Business Tax, which is a form of value-added tax." Hellerstein & Hellerstein at 389.

The Michigan activities of taxpayer's independent representatives may subject taxpayer to the MSBT, but that fact is irrelevant in determining whether Indiana may throw-back taxpayer's Michigan sourced sales receipts. The Michigan sales were correctly "thrown-back" to Indiana pursuant to IC 6-3-2-2.

C. Foreign Sales Income.

Taxpayer maintains that its sales receipts from Puerto Rico, Ecuador, and Mexico should not be thrown back to Indiana because, "P.L. 86-272 does not protect these sales from taxation in those countries."

For the purposes of determining whether a taxpayer is subject to the taxing jurisdiction of another state pursuant to 45 IAC 3.1-1-64, "[t]he term 'state' means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof." IC 6-3-1-25. Accordingly, the jurisdictions to which taxpayer here refers – Puerto Rico, Ecuador, and Mexico – fall within the definition of "state," and the receipts obtained from those three jurisdictions are properly considered as potentially subject to the throw-back rule.

Taxpayer may be correct in its assertion that Public Law 86-275 does not prevent a foreign jurisdiction from levying an income tax on the receipts taxpayer obtained from customers within those foreign jurisdictions. However, taxpayer has done nothing to demonstrate that it is subject to a net income tax in Puerto Rico, Ecuador, or Mexico. Accordingly, under IC 6-3-2-2, the receipts taxpayer obtained from its customers in Puerto Rico, Ecuador, and Mexico were properly thrown-back to Indiana.

FINDING

Taxpayer's protest is respectfully denied.

II. Abatement of the Ten-Percent Negligence Penalty.

According to taxpayer, it "had a position of substantial authority for not reflecting sales as 100 [percent] Indiana when the original returns were filed." As a result of the Department's own "incorrect application of the throw back rule, penalties should not

be assessed."

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 respectfully disagrees with taxpayer's argument that it was entirely justified in not reporting *any* of its out-of-state income and that its decision to do so was based upon "ordinary business care." The Department must decline the opportunity to abate the consequent penalty.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420020340.LOF

LETTER OF FINDINGS NUMBER: 02-0340
Sales and Use Tax
For the 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 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 and Use Tax- Lump Sum Contracts

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-3-2 (a), IC 6-2.5-1-1, 45 IAC 2.2-3-9 (e), 45 IAC 2.2-3-7.

The taxpayer protests the assessment of use tax on materials incorporated into its real property.

II. Sales and UseTax- Computer Software

Authority: IC 6-2.5-3-2 (a), Sales and Use Tax Information Bulletin 8, issued February 9, 1990.

The taxpayer protests the assessment of use tax on certain computer software.

III. Sales and Use Tax-Payment of Tax to Another State

Authority: IC 6-2.5-3-2(a), Sales Tax Information Bulletin #31, Section II-B, issued January 31, 1986.

The taxpayer protests the assessment of Indiana use tax on a sign after it had paid Kentucky sales tax.

IV. Tax Administration- 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 a professional limited liability corporation that built a new surgical facility in Indiana. After an audit, the Indiana Department of Revenue hereinafter referred to as the "department," assessed additional sales and use tax for the tax period 1999-2000. The taxpayer protested a portion of the assessment and penalty. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Lump Sum Contracts

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).

Indiana imposes a sales tax on retail sales of tangible personal property in Indiana. IC 6-2.5-2-1. Indiana also imposes a complementary use tax on tangible personal property stored, used, or consumed in Indiana when the sales tax was not paid at the time of purchase. IC 6-2.5-3-2 (a). The department assessed use tax on the taxpayer's use of several items of tangible personal property used in the construction of the taxpayer's facility. The taxpayer protested these assessments.

Regulations clarify the applicability of sales and use tax to construction and improvements to real estate.

45 IAC 2.2-3-9 (e) provides:

Disposition subject to the use tax. With respect to construction materials a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of revenue when he disposes of

such property in the following manner:

(1) He converts the construction material into realty on land he owns and then sells the improved real estate;

(2) He utilizes the construction material for his own benefit; or

(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

For the purposes of the above Regulation, 45 IAC 2.2-3-7 defines contractor and construction material as follows:

(a) Contractors. For purposes of this regulation [45 IAC 2.2] "contractor" means 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 n building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction.

(b) Construction material. For purposes of the regulation [45 IAC 2.2] "construction material' means any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of the land on which such facility or structure is situated.

The department assessed use tax on a light signaling system; wire and peripheral equipment used to support the computers, telephones, time clocks, and voice-call system; an illuminated outdoor sign; a fire alarm system; a security system; and venetian blinds. If the department could segregate the actual cost of the tangible personal property from the cost of the labor, the tax was only assessed on the value of the tangible personal property. If the amounts could not be segregated, the department assessed tax on the total value of the invoice. The department considered each of these transactions the sale of tangible personal property subject to either the sales tax or the use tax. The taxpayer protested these assessments contending that they were lump sum contracts for improvements to real estate and the contractors owed the sales tax on the tangible personal property.

Installations including an extensive amount of wiring in the walls of real estate become part of the real estate itself and cannot be removed without significant damage to the real estate. The taxpayer provided substantial evidence that the contracts for the installation of the light signaling system; wire and peripheral equipment used to support the computers, telephones, time clocks, and voice-call system; fire alarm system; and security system were lump sum contracts for the incorporation into and improvement of real estate. Therefore, the contractors are responsible for paying the sales or use tax on the purchases of these items of tangible personal property rather than the taxpayer.

The illuminated outdoor sign and venetian blinds are, however, different. After installation, they retain their character as personal property. They can also be removed doing little damage to the real estate. The department has consistently held that the installation of such items is the sale of tangible personal property. The taxpayer owes the use tax on the amount of the materials in the contract for installation of the sign. The venetian blinds were installed for a single charge with no breakdown of labor and materials. As such, this transaction constitutes a unitary transaction. The use tax is due on the total cost of the unitary transaction for the installation of the venetian blinds. IC 6-2.5-1-1.

FINDING

The taxpayer's protest to the assessments on the venetian blinds and out-door sign is denied. The remainder of the protest is sustained.

II. Sales and Use Tax- Computer Software

DISCUSSION

The department also assessed use tax on the taxpayer's use of certain computer software equipment pursuant to IC 6-2.5-3-2 (a). The taxpayer also protested this assessment. The computer software in question is advertised on the internet to medical offices and surgery centers. It is a specialty, highly customized software with a very broad range of applications. The taxpayer argues that the $43,000.00 cost of the adaptations evidences the high degree of customization necessary to make the software work properly for the taxpayer.

Sales and Use Tax Information Bulletin 8, issued February 9, 1990, clarifies the application of the sales and use tax to computer software as follows:

(t)ransactions involving computer software are not subject to Indiana Sales or Use tax provided the software is in the form of a custom program specifically designed for the purchaser.

Information Bulletin 8 also states:

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 computer software in question was not designed specifically for the taxpayer. Rather, it is marketed to medical and surgery facilities across the nation. The department agrees that the software required substantial adaptations before it could be used by the taxpayer. Those adaptations, however, do not change the basic character of the software from taxable canned software to exempt software specifically designed for the taxpayer.

FINDING

The taxpayer's protest is denied.

III. Sales and Use Tax-Payment of Tax to Another State

DISCUSSION

The taxpayer protests the assessment of use tax on the use of an illuminated outdoor sign with pole. Previously in this Letter of Findings, the department denied the taxpayer's protest to the assessment of use tax on the outdoor sign as property installed pursuant to a lump sum contract for improvement to realty. Alternatively, the taxpayer contends that it does not owe the Indiana use tax because it paid the Kentucky sales tax on the sign. Alternatively, the taxpayer argues that it deserves a credit for the Kentucky sales tax paid.

The taxpayer accepted delivery of the sign in Indiana and the sale was completed here. Therefore, the retail transaction is subject to the Indiana sales and use tax rather than the Kentucky sales tax. The use of the items in Indiana is subject to the Indiana use tax pursuant to IC 6-2.5-3-2(a). The Indiana use tax is the tax that is properly due and owing.

The department's position concerning credit for sales taxes paid to other jurisdictions is clearly stated in Sales Tax Information Bulletin #31, Section II-B, issued January 31, 1986 as follows:

A person is entitled to a credit against the Indiana use tax which is equal to the amount of sales tax, purchase tax, or use tax properly and validly paid to another state, territory, or jurisdiction of the United States for the acquisition of a particular item of property. No credit will be allowed if the tax was paid in error to another state and was not due that state.

In this case, the taxpayer owes Indiana use tax on the use of the sign and improperly paid the sales tax to Kentucky. Therefore, the taxpayer does not receive a credit for the sales tax paid to Kentucky.

FINDING

The taxpayer's protest is denied.

IV. Tax Administration- Penalty

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.

The taxpayer failed to pay sales tax or self assess use tax on such clearly taxable items as office supplies and consumable surgical supplies. The taxpayer's inattention to its duty to pay these taxes constitutes negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

11-20020374.LOF
11-20020375.LOF
11-20020376.LOF
11-20020377.LOF

LETTER OF FINDINGS NUMBERS: 02-0374, 02-0375, 02-0376, 02-0377
Marion County Supplemental Auto Rental Excise Tax
For the Years 1998, 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 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. Marion County Supplemental Auto Rental Excise Tax

Authority: IC 6-6-9.7-7

Taxpayer protests the imposition of Marion County Supplemental Auto Rental Excise Tax for 1998.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the penalty for negligence.

STATEMENT OF FACTS

Taxpayer is a business engaged in renting cars, primarily for insurance replacement for stolen and damaged vehicles. Some of taxpayer's business was conducted from rental locations in Marion County. For taxable years 1998, 1999 and 2000, taxpayer did not report any rentals as subject to Marion County Supplemental Auto Excise Tax. Taxpayer was audited for the taxable years in question. During the audit, taxpayer was unable to substantiate to the auditor's satisfaction that several rentals were made for purposes of replacing cars subject to damage or theft. Thus, Department assessed additional tax and penalties with respect to the tax in 1998, 1999 and 2000. Taxpayer has protested the imposition of tax for 1998, and the penalties for all three years

I. Marion County Supplemental Auto Rental Excise Tax

DISCUSSION

Taxpayer protests the imposition of Marion County Supplemental Auto Rental Excise Tax for taxable year 1998. Under Ind. Code § 6-6-9.7-7, counties meeting the criteria set forth therein are permitted to implement a county supplemental auto rental excise tax for short-term (less than 30 days) rentals of automobiles. In 1997, the Marion County City-County Council implemented such a tax. Taxpayer claims that the imposition of the tax for 1998 was improper, due to the fact that the state rental excise tax forms for that year did not contain an entry for the new Marion County tax. Taxpayer has not provided additional information to substantiate that the tax was not in effect for the periods in question.

FINDING

Taxpayer's protest is denied.

II. Tax Administration-Penalty

Taxpayer also protests the imposition of a 10% penalty for negligence. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "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.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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. 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.

45 IAC 15-11-2.

Taxpayer has claimed that it was not willfully negligent, and therefore should not be subject to tax. However, the test is not one of willful neglect, a standard tantamount to fraud. The standard for taxpayer negligence is one of meeting the standard of care expected of a normal taxpayer, either in terms of filing or recordkeeping. Taxpayer has not provided any further information with respect to its standard of care.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020495.LOF

LETTER OF FINDINGS NUMBER: 02-0495
Sales Tax
Responsible Officer
For the Years 1998-2000

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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Sales Tax-Imposition

Authority: IC 6-8-1-5-1(b), IC 6-8.1-5-4(a), IC 6-2.5-8-1.

The taxpayer protests the imposition of sales tax.

STATEMENT OF FACTS

From 1998 through May, 2000, the taxpayer operated a sole proprietorship marketing prepaid telephone calling cards. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales taxes, interest and penalty against the taxpayer as sole proprietor of the business. The taxpayer protested the assessment of tax and penalty. A hearing was held and this Letter of Findings results.

1. Sales Tax-Imposition

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b). Taxpayers are required to "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..." IC 6-8.1-5-4(a).

The taxpayer purchased prepaid telephone calling cards from telephone service providers at a discounted rate. The taxpayer then sold these cards to various customers. The taxpayer never registered with the department as a registered retail merchant as required by IC 6-2.5-8-1. The taxpayer never collected sales tax. The taxpayer argued that she did not collect sales tax because her customers were all business operations such as convenience stores that then resold the cards and collected the sales tax. The taxpayer was not able, however, to produce documentation adequate to sustain her burden of proving that the department's assessment was incorrect.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020529.LOF

LETTER OF FINDINGS NUMBER: 02-0529
Sales and Use Tax
Tax Year 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.

ISSUES

I. Sales and Use Tax-Imposition of Tax

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-3-2, IC 6-2.5-5-8, IC 6-2.5-5-6, IC 6-2.5-3-2(d).

The taxpayer protests the imposition of use tax on a truck.

STATEMENT OF FACTS

The taxpayer is a corporation with several lines of business including dealing in used automobiles. The taxpayer purchased a truck from another dealership on November 10, 1999. The taxpayer filed an ST108-E stating that the transaction was exempt from the sales tax because the taxpayer purchased the vehicle for resale in its regular course of business. Therefore, the taxpayer did not pay any sales tax at the time of the purchase. The taxpayer modified this vehicle by repainting it and changing accessories such as the running boards. The taxpayer used this vehicle as a demonstrator or model of the sorts of changes it could make to a vehicle in its automobile conversion business. The modified truck was shown to potential automobile conversion customers at the taxpayer's business site and at regional automobile and automobile conversion shows. The taxpayer sold the truck and properly collected and remitted sales tax on February 3, 2003. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed use tax, interest, and penalty on the taxpayer's use of this truck. The taxpayer protested the assessment. A telephone hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Imposition of Tax

DISCUSSION

The department assessed use tax on the taxpayer's use of the truck from 1999 to 2003.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes an excise tax, the use tax, on tangible personal property stored, used, or consumed in Indiana when no sales tax was paid at the time of purchase. IC 6-2.5-3-2. Since the taxpayer used the truck as a demonstrator for its automobile conversion business and did not pay sales tax at the time of purchase, the taxpayer owed use tax on the use unless it qualified for an exemption. The taxpayer argued that the use of the truck qualified for several exemptions.

The taxpayer first argued that the truck qualified for exemption as purchased for resale in the regular course of the taxpayer's business pursuant to IC 6-2.5-5-8. The taxpayer, however, used the truck as a model for the taxpayer's automobile conversion business for more than three years before the truck was resold. The taxpayer argued that he could find no law stating that a truck had to be sold in a certain amount of time to be exempt because it was purchased for resale. At the hearing, however, the taxpayer stated that during that time period the truck was primarily used as a demonstrator for the automobile conversion business. Therefore, the use of the truck did not qualify for exemption from sales or use tax as being purchased for resale. The department properly imposed tax on the taxpayer's use of the truck.

Alternatively, the taxpayer argued that the use of the truck qualified for exemption pursuant to IC 6-2.5-5-6 or IC 6-2.5-3-2(d). Since the sale took place in Indiana and the taxpayer used the truck in Indiana, the above cited exemption statutes do not apply in this situation.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020572.LOF

LETTER OF FINDINGS NUMBER: 02-0572
Sales Tax
Responsible Officer
For the Years 1999-September 30, 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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan, 654 N.E.2nd 270 (Ind. 1995), Slodov v. United States, 463 U.S. 238 (1978).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes

2. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2(b).

The taxpayer protests the assessment of penalty.

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales taxes for the tax period 1999 through September 30, 2000 against the taxpayer as responsible officer of a corporation. The taxpayer protested the assessment of tax and penalty. A hearing was held and this Letter of Findings results.

1. Sales Tax-Responsible Officer Liability

DISCUSSION

The taxpayer purchased a 49 % interest in the corporation on August 17, 1990 as an investment. Although he was a director, the taxpayer was not involved in the day-to-day operations of the corporation. The other shareholder, as President and Secretary of the corporation, operated the corporation. Sometime during 2000, the taxpayer discovered that the other director had mismanaged the corporation and commingled corporate funds with his own personal funds and that the corporation was insolvent. On October 26, 2000, the taxpayer purchased the other director's interest in the corporation. At this time the taxpayer became responsible for the day to day operations of the corporation. The corporation collected but failed to remit sales taxes during the tax period January 1, 1999 through September 30, 2000. The corporation properly remitted all sales taxes collected after the tax period ending September 30, 2000.

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270 (Ind. 1995) at page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid." The factors considered to determine whether a person has such authority are the following:

1. The person's position within the power structure of the corporation;

2. The authority of the officer as established by the Articles of Incorporation, By-laws or employment contract; and

3. Whether the person actually exercised control over the finances of the business including control of the bank account, signing checks and tax returns or determining when and in what order to pay creditors.

The taxpayer argues that although he was the person with the duty to remit the sales taxes to Indiana after October 26, 2000, he was not the person with the duty to remit the sales taxes to Indiana during the tax periods when the taxes were not properly remitted. Therefore, he argues that he is not personally responsible for the trust taxes that were not remitted prior to the time he became the responsible officer.

This argument is not persuasive. As the responsible officer after October 26, 2000, the taxpayer is deemed to have known that the trust taxes had not been properly remitted. As the person who made the fiscal decisions for the corporation, he determined which obligations to pay and which obligations to not pay. He chose not to remit the trust taxes due to Indiana during the period when he operated the corporation. Therefore he had the duty to remit those taxes and is personally responsible for those sales taxes not remitted to the state.

Alternatively, the taxpayer contends that he should only be held personally responsible to the extent that the corporation actually had funds at the time he became the responsible officer on October 26, 2000. The taxpayer bases this contention on the United States Supreme Court finding in Slodov v. United States, 463 U.S. 238 (1978). In that case, Dr. Slodov purchased the stock in a corporation whose previous owners had dissipated the corporate assets without remitting employee withholding trust taxes. The IRS brought an action to recover the trust taxes from Dr. Slodov personally. The United States Supreme Court held that Dr. Slodov could be held personally responsible only to the extent that the corporation had funds at the time it was purchased by Dr. Slodov. Similarly, in the instant case, the previous owner and manager of the corporation dissipated corporate funds and did not remit trust taxes. The taxpayer should only be held personally responsible for the payment of the trust taxes to the extent the corporation had funds available to pay the taxes when the taxpayer gained control. The taxpayer presented substantial evidence that the corporation had $12,249.21 in its accounts on the date of transfer of the corporation. Therefore, the taxpayer is personally responsible for remitting $12,249.21.

FINDING

The taxpayer's protest is sustained to the extent the assessment exceeds $12,249.21.

2. Tax Administration-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.

The taxpayer presented adequate evidence to sustain his burden of proof that he was not negligent in his failure to remit the assessed taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

02-20030225.LOF

LETTER OF FINDINGS NUMBER: 03-0225
Gross Income Tax
For the Tax 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. Gross Income Tax-Small Business Exemption

Authority: IC 6-2.1-2-2; IC 6-2.1-3-24.5; I.R.C. § 1361(b); I.R.C. § 1362(a).

Taxpayer protests imposition of gross income tax with respect to taxpayer's subsidiaries.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-1; 45 IAC 15-11-2.

Taxpayer protests the imposition of penalty for negligence.

STATEMENT OF FACTS

Taxpayer consists of a non-resident parent corporation (hereinafter referred to as "Parent"), with two wholly-owned subsidiary corporations and one largely-owned subsidiary corporation, with one of the wholly-owned subsidiaries and the largely-owned subsidiary (hereinafter referred to as "Subsidiaries") at issue. Parent, with thirteen individual shareholders, is a small business company, and thus would qualify for S-Corporation status upon proper election. For taxable years 1999, 2000, and 2001, Parent had not elected to be treated as an S-Corporation.

The Department conducted an audit for taxable years 1999, 2000, and 2001. As a result of the audit, Department assessed gross income tax with respect to the receipts of Subsidiaries, based on their gross income as a result of the conclusion that Subsidiaries were not small business companies. However, Parent's gross income was not subject to gross income tax.

I. Gross Income Tax-Small Business Exemption

DISCUSSION

As a general rule, non-resident corporate taxpayers are subject to gross income tax on their gross receipts derived from businesses and activities conducted in Indiana. Ind. Code § 6-2.1-2-2(a)(2) (repealed effective January 1, 2003). However, under Ind. Code § 6-2.1-3-24.5(b), a corporation which qualifies as a small business corporation is exempt from Gross Income Tax. For Gross Income Tax purposes, a small business corporation is defined as having the same definition that term has in I.R.C. § 1361(b). Ind. Code § 6-2.1-3-24.5(a).

Parent qualifies as a small business corporation within the statutory definition of I.R.C. § 1361(b)(1). However, Parent is not an S-Corporation due to the fact that it has not elected such status under I.R.C. § 1362(a).

Subsidiaries are not small business corporations due to the fact that the Subsidiaries have a corporate shareholder, which renders Subsidiaries ineligible for such status under I.R.C. § 1361(b)(1)(B), which limits the scope of permissible shareholders to various persons or entities, but generally does not permit ownership by another for-profit corporation.

Taxpayer maintains that, because the Parent is eligible for S-Corporation treatment within I.R.C. § 1361(b), Subsidiaries are eligible by virtue of I.R.C. § 1361(b)(3), which provides that domestic corporations wholly owned by an S-Corporation are disregarded as a separate entity, and treated as part of the parent S-Corporation for tax purposes. However, at the very least, such status requires the parent corporation elect to be treated as an S-Corporation, which Parent did not do in this case. Further, one of the Subsidiaries was not wholly owned by Parent, which rendered that company outside the definition provided by I.R.C. § 1361(b)(3). Thus, Subsidiaries were not small business corporations within the meaning of the statute, and gross income tax was properly assessed.

FINDING

Taxpayer's protest is denied.

II. Tax Administration-Penalty

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10. The Indiana Administrative Code further provides in 45 IAC 15-11-2:

(b) "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.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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. 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.

Taxpayer has presented sufficient information that the taxpayer acted with the level of reasonable care expected of a taxpayer, and accordingly the penalty should be waived.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20030230.LOF

LETTER OF FINDINGS NUMBER: 03-0230
Sales & Use Tax
For the Calendar Years 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 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.

STATEMENT OF FACTS

The negligence penalty was assessed on a Department audit conducted for the calendar years 2000 and 2001. The taxpayer failed to remit use tax on cards, software, gloves, wall display, candles, Kleenex, napkins, gift items, tote bags, folders, office forms, compact disc library, furniture, fragrance paks, clergy records, labels, decals, trays, and subscriptions. As such, an assessment was issued which assessed use tax on these purchases along with an assessment for negligence penalty.

The taxpayer is a funeral home located in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated.

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 of 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

0420030425.LOF

LETTER OF FINDINGS NUMBER: 03-0425
Sales Tax
Responsible Officer
For the Years 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

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan, 654 N.E.2nd 270 (Ind. 1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes

STATEMENT OF FACTS

The taxpayer was an employee and Vice-President of a corporation that did not properly remit collected sales taxes to the state during the tax period 2000-2001. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the additional sales taxes, interest and penalty against the taxpayer as a responsible officer. The taxpayer protested the assessment of tax and penalty. A hearing was held and this Letter of Findings results.

1. Sales Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270 (Ind. 1995) at page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid." The factors considered to determine whether a person has such authority are the following:

1. The person's position within the power structure of the corporation;

2. The authority of the officer as established by the Articles of Incorporation, By-laws or employment contract; and

3. Whether the person actually exercised control over the finances of the business including control of the bank account, signing checks and tax returns or determining when and in what order to pay creditors.

The corporation was a closely-held family-owned business. The taxpayer did not possess any ownership, nor was he a stockholder or investor in the company. He was not on the Board of Directors and never attended a Board of Directors' meeting. The taxpayer was hired by the corporation as a bargaining union sheet metal worker to be the coordinator of the industrial construction projects. Due to the success of the newly implemented programs, the taxpayer received a title-only promotion in 1998. The promotion was to Divisional Vice President of the commercial construction projects. His duties consisted of supervising and instructing the estimators and project managers for the commercial group. The taxpayer was required to conduct sales and marketing meetings and weekly project progress meetings. He reviewed the costs, posture and problem solving within the specific commercial group. The taxpayer did not have a corporate credit card, nor was he a signatory on any of the corporation's bank accounts. The taxpayer never ordered checks to be written. He could not and did not sign any checks for the corporation. It was never part of his duties to authorize or make payments of bills or taxes of any type.

The taxpayer provided significant documentation evidencing that he did not have the position within the corporate power structure, authority as an officer and employee, or control over finances that would give him the duty to remit the trust taxes to the state of Indiana. The taxpayer sustained his burden of proving that the department incorrectly assessed the corporation's sales tax liability against him personally.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

02-20030450.LOF

LETTER OF FINDINGS NUMBER: 03-0450
Adjusted Gross Income Tax
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. Prospective Treatment of Taxpayer's Adjusted Gross Income Tax Liability.

Authority: IC 6-8.1-3-3; IC 6-8.1-3-3(b); City Securities Corp. v. Dept. of State Revenue, 704 N.E.2d 1122 (Ind. Tax 1998).

If the Department determines that sales of software maintenance contracts are subject adjusted gross income tax, taxpayer maintains that it is entitled to prospective treatment of those determinations.

II. Tax Administration - Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b).

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer consists of several corporations engaged in various businesses. As part of its businesses, taxpayer bundles computer software applications and hardware equipment packages, which are then resold. In addition, with respect to the packages, maintenance contracts are also sold. The contracts include software updates and technical service assistance. Most services are provided by the taxpayer in Indiana.

For purposes of adjusted gross income tax, taxpayer treated the receipts of the maintenance contracts as occurring in the state in which the customer used the software. Therefore, certain receipts were treated as out-of-state sales for adjusted gross income tax purposes. However, upon audit, Department treated the amounts received under the maintenance contracts as being sales of taxpayer in Indiana, and thus Indiana sales for apportionment in determining adjusted gross income tax.

Previously, taxpayer had protested the same issues with the Department. The Department previously sustained taxpayer's protest in a Letter of Findings. Taxpayer protests both the imposition of taxes and penalties by the Department, and requests prospective imposition of these taxes with respect to the transactions in controversy.

I. Prospective Treatment of Taxpayer's Adjusted Gross Income Tax Liability.

DISCUSSION

Taxpayer protests the Department's assessment of the adjusted gross income tax with respect to sales of software maintenance contracts where the services are performed in Indiana, but the software is used out of state.

Taxpayer had previously protested a Department assessment on the same issues, and the Department had sustained taxpayer's protest. The previous Letter of Findings had treated the sale of the maintenance agreements as sales of tangible personal property. For AGI purposes, these sales were out-of-state sales that were not included in the numerator of the Indiana sales factor. The Department has reconsidered this position and determined that the maintenance contracts are primarily the provision of services within Indiana, even if the service is provided for tangible personal property used outside Indiana. Thus, the sales of software maintenance which had previously been treated as non-Indiana sales were changed to Indiana sales for adjusted gross income tax under current Department interpretation.

Under IC 6-8.1-3-3, the Department of Revenue is without authority to reinterpret a taxpayer's tax liability without promulgating and publishing a regulation giving taxpayer notice of that reinterpretation. IC 6-8.1-3-3(b) states that "[n]o change in the department's interpretation of a listed tax may take effect before the date the change is (1) adopted in a rule under this section or (2) published in the Indiana Register...."

In City Securities Corp. v. Dept. of State Revenue, 704 N.E.2d 1122 (Ind. Tax 1998), plaintiff taxpayer argued that the Department could not impose gross income tax on the gain realized from the sale of tax-exempt bonds, because that gain had been treated as exempt for 42 years. Id. at 1128. Plaintiff taxpayer argued that, in the absence of a new rule or regulation, the Department's assessment of gross income taxes against the gain realized from the sale of the tax-exempt bonds was invalid. Id. at 1129. The Tax Court found that – despite the intervening adoption of regulations to the contrary – the Department could not impose the additional taxes when the Department had permitted plaintiff taxpayer to claim an exemption from the taxes subsequent to the adoption of the intervening regulations. Id. Nevertheless, the Tax Court also held that plaintiff taxpayer, having been placed on notice of its additional tax liability, was responsible for paying the tax on a prospective basis. Id.

In this case, taxpayer had claimed the sales of software maintenance contracts as non-Indiana sales were exempt in accordance with a Department Letter of Findings, and was entitled to rely on the previous Letter of Findings with respect to the issues protested therein, and therefore is not taxable for the years in question. However, for all tax years after the audit period, taxpayer is subject to adjusted gross income tax with respect to the software maintenance contracts.

FINDING

Taxpayer's protest is sustained, subject to the conditions listed above.

II. Tax Administration-Penalty

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause

and not due to willful neglect. IC 6-8.1-10-2. In addition, 45 IAC 15-11-2(a) provides:

(b) "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.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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. 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.

Taxpayer has presented evidence that it reasonably relied on the Department's prior Letter of Findings with respect to the returns in question. Accordingly, the penalty for negligence is waived.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20030451.LOF

LETTER OF FINDINGS NUMBER: 03-0451
SALES AND USE TAX
For 2003

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. Sales and Use Tax—Application to tangible personal property purchased in Indiana for use outside the state

Authority: IC 6-2.5-3-2; IC 6-2.5-5-9(6); IC 6-2.5-5-15; IC 6-6-6.5-2; IC 6-6-6.5-3; IC 6-6-6.5-8(d); IC 6-6-6.5-9;

Taxpayer protests the imposition of use tax on an unregistered aircraft brought into Indiana for a period in excess of thirty days.

II. 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

Taxpayer is an Indiana company with its principal place of business in Indiana. Taxpayer, and its various affiliates, also have a business location in Connecticut and conduct business in all 50 states. Taxpayer purchased an aircraft in Arizona on June 19, 2003 and flew it to Indiana, where it remained for 13 days before its transfer and subsequent registration in Connecticut on September 30th, 2003. Taxpayer submitted an AE-1 exemption form dated October 1st, 2003. No sales or use tax was paid to Arizona, Indiana, or Connecticut. Indiana assessed use tax and registration fees against the aircraft and taxpayer now protests that the tax and registration fee were incorrectly applied to this transaction.

DISCUSSION

I. Sales and Use Tax—Application to tangible personal property in Indiana that was purchased outside the state

When taxpayer acquired this aircraft in Arizona, it brought the aircraft to Indiana and could have claimed an exemption from Indiana sales tax through IC 6-2.5-5-9(6). To take advantage of this statutory exemption, taxpayer had to fill out form AE-1. This form is used expressly for aircraft registered to Indiana residents and which are to be registered and/or titled outside the state of Indiana.

IC 6-6-6.5-2 and IC 6-6-6.5-3 establish the necessity of registration and set the parameters of this requirement. IC 6-6-6.5-2 states in relevant part;

Sec. 2. (a) Except as otherwise provided in this chapter, any resident of this state who owns an aircraft shall register the aircraft with the department not later than thirty-one (31) days after the purchase date.

…..

IC 6-6-6.5-3 also includes, in relevant part;

Sec. 3. (a) Any resident of this state who owns an aircraft, and any nonresident who has established a base in this state and bases an aircraft in this state for more than sixty (60) days, which is not exempt from registration under section 9 of this chapter, shall apply to the department for a certificate of registration for such aircraft. ….

As to the gross retail tax, IC 6-6-6.5-8(d) states:

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;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft as proof that the taxes are inapplicable because of an exemption.

The exemption taxpayer seeks to claim is based on IC 6-6-6.5-9, which states:

Sec. 9. (a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following:

….

(6) An aircraft owned by a resident of this state that is not a dealer and that is not based in this state at any time, if the owner files the required form not later than thirty-one (31) days after the date of purchase; and furnishes the department with evidence, satisfactory to the department, verifying where the aircraft is based during the year.

….

Taxpayer asserts that the submission of the AE-1 form, albeit late, conforms to the above statutory requirements. The form, correctly documenting the over 90 day lag between taxpayer's purchase of the aircraft and its registration in Connecticut, is not a talisman that can overcome the assessment by its mere appearance. The form comports to IC 6-6-6.5-9 by explicitly informing the taxpayer it must be filed within thirty (30) days after the purchase date. Regardless of the form's arrival time and the method of its presentation, the form as prepared by taxpayer would not provide an exemption under IC 6-6-6.5-9 inasmuch as it documents the taxpayer's failure to fall within the established guidelines for the exemption-i.e. purchasing and failing to register an aircraft in Indiana or elsewhere for more than 31 days and by establishing that the aircraft was not registered for more than 60 days after its purchase.

Taxpayer argues that the imposition of this tax in this fashion could result in a corporate resident of Indiana being taxed for the purchase, and use, of an aircraft in another state without the aircraft ever being based or brought into Indiana. Taxpayer's hypothetical is without merit. The imposition statute of the use tax, IC 6-2.5-3-2, explicitly states:

(a) 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. *(Emphasis added)*

Taxpayer purchased an aircraft, brought the aircraft to Indiana, and failed to provide a valid exemption or to demonstrate the payment of sales or use tax or registration to another jurisdiction within the respective statutory limits. Despite its failure to file the required forms for Indiana or to register in another state in a timely fashion taxpayer asserts that the established statutory and regulatory procedures should be waived to permit it to operate as it sees fit, presumably paying taxes and filing forms only when taxpayer concludes it should. The Department declines to so find.

FINDINGS

The taxpayer is denied.

DISCUSSION

II. Tax Administration- Ten Percent (10%) Negligence Penalty

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.

The AE-1 exemption forms are quite clear in their function and application. The title on the form states, "Based out of state Certificate of Exemption for aircraft." Because the form's application was straightforward, the law was clear, and because taxpayer

failed to use the form and therefore failed to follow instructions provided by the Department, the taxpayer was negligent.

FINDINGS

The taxpayer is denied.

DEPARTMENT OF STATE REVENUE

0420030476.LOF

LETTER OF FINDINGS NUMBER: 03-0476
Sales Tax
Responsible Officer
For the Tax Period July, 2001-December, 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

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid sales taxes.

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales taxes, interest and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit sales taxes during the tax period July, 2001 through December, 2001. The taxpayer protested the assessment of tax and penalty. This Letter of Findings is based upon the documentation in the file.

1. Sales Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The taxpayer provided significant documentation evidencing that he left his position with the corporation in 1997. Since the taxpayer was not an employee, officer, or member of the corporation from July, 2001 through December, 2001, the taxpayer cannot be held personally responsible for trust taxes that the corporation did not remit to the state.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420040010P.LOF

LETTER OF FINDINGS NUMBER: 04-0010P
Sales & Use Tax
For the month of March 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 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 penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a monthly sales tax return for the month of March 2003.

The taxpayer is an out-of-state company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer's employee responsible for the tax filing had medical conditions that precluded the employee from filing the tax return on time.

The Department points out the taxpayer is responsible for tax compliance that includes the duties performed by the taxpayer's employees even if the employee has medical conditions that preclude the proper performance of tax duties.

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 of 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

0320040022.LOF

LETTER OF FINDINGS NUMBER: 04-0022
Withholding and Sales Tax
Responsible Officer
For the Tax Periods 1999 and December, 2001-December, 2002

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

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales taxes,withholding tax, interest and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit sales taxes during the tax period 1999 and December, 2001 through December, 2002. The taxpayer protested the assessment of tax and penalty. A telephone hearing was held and this Letter of Findings results.

1. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The sales tax assessment for the period ending December 31, 1999 resulted from the department's audit of the corporation.

The audit deficiency resulted from sales taxes that were not collected but did not have the proper exemption certificates and use tax deficiencies. The use taxes were not held by the corporation in trust for the state. Therefore, the taxpayer is not personally responsible for the payment of the use taxes.

The sales taxes that were not collected, however, are considered trust taxes. As president during the audit period, the taxpayer is responsible for the payment of these taxes.

The taxpayer provided significant documentation evidencing that he resigned his position with the corporation in October, 2001 and sold his interest in the corporation in November, 2001. Since the taxpayer was not an employee, officer, or member of the corporation from December, 2001 through December, 2002, the taxpayer cannot be held personally responsible for the withholding trust taxes that the corporation did not remit to the state.

FINDING

The taxpayer's protest is sustained in part and denied in part.

DEPARTMENT OF STATE REVENUE

03-20040030P.LOF

LETTER OF FINDINGS NUMBER: 04-0030P
Withholding Tax
For the month of July 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 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 – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a monthly sales tax return for the month of July 2003.

The taxpayer is a company located in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the error was the result of the misinterpretation of the due date by a new employee. Furthermore, the taxpayer claims to have a very good payment history.

With regard to the payment history, the taxpayer has had another filing which was filed late due to changes in accounting personnel.

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 of tax duties. The taxpayer needs to ensure the taxpayer's employees are aware of filing requirements.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0420040044P.LOF

LETTER OF FINDINGS NUMBER: 04-0044P
Sales and Use Tax
For the Years 1999-2001

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 selling and servicing new and used vehicles. 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 the assessment of penalty and a hearing was scheduled. The taxpayer submitted additional documentation for review in lieu of attending a hearing. 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.

The taxpayer contends that its failure to pay the proper use tax was not due to negligence. The taxpayer supported this contention by submitting a previous audit to indicate that many of the deficiencies found in this audit were not considered deficiencies in the previous audit. However, this audit also included use tax assessments on clearly taxable items such as light bulbs, soft drinks, business cards, greeting cards, badges, magnets, and hand cleaner. Use tax was also assessed on the use of some of these items in the previous audit. The taxpayer's breach of its duty to pay sales tax at the time of purchase or self assess use tax on these items constitutes negligence.

FINDING

The taxpayer's protest is denied.

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

10 IAC 1.5	RA	03-102	26 IR 3425	**27 IR 946**
10 IAC 1.5-6	N	03-101	26 IR 3374	**27 IR 450**
10 IAC 3-1-1	A	03-167	26 IR 3909	**27 IR 824**
10 IAC 3-1-2	A	03-167	26 IR 3911	**27 IR 825**

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

11 IAC 2-5-5	N	02-324	26 IR 1598	*AROC (26 IR 2134)
11 IAC 3	N	03-165	26 IR 3911	**27 IR 826**

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

35 IAC 8-1-1	A	04-18	27 IR 2305	
35 IAC 8-1-2	A	04-18	27 IR 2305	
35 IAC 8-2-1	A	04-18	27 IR 2306	
35 IAC 10	N	04-18	27 IR 2307	
35 IAC 11	N	03-131	26 IR 3678	**27 IR 1164**
35 IAC 12	N	04-18	27 IR 2308	

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

50 IAC 18	N	02-81	26 IR 1117	*AROC (26 IR 1263)
	N	03-235	27 IR 909	*AROC (27 IR 2079)
50 IAC 19	N	02-342	26 IR 2397	*ARR (26 IR 3885) *AROC (27 IR 287) **27 IR 450**
50 IAC 20	N	03-6	27 IR 908	*CPH (27 IR 1613)

TITLE 52 INDIANA BOARD OF TAX REVIEW

52 IAC 2	N	03-179	26 IR 3915	**27 IR 1776** *ERR (27 IR 2284)
52 IAC 3	N	03-179	26 IR 3926	**27 IR 1787** *ERR (27 IR 2284)
52 IAC 4	N	03-259	27 IR 555	

TITLE 65 STATE LOTTERY COMMISSION

65 IAC 4-1-6	A	04-34	*ER (27 IR 1909)
65 IAC 4-1-6.5	A	04-34	*ER (27 IR 1909)
65 IAC 4-1-7	A	04-34	*ER (27 IR 1909)
65 IAC 4-1-12.2	N	04-34	*ER (27 IR 1909)
65 IAC 4-1-12.3	N	04-34	*ER (27 IR 1909)
65 IAC 4-1-12.4	N	04-34	*ER (27 IR 1909)
65 IAC 4-2-3	A	03-334	*ER (27 IR 1596)
65 IAC 4-2-5	A	03-334	*ER (27 IR 1596)
65 IAC 4-3-1	A	03-334	*ER (27 IR 1597)
65 IAC 4-3-2	A	03-334	*ER (27 IR 1597)
65 IAC 4-329	N	03-237	*ER (27 IR 192)
65 IAC 4-330	N	03-246	*ER (27 IR 199)
65 IAC 4-331	N	03-247	*ER (27 IR 200)
65 IAC 4-333	N	03-292	*ER (27 IR 891)
65 IAC 4-335	N	03-310	*ER (27 IR 1190)
65 IAC 4-336	N	03-338	*ER (27 IR 1602)
65 IAC 4-337	N	04-28	*ER (27 IR 1900)
65 IAC 4-338	N	04-26	*ER (27 IR 1896)
65 IAC 4-339	N	04-30	*ER (27 IR 1903)
65 IAC 4-340	N	04-31	*ER (27 IR 1905)
65 IAC 4-341	N	04-32	*ER (27 IR 1907)
65 IAC 4-343	N	04-93	*ER (27 IR 2511)
65 IAC 5-1-2.2	N	04-34	*ER (27 IR 1909)
65 IAC 5-1-2.4	N	04-34	*ER (27 IR 1910)
65 IAC 5-1-2.6	N	04-34	*ER (27 IR 1910)
65 IAC 5-1-6	A	04-34	*ER (27 IR 1910)
65 IAC 5-1-7	A	04-34	*ER (27 IR 1910)
65 IAC 5-1-8	A	04-34	*ER (27 IR 1910)
65 IAC 5-1-11.2	N	04-34	*ER (27 IR 1910)
65 IAC 5-1-12	A	04-34	*ER (27 IR 1910)
65 IAC 5-5-1	A	03-314	*ER (27 IR 1587)
65 IAC 5-5-1.5	N	03-314	*ER (27 IR 1587)
65 IAC 5-5-2	A	03-314	*ER (27 IR 1587)
65 IAC 5-5-3	A	03-314	*ER (27 IR 1587)
65 IAC 5-5-4	A	03-314	*ER (27 IR 1588)
65 IAC 5-5-5	A	03-314	*ER (27 IR 1588)
65 IAC 5-5-6	A	03-314	*ER (27 IR 1589)
65 IAC 5-6-1	A	03-314	*ER (27 IR 1589)
65 IAC 5-6-1.5	N	03-314	*ER (27 IR 1589)
65 IAC 5-6-2	A	03-314	*ER (27 IR 1590)
65 IAC 5-6-3	A	03-314	*ER (27 IR 1591)
65 IAC 5-6-4	A	03-314	*ER (27 IR 1591)
65 IAC 5-6-5	A	03-314	*ER (27 IR 1591)
65 IAC 5-6-6	A	03-314	*ER (27 IR 1593)
65 IAC 5-9-1	A	03-314	*ER (27 IR 1593) *ERR (27 IR 1575)
65 IAC 5-9-1.5	N	03-314	*ER (27 IR 1594)
65 IAC 5-9-2	A	03-314	*ER (27 IR 1594)
65 IAC 5-9-3	A	03-314	*ER (27 IR 1594)
65 IAC 5-9-4	A	03-314	*ER (27 IR 1594)
65 IAC 5-9-9	A	03-314	*ER (27 IR 1595)
65 IAC 5-9-12	A	03-314	*ER (27 IR 1595)

TITLE 68 INDIANA GAMING COMMISSION

68 IAC 4-1-1	RA	03-132	26 IR 3750	*CPH (27 IR 208) **27 IR 1295**
68 IAC 4-1-2	RA	03-132	26 IR 3751	*CPH (27 IR 208) **27 IR 1296**
68 IAC 4-1-3	RA	03-132	26 IR 3751	*CPH (27 IR 208) **27 IR 1296**
68 IAC 4-1-4	RA	03-132	26 IR 3751	*CPH (27 IR 208) **27 IR 1296**
68 IAC 4-1-5	RA	03-132	26 IR 3752	*CPH (27 IR 208) **27 IR 1297**
68 IAC 4-1-6	RA	03-132	26 IR 3752	*CPH (27 IR 208) **27 IR 1297**
68 IAC 4-1-7	RA	03-132	26 IR 3752	*CPH (27 IR 208) **27 IR 1297**
68 IAC 4-1-8	RA	03-132	26 IR 3753	*CPH (27 IR 208) **27 IR 1298**
68 IAC 4-1-9	RA	03-132	26 IR 3753	*CPH (27 IR 208) **27 IR 1299**
68 IAC 4-1-10	RA	03-132	26 IR 3754	*CPH (27 IR 208) **27 IR 1299**
68 IAC 6-3	N	03-204	27 IR 212	**27 IR 2440**

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 1.5-1-19	A	04-21	*ER (27 IR 1911)
71 IAC 3-2-9	A	04-21	*ER (27 IR 1911)
71 IAC 3-9-4	A	04-21	*ER (27 IR 1912)
71 IAC 4-3-15	A	04-21	*ER (27 IR 1912)
71 IAC 5-1-2	A	04-21	*ER (27 IR 1912)
71 IAC 5-1-3	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-1-2	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-1-3	A	04-21	*ER (27 IR 1913)
71 IAC 5.5-3-3	A	04-21	*ER (27 IR 1914)
71 IAC 5.5-4-2	A	04-21	*ER (27 IR 1915)
71 IAC 6-1-3	A	04-21	*ER (27 IR 1915)
71 IAC 6-3-1	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-11	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-15	A	04-21	*ER (27 IR 1917)
71 IAC 7-1-22	R	04-21	*ER (27 IR 1922)
71 IAC 7-1-28	A	04-21	*ER (27 IR 1918)
71 IAC 7-2-8	A	04-21	*ER (27 IR 1918)
71 IAC 7-3-6	A	03-244	*ER (27 IR 205)
71 IAC 7-3-11	A	04-21	*ER (27 IR 1918)
71 IAC 7-3-13	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-1-2	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-1-4	A	03-244	*ER (27 IR 205)
71 IAC 7.5-1-15	N	04-21	*ER (27 IR 1919)
71 IAC 7.5-6-1	A	04-21	*ER (27 IR 1919)
71 IAC 7.5-6-3	A	03-244	*ER (27 IR 206)

71 IAC 7.5-7-5	A	04-21		*ER (27 IR 1920)
71 IAC 8-6-2	A	04-21		*ER (27 IR 1920)
71 IAC 8-11-3	A	04-21		*ER (27 IR 1920)
71 IAC 8.5-5-2	A	04-21		*ER (27 IR 1921)
71 IAC 8.5-11-3	A	04-21		*ER (27 IR 1921)
71 IAC 12-2-15	A	03-293		*ER (27 IR 896)
71 IAC 13.5-3-1	A	04-21		*ER (27 IR 1921)
71 IAC 13.5-3-2	A	04-21		*ER (27 IR 1922)
71 IAC 13.5-3-3	A	04-21		*ER (27 IR 1922)
71 IAC 13.5-3-4	A	04-21		*ER (27 IR 1922)

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

105 IAC 9-1-1	A	03-17	26 IR 2400	**27 IR 451**
105 IAC 9-1-2	A	03-17	26 IR 2400	**27 IR 452**
105 IAC 9-2-1	A	02-231	26 IR 421	**27 IR 7**
105 IAC 9-2-2	R	02-231		**††27 IR 52**
105 IAC 9-2-3	N	02-231		**††27 IR 7**
105 IAC 9-2-4	N	02-231		**††27 IR 7**
105 IAC 9-2-5	N	02-231		**††27 IR 7**
105 IAC 9-2-6	N	02-231		**††27 IR 7**
105 IAC 9-2-7	N	02-231		**††27 IR 8**
105 IAC 9-2-8	N	02-231		**††27 IR 8**
105 IAC 9-2-9	N	02-231		**††27 IR 8**
105 IAC 9-2-10	N	02-231		**††27 IR 8**
105 IAC 9-2-11	N	02-231		**††27 IR 9**
105 IAC 9-2-12	N	02-231		**††27 IR 9**
105 IAC 9-2-13	N	02-231		**††27 IR 9**
105 IAC 9-2-14	N	02-231		**††27 IR 9**
105 IAC 9-2-15	N	02-231		**††27 IR 10**
105 IAC 9-2-16	N	02-231		**††27 IR 10**
105 IAC 9-2-17	N	02-231		**††27 IR 10**
105 IAC 9-2-18	N	02-231		**††27 IR 10**
105 IAC 9-2-19	N	02-231		**††27 IR 10**
105 IAC 9-2-20	N	02-231		**††27 IR 11**
105 IAC 9-2-21	N	02-231		**††27 IR 11**
105 IAC 9-2-22	N	02-231		**††27 IR 11**
105 IAC 9-2-23	N	02-231		**††27 IR 11**
105 IAC 9-2-24	N	02-231		**††27 IR 12**
105 IAC 9-2-25	N	02-231		**††27 IR 12**
105 IAC 9-2-26	N	02-231		**††27 IR 12**
105 IAC 9-2-27	N	02-231		**††27 IR 12**
105 IAC 9-2-28	N	02-231		**††27 IR 12**
105 IAC 9-2-29	N	02-231		**††27 IR 13**
105 IAC 9-2-30	N	02-231		**††27 IR 13**
105 IAC 9-2-31	N	02-231		**††27 IR 13**
105 IAC 9-2-32	N	02-231		**††27 IR 14**
105 IAC 9-2-33	N	02-231		**††27 IR 14**
105 IAC 9-2-34	N	02-231		**††27 IR 14**
105 IAC 9-2-35	N	02-231		**††27 IR 15**
105 IAC 9-2-36	N	02-231		**††27 IR 15**
105 IAC 9-2-37	N	02-231		**††27 IR 15**
105 IAC 9-2-38	N	02-231		**††27 IR 16**
105 IAC 9-2-39	N	02-231		**††27 IR 16**
105 IAC 9-2-40	N	02-231		**††27 IR 16**
105 IAC 9-2-41	N	02-231		**††27 IR 16**
105 IAC 9-2-42	N	02-231		**††27 IR 16**
105 IAC 9-2-43	N	02-231		**††27 IR 17**
105 IAC 9-2-44	N	02-231		**††27 IR 17**
105 IAC 9-2-45	N	02-231		**††27 IR 18**
105 IAC 9-2-46	N	02-231		**††27 IR 18**
105 IAC 9-2-47	N	02-231		**††27 IR 18**
105 IAC 9-2-48	N	02-231		**††27 IR 18**
105 IAC 9-2-49	N	02-231		**††27 IR 19**
105 IAC 9-2-50	N	02-231		**††27 IR 19**
105 IAC 9-2-51	N	02-231		**††27 IR 19**
105 IAC 9-2-52	N	02-231		**††27 IR 19**
105 IAC 9-2-53	N	02-231		**††27 IR 19**
105 IAC 9-2-54	N	02-231		**††27 IR 19**
105 IAC 9-2-55	N	02-231		**††27 IR 20**
105 IAC 9-2-56	N	02-231		**††27 IR 20**
105 IAC 9-2-57	N	02-231		**††27 IR 20**
105 IAC 9-2-58	N	02-231		**††27 IR 21**
105 IAC 9-2-59	N	02-231		**††27 IR 21**
105 IAC 9-2-60	N	02-231		**††27 IR 21**
105 IAC 9-2-61	N	02-231		**††27 IR 22**
105 IAC 9-2-62	N	02-231		**††27 IR 22**
105 IAC 9-2-63	N	02-231		**††27 IR 22**
105 IAC 9-2-64	N	02-231		**††27 IR 22**
105 IAC 9-2-65	N	02-231		**††27 IR 22**
105 IAC 9-2-66	N	02-231		**††27 IR 22**
105 IAC 9-2-67	N	02-231		**††27 IR 23**
105 IAC 9-2-68	N	02-231		**††27 IR 23**
105 IAC 9-2-69	N	02-231		**††27 IR 23**
105 IAC 9-2-70	N	02-231		**††27 IR 23**
105 IAC 9-2-71	N	02-231		**††27 IR 23**
105 IAC 9-2-72	N	02-231		**††27 IR 23**
105 IAC 9-2-73	N	02-231		**††27 IR 24**
105 IAC 9-2-74	N	02-231		**††27 IR 24**
105 IAC 9-2-75	N	02-231		**††27 IR 24**
105 IAC 9-2-76	N	02-231		**††27 IR 24**
105 IAC 9-2-77	N	02-231		**††27 IR 24**
105 IAC 9-2-78	N	02-231		**††27 IR 25**
105 IAC 9-2-79	N	02-231		**††27 IR 25**
105 IAC 9-2-80	N	02-231		**††27 IR 25**
105 IAC 9-2-81	N	02-231		**††27 IR 25**
105 IAC 9-2-82	N	02-231		**††27 IR 25**
105 IAC 9-2-83	N	02-231		**††27 IR 26**
105 IAC 9-2-84	N	02-231		**††27 IR 26**
105 IAC 9-2-85	N	02-231		**††27 IR 26**
105 IAC 9-2-86	N	02-231		**††27 IR 26**
105 IAC 9-2-87	N	02-231		**††27 IR 27**
105 IAC 9-2-88	N	02-231		**††27 IR 27**
105 IAC 9-2-89	N	02-231		**††27 IR 28**
105 IAC 9-2-90	N	02-231		**††27 IR 29**
105 IAC 9-2-91	N	02-231		**††27 IR 30**
105 IAC 9-2-92	N	02-231		**††27 IR 30**
105 IAC 9-2-93	N	02-231		**††27 IR 30**
105 IAC 9-2-94	N	02-231		**††27 IR 31**
105 IAC 9-2-95	N	02-231		**††27 IR 31**
105 IAC 9-2-96	N	02-231		**††27 IR 31**
105 IAC 9-2-97	N	02-231		**††27 IR 31**
105 IAC 9-2-98	N	02-231		**††27 IR 32**
105 IAC 9-2-99	N	02-231		**††27 IR 32**
105 IAC 9-2-100	N	02-231		**††27 IR 32**
105 IAC 9-2-101	N	02-231		**††27 IR 32**
105 IAC 9-2-102	N	02-231		**††27 IR 33**
105 IAC 9-2-103	N	02-231		**††27 IR 33**
105 IAC 9-2-104	N	02-231		**††27 IR 33**
105 IAC 9-2-105	N	02-231		**††27 IR 34**
105 IAC 9-2-106	N	02-231		**††27 IR 34**
105 IAC 9-2-107	N	02-231		**††27 IR 34**
105 IAC 9-2-108	N	02-231		**††27 IR 34**
105 IAC 9-2-109	N	02-231		**††27 IR 34**
105 IAC 9-2-110	N	02-231		**††27 IR 34**
105 IAC 9-2-111	N	02-231		**††27 IR 35**
105 IAC 9-2-112	N	02-231		**††27 IR 35**
105 IAC 9-2-113	N	02-231		**††27 IR 35**
105 IAC 9-2-114	N	02-231		**††27 IR 36**
105 IAC 9-2-115	N	02-231		**††27 IR 36**
105 IAC 9-2-116	N	02-231		**††27 IR 36**
105 IAC 9-2-117	N	02-231		**††27 IR 36**
105 IAC 9-2-118	N	02-231		**††27 IR 36**
105 IAC 9-2-119	N	02-231		**††27 IR 36**
105 IAC 9-2-120	N	02-231		**††27 IR 36**
105 IAC 9-2-121	N	02-231		**††27 IR 37**
105 IAC 9-2-122	N	02-231		**††27 IR 37**
105 IAC 9-2-123	N	02-231		**††27 IR 37**
105 IAC 9-2-124	N	02-231		**††27 IR 37**

105 IAC 9-2-125	N	02-231		††27 IR 37
105 IAC 9-2-126	N	02-231		††27 IR 37
105 IAC 9-2-127	N	02-231		††27 IR 37
105 IAC 9-2-128	N	02-231		††27 IR 38
105 IAC 9-2-129	N	02-231		††27 IR 38
105 IAC 9-2-130	N	02-231		††27 IR 38
105 IAC 9-2-131	N	02-231		††27 IR 39
105 IAC 9-2-132	N	02-231		††27 IR 39
105 IAC 9-2-133	N	02-231		††27 IR 39
105 IAC 9-2-134	N	02-231		††27 IR 39
105 IAC 9-2-135	N	02-231		††27 IR 39
105 IAC 9-2-136	N	02-231		††27 IR 40
105 IAC 9-2-137	N	02-231		††27 IR 40
105 IAC 9-2-138	N	02-231		††27 IR 40
105 IAC 9-2-139	N	02-231		††27 IR 40
105 IAC 9-2-140	N	02-231		††27 IR 41
105 IAC 9-2-141	N	02-231		††27 IR 41
105 IAC 9-2-142	N	02-231		††27 IR 41
105 IAC 9-2-143	N	02-231		††27 IR 42
105 IAC 9-2-144	N	02-231		††27 IR 42
105 IAC 9-2-145	N	02-231		††27 IR 42
105 IAC 9-2-146	N	02-231		††27 IR 42
105 IAC 9-2-147	N	02-231		††27 IR 42
105 IAC 9-2-148	N	02-231		††27 IR 42
105 IAC 9-2-149	N	02-231		††27 IR 43
105 IAC 9-2-150	N	02-231		††27 IR 43
105 IAC 9-2-151	N	02-231		††27 IR 43
105 IAC 9-2-152	N	02-231		††27 IR 43
105 IAC 9-2-153	N	02-231		††27 IR 43
105 IAC 9-2-154	N	02-231		††27 IR 44
105 IAC 9-2-155	N	02-231		††27 IR 44
105 IAC 9-2-156	N	02-231		††27 IR 44
105 IAC 9-2-157	N	02-231		††27 IR 44
105 IAC 9-2-158	N	02-231		††27 IR 45
105 IAC 9-2-159	N	02-231		††27 IR 45
105 IAC 9-2-160	N	02-231		††27 IR 45
105 IAC 9-2-161	N	02-231		††27 IR 46
105 IAC 9-2-162	N	02-231		††27 IR 46
105 IAC 9-2-163	N	02-231		††27 IR 46
105 IAC 9-2-164	N	02-231		††27 IR 47
105 IAC 9-2-165	N	02-231		††27 IR 47
105 IAC 9-2-166	N	02-231		††27 IR 47
105 IAC 9-2-167	N	02-231		††27 IR 47
105 IAC 9-2-168	N	02-231		††27 IR 47
105 IAC 9-2-169	N	02-231		††27 IR 47
105 IAC 9-2-170	N	02-231		††27 IR 48
105 IAC 9-2-171	N	02-231		††27 IR 48
105 IAC 9-2-172	N	02-231		††27 IR 48
105 IAC 9-2-173	N	02-231		††27 IR 49
105 IAC 9-2-174	N	02-231		††27 IR 49
105 IAC 9-2-175	N	02-231		††27 IR 49
105 IAC 9-2-176	N	02-231		††27 IR 49
105 IAC 9-2-177	N	02-231		††27 IR 49
105 IAC 9-2-178	N	02-231		††27 IR 50
105 IAC 9-2-179	N	02-231		††27 IR 50
105 IAC 9-2-180	N	02-231		††27 IR 50
105 IAC 9-2-181	N	02-231		††27 IR 50
105 IAC 9-2-182	N	02-231		††27 IR 51
105 IAC 9-2-183	N	02-231		††27 IR 51
105 IAC 9-2-184	N	02-231		††27 IR 51
105 IAC 9-2-185	N	02-231		††27 IR 51
105 IAC 9-2-186	N	02-231		††27 IR 51
105 IAC 9-2-187	N	02-231		††27 IR 51
105 IAC 9-2-188	N	02-231		††27 IR 52
105 IAC 9-2-189	N	02-231		††27 IR 52
105 IAC 9-2-190	N	02-231		††27 IR 52
105 IAC 12-1-2	A	03-58	26 IR 3077	*AWR (27 IR 2286)
105 IAC 12-1-5	A	03-58	26 IR 3077	*AWR (27 IR 2286)
105 IAC 12-1-14.5	N	03-58	26 IR 3077	*AWR (27 IR 2286)
105 IAC 12-1-14.6	N	03-58	26 IR 3077	*AWR (27 IR 2286)
105 IAC 12-1-18	A	03-58	26 IR 3077	*AWR (27 IR 2286)
105 IAC 12-1-22	A	03-58	26 IR 3077	*AWR (27 IR 2286)
105 IAC 12-1-23	A	03-58	26 IR 3078	*AWR (27 IR 2286)
105 IAC 12-2-4	A	03-58	26 IR 3078	*AWR (27 IR 2286)
105 IAC 12-2-6	A	03-58	26 IR 3078	*AWR (27 IR 2286)
105 IAC 12-2-7	A	03-58	26 IR 3078	*AWR (27 IR 2286)
105 IAC 12-2-10	A	03-58	26 IR 3078	*AWR (27 IR 2286)
105 IAC 12-2-11	A	03-58	26 IR 3078	*AWR (27 IR 2286)
105 IAC 12-2-13	A	03-58	26 IR 3079	*AWR (27 IR 2286)
105 IAC 12-2-14	A	03-58	26 IR 3079	*AWR (27 IR 2286)
105 IAC 12-2-16	A	03-58	26 IR 3079	*AWR (27 IR 2286)
105 IAC 12-2-17	A	03-58	26 IR 3080	*AWR (27 IR 2286)
105 IAC 12-2-18	N	03-58	26 IR 3080	*AWR (27 IR 2286)
105 IAC 12-2-19	N	03-58	26 IR 3080	*AWR (27 IR 2286)
105 IAC 12-2-20	N	03-58	26 IR 3080	*AWR (27 IR 2286)
105 IAC 12-2-21	N	03-58	26 IR 3081	*AWR (27 IR 2286)
105 IAC 12-3-1	A	03-58	26 IR 3082	*AWR (27 IR 2286)
105 IAC 12-3-2	A	03-58	26 IR 3082	*AWR (27 IR 2286)
105 IAC 12-3-4	A	03-58	26 IR 3082	*AWR (27 IR 2286)
105 IAC 12-3-5	A	03-58	26 IR 3083	*AWR (27 IR 2286)
105 IAC 12-4-3	A	03-58	26 IR 3084	*AWR (27 IR 2286)
105 IAC 12-4-4	A	03-58	26 IR 3084	*AWR (27 IR 2286)
105 IAC 12-4-5	A	03-58	26 IR 3084	*AWR (27 IR 2286)

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

170 IAC 4-4.2	N	03-305	27 IR 2312	
170 IAC 7-1.1-19	A	03-193	27 IR 2309	
170 IAC 7-1.2-10	A	03-194	27 IR 558	

TITLE 203 VICTIM SERVICES DIVISION

203 IAC	N	04-63	27 IR 2526	

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	**27 IR 286**

TITLE 250 LAW ENFORCEMENT TRAINING BOARD

250 IAC 2	N	02-339	26 IR 3679	**27 IR 1552**

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2-6	A	02-328	26 IR 1598	*DAG (27 IR 947)
	A	03-212	27 IR 216	
305 IAC 1-3-4	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 216	
305 IAC 1-4-1	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 217	
305 IAC 1-4-2	A	02-328	26 IR 1599	*DAG (27 IR 947)
	A	03-212	27 IR 217	
305 IAC 1-5	N	02-328	26 IR 1600	*DAG (27 IR 947)
	N	03-212	27 IR 217	

TITLE 307 INDIANA BOARD OF REGISTRATION FOR SOIL SCIENTISTS

307 IAC	N	03-32	26 IR 2652	*GRAT (27 IR 291)
				27 IR 53
				*ERR (27 IR 538)

TITLE 312 NATURAL RESOURCES COMMISSION

312 IAC 1-1-19.5	N	03-296	27 IR 1617	
312 IAC 1-1-27.5	N	03-296	27 IR 1617	
312 IAC 1-1-29.3	N	03-296	27 IR 1617	
312 IAC 2-2-1	A	03-220	27 IR 1205	
312 IAC 2-2-4	A	03-220	27 IR 1205	
312 IAC 2-3-1	A	03-220	27 IR 1205	
312 IAC 5-6-5	A	03-92	27 IR 220	*AWR (27 IR 2501)
312 IAC 5-6-6	A	03-29	26 IR 2660	**27 IR 59**
312 IAC 5-12.5	N	03-316	27 IR 2315	
312 IAC 6	RA	02-331	26 IR 2133	**27 IR 286**

312 IAC 6-4-3	A	04-4	27 IR 2316	
312 IAC 7	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 8	RA	03-315	27 IR 2339	
312 IAC 8-1-2	A	03-50	26 IR 3085	**27 IR 455**
312 IAC 8-1-4	A	03-50	26 IR 3085	**27 IR 455**
312 IAC 8-2-3	A	03-50	26 IR 3086	**27 IR 456**
312 IAC 8-2-6	A	03-50	26 IR 3088	**27 IR 457**
312 IAC 8-2-9	A	03-50	26 IR 3088	**27 IR 458**
312 IAC 8-2-11	A	03-50	26 IR 3088	**27 IR 458**
312 IAC 8-2-13	A	04-4	27 IR 2316	
312 IAC 9	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 9-1-9.5	N	03-311	27 IR 1946	
312 IAC 9-1-11.5	N	03-311	27 IR 1946	
312 IAC 9-2-11	A	03-50	26 IR 3089	**27 IR 459**
312 IAC 9-3-2	A	03-311	27 IR 1946	
312 IAC 9-3-3	A	03-311	27 IR 1947	
312 IAC 9-3-4	A	03-311	27 IR 1948	
312 IAC 9-3-10	A	03-311	27 IR 1949	
312 IAC 9-3-11	A	03-311	27 IR 1949	
312 IAC 9-3-12	A	03-311	27 IR 1949	
312 IAC 9-3-13	A	03-311	27 IR 1950	
312 IAC 9-3-14	A	03-311	27 IR 1950	
312 IAC 9-3-15	A	03-311	27 IR 1950	
312 IAC 9-3-17	A	03-311	27 IR 1950	
312 IAC 9-4-7	R	03-311	27 IR 1966	
312 IAC 9-4-10	A	03-311	27 IR 1951	
312 IAC 9-4-11	A	03-311	27 IR 1951	
312 IAC 9-4-14	A	03-311	27 IR 1952	
312 IAC 9-5-4	A	03-311	27 IR 1953	
312 IAC 9-5-6	A	03-311	27 IR 1953	
312 IAC 9-5-7	A	03-311	27 IR 1953	
312 IAC 9-5-9	A	03-311	27 IR 1955	
312 IAC 9-5-11	N	03-311	27 IR 1956	
312 IAC 9-6-9	A	03-311	27 IR 1957	
312 IAC 9-7-2	A	03-311	27 IR 1957	
312 IAC 9-7-6	A	03-311	27 IR 1959	
312 IAC 9-7-13	A	03-311	27 IR 1960	
312 IAC 9-10-3	A	03-35	26 IR 3374	**27 IR 1165**
312 IAC 9-10-4	A	03-149	27 IR 246	**27 IR 1789**
312 IAC 9-10-9	A	03-311	27 IR 1960	
312 IAC 9-10-9.5	N	03-311	27 IR 1961	
312 IAC 9-10-10	A	03-311	27 IR 1962	
312 IAC 9-10-13.5	N	03-311	27 IR 1963	
312 IAC 9-10-17	A	03-311	27 IR 1964	
312 IAC 9-11-1	A	03-311	27 IR 1964	
312 IAC 9-11-2	A	03-311	27 IR 1965	
312 IAC 9-11-14	A	03-311	27 IR 1965	
312 IAC 10-2-33.5	N	03-296	27 IR 1617	
312 IAC 10-5-0.3	N	03-215	27 IR 1940	
312 IAC 10-5-0.6	N	03-215	27 IR 1940	
312 IAC 10-5-3	A	03-215	27 IR 1941	
312 IAC 10-5-4	A	03-215	27 IR 1941	
312 IAC 10-5-5	A	03-215	27 IR 1942	
312 IAC 10-5-6	A	03-215	27 IR 1943	
312 IAC 10-5-7	A	03-215	27 IR 1944	
312 IAC 10-5-8	A	03-215	27 IR 1945	
312 IAC 11-3-1	A	03-203	27 IR 1201	
312 IAC 11-4-1	A	04-4	27 IR 2316	
312 IAC 11-4-3	A	03-203	27 IR 1202	
312 IAC 11-5-1	A	03-30	26 IR 2661	**27 IR 61**
312 IAC 11-5-2	A	03-296	27 IR 1617	
312 IAC 14	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 15	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 16	RA	03-315	27 IR 2339	
312 IAC 16-1-9.5	N	03-251	27 IR 1206	
312 IAC 16-1-39.5	N	03-251	27 IR 1206	
312 IAC 16-1-44.6	N	03-251	27 IR 1206	
312 IAC 16-5-14	A	04-23	27 IR 2532	
312 IAC 16-5-15	A	03-251	27 IR 1206	
312 IAC 16-5-19	A	03-251	27 IR 1207	
312 IAC 17	RA	03-315	27 IR 2339	
312 IAC 17-3-1	A	04-23	27 IR 2532	
312 IAC 17-3-2	A	04-23	27 IR 2532	
312 IAC 17-3-3	A	04-23	27 IR 2532	
312 IAC 17-3-4	A	04-23	27 IR 2533	
312 IAC 17-3-6	A	04-23	27 IR 2534	
312 IAC 17-3-8	A	04-23	27 IR 2534	
312 IAC 17-3-9	A	04-23	27 IR 2534	
312 IAC 18-3-12	A	03-214	27 IR 1203	
312 IAC 18-3-15	N	03-213	27 IR 559	**27 IR 2470**
312 IAC 18-3-16	N	03-213	27 IR 560	**27 IR 2471**
312 IAC 18-3-17	N	03-213	27 IR 560	**27 IR 2472**
312 IAC 18-5-2	A	03-213	27 IR 561	**27 IR 2472**
312 IAC 18-5-4	A	03-91	26 IR 3375	**27 IR 1166**
312 IAC 19	RA	03-315	27 IR 2339	
312 IAC 19-1-3	A	03-296	27 IR 1617	
312 IAC 20-2-1.7	N	03-12	26 IR 3084	**27 IR 454**
312 IAC 20-2-4.3	N	03-12	26 IR 3084	**27 IR 454**
312 IAC 20-2-4.7	N	03-12	26 IR 3085	**27 IR 454**
312 IAC 20-3-3	N	03-12	26 IR 3085	**27 IR 454**
312 IAC 20-5	N	02-329	26 IR 2658	**27 IR 452**
312 IAC 24	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 25-1-8	A	03-93	27 IR 221	**27 IR 2444**
312 IAC 25-1-75.5	N	03-93	27 IR 222	**27 IR 2445**
312 IAC 25-1-155.5	N	03-93	27 IR 222	**27 IR 2445**
312 IAC 25-4-17	A	03-93	27 IR 222	**27 IR 2445**
312 IAC 25-4-44		00-285		*ERR (27 IR 1890)
312 IAC 25-4-45	A	03-93	27 IR 223	**27 IR 2446**
		00-285		*ERR (27 IR 1890)
312 IAC 25-4-49	A	03-93	27 IR 224	**27 IR 2447**
312 IAC 25-4-87	A	03-93	27 IR 225	**27 IR 2448**
312 IAC 25-4-102	A	03-93	27 IR 226	**27 IR 2449**
312 IAC 25-4-105.5	N	03-93	27 IR 227	**27 IR 2451**
312 IAC 25-4-113	A	03-93	27 IR 228	**27 IR 2451**
312 IAC 25-4-114	A	03-93	27 IR 228	**27 IR 2452**
312 IAC 25-4-115	A	03-93	27 IR 229	**27 IR 2453**
312 IAC 25-4-118	A	03-93	27 IR 230	**27 IR 2454**
312 IAC 25-5-7	A	03-93	27 IR 231	**27 IR 2455**
312 IAC 25-5-16	A	03-93	27 IR 232	**27 IR 2455**
312 IAC 25-6-17	A	03-93	27 IR 233	**27 IR 2457**
312 IAC 25-6-20	A	03-93	27 IR 235	**27 IR 2458**
312 IAC 25-6-23	A	03-93	27 IR 237	**27 IR 2461**
312 IAC 25-6-25	A	03-93	27 IR 238	**27 IR 2462**
312 IAC 25-6-31	A	03-169	27 IR 248	
312 IAC 25-6-66	A	03-93	27 IR 238	**27 IR 2462**
312 IAC 25-6-81	A	03-93	27 IR 239	**27 IR 2463**
312 IAC 25-6-84	A	03-93	27 IR 241	**27 IR 2465**
312 IAC 25-6-130	A	03-93	27 IR 243	**27 IR 2467**
312 IAC 25-7-1	A	03-93	27 IR 244	**27 IR 2468**
312 IAC 25-7-20	A	03-93	27 IR 246	**27 IR 2470**
312 IAC 25-9-5	A	03-169	27 IR 249	
312 IAC 25-9-8	A	03-169	27 IR 249	
312 IAC 26	RA	03-315	27 IR 2339	

TITLE 326 AIR POLLUTION CONTROL BOARD

326 IAC 1-1-3	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 1-1-3.5	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 1-2-65	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 1-2-90	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 1-3-4	A	03-69	26 IR 3376	**27 IR 2224**
326 IAC 1-4-1	A	03-70	26 IR 3092	**27 IR 1167**
326 IAC 2-1.1-7	A	03-67	27 IR 1981	
326 IAC 2-2-1	A	03-68	27 IR 250	**27 IR 2216**
	A	03-67	27 IR 1983	

326 IAC 2-2-2	A	03-67	27 IR 1993	
326 IAC 2-2-3	A	03-67	27 IR 1995	
326 IAC 2-2-4	A	03-67	27 IR 1995	
326 IAC 2-2-5	A	03-67	27 IR 1996	
326 IAC 2-2-6	A	03-68	27 IR 256	**27 IR 2222**
	A	03-67	27 IR 1997	
326 IAC 2-2-7	A	03-67	27 IR 1998	
326 IAC 2-2-8	A	03-67	27 IR 1998	
326 IAC 2-2-10	A	03-67	27 IR 1999	
326 IAC 2-2-12	A	03-68	27 IR 257	**27 IR 2223**
326 IAC 2-2-13	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-2-16	A	02-337	26 IR 1999	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-2.2	N	03-67	27 IR 2000	
326 IAC 2-2.3	N	03-67	27 IR 2004	
326 IAC 2-2.4	N	03-67	27 IR 2005	
326 IAC 2-2.5	R	03-67	27 IR 2048	
326 IAC 2-2.6	N	03-67	27 IR 2013	
326 IAC 2-3-1	A	02-337	26 IR 2000	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
	A	03-67	27 IR 2014	
326 IAC 2-3-2	A	03-67	27 IR 2023	
326 IAC 2-3-3	A	03-67	27 IR 2025	
326 IAC 2-3.2	N	03-67	27 IR 2027	
326 IAC 2-3.3	N	03-67	27 IR 2032	
326 IAC 2-3.4	N	03-67	27 IR 2033	
326 IAC 2-5.1-4	A	03-67	27 IR 2041	
326 IAC 2-6-1	A	01-249	24 IR 3700	*CPH (24 IR 4012)
				*CPH (27 IR 551)
				27 IR 2210
326 IAC 2-6-2	A	01-249	24 IR 3700	*CPH (24 IR 4012)
				*CPH (27 IR 551)
				27 IR 2210
326 IAC 2-6-3	A	01-249	24 IR 3702	*CPH (24 IR 4012)
				*CPH (27 IR 551)
				27 IR 2212
326 IAC 2-6-4	A	01-249	24 IR 3703	*CPH (24 IR 4012)
				*CPH (27 IR 551)
				27 IR 2213
	A	02-337	26 IR 2005	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-6-5	N	01-249	24 IR 3705	*CPH (24 IR 4012)
				*CPH (27 IR 551)
				27 IR 2215
326 IAC 2-7-3	A	02-337	26 IR 2006	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-7-8	A	02-337	26 IR 2006	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-7-10.5	A	03-67	27 IR 2041	
326 IAC 2-7-11	A	03-67	27 IR 2045	
326 IAC 2-7-12	A	03-67	27 IR 2046	
326 IAC 2-7-18	A	02-337	26 IR 2007	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-8-3	A	02-337	26 IR 2008	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-9-8	A	02-337	26 IR 2010	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-9-9	A	02-337	26 IR 2012	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-9-10	A	02-337	26 IR 2013	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-9-13	A	02-337	26 IR 2014	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 2-10-1	RA	03-332	27 IR 2324	
326 IAC 2-10-2.1	N	03-332	27 IR 2325	
326 IAC 2-10-3.1	N	03-332	27 IR 2325	
326 IAC 2-10-4.1	N	03-332	27 IR 2325	
326 IAC 2-10-5.1	N	03-332	27 IR 2325	
326 IAC 2-10-6.1	N	03-332	27 IR 2325	
326 IAC 2-11-1	RA	03-333	27 IR 2326	
326 IAC 2-11-2	A	03-333	27 IR 2327	
326 IAC 2-11-3	RA	03-333	27 IR 2327	
326 IAC 2-11-4	RA	03-333	27 IR 2328	
326 IAC 3-4-1	A	02-337	26 IR 2016	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-4-3	A	02-337	26 IR 2016	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-5-2	A	02-337	26 IR 2017	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-5-3	A	02-337	26 IR 2019	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-5-4	A	02-337	26 IR 2019	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-5-5	A	02-337	26 IR 2020	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-6-1	A	02-337	26 IR 2022	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-6-3	A	02-337	26 IR 2022	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-6-5	A	02-337	26 IR 2023	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-7-2	A	02-337	26 IR 2024	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 3-7-4	A	02-337	26 IR 2025	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 5-1-2	A	01-407	26 IR 2026	*CPH (26 IR 2391)
326 IAC 5-1-4	A	02-337	26 IR 2026	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 5-1-5	A	02-337	26 IR 2027	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 6-1-10.1	A	01-407	26 IR 1970	*CPH (26 IR 2391)
				27 IR 61
326 IAC 6-1-10.2	A	01-407	26 IR 1994	*CPH (26 IR 2391)
				27 IR 85
326 IAC 6-1-13	A	03-195	27 IR 2318	
326 IAC 7-2-1	A	02-337	26 IR 2028	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 7-4-3	A	03-195	27 IR 2319	
326 IAC 7-4-10	A	02-337	26 IR 2029	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-1-4	A	02-337	26 IR 2030	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-4-6	A	02-337	26 IR 2032	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-4-9	A	02-337	26 IR 2035	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-7-7	A	02-337	26 IR 2036	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-9-2	A	02-337	26 IR 2037	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-9-3	A	02-337	26 IR 2037	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-9-4	A	02-337	26 IR 2038	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-9-5	A	02-337	26 IR 2040	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-9-6	A	02-337	26 IR 2042	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-10-7	A	02-337	26 IR 2044	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-11-2	A	02-337	26 IR 2044	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-11-6	A	02-337	26 IR 2046	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 8-11-7	A	02-337	26 IR 2050	*ARR (27 IR 2500)
				*CPH (27 IR 2521)

326 IAC 8-12-3	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-12-5	A	02-337	26 IR 2052	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-12-6	A	02-337	26 IR 2053	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-12-7	A	02-337	26 IR 2054	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 8-13-5	A	02-337	26 IR 2055	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 10-1-2	A	02-337	26 IR 2056	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 10-1-4	A	02-337	26 IR 2057	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 10-1-5	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 10-1-6	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 11-7-1	A	02-337	26 IR 2061	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 13-1.1-1	A	02-337	26 IR 2062	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 13-1.1-8	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 13-1.1-10	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 13-1.1-13	A	02-337	26 IR 2064	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 13-1.1-14	A	02-337	26 IR 2065	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 13-1.1-16	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-1-1	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-1-2	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-1-4	R	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-3-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-4-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-5-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-7-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-8-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-8-3	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-8-4	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-8-5	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-9-5	A	02-337	26 IR 2070	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-9-7	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-9-9	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-10-1	A	02-337	26 IR 2072	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-10-2	A	02-337	26 IR 2074	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-10-3	A	02-337	26 IR 2076	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 14-10-4	A	02-337	26 IR 2078	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 15-1-2	A	02-337	26 IR 2080	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 15-1-4	A	02-337	26 IR 2083	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 16-3-1	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 18-1-2	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 18-1-5	A	02-337	26 IR 2086	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 18-1-7	A	02-337	26 IR 2087	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 18-1-8	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 18-2-2	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 18-2-3	A	02-337	26 IR 2090	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 18-2-6	A	02-337	26 IR 2096	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 18-2-7	A	02-337	26 IR 2097	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 20-49	N	02-336	26 IR 3090	**27 IR 2473**
326 IAC 20-50	N	02-336	26 IR 3090	**27 IR 2473**
326 IAC 20-51	N	02-336	26 IR 3090	**27 IR 2473**
326 IAC 20-52	N	02-336	26 IR 3091	**27 IR 2473**
326 IAC 20-53	N	02-336	26 IR 3091	**27 IR 2474**
326 IAC 20-54	N	02-336	26 IR 3091	**27 IR 2474**
326 IAC 20-55	N	02-336	26 IR 3091	**27 IR 2474**
326 IAC 20-57	N	03-284	27 IR 1618	*CPH (27 IR 1937)
326 IAC 20-58	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-59	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-60	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-61	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-62	N	03-284	27 IR 1619	*CPH (27 IR 1937)
326 IAC 20-63	N	03-285	27 IR 2322	
326 IAC 20-64	N	03-285	27 IR 2322	
326 IAC 20-65	N	03-285	27 IR 2322	
326 IAC 20-66	N	03-285	27 IR 2323	
326 IAC 20-67	N	03-285	27 IR 2323	
326 IAC 20-68	N	03-285	27 IR 2323	
326 IAC 20-69	N	03-285	27 IR 2323	
326 IAC 20-70	N	03-284	27 IR 1620	*CPH (27 IR 1937)
326 IAC 22-1-1	A	02-337	26 IR 2098	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 23-1-4	A	02-189	26 IR 2407	**27 IR 459**
326 IAC 23-1-5	A	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-5.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-6.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-7.5	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-7.6	N	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-9	A	02-189	26 IR 2408	**27 IR 460**
326 IAC 23-1-10	A	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-11	A	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-11.5	N	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-12.5	N	02-189	26 IR 2409	**27 IR 461**
326 IAC 23-1-17	A	02-189	26 IR 2409	**27 IR 462**
326 IAC 23-1-21	A	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-21.5	N	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-22	A	02-189	26 IR 2437	**27 IR 462**
326 IAC 23-1-23	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-26.5	N	02-189	26 IR 2410	
326 IAC 23-1-27	A	02-189	26 IR 2410	**27 IR 462**
326 IAC 23-1-27.5	N	02-189	26 IR 2410	**27 IR 463**
326 IAC 23-1-31	A	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521)
326 IAC 23-1-32.1	N	02-189	26 IR 2410	**27 IR 463**
326 IAC 23-1-32.2	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34	A	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34.5	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-34.8	N	02-189	26 IR 2411	**27 IR 463**

326 IAC 23-1-37	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-40	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-42	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-43	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-44	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-45	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-46	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-47	R	02-189	26 IR 2437	**27 IR 490**
326 IAC 23-1-48.5	N	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-52	A	02-189	26 IR 2411	**27 IR 463**
326 IAC 23-1-52.5	N	02-189	26 IR 2411	**27 IR 464**
326 IAC 23-1-54.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-55.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-58.5	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-58.7	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-60.1	N	02-189	26 IR 2412	**27 IR 464**
326 IAC 23-1-60.5	N	02-189	26 IR 2412	**27 IR 465**
326 IAC 23-1-60.6	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-61.5	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-62.5	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-62.6	N	02-189	26 IR 2413	**27 IR 465**
326 IAC 23-1-63	A	02-189	26 IR 2413	**27 IR 466**
326 IAC 23-1-64	A	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.5	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.6	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-69.7	N	02-189	26 IR 2414	**27 IR 466**
326 IAC 23-1-71	N	02-189	26 IR 2414	**27 IR 467**
326 IAC 23-2-1	A	02-189	26 IR 2414	**27 IR 467**
326 IAC 23-2-3	A	02-189	26 IR 2415	**27 IR 467**
326 IAC 23-2-4	A	02-189	26 IR 2416	**27 IR 469**
326 IAC 23-2-5	A	02-189	26 IR 2418	**27 IR 471**
326 IAC 23-2-6	A	02-189	26 IR 2419	**27 IR 471**
326 IAC 23-2-6.5	N	02-189	26 IR 2419	**27 IR 472**
326 IAC 23-2-7	A	02-189	26 IR 2420	**27 IR 473**
326 IAC 23-2-8	A	02-189	26 IR 2421	**27 IR 474**
326 IAC 23-2-9	A	02-189	26 IR 2422	**27 IR 474**
326 IAC 23-3-1	A	02-189	26 IR 2422	**27 IR 475**
326 IAC 23-3-2	A	02-189	26 IR 2422	**27 IR 475**
326 IAC 23-3-3	A	02-189	26 IR 2423	**27 IR 476**
326 IAC 23-3-5	A	02-189	26 IR 2426	**27 IR 479**
326 IAC 23-3-7	A	02-189	26 IR 2426	**27 IR 479**
326 IAC 23-3-11	A	02-189	26 IR 2428	**27 IR 480**
326 IAC 23-3-12	A	02-189	26 IR 2428	**27 IR 481**
326 IAC 23-3-13	A	02-189	26 IR 2428	**27 IR 481**
326 IAC 23-4-1	A	02-189	26 IR 2429	**27 IR 481**
326 IAC 23-4-2	A	02-189	26 IR 2429	**27 IR 482**
326 IAC 23-4-3	A	02-189	26 IR 2429	**27 IR 482**
326 IAC 23-4-4	A	02-189	26 IR 2430	**27 IR 483**
326 IAC 23-4-5	A	02-189	26 IR 2431	**27 IR 484**
326 IAC 23-4-6	A	02-189	26 IR 2432	**27 IR 485**
326 IAC 23-4-7	A	02-189	26 IR 2434	**27 IR 486**
326 IAC 23-4-9	A	02-189	26 IR 2434	**27 IR 487**
326 IAC 23-4-11	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-4-12	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-4-13	A	02-189	26 IR 2435	**27 IR 488**
326 IAC 23-5	N	02-189	26 IR 2436	**27 IR 489**

TITLE 327 WATER POLLUTION CONTROL BOARD

327 IAC 5-1-1.5	A	02-327	26 IR 3097	*CPH (26 IR 3366)
				27 IR 1563
327 IAC 5-4-3	A	01-51	26 IR 3698	*CPH (27 IR 1195)
				27 IR 2225
327 IAC 5-4-3.1	N	01-51		**††27 IR 2230**
327 IAC 5-4-6				*ERR (27 IR 191)
327 IAC 15-2-3	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 830
327 IAC 15-2-6	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 830
327 IAC 15-2-8	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 831
327 IAC 15-2-9	A	01-95	26 IR 1615	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 831
327 IAC 15-3-1	A	01-95	26 IR 1616	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 832
327 IAC 15-3-2	A	01-95	26 IR 1616	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 832
	A	02-327	26 IR 3098	*CPH (26 IR 3366)
				27 IR 1563
327 IAC 15-3-3	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 832
327 IAC 15-5-1	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 833
327 IAC 15-5-2	A	01-95	26 IR 1617	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 833
327 IAC 15-5-3	A	01-95	26 IR 1618	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 834
327 IAC 15-5-4	A	01-95	26 IR 1619	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 834
				*ERR (27 IR 2284)
327 IAC 15-5-5	A	01-95	26 IR 1620	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 836
327 IAC 15-5-6	A	01-95	26 IR 1621	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 837
				*ERR (27 IR 2284)
327 IAC 15-5-6.5	N	01-95	26 IR 1622	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 838
				*ERR (27 IR 2284)
327 IAC 15-5-7	A	01-95	26 IR 1625	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 840
				*ERR (27 IR 2284)
327 IAC 15-5-7.5	N	01-95	26 IR 1627	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 843
327 IAC 15-5-8	A	01-95	26 IR 1628	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 843

327 IAC 15-5-10	A	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 844
327 IAC 15-5-11	R	01-95	26 IR 1646	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 863
327 IAC 15-5-12	N	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 844
327 IAC 15-6-1	A	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 845
327 IAC 15-6-2	A	01-95	26 IR 1629	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 845
				*ERR (27 IR 2284)
327 IAC 15-6-4	A	01-95	26 IR 1632	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 848
				*ERR (27 IR 2284)
327 IAC 15-6-5	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 851
327 IAC 15-6-6	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 851
327 IAC 15-6-7	A	01-95	26 IR 1635	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 851
				*ERR (27 IR 2284)
327 IAC 15-6-7.3	N	01-95	26 IR 1641	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 857
				*ERR (27 IR 2285)
327 IAC 15-6-7.5	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 858
327 IAC 15-6-8.5	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 859
327 IAC 15-6-9	A	01-95		††**27 IR 859**
327 IAC 15-6-10	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 859
327 IAC 15-6-11	N	01-95	26 IR 1643	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 860
327 IAC 15-6-12	N	01-95	26 IR 1644	*CPH (26 IR 1961)
				*CPH (26 IR 2392)
				*CPH (26 IR 2645)
				27 IR 860
				*ERR (27 IR 2285)
327 IAC 15-13				*ERR (27 IR 191)
327 IAC 15-14	N	02-327	26 IR 3098	*CPH (26 IR 3366)
				27 IR 1563
327 IAC 15-15	N	01-51	26 IR 3701	*CPH (27 IR 1195)
				27 IR 2230

TITLE 329 SOLID WASTE MANAGEMENT BOARD

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)
				27 IR 1874
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)
				27 IR 1874
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)
				27 IR 1875
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)
				27 IR 1875
	A	02-160	27 IR 912	
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)
				27 IR 1876
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)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
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)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
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)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
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)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)

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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)

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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)

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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)

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) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
329 IAC 10-1-2.5	N	00-185		**††27 IR 1791**
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) *CPH (27 IR 208) **27 IR 1791**
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) *CPH (27 IR 208) **27 IR 1792**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1792**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1792**
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) *CPH (27 IR 208) **27 IR 1793**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1793**
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) *CPH (27 IR 208) **27 IR 1793**
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) *CPH (27 IR 208) **27 IR 1793**
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) *CPH (27 IR 208) **27 IR 1793**
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) *CPH (27 IR 208) **27 IR 1793**
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) *CPH (27 IR 208) **27 IR 1793**
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) *CPH (27 IR 208) **27 IR 1794**
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) *CPH (27 IR 208) **27 IR 1794**
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) *CPH (27 IR 208) **27 IR 1794**
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) *CPH (27 IR 208) **27 IR 1873**

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) *CPH (27 IR 208) **27 IR 1794**
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) *CPH (27 IR 208) **27 IR 1794**
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) *CPH (27 IR 208) **27 IR 1795**
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) *CPH (27 IR 208) **27 IR 1795**
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) *CPH (27 IR 208) **27 IR 1795**
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) *CPH (27 IR 208) **27 IR 1795**
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) *CPH (27 IR 208) **27 IR 1795**
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) *CPH (27 IR 208) **27 IR 1795**
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) *CPH (27 IR 208) **27 IR 1795**
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) *CPH (27 IR 208) **27 IR 1796**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1796**
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) *CPH (27 IR 208) **27 IR 1796**
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) *CPH (27 IR 208) **27 IR 1796**
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) *CPH (27 IR 208)
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) *CPH (27 IR 208) **27 IR 1873**
329 IAC 10-2-151	A	00-185		††**27 IR 1796**
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) *CPH (27 IR 208) **27 IR 1796**
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) *CPH (27 IR 208) **27 IR 1797**
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) *CPH (27 IR 208) **27 IR 1797**

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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1797**
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) *CPH (27 IR 208) **27 IR 1797**
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) *CPH (27 IR 208) **27 IR 1797**
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) *CPH (27 IR 208) **27 IR 1797**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1873**
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) *CPH (27 IR 208) **27 IR 1797**
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) *CPH (27 IR 208) **27 IR 1798**
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) *CPH (27 IR 208) **27 IR 1798**
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) *CPH (27 IR 208) **27 IR 1799**
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) *CPH (27 IR 208) **27 IR 1799**
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) *CPH (27 IR 208) **27 IR 1801**
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) *CPH (27 IR 208) **27 IR 1801**
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) *CPH (27 IR 208) **27 IR 1802**
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) *CPH (27 IR 208) **27 IR 1803**
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) *CPH (27 IR 208) **27 IR 1804**

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) *CPH (27 IR 208) **27 IR 1804**
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) *CPH (27 IR 208) **27 IR 1806**
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) *CPH (27 IR 208) **27 IR 1806**
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) *CPH (27 IR 208) **27 IR 1806**
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) *CPH (27 IR 208) **27 IR 1807**
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) *CPH (27 IR 208) **27 IR 1808**
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) *CPH (27 IR 208) **27 IR 1809**
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) *CPH (27 IR 208) **27 IR 1810**
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) *CPH (27 IR 208) **27 IR 1810**
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) *CPH (27 IR 208) **27 IR 1812**
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) *CPH (27 IR 208) **27 IR 1813**
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) *CPH (27 IR 208) **27 IR 1814**
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) *CPH (27 IR 208) **27 IR 1814**
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) *CPH (27 IR 208) **27 IR 1815**
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) *CPH (27 IR 208) **27 IR 1817**
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) *CPH (27 IR 208) **27 IR 1818**
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) *CPH (27 IR 208) **27 IR 1819**
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) *CPH (27 IR 208) **27 IR 1819**
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) *CPH (27 IR 208) **27 IR 1821**
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) *CPH (27 IR 208) **27 IR 1821**
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) *CPH (27 IR 208) **27 IR 1822**
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) *CPH (27 IR 208) **27 IR 1823**

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) *CPH (27 IR 208) **27 IR 1824**
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) *CPH (27 IR 208) **27 IR 1824**
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) *CPH (27 IR 208) **27 IR 1825**
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) *CPH (27 IR 208) **27 IR 1825**
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) *CPH (27 IR 208) **27 IR 1825**
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) *CPH (27 IR 208) **27 IR 1826**
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) *CPH (27 IR 208) **27 IR 1830**
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) *CPH (27 IR 208) **27 IR 1835**
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) *CPH (27 IR 208) **27 IR 1838**
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) *CPH (27 IR 208) **27 IR 1840**
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) *CPH (27 IR 208) **27 IR 1841**
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) *CPH (27 IR 208) **27 IR 1842**
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) *CPH (27 IR 208) **27 IR 1843**
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) *CPH (27 IR 208) **27 IR 1845**
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) *CPH (27 IR 208) **27 IR 1849**
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) *CPH (27 IR 208) **27 IR 1850**
329 IAC 10-21-17	N	00-185		††**27 IR 1855**
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) *CPH (27 IR 208) **27 IR 1855**
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) *CPH (27 IR 208) **27 IR 1856**
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) *CPH (27 IR 208) **27 IR 1856**
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) *CPH (27 IR 208) **27 IR 1856**
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) *CPH (27 IR 208) **27 IR 1857**

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) *CPH (27 IR 208) **27 IR 1858**
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) *CPH (27 IR 208) **27 IR 1859**
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) *CPH (27 IR 208) **27 IR 1859**
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) *CPH (27 IR 208) **27 IR 1860**
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) *CPH (27 IR 208) **27 IR 1861**
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) *CPH (27 IR 208) **27 IR 1862**
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) *CPH (27 IR 208) **27 IR 1862**
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) *CPH (27 IR 208) **27 IR 1863**
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) *CPH (27 IR 208) **27 IR 1864**
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) *CPH (27 IR 208) **27 IR 1864**
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) *CPH (27 IR 208) **27 IR 1870**
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) *CPH (27 IR 208) **27 IR 1871**
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) *CPH (27 IR 208) **27 IR 1871**
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) *CPH (27 IR 208) **27 IR 1872**
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)

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

345 IAC 1-3-22	A	03-9	26 IR 3108	**27 IR 490**
345 IAC 1-3-30	A	02-323	26 IR 3102	**27 IR 87**
345 IAC 1-3-31	N	02-323	26 IR 3104	**27 IR 89**
345 IAC 1-3-32	N	02-323	26 IR 3104	**27 IR 90**
345 IAC 1-5-1	A	03-9	26 IR 3108	**27 IR 491**
345 IAC 1-6-2	A	02-323	26 IR 3105	**27 IR 90**
345 IAC 1-6-3	A	02-323	26 IR 3105	**27 IR 90**
345 IAC 2-7-2.4	N	02-323	26 IR 3106	**27 IR 92**
345 IAC 2-7-2.5	N	02-323	26 IR 3107	**27 IR 92**
345 IAC 2-7-3	A	02-323	26 IR 3107	**27 IR 92**
345 IAC 7-3.5-16	A	04-15	27 IR 2328	
345 IAC 9-2.1-1	A	04-15	27 IR 2329	
345 IAC 9-10.5-2	N	04-15	27 IR 2329	

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-11	N	02-332	26 IR 3109	*CPH (26 IR 3673) *AROC (27 IR 1652) **27 IR 1877**

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-8-2	A	03-164	26 IR 3929	*NRA (27 IR 1194) **27 IR 2247**
405 IAC 1-8-3	A	03-164	26 IR 3929	*NRA (27 IR 1194) **27 IR 2247**
405 IAC 1-10.5-2	A	03-164	26 IR 3930	*NRA (27 IR 1194) **27 IR 2248**
	A	03-236	27 IR 914	*NRA (27 IR 1935) **27 IR 2482**
405 IAC 1-10.5-3	A	03-18	26 IR 3378	*NRA (27 IR 207) **27 IR 863**
	A	03-164	26 IR 3932	*NRA (27 IR 1194) **27 IR 2249**
	A	03-236	27 IR 916	*NRA (27 IR 1935) **27 IR 2484**
405 IAC 1-17-1	A	03-61	26 IR 3111	*NRA (26 IR 3670) **27 IR 93**
405 IAC 1-17-2	A	03-61	26 IR 3111	*NRA (26 IR 3670) **27 IR 94**
405 IAC 1-17-3	A	03-61	26 IR 3112	*NRA (26 IR 3670) **27 IR 94**
405 IAC 1-17-4	A	03-61	26 IR 3113	*NRA (26 IR 3670) **27 IR 95**
405 IAC 1-17-5	A	03-61	26 IR 3113	*NRA (26 IR 3670) **27 IR 96**
405 IAC 1-17-6	A	03-61	26 IR 3114	*NRA (26 IR 3670) **27 IR 96**
405 IAC 1-17-7	A	03-61	26 IR 3114	*NRA (26 IR 3670) **27 IR 97**
405 IAC 1-17-9	A	03-61	26 IR 3115	*NRA (26 IR 3670) **27 IR 98**
405 IAC 1-21	N	03-184	27 IR 258	*NRA (27 IR 1194) *ARR (27 IR 1891) **27 IR 2475** *ERR (27 IR 2499)
405 IAC 2-3-1.1	A	03-205	27 IR 262	*NRA (27 IR 1612) **27 IR 2479**
405 IAC 2-3-10	A	03-263	27 IR 1210	
405 IAC 2-8-1	A	03-134	26 IR 3706	*AROC (27 IR 2080)
405 IAC 2-8-1.1	A	03-134	26 IR 3707	*AROC (27 IR 2080)
405 IAC 2-10-3	A	03-134	26 IR 3707	*AROC (27 IR 2080)
405 IAC 2-10-7	A	03-134	26 IR 3707	*AROC (27 IR 2080)
405 IAC 2-10-7.1	N	03-134	26 IR 3707	*AROC (27 IR 2080)
405 IAC 2-10-8	A	03-134	26 IR 3708	*AROC (27 IR 2080)
405 IAC 2-10-9	A	03-134	26 IR 3708	*AROC (27 IR 2080)
405 IAC 2-10-10	R	03-134	26 IR 3709	*AROC (27 IR 2080)
405 IAC 2-10-11	N	03-134	26 IR 3709	*AROC (27 IR 2080)
405 IAC 5-3-13	A	03-66	26 IR 3381	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550) *ARR (27 IR 1576) *NRA (27 IR 1612) **27 IR 2244**
405 IAC 5-19-3	A	03-207	27 IR 267	*AROC (27 IR 2342)
405 IAC 5-20-1	A	03-184	27 IR 259	*NRA (27 IR 1194) *ARR (27 IR 1891) **27 IR 2476**
405 IAC 5-20-2	A	03-184	27 IR 260	*NRA (27 IR 1194) *ARR (27 IR 1891) **27 IR 2476**
405 IAC 5-20-3.1	N	03-184	27 IR 260	*NRA (27 IR 1194) *ARR (27 IR 1891) **27 IR 2477**
405 IAC 5-20-4	A	03-184	27 IR 261	*NRA (27 IR 1194) *ARR (27 IR 1891) **27 IR 2477**
405 IAC 5-20-7	A	03-184	27 IR 261	*NRA (27 IR 1194) *ARR (27 IR 1891) **27 IR 2478**
405 IAC 5-21-1	A	03-66	26 IR 3381	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550) *ARR (27 IR 1576) *NRA (27 IR 1612) **27 IR 2245**
405 IAC 5-21-7	A	03-66	26 IR 3382	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550) *ARR (27 IR 1576) *NRA (27 IR 1612) **27 IR 2245**
405 IAC 5-21-8	N	03-66	26 IR 3382	*NRA (26 IR 3902) *ARR (27 IR 539) *NRA (27 IR 550) *ARR (27 IR 1576) *NRA (27 IR 1612) **27 IR 2245**
405 IAC 5-24-7	A	03-206	27 IR 266	*NRA (27 IR 1194) **27 IR 2252**
405 IAC 6-2-3	A	03-260	27 IR 919	*NRA (27 IR 1935) **27 IR 2486**

405 IAC 6-2-5	A	03-260	27 IR 919	*NRA (27 IR 1935) **27 IR 2486**
405 IAC 6-2-21	R	03-260	27 IR 921	*NRA (27 IR 1935) **27 IR 2489**
405 IAC 6-2-22	R	03-260	27 IR 921	*NRA (27 IR 1935) **27 IR 2489**
405 IAC 6-3-3	A	03-260	27 IR 919	*NRA (27 IR 1935) **27 IR 2487**
405 IAC 6-4-2	A	03-260	27 IR 919	*NRA (27 IR 1935) **27 IR 2487**
405 IAC 6-4-3	A	03-260	27 IR 920	*NRA (27 IR 1935) **27 IR 2487**
405 IAC 6-5-1	A	03-260	27 IR 920	*NRA (27 IR 1935) **27 IR 2487**
405 IAC 6-5-2	A	03-260	27 IR 920	*NRA (27 IR 1935) **27 IR 2488**
405 IAC 6-5-3	A	03-260	27 IR 921	*NRA (27 IR 1935) **27 IR 2488**
405 IAC 6-5-4	A	03-260	27 IR 921	*NRA (27 IR 1935) **27 IR 2488**
405 IAC 6-5-6	A	03-260	27 IR 921	*NRA (27 IR 1935) **27 IR 2489**
405 IAC 6-6-3	R	03-260	27 IR 921	*NRA (27 IR 1935) **27 IR 2489**
405 IAC 6-6-4	R	03-260	27 IR 921	*NRA (27 IR 1935) **27 IR 2489**

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

407 IAC 3-7-1	A	04-35	27 IR 2535	
407 IAC 3-13-1	A	04-35	27 IR 2535	

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 1-2.3-47	A	03-4	26 IR 3131	**27 IR 865**
410 IAC 1-2.3-48	A	03-4	26 IR 3134	**27 IR 869**
410 IAC 1-2.3-97.5	N	03-4	26 IR 3135	**27 IR 870**
410 IAC 1-5	RA	04-42	27 IR 2579	
410 IAC 1-7	N	03-161	27 IR 2048	
410 IAC 3-3-7.1	A	03-19	26 IR 3385	*ARR (27 IR 539) **27 IR 1568**
410 IAC 6-6-1				*ERR (27 IR 1890)
410 IAC 6-6-8				*ERR (27 IR 1890)
410 IAC 6-6-13				*ERR (27 IR 1890)
410 IAC 6-6-14.1				*ERR (27 IR 1890)
410 IAC 6-7.2-17	A	02-295	26 IR 2662	**27 IR 98**
410 IAC 6-7.2-29	A	02-295	26 IR 2662	**27 IR 99**
410 IAC 6-7.2-30	A	02-295	26 IR 2663	**27 IR 99**
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	*ARR (27 IR 878) **27 IR 1169**
410 IAC 7-23	N	02-317	26 IR 3383	*ARR (27 IR 878) **27 IR 1167**
410 IAC 15-1.5-8	A	03-216	27 IR 1620	
410 IAC 15-1.7-1	A	03-216	27 IR 1622	
410 IAC 15-2.5-7	A	03-216	27 IR 1623	
410 IAC 15-2.7-1	A	03-216	27 IR 1625	
410 IAC 16.2-1.1-11.5	N	03-275	27 IR 2051	
410 IAC 16.2-1.1-19.3	N	04-7	27 IR 2542	
410 IAC 16.2-3.1-2	A	03-297	27 IR 2536	
410 IAC 16.2-3.1-3	A	03-275	27 IR 2051	
410 IAC 16.2-3.1-4	A	03-275	27 IR 2053	
410 IAC 16.2-3.1-13	A	03-275	27 IR 2054	
410 IAC 16.2-3.1-14	A	03-275	27 IR 2056	
	A	04-7	27 IR 2542	
410 IAC 16.2-3.1-19	A	03-90	27 IR 922	*CPH (27 IR 1613)
410 IAC 16.2-3.1-26	A	03-275	27 IR 2059	
410 IAC 16.2-3.1-29	A	03-275	27 IR 2060	
410 IAC 16.2-3.1-53	N	04-7	27 IR 2545	
410 IAC 16.2-5-1.1	A	03-297	27 IR 2539	
410 IAC 16.2-5-1.2	A	03-275	27 IR 2060	
410 IAC 16.2-5-1.3	A	03-275	27 IR 2066	
410 IAC 16.2-5-1.4	A	03-275	27 IR 2067	
	A	04-7	27 IR 2547	
410 IAC 16.2-5-2	A	03-275	27 IR 2069	
410 IAC 16.2-5-4	A	03-275	27 IR 2069	
410 IAC 16.2-5-13	N	04-7	27 IR 2548	
410 IAC 16.2-8-1	A	03-90	27 IR 924	*CPH (27 IR 1613)

TITLE 414 HOSPITAL COUNCIL

414 IAC	N	03-277	27 IR 1625	

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

440 IAC 5.2	N	03-57	26 IR 3386	*NRA (26 IR 3902) **27 IR 492**

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 3.5-1-1	A	03-180	27 IR 269	
460 IAC 3.5-2-1	A	03-180	27 IR 269	
460 IAC 5-1-13	A	02-151	26 IR 524	
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	**27 IR 101**
460 IAC 6-3-5.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-5.2	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-6.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-10.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-15.1	N	02-326	26 IR 2665	**27 IR 101**
460 IAC 6-3-15.2	N	03-123	26 IR 3935	
460 IAC 6-3-15.3	N	02-326	26 IR 2665	††**27 IR 101**
460 IAC 6-3-18	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-25	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-29.5	N	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-31	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-32	A	02-326	26 IR 2666	**27 IR 102**
460 IAC 6-3-38.5	N	02-326	26 IR 2666	**27 IR 103**
460 IAC 6-3-38.6	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-41.1	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-52.1	N	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-3-56	A	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-4-1	A	02-326	26 IR 2667	**27 IR 103**
460 IAC 6-5-4	A	02-326	26 IR 2668	**27 IR 104**
460 IAC 6-5-7	A	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-21	A	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-32	N	02-326	26 IR 2669	**27 IR 105**
460 IAC 6-5-33	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-34	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-35	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-5-36	N	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-6-2	A	02-326	26 IR 2670	**27 IR 106**
460 IAC 6-6-3	A	02-326	26 IR 2670	**27 IR 107**
460 IAC 6-7-2	A	02-326	26 IR 2671	**27 IR 107**
460 IAC 6-7-3	A	02-326	26 IR 2671	**27 IR 108**
460 IAC 6-9-5	A	02-326	26 IR 2672	**27 IR 108**
460 IAC 6-9-7	N	02-326	26 IR 2673	**27 IR 109**
460 IAC 6-10-5	A	02-326	26 IR 2673	**27 IR 110**
460 IAC 6-10-8	A	02-326	26 IR 2674	**27 IR 110**
460 IAC 6-10-13	A	02-326	26 IR 2674	**27 IR 110**
460 IAC 6-13-2	A	02-326	26 IR 2675	**27 IR 111**
460 IAC 6-14-4	A	02-326	26 IR 2675	**27 IR 111**
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	**27 IR 111**
460 IAC 6-17-4	A	02-326	26 IR 2676	**27 IR 112**

460 IAC 6-19-6	A	02-326	26 IR 2676	**27 IR 113**
	A	03-123	26 IR 3936	
460 IAC 6-24-1	A	02-236	26 IR 2677	**27 IR 113**
460 IAC 6-24-2	A	02-326	26 IR 2677	**27 IR 114**
460 IAC 6-25-10	A	02-326	26 IR 2677	**27 IR 114**
460 IAC 6-29-4	A	02-326	26 IR 2678	**27 IR 114**
460 IAC 6-29-9	N	02-326	26 IR 2678	**27 IR 115**
460 IAC 6-31-1	A	03-123	26 IR 3936	
460 IAC 6-35	N	02-326	26 IR 2678	**27 IR 115**
460 IAC 6-36	N	03-123	26 IR 3937	
460 IAC 8	N	03-99	26 IR 3392	**27 IR 2489**

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)
				*AROC (27 IR 288)
				27 IR 162
470 IAC 3-4.2	R	02-298	26 IR 1719	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
				*AROC (27 IR 288)
				27 IR 162
470 IAC 3-4.7	N	02-298	26 IR 1675	*NRA (26 IR 3365)
				*AROC (26 IR 3756)
				*AROC (27 IR 288)
				27 IR 116
				*ERR (27 IR 1184)
470 IAC 3-4.8	N	03-232	27 IR 1626	
470 IAC 3-18	N	03-233	27 IR 1627	
470 IAC 6-2-1	A	03-136	26 IR 3709	*NRA (27 IR 207)
				27 IR 870
470 IAC 6-2-13	A	03-136	26 IR 3709	*NRA (27 IR 207)
				27 IR 871
470 IAC 6-4.1-4	A	03-136	26 IR 3710	*NRA (27 IR 207)
				27 IR 871
470 IAC 10.1-3-4	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.1-3-4.1	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.1-3-5	R	03-33	26 IR 2682	*NRA (26 IR 3670)
				27 IR 500
470 IAC 10.2	N	03-33	26 IR 2680	*NRA (26 IR 3670)
				27 IR 498

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 6-7-6.1	A	03-150	26 IR 3938	*ARR (27 IR 1185)
	A	03-150	27 IR 1211	
511 IAC 6-7-6.5	A	04-36	27 IR 2552	
511 IAC 6.1-1-2	A	03-219	27 IR 561	
511 IAC 6.1-5.1-2	A	04-36	27 IR 2553	
511 IAC 6.1-5.1-3	A	04-36	27 IR 2553	
511 IAC 6.1-5.1-4	A	04-36	27 IR 2554	
511 IAC 6.1-5.1-5	A	04-36	27 IR 2555	
511 IAC 6.1-5.1-6	A	04-36	27 IR 2555	
511 IAC 6.1-5.1-8	A	04-36	27 IR 2556	
511 IAC 6.1-5.1-9	A	03-151	26 IR 3939	
	A	04-36	27 IR 2557	
511 IAC 6.1-5.1-10.1	A	03-151	26 IR 3940	
	A	04-22	27 IR 2550	
511 IAC 6.2-2.5	N	03-219	27 IR 563	
511 IAC 6.2-6-4	A	02-264	26 IR 1719	**27 IR 162**
511 IAC 6.2-6-6.1	N	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-6-8	A	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-6-12	A	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-7	N	02-264	26 IR 1720	**27 IR 163**
511 IAC 6.2-7-8	A	03-219	27 IR 564	

TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD

514 IAC	N	03-298	27 IR 1634	

TITLE 515 PROFESSIONAL STANDARDS BOARD

515 IAC 1-3	R	02-314	26 IR 1257	*ARR (26 IR 3346)
				27 IR 505
515 IAC 1-4-1	A	03-320	27 IR 2558	
515 IAC 1-4-2	A	03-320	27 IR 2558	
515 IAC 1-7	N	02-314	26 IR 1254	*ARR (26 IR 3346)
				27 IR 501
515 IAC 4	N	03-135	27 IR 925	
515 IAC 8	N	03-10	26 IR 2437	**27 IR 166**
				*ERR (27 IR 538)
515 IAC 8-1-23	A	03-321	27 IR 2330	
515 IAC 8-1-42	A	03-321	27 IR 2330	
515 IAC 9	N	03-11	26 IR 2451	*CPH (26 IR 2648)
				27 IR 1169
515 IAC 9-1-22	A	03-322	27 IR 2331	
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	**27 IR 570**
540 IAC 1-1-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-5	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-8	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-10	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-15	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-18	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-3-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-4-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-4-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-8-8	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-10-2	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-11	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-1	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-3	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-12-4	RA	03-112	26 IR 3754	**27 IR 570**

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

550 IAC 2-2-7	A	03-155	26 IR 3944	*CPH (27 IR 551)
				*CPH (27 IR 1196)
				27 IR 2496
550 IAC 7	N	03-100	26 IR 3710	*CPH (27 IR 1196)
				27 IR 2495

TITLE 610 DEPARTMENT OF LABOR

610 IAC 4-2-1	A	03-36	26 IR 2463	**27 IR 1879**
610 IAC 4-2-11	R	03-36	26 IR 2464	**27 IR 1879**
610 IAC 4-6-11	A	03-37	26 IR 2464	**27 IR 1879**
610 IAC 4-6-13	R	03-253	27 IR 565	
610 IAC 4-6-23	A	03-252	27 IR 564	

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1-5.1	A	03-186	27 IR 932	*AROC (27 IR 1652)
655 IAC 1-2.1-2	A	03-186	27 IR 934	*AROC (27 IR 1652)
655 IAC 1-2.1-3	A	03-186	27 IR 934	*AROC (27 IR 1652)
655 IAC 1-2.1-6.1	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.2	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.3	A	03-186	27 IR 935	*AROC (27 IR 1652)
655 IAC 1-2.1-6.4	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-12	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-14	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-15	A	03-186	27 IR 936	*AROC (27 IR 1652)
655 IAC 1-2.1-19	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-19.1	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-20	A	03-186	27 IR 937	*AROC (27 IR 1652)
655 IAC 1-2.1-23	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-23.1	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24	A	03-186	27 IR 938	*AROC (27 IR 1652)

655 IAC 1-2.1-24.1	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24.2	A	03-186	27 IR 938	*AROC (27 IR 1652)
655 IAC 1-2.1-24.3	N	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-2.1-88	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-1	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-2	A	03-186	27 IR 939	*AROC (27 IR 1652)
655 IAC 1-3-4	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-5	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-7	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)
655 IAC 1-4-1	A	03-186	27 IR 940	*AROC (27 IR 1652)
655 IAC 1-4-2	A	03-186	27 IR 940	*AROC (27 IR 1652)

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

675 IAC 12-4-11	A	03-278	27 IR 941	
675 IAC 13-1-4	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 13-1-5	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 13-1-9.5	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 13-1-9.6	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 13-1-28	RA	03-48	26 IR 2693	*CPH (27 IR 551) **27 IR 1299**
675 IAC 14-4.2-1	A	03-71	26 IR 3712	**27 IR 2253**
675 IAC 14-4.2-2	A	03-71	26 IR 3712	**27 IR 2253**
675 IAC 14-4.2-3	A	03-71	26 IR 3714	**27 IR 2254**
675 IAC 14-4.2-6	A	03-71	26 IR 3715	**27 IR 2256**
675 IAC 14-4.2-7	A	03-71	26 IR 3719	**27 IR 2260**
675 IAC 14-4.2-9	A	03-71	26 IR 3719	**27 IR 2260**
675 IAC 14-4.2-13.5	N	03-71	26 IR 3719	**27 IR 2260**
675 IAC 14-4.2-15.5	N	03-71	26 IR 3719	**27 IR 2260**
675 IAC 14-4.2-19.5	N	03-71	26 IR 3720	**27 IR 2260**
675 IAC 14-4.2-20.5	A	03-71	26 IR 3720	**27 IR 2261**
675 IAC 14-4.2-21	A	03-71	26 IR 3720	**27 IR 2261**
675 IAC 14-4.2-22	A	03-71	26 IR 3721	**27 IR 2262**
675 IAC 14-4.2-26.5	N	03-71	26 IR 3722	**27 IR 2263**
675 IAC 14-4.2-27.5	A	03-71	26 IR 3722	**27 IR 2263**
675 IAC 14-4.2-29	A	03-71	26 IR 3722	**27 IR 2263**
675 IAC 14-4.2-30	A	04-8	27 IR 2333	
675 IAC 14-4.2-31	A	03-71	26 IR 3722	**27 IR 2263**
675 IAC 14-4.2-34	A	03-71	26 IR 3723	**27 IR 2264**
675 IAC 14-4.2-37.5	N	03-71	26 IR 3724	**27 IR 2265**
675 IAC 14-4.2-45.3	N	03-71	26 IR 3724	**27 IR 2265**
675 IAC 14-4.2-46.8	N	03-71	26 IR 3724	**27 IR 2265**
675 IAC 14-4.2-49.1	N	03-71	26 IR 3724	**27 IR 2265**
675 IAC 14-4.2-49.3	N	03-71	26 IR 3724	**27 IR 2265**
675 IAC 14-4.2-52	A	03-71	26 IR 3725	**27 IR 2266**
675 IAC 14-4.2-53	A	03-71	26 IR 3725	**27 IR 2266**
675 IAC 14-4.2-53.7	N	03-71	26 IR 3725	**27 IR 2266**
675 IAC 14-4.2-61	A	03-71	26 IR 3726	**27 IR 2267**
675 IAC 14-4.2-63	A	03-71	26 IR 3726	**27 IR 2267**
675 IAC 14-4.2-69.5	N	03-71	26 IR 3726	**27 IR 2267**
675 IAC 14-4.2-69.6	N	03-71		††**27 IR 2267**
675 IAC 14-4.2-71	A	03-71	26 IR 3726	**27 IR 2268**
675 IAC 14-4.2-73.5	N	03-71	26 IR 3727	**27 IR 2268**
675 IAC 14-4.2-77.6	N	03-71	26 IR 3727	**27 IR 2268**
675 IAC 14-4.2-77.7	N	03-71	26 IR 3727	**27 IR 2268**
675 IAC 14-4.2-81.2	N	03-71	26 IR 3727	**27 IR 2268**
675 IAC 14-4.2-81.3	N	03-71	26 IR 3727	**27 IR 2269**
675 IAC 14-4.2-81.7	N	03-71	26 IR 3727	**27 IR 2269**
675 IAC 14-4.2-82	A	03-71	26 IR 3727	**27 IR 2269**
675 IAC 14-4.2-83	A	03-71	26 IR 3728	**27 IR 2269**
675 IAC 14-4.2-89.2	N	03-71	26 IR 3728	**27 IR 2269**
	A	04-8	27 IR 2333	
675 IAC 14-4.2-89.6	A	03-71	26 IR 3728	**27 IR 2269**
675 IAC 14-4.2-89.7	R	03-71	26 IR 3737	**27 IR 2278**
675 IAC 14-4.2-89.8	A	03-71	26 IR 3728	**27 IR 2270**
675 IAC 14-4.2-89.9	A	03-71	26 IR 3728	**27 IR 2270**
675 IAC 14-4.2-89.10	R	03-71	26 IR 3737	**27 IR 2278**
675 IAC 14-4.2-89.11	R	03-71	26 IR 3737	**27 IR 2278**
675 IAC 14-4.2-95	A	03-71	26 IR 3729	**27 IR 2270**
675 IAC 14-4.2-96.2	N	03-71	26 IR 3729	**27 IR 2270**
675 IAC 14-4.2-97.5	N	03-71	26 IR 3729	**27 IR 2270**
675 IAC 14-4.2-97.9	N	03-71	26 IR 3729	**27 IR 2270**
675 IAC 14-4.2-107	A	03-71	26 IR 3729	**27 IR 2271**
675 IAC 14-4.2-112.5	N	03-71	26 IR 3735	**27 IR 2277**
675 IAC 14-4.2-117	A	03-71	26 IR 3736	**27 IR 2277**
675 IAC 14-4.2-171.5	N	03-71	26 IR 3736	**27 IR 2277**
675 IAC 14-4.2-174.5	N	03-71	26 IR 3736	**27 IR 2277**
675 IAC 14-4.2-177.5	N	03-71	26 IR 3736	**27 IR 2277**
675 IAC 14-4.2-189	A	03-71	26 IR 3736	**27 IR 2277**
675 IAC 14-4.2-189.2	N	03-71	26 IR 3736	**27 IR 2277**
675 IAC 14-4.2-191.4	A	03-71	26 IR 3736	**27 IR 2278**
675 IAC 14-4.2-192	R	03-71	26 IR 3737	
675 IAC 17-1.6-12	A	03-71	26 IR 3737	**27 IR 2278**
675 IAC 17-1.6-16	A	03-71	26 IR 3737	**27 IR 2278**
675 IAC 19-3-4	A	03-71	26 IR 3737	**27 IR 2278**
675 IAC 22-2.2-3	RA	04-19	27 IR 2339	
675 IAC 22-2.2-4	RA	04-19	27 IR 2339	
675 IAC 22-2.2-5	RA	04-19	27 IR 2339	
675 IAC 22-2.2-6	RA	04-19	27 IR 2339	
675 IAC 22-2.2-7	RA	04-19	27 IR 2339	
675 IAC 22-2.2-8	RA	04-19	27 IR 2339	
675 IAC 22-2.2-9	RA	04-19	27 IR 2339	
675 IAC 22-2.2-10	RA	04-19	27 IR 2339	
675 IAC 22-2.2-11	RA	04-19	27 IR 2339	
675 IAC 22-2.2-12	RA	04-19	27 IR 2339	
675 IAC 22-2.2-13	RA	04-19	27 IR 2339	
675 IAC 22-2.2-15	RA	04-19	27 IR 2340	
675 IAC 22-2.2-16	RA	04-19	27 IR 2340	
675 IAC 22-2.2-17	RA	04-19	27 IR 2340	
675 IAC 22-2.2-18	RA	04-19	27 IR 2340	
675 IAC 22-2.2-21	RA	04-19	27 IR 2340	
675 IAC 22-2.2-22	RA	04-19	27 IR 2340	
675 IAC 22-2.2-23	RA	04-19	27 IR 2340	
675 IAC 22-2.2-24	RA	04-19	27 IR 2340	
675 IAC 22-2.2-25	RA	04-19	27 IR 2340	
675 IAC 22-2.2-183	RA	04-19	27 IR 2340	

TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

750 IAC 1-1-1	A	04-46		*ER (27 IR 2297)

TITLE 760 DEPARTMENT OF INSURANCE

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 1-50-2	A	03-160	27 IR 271	**27 IR 1568**
760 IAC 1-50-3	A	03-160	27 IR 271	**27 IR 1569**
760 IAC 1-50-4	A	03-160	27 IR 272	**27 IR 1569**
760 IAC 1-50-5	A	03-160	27 IR 272	**27 IR 1569**
760 IAC 1-50-7	A	03-160	27 IR 273	**27 IR 1570**
760 IAC 1-50-13	A	03-160	27 IR 273	**27 IR 1570**
760 IAC 1-50-13.5	A	03-160	27 IR 273	**27 IR 1571**
760 IAC 1-57-1	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-2	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-3	A	03-7	26 IR 3398	**27 IR 505**
760 IAC 1-57-4	A	03-7	26 IR 3399	**27 IR 506**
760 IAC 1-57-5	A	03-7	26 IR 3399	**27 IR 506**
760 IAC 1-57-6	A	03-7	26 IR 3400	**27 IR 507**
760 IAC 1-57-7	R	03-7	26 IR 3408	**27 IR 515**
760 IAC 1-57-8	A	03-7	26 IR 3401	**27 IR 508** *ERR (27 IR 1575)
760 IAC 1-57-9	A	03-7	26 IR 3405	**27 IR 512**
760 IAC 1-57-10	A	03-7	26 IR 3407	**27 IR 514** *ERR (27 IR 1575)

760 IAC 1-60-3	A	03-258	27 IR 2070	
760 IAC 1-60-5	A	03-258	27 IR 2072	
760 IAC 1-69	N	03-8	26 IR 3945	**27 IR 872**
760 IAC 1-70	N	04-39	27 IR 2560	

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

804 IAC 1.1-1-1	A	03-20	26 IR 3136	**27 IR 180**

TITLE 808 STATE BOXING COMMISSION

808 IAC 1-3-6	A	03-226	27 IR 2563	
808 IAC 1-5-1	A	03-226	27 IR 2563	
808 IAC 1-5-2	A	03-226	27 IR 2563	
808 IAC 2-1-5	A	03-226	27 IR 2564	
808 IAC 2-1-12	A	03-226	27 IR 2564	
808 IAC 2-7-14	A	03-226	27 IR 2564	
808 IAC 2-8-7	R	03-226	27 IR 2566	
808 IAC 2-9-5	A	03-226	27 IR 2564	
808 IAC 2-12-0.5	N	03-227	27 IR 2566	
808 IAC 2-12-2	N	03-227	27 IR 2567	
808 IAC 2-12-3	N	03-227	27 IR 2567	
808 IAC 2-12-4	N	03-227	27 IR 2567	
808 IAC 2-12-5	N	03-227	27 IR 2567	
808 IAC 2-12-6	N	03-227	27 IR 2567	
808 IAC 2-12-7	N	03-227	27 IR 2568	
808 IAC 2-12-8	N	03-227	27 IR 2568	
808 IAC 2-18-1	A	03-226	27 IR 2565	
808 IAC 2-22-1	A	03-226	27 IR 2565	

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-1-11	A	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 515**
820 IAC 6-1-3	A	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 516**
820 IAC 6-3	N	03-21	26 IR 3137	*AROC (26 IR 3426) **27 IR 516**

TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 1-1-3	A	03-73	26 IR 3408	*CPH (26 IR 3904) **27 IR 2278**
828 IAC 1-1-6	A	03-73	26 IR 3409	*CPH (26 IR 3904) **27 IR 2279**
828 IAC 1-1-7	A	03-73	26 IR 3409	*CPH (26 IR 3904) **27 IR 2279**
828 IAC 1-1-12	A	03-73	26 IR 3409	*CPH (26 IR 3904) **27 IR 2279**
828 IAC 1-2-3	A	03-73	26 IR 3409	*CPH (26 IR 3904) **27 IR 2279**
828 IAC 1-2-6	A	03-73	26 IR 3410	*CPH (26 IR 3904) **27 IR 2280**
828 IAC 1-2-7	A	03-73	26 IR 3410	*CPH (26 IR 3904) **27 IR 2280**
828 IAC 1-2-12	A	03-73	26 IR 3410	*CPH (26 IR 3904) **27 IR 2280**
828 IAC 1-5-6	N	03-162	27 IR 2334	

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-1	RA	04-6	27 IR 2340	
830 IAC 1-2-1	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-2	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-3	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-4	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-2-5	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-3	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-4	RA	03-55	26 IR 3755	**27 IR 946**
830 IAC 1-5	RA	03-55	26 IR 3755	**27 IR 946**

TITLE 836 INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

836 IAC 1-1-1	A	03-188	27 IR 1212
836 IAC 1-1-2	A	03-188	27 IR 1215
836 IAC 1-1-3	A	03-188	27 IR 1216
836 IAC 1-1-4	N	03-188	27 IR 1217
836 IAC 1-1-5	N	03-188	27 IR 1217
836 IAC 1-1-6	N	03-188	27 IR 1219
836 IAC 1-1-7	N	03-188	27 IR 1220
836 IAC 1-1-8	N	03-188	27 IR 1220
836 IAC 1-2-1	A	03-188	27 IR 1221
836 IAC 1-2-2	A	03-188	27 IR 1222
836 IAC 1-2-3	A	03-188	27 IR 1222
836 IAC 1-2-5	N	03-188	27 IR 1225
836 IAC 1-3-1	A	03-188	27 IR 1225
836 IAC 1-3-2	A	03-188	27 IR 1226
836 IAC 1-3-3	A	03-188	27 IR 1226
836 IAC 1-3-5	A	03-188	27 IR 1228
836 IAC 1-3-6	A	03-188	27 IR 1229
836 IAC 1-4-1	A	03-188	27 IR 1230
836 IAC 1-4-2	A	03-188	27 IR 1230
836 IAC 1-11-1	A	03-188	27 IR 1231
836 IAC 1-11-2	A	03-188	27 IR 1231
836 IAC 1-11-3	A	03-188	27 IR 1232
836 IAC 1-11-4	A	03-188	27 IR 1234
836 IAC 1-12	N	03-188	27 IR 1235
836 IAC 2-1-1	A	03-188	27 IR 1239
836 IAC 2-2-1	A	03-188	27 IR 1240
836 IAC 2-2-2	A	03-188	27 IR 1243
836 IAC 2-2-3	A	03-188	27 IR 1244
836 IAC 2-2-4	N	03-188	27 IR 1245
836 IAC 2-4.1-1	A	03-188	27 IR 1245
836 IAC 2-4.1-2	A	03-188	27 IR 1246
836 IAC 2-7.1	R	03-188	27 IR 1283
836 IAC 2-7.2-1	A	03-188	27 IR 1247
836 IAC 2-7.2-2	A	03-188	27 IR 1250
836 IAC 2-7.2-3	A	03-188	27 IR 1250
836 IAC 2-7.2-4	N	03-188	27 IR 1252
836 IAC 2-11-1	R	03-188	27 IR 1283
836 IAC 2-14-1	A	03-188	27 IR 1252
836 IAC 2-14-2	A	03-188	27 IR 1253
836 IAC 2-14-3	A	03-188	27 IR 1253
836 IAC 2-14-5	A	03-188	27 IR 1255
836 IAC 3-1-1	A	03-188	27 IR 1256
836 IAC 3-2-1	A	03-188	27 IR 1256
836 IAC 3-2-2	A	03-188	27 IR 1258
836 IAC 3-2-3	A	03-188	27 IR 1258
836 IAC 3-2-4	A	03-188	27 IR 1259
836 IAC 3-2-5	A	03-188	27 IR 1260
836 IAC 3-2-6	A	03-188	27 IR 1261
836 IAC 3-2-7	A	03-188	27 IR 1261
836 IAC 3-3-1	A	03-188	27 IR 1262
836 IAC 3-3-2	A	03-188	27 IR 1263
836 IAC 3-3-3	A	03-188	27 IR 1264
836 IAC 3-3-4	A	03-188	27 IR 1264
836 IAC 3-3-5	A	03-188	27 IR 1266
836 IAC 3-3-6	A	03-188	27 IR 1266
836 IAC 3-3-7	A	03-188	27 IR 1267
836 IAC 3-5-1	A	03-188	27 IR 1267
836 IAC 4-1-1	A	03-188	27 IR 1267
836 IAC 4-2-1	A	03-188	27 IR 1270
836 IAC 4-2-2	A	03-188	27 IR 1270
836 IAC 4-2-3	A	03-188	27 IR 1271
836 IAC 4-2-4	A	03-188	27 IR 1272
836 IAC 4-3-2	A	03-188	27 IR 1272
836 IAC 4-3-3	A	03-188	27 IR 1273
836 IAC 4-4-1	A	03-188	27 IR 1273
836 IAC 4-4-2	A	03-188	27 IR 1274
836 IAC 4-4-3	A	03-188	27 IR 1275

836 IAC 4-5-2	A	03-188	27 IR 1275	
836 IAC 4-6-1	R	03-188	27 IR 1283	
836 IAC 4-7-1	A	03-188	27 IR 1276	
836 IAC 4-7-2	A	03-188	27 IR 1276	
836 IAC 4-7-3	A	03-188	27 IR 1277	
836 IAC 4-7-3.5	A	03-188	27 IR 1277	
836 IAC 4-7-4	A	03-188	27 IR 1278	
836 IAC 4-7.1-1	A	03-188	27 IR 1278	
836 IAC 4-7.1-2	A	03-188	27 IR 1278	
836 IAC 4-7.1-3	A	03-188	27 IR 1279	
836 IAC 4-7.1-4	A	03-188	27 IR 1280	
836 IAC 4-7.1-5	A	03-188	27 IR 1280	
836 IAC 4-7.1-6	A	03-188	27 IR 1281	
836 IAC 4-8-1	R	03-188	27 IR 1283	
836 IAC 4-9-1	A	03-188	27 IR 1281	
836 IAC 4-9-2	A	03-188	27 IR 1281	
836 IAC 4-9-3	A	03-188	27 IR 1282	
836 IAC 4-9-4	A	03-188	27 IR 1282	
836 IAC 4-9-5	A	03-188	27 IR 1282	
836 IAC 4-9-6	A	03-188	27 IR 1283	

TITLE 839 SOCIAL WORKER, MARRIAGE AND FAMILY THERAPIST, AND MENTAL HEALTH COUNSELOR BOARD

839 IAC 1-3-2	A	02-270	26 IR 871	*ARR (26 IR 1945)
			26 IR 3411	**27 IR 517**
839 IAC 1-4-5	A	02-270	26 IR 871	*ARR (26 IR 1945)
			26 IR 3411	**27 IR 518**
839 IAC 1-5-1	A	02-270	26 IR 872	*ARR (26 IR 1945)
			26 IR 3412	**27 IR 518**
839 IAC 1-5-1.5	N	02-270	26 IR 874	*ARR (26 IR 1945)
			26 IR 3414	**27 IR 520**

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

840 IAC 1-1-6	A	03-189	27 IR 566	**27 IR 1880**
840 IAC 1-2-1	A	03-190	27 IR 566	**27 IR 1881**

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

844 IAC 4-4.5-12	A	03-325	27 IR 2334	
844 IAC 5-1-1	A	02-268	26 IR 2117	**27 IR 521**
844 IAC 5-1-3	A	02-268	26 IR 2118	**27 IR 522**
844 IAC 5-3	N	02-268	26 IR 2118	**27 IR 522**
844 IAC 5-4	N	02-268	26 IR 2120	**27 IR 524**
				*ERR (27 IR 538)
844 IAC 6-1-2	A	03-262	27 IR 1284	
844 IAC 6-1-4	A	03-261	27 IR 1635	*CPH (27 IR 2300)
844 IAC 6-3-1	A	03-261	27 IR 1636	*CPH (27 IR 2300)
844 IAC 6-3-2	A	03-261	27 IR 1636	*CPH (27 IR 2300)
844 IAC 6-3-4	A	03-261	27 IR 1637	*CPH (27 IR 2300)
844 IAC 6-3-5	A	03-261	27 IR 1637	*CPH (27 IR 2300)
844 IAC 6-3-6	N	03-261	27 IR 1638	*CPH (27 IR 2300)
844 IAC 6-4-3	A	03-261	27 IR 1638	*CPH (27 IR 2300)
844 IAC 6-6-1	R	03-261	27 IR 1642	*CPH (27 IR 2300)
844 IAC 6-6-2	R	03-261	27 IR 1642	*CPH (27 IR 2300)
844 IAC 6-6-3	A	03-261	27 IR 1638	*CPH (27 IR 2300)
844 IAC 6-6-4	A	03-261	27 IR 1639	*CPH (27 IR 2300)
844 IAC 6-7-2	A	03-261	27 IR 1639	*CPH (27 IR 2300)
844 IAC 10-4-1	A	03-329	27 IR 2568	

TITLE 845 BOARD OF PODIATRIC MEDICINE

845 IAC 1-3-1	A	03-46	26 IR 2683	**27 IR 526**
845 IAC 1-3-2	A	03-46	26 IR 2683	**27 IR 526**
845 IAC 1-3-3	N	03-46	26 IR 2684	**27 IR 527**
845 IAC 1-4.1-1	A	03-46	26 IR 2684	**27 IR 527**
845 IAC 1-4.1-2	A	03-46	26 IR 2684	**27 IR 527**
845 IAC 1-4.1-4	R	03-46	26 IR 2686	**27 IR 528**
845 IAC 1-4.1-7	A	03-46	26 IR 2685	**27 IR 527**
845 IAC 1-5-1	A	03-46	26 IR 2685	**27 IR 527**
845 IAC 1-5-2	R	02-341	26 IR 2682	**27 IR 525**
845 IAC 1-5-2.1	N	02-341	26 IR 2682	**27 IR 525**
845 IAC 1-5-3	A	03-46	26 IR 2685	**27 IR 528**
845 IAC 1-6-8	R	03-47	26 IR 2686	**27 IR 529**
845 IAC 1-6-9	N	03-47	26 IR 2686	**27 IR 529**

TITLE 856 INDIANA BOARD OF PHARMACY

856 IAC 1-27-1	A	03-191	27 IR 276	**27 IR 1574**
856 IAC 1-33-1	A	03-154	26 IR 3949	
			27 IR 274	*ARR (27 IR 1185)
	A	03-326	27 IR 2073	
856 IAC 1-33-1.5	N	03-154	27 IR 274	*ARR (27 IR 1185)
	N	03-326	27 IR 2073	
856 IAC 1-33-2	A	03-154	26 IR 3949	
			27 IR 275	*ARR (27 IR 1185)
	A	03-326	27 IR 2073	
856 IAC 1-33-4	A	03-154	26 IR 3950	
			27 IR 275	*ARR (27 IR 1185)
	A	03-326	27 IR 2074	
856 IAC 1-33-5	N	03-154	27 IR 275	*ARR (27 IR 1185)
	N	03-326	27 IR 2074	
856 IAC 2-7	N	02-258	26 IR 1725	**27 IR 181**

TITLE 858 CONTROLLED SUBSTANCES ADVISORY COMMITTEE

858 IAC 2-1-1	A	03-281	27 IR 1285	
858 IAC 2-1-2	A	03-281	27 IR 1286	
858 IAC 2-1-3	A	03-281	27 IR 1286	
858 IAC 2-1-4	A	03-281	27 IR 1286	

TITLE 862 PRIVATE DETECTIVES LICENSING BOARD

862 IAC 1-1-3	A	03-313	27 IR 2074	

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

864 IAC 1.1-2-2	A	03-125	26 IR 3737	**27 IR 874**
864 IAC 1.1-2-4	A	03-301	27 IR 2569	
864 IAC 1.1-12-1	A	03-301	27 IR 2569	
864 IAC 1.1-12-2	N	03-301	27 IR 2570	
864 IAC 1.1-14	N	03-125	26 IR 3739	**27 IR 875**

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

865 IAC 1-7-3	A	03-22	26 IR 3950	**27 IR 1882**
865 IAC 1-10-23	R	03-22	26 IR 3958	**27 IR 1889**
865 IAC 1-10-24	R	03-22	26 IR 3958	**27 IR 1889**
865 IAC 1-11-1	A	03-300	27 IR 2570	
865 IAC 1-12-2	A	03-22	26 IR 3951	**27 IR 1882**
865 IAC 1-12-3	A	03-22	26 IR 3952	**27 IR 1883**
865 IAC 1-12-5	A	03-22	26 IR 3952	**27 IR 1884**
865 IAC 1-12-6	A	03-22	26 IR 3953	**27 IR 1884**
865 IAC 1-12-7	A	03-22	26 IR 3953	**27 IR 1884**
865 IAC 1-12-9	A	03-22	26 IR 3954	**27 IR 1885**
865 IAC 1-12-10	A	03-22	26 IR 3954	**27 IR 1885**
865 IAC 1-12-11	A	03-22	26 IR 3954	**27 IR 1886**
865 IAC 1-12-12	A	03-22	26 IR 3954	**27 IR 1886**
865 IAC 1-12-13	A	03-22	26 IR 3955	**27 IR 1887**
865 IAC 1-12-14	A	03-22	26 IR 3956	**27 IR 1888**
865 IAC 1-12-18	A	03-22	26 IR 3956	**27 IR 1888**
865 IAC 1-13-4	A	03-41	26 IR 3739	**27 IR 875**
865 IAC 1-13-5	A	03-187	27 IR 943	
865 IAC 1-13-7	A	03-41	26 IR 3739	**27 IR 875**
865 IAC 1-13-20	R	03-41	26 IR 3740	**27 IR 876**
865 IAC 1-14-13	A	03-41	26 IR 3740	**27 IR 876**
865 IAC 1-14-14	A	03-41	26 IR 3740	**27 IR 876**
865 IAC 1-14-15	A	03-41	26 IR 3740	**27 IR 876**
865 IAC 1-14-20	R	03-41	26 IR 3740	**27 IR 876**

TITLE 868 STATE PSYCHOLOGY BOARD

868 IAC 2	N	03-60	26 IR 3741	*CPH (27 IR 905)
				*AROC (27 IR 1300)

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

872 IAC 1-1-2	A	03-126	27 IR 277	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-6.1	A	04-41	27 IR 2574	
872 IAC 1-1-6.2	A	03-126	27 IR 277	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-6.4	A	03-126	27 IR 277	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-6.5	A	03-126	27 IR 278	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-6.6	A	03-126	27 IR 278	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-8	A	03-126	27 IR 278	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-8.3	A	03-126	27 IR 279	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-9	A	03-126	27 IR 279	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-9.5	A	03-126	27 IR 279	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-10	A	03-126	27 IR 279	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-12	A	03-126	27 IR 280	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-14	A	03-126	27 IR 280	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-17	R	03-126	27 IR 282	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-19	A	03-126	27 IR 281	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-22	R	03-126	27 IR 282	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-23	R	03-126	27 IR 282	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-1-25	A	03-126	27 IR 282	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
872 IAC 1-3-16	A	04-5	27 IR 2335	
872 IAC 1-6	N	03-270	27 IR 2571	

TITLE 876 INDIANA REAL ESTATE COMMISSION

876 IAC 1-1-19	A	03-124	26 IR 3744	**27 IR 877**
876 IAC 1-4-1	A	03-42	26 IR 3142	**27 IR 186**
876 IAC 1-4-2	A	03-42	26 IR 3142	**27 IR 186**
876 IAC 2-18	N	03-256	27 IR 2575	
876 IAC 3-2-7	A	03-273	27 IR 1642	
	A	03-255	27 IR 2574	
876 IAC 3-3-3	A	03-23	26 IR 3415	**27 IR 530**
876 IAC 3-3-4	A	03-23	26 IR 3416	**27 IR 531**
876 IAC 3-3-5	A	03-23	26 IR 3417	**27 IR 532**
876 IAC 3-4-8	A	03-23	26 IR 3418	**27 IR 533**
				*ERR (27 IR 538)
876 IAC 3-5-1	A	02-245	26 IR 3139	**27 IR 184**
876 IAC 3-5-1.5	A	02-245	26 IR 3140	**27 IR 185**
876 IAC 3-5-2.5	N	03-273	27 IR 1643	
876 IAC 3-5-6.1	N	03-23	26 IR 3418	**27 IR 533**
876 IAC 3-5-7	A	02-245	26 IR 3141	**27 IR 185**
876 IAC 3-6-2	A	03-225	27 IR 1287	
876 IAC 3-6-3	A	03-225	27 IR 1287	
876 IAC 3-6-4	A	02-245	26 IR 3141	**27 IR 186**
876 IAC 3-6-9	A	03-196	27 IR 282	**27 IR 1182**

TITLE 880 SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD

880 IAC 1-2	R	03-53	26 IR 3422	**27 IR 537**
880 IAC 1-2.1	N	03-53	26 IR 3419	**27 IR 534**

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

888 IAC 1.1-10-1	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-2	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-3	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-4	RA	03-77	26 IR 3148	**27 IR 946**

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

905 IAC 1-5.2-9	R	03-38	26 IR 2688	*ARR (27 IR 1185)
			27 IR 1289	**27 IR 2282**
905 IAC 1-5.2-9.1	N	03-38	26 IR 2687	*ARR (27 IR 1185)
			27 IR 1288	**27 IR 2281**
905 IAC 1-5.2-9.2	N	03-38	26 IR 2687	*ARR (27 IR 1185)
			27 IR 1289	**27 IR 2281**
905 IAC 1-11.1-1	A	03-39	26 IR 2688	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2282
905 IAC 1-11.1-2	A	03-39	26 IR 2688	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2282
905 IAC 1-13-3	A	03-40	26 IR 2689	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2283
905 IAC 1-13-6	N	03-40	26 IR 2689	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2283
905 IAC 1-15.2-3	A	03-94	26 IR 3745	*ARR (27 IR 1185)
				*AWR (27 IR 2501)
905 IAC 1-35.1	N	03-96	26 IR 3745	*ARR (27 IR 1185)
	N	03-96	27 IR 1290	*AROC (27 IR 1653)
				*AROC (27 IR 2580)
				27 IR 2497
905 IAC 1-36-2	A	03-97	26 IR 3747	
905 IAC 1-43	RA	04-14	27 IR 2579	
905 IAC 1-45	N	02-338	26 IR 2128	*ERR (26 IR 2375)
				27 IR 189
905 IAC 1-45-2	A	03-319	27 IR 2576	
905 IAC 1-45-3	A	03-319	27 IR 2576	
905 IAC 1-46	N	03-279	27 IR 1291	
905 IAC 1-47	N	03-280	27 IR 1292	

TITLE 910 CIVIL RIGHTS COMMISSION

910 IAC 2-4-6	N	03-254	27 IR 1644	
910 IAC 2-4-7	N	03-254	27 IR 1644	
910 IAC 2-4-8	N	03-254	27 IR 1645	
910 IAC 2-4-9	N	03-254	27 IR 1645	
910 IAC 2-4-10	N	03-254	27 IR 1646	

NONCODE RULES

Accountancy, Indiana Board of			
	A	04-33	*ETR (27 IR 1931)
Air Pollution Control Board			
	N	04-9	*ETR (27 IR 1608)
	N	04-81	*ETR (27 IR 2516)
Animal Health, Indiana State Board of			
	A	04-29	*ETR (27 IR 1930)
Boiler and Pressure Vessel Rules Board			
	A	04-37	*ETR (27 IR 2296)
Children's Health Insurance Program, Office of the			
	A	04-104	*ETR (27 IR 2519)
Family and Social Services, Office of the Secretary of			
	N	03-265	*ETR (27 IR 544)
	N	03-266	*ETR (27 IR 546)
	A	03-340	*ETR (27 IR 1608)
	A	04-85	*ETR (27 IR 2516)
Local Government Finance, Department of			
	N	03-268	*ETR (27 IR 541)
	N	04-78	*ETR (27 IR 2502)
Lottery Commission, State			
	N	03-238	*ETR (27 IR 193)
	N	03-239	*ETR (27 IR 194)
	N	03-240	*ETR (27 IR 196)

	N	03-241	*ETR (27 IR 198)
	N	03-248	*ETR (27 IR 203)
	N	03-249	*ETR (27 IR 204)
	N	03-287	*ETR (27 IR 884)
	N	03-288	*ETR (27 IR 885)
	N	03-289	*ETR (27 IR 886)
	N	03-290	*ETR (27 IR 888)
	N	03-291	*ETR (27 IR 889)
	N	03-295	*ETR (27 IR 894)
	N	03-307	*ETR (27 IR 1187)
	N	03-308	*ETR (27 IR 1187)
	N	03-309	*ETR (27 IR 1188)
	N	03-335	*ETR (27 IR 1598)
	N	03-336	*ETR (27 IR 1599)
	N	03-337	*ETR (27 IR 1601)
	N	03-339	*ETR (27 IR 1605)
	N	04-10	*ETR (27 IR 1892)
	N	04-11	*ETR (27 IR 1892)
	N	04-12	*ETR (27 IR 1893)
	N	04-24	*ETR (27 IR 1894)
	N	04-25	*ETR (27 IR 1895)
	N	04-27	*ETR (27 IR 1899)
	N	04-48	*ETR (27 IR 2287)
	N	04-49	*ETR (27 IR 2288) *ERR (27 IR 2284)
	N	04-50	*ETR (27 IR 2290)
	N	04-51	*ETR (27 IR 2292)
	N	04-52	*ETR (27 IR 2293)
	N	04-53	*ETR (27 IR 2294)
	N	04-80	*ETR (27 IR 2506)
	N	04-89	*ETR (27 IR 2506)
	N	04-90	*ETR (27 IR 2508)
	N	04-91	*ETR (27 IR 2509)
	N	04-92	*ETR (27 IR 2510)
Natural Resources Commission			
	N	03-217	*ETR (27 IR 206)
	N	03-242	*ETR (27 IR 544)
	N	03-243	*ETR (27 IR 544)
	N	03-306	*ETR (27 IR 1192)
	N	03-341	*ETR (27 IR 1607)
	N	04-20	*ETR (27 IR 1922)
	N	04-45	*ETR (27 IR 2295)
	N	04-59	*ETR (27 IR 2296)
	N	04-79	*ETR (27 IR 2513)
	N	04-82	*ETR (27 IR 2513)
	N	04-83	*ETR (27 IR 2514)
	N	04-86	*ETR (27 IR 2514)
	N	04-87	*ETR (27 IR 2514) *ERR (27 IR 2499)
Revenue, Department of State			
	A	03-304	*ETR (27 IR 879)
Tax Review, Indiana Board of			
	N	03-327	*ETR (27 IR 1577)
	N	03-328	*ETR (27 IR 1585)
	N	04-108	*ETR (27 IR 2504)
Utility Regulatory Commission, Indiana			
	N	03-267	*ETR (27 IR 543)
Water Pollution Control Board			
	A	03-299	*ETR (27 IR 897)
	A	04-38	*ETR (27 IR 1923)

*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
††:	Renumbered or Added in Final Rule

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