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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.)

Introduction

JUDICIAL NOTICE AND CITATION FORM

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

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

PRINTING CODE

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

REFERENCE TABLES AND INDEX

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

FILING AND PUBLISHING SCHEDULE

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

PUBLICATION SCHEDULE

Closing Dates:	Publication Dates:	Closing Dates:	Publication Dates:
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
November 10, 2004	December 1, 2004	June 10, 2005	July 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

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†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
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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
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105 Indiana Department of Transportation
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†120 Department of Highways
130 Indiana Port Commission
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†150 Office of Traffic Safety
†160 Department of Vehicle Inspection
170 Indiana Utility Regulatory Commission

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205 Indiana Criminal Justice Institute
207 Coroners Training Board
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307 Indiana Board of Registration for Soil Scientists
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†311 State Soil and Water Conservation Committee
312 Natural Resources Commission
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†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
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329 Solid Waste Management Board
†330 Stream Pollution Control Board of the State of Indiana
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†340 Commissioner of Agriculture
341 Indiana Standardbred Board of Regulations
345 Indiana State Board of Animal Health
350 Agricultural Experiment Station
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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
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480 Violent Crime Compensation Division
490 Interdepartmental Board for the Coordination of Human Service Programs

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511 Indiana State Board of Education
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†520 Commission on Textbook Adoptions
†530 Commission on Teacher Training and Licensing
540 Indiana Education Savings Authority
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560 Indiana Education Employment Relations Board
570 Indiana Commission on Proprietary Education
†572 Indiana Commission on Vocational and Technical Education
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585 State Student Assistance Commission
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595 Library Certification Board

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884 Board of Television and Radio Service Examiners
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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 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #03-235(F)

DIGEST

Adds 50 IAC 18 to provide uniform procedures necessary to review and assess the real property of an industrial facility under IC 6-1.1-8.7. Effective 30 days after filing with the secretary of state.

50 IAC 18

SECTION 1. 50 IAC 18 IS ADDED TO READ AS FOLLOWS:

ARTICLE 18. INDUSTRIAL FACILITY; REAL PROPERTY ASSESSMENT

Rule 1. Purpose

50 IAC 18-1-1 Purpose
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7

Sec. 1. The purpose of this article is to establish procedures to govern the assessment and review of industrial facilities' real property under IC 6-1.1-8.7. *(Department of Local Government Finance; 50 IAC 18-1-1; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2710)*

Rule 2. Definitions

50 IAC 18-2-1 Applicability
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7

Sec. 1. Unless otherwise indicated, the definitions contained in IC 6-1.1-8.7 also apply to this article. *(Department of Local Government Finance; 50 IAC 18-2-1; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2710)*

Rule 3. Filing Petitions for Reassessment

50 IAC 18-3-1 Filing procedure for petition for reassessment
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-4-4; IC 6-1.1-8.7-1; IC 6-1.1-8.7-2

Sec. 1. (a) Petitions filed pursuant to this rule must be filed by:
(1) personal delivery;
(2) deposit in the United States mail; or
(3) registered or certified mail, return receipt requested.

(b) Petitions may not be filed by facsimile or electronic mail. *(Department of Local Government Finance; 50 IAC 18-3-1; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2710)*

50 IAC 18-3-2 Time and place of filing petitions for assessment
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-4-4; IC 6-1.1-8.7-1; IC 6-1.1-8.7-2

Sec. 2. (a) A petition for assessment must be filed with the commissioner of the department and contain the following information:
(1) The name and address of the industrial company to be assessed.
(2) The county and township in which the industrial company is located.
(3) A detailed explanation of the reason a new assessment is being sought.
(4) The names and addresses of the real property owners if the petition is being filed under subsection (b).
(5) The name and title of the person filing on behalf of the industrial company if the petition is being filed under subsection (c).
(6) The name and contact information of the individual designated as petitioner's representative.
(7) A certification from the county auditor that the owners of real property filing under subsection (b) are in fact owners of real property in the township in which the industrial company is located.

(b) Two hundred fifty (250) or more owners of real property in a township may file a petition described under subsection (a) with the department before January 1 of each year that a general reassessment commences under IC 6-1.1-4-4, requesting to have the department assess the real property of an industrial company located in the township.

(c) Prior to submitting a petition to the department under subsection (b), the auditor of the county in which the industrial company is located shall certify the number of petitioners that are owners of real property within the township. The department shall forward a copy of the completed petition to the county auditor and the county assessor of the county in which the industrial company is located within fifteen (15) days of receiving the petition. The county assessor shall forward a copy of the petition to the township assessor who is responsible for the assessment of the industrial company.

(d) An industrial company as defined in IC 6-1.1-8.7-1 may file a petition under subsection (a) with the department requesting that the department assess the real property of an industrial facility owned or used by the company. *(Department of Local Government Finance; 50 IAC 18-3-2; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2710)*

Rule 4. Reassessment of Industrial Company Real Property

50 IAC 18-4-1 Review by the department
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7-5; IC 6-1.1-30-13

Sec. 1. (a) The department shall review all petitions filed under 50 IAC 18-3-2 to determine the completeness and accuracy of the petition. If the department determines that the petition is for any reason incomplete or inaccurate, the petitioner will be afforded an additional thirty (30) days to amend the petition and resubmit it to the department for review.

(b) Upon receipt of a properly filed petition, the department shall make an initial determination and choose to:
(1) grant the petitioner's request and assess the real property of an industrial facility; or
(2) deny the petitioner's request to assess the real property of the industrial facility.
The department will provide a copy of its initial determination to the petitioner's representative, the county assessor, the county auditor, the industrial company, and the township assessor who assessed the industrial facility's property. *(Department of Local Government Finance; 50 IAC 18-4-1; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2711)*

50 IAC 18-4-2 Assessment by the department
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7-5; IC 6-1.1-30-13

Sec. 2. If the department chooses to assess the real property of an industrial company under section 1(b)(1) of this rule, the department will determine the true tax value of the property under 50 IAC 2.3-1-1(d). *(Department of Local Government Finance; 50 IAC 18-4-2; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2711)*

50 IAC 18-4-3 Review procedure
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7-5; IC 6-1.1-30-13

Sec. 3. (a) If the department chooses to assess the real property of an industrial company under section 1(b)(1) of this rule, the department may schedule an on-site inspection of the company's industrial facility. The department shall provide notice to the owner of the industrial company and the assessor of the county of the department's intention to enter and inspect the property for assessment purposes not less than thirty (30) days before making a physical inspection of the property.

(b) The department may request that the industrial company and county assessor make available all information necessary or proper to determine the true tax value. If the industrial company fails or refuses to provide the information requested, the department may take necessary actions under IC 6-1.1-30-13. *(Department of Local Government Finance; 50 IAC 18-4-3; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2711)*

Rule 5. Certification of Values; Appeal and Review

50 IAC 18-5-1 Preliminary and final certifications of value
Authority: IC 6-1.1-8.7-7
Affected: IC 6-1.1-8.7

Sec. 1. (a) The department shall make a preliminary determination of true tax value of the industrial facility and submit the preliminary value to the county auditor, the county assessor, the petitioner's representative, and the industrial facility.

(b) The county assessor, the industrial company and the petitioner's representative will have thirty (30) days to review the preliminary true tax value issued under subsection (a) to determine the validity and may present findings to the department in support of or opposition to the department's preliminary determination. The department may extend or decrease this time to review for good cause.

(c) The department may make additions or corrections to the preliminary assessment based on the findings submitted under subsection (b) when making its final certified assessment determination.

(d) The department will certify a final assessment determination of an industrial company's real property to the county auditor, the county assessor, the industrial company, and the petitioner's representative within:
(1) six (6) months of a petition for reassessment filed under 50 IAC 18-3-2(b); or
(2) three (3) months if a petition is filed under 50 IAC 18-3-2(d).

(e) The department will base its final certified value on the evidence provided by the petitioners and county officials and issue a final determination containing the following information:
(1) Original assessment value.
(2) New assessment value if a change is made.
(3) A reason for the change in assessed value if a change is made.
(4) Appeal rights.
(Department of Local Government Finance; 50 IAC 18-5-1; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2711)

50 IAC 18-5-2 Appeal of assessments
Authority: IC 6-1.1-8.7-9
Affected: IC 6-1.1-8.7

Sec. 2. (a) The petitioner that petitioned for reassessment of an industrial company's true tax value under this article, the industrial company, or the county assessor of the county in which the industrial facility is located may appeal the final assessment determination made by the department under this article to the department.

(b) The department shall hold a hearing on any appeal filed under subsection (a) and issue a final order within one (1) year of the date the appeal is filed. *(Department of Local Government Finance; 50 IAC 18-5-2; filed Apr 22, 2004, 10:05 a.m.: 27 IR 2711)*

LSA Document #03-235(F)
Notice of Intent Published: September 1, 2003; 26 IR 3905
Proposed Rule Published: December 1, 2003; 27 IR 909
Hearing Held: January 23, 2004
Approved by Attorney General: April 8, 2004
Approved by Governor: April 14, 2004
Filed with Secretary of State: April 22, 2004, 10:05 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

LSA Document #03-194(F)

DIGEST

Amends 170 IAC 7-1.2-10 regarding extension of telephone facilities for new real estate developments. Effective 30 days after filing with the secretary of state.

170 IAC 7-1.2-10

SECTION 1. 170 IAC 7-1.2-10 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.2-10 Extension of facilities
Authority: IC 8-1-1-3
Affected: IC 8-1-2-4; IC 8-1-2-88

Sec. 10. (a) Each LEC shall include in its tariffs filed with the commission a statement of its standard extension policy setting forth the terms and conditions under which its facilities will be extended to provide service to customer applicants located within the LEC's certificated service territory. The LEC's policies for service extensions shall conform to construction charges for extension of facilities required to provide local service and will not apply to facilities located on public rights-of-way, except where:

(1) unusual costs, as defined in tariffs or otherwise determined by the commission, are involved in the establishment of service;

(2) the installation is for a temporary or semipermanent purpose; or

(3) the facilities cannot be used for other general telephone purposes if service to the customer applicant is discontinued.

(b) Provided the type of facilities and method of installation are the type normally used by the LEC to provide the requested service, construction charges for facilities to be located on private rights-of-way in order to satisfy ~~an~~ **a** customer applicant's request for local service shall not apply to the following:

(1) The first one-tenth (0.1) of a mile for business service.

(2) The first two-tenths (0.2) of a mile for residential service.

If a customer applicant requests a type of facility or method of installation that differs from the norm, the LEC shall charge the customer applicant for the difference in cost between the two (2) types of construction. The customer applicant shall also be responsible for providing necessary private rights-of-way if construction is required in areas where the right of eminent domain does not exist. The provision of any facilities beyond the first one-tenth (0.1) of a mile for business service and two-tenths (0.2) of a mile for residential service shall be charged to the customer applicant at cost.

(c) Requirements for new real estate developments are as follows:

(1) If a developer requests the installation of telephone facilities for a new real estate development, the developer shall have the property:

(A) cleared of trees, tree stumps, paving, and other obstructions necessary for installation of the telephone facilities;

(B) staked to show property lines and final grade; and

(C) graded to within six (6) inches of final grade;

all at no charge to the LEC.

(2) The LEC shall also have the right to require a deposit from the developer to cover the ~~full~~ cost of constructing the requested facilities in accordance with applicable rules, regulations, and tariffs approved by the commission. **The requirements for charging a deposit are as follows:**

(A) Each LEC shall file with the commission for approval, tariff provisions setting forth the conditions under which it will make line extensions to real estate developments.

(B) Such filing shall include line extension procedures, a specific explanation regarding how deposits will be calculated and how cost support will be presented.

(C) Upon application, each LEC shall provide an information sheet to developers describing line extension procedures and providing cost support as approved in the LEC's tariff on file with the commission.

(D) The LEC shall refund the deposit to the developer on a pro rata basis as ~~customers connect to the newly extended facilities.~~ **lots are sold. The developer shall notify and provide documentation to the LEC as lots are sold.** Such refunds shall be paid to the developer on a quarterly basis or at longer intervals if the developer and the LEC so agree. ~~If refunds are returned quarterly, no interest shall be paid. If refunds are returned annually,~~ The refundable portion of the deposit shall bear interest ~~at the rate of six percent (6%) per annum from the date the first customer is connected to the newly extended facilities.~~ **as prescribed in 170 IAC 7-1.3-3(h).**

~~(2)~~ **(3)** Any amount that is still owed to the LEC under this subsection or subsection (a) or (b) may be withheld when the deposit is returned to the developer.

~~(3)~~ **(4)** Any portion of the deposit that has not been refunded five (5) years from the date that the LEC is first ready to render service from the extension may be retained by the LEC as liquidated damages.

~~(4)~~ **(5)** When customers request pole attachments to avoid new construction costs, the LEC may charge the customer all expenses and rental charges associated with the attachments.

~~(5)~~ **(6)** Except as provided in filed tariffs, the ownership of all facilities constructed, as herein provided, shall be vested in the LEC.

~~(6)~~ **(7)** Except as provided in this subsection, no portion of the expense assessed against the customer shall be subject to later refund.

(d) Nothing in this rule shall be construed as prohibiting any LEC from establishing an extension policy more favorable to customers than that contained herein, ~~as long as~~ **provided such policy complies with the following requirements:**

(1) No discrimination is practiced between customers. ~~under the same or substantially the same circumstances and conditions.~~

(2) The policy has been approved and is included in the LEC's tariffs on file with the commission.

(Indiana Utility Regulatory Commission; 170 IAC 7-1.2-10; filed Aug 7, 2002, 10:09 a.m.: 25 IR 4061, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later; filed Apr 26, 2004, 2:00 p.m.: 27 IR 2712)

LSA Document #03-194(F)
Notice of Intent Published: August 1, 2003; 26 IR 3674
Proposed Rule Published: November 1, 2003; 27 IR 558
Hearing Held: December 16, 2003
Approved by Attorney General: April 8, 2004
Approved by Governor: April 22, 2004
Filed with Secretary of State: April 26, 2004, 2:00 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-169(F)

DIGEST

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 that 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. 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 25-6-31
312 IAC 25-9-5
312 IAC 25-9-8

SECTION 1. 312 IAC 25-6-31 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-6-31 Surface mining; explosives; publication of blasting schedule

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

Sec. 31. (a) Blasting schedule publication and distribution requirements are as follows:

(1) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days before beginning a blasting program in which blasts that use more than five (5) pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(2) Copies of the schedule shall be distributed to local governments and public utilities and by mail to each residence within one-half (½) mile of the proposed blasting area described in the schedule.

(3) The permittee shall republish and redistribute the schedule ~~pursuant to~~ **under** subdivisions (1) and (2) at least every twelve (12) months.

(b) ~~Blasting schedule contents.~~ The blasting schedule shall contain, at a minimum, the following:

(1) Identification of the specific areas in which blasting will take place.

(2) Days and time periods when explosives are to be detonated.

(3) Methods to be used to control access to the blasting area.

(4) Types and patterns of audible warning and all-clear signals to be used before and after blasting.

(5) Name, address, and telephone number of the permittee.

(c) Before blasting in areas or at times not in a previous blasting schedule, the permittee shall prepare a revised blasting schedule and shall publish and distribute the revised schedule according to the procedures in subsections (a) and (b). ~~The revised blasting schedule shall be approved by the director before publication and distribution.~~

(d) A copy of the public notice and publisher's affidavit or other proof of publication of the public notice required by subsections (a) and (c) shall be filed with the director not later than four (4) weeks after the last date of publication. *(Natural*

Resources Commission; 312 IAC 25-6-31; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3523, eff Dec 1, 2001; filed Apr 23, 2004, 10:45 a.m.: 27 IR 2713, 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 25-9-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-9-5 Examinations
Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 5. (a) The competence of an applicant for certification as a certified blaster will be evaluated by reviewing and verifying the following:

(1) The ability of the applicant to be directly responsible for the use of explosives in surface coal mining and reclamation operations through a written examination in the technical aspects of blasting and applicable Indiana and federal laws and regulations governing the storage, use, and transportation of explosives.

(2) The practical field experience specified in subsection (c).

(b) An applicant for registration as a certified blaster shall be examined in the topics set forth in section 3(c) of this rule.

(c) Admission to examination will be denied or deferred if the applicant lacks the necessary training required by section 3 of this rule or a minimum of one (1) year practical field experience. ~~Applicants~~ **An applicant** denied or deferred admission will be so notified, in writing, stating ~~the~~ **any** reason ~~or reasons~~ for such denial or deferral.

(d) An examination notice will be sent to all applicants admitted for examination approximately six (6) weeks in advance of the regularly scheduled examination. This notice will establish the time and place of the examination and other instructions pertinent to the examination. Failure to appear for an examination will result in termination of the application unless the director, for good reason, extends the time for appearing.

(e) Only pass-fail grades will be issued. A passing grade will be issued to applicants who correctly respond to at least seventy percent (70%) of the questions contained on the written examination.

(f) Any applicant may review his or her examination answer sheets in the department's Jasonville office at any time during normal working hours after the applicant has received notice of the examination results. The answer sheets will be retained in the department's office for a period of one (1) year after the examination date after which time they will be destroyed.

(g) An applicant failing an examination may retake the examination **two (2) times** without reapplying. ~~Applicants~~ **An applicant failing the examination three (3) times must retake the certified blaster training course. An applicant** must notify the director, in writing, within sixty (60) days from the date of notice of failing of their intention to retake the examination. The applicant will be scheduled for reexamination at the next scheduled examination. Failure to notify the director will cause the application to be terminated, and the applicant must reapply for examination ~~pursuant to~~ **under** section 4 of this rule. *(Natural Resources Commission; 312 IAC 25-9-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3608, eff Dec 1, 2001; filed Apr 23, 2004, 10:45 a.m.: 27 IR 2714, 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 25-9-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 25-9-8 Renewal
Authority: IC 14-34-2-1; IC 14-34-12-2
Affected: IC 14-34-12-1

Sec. 8. (a) A certified blaster must obtain renewal of the certification every three (3) years. A request for renewal of the certification shall be in writing on a form furnished by the department. The request for renewal must be received by the department not later than thirty (30) days prior to expiration of the certificate.

(b) The renewal will be approved if the certified blaster:

(1) has worked at least twelve (12) months of the preceding thirty-six (36) months as a certified blaster; ~~and the certified blaster~~

(2) is not in violation of section 9 of this rule; **and**

(3) has obtained a minimum of fifteen (15) hours of additional training in the topics found in section 3 of this rule. Each certified blaster must provide documentation that fifteen (15) hours of additional training has been achieved. The training must be approved by the department.

(c) When the certification is not renewed for more than one (1) year after expiration, **the blaster must retake the examination under section 5 of this rule and demonstrate completion of fifteen (15) hours of additional training in the previous thirty-six (36) months. When the certification is not renewed for five (5) years after expiration,** the certification will not be renewable. An application shall be submitted to the department in the event that the individual desires to again be certified, and the individual shall be considered as a new applicant.

(d) A renewal notice will be sent to each registrant not less than two (2) months prior to the expiration date of the certification.

(e) All renewal notices and other communications will be sent

to the last address given by the registrant to the department. A failure of the certified blaster to receive a renewal notice under this subsection does not relieve the certified blaster of the obligation to obtain a renewal of the certification as required under subsection (a). *(Natural Resources Commission; 312 IAC 25-9-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183; filed Apr 23, 2004, 10:45 a.m.: 27 IR 2714, 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. **SECTIONS 1 through 3 of this document take effect upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.**

LSA Document #03-169(F)
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Hearing Held: October 27, 2003
Approved by Attorney General: January 9, 2004
Approved by Governor: January 23, 2004
Filed with Secretary of State: April 23, 2004, 10:45 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #03-90(F)

DIGEST

Amends 410 IAC 16.2-3.1-19 and 410 IAC 16.2-8-1 to update the requirement for the Life Safety Code for health facilities. Effective 30 days after filing with the secretary of state.

410 IAC 16.2-3.1-19
410 IAC 16.2-8-1

SECTION 1. 410 IAC 16.2-3.1-19 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-19 Environment and physical standards

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 19. (a) The facility must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.

(b) The facility must meet the applicable provisions of the ~~1985~~ **2000** edition of the Life Safety Code of the National Fire Protection Association, which is incorporated by reference. This section applies to all facilities initially licensed on or after the effective date of this rule.

(c) Each facility shall comply with fire and safety standards, including the applicable rules of the state fire prevention and building safety commission (675 IAC) where applicable to health facilities.

(d) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits, equipment to maintain the fire detection, alarm, and extinguishing systems, and life support systems in the event the normal electrical supply is interrupted.

(e) When life support systems are used, the facility must provide emergency electrical power with an emergency generator that is located on the premises.

(f) The facility must provide a safe, functional, sanitary, and comfortable environment for residents, staff, and the public. The facility must do the following:

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply.
(2) Have adequate outside ventilation by means of windows or mechanical ventilation, or a combination of the two (2).
(3) Equip corridors with firmly secured handrails.
(4) Maintain an effective pest control program so that the facility is free of pests and rodents.
(5) Provide a home-like environment for residents.

(g) Personnel shall handle, store, process, and transport linen in a manner that prevents the spread of infection as follows:

(1) Soiled linens shall be securely contained at the source where it is generated and handled in a manner that protects workers and precludes contamination of clean linen.
(2) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.
(3) When laundry chutes are used to transport soiled linens, the chutes shall be maintained in a clean and sanitary state.
(4) Linens shall be maintained in good repair.
(5) The supply of clean linens, washcloths, and towels shall be sufficient to meet the needs of each resident. The use of common towels, washcloths, or toilet articles is prohibited.

(h) The facility must provide comfortable and safe temperature levels.

(i) Each facility shall have an adequate heating and air conditioning system.

(j) The heating and air conditioning systems shall be maintained in normal operating condition and utilized as necessary to provide comfortable temperatures in all resident and public areas.

(k) Resident rooms must be designed and equipped for adequate nursing care, comfort, and full visual privacy of residents.

(l) Requirements for bedrooms must be as follows:
(1) Accommodate no more than four (4) residents.
(2) Measure at least eighty (80) square feet per resident in multiple resident bedrooms and at least one hundred (100) square feet in single resident rooms.
(3) A facility initially licensed prior to January 1, 1964, must provide not less than sixty (60) square feet per bed in multiple occupancy rooms. A facility initially licensed after January 1, 1964, must have at least seventy (70) square feet of usable floor area for each bed. Any facility that provides an increase in bed capacity with plans approved after December 19, 1977, must provide eighty (80) square feet of usable floor area per bed.
(4) Any room utilized for single occupancy must be at least eight (8) feet by ten (10) feet in size with a minimum ceiling height of eight (8) feet. A new facility, plans for which were approved after December 19, 1977, must contain a minimum of one hundred (100) square feet of usable floor space per room for single occupancy.
(5) Have direct access to an exit corridor.
(6) Be designed or equipped to assure full visual privacy for each resident in that they have the means of completely withdrawing from public view while occupying their beds.
(7) Except in private rooms, each bed must have ceiling suspended cubicle curtains or screens of flameproof or flame-retardant material, which extend around the bed to provide total visual privacy, in combination with adjacent walls and curtains.
(8) Have at least one (1) window to the outside with an area equal to one-tenth ($^1/_{10}$) of the total floor area of such rooms, up to eighty (80) square feet per bed for rooms occupied by more than one (1) person and one hundred (100) square feet for single occupancy.
(9) Have a floor at or above grade level. A facility whose plans were approved before the effective date of this rule may use rooms below ground level for resident occupancy if the floors are not more than three (3) feet below ground level.

(m) The facility must provide each resident with the following:
(1) A separate bed of proper size and height for the convenience of the resident.
(2) A clean, comfortable mattress.
(3) Bedding appropriate to the weather, climate, and comfort of the resident.
(4) Functional furniture and individual closet space in the resident's room with clothes racks and shelves accessible to the resident and appropriate to the resident's needs, including the following:
(A) A bedside cabinet or table with hard surface, washable top.
(B) A clothing storage closet (which may be shared), including a closet rod and a shelf for clothing, toilet articles, and other personal belongings.
(C) A cushioned comfortable chair.
(D) A reading or bed lamp.
(E) If the resident is bedfast, an adjustable over-the-bed table or other suitable device.
(5) Each resident room shall have clothing storage, which includes a closet at least two (2) feet wide and two (2) feet deep, equipped with an easily opened door and a closet rod at least eighteen (18) inches long of adjustable height to provide access by residents in wheelchairs. The closet should be tall enough that clothing does not drag on the floor and to provide air circulation. A dresser, or its equivalent in shelf and drawer space equal to a dresser with an area of at least four hundred thirty-two (432) square inches, equipped with at least two (2) drawers six (6) inches deep to provide for clothing, toilet articles, and other personal belongings shall also be provided.

(n) Each resident room must be equipped with or located near toilet or bathing facilities such that residents who are independent in toileting, including chair-bound residents, can routinely have access to a toilet on the unit. As used in this subsection, "toilet facilities" means a space that contains a lavatory with mirror and a toilet. Bathing and toilet facilities shall be partitioned or completely curtained for privacy and mechanically ventilated. Toilets, bath, and shower compartments shall be separated from rooms by solid walls or partitions that extend from the floor to the ceiling.

(o) Bathing facilities for residents not served by bathing facilities in their rooms shall be provided as follows:

Residents	Bathtubs or Showers
3 to 22	1
23 to 37	2
38 to 52	3
53 to 67	4
68 to 82	5
83 to 97	6

Portable bathing units may be substituted for one (1) or more of the permanent fixtures with prior approval of the division.

(p) Toilet facilities shall be provided as set out in the building code at the time the facility was constructed. This section applies to facilities and additions to facilities for which construction plans are submitted for approval after July 1, 1984. At least one (1) toilet and lavatory shall be provided for each eight (8) residents. At least one (1) toilet and one (1) lavatory of the appropriate height for a resident seated in a wheelchair shall be available for each sex on each floor utilized by residents.

(q) Toilet rooms adjacent to resident bedrooms shall serve no more than two (2) resident rooms or more than eight (8) beds.

(r) Hot water temperature for all bathing and hand washing facilities shall be controlled by automatic control valves. Water

temperature at point of use must be maintained between one hundred **(100)** degrees Fahrenheit ~~(100°F)~~ and one hundred twenty **(120)** degrees Fahrenheit. ~~(120°F).~~

(s) Individual towel bars shall be provided for each resident.

(t) All bathing and shower rooms shall have mechanical ventilation.

(u) The nurses' station must be equipped to receive resident calls through a communication system from the following:
(1) Resident rooms.
(2) Toilet and bathing facilities.
(3) Activity, dining, and therapy areas.

(v) The facility must provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by this rule and as identified in each resident's care plan.

(w) Each facility shall have living areas with sufficient space to accommodate the dining, activity, and lounge needs of the residents and to prevent the interference of one (1) function with another as follows:
(1) In a facility licensed prior to June 1970, the lounge area, which may also be used for dining, shall be a minimum of ten (10) square feet per bed.
(2) In a facility licensed since June 1970, total dining, activity, and lounge area shall be at least twenty (20) square feet per bed.
(3) Facilities for which construction plans are submitted for approval after 1984, the total area for resident dining, activity, and lounge purposes shall not be less than thirty (30) square feet per bed.
(4) Dining, lounge, and activity areas shall be:
(A) readily accessible to wheelchair and ambulatory residents; and
(B) sufficient in size to accommodate necessary equipment and to permit unobstructed movement of wheelchairs, residents, and personnel responsible for assisting, instructing, or supervising residents.
(5) Dining tables of the appropriate height shall be provided to assure access to meals and comfort for residents seated in wheelchairs, geriatric chairs, and regular dining chairs.

(x) Room-bound residents shall be provided suitable and sturdy tables or adjustable over-bed tables or other suitable devices and chairs of proper height to facilitate independent eating.

(y) Facilities having continuing deficiencies in the service of resident meals directly attributable to inadequacies in the size of the dining room or dining areas shall submit a special plan of correction detailing how meal service will be changed to meet the resident's needs.

(z) A comfortably furnished resident living and lounge area shall be provided on each resident occupied floor of a multi-story building. This lounge may be furnished and maintained to accommodate activity and dining functions.

(aa) The provision of an activity area shall be based on the level of care of the residents housed in the facility. The facility shall provide the following:
(1) Equipment and supplies for independent and group activities and for residents having special needs.
(2) Space to store recreational equipment and supplies for the activities program within or convenient to the area.
(3) Locked storage for potentially dangerous items, such as scissors, knives, razor blades, or toxic materials.
(4) In a facility for which plans were approved after December 19, 1977, a rest room large enough to accommodate a wheelchair and equipped with grab bars located near the activity area.

(bb) Maintain all essential mechanical, electrical, and resident care equipment in safe operating condition. Each facility shall establish and maintain a written program for maintenance to ensure the continued upkeep of the facility.

(cc) The facility must provide one (1) or more rooms designated for resident dining and activities. These rooms must:
(1) be well-lighted with artificial and natural lighting;
(2) be well-ventilated, with nonsmoking areas identified;
(3) be adequately furnished with structurally sound furniture that accommodates residents' needs, including those in wheelchairs; and
(4) have sufficient space to accommodate all activities.

(dd) Each facility shall have natural lighting augmented by artificial illumination, when necessary, to provide light intensity and to avoid glare and reflective surfaces that produce discomfort and as indicated in the following table:

Minimum Average Area	Foot-Candles
Corridors and interior ramp	15
Stairways and landing	20
Recreation area	40
Dining area	20
Resident care room	20
Nurses' station	40
Nurses' desk for charts and records	60
Medicine cabinet	75
Utility room	15
Janitor's closet	15
Reading and bed lamps	20
Toilet and bathing facilities	20
Food preparation surfaces and utensil washing facilities	70

(ee) Each facility shall have a policy concerning pets. Pets may be permitted in a facility but shall not be allowed to create

a nuisance or safety hazard. Any pet housed in a facility shall have periodic veterinary examinations and required immunizations in accordance with state and local health regulations.

(ff) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a) is an offense;
(2) subsection (b), (c), (d), (e), (f), (g), (h), (i), (j), (r), (u), or (bb) is a deficiency; and
(3) subsection (k), (l), (m), (n), (o), (p), (q), (s), (t), (v), (w), (x), (z), (aa), (cc), (dd), or (ee) is a noncompliance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-19; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1543, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2715)

SECTION 2. 410 IAC 16.2-8-1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-8-1 Incorporation by reference
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28

Sec. 1. (a) When used in this article, references to the publications in this subsection shall mean the version of that publication listed below. The following publications are hereby incorporated by reference:

(1) National Fire Protection Association (NFPA) 101, Life Safety Code Handbook ~~(1985~~ **(2000** Edition). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box ~~99101,~~ **9101,** Quincy, Massachusetts 02269-9904.
(2) 42 CFR 493 (October 1, 1995 Edition).
(3) 42 CFR 483.75(e)(1) (October 1, 1995 Edition).

(b) Federal rules that have been incorporated by reference do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. All incorporated material is available for public review at the Indiana state department of health. *(Indiana State Department of Health; 410 IAC 16.2-8-1; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1588, 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 Apr 16, 2004, 10:30 a.m.: 27 IR 2718)*

LSA Document #03-90(F)
Notice of Intent Published: May 1, 2003; 26 IR 2650
Proposed Rule Published: December 1, 2003; 27 IR 921
Hearing Held: February 23, 2004
Approved by Attorney General: April 8, 2004
Approved by Governor: April 14, 2004
Filed with Secretary of State: April 16, 2004, 10:30 a.m.
Incorporated Documents Filed with Secretary of State: Life Safety Code, National Fire Protection Association, 2000 edition

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #03-216(F)

DIGEST

Amends 410 IAC 15-1.5-8, 410 IAC 15-1.7-1, 410 IAC 15-2.5-7, and 410 IAC 15-2.7-1 to update the requirement for the Life Safety Code for hospitals and ambulatory outpatient surgical centers. Effective 30 days after filing with the secretary of state.

410 IAC 15-1.5-8 **410 IAC 15-2.5-7**
410 IAC 15-1.7-1 **410 IAC 15-2.7-1**

SECTION 1. 410 IAC 15-1.5-8 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-1.5-8 Physical plant, maintenance, and environmental services
Authority: IC 16-21-1-7
Affected: IC 16-21-1

Sec. 8. (a) The hospital shall be constructed, arranged, and maintained to ensure the safety of the patient and to provide facilities for services authorized under the hospital license as follows:

(1) The plant operations and maintenance service, equipment maintenance, and environmental service shall be:
(A) staffed to meet the scope of the services provided; and
(B) under the direction of a person or persons qualified by education, training, or experience.
(2) There shall be a safety officer designated to assume responsibility for the safety program.
(3) The hospital shall provide a physical plant and equipment that ~~meets~~ **meet** the statutory requirements and regulatory provisions of the state department of fire and building services, including 675 IAC 22, Indiana fire prevention codes, and 675 IAC 13, Indiana building codes.

(b) The condition of the physical plant and the overall hospital environment shall be developed and maintained in such a manner that the safety and well-being of patients are assured as follows:

(1) No condition in the facility or on the grounds shall be maintained ~~which~~ **that** may be conducive to the harborage or breeding of insects, rodents, or other vermin.
(2) No condition shall be created or maintained ~~which~~ **that** may result in a hazard to patients, public, or employees.
(3) There shall be emergency power and lighting in accordance with National Fire Protection Association (NFPA) 99.
(4) There shall be a plan for emergency fuel and water supply.
(5) Provision shall be made for the periodic inspection, preventive maintenance, and repair of the physical plant and equipment by qualified personnel as follows:

(A) Operation, maintenance, and spare parts manuals shall be available, along with training or instruction of the appropriate personnel, in the maintenance and operation of the fixed and movable equipment.

(B) Operational and maintenance control records shall be established and analyzed periodically. These records shall be readily available on the premises.

(C) Maintenance and repairs shall be carried out in accordance with applicable codes, rules, standards, and requirements of local jurisdictions, the administrative building council, the state fire marshal, and the department.

(c) In new construction, renovations, and additions, the hospital site and facilities, or nonlicensed facilities acquired for the purpose of providing hospital services, shall meet the following:

(1) The 2001 edition of the national "Guideline for Construction and Equipment of Hospital and Medical Facilities" (Guidelines).

(2) All building, fire safety, and handicapped accessibility codes and rules adopted and administered by the state building commissioner shall apply to all facilities covered by this rule and take precedence over any building, fire safety, or handicapped accessibility requirements of the Guidelines.

(3) When renovation or replacement work is done within an existing facility, all new work or addition, or both, shall comply, insofar as practical, with applicable sections of the Guidelines and for certification with appropriate parts of National Fire Protection Association (NFPA) 101 **(2000 Edition).**

(4) Proposed sites shall be located away from detrimental nuisances, well drained, and not subject to flooding. A site survey and recommendations shall be obtained from the department prior to site development.

(5) Water supply and sewage disposal services shall be obtained from municipal or community services. Outpatient facilities caring for patients less than twenty-four (24) hours that do not provide surgery, laboratory, or renal dialysis services may be served by approved private on-site septic tank absorption field systems.

(6) Site utility installations for water, sprinkler, sanitary, and storm sewer systems, and wells for potable emergency water supplies, shall comply with applicable sections of Bulletin S.E. 13, "On-Site Water Supply and Waste-water Disposal for Public and Commercial Establishments", 1988 edition.

(7) As early in the construction, addition, or renovation project as possible, the functional and operational description shall be submitted to the division. This submission shall consist of, but not be limited to, the following:

(A) Functional program narrative as established in the Guidelines.

(B) Schematics, based upon the functional program, consisting of drawings (as single-line plans), outline specifications, and other documents illustrating the scale and relationship of project components.

(8) Prior to the start of construction, addition, ~~and/or~~ **or** renovation projects, detailed architectural and operational plans for construction shall be submitted to the plan review division of the department of fire and building services and to the division of sanitary engineering of the department, as follows:

(A) Working drawings, project manual, and specifications shall be included.

(B) Prior to submission of final plans and specifications, recognized standards and codes, including infection control standards, shall be reviewed as required in section 2(f)(2) of this rule.

(C) All required approvals shall be obtained from the state building commissioner and final approval from the division of sanitary engineering of the department prior to issuance of the occupancy letter by the division.

(9) All backflow prevention devices shall be installed as required by 327 IAC 8-10 and the current edition of the Indiana plumbing code. Such devices shall be listed as approved by the department.

(10) Upon receipt of a design release from the state building commissioner and documentation of a completed plan review by the division of sanitary engineering of the department, a licensure application shall be submitted to the division on the form approved and provided by the department.

(11) Documentation from the state building commissioner that the hospital is in compliance with the fire safety rules of the fire prevention and building safety commission shall be furnished to the division with the licensure application.

(12) Plans for constructing, expanding, or remodeling x-ray or gamma ray facilities shall be accompanied by an evaluation of the radiation protection features by a radiation qualified expert as required by 410 IAC 5. After completion of the x-ray or gamma ray installation and prior to use, a radiation safety survey shall be performed by a radiation qualified expert to ~~insure~~ **ensure** that the facility meets all applicable requirements of 410 IAC 5 and National Council on Radiation Protection and Measurements (NCRP) Reports Number 49 and 102.

(13) Outpatient facilities, rehabilitation facilities, psychiatric facilities, and mobile, transportable, and relocatable units ~~which~~ **that** are included under the hospital license may comply with appropriate sections of the Guidelines. If not, they shall comply with the hospital section of the Guidelines.

(d) The equipment requirements are as follows:

(1) All equipment shall be in good working order and regularly serviced and maintained.

(2) There shall be sufficient equipment and space to assure the safe, effective, and timely provision of the available services to patients, as follows:

(A) All mechanical equipment (pneumatic, electric, or other) shall be on a documented maintenance schedule of appropriate frequency and with the manufacturer's recommended maintenance schedule.

(B) There shall be evidence of preventive maintenance on all equipment.

(C) Appropriate records shall be kept pertaining to equipment maintenance, repairs, and current leakage checks.

(3) Defibrillators shall be discharged at least in accordance with manufacturers' recommendations and a discharge log with initialed entries shall be maintained.

(4) Electrical safety shall be practiced in all areas.

(e) The **building or** buildings, including fixtures, walls, floors, ceiling, and furnishings throughout, shall be kept clean and orderly in accordance with current standards of practice as follows:

(1) Environmental services shall be provided in such a way as to guard against transmission of disease to patients, health care workers, the public, and visitors by using the current principles of **the following:**

(A) Asepsis.

(B) Cross-infection. ~~and~~

(C) Safe practice.

(2) Refuse and garbage shall be collected, transported, sorted, and disposed of by methods ~~which~~ **that** will minimize nuisances or hazards.

(f) The safety management program shall include, but not be limited to, the following:

(1) An ongoing hospital-wide process to evaluate and collect information about hazards and safety practices to be reviewed by the safety committee.

(2) A safety committee appointed by the chief executive officer ~~which~~ **that** includes representatives from administration, patient services, and support services.

(3) The safety program ~~which~~ **that** includes, but is not limited to, the following:

(A) Patient safety.

(B) Health care worker safety.

(C) Public and visitor safety.

(D) Hazardous materials and wastes management in accordance with federal and state rules.

(E) A written fire control plan that contains provisions for the following:

(i) Prompt reporting of fires.

(ii) Extinguishing of fires.

(iii) Protection of patients, personnel, and guests.

(iv) Evacuation.

(v) Cooperation with firefighting authorities.

(F) Maintenance of written evidence of regular inspection and approval by state or local fire control agencies.

(G) Emergency and disaster preparedness coordinated with appropriate community, state, and federal agencies.

(Indiana State Department of Health; 410 IAC 15-1.5-8; filed Dec 21, 1994, 9:40 a.m.: 18 IR 1273; errata filed Feb 23, 1995, 2:00 p.m.: 18 IR 1837; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1135; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2718)

SECTION 2. 410 IAC 15-1.7-1 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-1.7-1 Incorporation by reference

Authority: IC 16-21-1-7
Affected: IC 16-21-1

Sec. 1. (a) When used in this article, references to the following publications shall mean the version of that publication listed below. The following publications are hereby incorporated by reference:

(1) Guidelines for Construction and Equipment of Hospital and Medical Facilities (2001 Edition). Copies are available from the American Institute of Architects, 1735 New York Ave. Northwest, Washington, D.C. 20006.

(2) Bulletin S.E. 13, "On-site Water Supply and Waste-water Disposal for Public and Commercial Establishments" (1988 Edition). Copies are available from the Indiana State Department of Health, 1330 West Michigan Street, P.O. Box 1964, Indianapolis, IN 46206-1964.

(3) National Fire Protection Association (NFPA) 99, Health Care Facilities (1993 Edition). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9904.

(4) National Fire Protection Association (NFPA) 101, Life Safety Code Handbook ~~(1985~~ **(2000** Edition). ~~for Medicare/Medicaid certified nonaccredited hospitals, and the 1991 Edition for Medicare/Medicaid certified hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)).~~ Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9904.

(5) National Committee on Radiation Protection (NCRP) *[sic.]* Reports, Number 49, "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies Up to 10 MeV" (September 15, 1976 Edition). Copies may be obtained from the National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Washington, D.C. 20014.

(6) National Committee on Radiation Protection (NCRP) Reports, Number 102, "Medical X-ray, Electron Beam and Gamma Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance and Use)" (June 30, 1989 Edition). Copies may be obtained from the National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Washington, D.C. 20014.

(7) 42 CFR Part 412, Subpart B, Section 412.25, 42 CFR Part 412, Subpart B, Section 412.27, 42 CFR Part 412, Subpart B, Section 412.29, 42 CFR Part 412, Subpart B, Section 412.30 (October 1, 1993 Edition).

(8) 42 CFR Part 493 (October 1, 1993 Edition).

(9) 21 CFR Part 606 (April 1, 1994 Edition).

(10) 21 CFR Part 640 (April 1, 1994 Edition).

(b) Federal rules ~~which~~ **that** have been incorporated by

reference do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. All incorporated material is available for public review at the Indiana state department of health. *(Indiana State Department of Health; 410 IAC 15-1.7-1; filed Dec 21, 1994, 9:40 a.m.: 18 IR 1280; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1137; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2720)*

SECTION 3. 410 IAC 15-2.5-7 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-2.5-7 Physical plant, equipment maintenance, and environmental services

Authority: IC 16-21-1-7
Affected: IC 16-21-1

Sec. 7. (a) The center shall be constructed, arranged, and maintained to ensure the safety of the patient and to provide facilities for services authorized under the center license as follows:

(1) The plant operations and maintenance service, equipment maintenance, and environmental services must be as follows:

(A) Staffed to meet the scope of the services provided.

(B) Under the direction of a person or persons qualified by education, training, or experience according to center policy approved by the governing body.

(2) The center shall provide a physical plant and equipment that meets the statutory requirements and regulatory provisions of the state department of fire and building services, 675 IAC 22, Indiana fire prevention codes, and 675 IAC 13, Indiana building codes.

(3) There must be emergency power and lighting in accordance with National Fire Protection Association (NFPA) 99.

(4) In new construction, renovations, and additions, the center site and facilities, or nonlicensed facilities acquired for the purpose of providing center services, shall meet the following:

(A) The 2001 edition of the national "Guidelines for Design and Construction of Hospital and Health Care Facilities" (Guidelines).

(B) All building, fire safety, and handicapped accessibility codes, and rules adopted and administered by the state building commission shall apply to all facilities covered by this rule and take precedence over any building, fire safety, or handicapped accessibility requirements of the Guidelines.

(C) When renovation or replacement work is done within an existing facility, all new work or additions, or both, shall comply, insofar as practical, with applicable sections of the Guidelines and for certification with appropriate parts of NFPA 101 **(2000 Edition).**

(D) Water supply and sewage disposal services shall be obtained from municipal or community services.

(E) As early in the construction, addition, ~~and/or~~ **or** renovation project as possible, the functional and operational description shall be submitted to the division. This submission shall consist of, but not be limited to, the following:

(i) Functional program narrative as established in the Guidelines.

(ii) Schematics, based upon the functional program, consisting of drawings (as single-line plans), outline specifications, and other documents illustrating the scale and relationship of project components.

(F) Prior to the start of construction, addition, ~~and/or~~ **or** renovation projects, detailed architectural and operational plans for construction shall be submitted to the plan review division of the department of fire and building services and to the division of sanitary engineering of the department as follows:

(i) Working drawings, project manuals, and specifications shall be included.

(ii) Prior to submission of final plans and specifications, recognized standards and codes, including infection control standards, shall be reviewed as required in section 1(e)(2) of this rule.

(iii) All required approvals shall be obtained from fire and building services and final approval from the division of sanitary engineering of the department prior to issuance of the occupancy letter by the division.

(G) Upon receipt of a plan release from the fire and building commissioner and documentation of a completed plan review by the division of sanitary engineering of the department, a licensure application shall be submitted to the division on the form approved and provided by the department.

(H) Documentation from the state building commissioner that the center is in compliance with the fire safety rules of the fire prevention and building safety commission shall be furnished to the division with the licensure application.

(b) The condition of the physical plant and the overall center environment must be developed and maintained in such a manner that the safety and well-being of patients are assured as follows:

(1) No condition in the center or on the grounds may be maintained ~~which~~ **that** may be conducive to the harboring or breeding of insects, rodents, or other vermin.

(2) No condition may be created or maintained ~~which~~ **that** may result in a hazard to patients, public, or employees.

(3) Provision must be made for the periodic inspection, preventive maintenance, and repair of the physical plant and equipment by qualified personnel as follows:

(A) Operation, maintenance, and spare parts manuals must be available, along with training ~~and/or~~ **or** instruction, **or both,** of the appropriate center personnel, in the maintenance and operation of fixed and movable equipment.

(B) All mechanical equipment (pneumatic, electric, sterilizing, or other) must be on a documented maintenance schedule of appropriate frequency in accordance with acceptable standards of practice or the manufacturer's recommended maintenance schedule.

(C) Operational and maintenance control records must be established and analyzed at least triennially. These records must be readily available on the premises.

(D) Maintenance and repairs must be carried out in accordance with applicable codes, rules, standards, and requirements of local jurisdictions, administrative building council, the state fire marshal, and the department.

(4) The patient care equipment requirements are as follows:

(A) There must be sufficient patient care equipment and space to assure the safe, effective, and timely provision of the available services to patients.

(B) All patient care equipment must be in good working order and regularly serviced and maintained as follows:

(i) All patient care equipment must be on a documented maintenance schedule of appropriate frequency in accordance with acceptable standards of practice or the manufacturer's recommended maintenance schedule.

(ii) There must be evidence of preventive maintenance on all patient care equipment.

(iii) Appropriate records must be kept pertaining to equipment maintenance, repairs, and electrical current leakage checks and analyzed at least triennially.

(iv) Defibrillators must be discharged at least in accordance with manufacturers' recommendations, and a discharge log with initialed entries must be maintained.

(5) The **building or** buildings, including fixtures, walls, floors, ceiling, and furnishings throughout, must be kept clean and orderly in accordance with current standards of practice, including the following:

(A) Environmental services must be provided in such a way as to guard against transmission of disease to patients, health care workers, the public, and visitors by using the current principles of the following:

(i) Asepsis.

(ii) Cross-contamination prevention.

(iii) Safe practice.

(B) Refuse, biohazards, infectious waste, and garbage must be collected, transported, sorted, and disposed of by methods ~~which~~ **that** will minimize nuisances or hazards according to federal, state, and local laws and rules.

(c) A safety management program must include, but not be limited to, the following:

(1) A review of safety functions by a committee appointed by the chief executive officer ~~which~~ **that** includes representatives from administration and patient care services.

(2) An ongoing center-wide process to evaluate and collect information about hazards and safety practices to be reviewed by the committee.

(3) The safety program includes, but is not limited to, the following:

(A) Patient safety.

(B) Health care worker safety.

(C) Public and visitor safety.

(4) A written fire control plan that contains provisions for the following:

(A) Prompt reporting of fires.

(B) Extinguishing of fires.

(C) Protection of patients, personnel, and guests.

(D) Evacuation.

(E) Cooperation with firefighting authorities.

(F) Fire drills.

(5) Maintenance of written evidence of regular inspection and approval by state or local fire control agencies in accordance with center policy and state and local regulations.

(6) Emergency and disaster preparedness coordinated with appropriate community, state, and federal agencies.

(Indiana State Department of Health; 410 IAC 15-2.5-7; filed Dec 1, 1999, 3:44 p.m.: 23 IR 793; errata filed Feb 15, 2000, 8:05 a.m.: 23 IR 1657; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1133; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2721)

SECTION 4. 410 IAC 15-2.7-1 IS AMENDED TO READ AS FOLLOWS:

Rule 2.7. Incorporations by Reference

410 IAC 15-2.7-1 Incorporation by reference

Authority: IC 16-21-1-7
Affected: IC 16-21-1

Sec. 1. (a) When used in this article, references to the following publications shall mean the version of that publication listed and are hereby incorporated by reference:

(1) Guidelines for Design and Construction of Hospital and Health Care Facilities (2001 Edition). Copies are available from the American Institute of Architects, 1735 New York Avenue Northwest, Washington, D.C. 20006. Local purchase may be made from the Architectural Center Bookstore, 47 South Pennsylvania Avenue, Indianapolis, Indiana 46204.

(2) National Fire Protection Association (NFPA) 99, Health Care Facilities (1993 Edition). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P. O. Box 1901, Quincy, Massachusetts 02260-9904.

(3) National Fire Protection Association (NFPA) 101, Life Safety Code Handbook ~~(1985~~ **(2000** Edition). ~~for Medicare/Medicaid certified nonaccredited hospitals, and the 1991 Edition for Medicare/Medicaid certified hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).~~ Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P. O. Box 1901, Quincy, Massachusetts 02269-9904.

(4) National Committee on Radiation Protection (NCRP) Reports, Number 49, "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies Up to 10 MeV" (September 15, 1976, Edition). Copies may be obtained from the National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Washington, D.C. 20014.

(5) National Committee on Radiation Protection (NRCP) *[sic.]* Reports, Number 102, "Medical X-ray, Electron Beam and Gamma Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance and Use)" (June 30, 1989,

Edition). Copies may be obtained from the National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Washington, D.C. 20014.
(6) 42 CFR 493 (Effective October 1, 1993, Edition).
(7) 21 CFR 606 (April 1, 1994, Edition).
(8) 21 CFR 640 (April 1, 1994, Edition).

(b) Federal rules ~~which~~ **that** have been incorporated by reference do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. All incorporated material is available for public review at the department. *(Indiana State Department of Health; 410 IAC 15-2.7-1; filed Dec 1, 1999, 3:44 p.m.: 23 IR 795; errata filed Feb 15, 2000, 8:05 a.m.: 23 IR 1658; filed Nov 13, 2000, 11:17 a.m.: 24 IR 992; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1134; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2722)*

LSA Document #03-216(F)
Notice of Intent Published: September 1, 2003; 26 IR 3906
Proposed Rule Published: February 1, 2004; 27 IR 1620
Hearing Held: February 23, 2004
Approved by Attorney General: April 8, 2004
Approved by Governor: April 14, 2004
Filed with Secretary of State: April 16, 2004, 10:30 a.m.
Incorporated Documents Filed with Secretary of State: National Fire Protection Association (NFPA) 101, Life Safety Code Handbook (2000 Edition).

TITLE 414 HOSPITAL COUNCIL

LSA Document #03-277(F)

DIGEST

Adds 414 IAC to set licensure fees for hospitals and ambulatory outpatient surgical centers. Effective 30 days after filing with the secretary of state.

414 IAC

SECTION 1. 414 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 414 HOSPITAL COUNCIL

ARTICLE 1. LICENSURE FEES FOR HOSPITALS AND AMBULATORY OUTPATIENT SURGICAL CENTERS

Rule 1. Fees

414 IAC 1-1-1 Hospital license fees
Authority: IC 16-21-2-12; IC 16-21-2-14
Affected: IC 16-21-1; IC 16-21-2; IC 16-21-6-3

Sec. 1. (a) Each hospital licensed under IC 16-21-2 and 410 IAC 15 shall pay a license fee or annual renewal fee.

(b) An application for a hospital license must be accompanied by a licensing fee at the rate set in the fee schedule in this subsection. Annual renewal fees will be due upon application, as provided by 410 IAC 15-1.3, for an annual renewal of a hospital's license based upon total operating expenses as reported to the state department of health on the most recently filed hospital fiscal report (State Form 49520) required by IC 16-21-6-3. The fee schedule shall be as follows:

Total Operating Expenses	Fee
0 – $49,999,999	$1,000
$50,000,000 – $99,999,999	$2,000
$100,000,000 – $199,999,999	$3,000
$200,000,000 – $299,999,999	$4,000
$300,000,000 and above	$5,000

(Hospital Council; 414 IAC 1-1-1; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2723)

414 IAC 1-1-2 Ambulatory outpatient surgical center license fees
Authority: IC 16-21-2-12; IC 16-21-2-14
Affected: IC 16-21-1; IC 16-21-2

Sec. 2. (a) Each ambulatory outpatient surgical center licensed under IC 16-21-2 and 410 IAC 15 shall pay a license fee or annual renewal fee.

(b) Ambulatory outpatient surgical center license fees will be due upon initial application for and annual renewal of the ambulatory outpatient surgical center's license based upon total annual procedures performed as reported to the state department of health in section III, total patients and procedures, on the fourth quarter quarterly utilization review report/ambulatory surgery center (State Form 49933). The fee schedule shall be as follows:

Total Annual Procedures	Fee
0 – 799	$500
800 – 3,499	$1,000
3,500 – 6,999	$2,000
7,000 and above	$3,000

(Hospital Council; 414 IAC 1-1-2; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2723)

LSA Document #03-277(F)
Notice of Intent Published: November 1, 2003; 27 IR 552
Proposed Rule Published: February 1, 2004; 27 IR 1625
Hearing Held: February 23, 2004
Approved by Attorney General: April 7, 2004
Approved by Governor: April 8, 2004
Filed with Secretary of State: April 16, 2004, 10:30 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #03-123(F)

DIGEST

Amends 460 IAC 6 to incorporate a code of ethics for providers providing case management services to an individual and to make other necessary changes. Effective 30 days after filing with the secretary of state.

460 IAC 6-2-2
460 IAC 6-2-3
460 IAC 6-3-15.2
460 IAC 6-14-6
460 IAC 6-14-7
460 IAC 6-15-2
460 IAC 6-19-6
460 IAC 6-31-1
460 IAC 6-36

SECTION 1. 460 IAC 6-2-2 IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-2-2 Rules applicable to all providers
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. This rule, ~~and~~ 460 IAC 6-3 through 460 IAC 6-17, **and 460 IAC 6-34** apply to all providers of supported living services and supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-2-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724)*

SECTION 2. 460 IAC 6-2-3 IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-2-3 Rules applicable to specific providers
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 3. 460 IAC 6-18 through ~~460 IAC 6-35~~ **460 IAC 6-34** apply to the providers of supported living services and supports specified in the respective rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-2-3; filed Nov 4, 2002, 12:04 p.m.: 26 IR 749; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724)*

SECTION 3. 460 IAC 6-3-15.2 IS ADDED TO READ AS FOLLOWS:

460 IAC 6-3-15.2 "Conflict of interest" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 15.2. "Conflict of interest" means a situation in which an agent, employee, or officer of a provider, or a family member of any of these individuals has a private financial interest, such as affiliation through employment or contract, with an organization that does business with the provider. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-3-15.2; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724)*

SECTION 4. 460 IAC 6-14-6 IS ADDED TO READ AS FOLLOWS:

460 IAC 6-14-6 Policies and procedures for conflicts of interest
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. A provider shall develop and enforce policies and procedures regarding conflicts of interest and the disclosure of possible conflicts of interest for all of the provider's employees or agents. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-6; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724)*

SECTION 5. 460 IAC 6-14-7 IS ADDED TO READ AS FOLLOWS:

460 IAC 6-14-7 Policies and procedures for code of ethics
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. A provider shall develop and enforce policies and procedures regarding a code of ethics for agents and employees. The policies and procedures shall be consistent with 460 IAC 6-36. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-14-7; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724)*

SECTION 6. 460 IAC 6-15-2 IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-15-2 Maintenance of personnel files
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. (a) A provider shall maintain in the provider's office files for each employee or agent of the provider.

(b) The provider's files for each employee or agent shall contain the following:

(1) A negative tuberculosis screening prior to providing services and updated in accordance with recommendations of Centers for Disease Control.

(2) Cardiopulmonary resuscitation certification and recertification, updated ~~annually.~~ **every two (2) years, for each employee or agent who works with individuals.**

(3) Auto insurance information, updated ~~annually,~~ **when it is due to expire,** if the employee or agent will be transporting an individual in the employee's or agent's personal vehicle.

(4) Limited criminal history information that meets the requirements of 460 IAC 6-10-5 with the information updated at least every three (3) years.

(5) Professional licensure, certification, or registration, including renewals, as applicable.
(6) A copy of the employee's or agent's driver's license, updated when the driver's license is due to expire.
(7) Copies of:
(A) the employee's time records; or
(B) the agent's invoices for services.
(8) Copies of the agenda for each training session attended by the employee or agent, including the following:
(A) Subject matter included in each training session.
(B) The date and time of each training session.
(C) The name of the person or persons conducting each training session.
(D) Documentation of the employee's or agent's attendance at each training session, signed by:
(i) the employee or agent; and
(ii) the trainer.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-15-2; filed Nov 4, 2002, 12:04 p.m.: 26 IR 772; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2724)

SECTION 7. 460 IAC 6-19-6, AS AMENDED AT 27 IR 113, SECTION 40, IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-19-6 Monitoring of services
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 6. (a) A provider of case management shall monitor and document the quality, timeliness, and appropriateness of the care, services, and products delivered to an individual.

(b) The documentation required under this section shall include an assessment of the following:
(1) The appropriateness of the outcomes in the individual's ISP.
(2) An individual's progress toward the ~~goals~~ **outcomes** in the individual's ISP.

(c) The documentation required by this section shall include the following:
(1) Any medication administration system for the individual.
(2) An individual's behavioral support plan.
(3) Any health-related incident management system for the individual.
(4) Any side effect monitoring system for the individual.
(5) Any seizure management system for the individual.
(6) Any other system for the individual implemented by more than one (1) provider.

(d) A provider of case management services shall continuously monitor the services and outcomes established for the individual in the individual's ISP, including the following:
(1) A provider of case management services shall timely follow-up on identified problems.
(2) A provider of case management services shall act immediately to resolve critical issues and crises in accordance with this article.
(3) If concerns with services or outcomes are identified, a provider of case management services shall:
(A) address the concerns in a timely manner; and
(B) involve all necessary providers and the individual's support team if necessary.

(e) A provider of case management services who is attempting to resolve a dispute shall follow the dispute resolution procedure described in 460 IAC 6-10-8.

(f) No later than thirty (30) days after the implementation of an individual's ISP, unless otherwise specified in the ISP, a provider of case management shall make the first monitoring contact with the individual.

(g) A provider of case management services shall have regular in-person contact with the individual as required by the ISP and this section. The provider of case management services shall make at least:
(1) one (1) in-person contact with the individual every ninety (90) days to ~~assess the quality and effectiveness of the ISP;~~ **review and complete with the individual or the individual's representative the case management ninety (90) day check list available to providers of case management on the division's providers' computer automation system;**
(2) two (2) in-person contacts each year in the individual's residence; and
(3) one (1) in-person contact each year unannounced.

(h) If an individual's ISP requires more contact than required by subsection (g), the individual's ISP shall control the amount of contact a provider of case management services must make with an individual receiving case management services.

(i) A provider of case management services shall coordinate the provision of family and caregiver training services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-19-6; filed Nov 4, 2002, 12:04 p.m.: 26 IR 777; filed Aug 29, 2003, 10:30 a.m.: 27 IR 113; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2725)*

SECTION 8. 460 IAC 6-31-1 IS AMENDED TO READ AS FOLLOWS:

460 IAC 6-31-1 Documentation required
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. (a) A provider of respite care services shall maintain chronological documentation of the services provided for an individual.

(b) The documentation shall include the following:
(1) The date and duration of respite care services provided.

(2) The signature of the person providing respite care services.
(3) The location and setting where the respite care service was provided.
(4) The reason for the respite care services.

(c) Documentation shall be updated, reviewed, and analyzed whenever respite care services are provided. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-31-1; filed Nov 4, 2002, 12:04 p.m.: 26 IR 785; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2725)*

SECTION 9. 460 IAC 6-36 IS ADDED TO READ AS FOLLOWS:

Rule 36. Code of Ethics

460 IAC 6-36-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. This rule applies to all providers of supported living services and supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-36-1; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2726)*

460 IAC 6-36-2 Code of ethics
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 2. A provider, in the provision of services under this article, shall abide by the following code of ethics:
(1) A provider shall provide professional services with objectivity and with respect for the unique needs and values of the individual being provided services.
(2) A provider shall avoid discrimination on the basis of factors that are irrelevant to the provision of services, including, but not limited to:
(A) race;
(B) creed;
(C) gender;
(D) age; or
(E) disability.
(3) A provider shall provide sufficient objective information to enable an individual, or the individual's guardian, to make informed decisions.
(4) A provider shall accurately present professional qualifications and credentials.
(5) A provider shall accurately present professional qualifications of all employees or agents.
(6) A provider shall require all employees or agents to assume responsibility and accountability for personal competence in the practice of the person's profession and in the provision of services under this article.
(7) A provider shall require employees or agents to maintain knowledge and skills required for continued professional competence including all requirements necessary for a licensed or accredited professional to maintain the professional's licensure or accreditation.
(8) A provider shall require professional, licensed, or accredited employees or agents to adhere to acceptable standards for the employee or agent's area of professional practice.
(9) A provider shall require employees or agents to comply with all laws and regulations governing a licensed or accredited person's profession.
(10) A provider shall require all employees or agents to maintain the confidentiality of individual information consistent with the standards of this article and all other laws and regulations governing confidentiality of individual information.
(11) A provider shall require all employees or agents to conduct all practice with honesty, integrity, and fairness.
(12) A provider shall require all employees or agents to fulfill professional commitments in good faith.
(13) A provider shall require all employees or agents to inform the public and colleagues of services by use of factual information.
(14) A provider shall not advertise or market services in a misleading manner.
(15) A provider providing services shall not engage in uninvited solicitation of potential clients, who are vulnerable to undue influence, manipulation, or coercion.
(16) A provider shall make reasonable efforts to avoid bias in any kind of professional evaluation.
(17) A provider shall notify the appropriate party, which may include:
(A) the division;
(B) the Indiana state department of health;
(C) a licensing authority;
(D) an accrediting agency;
(E) an employer;
(F) the office of the attorney general, consumer protection division;
of any unprofessional conduct that may jeopardize an individual's safety or influence the individual or individual's representative in any decision making process.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 6-36-2; filed Apr 16, 2004, 10:00 a.m.: 27 IR 2726)

LSA Document #03-123(F)
Notice of Intent Published: June 1, 2003; 26 IR 3075
Proposed Rule Published: September 1, 2003; 26 IR 3935
Hearing Held: September 24, 2003
Approved by Attorney General: March 26, 2004
Approved by Governor: April 8, 2004
Filed with Secretary of State: April 16, 2004, 10:00 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #03-65(F)

DIGEST

Adds 515 IAC 12 to provide for certain requirements for the issuance of an accomplished practitioner license by the professional standards board. *NOTE: Under IC 4-22-2-25(b), if a rule document is not approved by the governor one (1) year from the date that a notice of intent is published in the Indiana Register, the rule document is ineffective. The notice of intent for LSA Document #03-65 was published in the April 1, 2003, Indiana Register and signed by the governor April 8, 2004, making this document ineffective. See a new notice of intent LSA Document #04-141, printed in this Indiana Register at 27 IR 2763.* Effective 30 days after filing with the secretary of state.

515 IAC 12

SECTION 1. 515 IAC 12 IS ADDED TO READ AS FOLLOWS:

ARTICLE 12. ACCOMPLISHED PRACTITIONER LICENSE

Rule 1. Accomplished Practitioner License

515 IAC 12-1-1 Accomplished practitioner instructional license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 1. An accomplished practitioner instructional license is a renewable license that may be issued to a teacher who

(1) holds a proficient practitioner instructional license, as noted in 515 IAC 8-1-8 through 515 IAC 8-1-15, 515 IAC 8-1-17 through 515 IAC 8-1-34, and 515 IAC 8-1-36 through 515 IAC 8-1-39, and completes either

(A) a master's degree or higher approved or recognized by the professional standards board and has been recommended for the accomplished practitioner license by the institution granting the degree, or

(B) certification by the National Board for Professional Teaching Standards of a content area recognized by the professional standards board, or

(2) holds a proficient practitioner instructional license, as noted in 515 IAC 8-1-16 or 515 IAC 8-1-35; and completes the requirements as outlined in this rule.

(Professional Standards Board; 515 IAC 12-1-1; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2727)

515 IAC 12-1-2 Accomplished practitioner administration or school services license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 2. An accomplished practitioner administration or school services license is a renewable license that may be issued to an administrator or school services applicant who holds a proficient practitioner administration or school services license, as noted in 515 IAC 8-1-40 through 515 IAC 8-1-48; and completes the requirements as outlined in this rule. *(Professional Standards Board; 515 IAC 12-1-2; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2727)*

515 IAC 12-1-3 Accomplished practitioner license validity period

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 3. The accomplished practitioner administration or school services license is valid for ten (10) years from the date the materials are received by the professional standards board. After the initial ten (10) years, all subsequent renewals will be valid for five (5) years. *(Professional Standards Board; 515 IAC 12-1-3; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2727)*

515 IAC 12-1-4 Accomplished practitioner application procedures

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 4. The application procedures set forth in 515 IAC 9-1-5 and IAC 9-1-6 shall apply to this rule. *(Professional Standards Board; 515 IAC 12-1-4; filed Apr 16, 2004, 10:30 a.m.: 27 IR 2727)*

LSA Document #03-65(F)
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Proposed Rule Published: September 1, 2003; 26 IR 3943
Hearing Held: October 1, 2003
Approved by Attorney General: March 25, 2004
Approved by Governor: April 8, 2004
Filed with Secretary of State: April 16, 2004, 10:30 a.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 610 DEPARTMENT OF LABOR

LSA Document #03-252(F)

DIGEST

Amends 610 IAC 4-6-23 to comply with amended federal Occupational Safety and Health Administration requirements for recording and reporting fatalities and multiple hospitalization incidents. Effective 30 days after filing with the secretary of state.

610 IAC 4-6-23

SECTION 1. 610 IAC 4-6-23 IS AMENDED TO READ AS FOLLOWS:

610 IAC 4-6-23 Reporting fatalities and multiple hospitalization incidents

Authority: IC 22-1-1-2; IC 22-8-1.1-48.1
Affected: IC 22-8-1.1-3.1; IC 22-8-1.1-43.1

Sec. 23. (a) Within ~~forty-eight (48)~~ **eight (8)** hours after the death of any employee from a work-related incident or the inpatient hospitalization of ~~five (5)~~ **three (3)** or more employees as a result of a work-related incident, the employer must orally report the fatality **or** multiple hospitalization by telephone or in person to the Indiana occupational safety and health administration (IOSHA). The employer shall contact IOSHA by calling 1-317-232-2693. The employer may also use the federal Occupational Safety and Health Administration toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(b) The employer must report fatalities and multiple hospitalization incidents as follows:

(1) Reporting the incident by leaving a facsimile transmission or e-mail is prohibited. If IOSHA is closed and the employer cannot talk to a person at IOSHA, the employer must report the fatality or multiple hospitalization incident by calling 1-317-232-2693 or 1-800-321-OSHA.

(2) The employer must give IOSHA the following information for each fatality or multiple hospitalization incident:

(A) The establishment name.

(B) The location of the incident.

(C) The time of the incident.

(D) The number of fatalities or hospitalized employees.

(E) The names of any injured employees.

(F) The employer's contact person and his or her phone number.

(G) A brief description of the incident.

(3) The employer does not have to report all fatality or multiple hospitalization incidents resulting from a motor vehicle accident. If the motor vehicle accident occurs on a public street or highway and does not occur in a construction work zone, the employer does not have to report the incident to IOSHA. However, these injuries must be recorded on the employer's OSHA injury and illness records if the employer is required to keep such records.

(4) Reporting a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system is not required. Employers do not have to call IOSHA to report a fatality or multiple hospitalization incident if it involves a commercial airplane, train, subway, or bus accident. However, these injuries must be recorded on the employer's IOSHA injury and illness records if the employer is required to keep such records.

(5) Reporting a fatality caused by a heart attack at work is required. IOSHA will then decide whether to investigate the incident depending on the circumstances of the heart attack.

(6) Reporting a fatality or hospitalization that occurs long after the incident is not required. The employer must only report each fatality or multiple hospitalization incident that occurs within thirty (30) days of an incident.

(7) If an employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this section, the employer must make the report within ~~forty-eight (48)~~ **eight (8)** hours of the time the incident is reported to the employer or to any of the employer's agents or employees.

(Department of Labor; 610 IAC 4-6-23; filed Sep 26, 2002, 11:22 a.m.: 26 IR 367; filed Apr 30, 2004, 3:45 p.m.: 27 IR 2728)

LSA Document #03-252(F)
Notice of Intent Published: October 1, 2003; 27 IR 210
Proposed Rule Published: November 1, 2003; 27 IR 564
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Filed with Secretary of State: April 30, 2004, 3:45 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 610 DEPARTMENT OF LABOR

LSA Document #03-253(F)

DIGEST

Repeals 610 IAC 4-6-13 to comply with the amended federal Occupational Safety and Health Administration requirements for recording and reporting work-related musculoskeletal disorders. Effective 30 days after filing with the secretary of state.

610 IAC 4-6-13

SECTION 1. 610 IAC 4-6-13 IS REPEALED.

LSA Document #03-253(F)
Notice of Intent Published: October 1, 2003; 27 IR 210
Proposed Rule Published: November 1, 2003; 27 IR 565
Hearing Held: November 25, 2003
Approved by Attorney General: April 23, 2004
Approved by Governor: April 29, 2004
Filed with Secretary of State: April 30, 2004, 3:45 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #03-258(F)

DIGEST

Amends 760 IAC 1-60 regarding physician specialty classes, discounts, and rates for part-time and retired physicians. Effective July 1, 2004.

760 IAC 1-60-3
760 IAC 1-60-5

SECTION 1. 760 IAC 1-60-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-60-3 List of physician specialty classes

Authority: IC 34-18-5-2
Affected: IC 34-18-5-2

Sec. 3. The list of physician specialty classes required by IC 34-18-5-2 is as follows:

Indiana Department of Insurance
Patient's Compensation Fund
Physician Class Plan
Class 0

ISO Code	Specialty
80001	Resident Nonmoonlighting
80221	Resident Moonlighting (No ER)
80230	Aerospace Medicine
80231	General Preventive Medicine – No Surgery
80234	Pharmacology – Clinical
80236	Public Health
80240	Legal Medicine and Forensic Medicine
80248	Nutrition
80249	Psychiatry (Including Child)
80250	Psychoanalysis
80251	Psychosomatic Medicine
~~80253~~	~~Radiology – No Surgery~~
80254	Allergy
80256	Dermatology – No Surgery
80263	Ophthalmology – No Surgery
80266	Pathology – No Surgery

Class 1

ISO Code	Specialty
80233	Occupational Medicine
80235	Physical Medicine and Rehabilitation
80237	Diabetes – No Surgery
80238	Endocrinology – No Surgery
80239	Family Practice – No Surgery
80241	Gastroenterology – No Surgery
80242	General Practice – No Surgery
80243	Geriatrics – No Surgery
80244	Gynecology – No Surgery
80245	Hematology – No Surgery
80246	Infectious Disease – No Surgery
80247	Rhinology – No Surgery
80252	Rheumatology – No Surgery
80255	Cardiovascular Disease – No Surgery
80257	Internal Medicine – No Surgery
80258	Laryngology – No Surgery
80259	Neoplastic Disease – No Surgery
80260	Nephrology – No Surgery
80261	Neurology (Including Child) – No Surgery
80262	Nuclear Medicine
80264	Otology – No Surgery
80265	Otorhinolaryngology – No Surgery
80267	Pediatrics – No Surgery
80268	Physicians (Not Otherwise Classified) – No Surgery
80269	Pulmonary Disease – No Surgery
80420	Family Physicians – No Surgery

Class 2

ISO Code	Specialty
80223	Resident Moonlighting (with ER)
80253	**Radiology – No Surgery**
80280	Radiology – Minor Surgery
80282	Dermatology – Minor Surgery
80289	Ophthalmology – Minor Surgery
80292	Pathology – Minor Surgery
~~80424~~	~~Emergency Medicine~~
80425	Radiation Therapy – Not Otherwise Classified
80431	Shock Therapy

Class 3

ISO Code	Specialty
80109	Physicians – No Major Surgery
80114	Surgery – Ophthalmology
80132	Physicians (Not Otherwise Classified) – Minor Surgery
80172	Physician (Not Otherwise Classified) – No Major Surgery
80270	Rhinology – Minor Surgery
80271	Diabetes – Minor Surgery
80272	Endocrinology – Minor Surgery
80273	Family Practice – Minor Surgery
80274	Gastroenterology – Minor Surgery
80275	General Practice – Minor Surgery
80276	Geriatrics – Minor Surgery
80277	Gynecology – Minor Surgery
80278	Hematology – Minor Surgery
80279	Infectious Diseases – Minor Surgery
80281	Cardiovascular Disease – Minor Surgery
80283	Intensive Care Medicine – Minor Surgery
80284	Internal Medicine – Minor Surgery
80285	Laryngology – Minor Surgery
80286	Neoplastic Diseases – Minor Surgery
80287	Nephrology – Minor Surgery
80288	Neurology (Including Child) – Minor Surgery
80290	Otology – Minor Surgery
80291	Otorhinolaryngology – Minor Surgery
80293	Pediatrics – Minor Surgery
80294	Physicians (Not Otherwise Classified) – Minor Surgery
80421	Family Physicians (GP) – Minor Surgery – No OB
80422	Catheterization, Not Otherwise Classified
80424	**Emergency Medicine – No Surgery**

Class 4

ISO Code	Specialty
80000	Family Practice – with OB
80101	Broncho-Esophagology

~~80102~~	~~Emergency Medicine = No Major Surgery~~
80115	Surgery – Colon and Rectal
80117	Surgery – GP (Not Primarily Engaged in Surgery)
80145	Surgery – Urological
80151	**Surgery – Anesthesiology**
80163	Radiation Therapy – Employed Physicians or Surgeons with Major Surgery
80428	Physicians – Minor Invasive Procedures – Myelography
80434	Physicians – Minor Invasive Procedures – Lymphangiography
80437	Physicians – Minor Invasive Procedures – Acupuncture
80440	Physicians – Minor Invasive Procedures – Laparoscopy
80443	Physicians – Minor Invasive Procedures – Colonoscopy
80446	Physicians – Minor Invasive Procedures – Needle Biopsy
80449	Radiopaque Dye Injection

Class 5

ISO Code	Specialty
80102	**Emergency Medicine – No Major Surgery**
80103	Physicians – Surgery – Endocrinology
80104	Physicians – Surgery – Gastroenterology
80105	Physicians – Surgery – Geriatrics
80106	Surgery – Laryngology
80107	Physicians – Surgery – Neoplastic
80108	Physicians – Surgery – Nephrology
~~80151~~	~~Surgery = Anesthesiology~~
80158	Surgery – Otology
80159	Surgery – Otorhinolaryngology
80160	Physicians – Surgery – Rhinology
80419	Family or General Practice – Major Surgery

Class 6

ISO Code	Specialty
80141	Surgery – Cardiac
80143	Surgery – General Not Otherwise Classified
80155	Surgery – Plastic – Otorhinolaryngology
80156	Surgery – Plastic Not Otherwise Classified
80157	Surgery – Emergency Medicine
80166	Surgery – Abdominal
80167	Surgery – Gynecology
80169	Surgery – Hand
80170	Surgery – Head and Neck

Class 7

ISO Code	Specialty
80144	Surgery – Thoracic
80146	Surgery – Vascular
80150	Surgery – Cardiovascular Disease
80154	Surgery – Orthopedic
80171	Surgery – Traumatic

Class 8

ISO Code	Specialty
80152	Surgery – Neurology (Including Child)
80153	Surgery – Obstetrics/Gynecology
80168	Surgery – Obstetrics

(Department of Insurance; 760 IAC 1-60-3; filed Oct 23, 1998, 2:45 p.m.: 22 IR 754; filed Aug 6, 1999, 2:35 p.m.: 22 IR 3934; filed Apr 26, 2004, 2:00 p.m.: 27 IR 2729, eff Jul 1, 2004)

SECTION 2. 760 IAC 1-60-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-60-5 Part-time and retired physicians

Authority: IC 34-18-5-2
Affected: IC 25-22.5-1-1.1

Sec. 5. (a) A physician who practices medicine on a part-time basis shall pay a reduced surcharge as follows:

(1) A physician who practices medicine ten (10) hours per week or less shall receive a credit equal to seventy-five percent (75%) of the surcharge amount.

(2) A physician who practices medicine more than ten (10) but less than twenty (20) hours per week shall receive a credit equal to fifty percent (50%) of the surcharge amount.

(b) Medical school faculty shall receive a credit equal to sixty-seven percent (67%) of the surcharge amount. As used in this subsection, "medical school faculty" means a physician engaged in research or teaching at a medical school as defined in IC 25-22.5-1-1.1(h). To be eligible for the credit, no more than thirty percent (30%) of the physician's time may be spent treating patients whose treatment is unrelated to the physician's duties at the medical school.

(c) Newly licensed physicians shall receive a credit equal to fifty percent (50%) of the surcharge amount during their first year of practice and twenty-five percent (25%) during their second year. For purposes of this subsection, a physician is considered newly licensed for two (2) years after completion of a residency program or a fellowship program in their medical specialty or the fulfillment of a military obligation in remuneration for medical school tuition.

(d) A retired physician shall pay an annual surcharge in the amount of ~~three~~ **five** hundred dollars ~~($300).~~ **($500).**

(e) No more than one (1) credit may be applied to a physician in any policy year. *(Department of Insurance; 760 IAC 1-60-5; filed Oct 23, 1998, 2:45 p.m.: 22 IR 756; filed Aug 6, 1999, 2:35 p.m.: 22 IR 3936; filed Apr 26, 2004, 2:00 p.m.: 27 IR 2730, eff Jul 1, 2004)*

LSA Document #03-258(F)
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Approved by Attorney General: April 7, 2004
Approved by Governor: April 22, 2004

Filed with Secretary of State: April 26, 2004, 2:00 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 858 CONTROLLED SUBSTANCES ADVISORY COMMITTEE

LSA Document #03-281(F)

DIGEST

Amends 858 IAC 2-1 to revise the electronic prescription monitoring program. Effective 30 days after filing with the secretary of state.

858 IAC 2-1-1 **858 IAC 2-1-3**
858 IAC 2-1-2 **858 IAC 2-1-4**

SECTION 1. 858 IAC 2-1-1 IS AMENDED TO READ AS FOLLOWS:

858 IAC 2-1-1 Definitions

Authority: IC 35-48-7-12
Affected: IC 35-48-2; IC 35-48-7-3

Sec. 1. (a) As used in this article, "department" refers to the Indiana state police department.

(b) As used in this article, "dispense" means the actual or constructive transfer from one (1) person to another whether or not there is an agency relationship.

(c) As used in this article, "dispenser" has the meaning set forth in IC 35-48-7-3.

(d) As used in this article, "Schedule II controlled substance" means **a controlled substance classified in Schedule II:**

(1) ~~a controlled substance classified in Schedule II~~ under IC 35-48-2-6; or

(2) ~~a controlled substance classified in Schedule II~~ by rule adopted under IC 35-48-2-14.

(e) As used in this article, "Schedule III controlled substance" means a controlled substance classified in Schedule III:

(1) under IC 35-48-2-8; or

(2) by rule adopted under IC 35-48-2-14.

(f) As used in this article, "Schedule IV controlled substance" means a controlled substance classified in Schedule IV:

(1) under IC 35-48-2-10; or

(2) by rule adopted under IC 35-48-2-14.

(g) As used in this article, "Schedule V controlled substance" means a controlled substance classified in Schedule V:

(1) under IC 35-48-2-12; or

(2) by rule adopted under IC 35-48-2-14.

~~(e)~~ **(h)** As used in this article, "universal claim form" means a nationally recognized standard form developed by the National Council for Prescription Drug Programs used for billing drug claims to insurance plans. *(Controlled Substances Advisory Committee; 858 IAC 2-1-1; filed Oct 6, 1994, 1:30 p.m.: 18 IR 266; filed Jan 27, 2000, 7:49 a.m.: 23 IR 1383; readopted filed Nov 30, 2001, 2:47 p.m.: 25 IR 1344; filed Apr 16, 2004, 10:07 a.m.: 27 IR 2731)*

SECTION 2. 858 IAC 2-1-2 IS AMENDED TO READ AS FOLLOWS:

858 IAC 2-1-2 Applicability

Authority: IC 35-48-7-12
Affected: IC 35-48-7-8

Sec. 2. This article shall apply ~~only~~ to Schedule II, **III, IV, and V** controlled substances and shall not apply to ~~Schedule III, IV, or V controlled substances, nor to~~ any other drug. *(Controlled Substances Advisory Committee; 858 IAC 2-1-2; filed Oct 6, 1994, 1:30 p.m.: 18 IR 267; readopted filed Nov 30, 2001, 2:47 p.m.: 25 IR 1344; filed Apr 16, 2004, 10:07 a.m.: 27 IR 2731)*

SECTION 3. 858 IAC 2-1-3 IS AMENDED TO READ AS FOLLOWS:

858 IAC 2-1-3 Prescription monitoring program

Authority: IC 35-48-7-12
Affected: IC 35-48-7-8

Sec. 3. (a) Each time a Schedule II, **III, IV, or V** controlled substance is dispensed, the dispenser shall transmit to the central repository information outlined in IC 35-48-7-8.

(b) Dispensers reporting more than twenty (20) Schedule II, **III, IV, or V** prescriptions in any given month must transmit to the central repository information outlined in IC 35-48-7-8 utilizing one (1) of the following:

(1) An electronic device compatible with the receiving device of the central repository.

(2) A computer diskette.

(3) A magnetic tape.

(c) Dispensers reporting less than twenty (20) Schedule II, **III, IV, or V** prescriptions in any given month may submit data utilizing a universal claim form or transmit the information utilizing the ways outlined in subsection (b).

(d) The committee may grant a waiver to a dispenser which is unable to transmit the required data in accordance with subsection (b) for a period of one hundred eighty (180) days from the effective date of this rule which one hundred eighty (180) day period may be extended by the committee at its discretion. During the effective

period of the waiver and any extension granted by the committee, the dispenser shall submit the required data in a format acceptable to the committee. *(Controlled Substances Advisory Committee; 858 IAC 2-1-3; filed Oct 6, 1994, 1:30 p.m.: 18 IR 267; readopted filed Nov 30, 2001, 2:47 p.m.: 25 IR 1344; filed Apr 16, 2004, 10:07 a.m.: 27 IR 2731)*

SECTION 4. 858 IAC 2-1-4 IS AMENDED TO READ AS FOLLOWS:

858 IAC 2-1-4 Application for payment of pharmacy costs

Authority: IC 35-48-7-12
Affected: IC 35-48-7-9

Sec. 4. (a) Before the department will pay for the purchase of hardware to comply with the program, an applicant must file an application provided by the department and provide the following information:

(1) The dispenser's name, address, and Indiana license number.

(2) A detailed description of the dispenser's current computer hardware, including the name and manufacturer of all components.

(3) A detailed description of the hardware the dispenser intends to purchase and two (2) price quotes from computer hardware vendors.

(4) The reason why the dispenser believes the computer hardware will be necessary to comply with the program.

(5) The number of Schedule II, **III, IV, and V** prescriptions the pharmacy dispenses in any given month.

(b) Upon receipt of an application requesting that the department pay for computer hardware, the committee shall evaluate the dispenser's current technology in determining whether the dispenser would be required to purchase new computer hardware. The committee shall take into account the ability of the dispenser to utilize any one (1) of the methods outlined in section 3 of this rule.

(c) The central repository shall provide grants to software vendors to update software in order for dispensers to comply with the program as outlined in contract form.

(d) The department and the central repository shall pay for telephone access charges, line charges, and switch charges for transmission of data by dispensers to the central repository. *(Controlled Substances Advisory Committee; 858 IAC 2-1-4; filed Oct 6, 1994, 1:30 p.m.: 18 IR 267; filed Jan 27, 2000, 7:49 a.m.: 23 IR 1384; readopted filed Nov 30, 2001, 2:47 p.m.: 25 IR 1344; filed Apr 16, 2004, 10:07 a.m.: 27 IR 2732)*

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Incorporated Documents Filed with Secretary of State: None

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #03-187(F)

DIGEST

Amends 865 IAC 1-13-5 to revise the continuing education requirements to develop mechanisms to allow for courses sponsored by providers that are approved in another state to qualify for Indiana continuing education credit. Effective 30 days after filing with the secretary of state.

865 IAC 1-13-5

SECTION 1. 865 IAC 1-13-5 IS AMENDED TO READ AS FOLLOWS:

865 IAC 1-13-5 Courses from approved and unapproved providers

Authority: IC 25-21.5-2-14; IC 25-21.5-8-7
Affected: IC 25-1-11; IC 25-21.5

Sec. 5. (a) Hours of continuing education will be granted to registered land surveyors who have successfully completed courses offered by land surveyor continuing education providers approved ~~pursuant to~~ **under** 865 IAC 1-14 or specific courses from nonapproved providers that the board has approved **under subsections (b) and (c) or that qualify under subsections (d) through (f).**

(b) It is the obligation of the registered land surveyor to submit course material from unapproved providers either not more than six (6) months after taking the course or three (3) months before the end of the renewal cycle, whichever comes first. The required information must include the following:

(1) The course outline or description.

(2) A certified statement signed by the registered land surveyor stating that the entire course was completed.

(3) The information required in 865 IAC 1-14-13.

(4) The name and professional biography of the instructor.

(c) To qualify under subsection (b), courses must be on the subject matter listed in section 6 or 7 of this rule and instructors must meet the requirements of 865 IAC 1-14-9. Course content, instructor qualifications, and provider qualifications must meet the requirements provided in 865 IAC 1-14. If the submitted information does not meet the requirements for approval, the course may be rejected and credit denied.

(d) As an alternative to the procedures described in subsections (b) and (c), specific courses obtained from nonapproved providers shall qualify as the appropriate number of hours of continuing education as an elective topic under section 7 of this rule as long as the following requirements are met:

(1) The course has been approved by the land surveyor registration board of another state that requires land surveyors to obtain continuing education.

(2) The other state defines an hour of continuing education as at least fifty (50) minutes of instruction time.

(3) The course must cover one (1) or more of the elective topics listed in section 7(a)(1) through 7(a)(14) of this rule.

(4) The course is not self-study, correspondence, or other unmonitored course where college credit is not awarded for successful completion or where such course was not provided by an accredited college or university as defined in this rule.

(5) The subject matter is not specific to a particular state such as "boundary law of Ohio" or "the Michigan plat act".

(e) The registered land surveyor claiming credit under subsection (d) is responsible for the following:

(1) That the requirements of subsection (d) are met.

(2) For an audit under section 19 of this rule, making available information, such as a course content outline and a course objective, to establish that the requirements of subsection (d) are met.

(3) Obtaining and retaining for five (5) years from the date of the course, a certification of course completion that substantially complies with 865 IAC 1-14-13.

(f) As it does regarding any other continuing education issue, section 19 of this rule regarding audits of continuing education and the possible imposition of sanctions under IC 25-1-11 applies to continuing education credit claimed under subsection (d). *(State Board of Registration for Land Surveyors; 865 IAC 1-13-5; filed Nov 20, 2000, 3:01 p.m.: 24 IR 1026; readopted filed May 22, 2001, 9:55 a.m.: 24 IR 3237; filed Jul 17, 2002, 3:36 p.m.: 25 IR 4111; filed Apr 26, 2004, 2:15 p.m.: 27 IR 2732; errata filed Apr 27, 2004, 2:00 p.m.: 27 IR 2744; errata filed May 7, 2004, 1:35 p.m.: 27 IR 2744)*

LSA Document #03-187(F)
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Incorporated Documents Filed with Secretary of State: None

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #03-126(F)

DIGEST

Amends 872 IAC 1-1 to implement rule changes to facilitate the computerization of the Uniform CPA examination based on P.L.6-2003 (House Enrolled Act 1183). Effective 30 days after filing with the secretary of state.

872 IAC 1-1-2
872 IAC 1-1-6.2
872 IAC 1-1-6.4
872 IAC 1-1-6.5
872 IAC 1-1-6.6
872 IAC 1-1-8
872 IAC 1-1-8.3
872 IAC 1-1-9
872 IAC 1-1-9.5
872 IAC 1-1-10
872 IAC 1-1-12
872 IAC 1-1-14
872 IAC 1-1-17
872 IAC 1-1-19
872 IAC 1-1-22
872 IAC 1-1-23
872 IAC 1-1-25

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

872 IAC 1-1-2 Applications for examination or registration; use of forms; filing deadlines

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

Sec. 2. Applications must be made on forms authorized by the board. Reproductions will not be accepted. The forms include detailed instructions ~~which,~~ **that** if followed, should furnish the board or the board's designee with sufficient information to enable it to pass upon the ~~applicant's~~ **candidate's** eligibility for examination or **the applicant's eligibility for** registration. The board or the board's designee may require ~~applicants~~ **candidates** to provide photographs, certified transcripts of education achievement, and other relevant data.

~~Examinations are ordinarily held in May and November of each year; and applications for the May examination, complete in all respects, must be filed by the preceding March 1, and the applications for the November examination, complete in all respects, must be filed by the preceding September 1.~~ *(Indiana Board of Accountancy; Rule 69-1,2; filed Jun 30, 1978, 9:54 a.m.: 1 IR 394; filed Aug 18, 1983, 3:20 p.m.: 6 IR 1927; filed May 1, 1984, 12:50 p.m.: 7 IR 1538; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1030; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2733)*

SECTION 2. 872 IAC 1-1-6.2 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-6.2 Graduation; accreditation

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

Sec. 6.2. ~~An applicant~~ **A candidate** is considered as graduat-

ing from an accredited educational institution if, at the time the educational institution grants the ~~applicant's~~ **candidate's** degree, it is accredited as outlined in sections 6.1 and 6.3 of this rule. *(Indiana Board of Accountancy; 872 IAC 1-1-6.2; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3934; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2733)*

SECTION 3. 872 IAC 1-1-6.4 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-6.4 Accredited degree equivalency requirements

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

Sec. 6.4. A graduate of a four (4) year degree granting college or university not accredited at the time the ~~applicant's~~ **candidate's** degree was received or at the time the application was filed will be deemed to be a graduate of an accredited educational institution if:

(1) the ~~applicant's~~ **candidate's** degree is equivalent to a degree from an accredited educational institution, as defined in section 6.3 of this rule, and that fact is certified by a credentials certification service;

(2) an accredited institution defined in section 6.3 of this rule accepts the ~~applicant's~~ **candidate's** nonaccredited baccalaureate degree for admission to a graduate business degree program; or

(3) the:

(A) ~~applicant~~ **candidate** satisfactorily completes at least fifteen (15) semester hours, or the equivalent, in postbaccalaureate education at the accredited educational institution, of which at least nine (9) semester hours, or the equivalent, shall be in accounting; and

(B) accredited educational institution certifies that the ~~applicant~~ **candidate** is in good standing for the continuation in the graduate program or has maintained a grade point average in these courses that is necessary for graduation.

(Indiana Board of Accountancy; 872 IAC 1-1-6.4; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3935; errata filed Jul 28, 1998, 10:59 a.m.: 21 IR 4537; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2734)

SECTION 4. 872 IAC 1-1-6.5 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-6.5 Acceptance of degrees; previously not accredited

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

Sec. 6.5. If an educational institution was not accredited at the time ~~an applicant's~~ **a candidate's** degree was received, but is so accredited at the time the application is filed with the board, the institution will be deemed to be accredited for the purpose of section 6.2 of this rule provided that it certifies that the ~~applicant's~~ **candidate's** total educational program would qualify the ~~applicant~~ **candidate** for graduation with a baccalaureate degree during the time the institution has been accredited. *(Indiana Board of Accountancy; 872 IAC 1-1-6.5; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3935; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2734)*

SECTION 5. 872 IAC 1-1-6.6 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-6.6 Courses taken at nonaccredited institutions

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

Sec. 6.6. If ~~an applicant's~~ **a candidate's** degree was received at an accredited educational institution ~~pursuant to~~ **under** section 6.3 or 6.4 of this rule, but the educational program that was used to qualify the ~~applicant's~~ **candidate's** major included courses taken at nonaccredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which the ~~applicant's~~ **candidate's** degree was received provided the accredited institution **has** either:

(1) ~~has~~ accepted such courses by including them in its official transcript; or

(2) ~~has~~ certified to the board that it will accept such courses for credit toward graduation.

(Indiana Board of Accountancy; 872 IAC 1-1-6.6; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3935; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2734)

SECTION 6. 872 IAC 1-1-8 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-8 Experience requirements; credit for types of experience

Authority: IC 25-2.1-2-15
Affected: IC 20-12-61; IC 20-12-62; IC 25-2.1-3-10

Sec. 8. (a) This section and sections 8.2 through 8.5 of this rule implement the requirements in IC 25-2.1-3-10 for experience to be obtained by applicants for certified public accountant certificates before the certificate or license may be issued by the board. The experience requirements are twenty-four (24) months of full-time employment in the following positions:

(1) As an employee or an accounting intern engaged in an accounting position in a firm (as that term is defined in 872 IAC 1-0.5-1(11)).

(2) As an employee in a financial or accounting position in industry, government, or a nonprofit organization.

(3) As an employee in an advisory and/or consulting services position related to one (1) or more of the following activities:

(A) Financial.
(B) Accounting.
(C) Operational.

(4) As an instructor teaching accounting in a college or university (four (4) year institutions or junior colleges).

(5) As an instructor teaching accounting in an institution created under ~~IC 25-12-61~~ **IC 20-12-61** or private school registered under IC 20-12-62.

(b) Clerical functions shall not count under this section toward meeting the experience requirements. Clerical functions are positions that do not have accounting significance, including doing merely mathematical calculations, account analysis (looking into accounting books for specific information already recorded), and merely recording information in the general ledger (as opposed to compiling the information). Positions that partly qualify under this section and partly do not qualify shall be treated under this method provided for in section 8.2 of this rule with the part of the position that does not qualify under this section being treated as if it were part-time employment.

(c) Experience in fractions of months will be counted.

(d) An applicant may combine the types of experience described in subsection (a). ~~of this rule.~~ To do so, the applicant must obtain a total of twenty-four (24) months of experience. *(Indiana Board of Accountancy; Rule 69-1,8; filed Jun 30, 1978, 9:54 a.m.: 1 IR 396; filed Aug 18, 1983, 3:20 p.m.: 6 IR 1928; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1033; filed Aug 28, 1986, 3:20 p.m.: 10 IR 65; filed Nov 28, 1988, 5:32 p.m.: 12 IR 922; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2343; errata filed Sep 14, 1994, 2:50 p.m.: 18 IR 269; filed Feb 21, 2000, 7:06 a.m.: 23 IR 1651; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 4, 2002, 9:28 a.m.: 25 IR 2518; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2734)*

SECTION 7. 872 IAC 1-1-8.3 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-8.3 Experience verification
Authority: IC 25-2.1-2-15
Affected: IC 20-12-61; IC 20-12-62; IC 25-2.1-3-10

Sec. 8.3. (a) An applicant's experience in a particular position meets the requirements in IC 25-2.1-3-10 if the work is verified by ~~a licensee~~ **the holder of an active certificate issued by the board or issued by another state so long as the certificate allows the holder to perform similar acts to those allowed to be performed by certificate holders in Indiana** who:

(1) employed the applicant or a legal entity controlled by that individual employed the applicant;

(2) worked for the same employer as the ~~applicants;~~ **applicant;**

(3) reviewed the accounting work of the applicant on a periodic basis in the capacity of an outside accounting firm, a government agency, or some similar capacity; or

(4) otherwise has direct knowledge of the work performed by the applicant.

(b) Any ~~licensee~~ **certificate holder** who has been requested by an applicant to submit to the board verification of the applicant's experience and has refused to do so shall, upon request by the board, explain in writing or in person the basis for such refusal. *(Indiana Board of Accountancy; 872 IAC 1-1-8.3; filed Feb 21, 2000, 7:06 a.m.: 23 IR 1653; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 4, 2002, 9:28 a.m.: 25 IR 2519; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2735)*

SECTION 8. 872 IAC 1-1-9 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-9 Requirements for examination
Authority: IC 25-2-1-3
Affected: IC 25-2-1-4

Sec. 9. ~~An applicant~~ **A candidate** wishing to take the examination must:

(1) complete the application provided for in section 2 of this rule; and

(2) pay the ~~applicant's~~ **candidate's** cost of purchasing the examination, payable to the examination service.

(Indiana Board of Accountancy; Rule 69-1,9; filed Jun 30, 1978, 9:54 a.m.: 1 IR 396; filed Aug 18, 1983, 3:20 p.m.: 6 IR 1928; filed May 1, 1984, 12:50 p.m.: 7 IR 1539; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1033; filed Jul 6, 1995, 12:00 p.m.: 18 IR 2784; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2735)

SECTION 9. 872 IAC 1-1-9.5 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-9.5 Degree required
Authority: IC 25-2.1-2-15
Affected: IC 25-2.1

Sec. 9.5. Notwithstanding sections 2 and 6 of this rule and any other provisions of this title that may be to the contrary, ~~applicants~~ **candidates** may **not** take the certified public accountant examination prior to meeting the education requirements. ~~However, if an applicant who has taken the examination before meeting the education requirements fails to satisfactorily complete degree requirements within sixty (60) days after taking the examination, the applicant's examination is invalid. This section shall only apply until January 1, 2000.~~ *(Indiana Board of Accountancy; 872 IAC 1-1-9.5; filed Feb 24, 1997, 4:00 p.m.: 20 IR 1736; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2735)*

SECTION 10. 872 IAC 1-1-10 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-10 Application; fees
Authority: IC 25-2.1-2-15
Affected: IC 25-2.1

Sec. 10. (a) Applications to take the ~~May~~ **certified public accountant** examination must be ~~filed by the preceding March~~

~~1. Application to take the November examination must be filed by the preceding September 1. If March 1 or September 1 is a Saturday, a Sunday, a legal holiday under state statute, or a day that the Indiana professional licensing agency's offices are closed during regular business hours, the deadline shall be the first day thereafter that is not a Saturday, a Sunday, a legal holiday under state statute, or a day that the Indiana professional licensing agency's offices are closed during regular business hours. The date the application is filed shall be calculated in the manner provided for in IC 4-21.5-3-1(f). Applicants~~ **made on a form provided by the board. Candidates** will be notified of their eligibility to sit for the exam.

(b) All fees are nonrefundable and nontransferable. The following is a schedule of fees adopted by the board:

(1) The fee for the examination for CPA and AP licensure is the payment of the ~~applicant's~~ **candidate's** cost of purchasing the examination, payable to the examination service.

(2) Transfer of grades, seventy-five dollars ($75).

(3) CPA certificate by reciprocity, seventy-five dollars ($75).

(4) Triennial certificate of registration for CPAs, PAs, and APs, seventy-five dollars ($75).

(5) For restoration of an expired triennial certificate of registration for CPAs, PAs, and APs, fifty dollars ($50), plus all unpaid renewal fees.

(6) Triennial permit to practice for firms, thirty dollars ($30).

(7) For restoration of an expired triennial permit to practice for firms, fifty dollars ($50), plus all unpaid renewal fees.

(8) Verification of certificate of registration for CPA, PA, or AP to another state, twenty-five dollars ($25).

(c) Notwithstanding subsection (b)(4), a fee for an individual initially registered in the:

(1) second year of a triennial registration period shall be fifty dollars ($50); and

(2) third year of the triennial registration period shall be twenty-five dollars ($25).

(d) Failure of an applicant to pay the initial registration fee will cause the application to be terminated one (1) year after the board's action granting registration.

(e) Should an applicant pay the initial registration fee after the first renewal deadline for all licensees following the applicant's approval for licensure, the applicant must pay the renewal fee in addition to the initial registration fee in order to become licensed. *(Indiana Board of Accountancy; Rule 69-1, 10; filed Jun 30, 1978, 9:54 a.m.: 1 IR 396; filed Feb 15, 1980, 3:05 p.m.: 3 IR 639; filed Aug 18, 1983, 3:20 p.m.: 6 IR 1928; filed May 1, 1984, 12:50 p.m.: 7 IR 1540; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1033; filed Aug 28, 1986, 3:20 p.m.: 10 IR 65; filed Aug 6, 1990, 4:30 p.m.: 13 IR 2135; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2345; errata filed Jul 28, 1994, 4:00 p.m.: 17 IR 2891; filed Jul 6, 1995, 12:00 p.m.: 18 IR 2784; filed Jun 14, 1996, 3:00 p.m.: 19 IR 3110; filed Feb 21, 2000, 7:06 a.m.: 23 IR 1654; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 4, 2002, 9:28 a.m.: 25 IR 2520; filed Jul 7, 2003, 3:45 p.m.: 26 IR 3654; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2735)*

SECTION 11. 872 IAC 1-1-12 IS AMENDED TO READ AS FOLLOWS:

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

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

Sec. 12. (a) **Effective April 2004,** as the examination for certified public accountant ~~applicants,~~ **candidates,** the board or the board's designee shall use the **computer-based** Uniform CPA examination that is ~~given in May and November~~ **available to be taken in four (4) testing windows as provided in section 14** of ~~each calendar year~~ **this rule** and prepared by the AICPA under a plan of cooperation with the boards of all states and territories of the United States. The examination consists of the following ~~parts:~~ **sections:**

(1) Auditing **and attestation.**

(2) Business ~~law~~ **environment** and ~~professional responsibilities.~~ **concepts.**

(3) Financial accounting and reporting.

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

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

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

~~(d)~~ **(c)** For purposes of section 19 of this rule, for conditioned candidates reexamination requirements, those ~~applicants~~ **candidates** who prior to ~~the May 1994 examination~~ **April 2004** had credit for passing:

(1) auditing shall have credit for auditing **and attestation;**

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

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

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

~~(e)~~ **(d)** As the examination for accounting practitioners, the board or the board's designee shall use sections of the **computer-based** Uniform CPA examination as provided for in this subsection. An individual with a two (2) year associate degree under IC 25-2.1-6-1(a)(3)(A) shall take the financial accounting and reporting and the ~~accounting and reporting~~

regulations sections of the Uniform CPA examination. An individual with a baccalaureate degree under IC 25-2.1-6-1(a)(3)(B) shall take only the financial accounting and reporting section of the Uniform CPA examination.

~~(f)~~ **(e)** The board or the board's designee may also make use of the Advisory Grading Service provided by the AICPA to assist in performing its duties under IC 25-2.1. ~~A passing grade of seventy-five percent (75%) or more is required.~~ *(Indiana Board of Accountancy; Rule 69-1, 12; filed Jun 30, 1978, 9:54 a.m.: 1 IR 397; filed May 1, 1984, 12:50 p.m.: 7 IR 1540; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1034; filed Aug 28, 1986, 3:20 p.m.: 10 IR 66; filed Apr 5, 1994, 3:30 p.m.: 17 IR 1888; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Jul 30, 2003, 5:15 p.m.: 26 IR 3882; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2736)*

SECTION 12. 872 IAC 1-1-14 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-14 Time of holding examinations; notice

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

Sec. 14. ~~Time of Holding Examinations. Examinations are held in May and November of each~~ **(a) Beginning April 2004, candidates will be allowed to take the examination during the following four (4) testing windows in a calendar** year:

(1) January 2 through February 29.
(2) April 1 through May 31.
(3) July 1 through August 31.
(4) October 1 through November 30.

~~Written notice of the exact dates for examinations shall be mailed to each person who has on file an approved application to sit for the CPA examination.~~

(b) Eligible candidates shall be notified of the time, place, and procedures of the examination or shall independently contact the board or a test center operator identified by the board to obtain the time, place, and procedures for the examination at an approved test site. *(Indiana Board of Accountancy; Rule 69-1,14; filed Jun 30, 1978, 9:54 a.m.: 1 IR 398; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2737)*

SECTION 13. 872 IAC 1-1-19 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-19 Certified public accountants; passing grades; conditioned candidates; reexaminations

Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-3-8

Sec. 19. (a) ~~This section applies to examinations of candidates. The examination papers shall be graded on the scale of 100. The passing grade in each subject is 75.~~ **The candidate must attain the uniform passing grade of seventy-five (75), scaled through a psychometrically acceptable standard setting procedure and approved by the board.**

(b) A candidate ~~must~~ **may** take ~~all subjects at one (1) sitting until the candidate becomes a conditioned candidate or passes all subjects.~~ **the required test sections individually and in any order. Credit for any test section passed shall be valid for eighteen (18) months from the actual date the candidate took that test section provided the following:**

(1) Candidates must pass all four (4) test sections of the Uniform CPA examination within a rolling eighteen (18) month period, which begins on the date that the first test section passed is taken.

(2) Candidates cannot retake a failed test section in the same testing window.

(3) In the event all four (4) test sections of the Uniform CPA examination are not passed within the rolling eighteen (18) month period, credit for any test section passed more than eighteen (18) months previously will expire and that test section must be retaken.

~~(c) IC 25-2.1-3-6 states the requirements for a candidate to achieve conditioned status (receive credit for passing two (2) or three (3) sections of the examination).~~

~~(d) If, on reexamination, the candidate fails to pass the remaining subject or subjects within the time provided for reexamination of candidates having a conditioned standing, such candidate shall revert to the status of a new applicant and shall be required to file a new application and write the entire examination.~~

(c) Candidates having earned conditional credits on the paper and pencil examination, prior to April 2004, will retain conditional credits for the corresponding test sections of the computer-based CPA examination as follows:

Paper and Pencil Examination	Computer-Based Examination
Auditing	Auditing and attestation
Financial accounting and reporting (FARE)	Financial accounting and reporting
Accounting and reporting (ARE)	Regulation
Business law and professional responsibilities (LPR)	Business environment and concepts

(d) Additional requirements for the transitional conditional status are as follows:

(1) Candidates who have attained conditional status prior to April 2004 will be allowed a transition period to complete any remaining test sections of the CPA examination. The transition is the maximum number of opportunities that candidates who have conditioned under the

paper and pencil examination have remaining, prior to April 2004, to complete all remaining test sections, or the number of remaining opportunities under the paper and pencil examination, multiplied by six (6) months, whichever is first exhausted.

(2) If a previously conditioned candidate does not pass all remaining test sections during the transition period, conditional credits earned under the paper and pencil examination will expire and the candidate will lose credit for the test sections earned under the paper and pencil examination. However, any test section passed during the transition period is subject to the conditioning provisions of the computer-based examination as provided for in subsection (c), except that a previously conditioned candidate will not lose conditional credit for a test section of the computer-based examination that is passed during the transition period, even though more than eighteen (18) months may have elapsed from the date the test section is passed, until the end of the transition period.

(e) Under IC 25-2.1-3-8, the board may extend the term of conditional credit validity if the candidate can show that the credit was lost by reason of circumstances beyond the candidate's control.

(f) A candidate shall be deemed to have passed the Uniform CPA examination once the candidate holds at the same time valid credit for passing each of the four (4) test sections of the examination. For purposes of this section, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that testing section, regardless of the date the candidate actually receives notice of the passing grade. *(Indiana Board of Accountancy; Rule 69-1, 19; filed Jun 30, 1978, 9:54 a.m.: 1 IR 398; filed Feb 15, 1980, 3:05 p.m.: 3 IR 640; filed Aug 18, 1983, 3:20 p.m.: 6 IR 1929; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1036; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2346; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2737)*

SECTION 14. 872 IAC 1-1-25 IS AMENDED TO READ AS FOLLOWS:

872 IAC 1-1-25 Transfer of credits
Authority: IC 25-2.1-2-15
Affected: IC 25-2.1-3-7

Sec. 25. An applicant for a CPA certificate who has ~~written~~ **taken** the Uniform CPA examination under the jurisdiction of another state may be given credit for subjects passed as provided for by IC 25-2.1-3-7. *(Indiana Board of Accountancy; Rule 69-1, 25; filed Jun 30, 1978, 9:54 a.m.: 1 IR 400; filed Aug 18, 1983, 3:20 p.m.: 6 IR 1930; filed Mar 20, 1985, 3:25 p.m.: 8 IR 1037; filed Aug 28, 1986, 3:20 p.m.: 10 IR 66; filed Jun 1, 1994, 5:00 p.m.: 17 IR 2347; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Apr 16, 2004, 10:04 a.m.: 27 IR 2738)*

SECTION 15. THE FOLLOWING ARE REPEALED: 872 IAC 1-1-17; 872 IAC 1-1-22; 872 IAC 1-1-23.

LSA Document #03-126(F)
Notice of Intent Published: June 1, 2003; 26 IR 3076
Proposed Rule Published: October 1, 2003; 27 IR 277
Hearing Held: February 20, 2004
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Incorporated Documents Filed with Secretary of State: None

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #03-225(F)

DIGEST

Amends 876 IAC 3-6-2 to incorporate by reference the 2004 edition of the Uniform Standards of Professional Appraisal Practice (USPAP). Amends 876 IAC 3-6-3 to update the revisions to USPAP based upon the changes in the 2004 edition. Effective 30 days after filing with the secretary of state.

876 IAC 3-6-2
876 IAC 3-6-3

SECTION 1. 876 IAC 3-6-2 IS AMENDED TO READ AS FOLLOWS:

876 IAC 3-6-2 Uniform Standards of Professional Appraisal Practice
Authority: IC 25-34.1-3-8
Affected: IC 4-22-2; IC 25-34.1

Sec. 2. (a) That certain document being titled Uniform Standards of Professional Appraisal Practice, ~~2003~~ **2004** edition, as published by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, D.C. 20005, copyright ~~2003,~~ **2004,** is hereby incorporated by reference as if fully set out in this rule except for the revisions stated in section 3 of this rule. The Statements on Appraisal Standards are adopted as part of this rule. The Advisory Opinions are not adopted as part of this rule. The Comments are adopted as part of this rule.

(b) No subsequent editions, amendments, supplements, or releases of the Uniform Standards of Professional Appraisal Practice will be in effect in Indiana or adopted by the commission except by following the rulemaking provisions of IC 4-22-2.

(c) As used in this article, "appraiser" refers to the following:
(1) Indiana licensed trainee appraiser.

(2) Indiana licensed residential appraiser.
(3) Indiana certified residential appraiser.
(4) Indiana certified general appraiser.

(Indiana Real Estate Commission; 876 IAC 3-6-2; filed Sep 24, 1992, 9:00 a.m.: 16 IR 748; filed Dec 8, 1993, 4:00 p.m.: 17 IR 781; filed Apr 10, 1995, 10:00 a.m.: 18 IR 2124; filed Dec 24, 1997, 11:00 a.m.: 21 IR 1766; filed May 10, 1999, 12:42 p.m.: 22 IR 2879; filed Apr 24, 2000, 12:48 p.m.: 23 IR 2243; filed May 25, 2001, 2:42 p.m.: 24 IR 3068; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238; filed May 13, 2002, 2:05 p.m.: 25 IR 3181; filed May 1, 2003, 12:15 p.m.: 26 IR 3043; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2738)

SECTION 2. 876 IAC 3-6-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 3-6-3 Deletions from the Uniform Standards of Professional Appraisal Practice

Authority: IC 25-34.1-3-8
Affected: IC 25-1-11-5; IC 25-34.1

Sec. 3. (a) Standards 6 through 10 are deleted.

(b) The references to Standards 6 through 10 of the Uniform Standards of Professional Appraisal Practice are deleted or revised as follows:

(1) In the Comment under the definition of "REPORT", delete the following:
(A) "personal property".
(B) "Appraisal Report: a written report prepared under Standards Rule 10-2(a)".
(C) "or 8-2(a)".
(D) "or 8-2(b)".
(E) The comma after 2-2(c) and "8-2(c) or 10-2(b)".

(2) **Under the fourth paragraph of the Preamble, in the sixth bullet point,** delete **"ten" from the first sentence and** the last three (3) sentences. ~~of the fifth paragraph of the Preamble.~~

(3) In the third sentence in the Ethics Rules, ~~in the Preamble,~~ delete "Standards 1 through 10" and insert "Standards 1 through 5".

(4) In the second Comment under the Ethics Rule, ~~in the Preamble,~~ delete the comma after "5-3" and "6-8, 8-3, and 10-3" and before "5-3", insert "and".

(5) In the second Comment under the Management category of the Ethics Rule, ~~in the Preamble,~~ delete the comma after "5-3" and "6-8, 8-3, or 10-3" and before "5-3", insert "or".

(6) In the last paragraph of the Comment under the Record Keeping category under the Ethics Rule, ~~in the Preamble,~~ delete **"STANDARDS 2 and 8" and insert "STANDARD 2", delete "or an Appraisal Report (for assignments under STANDARD 10),", and delete** the comma after "2-2(c)(ix)" and "8-2(c)(ix), and 10-2(b)(ix)".

(7) In the third to last paragraph of the Comment following the Departure Rule, ~~in the Preamble,~~ delete "6-7(p), 8-2(a)(xi), 8-2(b)(xi), 8-2(c)(xi), 10-2(a)(x), and 10-2(b)(x)" and before "2-2(c)(xi)", insert "and".

(8) In the next to last paragraph of the Comment following the Departure Rule, ~~in the Preamble,~~ delete the comma after "5-3" and "6-1, 6-3, 6-6, 6-7, 6-8, 7-1, 7-2, 7-5, 7-6, 8-1, 8-2, 8-3, 9-1, 9-2, 9-3, 9-5, 10-1, 10-2, and 10-3" and before "5-3", insert "and".

(9) In the Comment under Standards Rule 1-4(g), delete "(See Standard 7)" and "(See Standard 9)".

(10) In the **last paragraph of the** Comment under Standard 3, delete the comma after "5-3" and "6-8, 8-3, and 10-3" and before "5-3", insert "and".

(11) In two (2) locations that appear in the Comment under Standard 3-1(c), delete "(STANDARD 1, 4, 6, 7, or 9)" and insert "(STANDARD 1 or 4)".

(12) Delete the last sentence in the Comment under Standard 3-2(d) and insert the following: "However, ~~changes to the report content~~ **data and analyses provided** by the reviewer to support a different value conclusion must match, at a minimum, the reporting requirements for a Summary Appraisal Report for real property appraisal (SR 2-2(b)) and an appraisal consulting report for real property appraisal consulting (SR 5-2).".

(13) Any references to Standards 6 through 10 in the Statements on Appraisal Standards are deleted and shall not apply.

(c) In the Definitions, delete the title and text of the Comment under Real Property.

~~(c)~~ **(d)** Delete the ~~second~~ **third** paragraph of the Preamble.

~~(d) In the Preamble,~~ **(e)** Add the following sentences to the end of the text of **the** Supplemental Standards **Rule,** "Any such supplemental standard shall not be considered part of this title. However, this does not preclude the possibility of disciplinary sanctions under IC 25-1-11-5(a)(3) where appropriate.".

~~(e) In the Definitions in the Preamble, delete the title and text of the Comment under Real Property.~~ *(Indiana Real Estate Commission; 876 IAC 3-6-3; filed Sep 24, 1992, 9:00 a.m.: 16 IR 748; filed Dec 8, 1993, 4:00 p.m.: 17 IR 781; filed Apr 10, 1995, 10:00 a.m.: 18 IR 2124; errata filed May 8, 1995, 4:30 p.m.: 18 IR 2262; filed Dec 24, 1997, 11:00 a.m.: 21 IR 1767; filed May 10, 1999, 12:42 p.m.: 22 IR 2880; errata, 22 IR 3420; filed Apr 24, 2000, 12:48 p.m.: 23 IR 2244; filed May 25, 2001, 2:42 p.m.: 24 IR 3068; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238; filed May 13, 2002, 2:05 p.m.: 25 IR 3181; filed May 1, 2003, 12:15 p.m.: 26 IR 3044; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2739)*

LSA Document #03-225(F)
Notice of Intent Published: September 1, 2003; 26 IR 3908
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Hearing Held: January 22, 2004
Approved by Attorney General: March 24, 2004
Approved by Governor: April 6, 2004

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Incorporated Documents Filed with Secretary of State: Uniform Standards of Professional Appraisal Practice, 2004 edition.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #03-273(F)

DIGEST

Amends 876 IAC 3-2-7 to revise the fee schedule for the application for the issuance of a permit for temporary practice. Adds 876 IAC 3-5-2.5 to require approval of continuing education courses and to establish the criteria for approval for continuing education courses. Effective 30 days after filing with the secretary of state.

876 IAC 3-2-7
876 IAC 3-5-2.5

SECTION 1. 876 IAC 3-2-7 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

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) shall be one hundred dollars ($100), 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) $150
(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) $125
(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) $150
(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) $125
(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) $150
(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 ~~$50~~ **$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; filed Apr 26, 2004, 2:15 p.m.: 27 IR 2740)*

SECTION 2. 876 IAC 3-5-2.5 IS ADDED TO READ AS FOLLOWS:

876 IAC 3-5-2.5 Criteria for approval of continuing education course

Authority: IC 25-34.1-3-8
Affected: IC 25-1-11; IC 25-34.1

Sec. 2.5. (a) Continuing education course providers must obtain approval by the board under this section of all courses. The content of the course must comply with section 1(c) or 1.5(a) of this rule.

(b) In order to be an approved continuing education course, a course must satisfy the following criteria:
(1) The course must be a current offering of the continuing education course sponsor.
(2) The course must involve a minimum of two (2) classroom hours of instruction on real estate appraisal or related topics.
(3) The course materials or syllabus must include a course description, which clearly describes the content of the course.
(4) The course materials or syllabus must include specific learning objectives that:

(A) are appropriate for a continuing education course;
(B) clearly state the specific knowledge and skills students are expected to acquire by completing the course;
(C) are consistent with the course description;
(D) are consistent with the instructional materials; and
(E) are reasonably achievable within the number of classroom hours allotted for the course.

(5) Instructional materials for students must be provided unless the applicant demonstrates that such materials are not needed to accomplish the stated course objectives. Any such instructional materials must:

(A) be appropriate in view of the stated course learning objectives;
(B) reflect current knowledge and practice;
(C) contain no significant errors;
(D) reflect correct grammatical usage and spelling;
(E) effectively communicate and explain the information presented;
(F) be suitable in layout and format; and
(G) be suitably bound or packaged and be produced in a quality manner.

(6) For courses containing examinations, course examinations may consist of either a series of examinations or a comprehensive final examination, or both. The course examination must comply with the following criteria:

(A) The examination must contain a sufficient number of questions to adequately test the subject matter covered in the course.
(B) The amount of time devoted to examinations must be appropriate for the course.
(C) Examination questions must, individually and collectively, test at a difficulty level appropriate to measure attendee achievement of the stated course learning objectives.
(D) The subject matter tested by examination questions must be adequately addressed in the course instructional materials.
(E) Examination questions must be written in a clear and unambiguous manner.
(F) Examination questions must be accurate, and the intended correct answer must clearly be the best answer choice.

(7) The continuing education provider must have a written policy regarding instructor qualifications that requires the use of instructors who meet at least one (1) of the requirements in section 7 of this rule.

(8) The continuing education provider must have a written attendance policy that requires the student attendance to be verified.

(9) If the course involves more than eight (8) classroom hours, the continuing education provider must have established a policy on course scheduling that provides for a maximum of eight (8) classroom hours of instruction in any given day and for appropriate breaks during each class session.

(Indiana Real Estate Commission; 876 IAC 3-5-2.5; filed Apr 26, 2004, 2:15 p.m.: 27 IR 2740)

LSA Document #03-273(F)
Notice of Intent Published: November 1, 2003; 27 IR 553
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Approved by Attorney General: April 16, 2004
Approved by Governor: April 22, 2004
Filed with Secretary of State: April 26, 2004, 2:15 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-29(AC)

Under IC 4-22-2-38, corrects the following typographical, clerical, and spelling errors in LSA Document #03-29(F), printed at 27 IR 59:

(1) In 312 IAC 5-6-6(b)(1)(A), on page 1 of the original document (27 IR 59), after "2244173.23", insert "(UTM 4585045.15)" and, after "323786.03", insert "(UTM 610130.52)".

(2) In 312 IAC 5-6-6(b)(1)(B)(i), on page 1 of the original document (27 IR 59), after "2244348.87", insert "(UTM 4585097.04)" and, after "323439.20", insert "(UTM 610024.02)".

(3) In 312 IAC 5-6-6(b)(1)(B)(ii), on page 1 of the original document (27 IR 59), after "2244959.54", insert "(UTM 4585282.60)" and, after "323331.64", insert "(UTM 609988.38)".

(4) In 312 IAC 5-6-6(b)(1)(B)(iii), on page 1 of the original document (27 IR 59), after "2245188.84", insert "(UTM 4585350.69)" and, after "322952.76", insert "(UTM 609871.86)".

(5) In 312 IAC 5-6-6(b)(1)(C), on page 1 of the original document (27 IR 59), after "2245460.99", and insert "(UTM 4585431.22)" and, after "322442.69", insert "(UTM 609715.17)".

(6) In 312 IAC 5-6-6(b)(2)(A), on page 1 of the original document (27 IR 59), after "2242916.32", insert "(UTM 4584652.79)" and, after "321786.06", insert ("UTM 609527.03)".

(7) In 312 IAC 5-6-6(b)(2)(B)(i), on page 1 of the original document (27 IR 59), after "2243201.20", insert "(UTM 4584740.07)" and, after "321889.40", insert "(UTM 609557.18)".

(8) In 312 IAC 5-6-6(b)(2)(B)(ii), on page 1 of the original document (27 IR 59), after "2243594.17", insert "(UTM 4584859.59)" and, after "321842.69", insert "(UTM 609541.11)".

(9) In 312 IAC 5-6-6(b)(2)(C), on page 1 of the original document (27 IR 59), after "2243903.36", insert "(UTM 4584954.47)" and, after "321985.50", insert "(UTM 609583.17)".

(10) In 312 IAC 5-6-6(b)(3)(A), on page 1 of the original document (27 IR 60), after "2242788.82", insert "(UTM 4584545.75)" and, after "307249.00", insert "(UTM 605098.25)".

(11) In 312 IAC 5-6-6(b)(3)(B)(i), on page 2 of the original document (27 IR 60), after "2242718.09", insert "(UTM 4584524.69)" and, after "307352.68", insert "(UTM 605130.17)".

(12) In 312 IAC 5-6-6(b)(3)(B)(ii), on page 2 of the original document (27 IR 60), after "2242565.10", insert "(UTM 4584478.30)" and, after "307401.91", insert "(UTM 605145.89)".

(13) In 312 IAC 5-6-6(b)(3)(B)(iii), on page 2 of the original document (27 IR 60), after "2242497.48", insert "(UTM 4584458.00)" and, after "307465.11", insert "(UTM 605165.46)".

(14) In 312 IAC 5-6-6(b)(3)(B)(iv), on page 2 of the original document (27 IR 60), after "2242521.75", insert "(UTM 4584465.68)" and, after "307526.81", insert "(UTM 605184.15)".

(15) In 312 IAC 5-6-6(b)(3)(B)(v), on page 2 of the original document (27 IR 60), after "2242525.13", insert "(UTM 4584466.99)" and, after "307585.84", insert "(UTM 605202.12)".

(16) In 312 IAC 5-6-6(b)(3)(B)(vi), on page 2 of the original document (27 IR 60), after "2242474.80", insert "(UTM 4584452.16)" and, after "307694.90", insert "(UTM 605235.58)".

(17) In 312 IAC 5-6-6(b)(3)(B)(vii), on page 2 of the original document (27 IR 60), after "2242498.23", insert "(UTM 4584459.61)" and, after "307759.98", insert "(UTM 605255.30)".

(18) In 312 IAC 5-6-6(b)(3)(B)(viii), on page 2 of the original document (27 IR 60), after "2242567.77", insert "(UTM 4584481.05)" and, after "307813.45", insert "(UTM 605271.27)".

(19) In 312 IAC 5-6-6(b)(3)(B)(ix), on page 2 of the original document (27 IR 60), after "2242659.47", insert "(UTM 4584509.22)" and, after "307862.22", insert "(UTM 605285.70)".

(20) In 312 IAC 5-6-6(b)(3)(B)(x), on page 2 of the original document (27 IR 60), after "2242742.59", insert "(UTM 4584534.73)" and, after "307901.47", insert "(UTM 605297.27)".

(21) In 312 IAC 5-6-6(b)(3)(B)(xi), on page 2 of the original document (27 IR 60), after "2242822.16", insert "(UTM 4584559.27)" and, after "307964.83", insert "(UTM 605316.20)".

(22) In 312 IAC 5-6-6(b)(3)(B)(xii), on page 2 of the original document (27 IR 60), after "2242840.80", insert "(UTM 4584565.12)" and, after "308000.91", insert "(UTM 605327.11)".

(23) In 312 IAC 5-6-6(b)(3)(B)(xiii), on page 2 of the original document (27 IR 60), after "2242834.77", insert "(UTM 4584563.55)" and, after "308059.05", insert "(UTM 605344.85)".

(24) In 312 IAC 5-6-6(b)(3)(B)(xiv), on page 2 of the original document (27 IR 60), after "2242805.66", insert "(UTM 4584554.98)" and, after "308123.49", insert "(UTM 605364.62)".

(25) In 312 IAC 5-6-6(b)(3)(B)(xv), on page 2 of the original document (27 IR 60), after "2242814.46", insert "(UTM 4584558.09)" and, after "308213.15", insert "(UTM 605391.90)".

(26) In 312 IAC 5-6-6(b)(3)(B)(xvi), on page 2 of the original document (27 IR 60), after "2242828.98", insert "(UTM 4584562.98)" and, after "308312.37", insert "(UTM 605422.06)".

(27) In 312 IAC 5-6-6(b)(3)(B)(xvii), on page 2 of the original document (27 IR 60), after "2242887.79", insert "(UTM 4584581.21)" and, after "308379.96", insert "(UTM 605442.38)".
(28) In 312 IAC 5-6-6(b)(3)(B)(xviii), on page 2 of the original document (27 IR 60), after "2242958.99", insert "(UTM 4584602.94)" and, after "308387.17", insert "(UTM 605444.24)".
(29) In 312 IAC 5-6-6(b)(3)(B)(xix), on page 2 of the original document (27 IR 60), after "2243095.28", insert "(UTM 4584644.80)" and, after "308458.38", insert "(UTM 605465.30)".
(30) In 312 IAC 5-6-6(b)(3)(B)(xx), on page 2 of the original document (27 IR 60), after "2243116.97", insert "(UTM 4584651.58)" and, after "308495.63", insert "(UTM 605476.55)".
(31) In 312 IAC 5-6-6(b)(3)(B)(xxi), on page 2 of the original document (27 IR 60), after "2243128.91", insert "(UTM 4584655.80)" and, after "308619.23", insert "(UTM 605514.15)".
(32) In 312 IAC 5-6-6(b)(3)(B)(xxii), on page 2 of the original document (27 IR 60), after "2243071.61", insert "(UTM 4584638.69)" and, after "308693.71", insert "(UTM 605537.12)".
(33) In 312 IAC 5-6-6(b)(3)(B)(xxiii), on page 2 of the original document (27 IR 60), after "2243045.71", insert "(UTM 4584631.56)" and, after "308854.70", insert "(UTM 605586.29)".
(34) In 312 IAC 5-6-6(b)(3)(B)(xxiv), on page 2 of the original document (27 IR 60), after "2243044.62", insert "(UTM 4584631.50)" and, after "308912.74", insert "(UTM 605603.98)".
(35) In 312 IAC 5-6-6(b)(3)(B)(xxv), on page 2 of the original document (27 IR 60), after "2243022.03", insert "(UTM 4584624.84)" and, after "308961.85", insert "(UTM 605619.05)".
(36) In 312 IAC 5-6-6(b)(3)(B)(xxvi), on page 2 of the original document (27 IR 60), after "2243024.71", insert "(UTM 4584625.98)" and, after "309030.45", insert "(UTM 605639.94)".
(37) In 312 IAC 5-6-6(b)(3)(B)(xxvii), on page 2 of the original document (27 IR 60), after "2242991.47", insert "(UTM 4584616.19)" and, after "309101.67", insert "(UTM 605661.79)".
(38) In 312 IAC 5-6-6(b)(3)(B)(xxviii), on page 2 of the original document (27 IR 60), after "2242960.27", insert "(UTM 4584607.03)" and, after "309176.01", insert "(UTM 605684.59)".
(39) In 312 IAC 5-6-6(b)(3)(B)(xxix), on page 2 of the original document (27 IR 60), after "2242952.81", insert "(UTM 4584605.10)" and, after "309248.88", insert "(UTM 605706.83)".
(40) In 312 IAC 5-6-6(b)(3)(B)(xxx), on page 2 of the original document (27 IR 60), after "2242922.97", insert "(UTM 4584596.21)" and, after "309291.55", insert "(UTM 605719.97)".
(41) In 312 IAC 5-6-6(b)(3)(B)(xxxi), on page 2 of the original document (27 IR 60), after "2242842.09", insert "(UTM 4584571.77)" and, after "309335.57", insert "(UTM 605733.76)".
(42) In 312 IAC 5-6-6(b)(3)(B)(xxxii), on page 2 of the original document (27 IR 60), after "2242744.94", insert "(UTM 4584542.60)" and, after "309426.58", insert "(UTM 605761.95)".
(43) In 312 IAC 5-6-6(b)(3)(B)(xxxiii), on page 2 of the original document (27 IR 60), after "2242709.93", insert "(UTM 4584532.22)" and, after "309487.98", insert "(UTM 605780.82)".
(44) In 312 IAC 5-6-6(b)(3)(B)(xxxiv), on page 2 of the original document (27 IR 60), after "2242717.16", insert "(UTM 4584534.90)" and, after "309590.62", insert "(UTM 605812.06)".
(45) In 312 IAC 5-6-6(b)(3)(B)(xxxv), on page 2 of the original document (27 IR 60), after "2242677.69", insert "(UTM 4584523.74)" and, after "309775.22", insert "(UTM 605868.49)".
(46) In 312 IAC 5-6-6(b)(3)(B)(xxxvi), on page 2 of the original document (27 IR 60), after "2242666.43", insert "(UTM 4584520.55)" and, after "309826.05", insert "(UTM 605884.03)".
(47) In 312 IAC 5-6-6(b)(3)(B)(xxxvii), on page 2 of the original document (27 IR 60), after "2242691.59", insert "(UTM 4584528.88)" and, after "309969.02", insert "(UTM 605927.48)".
(48) In 312 IAC 5-6-6(b)(3)(C), on page 2 of the original document (27 IR 60), after "2242703.63", insert "(UTM 4584532.75)" and, after "310011.72", insert "(UTM 605940.43)".
(49) In 312 IAC 5-6-6(b)(5)(A), on page 2 of the original document (27 IR 60), after "2249799.53", insert "(UTM 311364.04)" and, after "4586701.18", insert "(UTM 606319.19)".
(50) In 312 IAC 5-6-6(b)(5)(B)(i), on page 2 of the original document (27 IR 60), after "2249436.77", insert "(UTM 4586585.73)" and, after "310315.97", insert "(UTM 606001.55)".
(51) In 312 IAC 5-6-6(b)(5)(B)(ii), on page 2 of the original document (27 IR 60), after "2249156.14", insert "(UTM 4586498.97)" and, after "310047.98", insert "(UTM 605921.21)".
(52) In 312 IAC 5-6-6(b)(5)(C), on page 2 of the original document (27 IR 60), after "2248558.17", insert "(UTM 4586316.32)" and, after "309952.51", insert "(UTM 605894.93)".
(53) In 312 IAC 5-6-6(b)(6)(A), on page 2 of the original document (27 IR 60), after "2246336.50", insert "(UTM 4585656.83)" and, after "313670.41", insert "(UTM 607038.18)".
(54) In 312 IAC 5-6-6(b)(6)(B), on page 2 of the original document (27 IR 60), after "2246294.91", insert "(UTM 4585640.40)" and, after "312868.18", insert "(UTM 606793.94)".

(55) In 312 IAC 5-6-6(c)(1)(A), on page 2 of the original document (27 IR 60), after "2246372.00", insert "(UTM 4585665.57)" and, after "313226.16", insert "(UTM 606902.65)".
(56) In 312 IAC 5-6-6(c)(1)(B), on page 2 of the original document (27 IR 60), after "2246561.00", insert "(UTM 4585723.15)" and, after "313224.59", insert "(UTM 606901.28)".
(57) In 312 IAC 5-6-6(c)(1)(C), on page 2 of the original document (27 IR 60), after "2246576.75", insert "(UTM 4585729.42)" and, after "313538.09", insert "(UTM 606996.73)".
(58) In 312 IAC 5-6-6(c)(1)(D), on page 2 of the original document (27 IR 60), after "2246382.25", insert "(UTM 4585670.21)" and, after "313549.53", insert "(UTM 607001.13)".
(59) In 312 IAC 5-6-6(c)(2)(A), on page 2 of the original document (27 IR 60), after "2246371.25", insert "(UTM 4585664.08)" and, after "312958.88", insert "(UTM 606821.21)".
(60) In 312 IAC 5-6-6(c)(2)(B), on page 2 of the original document (27 IR 60), after "2246558.25", insert "(UTM 4585721.04)" and, after "312954.19", insert "(UTM 606818.91)".
(61) In 312 IAC 5-6-6(c)(2)(C), on page 2 of the original document (27 IR 60), after "2246558.50", insert "(UTM 4585721.75)" and, after "313090.28", insert "(UTM 606860.37)".
(62) In 312 IAC 5-6-6(c)(2)(D), on page 2 of the original document (27 IR 60), after "2246374.50", insert "(UTM 4585665.70)" and, after "313091.94", insert "(UTM 606861.74)".

Filed with Secretary of State: May 3, 2004, 5:30 p.m.

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

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #03-187(AC)

Under IC 4-22-2-38, corrects the following clerical error in LSA Document #03-187(F), printed at 27 IR 2732:
In 865 IAC 1-13-5(d)(4), on page 2 of the original document (27 IR 2733), after "The course", delete "acceptable" *[sic.]*.

Filed with Secretary of State: April 27, 2004, 2:00 p.m.

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

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #03-187(AC)(2)

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in LSA Document #03-187(F), printed at 27 IR 2732:
(1) In 865 IAC 1-13-5(d)(3), on page 2 of the original document (27 IR 2733), delete "section 7(1) through 7(14) of this rule" and insert "section 7(a)(1) through 7(a)(14) of this rule".
(2) In 865 IAC 1-13-5(d)(4), on page 2 of the original document (27 IR 2733), delete "acceptance".
(3) In 865 IAC 1-13-5(f), on page 2 of the original document (27 IR 2733), delete "apply" and insert "applies".

Filed with Secretary of State: May 7, 2004, 1:35 p.m.

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

NOTE: This change was incorporated into the printed version of LSA Document # 03-187(F) and may be found at 27 IR 2732 as corrected.

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #03-6

Under IC 4-22-2-40, LSA Document #03-6, printed at 27 IR 908, is recalled.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-214

Under IC 4-22-2-40, LSA Document #03-214, printed at 27 IR 1203, is recalled.

TITLE 28 STATE INFORMATION TECHNOLOGY OVERSIGHT COMMISSION

LSA Document #04-96

Under IC 4-22-2-41, LSA Document #04-96, printed at 27 IR 2522, is withdrawn.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #04-88

Under IC 4-22-2-41, LSA Document #04-88, printed at 27 IR 2524, is withdrawn.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-128(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 695. Effective May 7, 2004.

SECTION 1. **The name of this scratch-off game is "Scratch-Off** *[sic., Game]* **Number 695, Stars & Stripes".**

SECTION 2. **Scratch-off tickets in scratch-off game number 695 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 695 shall contain nine (9) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. The play symbols and play symbol captions in scratch-off game number 695 shall consist of the following possible play symbols and play symbol captions:**

(1) $1.00
ONE
(2) $2.00
TWO
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $10.00
TEN
(6) $20.00
TWENTY
(7) $40.00
FORTY
(8) $100
ONE HUN
(9) $1,000
ONE THOU
(10) $2,000
TWO THOU

SECTION 4. **The holder of a ticket in scratch-off game number 695 shall remove the latex material covering the nine (9) play symbols and play symbol captions. If three (3) matching play symbols and play symbol captions are exposed, the holder is entitled to a prize of the matched amount. The prize amounts and number of winners in scratch-off game number 695 are as follows:**

Matched Play Symbols	Prize Amount	Approximate Number of Winners
3 – $1.00	$1	600,000
3 – $2.00	$2	400,000
3 – $4.00	$4	120,000
3 – $5.00	$5	40,000
3 – $10.00	$10	60,000
3 – $20.00	$20	20,000
3 – $40.00	$40	6,000
3 – $100	$100	2,000
3 – $1,000	$1,000	100
3 – $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 695.**

(b) The odds of winning a prize in scratch-off number game *[sic.]* **695 are approximately 1 in 4.81.**

(c) All reorders of tickets for scratch-off game number 695 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 695 is May 31, 2005.**

SECTION 7. **This document expires June 3, 2005.**

LSA Document #04-128(E)
Filed with Secretary of State: May 5, 2004, 5:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-129(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 697. Effective May 7, 2004.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 697, Pin Heads".**

SECTION 2. **Scratch-off tickets in scratch-off game number 697 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 697 shall contain eleven (11) play symbols and play symbol captions appearing in the game play data area all concealed under a large spot of latex material. Ten (10) play symbols and play symbol captions shall be arranged in a matrix of two (2) rows and five (5) columns. One (1) play symbol and play symbol caption shall be**

concealed under "EXTRA FRAME". Each scratch-off ticket shall contain a legend setting forth prize amounts associated with the matching play symbols.

(b) The play symbols and play symbol captions in scratch-off game number 697 shall consist of the following possible play symbols and play symbol captions:

(1) A picture of a bowling ball
BALL
(2) A picture of bowling pins down
STRIKE
(3) A picture of a bowling shoe
SHOE
(4) A picture of bowling pins standing upright
PINS
(5) A picture of a bowling ball bag
BAG
(6) A picture of a bowling pin facing left
PIN
(7) A picture of a bowling pin facing right
PIN
(8) A picture of two bowling pins apart
SPLIT
(9) 300
THRHUN
(10) X00
TRYAGN

SECTION 4. **The holder of a ticket in scratch-off game number 697 shall remove the latex material covering the eleven (11) play symbols and play symbol captions. If the play symbol and play symbol caption revealed is a picture of a "STRIKE" the holder is entitled to a prize in the amount set forth on the accompanying prize grid for the associated number of strickes** *[sic.]***. If the play symbol "300" with the play symbol caption "THRHUN" is exposed in the area labeled "EXTRA FRAME", the player is automatically entitled to a prize of three hundred dollars ($300). The prize amounts and number of winners in scratch-off game number 697 are as follows:**

Matched Play Symbols	Prize Amount	Approximate Number of Winners
1 strike	$2	326,400
2 strikes	$4	268,800
3 strikes	$5	96,000
4 strikes	$10	57,600
5 strikes	$20	38,400
6 strikes	$40	9,600
7 strikes	$100	5,824
1 – $300	$300	800
8 strikes	$1,000	128
9 strikes	$10,000	10
10 strikes	$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 697.**

(b) The odds of winning a prize in scratch-off game number 697 are approximately 1 in 4.78.

(c) All reorders of tickets for scratch-off game number 697 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 697 is May 31, 2005.**

SECTION 7. **This document expires June 30, 2005.**

LSA Document #04-129(E)
Filed with Secretary of State: May 5, 2004, 5:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-130(E)

DIGEST

Adds 65 IAC 4-346 concerning scratch-off game number 702. Effective May 7, 2004.

65 IAC 4-346

SECTION 1. 65 IAC 4-346 IS ADDED TO READ AS FOLLOWS:

Rule 346. Scratch-Off Game 702

65 IAC 4-346-1 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 702, Cool 5s". *(State Lottery Commission; 65 IAC 4-346-1; emergency rule filed May 5, 2004, 5:00 p.m.: 27 IR 2748, eff May 7, 2004)*

65 IAC 4-346-2 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 702 shall sell for five dollars ($5) per ticket. *(State Lottery Commission; 65 IAC 4-346-2; emergency rule filed May 5,*

2004, 5:00 p.m.: 27 IR 2748, eff May 7, 2004)

65 IAC 4-346-3 Scratch-off ticket layout
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 702 shall contain thirty-eight (38) play symbols and play symbol captions arranged among three (3) separate and independent game play data areas each concealed under a spot of latex material.

(b) The game play data area on the upper right portion of each scratch-off ticket shall be labeled "GAME 1" and contain six (6) play symbols and play symbol captions arranged in two (2) rows and three (3) columns.

(c) The game play data area in the middle portion of each scratch-off ticket shall be labeled "GAME 2" and shall contain nine (9) play symbols and play symbol captions representing pictures and numbers arranged in a matrix of three (3) rows and three (3) columns. One (1) play symbol and play symbol caption representing a prize amount shall appear in the area labeled "PRIZE".

(d) The game play data area at the bottom portion of each scratch-off ticket shall be labeled "GAME 3" and shall contain twenty (20) play symbols and play symbol captions in the area labeled "YOUR NUMBERS" arranged in pairs of numbers and prize amounts. Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". *(State Lottery Commission; 65 IAC 4-346-3; emergency rule filed May 5, 2004, 5:00 p.m.: 27 IR 2749, eff May 7, 2004)*

65 IAC 4-346-4 Play symbols and play symbol captions
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. (a) The play symbols and play symbol captions in scratch-off game 702 representing prize amounts 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) $5.00
FIVE
(5) $6.00
SIX
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $25.00
TWY FIVE
(9) $40.00
FORTY
(10) $50.00
FIFTY
(11) $100
ONE HUN
(12) $500
FIVE HUN
(13) $5,000
FIVE THOU
(14) $10,000
TEN THOU
(15) $100,000
ONE HUN THOU

(b) The play symbols and play symbol captions in scratch-off game 702, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELV
(12) 12
TLV
(13) 13
TRN
(14) 14
FRN
(15) 16
SXT
(16) 17
SVT
(17) 18
ETN

(18) 19
NTN
(19) 20
TWY
(20) The letter X
XXX
(21) The letter O
OOO
(22) The number 5
FIV

(State Lottery Commission; 65 IAC 4-346-4; emergency rule filed May 5, 2004, 5:00 p.m.: 27 IR 2749, eff May 7, 2004)

65 IAC 4-346-5 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. (a) The holder of a ticket in scratch-off game number 702 shall remove the latex material covering the thirty-eight (38) play symbols and play symbol captions.

(b) If three (3) matching play symbols and play symbol captions are exposed in "GAME 1", the holder is entitled to the matched prize amount. If two (2) matching play symbols and play symbol captions and the play symbol caption "5" are exposed, the holder is automatically entitled to double the matched prize amount.

(c) If three (3) matching play symbols of an "X" or "O" are exposed in "GAME 2", in a row, column, or diagonally, the holder is entitled to the prize in the "PRIZE" area. If three (3) matching play symbols of "5" are exposed in a row, column, or diagonally, the holder is automatically entitled to double the prize in the "PRIZE" area.

(d) If any play symbol and play symbol caption in "YOUR NUMBERS" match either of the play symbols and play symbol captions in the "WINNING NUMBERS" in "GAME 3", the holder is entitled to the matched prize amount. If the play symbol "5" is exposed in "YOUR NUMBERS" the holder is automatically entitled to double the matched prized amount. *(State Lottery Commission; 65 IAC 4-346-5; emergency rule filed May 5, 2004, 5:00 p.m.: 27 IR 2750, eff May 7, 2004)*

65 IAC 4-346-6 "Pack" defined
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. For purposes of scratch-off game number 702, "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 4-346-6; emergency rule filed May 5, 2004, 5:00 p.m.: 27 IR 2750, eff May 7, 2004)*

65 IAC 4-346-7 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. The prize amounts and number of winners in scratch-off game number 702 are as follows:

Number of Winning Play Symbols	Prize Amount	Approximate Number of Winners
1 – $2.00 + 1 – $3.00	$5	158,400
1 – $5.00	$5	158,400
2 – $5.00	$10	79,200
1 – $6.00 + 1 – $2.00 with doubler	$10	105,600
1 – $10.00	$10	52,800
3 – $5.00	$15	13,200
1 – $5.00 with doubler + 1 – $5.00	$15	13,200
1 – $20.00	$20	13,200
1 – $5.00 with doubler + 1 – $6.00 + 4 – $1.00	$20	26,400
4 – $1.00 + 8 – $2.00	$20	13,200
4 – $10.00	$40	4,400
10 – $2.00 + 1 – $5.00 with doubler + 1 – $10.00	$40	8,800
1 – $40.00	$40	5,500
5 – $10.00	$50	1,100
2 – $25.00	$50	1,100
4 – $10.00 + 1 – $6.00 + 1 – $2.00 with doubler	$50	1,100
1 – $50.00	$50	2,860
4 – $25.00	$100	2,640
4 – $5.00 + 1 – $5.00 with doubler + 7 – $10.00	$100	2,640
1 – $100	$100	2,860
1 – $100 with doubler + 3 – $100	$500	440
5 – $100	$500	176
1 – $500	$500	154
2 – $500	$1,000	110
1 – $500 with doubler	$1,000	110
1 – $25.00 with doubler + 3 – $50 + 8 – $100	$1,000	44
1 – $5,000	$5,000	22
1 – $5,000 with doubler	$10,000	10
1 – $10,000	$10,000	10
1 – $100,000	$100,000	10

(State Lottery Commission; 65 IAC 4-346-7; emergency rule filed May 5, 2004, 5:00 p.m.: 27 IR 2750, eff May 7, 2004)

65 IAC 4-346-8 Number of tickets; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. (a) There shall be approximately two million six hundred thousand (2,600,000) scratch-off tickets initially

available in scratch-off game number 702.

(b) The odds of winning a prize in scratch-off game number 702 are approximately 1 in 3.95.

(c) All reorders of tickets for scratch-off game number 702 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 4-346-8; emergency rule filed May 5, 2004, 5:00 p.m.: 27 IR 2750, eff May 7, 2004)*

65 IAC 4-346-9 Last day to claim prizes

Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 9. Players will have up to sixty (60) days from the end of scratch-off game 702 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 4-346-9; emergency rule filed May 5, 2004, 5:00 p.m.: 27 IR 2751, eff May 7, 2004)*

SECTION 2. **SECTION 1 of this document takes effect May 7, 2004.**

LSA Document #04-130(E)
Filed with Secretary of State: May 5, 2004, 5:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-131(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 704. Effective May 7, 2004.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 704, Magic 8 Ball".**

SECTION 2. **Scratch-off tickets in scratch-off game number 704 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 704 shall contain eighteen (18) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. One (1) play symbol and play symbol caption shall appear in the area labeled "MAGIC BONUS BOX". Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Sixteen (16) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" and be arranged in pairs representing numbers and prize amounts.**

(b) The play symbols and play symbol captions in scratch-off game number 704, 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) YES
WINALL

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 704 shall

consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $8.00
EIGHT
(6) $10.00
TEN
(7) $18.00
EIGHTEEN
(8) $48.00
FRE EGT
(9) $80.00
EIGHTY
(10) $100
ONE HUN
(11) $400
FOUR HUN
(12) $800
EGT HUN
(13) $5,000
FIVE THOU
(14) $8,888
ETHEHEYET

SECTION 4. **The holder of a valid scratch-off ticket in scratch-off game number 704 shall remove the latex material covering the nineteen (19) 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 and play symbol caption "YES" is exposed in the "MAGIC BONUS BOX" area, the holder is automatically entitled to all eight (8) paired prize amounts. The matched prize play symbols, prize amounts, and number of winners in scratch-off game number 704 are as follows:**

Number of Matches and Matched Yes	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	270,000
1 – $4.00	$4	195,000
5 – $1.00	$5	45,000
1 – $5.00	$5	30,000
8 – $1.00 with yes	$8	37,500
4 – $2.00	$8	7,500
2 – $4.00	$8	7,500
1 – $8.00	$8	7,500
7 – $2.00 + 1 – $4.00 with yes	$18	18,750
1 – $2.00 + 2 – $8.00	$18	3,750
3 – $1.00 + 3 – $5.00	$18	3,750
1 – $18.00	$18	3,750
2 – $2.00 + 1 – $4.00 + 5 – $8.00 with yes	$48	5,000
6 – $8.00	$48	1,250
1 – $48	$48	1,250
8 – $10.00 with yes	$80	2,250
1 – $8.00 + 4 – $18.00	$80	500
1 – $2.00 + 3 – $4.00 + 1 – $18.00 + 1 – $48	$80	500
1 – $80	$80	500
5 – $80	$400	250
1 – $400	$400	250
8 – $100 with yes	$800	50
1 – $800	$800	25
1 – $5,000	$5,000	25
1 – $8,888	$8,888	25

SECTION 5. **(a) There shall be approximately three million (3,000,000) scratch-off tickets initially available in scratch-off game number 704.**

(b) The odds of winning a prize in scratch-off game number 704 are approximately 1 in 4.67.

(c) All reorders of tickets for scratch-off game number 704 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 704 is May 31, 2005.**

SECTION 7. **This document expires June 30, 2005.**

LSA Document #04-131(E)
Filed with Secretary of State: May 5, 2004, 5:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-132(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 015. Effective May 20, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 015, Fiesta 7s".**

SECTION 2. **Pull-tab tickets for pull-tab game number**

015 shall sell for fifty cents ($0.50) per ticket.

SECTION 3. **Pull-tab game number 015 is a criss-cross game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 015 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 015 shall consist of the following possible play symbols:**

(1) A picture of the number 7
SEVEN
(2) A picture of a bowl of salsa
SALSA
(3) A picture of a pepper
PEPPER
(4) A picture of a tomato
TOMATO
(5) A picture of a star
WILD
(6) A picture of a bell
BELL
(7) A picture of a bunch of grapes
GRAPES
(8) A picture of a watermelon
WATERMELON

SECTION 5. **A row, column, or diagonal on a pull-tab ticket in pull-tab game number 015 which contains three (3) identical play symbols of three (3) "SEVENS", three (3) "SALSAS", three (3) "PEPPERS", three (3) "TOMATOES", or two (2) identical play symbols of the aforementioned with a WILD symbol 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 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 document, the holder of a valid pull-tab ticket for pull-tab game number 015 containing a criss-cross winning combination is entitled to a prize amount, and the approximate numbers of which are as follows:**

Matching Play Symbol in Criss-Cross Winning Combination	Prize Amount	Approximate Number of Prizes
1 wild + 1 seven, or 1 salsa or 1 pepper or 1 tomato	$0.50	202,572
3 tomatoes	$1	32,769
3 peppers	$7	11,916
3 salsas	$17	2,979
3 sevens	$127	2,979

SECTION 7. **A total of approximately two million (2,000,000) pull-tab tickets will be initially available for pull-tab game number 015. The odds of winning a prize in pull-tab game 015 are approximately 1 in 7.91. 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 015 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 #04-132(E)
Filed with Secretary of State: May 5, 2004, 5:00 p.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #04-117(E)

DIGEST

Amends 71 IAC 1-1-1 concerning applicability. Amends 71 IAC 3-2-9 concerning clarifications on horses to be placed on judge's list. Amends 71 IAC 3.5-2-9 concerning clarifications on horses to be placed on steward's list. Adds 71 IAC 8-12 concerning laboratory findings, claimed horses, authority to test, out-of-state horses, and Indiana sires stakes and Genesis series. Adds 71 IAC 8.5-12 concerning claimed horses, authority to test, and out-of-state horses. Effective April 21, 2004.

71 IAC 1-1-1 **71 IAC 8-12**
71 IAC 3-2-9 **71 IAC 8.5-12**
71 IAC 3.5-2-9

SECTION 1. 71 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 1-1-1 Applicability
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. The definitions in this rule apply to *[sic.]* ~~articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of~~ **throughout** this title. *(Indiana Horse Racing Commission; 71 IAC 1-1-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1113; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2814, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emer-*

gency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2753)

SECTION 2. 71 IAC 3-2-9, AS AMENDED AT 27 IR 1911, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

71 IAC 3-2-9 Judge's list
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 9. (a) The judges shall maintain a judge's list of the horses ~~which~~ **that** are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the race track that may endanger the health and safety of the participants and for the protection of the wagering public. The reasons for a horse to be placed on the judge's list and ordered to qualify shall include, but not be limited to, the following on a fast or good track:

(1) Making a break in a qualifying race.

(2) Making a break in a race following a qualifying race unless finishing ~~1st~~, ~~2nd~~, **first, second,** or ~~3rd~~. **third.** Two (2) year old nonwagering purse races for three hundred dollars ($300) or less shall be considered a qualifying race.

(3) Poor performance or failure to go in a qualifying time following a qualifying race.

(4) Poor performance in a qualifying race regardless of going in qualifying time.

(5) ~~Failing~~ **Failure** to go in qualifying time in two (2) consecutive starts.

(6) Failure to go in qualifying time previous or subsequent to a break line.

(7) Making breaks in two (2) consecutive starts unless finishing ~~1st~~, ~~2nd~~, **first, second,** or ~~3rd~~ **third** in one (1) of the two (2).

(8) Being scratched sick or lame in two (2) consecutive programmings or scratched sick or lame from a race following a qualifying race.

(9) Scratched sick or lame, having failed to go in qualifying time in a previous or subsequent start to that scratch.

(10) Scratched sick/lame in a race previous or subsequent to a break line.

(11) Numerous bad lines in its last six (6) starts regardless of being consecutive on finishing ~~1st~~, ~~2nd~~, **first, second,** or ~~3rd~~. **third.**

(b) ~~(1)~~ A horse showing a satisfactory line in one (1) of its last two (2) starts or its last start at a pari-mutuel track prior to racing at an Indiana county fair half-mile track, the aforementioned county fair lines will not be considered towards its eligibility to return to the pari-mutuel track. Notwithstanding the above satisfactory line, at the pari-mutuel track, must be within its last six (6) programmed lines but within thirty (30) days of the pari-mutuel start (race date to race date).

~~(2)~~ **(c)** A horse having not raced at a pari-mutuel track must show a satisfactory charted line in one (1) of its last two (2) county fair starts within the time standards set.

~~(c)~~ **(d)** The judges may place a horse on the judge's list when there exists a question as to the exact identification, ownership, or trainer of a horse.

(e) A horse that has been the subject of a finding by a commission-approved laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from the horse shall be placed on the judge's list. Such horse shall not be released from the judge's list unless and until it has tested negative by a commission-approved laboratory for the antibody of erythropoietin or darbepoietin.

~~(d)~~ **(f)** A horse may not be released from the judge's list without permission of the judges. *(Indiana Horse Racing Commission; 71 IAC 3-2-9; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1129; emergency rule filed Apr 9, 1998, 1:18 p.m.: 21 IR 3377; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2097; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2534; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1911; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2754)*

SECTION 3. 71 IAC 3.5-2-9 IS AMENDED TO READ AS FOLLOWS:

71 IAC 3.5-2-9 Steward's list
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 9. (a) The stewards shall maintain a steward's list of the horses ~~which~~ **that** are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the race track that may endanger the health ~~or~~ **and** safety of other participants in racing.

(b) The stewards may place a horse on the steward's list when there exists a question as to the exact identification, ownership, or trainer of said horse.

(c) A horse that has been the subject of a finding by a commission-approved laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from the horse shall be placed on the steward's list. Such horse shall not be released from the steward's list unless and until it has tested negative by a commission-approved laboratory for the antibodies of erythropoietin or darbepoietin.

~~(c)~~ **(d)** A horse may not be released from the steward's list without permission of the stewards. *(Indiana Horse Racing Commission; 71 IAC 3.5-2-9; emergency rule filed Jun 15,*

1995, 5:00 p.m.: 18 IR 2831, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2754)

SECTION 4. 71 IAC 8-12 IS ADDED TO READ AS FOLLOWS:

Rule 12. Erythropoietin and Darbepoietin

71 IAC 8-12-1 Laboratory findings
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. (a) A finding by a commission-approved laboratory that the antibody of erythropoietin or darbepoietin was present in a sample taken from a horse shall establish that the horse is unfit to race in any subsequent race, subject to the provisions of subsection (b).

(b) Any horse that has been the subject of a finding by a commission-approved laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse shall be placed on the judge's list and shall not be entered or allowed to race in any subsequent race until the horse has tested negative by a commission-approved laboratory for the antibodies of erythropoietin or darbepoietin.

(c) Notwithstanding any inconsistent provision of this article, a horse shall not be subject to disqualification from the race and from any share of the purse in the race, nor shall the trainer of the horse be subject to the application of trainer's responsibility rules based solely upon a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse.

(d) A finding by a commission-approved laboratory for the antibody of erythropoietin or darbepoietin is not subject to split sample testing. *(Indiana Horse Racing Commission; 71 IAC 8-12-1; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2755)*

71 IAC 8-12-2 Claimed horses
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. All claimed horses shall be tested by a commission-approved laboratory for the presence of the antibody erythropoietin or darbepoietin. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five (5) days of receipt of such notice by his or her trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or his trainer. *(Indiana Horse Racing Commission; 71 IAC 8-12-2; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2755)*

71 IAC 8-12-3 Authority to test
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 3. (a) The executive director shall have the authority to demand the testing of any horse for the presence of the antibody to erythropoietin or darbepoietin that is:
(1) stabled at a pari-mutuel racetrack in Indiana;
(2) participating at a pari-mutuel racetrack in Indiana regardless of where it is stabled;
(3) trained by a licensed trainer participating at a pari-mutuel racetrack in Indiana; or
(4) listed on a stall application.

(b) Any horse requested to be tested pursuant to this rule shall be made available for testing at a time and location determined by the commission. Failure to present a horse for testing may result in the horse being placed on the judges' list until such testing occurs. *(Indiana Horse Racing Commission; 71 IAC 8-12-3; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2755)*

71 IAC 8-12-4 Out-of-state horses
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 4. A horse on a judge's list or veterinarian's list in another jurisdiction due to the presence of the antibody to erythropoietin and darbopoietin shall be ineligible to be entered in a race. A trainer entering such an ineligible horse shall be subject to disciplinary action. *(Indiana Horse Racing Commission; 71 IAC 8-12-4; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2755)*

71 IAC 8-12-5 Indiana Sires Stakes and Genesis Series
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 5. (a) In order to be eligible to participate in any Indiana Sires Stakes finals and the Genesis Series finals, a horse must provide a blood sample on the date of the last leg of the series for the purpose of determining the presence of the antibody to erythropoietin or darbepoietin.

(b) A horse not participating in the last leg of the series must report to the track on the date of the last leg of the series at a time and location determined by the commission to provide a blood sample for the purpose of determining the presence of the antibody to erythropoietin or darbepoietin.

(c) This rule supercedes the conditions of the Indiana Sires Stakes and Genesis Series. *(Indiana Horse Racing Commission; 71 IAC 8-12-5; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2755)*

SECTION 5. 71 IAC 8.5-12 IS ADDED TO READ AS FOLLOWS:

Rule 12. Erythropoietin and Darbepoietin

71 IAC 8.5-12-1 Laboratory findings
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. (a) A finding by a commission-approved laboratory that the antibody of erythropoietin or darbepoietin was present in a sample taken from a horse shall establish that the horse is unfit to race in any subsequent race, subject to the provisions of subsection (b).

(b) Any horse that has been the subject of a finding by a commission-approved laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse shall be placed on the steward's list and shall not be entered or allowed to race in any subsequent race until the horse has tested negative by a commission-approved laboratory for the antibodies of erythropoietin or darbepoietin.

(c) Notwithstanding any inconsistent provision of this article, a horse shall not be subject to disqualification from the race and from any share of the purse in the race, nor shall the trainer of the horse be subject to the application of trainer's responsibility rules based solely upon a finding by the laboratory that the antibody of erythropoietin or darbepoietin.

(d) A finding by a commission-approved laboratory for the antibody of erythropoietin or darbepoietin is not subject to split sample testing. *(Indiana Horse Racing Commission; 71 IAC 8.5-12-1; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2756)*

71 IAC 8.5-12-2 Claimed horses
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. All claimed horses shall be tested by a commission-approved laboratory for the presence of the antibody erythropoietin or darbepoietin. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five (5) days of receipt of such notice by his or her trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer. *(Indiana Horse Racing Commission; 71 IAC 8.5-12-2; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2756)*

71 IAC 8.5-12-3 Authority to test
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 3. (a) The executive director shall have the authority to demand the testing of any horse for the presence of the antibody to erythropoietin or darbepoietin that is:
(1) stabled at a pari-mutuel racetrack in Indiana;
(2) participating at a pari-mutuel racetrack in Indiana regardless of where it is stabled;
(3) trained by a licensed trainer participating at a pari-mutuel racetrack in Indiana; or
(4) listed on a stall application.

(b) Any horse requested to be tested pursuant to this rule shall be made available for testing at a time and location determined by the commission. Failure to present a horse for testing may result in the horse being placed on the judges' list until such testing occurs. *(Indiana Horse Racing Commission; 71 IAC 8.5-12-3; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2756)*

71 IAC 8.5-12-4 Out-of-state horses
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 4. A horse on a steward's list or veterinarian's list in another jurisdiction due to the presence of the antibody to erythropoietin and darbopoietin shall be ineligible to be entered in a race. A trainer entering such an ineligible horse shall be subject to disciplinary action. *(Indiana Horse Racing Commission; 71 IAC 8.5-12-4; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2756)*

LSA Document #04-117(E)
Filed with Secretary of State: April 21, 2004, 3:45 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-116(E)

DIGEST

Repeals LSA Document #04-79(E), which temporarily modified 312 IAC 9-4-11 governing the hunting and possession of wild turkeys in and following the spring hunting season, because, following technical review, the department of natural resources has determined LSA Document #04-79(E) is not reasonably required to further the goals of the agency's Turkey Restoration Project. Effective April 21, 2004.

SECTION 1. LSA Document #04-79(E) is repealed.

SECTION 2. **SECTION 1 of this document takes effect April 21, 2004.**

LSA Document #04-116(E)
Filed with Secretary of State: April 20, 2004, 9:30 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-118(E)

DIGEST

Temporarily modifies 312 IAC 18-3 under the article pertaining to entomology and plant pathology to regulate the emerald ash borer (Agrilus planipennis) as a pest or pathogen and to provide standards for quarantine in Jamestown Township of Steuben County, which is infested with the species. Effective April 22, 2004.

SECTION 1. **(a) Emerald ash borer (Coleoptera: Buprestidae: Agrilus planipennis) is a pest or pathogen and is regulated under this document.**

(b) These terms apply to this document and are in addition to definitions contained in 312 IAC 1 and 312 IAC 18-1:

(1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist for this purpose, including a phytosanitary document or multiple use quarantine certificate.

(2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this SECTION and other stated conditions.

(3) "Infested area" means a site where the emerald ash borer is present or where circumstances make it reasonable to believe that the ash borer is present.

(4) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this SECTION.

(5) "Move" means to ship, offer for shipment, receive for transportation, transport, carry, or allow to move or to ship.

(c) Jamestown Township of Steuben County is regulated under this document.

(d) The following items are regulated articles:

(1) The emerald ash borer in any living stage of development.

(2) Any ash tree (Fraxinus spp.), including nursery stock.

(3) A limbs *[sic.]*, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.

(4) An ash log or untreated ash lumber with bark attached.

(5) Composted and uncomposted ash chips and composted and uncomposted ash bark chips at least one (1) inch in diameter.

(6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of spread of the emerald ash borer.

(7) Cut firewood of any species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:

(1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.

(2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees F., if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees F. or higher if the article is shipped in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by the emerald ash borer.

(3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.

(4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.

(5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection

(c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees F., if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees F. or higher, if the article is shipped in an enclosed vehicle or completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.

(3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of this SECTION must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this document.

(l) Uncomposted ash chips and uncomposted ash bark chips no larger than one (1) inch in diameter are exempted from the requirements of this document.

SECTION 2. **SECTION 1 of this document expires April 1, 2005.**

LSA Document #04-118(E)
Filed with Secretary of State: April 22, 2004, 11:30 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-126(E)

DIGEST

Temporarily modifies 312 IAC 18-3 under the article pertaining to entomology and plant pathology to regulate giant African land snails (Achatina achatina (L.), Achatina fulica Bowdich, Achatina marginata, and other species of the family Achatinidae (Gastropoda)) as a pest or pathogen and to prohibit the possession, sale, release, or other distribution of these snails in Indiana. Effective May 3, 2004.

SECTION 1. **(a) Giant African Land Snail (Achatina achatina (L.), Achatina fulica Bowdich, Achatina marginata, and other species of the family Achatinidae (Gastropoda)) is a pest or pathogen and is regulated under this document.**

(b) A person must not possess, offer for sale, sell, give away, barter, exchange, or otherwise distribute or release a giant African land snail, in any life stage, in Indiana.

(c) Nothing in this document precludes the state entomologist from issuing a permit to a qualified applicant to properly contain a species of giant African land snail for scientific research.

SECTION 2. **SECTION 1 of this document expires May 1, 2005.**

LSA Document #04-126(E)
Filed with Secretary of State: May 3, 2004, 5:30 p.m.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-119(E)

DIGEST

Temporarily amends matters incorporated by reference in 345 IAC 9-2.1-1 to facilitate prevention of and surveillance for bovine spongiform encephalopathy (BSE), including prohibiting the slaughter of nonambulatory cattle for human food, prohibiting meat and meat products from nonambulatory cattle to be distributed for food, prohibiting the distribution of carcasses and parts of BSE positive animals, declaring certain animal parts specified risk materials, amending rules governing products produced using advanced meat recovery technology, prohibiting air-injection stunning of cattle, and further regulating or prohibiting the use of mechanically separated meat in human food. Temporarily adds rules that require carcasses from animals tested for BSE be held until test results are obtained. Authority: IC 15-2.1-18-21. *NOTE: The original emergency document LSA Document #04-29(E), printed at 27 IR 1930, effective January 23, 2004, expires April 22, 2004.* Effective April 22, 2004.

SECTION 1. (a) The board adopts as its rule and incorporates

by reference the following federal regulations in effect on January 1, ~~2002.~~ **2004, and as amended in 69 FR 1862 through 69 FR 1891, January 12, 2004:**

(1) 9 CFR 301, except the definitions in IC 15-2.1 and 345 IAC 9-1-3 shall control over conflicting definitions in 9 CFR.

(2) 9 CFR 303 through 9 CFR 311, except the following are not incorporated:

(A) 9 CFR 303.1(c), 9 CFR 303.1(g), and 9 CFR 303.2.

(B) 9 CFR 306.1.

(C) 9 CFR 307.4, 9 CFR 307.5, and 9 CFR 307.6.

(D) 9 CFR 308.

(3) 9 CFR 313 through 9 CFR 320, except 9 CFR 317.4 and 9 CFR 317.5.

(4) 9 CFR 325.

(5) 9 CFR 416.

(6) 9 CFR 417.

(7) 9 CFR 500, except the following:

(A) References to the Uniform Rules of Practice, 7 CFR Subtitle A, Part 1, Subpart H shall mean IC 15-2.1-19 and IC 4-21.5-3.

(B) References to adulterated or misbranded product shall refer to products adulterated or misbranded as defined in ~~IC 15-2.1-24.~~ **IC 15-2.1-2.**

(b) When interpreting this article, including all matters incorporated by reference, the following shall apply:

(1) A reference to any subpart of 9 CFR 302 refers to the corresponding section of 345 IAC 9-2.

(2) A reference to:

(A) 9 CFR 307.4 shall refer to 345 IAC 9-7-4;

(B) 9 CFR 307.5 shall refer to 345 IAC 9-7-6; and

(C) 9 CFR 307.6 shall refer to 345 IAC 9-7-6.

(3) A reference to any subpart of 9 CFR 312 refers to the corresponding section of 345 IAC 9-12.

(4) A reference to:

(A) 9 CFR 316.16 shall refer to 345 IAC 9-16-16;

(B) 9 CFR 317.4 shall refer to 345 IAC 9-17-4;

(C) 9 CFR 317.5 shall refer to 345 IAC 9-17-5; and

(D) 9 CFR 317.16 shall refer to 345 IAC 9-17-16.

(5) A reference to:

(A) 9 CFR 321.1 shall refer to 345 IAC 9-20; and

(B) 9 CFR 321.2 shall refer to 345 IAC 9-20.

(6) A reference to any subpart of 9 CFR 329 shall refer to the corresponding section in 345 IAC 9-22.

(c) Where the provisions of this article conflict with matters incorporated by reference, the express provisions of this article shall control.

SECTION 2. **The following apply to the carcass and parts of carcasses of an animal that is tested for bovine spongiform encephalopathy (BSE):**

(1) In an official establishment, carcass and parts thereof shall be retained until such time as the BSE test results are received and a board representative releases the carcass and parts. If the animal tests negative for BSE, the carcass and parts thereof may be passed if the carcass and parts otherwise qualify to be passed. If the animal tests positive for BSE, the carcasses and parts shall be condemned as adulterated and held for disposition in a manner approved by the state veterinarian.

(2) In a custom exempt establishment, carcass and parts thereof shall be retained until such time as the BSE test results are received and a board representative releases the carcass and parts. If the animal tests negative for BSE, the carcass and parts may be released. If the animal tests positive for BSE, the carcasses and parts shall be condemned as adulterated and held for disposition in a manner approved by the state veterinarian.

SECTION 3. **SECTIONS 1 and 2 of this document expire on the earliest of the following:**

(1) The date that another temporary rule adopted under IC 15-2.1-18-21 supercedes this document.

(2) The date that permanent rules adopted under IC 4-22-2 supercede this document.

(3) July 21, 2004.

LSA Document #04-119(E)
Filed with Secretary of State: April 22, 2004, 4:00 p.m.

Change in Notice of Public Hearing

TITLE 326 AIR POLLUTION CONTROL BOARD

#03-228(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of #03-228(APCB), printed at 27 IR 1936, 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 the public hearing on amendments to 326 IAC 1-2 and 326 IAC 1-3-4 was opened on May 5, 2004, and continued to the June 2, 2004, meeting of the Air Pollution Control Board. 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 amendments to 326 IAC 1-2 and 326 IAC 1-3-4.*

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 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 in Notice of Public Hearing 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

#03-312(SWMB)

The Solid Waste Management Board (board) gives notice that the location of the public hearing for consideration of preliminary adoption of #03-312(SWMB), printed at 27 IR 2592, 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 August 17, 2004, at 1:30 p.m., at the Indiana Government Center-South, ***402 West Washington Street,*** *Conference Center Room A, Indianapolis, Indiana the Solid Waste Management Board will hold a public hearing on proposed new rules and amendments to rules at 329 IAC 3.1 and 329 IAC 13.*

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana). If the date or location of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing 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 may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the IDEM Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 28 STATE INFORMATION TECHNOLOGY OVERSIGHT COMMISSION

LSA Document #04-123

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, developed, maintained, or used by state and local government. 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 45 DEPARTMENT OF STATE REVENUE

LSA Document #04-125

Under IC 4-22-2-23, the Department of State Revenue intends to adopt a rule concerning the following:

OVERVIEW: Adds 45 IAC 1.3 concerning the utility receipts tax which was effective January 1, 2003. Replaces temporary provisions concerning the utility receipts tax effective July 1, 2004. Statutory authority: P.L.192-2002(ss), SECTION 196(b).

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

LSA Document #04-144

Under IC 4-22-2-23, the Indiana Utility Regulatory Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds 170 IAC 4-1.2, 170 IAC 5-1.2, and 170 IAC 6-1.2 to establish new customer service rights and responsibilities rules for electric, gas, and water utilities. Amends 170 IAC 7-1.3-2, 170 IAC 7-1.3-3, 170 IAC 7-1.3-8, 170 IAC 7-1.3-9, and 170 IAC 7-1.3-10 regarding telecommunications customer service rights and responsibilities. Amends 170 IAC 8.5-2 regarding sewage disposal service customer rights and responsibilities. Repeals 170 IAC 4-1-15, 170 IAC 4-1-16, 170 IAC 4-1-16.5, 170 IAC 4-1-16.6, 170 IAC 4-1-17, 170 IAC 5-1-15, IAC 5-1-16, 170 IAC 5-1-16.5, 170 IAC 5-1-16.6, 170 IAC 5-1-17, 170 IAC 6-1-15, 170 IAC 6-1-16, and 170 IAC 6-1-17. Effective 180 days after filing with the secretary of state. Statutory authority: IC 8-1-1-3(g). Questions concerning the proposed rule may be addressed to the following telephone number: (317) 232-2092.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-120

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Establishes a new section 312 IAC 18-3-18 under the article pertaining to entomology and plant pathology to regulate the emerald ash borer (Agrilus planipennis) as a pest or pathogen. Provides standards for quarantine of an area infested with the species. Establishes a quarantine in Jamestown Township of Steuben County. (The quarantine is currently effective through an emergency rule as LSA Document #04-118(E).) Questions concerning the proposed new rule section may be directed to (317) 233-3322 or slucas@dnr.state.in.us. Statutory authority: IC 14-10-2-4; IC 14-24-3.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-121

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amendments to 312 IAC 16-3 would bring rules into compliance with IC 14-37-4-6 regarding the fees associated with the permitting of wells and transfer of permits. Amendments also include a requirement that the UTM coordinate location of a proposed well be provided in the application for a well permit. 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 14-37-3-15.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-127

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Establishes a new section 312 IAC 18-3-19 under the article pertaining to entomology and plant pathology to regulate giant African land snails (Achatina achatina (L.), Achatina fulica Bowdich, Achatina marginata, and other species of the family Achatinidae (Gastropoda)) as a pest or pathogen.

Questions concerning the proposed new rule section may be directed to (317) 233-3322 or slucas@dnr.state.in.us. Statutory authority: IC 14-10-2-4; IC 14-24-3.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-122

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: The rule will amend facility, sanitation, testing, and other requirements for poultry slaughter and processing establishments and update matters incorporated by reference including updating and amending exemptions from poultry inspection. Makes other changes in the law of meat and poultry inspection. Comments on the proposed rule may be sent to the Indiana State Board of Animal Health, Attention: Legal Affairs, 805 Beachway Drive, Suite 50, Indianapolis, Indiana 46224 or by electronic mail to ghaynes@boah.state.in.us. Statutory authority: IC 15-2.1-3-19.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-135

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: Amends and updates 345 IAC 4 concerning participation in the National Poultry Improvement Plan. Amends 345 IAC 10 concerning facility, sanitation, testing, and other requirements for poultry slaughter and processing establishments, updating matters incorporated by reference, and amending exemptions from poultry inspection. Makes other changes in the law of poultry health and poultry slaughter and processing inspection. Comments on the proposed rule may be sent to the Indiana State Board of Animal Health, Attention: Legal Affairs, 805 Beachway Drive, Suite 50, Indianapolis, Indiana 46224, or by electronic mail to ghaynes@boah.state.in.us. Statutory authority: IC 15-2.1-3-19.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-147

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: The rule will add and amend rules governing tuberculosis control in animals including requirements to move animals into and within the state, testing standards and requirements, identification of animals and premises, record keeping requirements, classification of animals and herds, recognition of area tuberculosis designations, and procedures for suspect, exposed, and positive animals. The rule will make other substantive and technical changes in the law of tuberculosis control. Comments on the proposed rule may be sent to the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, IN 46224, or by electronic mail to ghaynes@boah.state.in.us. Statutory authority: IC 15-2.1-3-19.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-142

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 405 IAC 1 to add provisions governing the claims dispute resolution process for certain providers furnishing services to enrollees in the Medicaid risk based managed care program. Applies to a reimbursement dispute between a provider and a managed care organization, if the provider does not have a contract with the managed care organization. Provides for an informal claim dispute resolution process that allows the provider to make verbal inquiries and to otherwise informally undertake to resolve the provider's objection to a determination made by the managed care organization, including the amount of payment, or the lack of sufficient supporting information, records, or other materials. Provides for a formal dispute resolution process in the event the matter submitted for informal resolution is not resolved to the provider's satisfaction. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #04-136

Under IC 4-22-2-23, the Division of Disability, Aging, and Rehabilitative Services intends to adopt a rule concerning the following:

OVERVIEW: Adds a new rule to 460 IAC to provide for the posting of notices at housing with services establishments, area

agencies on aging, and centers for independent living that advise residents of their rights and for procedures for residents and their representatives to file complaints concerning violations of filing disclosure requirements. Statutory authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14.

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #04-145

Under IC 4-22-2-23, the Division of Disability, Aging, and Rehabilitative Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 460 IAC 6 to provide qualifications for applied behavioral analysis, the addition of crisis intervention services, the addition of provisions regarding communication with individuals receiving supported living services and supports when a provider is sanctioned, changes to the process for the approval of additional supported living services and supports, clarification of the human rights committee, and other general clarifications and necessary related changes to enhance the functionality of the rules within this article. Statutory authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12.

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #04-146

Under IC 4-22-2-23, the Division of Disability, Aging, and Rehabilitative Services intends to adopt a rule concerning the following:

OVERVIEW: Amends 460 IAC 6 to provide provisions piloting a new level of care assessment tool and making other necessary related changes. Statutory authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12.

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #04-141

Under IC 4-22-2-23, the Professional Standards Board intends to adopt a rule concerning the following:

OVERVIEW: Adds 515 IAC 12 to provide certain requirements and procedures for the issuance by the Professional Standards Board of the accomplished practitioner teacher license. Public comments are invited and may be directed to Marie Theobald, Executive Director, Indiana Professional Standards Board, 101 W. Ohio Street, Indianapolis, IN 46204. Statutory authority: IC 20-1-1.4-7.

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

LSA Document #04-138

Under IC 4-22-2-23, the Board of Firefighting Personnel Standards and Education intends to adopt a rule concerning the following:

OVERVIEW: The proposed amendments and additions to 655 IAC 1 are for the purpose of amending general administrative requirements, amending and adding certification programs, amending and adding certifications, updating certain National Fire Protection Association standards, and making conforming section changes. Statutory authority: IC 22-12-7-7; IC 22-14-2-7.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #04-133

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: To amend 760 IAC 1-68 regarding the requirements for financial statements, net worth, applications, board of directors, open enrollment, place of business, stop loss coverage, benefits, and renewal of a registration as well as the general requirements for limited service multiple employer welfare arrangements and professional employer organizations. 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 27-1-34-9.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #04-139

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 examinations, credit hours, fees, documentation,

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 760 DEPARTMENT OF INSURANCE

LSA Document #04-140

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: Amends 760 IAC 1-21 regarding definitions, filing of proof of financial responsibility, use of insurance and means other than insurance for proof of financial responsibility, certificates of insurance, deposits, reserves, surcharge payments and amounts, corporations as qualified health care providers, the annual aggregate, settlement of claims, and communications between the Department of Insurance and the health care provider. Statutory authority: IC 34-18-3-7; IC 34-18-5-2; IC 34-18-6-6.

TITLE 845 BOARD OF PODIATRIC MEDICINE

LSA Document #04-134

Under IC 4-22-2-23, the Board of Podiatric Medicine intends to adopt a rule concerning the following:

OVERVIEW: Amends 845 IAC 1-5-3 concerning the approval of continuing education programs. Effective 30 days after filing with the secretary of state. Questions or comments concerning the proposed rule may be directed to: Indiana Board of Podiatric Medicine, ATTENTION: Valerie Jones, 402 West Washington Street, Room W066, Indianapolis, IN 46204-2700 or by electronic email at vjones@hpb.in.gov. Statutory authority: IC 25-29-2-11.

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

LSA Document #04-137

Under IC 4-22-2-23, the Indiana Board of Veterinary Medical Examiners intends to adopt a rule concerning the following:

OVERVIEW: Amends 888 IAC 1.1-6-1 concerning applicants who are applying to take the North American Veterinary Licensing Examination (NAVLE). Effective 30 days after filing with the secretary of state. Questions or comments concerning the proposed rule may be directed to: Indiana Board of Veterinary Medical Examiners, ATTENTION: Board Director, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204 or by electronic mail at cvaught@hpb.state.in.us. Statutory authority: IC 15-5-1.1-8.

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule
LSA Document #04-68

DIGEST

Amends 170 IAC 4-1-23 concerning electricity interruptions of service and outage reporting. Effective 30 days after filing with the secretary of state.

170 IAC 4-1-23

SECTION 1. 170 IAC 4-1-23 IS AMENDED TO READ AS FOLLOWS:

170 IAC 4-1-23 Interruptions of service; timing; records
Authority: IC 8-1-1-3; IC 8-1-2-4
Affected: IC 8-1-2-12; IC 8-1-2-113; IC 8-1-13

Sec. 23. ~~Interruptions of Service. Each utility shall keep a record of any interruption of service affecting its entire system or a major division thereof, including a statement of time, duration, extent and cause of the interruption.~~ **(a) For purposes of this section, the following definitions apply:**

(1) "Business days" means all days other than:
(A) Saturday;
(B) Sunday; or
(C) a legal holiday observed by the state of Indiana.

(2) "Customer" means a metered electrical service point for which an active bill account is established at a specific location.

(3) "Customer average interruption duration index (CAIDI)" is calculated by dividing the summation of sustained service interruption durations for a specified period of time by the total number of customers interrupted. This index indicates the average time required to restore a sustained service interruption.

(4) "Customer of record" means any:
(A) person;
(B) firm;
(C) corporation;
(D) municipality; or
(E) other government agency;
which has agreed, orally or otherwise, to pay for electric service received from a utility.

(5) "Interruption" means the loss of electrical service to one (1) or more customers connected to the distribution portion of the system.

(6) "Investor-owned utility" means any utility that is financed by the sale of securities and whose business operations are overseen by a board representing their shareholders.

(7) "Nonbusiness days" means:
(A) Saturday;
(B) Sunday; or
(C) a legal holiday observed by the state of Indiana.

(8) "Planned service interruption" means a service interruption initiated by the utility to perform necessary scheduled activities, such as, but not limited to:
(A) maintenance;
(B) infrastructure improvements; and
(C) new construction due to customer growth.
Customers of record are typically notified in advance of such events.

(9) "REMC" means an electric utility formed under IC 8-1-13.

(10) "Sustained service interruption" means a service interruption that is greater than or equal to five (5) minutes unless defined as less than five (5) minutes by the individual utility.

(11) "System average interruption duration index (SAIDI)" is calculated by dividing the summation of sustained service interruption durations for a specified period of time by the total number of customers served. This index indicates the total duration of a sustained service interruption for the average customer during a specified period of time.

(12) "System average interruption frequency index (SAIFI)" is calculated by dividing the total number of sustained service interruptions over a specified period of time by the total number of customers served. This index indicates how many sustained service interruptions a customer experiences over a specified period of time.

(b) The requirements for the reporting of sustained service interruptions are as follows:

(1) A utility shall report any interruption in service that is not planned that meets the following criteria:
(A) For investor-owned utilities, interruptions of service lasting two (2) hours or more and affecting two percent (2%) or five thousand (5,000) customers, whichever is fewer.
(B) For REMCs, interruptions of service lasting two (2) hours or more and affecting one thousand five hundred (1,500) or more customers.
An initial report shall be made to the commission by the next regularly scheduled interval as provided in subdivision (2) and updates shall be made to the commission at each regularly scheduled interval until electrical service has been restored to the level below that of the threshold described in clause (A). The report indicating that all electrical service has been restored to the level below that of the threshold described in clause (A) shall be noted as the "final report" for each interruption period.

(2) The regularly scheduled intervals for reporting times shall be as follows:
(A) On business days: 6:00 a.m., 9:00 a.m., 11:00 a.m., 2:00 p.m., 4:00 p.m., and 9:00 p.m., Eastern Standard Time (EST) (Indianapolis time).
(B) On nonbusiness days: 6:00 a.m., 2:00 p.m., and 9:00 p.m. Eastern Standard Time (EST) (Indianapolis time).

(3) Service interruption reports that occur during business days shall be submitted to the commission and the office of the utility consumer counselor via commission prescribed format. The preferred method of reporting is via electronic mail; however, telephone or other types of reports may be made if coordinated in advance with commission staff.
(4) In the case of an extreme emergency, a different schedule for status reporting may be agreed to by the commission and the utility until the emergency has ended.
(5) The commission shall notify the utility if a written report or further information is required after the final report is submitted.
(6) This subsection shall not apply to a curtailment or an interruption of service to customers receiving service under interruptible rate classifications when the curtailment or interruption of service occurs pursuant to the affected retail customer's service agreement.

(c) Whenever ~~the~~ service is intentionally interrupted for any purpose, ~~such interruptions~~ **the utility** shall, except in emergencies, ~~be at a time which will cause~~ **make reasonable attempts to minimize** the ~~least~~ inconvenience to **affected** customers ~~Those customers who will be most seriously affected by such interruption shall, so far as possible, be notified in advance. Whenever the service is interrupted other than intentionally in a major division or community the utility shall notify the Public Service Commission by telephone at the earliest practicable moment following discovery, giving the above information and confirming by a written report within five days thereafter, and shall submit such additional reports as the commission may require.~~ **of record. The utility shall make reasonable attempts to notify in advance customers of record whose service is expected to be interrupted for more than one (1) hour for scheduled maintenance or facilities upgrades, consistent with safety and security considerations. This rule does not apply to customer interruptions pursuant to an interruptible tariff or agreement approved by the commission.**

(d) Utilities shall first attempt to restore service that affects public health and safety. Each utility shall have written procedures for designated employees to follow in emergencies. The procedures shall contain at least the following:
(1) Notification procedures for emergency response personnel.
(2) General location or locations of:
(A) equipment;
(B) tools; and
(C) materials;
normally needed to restore service.
(3) Procedures for notifying:
(A) fire;
(B) police;
(C) medical; and
(D) other public;
officials.

(e) Each investor-owned utility shall file a reliability indices report with the commission's electricity division on or before March 1 of each year. The first report filed under this section shall include data from the previous three (3) calendar years. Subsequent reports filed under this section shall include data only from the previous calendar year. The report shall contain the following information:
(1) The reliability indices SAIDI, CAIDI, and SAIFI, with and without major events, for the utility's system and for each district or region into which its system may be divided. The utility shall report these data and analyses on a form prescribed by the commission.
(2) The definition of major event used by the utility for reporting purposes.
(3) For the reported indices, the number of customers used for the calculations and the utility's definition of customer.
If a REMC maintains sufficient electronic records to comply with this subsection, the cooperative utility shall file a reliability indices report under this subsection.

(f) The commission may require that data be reported by the utilities in order to determine whether a utility is providing service consistent with this rule. The utility shall maintain historical CAIDI, SAIDI, SAIFI, and supporting data needed to calculate those indexes for a minimum of seven (7) years. *(Indiana Utility Regulatory Commission; No. 33629: Standards of Service For Electrical Utilities Rule 21; filed Mar 10, 1976, 9:10 a.m.: Rules and Regs. 1977, p. 355; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 14, 2004 at 10:00 a.m., at the Indiana Government Center-South, 302 West Washington Street, Room E306, Indianapolis, Indiana the Indiana Utility Regulatory Commission will hold a public hearing on electricity outage reporting. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E306 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

William D. McCarty
Commission Chairman
Indiana Utility Regulatory Commission

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #04-3

DIGEST

Adds 312 IAC 6.5 to govern the registration of off-road vehicles and snowmobiles. (A temporary rule currently ad-

dresses this subject within LSA Document #03-341(E).) Effective 30 days after filing with the secretary of state.

312 IAC 6.5

SECTION 1. 312 IAC 6.5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6.5. OFF-ROAD VEHICLES AND SNOWMOBILES

Rule 1. Registration

312 IAC 6.5-1-1 Purpose
Authority: IC 14-10-2-4; IC 14-16-1
Affected: IC 14-16-1

Sec. 1. The purpose of this rule is to assist with the registration of an off-road vehicle or snowmobile under IC 14-16-1. *(Natural Resources Commission; 312 IAC 6.5-1-1)*

312 IAC 6.5-1-2 Definitions
Authority: IC 14-10-2-4; IC 14-16-1
Affected: IC 14-8

Sec. 2. In addition to the definitions in IC 14-8, IC 14-16-1, and 312 IAC 1, the following definitions apply throughout this rule:

(1) "Dealer registration" means a certificate of registration issued under IC 14-16-1-16 to a dealer or a manufacturer.

(2) "Decal" means a sticker or similar document to identify a vehicle's registration number under IC 14-16-1-9 and IC 14-16-1-11.5.

(3) "Division" means the department's division of accounting.

(4) "Interim certificate of registration" means a written instrument sufficient to support an intent to renew or register an off-road vehicle or a snowmobile.

(Natural Resources Commission; 312 IAC 6.5-1-2)

312 IAC 6.5-1-3 Interim certificate of registration
Authority: IC 14-10-2-4; IC 14-16-1
Affected: IC 14-16-1

Sec. 3. (a) Upon the purchase of a vehicle or the renewal of a vehicle previously registered, an operator must apply to the department for an interim certificate of registration. The application may be made on-line with the assistance of a dealer or in person at the division's offices in Indianapolis. The application must include the following information:

(1) Name.

(2) Address.

(3) Date of purchase of a vehicle or date of expiration of a registration for a vehicle registered previously.

(4) Year.

(5) Make.

(6) Model.

(7) Vehicle identification number.

(b) An interim certificate of registration shall be issued on a form approved by the division. The interim certificate of registration expires:

(1) thirty-one (31) days after the date of purchase; or

(2) for a vehicle registered previously, thirty-one (31) days after renewal of the registration.

(Natural Resources Commission; 312 IAC 6.5-1-3)

312 IAC 6.5-1-4 Decals
Authority: IC 14-10-2-4; IC 14-16-1
Affected: IC 14-16-1

Sec. 4. (a) The department shall design and approve the following decals that:

(1) Have a unique identification number for each registration.

(2) Are differently colored than those used in the previous year.

(3) Can be easily identified and verified by a law enforcement officer.

(b) An owner or operator must attach two (2) decals that are each clearly visible for identification, with one (1) on each side of the forward half of the vehicle. A dealer or manufacturer may display the decals on an attached but removable sign. *(Natural Resources Commission; 312 IAC 6.5-1-4)*

312 IAC 6.5-1-5 Fees
Authority: IC 14-10-2-4; IC 14-16-1
Affected: IC 14-16-1

Sec. 5. In addition to the fees established by IC 14-16-1, the following fees apply:

(1) Thirty dollars ($30) for each registration renewal requested under IC 14-16-1-11.

(2) Six dollars ($6) for each replacement decal requested under IC 14-16-1-11.5(b).

(3) Fifteen dollars ($15) for each change of address requested under IC 14-16-1-14(d).

(4) Thirty dollars ($30) for each transfer of ownership requested under IC 14-16-1-14(e).

(5) Thirty dollars ($30) for each of the first two (2) registrations requested by a manufacturer or dealer under IC 14-16-1-16(a).

(6) Thirty dollars ($30) for each registration requested by a manufacturer or dealer under IC 14-16-1-16(a) that is subsequent to those requested under subdivision (4).

(Natural Resources Commission; 312 IAC 6.5-1-5)

312 IAC 6.5-1-6 Administrative review
Authority: IC 14-10-2-4; IC 14-16-1
Affected: IC 4-21.5

Sec. 6. An owner or operator may seek administrative

review, under IC 4-21.5 and 312 IAC 3-1, of an order issued by the department under this rule. *(Natural Resources Commission; 312 IAC 6.5-1-6)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 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 a proposd new rule to govern the registration of off-road vehicles and snowmobiles. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #03-282

DIGEST

Amends 326 IAC 7-4-13 to make corrections and update information for sources listed in the rule. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 2003, Indiana Register (27 IR 573).

Second Notice of Comment Period: February 1, 2004, Indiana Register (27 IR 1654).

Notice of First Hearing: April 1, 2004, Indiana Register (27 IR 2299).

Date of First Hearing: May 5, 2004.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4 until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on February 1, 2004, at 27 IR 1654, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from February 1, 2004, through March 3, 2004, on IDEM's draft rule language. IDEM received comments from the following party:

American Electric Power (AEP)

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

Comment: We appreciate IDEM's adoption of the language we proposed in comments to the First Notice of Proposed Rulemaking relating to Tanners Creek Plant located in Lawrenceburg. As proposed by IDEM, we support this rule and encourage IDEM to finalize this rule in this form at the earliest possible time and submit it to U.S. EPA for incorporation into the state implementation plan. (AEP)

Response: IDEM is recommending the language suggested by AEP to the Air Pollution Control Board for final adoption.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On May 5, 2004, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 7-4-13. No comments were made at the first hearing.

326 IAC 7-4-13

SECTION 1. 326 IAC 7-4-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 7-4-13 Dearborn County sulfur dioxide emission limitations

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

Sec. 13. The following sources and facilities located in Dearborn County shall comply with the sulfur dioxide emission limitations in pounds per million Btu and other requirements:

Source	Facility Description	Emission Limitations	
(1)	Indiana Michigan	(A) Units 1, 2, and 3	1.2 each
	Power Tanners	(B) Unit 4	**5.24**
	Creek Station,	~~Prior to October 1, 1989~~	~~8.3~~
	Source Identification No. 00002	~~Beginning October 1, 1989~~	~~6.6~~
		~~Beginning August 1, 1991~~	~~5.24~~

~~Beginning July 1, 1988, coal delivered to the Tanners Creek Station shall not exceed a sulfur dioxide emission rate equivalent to an emission limit of six and six-tenths (6.6) pounds per million Btu.~~

~~(2)~~	~~Schenley Distillers, Inc.~~	~~(A) Boilers 1, 2, 3, 6, 7, and 8~~ ~~(B) Boilers 4, 5, and 9~~ ~~(C) Boilers 6, 7, and 8~~ ~~(D) Monthly reports of total sulfur dioxide emissions from Boilers 6, 7, and 8 for the previous twelve (12) consecutive months shall be submitted to the department at the end of each quarter. Sulfur dioxide emissions shall be based on monthly fuel oil usage, average sulfur content, and heating value.~~	~~0.6 each natural gas only 40 tons per year total~~
~~(3)~~ **(2)**	~~Joseph E. Seagram and Sons, Inc.~~ **Pernod Ricard USA, Seagram Lawrenceburg Distillery, Source Identification No. 00005**	~~(A) Boilers 5 and 6~~ **Steam Boiler EU-96** ~~(B) If Boilers 5 and 6 are being operated at the same time, only one (1) of the boilers may use coal or fuel oil. Seagram shall maintain a record of the fuel type used at Boilers 5 and 6 in order to demonstrate compliance with the requirements of this rule. When both boilers are operating simultaneously, daily logs shall be kept. Such records shall be made available to the department upon request. Within thirty (30) days following the end of the calendar quarter in which both Boilers 5 and 6 operated simultaneously, Seagram shall report to the department the fuels used, including daily information for each day during which both boilers operated simultaneously.~~	1.92 ~~each~~
~~(4)~~ **(3)**	~~Diamond Thatcher Glass~~ **Anchor Glass Container Corporation, Source Identification No. 00007**	Furnaces 1 and 2	1.4 each

(Air Pollution Control Board; 326 IAC 7-4-13; filed Aug 28, 1990, 4:50 p.m.: 14 IR 77; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)

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 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 proposed amendments to 326 IAC 7-4-13.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Christine Pedersen, Rule Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

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

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

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

Copies of these rules are now on file at the Office of Air Quality, Indiana 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.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

Proposed Rule
LSA Document #02-204

DIGEST

Amends 328 IAC 1 concerning the excess liability trust fund (ELTF) to provide for additional cost accountability by claim-

ants, to maintain the ELTF, to amend the method for prioritization of claims in the event of a fund balance near or at $25 million, to clarify the definition of "third party liability", to clarify the fund access and to include access to the fund by multiple owners and operators, and to revise and update the schedule of specific costs allowed to be reimbursed. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: August 1, 2002, Indiana Register (25 IR 3906).

Continuation of First Notice of Comment Period: February 1, 2003, Indiana Register (26 IR 1744).

Second Notice of Comment Period: December 1, 2003 Indiana Register (27 IR 952).

Notice of First Hearing: December 1, 2003 Indiana Register (27 IR 952).

Date of First Hearing: March 11, 2004, continued to April 8, 2004.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

Because this proposed rule is not substantively different from the draft rule published on December 1, 2003 at 27 IR 952, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM requested public comment from December 1, 2003, through January 8, 2004, on IDEM's draft rule language. IDEM received comments from the following parties:

Christopher J. Braun, General Counsel to the Indiana Petroleum (PSRB)

Marketers and Convenience Store Association

Maggie McShane, Executive Director, Indiana Petroleum Council (IPC)

Catherine Gibbs, Lee & Ryan (L & R)

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

Comment: The IPCA certainly appreciates the extensive amount of time and effort invested by representatives from the ELTF, IDEM, UST owners and the environmental consulting community during the past several months to develop a consensus on various amendments to the ELTF's rules. The IPCA supports the overall goal of this rulemaking, which has been to ensure that the monies from the Fund are being wisely spent by the UST owner, environmental consultant and IDEM in undertaking reasonable, cost effective cleanups. The IPCA believes that this goal has been accomplished in this rulemaking in several positive ways: (a) further clarification of the rules to avoid the "open checkbook" approach of UST investigations and cleanups; (b) minimizing the potential for claims and billing excesses by tightening certain rules; (c) more carefully evaluating what constitutes "cost effective" site investigations and cleanups and "reasonable" costs; (d) reducing the amounts of certain reimbursable costs; (e) further integration of RISC in determining an appropriate level of cleanup standards for sites, including a cost benefit analysis of operation and maintenance costs for long-term monitoring of sites; and (f) the prioritization of sites based on the actual environmental risks to human health and the environment.

These changes are certainly needed. Since its high water mark in June 2001 when its balance peaked at more than $87,000,000, the ELTF's balance has rapidly declined, to $68,000,000 in June 2002, $52,000,000 in June 2003 and $37,000,000 as of October 31, 2003. The reasons for this situation are many and are more fully reflected in the article recently published in the IPCA's Fueling Indiana magazine, a copy of which is attached hereto at **Tab 1** and incorporated herein. Moreover, the consolidation within the petroleum marketing industry continues, as the large number of mergers and acquisitions of UST operations has resulted in numerous site investigations and cleanups as part of the transfer of the properties, with the total amount of claims being paid by the ELTF nearly tripling in two years, as they increased from roughly $16,000,000 in 2001 to more than $47,000,000 in 2003. During this same period, the annual revenue levels derived from UST payments and the oil inspection fee ranged from a low of $26,649,319 to a high of $37,612,959. At the current pace of claim submission and payment, it is anticipated that by mid-2004 the ELTF will be depleted to the range of $25,000,000, at which point the ELTF's administrator is authorized to invoke restrictive procedures under a priority claim and payment process.

The IPCA believes that the draft rules are a significant and positive step forward in addressing the above concerns. Subject to the handful of changes listed below, the IPCA fully supports these rulemaking changes. These changes, if adopted, would clarify certain areas of the ELTF, would be consistent with the legislative purpose set forth in the governing statutes, and would provide greater protection to ensure that the ELTF remains a fiscally responsible, viable funding mechanism for our members' UST liabilities for many years to come. (PSRB)

Response: The department thanks the association for its comment and its support of this rulemaking.

Comment: **328 IAC 1-1-8.3:** "Reasonable" means that the **site characterization and** corrective action **are** appropriate and performed only as necessary to meet the cleanup objectives. The term also means that corrective action and site characterization are consistent with 328 IAC 1-3-5(a) through 328 IAC 1-3-5(e).

Change made to be consistent with other provisions in rulemaking and to avoid later confusion over the application of the term "reasonable." (PSRB)

Response: IDEM agrees and this was changed as specified.

Comment: **328 IAC 1-1-10:(a)** "Third party liability" means the damages a tank owner or operator is legally obligated to pay for injury, costs, and damage suffered by a third party as the result of a release. The term includes bodily injury and property damage.

(b) The term does not include the following:

(1) Punitive or exemplary damages.

(2) Claims arising on behalf of or in favor of a claimant, **owner or operator except that in the event of a third party claim being asserted either by an owner of a site with USTs against the operator of the site or by an operator of a site with USTs against the owner of the site, then the owner and operator would only be able to assert a first party claim and would have no greater rights to recover from the Fund than a claimant asserting a first party claim to the Fund.**

(3) Costs that were previously determined ineligible for reimbursement.

The IPCA is willing to accept the proposed language to exclude from the definition of third party liability: (a) claims arising on behalf of or in favor of a claimant; and (b) costs that were previously determined ineligible for reimbursement. However, for the following reasons, the IPCA cannot accept the proposed change to exclude new owners and operators from third party liability. Instead, to balance the needs of the IPCA, the ELTF and IDEM on this important issue, for future claims the IPCA is willing to accept limiting the types of damages that can be recovered in this situation to that of a first party

claim, namely, site characterization and corrective action costs. By placing the owner and operator on the same footing with a first party claimant this would require the payment of a deductible and not allow the recovery of various damages eligible to be recovered in a third party claim, such as lost rent, interest, attorney fees, and diminution in property value due to contamination. This type of limitation would place an owner/operator of a UST site on equal footing with an owner who leases its UST site to an operator. Also, these owner/operator claims would be subject to the same requirements imposed on first party claims, such as UST registration, payment of UST fees, payment of a deductible, timely reporting of a release, etc. Absent such language, the IPCA will have no choice but to oppose IDEM's proposed language to exclude owners and operators from third party liability coverage, for the following reasons. Contrary to the statement in IDEM's comments to the rules, the revisions to third party liability proposed by the Indiana Attorney General to specifically exclude owners and operators is not a clarification, but, rather, a substantial change that is objectionable and will have far-reaching consequences.

First, the proposed language to exclude owners and operators is completely contrary to the position taken by the Financial Assurance Board on this very issue at its June 12, 2003 meeting. In the **Resolution Adopted by the Financial Assurance Board, dated June 12, 2003,** the FAB adopted the following position on this issue:

...WHEREAS, Indiana Code §13-23-8-1 and §13-23-9-3, and the regulations or rules thereunder, do not define "third party" or "third parties" to mean any third party except owners and/or operators; and

"BE IT HEREBY RESOLVED, to accomplish the Fund's purposes of encouraging environmental cleanups and payment of first party and third party environmental liabilities arising from underground storage tanks, under Ind. Code §13-23-8-1 and §13-23-9-3 and any regulation or rule arising thereunder, "third party" and "third parties" are to be construed broadly to include any and all such third party claims against an owner or operator of an underground storage tank, including an owner or operator of a site with underground storage tanks."

For ease of review, a copy of the Board's Resolution is attached at **Tab 2.** Given that the FAB is responsible for the Fund and its administration, the IPCA believes that IDEM should reflect the position of its client, the FAB, not the Attorney General, on this issue.

Second, excluding the USTs that are owned by the major oil companies, the IPCA members own, operate and/or supply petroleum products to a majority of the remaining USTS in Indiana that are subject to Indiana's Underground Storage Tank program and the ELTF. The IPCA members have hundreds, if not thousands, of UST locations around the State of Indiana where they have entered into contractual arrangements to lease sites to operators who depend on the ELTF to pay for any liabilities arising from the UST operations and related environmental liabilities. As a result, IPCA members and their lessees, dealers and otherwise, routinely face substantial first party and third party liability claims due to UST contamination and will face such claims in the future. Cleanups from leaking USTs typically range in the six figures up to seven-figure range and pose a major liability and expense for UST owners and operators. To suddenly narrow the third party liability coverage available to UST owners would impose a fiscal impact on the regulated community far greater than $500,000. This change would also force UST owners, lessors and lessees throughout the State of Indiana to renegotiate hundred os existing dealer agreements, site and operational leases and other contractual arrangements to address this newly unfunded environmental liability.

Third, since the Fund was enacted in 1988, the IPCA and its members have relied upon the Fund to provide complete first party and third party liability protection and have entered into countless contractual agreements and transactions based on this understanding. Due to the Careful management of these sites throughout the State of Indiana and cooperative efforts of UST owners and operators through the cleanup stage, it is the IPCA's understanding that **only three (3) claims involving a UST owner and operator have ever been submitted to the Fund in its 15-year existence. Morever, of the more than $158,000,000 in claims paid during the 15-year history of the Fund, only one such claim for less than $111,000 has even been paid by the Fund.** Consequently, under the existing language there has been no abuse of the Fund by UST owners and operators on this issue, further supporting the lack of support for changing the existing language. Simply stated, the Fund has **not** experienced a significant number of claims or drain on its resources as a result of the existing language and the ICPA members have continued to rely on this Fund coverage in negotiating dealer agreements, site and operational leases and other transactional documents. To change the status quo now by narrowing the definition of third party to exclude owners and operators would leave a significant, unfunded environmental exposure. This would also be contrary to the state and federal requirements which require a financial assurance mechanism to demonstrate financial responsibility of $1,000,000 per site. (PSRB)

Response: The department appreciates the association proposing compromise language on this issue. The concepts discussed in the draft language have been placed at 328 IAC 1-3-1, Fund Access.

Comment: **328 IAC 1-3-1.3 Cost Effectiveness of Corrective Action**. **1.3(a)(2)(C)** if appropriate, a demonstration that the remediation approach will substantially reduce or eliminate **first party and/or** third party liability.

Change made to clarify that in determining the cost effectiveness of a corrective action, it is appropriate to consider the reduction and/or elimination of both first party and third party liability. (PSRB)

Response: The department agrees that the projected costs of the selected remediation approach should be included in the cost effectiveness analysis. A change was made to 328 IAC 1-3-1.3(b)(1) to include this factor.

Comment: **328 IAC 1-3-1.3(b)(3)** The cost projections under subsection (a)(2)(A) for the remediation approaches and the work to be performed do not exceed the reimbursable costs allowed under **328 IAC 1-3-5(a) and (c) of this rule.**

Change made to be consistent with other provisions in the rulemaking. (PSRB)

Response: IDEM considered this change and added 5(a). IDEM disagrees that reimbursable costs are designated in 328 IAC 1-3-5 (c).

Comment: **328 IAC 1-3-1.3(b)(5)** A demonstration that the remediation approach will substantially reduce or eliminate **first party and** third party liability.

Change made to clarify that in determining the cost effectiveness of a corrective action, it is appropriate to consider the reduction and/or elimination of both first party and third party liability. (PSRB)

Response: The department agrees that the projected costs of the selected remediation approach should be included in the cost effectiveness analysis. A change was made to 328 IAC 1-3-1.3(b)(1) to include this factor.

Comment: **328 IAC 1-3-1.6 Preapproval of Costs**. **(c)** The administrator will send a preapproval letter to the owner or operator stating how much of the cost for each item is preapproved as reasonable and cost effective. This preapproval is not a determination on **fund** eligibility.

Change made to avoid confusion that preapproval of costs does not extend to a determination of a UST owner's eligibility under the fund, which is a separate consideration. (PSRB)

Response: IDEM agrees and this was changed as specified.

Comment: **328 IAC 1-3-3 Eligibility Requirements. (a) (4)** A person who acquires ownership in accordance with subsection (d) and has made timely payment of all past due tank fees, interest and penalties in accordance with subsection (g) for any site characterizations or corrective action related to **the discovery of a release that is reported** after the payment of all past and currently due fees, interest and penalties.

Under the existing regulations, a buyer who submits payment for any past due tank fees, interest and penalties within 30 days of acquiring the site is eligible under the Fund for UST petroleum related claims subsequently discovered and reported to IDEM. Given the subsurface nature of the USTS and the fact that many UST releases occur slowly over long periods of time, the emphasis should be on when the petroleum release is discovered and reported to IDEM, not when first began occurring, which could have been before the date the buyer acquired the site unbeknownst to the seller and buyer. (PSRB)

Response: IDEM agrees and a change was made to refer to a release "first suspected, discovered or confirmed" to this subdivision.

Comment: **328 IAC 1-3-3(d)** IDEM deleted this entire section dealing with a tank owner's right to appeal and resubmit a denied claim yet it does not appear that IDEM replaced or referenced as alternative method for such rights of appeal and resubmission, which need to be provided to UST owners who do not agree with a decision by IDEM/ELTF to deny a claim. (PSRB)

Response: The right to appeal is addressed in 328 IAC 1-5-2. The resubmission of claims process is still being considered by the department because additional costs to the fund are involved.

Comment: **328 IAC 1-3-3(f)** The purchaser is to collect all past due tank fees, interest and penalties from the noncompliant seller and remit to the administrator the full amount of the assessment for the subject underground petroleum storage tank provided by the administrator in accordance with subsection (f) prior to an occurrence **being reported to IDEM**.

Under existing regulations, a buyer who submits payment for any past due tank fees, interest and penalties within 30 days of acquiring the site is eligible under the Fund for UST petroleum related claims subsequently discovered and reported to IDEM. Given the subsurface nature of the USTs and the fact that many UST releases occur slowly over long periods of time, the change is made to properly place the emphasis on when the petroleum release is discovered and reported to IDEM, not when it first began occurring, which would have been before the date the buyer acquired the site. (PSRB)

Response: Subsection (f) is now 328 IAC 1-3-3-(d). IDEM has changed "occurrence" to "release".

Comment: **328 IAC 1-3-3(g)(2)(A)** For sites that were never registered, or sites for which no tanks were **ever** paid when due, the penalty will be calculated at two thousand dollars ($2,000) under IC 13-23-12-7(a) per petroleum underground storage tanks per year that passes after each year's fee is due.

Change made to clarify that the $2,000 penalty applies to UST owners who never registered or who never paid any fees for any USTs at a site. In addition, both of the tables that follow this provision appear to have incorrect totals. For example, in the first table, three years of missed tank fees for one UST at $2,000 per year equal $6,000, not $12,000. In the second table involving a UST owner who has made some but not all payments, three years of missed tank fees for one UST at $1,000 per year equals $3,000, not $6,000. (PSRB)

Response: The penalties increase exponentially under this provision. This is meant to meaningfully deter persons who fail to register their tanks or timely pay fees. The rule language is based on IC 13-23-12-7.

Comment: **328 IAC 1-3-4 Amount of Coverage. (a)** After payment of the applicable deductible amount, the fund may pay for reimbursable costs incurred by persons listed in section 1 of this rule **for site characterization and corrective action costs** and third party liability claims as specified in IC 13-23-8-1.

Change made to be consistent with other provisions in the regulations and this rulemaking. (PSRB)

Response: IDEM believes that this change is unnecessary and redundant. Reimbursable costs are specifically described in 328 IAC 1-3-5(a).

Comment: **328 IAC 1-3-5 Costs. (a)(2)(B)** The work performed was consistent with site characterization or an approved **or deemed approved** CAP.

Change made to ensure that both approved and deemed approved CAPS are covered by this provision. (PSRB)

Response: An "approved" CAP does include a "deemed approved" CAP, subject to 328 IAC 1-5-3. No change to the existing language was made.

Comment: **328 IAC 1-3-5(b)(10)** Any other reimbursable costs the administrator finds to be necessary. Payment of a third party liability claim the administrator **approves pursuant to IC §13-23-3.**

Change is made to be consistent with other provisions in the regulations and this rulemaking. (PSRB)

Response: This provision is now at 328 IAC 1-3-5(b)(9). IDEM has made changes to 328 IAC 1-6-2 to clarify that the Attorney General approves requests for payment of third party liability claims. 328 IAC 1-3-5 now deals only with reimbursable costs, not third party liability claims.

Comment: **328 IAC 1-3-5(b)(13)**The cost is consistent with an approved **or deemed approved** CAP where projected costs for the work to be completed under the CAP are reviewed by the **administrator** to determine whether the costs are reimbursable costs.

Change is made to ensure that both approved and deemed approved CAPS are covered by this provision and to be consistent with other references to the administrator rather than commissioner. (PSRB)

Response: The concepts contained in the provision are now part of 328 IAC 1-3-5(a). This subsection now includes, in essence, the language proposed in this comment.

Comment: **328 IAC 1-3-5(c)** The approval of the initial site characterization and the corrective action plan under rules of the solid waste management board at 329 IAC 9 does not necessarily mean that **the actual** costs **incurred** are reimbursable under this rule.

These changes are consistent with other provisions in this rulemaking to ensure that IDEM's approval of an ISC or CAP is limited to these items and does not extend to the actual costs incurred, which are subject to a separate consideration later by the Fund. (PSRB)

Response: IDEM agrees and this was changed as specified.

Comment: **328 IAC 1-3-5(d)(14)(B)** excavation and disposal were shown to be **most cost-effective** remediation option.

Change made to be consistent with the cost-effective language and definition adopted in this rulemaking, which includes a number of considerations. (PSRB)

Response: IDEM agrees and this was changed as specified.

Comment: **328 IAC 1-3-5(d)(14)(C)** the soil removal is part of a CAP approved or deemed approved by the **administrator**.

Change made to be consistent with other references to the administrator rather than commissioner. (PSRB)

Response: IDEM agrees and this was changed as specified.

Comment: **328 IAC 1-4-1 General Procedure** There needs to be a timetable for claims to be classified by IDEM, such as 30 days after submission, so the UST owner and its consultant have a priority

determination and an understanding of the likelihood of reimbursement at an early stage of a site investigation and remediation and can plan and budget accordingly. (PSRB)

Response: The department is considering development of a timetable or some other feasible alternative.

Comment: **328 IAC 1-4-1(1)(b)** Most, if not all, emergency situations require immediate response by the UST owner. As such, these situations do not afford the luxury of time to first submit the necessary documentation to IDEM to obtain preapproval of expenditures and proposed tasks by IDEM and/or the Fund Administrator before undertaking the work and incurring the expenses. Thus, it is unclear why this category is separately listed. Instead, the IPCA suggests that either the word "preapproved" be deleted from the first sentence of (b) or, alternatively, that these claims and expenditures be included in the Category 1 list of claims. (PSRB)

Response: There is no 1-4-1(1)(b). There is a 1-4-1(b) and the word "preapproved" does not appear anywhere in this section.

Comment: **328 IAC 1-4-1(2)** Given the potential third party liability claims that exist and the need to move forward more urgently when off-site soil and groundwater contamination is encountered, the IPCA suggests that these claims be moved up from Category 3 (see (3)(A) and (B)) to Category 2 claims. (PSRB)

Response: IDEM believes that higher prioritization should be given to the most immediate and significant threats to the environment. This is a requirement of IC 13-23-8. However, third party liability is categorized as the site is categorized in the current draft rule.

Comment: **328 IAC 1-4-3 Reclassification of Releases**.

(a)(3) If the administrator approves placement in a **different** category, the applicant may seek reimbursement under the new category for any costs incurred subsequent to the placement.

Change is made to allow the administrator flexibility to reclassify a claim to either a higher or lower category. For example, a claim may initially be classified as a low priority claim, such as Category 3, but then further investigation reveals high levels of free product or significant off-site contamination that would warrant a higher priority claim classification. (PSRB)

Response: IDEM agrees and will change to word "lower" to "different".

Comment: **328 IAC 1-4-4 Monthly Reimbursement. (a)** The total amount reimbursed from the fund **each month** must not exceed ten percent (10%) of the fund balance based on the average fund balance of the previous fiscal quarter...

Change made to clarify that the limitation on the amount reimbursed is on a monthly basis. (PSRB)

Response: IDEM agrees and the language was changed.

Comment: **328 IAC 1-5-1 Applications for payment of reimbursable costs. (b)** The application shall contain the following statement, which shall be signed and attested by the person applying to the fund and the owner **or** operator: "I swear or affirm...

Given that the owner and operator are often two distinct corporate entities, only one of which has the USTs registered in its name at the time a claim is submitted, the sworn statement should be signed by the entity responsible for the UST registration, UST payment and claim for reimbursement. (PSRB)

Response: 328 IAC 1-5-1(b) has been revised to clarify this issue.

Comment: On behalf of the Indiana Petroleum Council, I would like to submit the following comments regarding the proposed amendments to rules concerning the Excess Liability Trust Fund. The Council is a trade association representing oil suppliers and refiners that have assets in the state of Indiana. Some of our member companies also own and operate underground storage tanks in the state, and thus, are very concerned with the solvency of the Excess Liability Trust Fund (ELTF) and the continued success of Indiana's UST program. A healthy fund balance in the Excess Liability Trust fund is a major priority for the Council and its members. Unlike some other states that have seen their fund run dry, Indiana has established a long history of support for the ELTF by the industry, legislators and regulators alike. This partnership is critical in order for the ELTF to continue to be a viable entity in the future. (IPC)

Response: The department thanks the Council for its support. IDEM agrees that the viability of the fund must continue to be supported by all stakeholders.

Comment: First, I would like to compliment IDEM staff on their hard work conducting the numerous public work group meetings regarding the proposed amendments. The Council applauds the efforts by the department to take the necessary steps to ensure that the fund is used for its intended purpose and claims made against the fund are cost effective and reasonable in nature. Also, with the prospect that the fund may for the first time dip below the $25 million mark, it is important to clarify the prioritization scheme for claims so that those sites posing the most significant threat are given priority in payment. (IPC)

Response: IDEM believes that the proposed prioritization scheme presented in 328 IAC 1-4 is much clearer and more specific than the current rule language. Sites posing the most immediate and significant threats to the environment will receive top priority.

Comment: The Council supports several of the definitional changes proposed by the department, which we believe provide some necessary clarity to the rules. For example, the Council believes the changes in the definition of "substantial compliance" in 328 IAC 1-1-9 are positive. With more and more pressure on the fund balance, the Council does not believe it is appropriate to reward tank owners and operators who do not comply with existing regulatory or statutory requirements and deadlines over those who comply with all applicable requirements. The language proposed by the department is a positive addition to the rule and clarifies the existing, somewhat vague, current language. (IPC)

Response: IDEM thanks the Council for its support of these changes to definition of "substantial compliance".

Comment: The Council also supports the department's proposed changes to the definition of "reasonable" in 328 IAC 1-1-8.3. The Council, however, is concerned about the manner in which the new definition may be applied to work already submitted in a claim in the past that may have been deemed reasonable at the time but is now no longer deemed reasonable. The Council asks that the Department use caution in applying this new definition retroactively, which could potentially have an adverse effect on site that where the work is already in progress and a CAP has already been approved. (IPC)

Response: It is not the department's intention to deny reimbursement for costs for work that was previously approved as reasonable. There may be circumstances, however, where IDEM denies claims for work previously performed that IDEM did not review.

Comment: In addition, the Council supports the Department's efforts to further define "cost effectiveness of corrective action," which we believe is an important step toward keeping a check on clean up costs that will, in turn, help protect the fund balance. However, this new step additional step for the fund administrator should not result in adding any unnecessary delays to the claims review process. In addition, the Council requests that the Department consider that in certain cases where a third party may be impacted the third party may request that the impacted property be cleaned up to a more stringent clean up criteria. A third party may have a future plan for a parcel currently zoned commercial that involves more than commercial use. Third party claims should be granted an exception in this case and reimbursement

should be allowed for corrective action that goes further than what might be acceptable for the current use if requested by a third party. (IPC)

Response: The department does not believe there will be unnecessary delays. Generally the fund cannot pay for higher cleanup levels for a speculative future use. Please see the current draft language at 328 IAC 1-3-5(d)(13).

Comment: The Department has added a new definition of "third party" in the proposed rule, which excludes an owner or operator. The Council requests that IDEM add language to the proposed draft that would allow a property owner who did not own or operate USTs at a particular site to be allowed eligibility to the fund in the same manner they would if they owned or operated tanks at the site. This would protect an innocent landowner who leased his property to another tank owner/operator, but did not cause the release. In essence, this would allow for multiple first party claims at a site and would not leave a property owner stranded with a release he did not cause at a site that had been ELTF eligible, but with no chance of reimbursement from the fund. As a member of the Financial Assurance Board, I also believe this approach to be consistent with the intent of the FAB when it passed a resolution on this matter last June. (IPC)

Response: IDEM agrees that UST owners, UST operators, and owners of property containing USTs, should be able to access the fund if they meet the eligibility requirements. The department also agrees that more one or more of these parties should be able to access the fund. Based on these comments and comments received from others, IDEM modified 328 IAC 1-3-1 Fund access, to further clarify and ensure that this may occur.

Comment: **328 IAC 1-1-8.3 "Reasonable" defined:** Lee & Ryan believes that this rule should include a specific reference to the requirements under 329 IAC 9-4, 9-5 and 9-6. As all corrective action, including site characterization, must meet these requirements, any costs associated with the work required by these rules must be presumed to be reasonable. In addition, as 328 IAC 1-3-5 refers only to the costs of corrective action, the rule needs to be clarified. Lee & Ryan suggests the following changes to the proposed rule language:

Sec. 8.3. "Reasonable" means that the *corrective* action is appropriate and performed as necessary to meet the cleanup objectives for the site *and the requirements under 329 IAC 9 and other applicable federal and state regulations and local ordinances.* The term also means that the *costs associated* action and site characterization are consistent with 328 IAC 1-3-5(b) through IAC 1-3-5(e). (L & R)

Response: IDEM agrees with most of the changes proposed in this comment and has made changes to the definition accordingly.

Comment: **328 IAC 1-1-9 *"Substantial compliance"* defined** The reference to the "spill reporting rule" is somewhat vague and references to the actual rules should be included. Also, IDEM had originally proposed allowing a grace period of 30 days rather than 7. For purposes of determining ELTF eligibility, 30 days is more reasonable. In addition, "threatens to harm" is very vague. In theory, any release of petroleum to the environment presents a "threat". For purposes of ELTF reimbursement, Lee & Ryan believes that actual harm to the environment should be shown in order to deny reimbursement to an otherwise eligible owner or operator. (If IDEM chooses to punish an owner or operator for failing to report in a timely manner, it has enforcement authority.) Lee & Ryan suggests the following changes to subsection (b), rule language:

(b) An owner or operator is not in substantial compliance if the release:

(1) has not been reported, under ~~the spill reporting rule~~ *either 3,2. LAC 9-4-1 or 327 IAC 2-6.1* as applicable at the time of the release, within ~~seven (7)~~ *thirty (30)* days of the discovery of the release; or

(2) harms ~~or threatens to harm~~ public health or the environment and was not timely reported under ~~the spill reporting rule~~ *either 329 IAC 9-4-1 or 327 IAC 2-6.1 as* applicable at the time of the release. (L & R)

Response: Seven days is sufficient time for "substantial compliance" when a spill is required to be reported within twenty-four (24) hours under the law.

Comment: **328 IAC 1-2-1 Applicability.** The date for determining the *applicable* cost should be the date the work is performed, not the date of the invoice, regardless of whether *the work* is performed by a subcontractor or the *owner or* operator. If the work is conducted over a period of days *and overlaps* the effective date of the rules, the date for determining which cost should be applied should be the date the work began.

Lee & Ryan suggests *that* the language remain essentially the same:

(2) The applicable cost range or amount of the reimbursable cost, as set forth in 328 IAC 1-3-5, shall be determined as of the date *the expense was initially incurred by the applicant to the fund.* (L & R)

Response: The applicable cost is based on the date the cost was incurred. If it is a cost incurred by the owner, operator or assignee, it is the actual date the work is performed or completed. However, if it is a cost for which subcontractor performs work for a contractor in an assignment situation or if a contractor performs work for an owner or operator, that cost is not incurred until an invoice is generated.

Comment: **328 IAC 1-3-1.3 Cost Effectiveness of Corrective Action.** The proposed language in 328 IAC 1-3-1.3(a) states *that,* "the Administrator will not make a determination on cost effectiveness before a CAP is approved." It is unclear why the Administrator will not make this decision at this point in time. Delaying this determination only serves to delay the corrective action as the owner or operator must, upon receiving CAP approval, resubmit all of this *information* in order to get a determination regarding cost effectiveness. Lee & Ryan suggests deleting this language. (L & R)

Response: IDEM agrees that the department should take whatever steps possible to ensure timely approval of work to be performed. However, before the work can be evaluated for cost effectiveness, the department must first determine that the proposed CAP is appropriate or will indeed work. As a practical matter, these approvals should occur simultaneously. IDEM does not expect significant delays or resubmittals as a result of this process. Both CAPS and budgets should be submitted together and will be reviewed concurrently.

Comment: **328 IAC 1-3-1.6 Preapproval of costs.** It is important that IDEM provide guidance as to how this provision well be implemented. It is likely that this procedure will be used frequently. There is a strong possibility that this could slow down the remediation of sites if IDEM does not have a process in place for implementing this. It should be clear that preapproval means that the costs will be deemed reimbursable under 328 IAC 1-3-5(a). It is important *that* the regulated community know that even through CAP approval does not "necessarily mean that costs are reimbursable costs under the rule " (328 IAC 1-3-5(c)), that there is a mechanism by which the owner/operator can get a definitive response from IDEM regarding which costs will be reimbursed. It is equally important that this response be timely. Lee & Ryan suggests the following language:

328 IAC 1-3-1.6 Preapproval of reimbursable costs

Sec. 1.6 (a) Persons described in section 1 of this rule may submit to the administrator a request for a preapproval of reimbursable costs for work to be performed under the approved CAP. The administrator's preapproval will be based on the following:

(1) A determination of cost effectiveness under section 1.3 of this rule.

(2) Costs are reasonable.

(b) Costs preapproved under this section shall be deemed to be reimbursable under 328 IAC 1-3-5(a).

~~(b)~~ **(c) The administrator may ask for additional information to substantiate the projected work and projected costs.**

~~(c)~~ **(d) The administrator will send a preapproval letter the owner or operator stating how much of the cost for each item of work is preapproved as reasonable and cost effective. This preapproval is not a determination of eligibility.**

(e) The administrator shall review any requests for preapproval within sixth (60) days of receipt. (L & R)

Response: Further discussions with the workgroup may be necessary to finalize changes to this section.

Comment: 328 IAC 1-3-5(a)(12) Mark up. As the primary contractor on an ELTF project, Lee and Ryan incurs various costs related to its business as a whole, and not specifically chargeable to the project in particular. These expenses include: administrative salaries, insurance costs, office rent, utilities and taxes, telephone communications, office equipment and supplies, health care benefits for employees and other such customary corporate expenses. As the company adds additional projects, the overhead costs rise as well. The company's revenue stream must be sufficient to cover these expenses. This is true whether the environmental work, such as drilling, sample analysis or system operation and maintenance, is handled internally or subcontracted to other parties. In additional the general overhead costs, the costs to obtain liability insurance, prepare ELTF claims, purchase equipment, handle data processing needs, process invoices and bills and other such administrative responsibilities must be performed related to the ELTF project, but aren't reimbursed. The projects' net profit margin needs to be sufficient to cover these expenses. A 15% mark-up allows the corporation to recover these costs with very minimal additional profit. Since the cost will not decrease as the mark-up is reduced, reducing the mark-up on subcontractor revenues to 10% will result in the consulting firms failing to recover their overhead costs. If consultants cannot make a profit from ELTF work, they will be reluctant to take on such projects. This may result in a delay in cleanups. Lee and Ryan suggest that the mark-up remain 15%. (L & R)

Response: IDEM disagrees that the markup should remain at 15%. After review of several other state fund programs, about 90% allow a 10% markup. Often, the costs for larger purchases such as building a corrective action system are incurred by the subcontractor or owner/operator and not the contractor or assignee. In addition, consultants make profits in other ways, particularly with labor rates. Finally, when a Lee & Ryan representative asked if any other consultant had an issue with this change at the January 29, 2004 stakeholder meeting, only one contractor out of about 20 supported this position. One contractor said that 10% is acceptable. The department believes that contractors can still make a fair profit with a lower markup.

Comment: 328 IAC 1-3-5(c). There is still a great deal of uncertainty regarding what cost would not be reimbursable under an approved CAP.. IDEM has provided no guidance on this issue. At the very least, a non-rule policy document must be drafted to provide some direction to the regulated community as to which costs may be denied under this provision. In addition, the rule should contain a requirement that IDEM notify an owner or operator as soon as they have information that the owner or operator intends to incur costs which are not reimbursable. This notification should include the reasons why IDEM made this determination. Lee and Ryan does not believe it is in our clients' best interest to incur costs which will not be reimbursed. If IDEM cannot provide some standards through which the regulated community can determine if the costs they intend to incur are reimbursable, then this provision should be stricken. Lee and Ryan suggests the following language:

(c) The approval of the initial site characterization and the corrective action plan under rules of the solid waste management board at 329 IAC 9 does not necessarily means that costs are reimbursable under this rule except as follows. The following costs will be deemed reimbursable:

(1) Costs preapproved under 329 IAC 1-3-1.6.

(2) Costs incurred for work requested by the administrator. (L & R)

Response: IDEM believes that the current draft rule language adequately addresses this comment. However, IDEM is willing to further discuss the possibility of developing additional guidance at a future date.

Comment: **328 IAC 1-3-5(d)(2) Costs incurred more than twenty-four (24) hours prior to the date and time the <u>suspected or the confirmed release has been reported under the spill reporting rule in effect at the time of the release.</u>**

Discussions held at the external workgroups revealed that the purposed behind this rule is to discourage owners or operators from initiating cleanups for business reasons, such as the sale of the property. The reason why an owner or operator begins an investigation is not relevant to its eligibility for reimbursement. There is a certain amount of information that should be collected prior to initiating actual site work. This information must be included in the site characterization report pursuant to 329 IAC 9. Whether the information is obtained before a release is reported or after is irrelevant. Lee and Ryan suggests deleting this provision. (L & R)

Response: Fund access for work performed cannot be obtained until a release is suspected, discovered or confirmed. That is verified by a release report to the department. IDEM will not reimburse costs incurred prior to that date with the exception noted which acknowledges the reporting requirements of 24 hours.

Comment: 328 IAC 1-3-5(d)(6) Labor Costs. This provision references "the cost of labor and equipment purchases other than those costs routinely required to implement a corrective action plan." No examples of such labor costs are given. For Clarification purposes, examples should be given. (L & R)

Response: There are no references to "labor" in the current draft rule, this was deleted.

Comment: 328 IAC 1-3-5(d)(13). Use of Industrial Levels. Lee and Ryan agrees with IDEM that the use of industrial clean-up levels may be appropriate on the majority of ELTF sites. The following situation should also be included as an exception to this rule: (1) private drinking water wells are contaminated and (2) the properties down gradient are residential. Lee and Ryan suggest the following language:

(13) Any costs for remediation of contamination not shown to be above ~~the concentrations listed in the Indiana Department of Environmental Management Underground Storage Tank Guidance Manual (1994), rules of the solid waste management board at 329 IAC 9 and~~ the RISC **industrial cleanup** standards **with the following exceptions:**

(A) Groundwater contamination affecting a public or private drinking water well on-site or off-site.

(B) Contamination at concentrations exceeding RISC residential cleanup standards off-site, not including roadways.

(C) Contamination at concentrations exceeding RISC residential cleanup standards on-site where the properties immediately down gradient of the site are residential properties.

(D) Contamination at concentrations exceeding RISC residential cleanup standards on-site where the future land use will be residential. (L & R)

Response: IDEM agrees with adding items (A) and (B). IDEM disagrees with items (C) and (D). The RISC program is specifically designed to ensure that contaminants are not migrating onto neighboring properties beyond a perimeter of compliance above acceptable levels such as residential levels. If there is no likelihood of contamination migrating to a neighboring property no matter what the land use is, there is no justification for requiring stricter cleanup objectives. The ELTF was not created for property improvements or development.

Comment: 328 IAC 1-3-5(d)(14)(B) Excavation. In 328 IAC 1-3-1.3, IDEM has proposed adding a definition of "cost effective" and requires that the proposed corrective action be cost effective. 328 IAC 1-3-5(d)(14)(B) proposes to exempt excavation from this requirement. There is no reason why excavation and disposal of contaminated soil should not meet the same criteria as any other corrective action. Lee and Ryan suggests the following language for subparagraph (B):

(B) excavation and disposal was shown to be the most effective pursuant to 328 IAC 1-3-1.3 **~~least costly and quickest~~** remediation option; and (L & R)

Response: IDEM agrees with the reasoning of the comment and this provision has been revised. The phrase "cost effective" has been added to the provision. However, it should be noted that 328 IAC 1-3-1.3 is not a definition, but delineates an analysis for cost effective of remediation alternatives. The phrase "cost effective" in 328 IAC 1-3-5(d)(14)(B) should be given its plain and ordinary meaning.

Comment: 328 IAC 1-3-5(e) Drilling costs. Per foot rate for use of hollow stem auger vs. per day for use of direct push: Lee and Ryan does not agree that there should be a separate rate for soil borings that depends upon the method used to install the soil borings. Typically, the use of a direct push is more time efficient and generates less waste. Allowing a per foot rate for the auger seems to be rewarding the use of a less efficient method. In addition, given the rate for the direct push is listed under equipment rental rates, is it now acceptable for the drilling subcontractor to charge hourly labor rates for the installation of soil borings in addition to the daily equipment rental? Lee and Ryan is also concerned about IDEM's policy in deciding which rate to use, either the half-day or full day rate. The rule does note provide any guidance on this matter. In particular, Lee and Ryan would like to point out that, given certain geological conditions, it is possible to spend a significant amount of time working on a site using the direct push and completing on a small number of borings. If the appropriate rate is dependent upon the number of feet frilled in one day, then Lee and Ryan would request that IDEM take the difficulty of drilling in account also. (L & R)

Response: IDEM agrees and has added a statement was added to the rule that says "Direct push technology must be used when it is more appropriate to the site and costs less than other drill methods."

Comment: The costs for an on-site delineation should be reimbursed upon IDEM's approval of the on-site characterization. Frequently, completing the site characterization is difficult if off-site issues arise and the owner or operator must seek access to the off-site properties. This may take a significant amount of time. If the owner or operator were reimbursed for the on-site work, this would ease the financial burden on the owner or operator. (L & R)

Response: The current draft rule describes how costs are reimbursed. Some level of detail is beyond the scope of the rule.

Comment: IDEM required that a licensed professional geologist, registered professional engineer, certified hazardous materials manager or professional soil scientist sign the technical reports, such as the Corrective Action Plan or Initial Site Characterization Report. However, there is no requirement that the IDEM staff reviewing these documents have the same qualifications. It would seem logical that if such qualifications are necessary to write the reports, then the same qualification are necessary to adequately review the reports. (L & R)

Response: These rule regulate persons applying to the excess liability trust fund for repayment of cleanup costs at underground storage tank sites. It also lays out the penalties for non-payment of underground storage tank fees. The rule outlines a prioritization scheme for when the fund payments must be prioritized. This rule implements the statute at IC 13-23-8 and IC 13-23-9. There is no statutory authority for only licensed professional geologists, registered professional engineers, certified hazardous materials managers or professional soil scientists to review technical reports even though many of the department staff do have those credentials.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 8, 2004, the financial assurance board (board) conducted the first public hearing/board meeting concerning the development of amendments to 328 IAC 1. Comments were made by the following parties:

Miriam Smulevitz Dant, counsel to Lee and Ryan (L & R)
Christopher Braun, General Counsel to the Indiana
Petroleum Marketers and Convenience Store Association (PSRB)
Kim Forester, Active Environmental (AE)
Fred Nichols, Astbury Environmental Engineering (AEEI)

Comment: I would like to thank IDEM for making the workgroup process so productive. There have been many improvements in the rule since the original draft and a good dialogue has taken place. It is clear that all interested parties share the same goals of protecting human health and our environment and keeping the fund solvent so it can continue to serve as the required financial assurance. (L & R) (PSRB)

Response: Without the interested parties, many of the rule improvements might not have been recognized. IDEM appreciates the participation of the interested parties in the workgroup meetings.

Comment: The current version of the rule does many positive things. For example, it adds some helpful definitions and improves the accountability and efficiency of the ELTF. (L & R) (PSRB)

Response: Yes, IDEM agrees several helpful definitions were added and it does improve the accountability and efficiency of the rule.

Comment: But the fact of the matter is that regardless of what the rule does or does not do, the fund is being depleted, we are likely going to go into priority payment mode, and the environmental consulting industry will bear some of the brunt of these circumstances. There are still some provisions in the proposed rule that could make this difficult situation worse. I will address just a few of the concerns that we raised in the written comments we submitted to IDEM during the official comment period. (L & R)

Response: The department is trying to maintain the integrity of the fund for financial assurance for underground storage tank owners and operators and avoid the priority payment mode for as long as possible. As the cleanups are still required to be completed, it seems to the department that the brunt of the circumstances caused by the reduction of the fund are borne by the owners and operators of the leaking tanks.

Comment: 328 IAC 1-2-1.3 (Cost effectiveness of corrective action)- The proposed language says that the Administrator will not make a determination on cost effectiveness of the corrective action until after the corrective action plan (CAP) is approved. This concerns us because it could lead to delays in corrective action and possible duplication of information to be submitted to IDEM. In IDEM's response to our comments, the agency said that as a practical matter, both approvals should occur simultaneously, and that IDEM does not expect significant delays or resubmittals. We are encouraged by this response and request the addition of language that reflects IDEM's intentions and expectations regarding this part of the process. (L & R)

Response: The department's intentions are already stated in the last sentence of 328 IAC 1-3-1.3(a). The information required by 328 IAC 1-3-1.3(a)(2)(A) and (C) will usually be submitted to the department simultaneously with the CAP for which approval is requested; IDEM can then be reviewing this information as it evaluates the CAP for approval. It would be an inefficient use of time and fund resources for the department to make a cost effectiveness determination on a CAP that is not yet approved. The section on cost effectiveness does not require duplicate information to be submitted to IDEM.

Comment: 328 IAC 1-3-1.6 (Preapproval of costs) Under this proposed section of the rule, an applicant can request that IDEM preapprove costs for work to be performed under an approved CAP. We are concerned because this preapproval is not a final determination of fund eligibility. In our comments on that language, Lee and Ryan propose language that would deem preapproved costs to be reimbursable, and would require IDEM to review requests for preapproval within 60 days. Much like a patient waiting for preapproval from its health insurer who sees his or her condition worsen and become more costly while waiting for an answer, we are concerned that cleanups will become more expensive and environmental damage more extensive if parties have to wait too long for preapproval of costs, and then still face uncertainty as to whether those costs will ultimately be paid out of the fund. In IDEM's response to our concerns, the agency said that further workgroup discussions may be necessary on this section. We wholeheartedly agree and look forward to working with IDEM and the workgroup on this important issue. (L & R)

Response: Preapproval of costs is solely for cost effectiveness and reasonableness of the work to be performed. (See IC 13-23-9-2(c).) Fund eligibility is determined under a different section of the rule, 328 IAC 1-3-3. Preapproved costs are not automatically reimbursable costs; for example, only costs actually incurred may be reimbursed. The department is willing to discuss how preapproval will be accomplished during the next workgroup meeting, as this comment appears to show an uncertainty about how IDEM will implement this section.

Comment: 328 IAC 1-1-9 (Definition of substantial compliance) We are also concerned about the proposed changes to the definition of "substantial compliance." Specifically, we believe a more reasonable and attainable definition would allow a 30 day grace period for reporting releases, rather than the seven day period that is proposed, and that IDEM should look at "actual harm" to public health and the environment rather than releases that "threaten to harm" human health or the environment. Our concerns raise the question of how IDEM will proceed against owner/operators that are not in substantial compliance, and to what extent will eligibility for the ELTF be impacted? (L & R)

Response: By statute, if the owner/operator is not in substantial compliance then the owner/operator is not eligible for reimbursement from the ELTF. Whether or not enforcement action will be taken against the owner/operator that is not in substantial compliance is outside the scope of this rulemaking. The department believes that 7 (seven) days allows adequate time to comply with the spill reporting requirements that were designed to be complied with within 24 (twenty-four) hours of a spill. The agency selected seven (7) days because timely response to a release is critical to an effective and efficient response action.

Comment: Pursuant to the IPCA's comments at today's FAB hearing and our follow-up discussion after today's FAB meeting, this e-mail sets forth the IPCA's three comments on the draft rule: 1. 328 IAC 1-3-3(a). The language needs to be clarified to confirm the existing policy that a UST owner/operator can submit a third party liability claim and have it paid by the ELTF prior to the date that the UST owner/operator has obtained an approved ISC or approved CAP from IDEM. (PSRB)

Response: The department can only reimburse from the ELFT fund (for reimbursable costs and third party claims) if there is an approved CAP, as per the Indiana statute at IC 13-23-8-4(a) and IC 13-23-8-4(a)(4). A claim can be submitted but will not be paid until the CAP is approved. IDEM is unaware of any existing policy that addresses payment of third party claims prior to CAP approval.

Comment: 2. 328 IAC 1-3-3(f). For a UST owner who has never registered his UST or who has registered his UST but never paid any fees, the penalty will be $2,000 per tank per year, and $1,000 per tank per year for the UST owner who is in partial compliance. However, there cannot be any compounding of the annual penalty and there needs to be notice of the balance from prior years of unpaid fees, interest and penalties provided to the UST owner when the annual UST fee assessment is mailed to the UST owner. (PSRB)

Response: The statute at IC 13-23-12-7(a) states that a penalty shall be assessed of not more than $2, 000 per tank for each year that passes after the fee becomes due and before the fee is paid. The statute allows for compounding. Furthermore, the department believes that this will deter owners/operators from not paying their tank fees. The penalty also helps make it financially unfeasible for tank owners and operators who have never paid tank fees to gain access to the fund to get money to pay for a cleanup. The compounding penalty structure will ensure that the fund is preserved as a financial assurance mechanism under 40 CFR 280 and to reimburse owners and operators, as opposed to being a source of money to clean up abandoned, contaminated sites. However, there may be some specific, limited situations where application of the compounded penalty contained in the rule for partial compliance may not be appropriate. The department is interested in working with the regulated community to address this situation.

The Department of Revenue does send notice to owner/operators with delinquent fees, however, in the case of an illegally, unregistered tank, neither IDEM nor the Department of Revenue can be expected to identify or provide notice to the tank owners/operators.

Comment: 3. 328 IAC 1-7-2. The language needs to be clarified that the administrator will notify the UST owners when the ELTF goes into priority payment mode, but that the trigger of the priority payment mode will not result in the termination of financial assurance nor does priority payment mode constitute insufficient funds to provide for financial assurance. (PSRB)

Response: You have addressed two totally different concepts; the prioritization scheme under 329 IAC 1-4 and cessation of the ELTF as a financial assurance for underground storage tanks under state rules at 329 IAC 9 and federal law at 40 CFR 280. In order to assure the viability of the fund, prioritization is required when the fund falls below $25,000,000. Invoking the prioritization scheme is done to maintain a level of funding that would reasonably ensure continuation of the ELTF as a financial assurance mechanism under state and federal law. However, continued recognition of the fund as a financial assurance mechanism under federal law is not entirely under the control of the state administrator or the department. The notification provision of 328 IAC 1-7-2 relates only to a situation where the ELTF has been determined to no longer provide owners and operators with the financial assurance required by 40 CFR 280 and the state rules. The department will propose clarifying language to distinguish these concepts for the next workgroup meeting.

Comment: We were a part of the workgroup, which has made much progress in putting together an acceptable rule. We hope the board will preliminarily adopt the rule. (AE) (AEEI)

Response: The department agrees and hopes to continue use of the workgroup as a forum for help with changes to the rule and gain consensus for the rule.

SECTION 1. 328 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-2 "Administrator" defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 2. "Administrator" refers to the ~~administrator~~ **commissioner** of the ~~fund.~~ **department.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 787)*

SECTION 2. 328 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-3 "Corrective action" defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 3. "Corrective action" means ~~action taken~~ **any or all work performed or to be performed, including all work performed or to be performed under a CAP as defined under section 3.1 of this rule and rules of the solid waste management board at 329 IAC 9-1-14.7,** to:

(1) minimize;
(2) contain;
(3) eliminate;
(4) remediate;
(5) mitigate; or
(6) clean up a release **caused by an occurrence;**

including emergency measures taken as part of an initial response to the release under rules of the solid waste management board at 329 IAC 9-5-2. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 787)*

SECTION 3. 328 IAC 1-1-4 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-4 "Deductible amount" defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-3; IC 13-23-8-4

Sec. 4. "Deductible amount" means the amount ~~set forth~~ **specified** in IC 13-23-8-3 applicable to each incident number assigned by the department. A person applying to the fund under 328 IAC 1-3-1 must provide evidence of payment of the deductible amount under IC 13-23-8-4(a)(3). *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788)*

SECTION 4. 328 IAC 1-1-5.1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-5.1 "Emergency measures" defined

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-12-3-2; IC 13-23-8-4

Sec. 5.1. "Emergency measures" means any ~~action that is taken at or near a petroleum release to abate an immediate threat of harm to human health, property, or the environment. The actions taken must be approved by the department prior to payment from the fund.~~ **work described under IC 13-23-8-4(b)(1). The term only includes the necessary work performed to directly abate the following conditions related to a release:**

(1) Regulated substances are detected in indoor air in an inhabitable building greater than short term risk-based concentrations under IC 13-12-3-2 for the contaminants of concern.

(2) Regulated substances, greater than ten percent (10%) of the measured lower explosive limits, are detected anywhere in conduits, such as sewers.

(3) Regulated substances are detected as free product or sheen in conduits or surface water.

(4) Regulated substances are detected as free product off-site, not including easements or rights-of-way.

(5) Regulated substances are detected at or above the maximum contamination levels (MCLs) or RISC residential ground water cleanup objectives under IC 13-12-3-2 in a drinking water well. The regulated substances are detected at those levels at the point of compliance or at the tap.

(6) Regulated substances in the ground water are detected at or above the MCLs or RISC residential ground water cleanup objectives under IC 13-12-3-2 within one (1) year time of travel from a public drinking water well and are in imminent danger of impacting drinking water.

(7) Any other abatement action required by the department.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-5.1; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788)

SECTION 5. 328 IAC 1-1-7.5 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-7.5 "Off-site" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 7.5. "Off-site" means property other than the following:
(1) The parcel of real estate that contains the UST that is the cause of the release.
(2) Other parcels owned by a person described in 328 IAC 1-3-1(a).
(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-7.5)

SECTION 6. 328 IAC 1-1-8.3 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-1-8.3 "Reasonable" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 8.3. "Reasonable" means that the site characterization and corrective action are appropriate and performed only as necessary to meet the cleanup objectives for the site. The term also means that corrective action and site characterization are consistent with the requirements of 329 IAC 9, other applicable state and federal laws and regulations, and 328 IAC 1-3-5(b) through 328 IAC 1-3-5(e). *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.3)*

SECTION 7. 328 IAC 1-1-8.5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-8.5 "Site characterization" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 8.5. "Site characterization" means the **work performed under the** initial site characterization described in rules of the solid waste management board at 329 IAC 9-5-5.1 ~~and~~ **or work performed under further site** investigations described in 329 IAC 9-5-6 and may include, as necessary, quarterly monitoring and pilot studies to determine the feasibility of remediation alternatives. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.5; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788)*

SECTION 8. 328 IAC 1-1-9 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-9 "Substantial compliance" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-4; IC 13-23-12

Sec. 9. **(a)** "Substantial compliance" means that, at the time a release was **first** discovered **or confirmed:**

(1) the owner or operator ~~had taken affirmative steps to comply with~~ **has met** the requirements of ~~IC 13-23-8-4.~~ **IC 13-23-8-4(a), with the exception of minor violations of:**
(A) statutory deadlines;
(B) regulatory deadlines; or
(C) regulatory requirements;
that do not cause harm or threaten to harm human health or the environment; and
(2) registration fees have been paid as required under IC 13-23-12 and 328 IAC 1-3-3.

(b) An owner or operator is not in substantial compliance if the release:
(1) has not been reported, under the spill or release reporting rule applicable at the time the release was discovered or confirmed, within seven (7) days of a suspicion, discovery, or confirmation of the release; or
(2) harms public health or the environment and was not timely reported under the spill reporting rule applicable at the time of the release.
(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-9; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)

SECTION 9. 328 IAC 1-1-10 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-1-10 "Third party liability" defined
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 10. **(a)** "Third party liability" ~~is~~ **means** the damage a tank owner or operator is legally obligated to pay for injury, ~~expense,~~ **costs,** and damage suffered by a third party as the result of a release. ~~Third party liability~~ **The term** includes bodily injury and property damage. ~~Third party liability~~

(b) The term does not include **the following:**
(1) Punitive or exemplary damages.
(2) Claims for injury, costs, or damages arising on behalf or in favor of a person listed in 328 IAC 1-3-1.
(3) Costs that were previously determined ineligible for reimbursement.
(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-10; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)

SECTION 10. 328 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-1 Applicability
Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 1. This article implements provisions of IC 13-23 for the administration of the fund. This article establishes procedures by which persons listed in 328 IAC 1-3-1 may apply to the fund for payment of ~~corrective action~~ **reimbursable** costs and third party liability claims. ~~arising from petroleum releases.~~ Payment of ~~corrective action~~ **reimbursable** costs and third party liability claims shall be made in accordance with the following:

(1) 328 IAC 1-3-4(b) applies to any one (1) site upon which ~~(A) an occurrence has not been reported to the department; or~~

~~(B)~~ the corrective action has not been completed as of the effective date of this rule.

(2) The **applicable** cost range or amount of the ~~expenditure to be reimbursed by the fund,~~ **reimbursable cost,** as set forth in 328 IAC 1-3-5, shall be determined ~~as of~~ **under the rule in effect on** the date ~~the expense was initially~~ **of the invoice for the work and the costs so** incurred **unless the work is performed** by the **owner, operator, or** applicant, ~~to the fund.~~ **in which case, it is the date the work was completed.**

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)

SECTION 11. 328 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-2-3 Obligation of monies

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 3. (a) Claims shall be paid in the order received by the ~~department~~ **administrator** unless the procedure set forth in 328 IAC 1-4-1 is applicable.

(b) At the beginning of each state fiscal year, the administrator shall obligate sufficient monies for administering the fund. This amount shall be approved by the financial assurance board.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789)

SECTION 12. 328 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-1 Fund access

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-4

Sec. 1. **(a)** The following persons may apply to the fund for payment of ~~expenditures arising from corrective action and~~ **reimbursable costs or** for ~~indemnification of~~ third party liability **claims:**

(1) ~~Eligible~~ Tank owners and operators, including ~~transferees~~ **a person** as described in ~~IC 13-23-8-4.~~ **section 3(d) of this rule.**

(2) Persons assigned the right of reimbursement by any person described in subdivision (1).

(3) Subsequent owners of the property upon which tanks were located, if the tanks were closed by a previous property owner, tank owner, or operator who is eligible, **as specified in IC 13-23-8-4(e)**.

(b) Any or all persons listed under subsection (a)(1) or (a)(3) may apply to the fund for payment of reimbursable costs or third party liability claims if the following have occurred:

(1) The payment for the applicable deductible amount for the release has been made.

(2) A claim for the same costs has not been submitted to or paid by the fund. A claim for the same costs will not be paid more than once by the fund.

(c) The department may determine the identity of the tank owner or tank operator based on the notification submitted under 329 IAC 9-2-2. The department may require an affirmation that a claimant is a person, as described in section 3(d) of this rule, or a subsequent owner of the property, as specified in subsection (a)(3).

(d) A person who owns property with a tank is considered a tank owner. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790)*

SECTION 13. 328 IAC 1-3-1.3 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-1.3 Cost effectiveness of corrective action

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-4

Sec. 1.3. (a) After the person described in section 1 of this rule has:

(1) completed the initial site characterization under 329 IAC 9-5-5.1 and the further site investigation under 329 IAC 9-5-6 for the release at the site; and

(2) submitted the information in clauses (A) through (C) to the administrator in a form or format approved by the administrator:

(A) for each of the remediation alternatives as required by 329 IAC 9-5-6(d), details of the work to be performed and the projected costs;

(B) the approved CAP; and

(C) if appropriate, a demonstration that the remediation alternative will substantially reduce or eliminate third party liability;

the administrator will determine if the work to be per-

formed or the work already performed, or a portion thereof, under the approved CAP is cost effective. The administrator may review information concerning cost effectiveness while reviewing a CAP submitted for approval; however, the administrator will not make a determination on cost effectiveness before a CAP is approved.

(b) The administrator's determination for cost effectiveness will be based on the information in subsection (a) and the following criteria:

(1) The projected costs of the selected remedial alternative compared to the other remedial approaches.

(2) The likelihood that the remediation approach will achieve the cleanup objectives as set forth in the approved CAP.

(3) The appropriateness of the length of time it will take to achieve the cleanup objectives based on the remediation approach considering actual impacts to human health and the environment.

(4) The cost projections under subsection (a)(2)(A) for the remediation approaches and the work to be performed do not exceed the reimbursable costs allowed under section 5(a), 5(b), and 5(e) of this rule.

(5) The cleanup objectives are sufficient, but no more stringent than necessary, for the current land use for the site.

(6) A demonstration that the remediation alternative will substantially reduce or eliminate third party liability.

(c) The administrator may ask for additional information to substantiate the projected work and projected costs.

(d) At any time, if the administrator finds that the approved CAP will not achieve or is not achieving the cleanup objectives, then the administrator may determine that the work to be performed under the approved CAP is no longer cost effective. The administrator will give notice to the claimant of this determination. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.3)*

SECTION 14. 328 IAC 1-3-1.6 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-3-1.6 Preapproval of costs

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-8-4

Sec. 1.6. (a) Persons described in section 1 of this rule may submit to the administrator a request for a preapproval of projected costs for work to be performed under the approved CAP. The request and any additional information requested by the administrator must be in a form or format approved by the administrator. The administrator's preapproval will be based on a determination of the following:

(1) Cost effectiveness under section 1.3 of this rule.

(2) That the costs are reasonable and within the amounts allowed under section 5(e) of this rule.

(b) The administrator may ask for additional information to substantiate the projected work and projected costs.

(c) The administrator will send a preapproval letter to the owner or operator stating how much of the cost for each item of work is preapproved as reasonable and cost effective. This preapproval is not a final determination on fund eligibility. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.6)*

SECTION 15. 328 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-2 Fund disbursement

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-4; IC 13-23-9-2; IC 13-23-9-3

Sec. 2. (a) Monies may be disbursed from the fund to persons listed in section 1 of this rule for payment of ~~corrective action~~ **reimbursable** costs ~~in compliance with IC 13-23-8-4(a)(4) through IC 13-23-8-4(c) and IC 13-23-9-2(a) through IC 13-23-9-2(c). Site characterization costs may be disbursed from the fund to persons listed in section 1 of this rule prior to an approved or deemed approved CAP, if the work for which payment is sought is completed in accordance with rules of the solid waste management board at 329 IAC 9 or the risk integrated system of closure (RISC) standards.~~ **as specified under section 5 of this rule.**

(b) Monies may be disbursed to persons listed in section 1 of this rule for payment of ~~claims of liability to~~ third ~~parties~~ **party liability claims** in compliance with IC 13-23-9-3. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790)*

SECTION 16. 328 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-3 Eligibility requirements

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 6-8.1-10-1; IC 13-23-7; IC 13-23-8-4; IC 13-23-12

Sec. 3. (a) ~~Persons~~ **A person** listed in section 1 of this rule ~~must do~~ **shall comply with** the following **for a claim for reimbursable costs or a third party liability claim** to be ~~eligible~~ **considered** for reimbursement from the fund **by the administrator:**

(1) ~~Meet~~ **Demonstrate that** the requirements ~~set forth~~ in IC 13-23-8-4(a)(1) through IC 13-23-8-4(a)(4) **have been met. The CAP as required by IC 13-23-8-4(a)(4) must be submitted with a budget that describes in detail the costs for work to be completed under the CAP. The budget**

must be in a form or format approve by the administrator.
~~(2) In accordance with rules of the solid waste management board at 329 IAC 9-4 and rules of the water pollution control board at 327 IAC 2-6.1, communicate a spill report to the department of environmental management.~~
(2) Demonstrate that the tank owner or operator was in substantial compliance with the spill reporting rule or law applicable at the time of the release is discovered.
(3) Current tank owners or operators who have failed to pay all tank fees ~~that are~~ **when they were** due under IC 13-23-12-1, ~~by the date that the fees are due shall be eligible for reimbursement from the fund in accordance with subsection (b) upon~~ **but who have now made** payment of all past **and currently** due fees, interest, and penalties. **If any fees have not been paid, the person shall pay all past and currently due fees, interest, and penalties.**
(4) A person who acquires ownership in accordance with subsection ~~(e) shall be eligible for reimbursement from the fund upon~~ **(d) must make** timely payment of all past due tank fees, interest, and penalties in accordance with subsection ~~(h)~~ **(f) to make a claim for reimbursable costs for any site characterization or corrective action related to a release that is first suspected, discovered, or confirmed after the payment of all past and currently due fees, interest, and penalties.**
(5) The owner or operator must have registered the tank or tanks within thirty (30) days of the time the tank or tanks were first put into use, even if a release is discovered or confirmed before the tank or tanks were registered. Tanks are considered in use when the tank contains or has ever contained a regulated substance and has not been closed under 329 IAC 9-6.
(6) The claimant is in compliance with the requirements of IC 13-23, 329 IAC 9, and this title.

(b) ~~A~~ **An eligible** tank owner or **tank** operator **under this section,** who fails to pay all tank fees that are due under IC 13-23-12-1 by the date that the fees are due shall be eligible **to apply to the fund** for reimbursement from the fund according to the following formula:
(1) Determine the number of payments that were owed under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, beginning with the date that the fees for each tank first became due under IC 13-23-12 and continuing until the date on which the release occurred.
(2) Determine the number of payments actually made under IC 13-23-12-1 on all regulated tanks at the facility from which a release occurred, beginning with the date each tank became regulated under IC 13-23 and continuing until the date on which the release occurred. Divide the number of payments actually made by the number of payments due as determined in subdivision (1).
(3) Determine the amount of money the person would have received from the fund if all payments due on the date the release occurred had been paid when due and multiply the amount by:
(A) the percentage determined in subdivision (2), if the percentage is fifty percent (50%) or more; or
(B) zero (0), if the percentage determined in subdivision (2) is less than fifty percent (50%).

(c) Payments that were made or could have been paid four (4) times per year under IC 13-23-12-3 count as one (1) payment for purposes of this section. Each payment made or due on each tank at a facility shall count as an additional payment for purposes of this section in figuring the total payments made or due.

~~(d) Persons listed in section 1 of this rule who have had a claim denied for failure to register an underground petroleum storage tank from which a release has occurred or for failure to pay all registration fees that are due under IC 13-23-12-1 by the date the fees are due may resubmit the claim, regardless of whether the denial was appealed, under subsection (a). The resubmission must be in the form of a letter providing the facility identification number, the incident number, and, if an appeal was filed, a copy of a document demonstrating the resolution of the appeal. The department has the option to settle any pending appeals and resubmitted claims.~~

~~(e)~~ **(d)** A person who acquires ownership or operation of an underground petroleum storage tank under IC 13-23-8-4.5(2) may become eligible for reimbursement from the fund ~~by complying with subsection (f).~~

~~(f) A person described under subsection (e) may become eligible for reimbursement from the fund~~ for any releases reported after the date that the ~~department~~ **commissioner** receives the "Intent to Acquire UST and Reinstate Eligibility" form by doing the following:
(1) Submitting a fund "Intent to Acquire UST and Reinstate Eligibility" form (Form) as prescribed by the commissioner at least sixty (60) days prior to acquiring ownership or operation of an underground petroleum storage tank. This form will be kept confidential up to the earlier of the following:
(A) The date of the transfer of the property.
(B) The ~~department's~~ **administrator's** receipt of the monies provided in subsection ~~(g).~~ **(f).**
(C) For up to ninety (90) days after the projected date of closure listed in the Form.
The ~~department~~ **administrator** will provide a listing of environmental penalties, interest due to the fund, and fees due to the prospective purchaser and the property owner within forty-five (45) days of receipt of the Form.
(2) Paying all applicable tank fees, including past due fees, interest, and penalties, for each tank not more than thirty (30) days after the transaction whereby the person acquires ownership or operation of each tank.
(3) The seller of the underground petroleum storage tank site

is liable for any and all unpaid tank fees, interest, and penalties that are assessed by the ~~department~~ **administrator** in accordance with subsection ~~(g).~~ **(e).** The purchaser is to collect all past due tank fees, interest, and penalties from the noncompliant seller and remit to the ~~department~~ **administrator** the full amount of the assessment for the subject underground petroleum storage tank provided by the ~~department~~ **administrator** in accordance with subsection ~~(g)~~ **(e)** prior to ~~an occurrence.~~ **a release.** The timely remittance of these monies is a condition of fund eligibility for the purchaser.

~~(g)~~ **(e)** Persons listed in section 1 of this rule and described in subsection ~~(e)~~ **(d)** who fail to pay tank fees when due are subject to payment of interest and penalties on those fees in order to become eligible for the fund under subsection ~~(f).~~ **(d).** Interest and penalties due ~~will~~ include the following:

(1) Penalties and interest due the department of **state** revenue.

(2) All past due underground storage tank fees under IC 13-23-12.

(3) An environmental penalty as specified in subsection ~~(h)(2).~~ **(f)(2).** This penalty will be distributed into the fund and into the petroleum trust fund in accordance with IC 13-23-12-7(b).

(4) Interest will be charged for the missed ~~fee(s)~~ **fee or fees** at the percent per year based on subsection ~~(h)~~ **(f)** and IC 6-8.1-10-1 until all fees due have been paid in full for each tank. This interest will be deposited into the fund.

Payment of all fees, interest, and penalties due within thirty (30) days of the date of transfer of the subject property is a requirement for fund eligibility for the purchaser.

~~(h)~~ **(f)** In addition to all past due fees owed, the amount of interest and penalties owed by a particular owner or operator is to be determined by the following formula:

(1) Interest as follows:

Number of delinquent days × daily interest rate = interest due

Interest will be calculated according to IC 6-8.1-10-1.

(2) Penalty as follows:

(A) For ~~sites~~ **tanks** that were never registered, or ~~sites~~ **tanks** for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars ($2,000) under IC 13-23-12-7(a) per petroleum underground storage tank **per year that passes after each year's fee is due. The table may be used or the following formula to calculate the penalty per tank:**

Where: n = Total numbers of years late.

$Y_{i,j}$ = Each year with an unpaid fee or a fee that was paid at least one (1) year late.

Yo = First year a fee was unpaid or paid at least one (1) year late.

m = Most recent year where tank fees were unpaid or paid at least one (1) year late.

$$(2000)\left(\sum_{j=Yo}^{m}\left(\sum_{i=1}^{n} Y_{i,j}\right)\right) = \text{penalty}$$

Year due	1 year past year due	2 years past year due	3 years past year due	4 years past year due
Year 1	2,000	2,000	2,000	2,000
Year 2		2,000	2,000	2,000
Year 3			2,000	2,000
Year 4				2,000
Total per tank	2,000	6,000	12,000	20,000

(B) For ~~all other~~ sites **that were registered and not all fees have been completely paid,** the penalty will be calculated at one thousand dollars ($1,000) per petroleum underground storage tank for each year that passes after the fee becomes due and before the fee is paid. **The following table is an example of how penalties must be paid per tank:**

Year due	1 year past year due	2 years past year due	3 years past year due	4 years past year due
Year 1	1,000	1,000	1,000	1,000
Year 2		1,000	1,000	1,000
Year 3			1,000	1,000
Year 4				1,000
Total per tank	1,000	3,000	6,000	10,000

(C) The penalty is incurred:

(i) nine (9) months after the fee is due; or

(ii) three (3) months after the final quarterly installment is due.

Subsequent penalties are calculated yearly and are cumulative as specified in clause (B).

(D) Penalties will not be collected for fees due before December 1, 2001.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1104; errata, 20 IR 1593; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790; errata filed Feb 27, 2002, 9:58 a.m.: 25 IR 2254)

SECTION 17. 328 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-4 Amount of coverage

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-8

Sec. 4. (a) After payment of the applicable deductible amount, the fund may pay for **reimbursable** costs incurred by persons listed in section 1 of this rule ~~for corrective action~~ and third party liability **claims** as specified in IC 13-23-8-1.

(b) Regardless of the number of eligible persons listed in section 1 of this rule at one (1) site, no more than two million

dollars ($2,000,000) may be reimbursed for the costs, including third party liability claims, associated with a single occurrence.

(c) An owner or operator may not receive payment for more than the allowable limits as specified in IC 13-23-8-8.

(d) For purposes of this section, "year" means a calendar year even if more than the maximum is received in any three hundred sixty-five (365) day period. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792)*

SECTION 18. 328 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-5 Costs

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-12-3-4; IC 13-23-3-2; IC 13-23-8-4

Sec. 5. **(a) Reimbursable costs, excluding third party liability claims, are actual monetary amounts paid or incurred for work performed:**

(1) consistent with an approved or deemed approved CAP or under one (1) or more of the provisions of IC 13-23-8-4(b); and

(2) subject to each of the following conditions:

(A) Credits, rebates, refunds, or other similar payments made to the owner or operator or received by the owner, operator, or claimant must be subtracted from the costs submitted for reimbursement.

(B) The work performed was consistent with:

(i) site characterization;

(ii) an approved CAP; or

(iii) emergency measures, as defined in 328 IAC 1-1-5.1.

(C) The work performed under the CAP has been determined to be cost effective under section 1.3 of this rule.

(D) The work performed has been determined to be reasonable under 328 IAC 1-1-8.3.

(E) The work was performed as described in subsection (b) or (e), or both, and is not described in subsection (d).

~~(a)~~ **(b)** Persons listed in section 1 of this rule may seek payment from the fund for the following ~~costs related to necessary costs actually incurred in the performance of corrective action:~~ **reimbursable of the type described as follows:**

(1) ~~Investigation,~~ **Site characterization,** which includes:

(A) research;

(B) field time;

(C) report writing; and

(D) clerical support;

but only after the site characterization has been approved by the administrator.

(2) Lodging and per diem costs will be paid in accordance with the most current Indiana department of administration financial management circular covering state travel policies and procedures. Mileage shall be calculated at the federal rate for a privately owned automobile under 41 CFR 301-10.303, in effect on ~~September 6, 2000.~~ **January 16, 2003, 68 FR 494.** Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, ~~Government Printing Office, Washington, D.C. 20402.~~ **P.O. Box 371954, Pittsburgh, PA 15250-7954.**

(3) Persons listed in section 1 of this rule may employ a certified contractor under IC 13-23-3-2 or may use the owner's or operator's personnel to perform all or part of a corrective action.

(4) Soil and water sampling for petroleum and petroleum constituents shall be performed in accordance with rules of the solid waste management board at 329 IAC 9, **effective in either 1998 or 2004,** or the risk integrated system of closure (RISC) standards **under IC 13-12-3-4, but not both.**

(5) ~~Expenditures~~ **Costs** for machinery and equipment must be prorated based on the normal expected life of the item and the length of time the item was used for a single corrective action. In no event will the fund pay for purchases of machinery and equipment in excess of the market cost of leasing the item for a corrective action. Examples of equipment charges ~~which~~ **that** can be made to the fund are disposable bailers and sample bottles.

(6) Persons listed in section 1 of this rule may be reimbursed for ~~expenditures~~ **costs** for materials and supplies, such as:

(A) disposable protective equipment;

(B) building materials, **such as:**

(i) piping; **and**

(ii) cement; and

(C) preservatives.

~~(7) Attorney fees, not to exceed twenty-five percent (25%) of the total claim or thirty thousand dollars ($30,000), whichever is less, shall only be payable if incurred by the owner or operator in defense of a third party liability claim.~~

~~(8)~~ **(7)** Governmental administrative fees for local, state, or federal permits necessary for corrective action.

~~(9)~~ **(8)** Provision of alternate water supply. This cost must have been previously approved by the ~~department.~~ **administrator.**

~~(10)~~ **(9)** Any other ~~reasonable~~ **reimbursable** costs the ~~department~~ **administrator** finds to be necessary. ~~for corrective action or payment of a third party liability claim.~~

~~(11)~~ **(10)** Costs associated with transitioning a site to RISC will be paid if these costs would be less than the costs to complete the remediation under rules of the solid waste management board at 329 IAC 9.

~~(12)~~ **(11)** Markup of no more than ~~fifteen~~ **ten** percent ~~(15%)~~ **(10%)** will be reimbursed on all eligible costs except for the following:

(A) Travel costs, including mileage, per diem, and lodging.
(B) Personnel costs.
(C) Utilities for temporary facilities.
(D) Governmental administrative fees for local, state, or federal permits.
(E) Equipment and supplies not purchased or rented specifically for use at a facility or that are not part of the approved remedial technology.

(12) The fair market value of the cost to obtain access to off-site property if necessary for site characterization or corrective action can be reimbursable costs.

(13) Emergency measures include the following as determined to be appropriate by the administrator:

(A) Evacuation and relocation of a building resident or residents.
(B) Ventilation of a building or conduit.
(C) Installation and maintenance of an alternate water or treatment system for contaminated drinking water.
(D) Recovery of free product as necessary to eliminate a release to a conduit.
(E) Installation of a system to mitigate free product migration, actual or potential drinking water impacts, or vapor intrusion into a building or a conduit.
(F) Other emergency measures required by the department.

(c) The approval of the site characterization and the corrective action plan under rules of the solid waste management board at 329 IAC 9 is not a determination that the actual costs incurred under the site characterization or the CAP are reimbursable costs under this rule.

~~(b)~~ **(d)** The following ~~expenditures~~ **costs** are ~~ineligible for reimbursement~~ **not reimbursable** from the fund:

(1) Costs ~~incurred~~ **from releases occurring** before April 1, 1988.

(2) Costs incurred more than twenty-four (24) hours prior to the date and time the suspected, discovered, or confirmed release has been reported under the spill reporting rule in effect at the time of the release.

~~(2)~~ **(3)** Costs of repair, upgrading, or replacement of an underground petroleum storage tank or its associated equipment.

~~(3)~~ **(4)** Costs of environmental investigation and remediation not directly related to a release from a qualifying underground storage tank. Ineligible costs include the cost of testing for nonpetroleum contamination and the cost of vapor or ground water monitoring devices that are not associated with corrective action.

(5) Costs that exceed reimbursable costs even if incurred pursuant to an approved CAP.

~~(4)~~ **(6)** The cost of equipment purchases other than those ~~expenditures~~ **costs** routinely required to implement a corrective action plan. **Although the following items are not reimbursable,** examples of equipment purchases that cannot be charged to a specific site include:

(A) drilling rigs;
(B) earth moving equipment;
(C) photoionization detectors;
(D) explosimeters; and
(E) hand tools.

~~(5)~~ **(7)** The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with corrective action.

~~(6)~~ **(8)** Lost income or reduced property values unless part of a third party liability claim.

~~(7)~~ **(9)** Interest or finance charges.

~~(8)~~ **(10)** Contractor costs not directly related to corrective action activities, such as preparing cost estimates.

~~(9)~~ **(11)** Fines or penalties imposed by local, state, or federal governmental agencies.

~~(10)~~ **(12)** Punitive or exemplary damages.

~~(11)~~ **(13)** Any costs for remediation of contamination not shown to be ~~above the concentrations listed in the Indiana Department of Environmental Management Underground Storage Tank Guidance Manual (1994), rules of the solid waste management board at 329 IAC 9, and~~ **at concentrations exceeding** the RISC **industrial cleanup** standards **with the following exceptions:**

(A) Ground water contamination affecting a public or private drinking water well on-site or off-site.
(B) Contamination at concentrations exceeding RISC residential cleanup standards off-site, not including roadways and railroads.

~~(12)~~ **(14)** Any costs related to the excavation and disposal of more than one thousand five hundred (1,500) tons of soil unless:

(A) alternative remediation techniques have been considered;
(B) excavation and disposal was shown to be the most cost effective remediation option; and
(C) the soil removal is part of a CAP approved or deemed approved by the ~~commissioner.~~ **administrator.**

~~(13)~~ **(15)** Any other cost not directly related to **site characterization,** corrective action, or third party liability or otherwise determined not to be reimbursable under this rule as a result of a financial or technical review.

(16) If a release has occurred before the tank or tanks were registered, and the tank or tanks were not registered within thirty (30) days from the time the tank or tanks were first put into use, a claim is not reimbursable from the fund by the administrator. Tanks are considered in use when the tank contains or has ever contained a regulated substance and has not been closed under 329 IAC 9-6.

(17) Any costs to purchase equipment, which was previously purchased and the cost was previously reimbursed from the fund.

(18) Any costs incurred after receipt of notice by the

administrator under section 1.3(d) of this rule that the approved CAP is not successfully remediating the site, except the following costs necessary, until such time as the modified CAP is approved, to:

(A) Develop the modified CAP, including pilot studies or additional investigation.

(B) Demobilize the corrective action system currently at the site.

(C) Abandon monitoring, extraction, or other wells associated with the CAP.

(D) Maintain compliance with applicable regulations and permits, including quarterly ground water monitoring.

(E) Maintain the corrective action system.

~~(c)~~ ~~Appropriate~~ ~~expenditures~~ ~~which~~ **(e) Costs that** may be ~~considered~~ ~~for~~ ~~reimbursement~~ **paid from the fund** are set forth in the following: ~~reimbursable~~ ~~expenditure~~ ~~chart.~~ ~~Sampling~~ ~~and~~ ~~analysis~~ ~~must be conducted~~ ~~in~~ ~~accordance~~ ~~with~~ ~~"Test Methods~~ ~~for~~ ~~Evaluating~~ ~~Solid~~ ~~Waste,~~ ~~Physical/Chemical~~ ~~Methods",~~ ~~United~~ ~~States~~ ~~Environmental~~ ~~Protection~~ ~~Agency~~ ~~Publication~~ ~~SW-846,~~ ~~Third~~ ~~Edition~~ ~~(November~~ ~~1986)~~ ~~as~~ ~~amended~~ ~~by~~ ~~Updates~~ ~~I~~ ~~(July~~ ~~1992),~~ ~~II~~ ~~(September~~ ~~1994),~~ ~~IIA~~ ~~(August~~ ~~1993),~~ ~~IIB~~ ~~(January~~ ~~1995),~~ ~~III~~ ~~(December~~ ~~1996),~~ ~~and~~ ~~IIIA~~ ~~(May~~ ~~1999).~~ ~~Publication~~ ~~SW~~ ~~846~~ ~~is~~ ~~available~~ ~~from~~ ~~the~~ ~~Superintendent~~ ~~of~~ ~~Documents,~~ ~~Government~~ ~~Printing~~ ~~Office,~~ ~~Washington,~~ ~~D.C.~~ ~~20402.~~

Activity	Cost Range or Maximum Amount
SITE ~~INVESTIGATION~~ **CHARACTERIZATION**	
Direct push technology	**$1,200 (between >100 and ≤ 200 feet** **$750 (up to 100 feet)**
Rate allowed for drilling greater than 200 feet using direct push technology in a single day	**$6 per foot**
Mobilization and demobilization. ~~within~~ ~~a~~ ~~50~~ ~~mile~~ ~~radius.~~ This includes the cost of moving general contractor owned equipment, set-up, and removing equipment.	$300
Soil borings, **for purposes of soil or ground water sampling or monitoring well installation when using a hollow stem auger.**	
Number of feet in incremental amounts	
Less than 16 feet	$20 per foot
16 through less than 26 feet	$25 per foot
26 feet or more	$30 per foot
These amounts may only be charged one (1) time per borehole. Sample collection is part of well installation. Direct push technology must be used when it is most appropriate to the site and cost effective.	
Blind drilling using a hollow stem auger when well borings have already been logged within 5 feet.	
0-50 feet	**$6.50 per foot**
> 50 feet	**$8.50 per foot**
Decontamination and equipment cleaning	$10 per each 5 feet of boring
Cutting holes in concrete or asphalt (12 inches in diameter)	$90 per hole
Materials	
Well casing and screen (including riser) filter pack, annular, and surface seal:	
2 inch well	~~$10~~ **$7** per foot
4 inch well	$12 per foot
6 inch well	~~$15~~ **$22** per foot
Flush-grade well covers	$75 per cover
Laboratory services, including containers, packaging, and postage.	
Soil analysis methods	
TPH–8015 **GRO**	~~$75~~ **$60** per sample
TPH–8015 DRO	**$60 per sample**
TPH–8015 ERO	**$60 per sample**
TPH–418.1	~~$100~~ **$95** per sample
TRPH-HEM-1664/9071B	**$60 per sample**

VOC–8260	~~$200~~ **$150** per sample
SVOC–8270	~~$325~~ **$250** per sample
PAH-8270SIM	**$110 per sample**
PAH–8310	~~$185~~ **$150** per sample
~~PCB–8080~~ **PCB-8082**	$110 per sample
Metals– ~~(13)~~ **7 barium, cadmium, chromium, lead, mercury, nickel, zinc**	~~$170~~ **$100** per sample
BTEX/MTBE–8021	~~$75~~ **$60** per sample
BTEX/MTBE–8260	~~$200~~ **$100** per sample
Ignitability	**$30 per sample**
Fractional organic carbon	**$70 per sample**
Water analysis methods	
TPH–8015 **GRO**	~~$75~~ **$60** per sample
TPH–8015 DRO	**$60 per sample**
TPH–8015 ERO	**$60 per sample**
TPH-8015 methane	**$60 per sample**
TRPH-HEM-1664	**$60 per sample**
VOC–8260	~~$200~~ **$100** per sample
BTEX/MTBE–8021	~~$75~~ **$60** per sample
BTEX/MTBE–8260	~~$200~~ **$100** per sample
SVOC–8270	~~$325~~ **$250** per sample
PAH-8270 SIM	**$130 per sample**
PAH–8310	~~$185~~ **$140** per sample
Metals– ~~(13)~~ **7 barium, cadmium, chromium, lead, mercury, nickel, zinc**	~~$170~~ **$80** per sample
Metal-soluble iron	**$25 per sample**
~~Monitored natural attenuation parameters~~	
Nitrates	~~$15~~ **$25** per sample
~~Nitrites~~	~~$15 per sample~~
Sulfate	~~$15~~ **$25** per sample
Sulfide	**$25 per sample**
~~Dissolved methane~~	~~$50 per sample~~
COD	**$20 per sample**
BOD_5	**$40 per sample**
Total suspended solids	**$12 per sample**
Air analysis methods	
VOC-TO-15	**$400 per sample**
Other Methods	
TCLP-lead	**$110 per sample**
~~Use of RISC will require DQO-Level IV,~~ **If the commissioner requires all quality assurance/quality control (QA/QC),** including raw data **and** internal chain of custody ~~and QA/QC~~ **necessary to validate analytical results.**	20% markup allowed per sample
When submitting a claim for reimbursement, the claimant shall be required to give the personnel classification, task being performed, and the name of the individual performing the task. Rates will be paid based on the task performed by an employee rather than the qualifications of the employee. Refer to subsection ~~(d)~~ **(f)** for task descriptions for personnel classifications.	
Principal	$110 per hour
Senior project manager	$102 per hour
Project manager	$83 per hour
Staff project person	$70 per hour

Senior technician	$55 per hour
Technician	$38 per hour
Drafting person	$35 per hour
Word processor/clerical	$28 per hour
Toxicologist	$125 per hour

INITIAL ABATEMENT AND FREE PRODUCT REMOVAL

Except where provided in this rule, approval of costs will be on a case-by-case basis.

SITE SET-UP PREPARATION

Trailer rental	$300 per month ($10 per day)
Portable toilet	$150 per month ($5 per day)
Utility check, the date and time of the utility check must be documented.	~~$400~~ **$600**
Utilities for temporary facilities	
Temporary power	$500 per month ($16.67 per day)
Temporary water	$150 per month ($5 per day)
Temporary phone	$200 per month ($6.67 per day)

DEMOLITION

Mobilization	**$300 per trailer**

Concrete and asphalt removal

Saw concrete, prices are per linear foot

	4 inch concrete	6 inch concrete
Under 200 feet	$1.60 per foot	$2 per foot
200 through 400 feet	$1.40 per foot	$1.81 per foot
400 through 600 feet	$1.33 per foot	$1.70 per foot
600 through 1,000 feet	$1.20 per foot	$1.66 per foot
Over 1,000 feet	$1.08 per foot	$1.60 per foot

Saw asphalt, prices are per linear foot

	3 inch asphalt	4 inch asphalt	6 inch asphalt
Under 450 feet	$1.75 per foot	$1.90 per foot	$3 per foot
450 through 600 feet	$1.50 per foot	$1.75 per foot	$2.75 per foot
600 through 1,000 feet	$1.35 per foot	$1.50 per foot	$2.25 per foot
Over 1,000 feet	$1.25 per foot	$1.35 per foot	$2 per foot

~~Concrete removal, including the cost of loading and hauling to a legal landfill within 6 miles, but does not include landfill fees~~

~~4 inch concrete~~	~~$3 per ton~~
~~6 inch concrete~~	~~$5.77 per ton~~
~~7 inch through 9 inch concrete~~	~~$17.47 per ton~~
~~10 inch and over~~	~~$43.96 per ton~~
~~With rebar~~	~~Add 15%~~
~~For less than 500 square feet~~	~~Add 35%~~
~~Concrete curb~~	~~$5.04 per linear foot~~

~~Asphalt removal, including the cost of loading and hauling to a legal landfill within 6 miles, but does not include landfill fees~~

~~Removal asphalt pad (3 inches)~~	~~$0.25 per square foot~~
~~Removal asphalt curb~~	~~$1.41 per linear foot~~
~~For less than 500 square feet~~	~~Add 35%~~
Hauling	**$70 per hour per truck**

EXCAVATION

Equipment costs and labor	$2.22 per ton
Mobilization	$300 **per trailer**
Supplies, for example, ~~visqueen.~~ **plastic sheeting**	
Stockpiling soil on-site	$1.34 per ton

Tank removal, decommissioning, cutting, and disposal are not eligible for reimbursement unless necessary as part of corrective action.	
Costs for pumping, testing, and disposal of tank contents are not eligible for reimbursement	
Under 1,000 gallons	$1,000 per tank
1,000 through 4,999 gallons	$1,500 per tank
5,000 through 10,000 gallons	$2,000 per tank
Above 10,000 gallons	$2,500 per tank
TRANSPORTATION	
Loading	$1.34 per ton
Mobilization	**$300 per trailer**
Hauling, mileage must be documented	~~$0.37 per ton for each mile~~ **$70 per hour per truck**
For excavation, stockpiling, and loading of less than 300 tons in a single day.	**$1,000 per day or the current rate if less than $1,000 per day**
DISPOSAL OF SOIL, GROUND WATER, AND TRASH	
Landfill fees	
Sampling required by landfill. Must include receipts and analytical results from local municipality.	
Sanitary sewer, if approved for disposal of treated ground water. Must include receipts.	
Contaminated or disposable equipment and decontamination fluids.	
Landfill reimbursement will ~~be based on~~ **not exceed** the least expensive combination of documented ~~transportation~~ **hauling** costs and documented disposal costs at a permitted landfill. **Applicant must submit a cost justification if the applicant does not use the nearest land disposal facility permitted and willing to accept the applicant's waste.**	
~~Trash~~	~~$15 per ton~~
~~APPROVED~~ **CORRECTIVE ACTION** TECHNOLOGIES	
~~Reimbursement~~ **The maximum costs** for **the work done for** corrective action, ~~costs~~ **except excavation,** will be ~~reimbursed~~ **allowed** on the basis of the lowest of three (3) **comparable,** competitive bids ~~on~~ **for** the work specified in the corrective action plan. ~~that is approved or deemed approved by the department. If the claimant can provide sufficient technical justification for the selection of another bid, the corrective action costs associated with the higher bid will be reimbursed.~~ **Bids for the work specified in the CAP must include bids for installation and labor; however, separate bids may be obtained for cost of installation and labor. Copies of the request for proposal (RFP) for implementation of CAP that was sent to each vendor must be submitted. The administrator can approve costs based on less than three (3) bids if a demonstration is provided to the administrator that lower costs for the specified work is not possible or practical.**	
Lease or rental on equipment will not be reimbursed above the purchase price.	
SITE RESTORATION	
Backfill hauling	~~$0.37 per ton for each mile~~ **$70 per hour per truck**
Backfill material	$13 per ton **of** stone $6.50 per ton **of** soil
Backfill placement, compaction, and density verification	$4 per ton
Resurfacing	
4 inch concrete	$3.25 per square foot
For each additional inch of concrete	Add $0.40 per square foot
For rebar	Add 15%
Asphalt pad, 4 inch thickness	$2.15 per square foot
Asphalt curb and gutter	$4.75 per linear foot

Island forms	
4 feet by 10 feet with 2 foot bumpers	$725 each
4 feet by 16 feet with 2 foot bumpers	$1,100 each
Equipment rental (based on daily rate; not an inclusive list)	
Decontamination equipment (bucket, brushes, **and** detergent)	$10
Power auger	$50
Hand auger sampling kit (hand auger/brass sleeves)	$35
Slide hammer core sampler	$35
Photoionization detector	$75
Flame ionization detector	$95
~~LEL/O2~~ **LED/O2** meter	$50
pH and conductivity meter	$20
Dissolved oxygen meter	$30
Oxidation/reduction meter (REDOX)	**$35**
Multiparameter water quality meter including pH, dissolved oxygen, temperature, and conductivity	**$50**
Ferrous iron field test	**$6 per sample**
Hydrogen sulfite field test	**$6 per sample**
Digital camera	**$10**
Geographic positioning system (GPS) unit for site mapping to one foot accuracy	**$95**
2~~"~~ **inch** submersible pump	$115
4~~"~~ **inch** submersible pump	$95
~~Direct push technology~~	$1,200 ~~per day~~ $750 ~~per ½ day~~
Steam cleaner/pressure washer	$75
Water level indicator	$12
Oil/water interface probe	$55
Bailer rental	$15
Anemometer	$35
Carbon dioxide meter	$25
Portable generator, generator ≤ 5kW	$50
~~Portable generator, generator > 5kW~~	~~$90~~
Portable generator, generator ≤ 10kW	$100
Portable generator, generator > 10kW	$125

~~(d)~~ **(f)** The following categories describe the personnel classification activity descriptions:

(1) Principal will do the following:
(A) Supervise professional staff.
(B) Serve as technical expert on sites.
(C) Provide final review of project documents.
(D) Limit site visits on projects.
(E) Handle legal matters.
(F) Coordinate with attorneys.

(2) Senior project manager (includes professional geologist, engineer, and hydrogeologist) will provide the following:
(A) Project management/oversight.
(B) Technical document preparation/review.
(C) Coordination with the department, client, and contractors.
(D) Hydrogeologic and contaminant modeling.
(E) Supervision of investigation/remediation activities.
(F) Site access/permitting.

(3) Project manager will provide the following:
(A) Remediation work plan preparation (CAP, ISC, FSI, pilot study).
(B) Site work preparation and planning.
(C) Supervision of remediation activities.
(D) Oversight of waste characterization, transportation, and disposal.
(E) RISC statistics and equations.
(F) Coordination of subcontractor work (drillers, plumbers, and electricians).
(G) Coordination of heavy equipment mobilization.

(4) Staff project person will do the following:
(A) Implement remediation system installation, operation, and maintenance.
(B) Conduct site mapping.
(C) Assist with waste characterization, transportation, and disposal.
(D) Oversee installation of soil borings and monitoring wells.
(E) Provide on-site supervision ~~and/or~~ **or** perform site characterization and remediation activities, **or both.**

(F) Oversee well water records searches.
(G) Define how site utilities are marked.
(H) Survey wells.
(I) Oversee free product removal.
(J) Conduct quarterly sampling.
(K) Provide drilling/sampling support.
(5) Senior technician will oversee the following:
(A) Activities associated with operation and maintenance of remediation system.
(B) Equipment installation.
(6) Field technician will oversee the following:
(A) Well purging and development.
(B) Sample collection.
(C) Drum labeling/disposal.
(D) Decontamination/site cleanup tasks.
(E) Sample preparation and delivery.
(7) Drafting person will do the following:
(A) Provide CADD work.
(B) Generate drawings, maps and plans, boring logs, and monitoring well installation logs.
(C) Revise drawings and maps and plans.
(8) Word processor/clerical will provide the following:
(A) Word processing/data input.
(B) General clerical duties.
(C) Documentation reproduction, report binding, and filing.
(D) Proofreading/editing.
(9) Toxicologist will provide guidance for nondefault risk-based closures utilizing nondefault toxicological parameters.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-5; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1105; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792; errata filed Feb 27, 2002, 9:58 a.m.: 25 IR 2255)

SECTION 19. 328 IAC 1-3-6 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-3-6 Limitation of liability

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 6. The application for or receipt of payment for ~~corrective action~~ **reimbursable costs** does not limit the legal responsibility of persons listed in section 1 of this rule for damages incurred by another person as a result of a release. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-6; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 798)*

SECTION 20. 328 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-1 General procedure for prioritization

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-9-4

Sec. 1. (a) The procedure set forth in this rule shall be followed in the event the unencumbered balance, ~~of funds~~ **less the unpaid, approved claims for reimbursable costs and third party liability claims,** in the fund falls below twenty-five million dollars ($25,000,000). ~~or by the discretion of~~ The administrator **may invoke these procedures prior to the unencumbered balance, but less the unpaid, approved claims for reimbursable costs and third party liability, in the fund falling below twenty-five million dollars ($25,000,000).**

~~(b) Each qualifying claim shall be assigned a priority score based on a ranking system designed to address the following:~~
~~(1) Initial prioritization of all claims shall be based on the degree of environmental threat existing at the time the occurrence was discovered. The administrator shall assign a priority score upon evaluation of the following technical criteria (listed in descending order, from highest priority to lowest priority, clause (A) having the highest priority):~~
~~(A) Impacts to public and private water supply.~~
~~(B) Type of petroleum.~~
~~(C) Health standards and explosivity hazard.~~
~~(D) Corrective action taken.~~
~~(E) Number of gallons released.~~
~~(F) Degree of access to contaminated soil.~~
~~(G) Designated use of surface water.~~
~~(H) Site geology and hydrology.~~
~~(2) For purposes of scoring claims resulting from occurrences before December 4, 1992, and after March 31, 1988, the administrator shall give additional consideration for when the corrective action was taken.~~
~~(3) Scoring of claims shall be determined by application of the following site assessment model:~~

~~Site Assessment Scoring Model for Prioritization of Claims~~

~~Criteria~~		~~Value~~
~~Site assessment information.~~		
~~Public drinking water supply or well within 1 mile:~~		
~~Is contamination present in drinking water?~~	~~YES~~	~~15~~
	~~NO~~	~~1~~
~~Number of wells within 1 mile~~		
	~~1~~	~~1~~
	~~2 through 3~~	~~2~~
	~~4 through 6~~	~~3~~

	6 or more	4
	Public water total _____ times 24 equals_____	
Private drinking water supply or well within 1 mile:		
Is contamination present in drinking water?	YES	15
	NO	0
Number of wells within 1 mile		
	1 through 10	1
	11 through 25	2
	26 through 100	3
	greater than 100	4
	Private drinking water total _____ times 12 equals_____	
Type of petroleum		
Mixed products or waste oil		15
Leaded gasoline		13
Gasoline		12
Jet fuels		10
Diesel fuels		9
Heating fuels		8
Kerosene fuels		7
Crude oil		5
Other		-
	Type of petroleum total _____ times 10 equals _____	
Health standards and explosivity hazards		
Contamination phase		
Vapors present at the time release discovered		10
Free product present at the time the release was discovered		7
Surface contamination present at the time the release was discovered		5
Structures affected		
Residential housing		7
Municipal, commercial, or industrial		5
Utility lines or trenches		1
Area designation		
Large municipality or urban area		7
Small municipality or suburban area		5
Rural, agricultural, or livestock area		1
	Health standards total _____ times 6 equals _____	
Corrective action taken		
Corrective action complete		5
Corrective action over 50% complete		5
Corrective action initiated		5
Corrective action approved by the department		5
Site characterization complete		5
Release response measures complete		5
	Corrective action total _____ times 4 equals _____	
Number of gallons released		
Over 12,000		10
5,000 through 11,999		8
2,000 through 4,999		6
500 through 1,999		4
100 through 500		2
Under 100		1
	Number of gallons released total _____ times 5 equals _____	
Degree of access to contaminated soil		
Contamination access		
Surface (0 to 2 feet below surface)		10

~~Subsurface (over 2 feet below surface)~~ ~~5~~

~~Access total _____ times 4 equals _____~~

~~Designated use of surface water~~
~~Surface waters within ½ mile~~
~~Lake or river~~ ~~3~~
~~Swamp or wetlands~~ ~~3~~
~~Pond or canal~~ ~~2~~
~~Stream, creek, or active drainage ditch~~ ~~1~~
~~Distance to surface waters~~
~~Under 500 feet~~ ~~3~~
~~500 feet to ¼ mile~~ ~~2~~
~~Over ¼ mile~~ ~~1~~
~~Designated use of surface water~~
~~Drinking water~~ ~~4~~
~~Recreational or full body human contact~~ ~~3~~
~~Aquatic, wildlife, or partial human contact~~ ~~3~~
~~Agriculture or livestock~~ ~~2~~

~~Designated use of surface water total _____ times 4 equals _____~~

~~Site geology and hydrogeology~~
~~Soil type~~
~~Sand~~ ~~4~~
~~Clay~~ ~~1~~
~~Depth to water table in feet~~
~~0 through 10~~ ~~4~~
~~11 through 20~~ ~~3~~
~~21 through 40~~ ~~2~~
~~Over 40~~ ~~1~~
~~Unusual geologic factors, for example, fractured bedrock, sand or gravel veins, perched aquifers, or geological outcroppings~~
~~YES~~ ~~5~~
~~NO~~ ~~0~~

~~Site geology and hydrogeology total _____ times 3 equals _____~~

~~(c) To assure the efficient administration of the fund, the administrator may reclassify a claim at any time that it is determined a claim has been incorrectly ranked.~~

(b) All claims submitted to the administrator for work to abate an emergency measure, as defined under 328 IAC 1-1-5.1, will be paid first. If the administrator determines that the work performed was not an emergency measure as defined under 328 IAC 1-1-5.1, the work performed will be paid according to the category of the release as determined in subsection (c).

(c) After the initial site characterization, further site investigation, or a corrective action progress report is completed, the release will be placed in the lowest numbered category for which it qualifies as follows, and all claims for reimbursement of costs and third party liability shall be paid in numerical order of the release category unless the release is recategorized under section 3 of this rule:

(1) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and it is attributable to the release, then the release is considered a category 1 release and claims for that release shall be paid after all approved claims for emergency measures are paid as provided in subsection (b):

(A) Regulated substances in a structure or a conduit, such as a storm sewer, sanitary sewer, or utility conduit that exceeds ten percent (10%) lower explosive limit (LEL).

(B) Vapors for regulated substances are detected in an inhabitable building in levels greater than long term, risk-based exposure for contaminants of concern.

(C) Regulated substances are detected in a drinking water well at or above maximum contamination levels (MCLs) or RISC residential ground water cleanup objectives at the point of compliance or at the tap.

(2) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the release, then the release is considered a category 2 release and claims for that release shall be paid after all approved claims for category 1 releases are paid as provided in subdivision (1):

(A) Regulated substances are detected in free phase in a thickness of at least one (1) foot in any one (1) well, or at least one (1) inch in two (2) or more wells where the wells are at least twenty (20) feet apart, provided that the wells are not screened in the UST cavity backfill.

(B) Regulated substances are detected in surface water above water quality standards under rules of the water pollution control board at 327 IAC 2.

(3) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the release, then the release is considered a category 3 release and claims for that release shall be paid after all approved claims for category 2 releases are paid as provided in subdivision (2):

(A) Regulated substances are detected at a location not on the site of the release in ground water at concentrations exceeding RISC cleanup standards appropriate for the land use of the off-site location.

(B) Regulated substances are detected at a location not on the site of the release in soil at concentrations exceeding RISC cleanup standards appropriate for the land use of the off-site location.

(C) Regulated substances are present in free phase in a thickness of at least one-sixteenth ($^1/_{16}$) inch in any well.

(4) If the administrator determines, based on the most recent information submitted to the administrator, that one (1) of the following has occurred and is attributable to the release, then the release is considered a category 4 release and claims for that release shall be paid after all approved claims for category 3 releases are paid as provided in subdivision (3):

(A) Regulated substances are detected in on-site ground water at concentrations exceeding RISC industrial cleanup standards in two (2) or more wells, where the wells are at least twenty (20) feet apart, where neither well is screened in the UST cavity backfill.

(B) Regulated product is detected in on-site soil at concentrations exceeding RISC industrial cleanup standards in at least two (2) boring holes at least twenty (20) feet apart.

(5) A release that does not qualify as a category 1, 2, 3, or 4 category will be considered a category 5 release.

(6) All claims submitted under identical categories will be paid by priority ranking in chronological order according to the date and time received by the administrator as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.

(d) Initial releases shall be classified according to those conditions that existed at the time the release or occurrence was discovered.

(e) Claims determined to be unreimburseable may be revised and resubmitted to the fund. The priority ranking process of the revised claim shall be based on the date and time that the fund administrator receives the revised claim as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.

(f) A claimant may request a review of a denial of payment using the procedures set forth in IC 13-23-9-4.

~~(d)~~ **(g) Classification of a release or** placement of a claim on a priority list does not constitute a commitment to reimburse corrective action or third party liability costs. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed Nov 1, 1995, 8:30 a.m.: 19 IR 347; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 799)*

SECTION 21. 328 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-4-3 Recategorization of releases

Authority: IC 13-14-8
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 3. ~~(a) Except for environmental emergencies, initial claims shall be ranked according to those conditions which existed at the time the corrective action was commenced. Claims determined to be of identical priority shall be ranked according to the date that an acceptable claim was received by the fund.~~

~~(b) Subsequent claims may be reprioritized based on the environmental threat present during the time period for which additional reimbursement is being claimed.~~

~~(c) The administrator shall notify claimants within sixty (60) days after the receipt of their claims whether their claims shall be approved for payment. If a claim is determined to be unacceptable or ineligible after reviewing the submitted information in accordance with IC 13-23-9-2, the administrator shall notify the owner or operator within ten (10) days of the denial and inform the claimant of the reasons for which the claim was rejected.~~

~~(d) Claims determined to be unacceptable may be revised and resubmitted to the fund. The priority ranking process of the revised claim shall be based on the date that the fund receives the revised claim.~~

~~(e) A claimant may request a review of a denial of payment using the procedures set forth in IC 13-23-9-4.~~

(a) To assure the efficient administration of the fund, the administrator may reclassify a release at any time that it is determined a claim release has been incorrectly classified:

(1) The administrator will notify the applicant by mail of any new classification. If a higher category, the claimant has fifteen (15) days after the notification to submit current costs under the new category.

(2) The applicant may petition the administrator to be put in a lower number category based on new information.

(3) If the administrator approves placement in a different number category, the applicant may seek reimbursement under the new category for any costs incurred subsequent to the placement in the new category.

(b) Releases may be recategorized based on:

(1) the environmental threat present during the time period for which additional reimbursement is being claimed;

(2) information indicating the elimination or abatement of the condition or conditions that led to the placement of a release in a category;

(3) other information is submitted to the administrator; or

(4) the discovery of the event that led to the placement in a higher category with category 1 being the highest.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534)

SECTION 22. 328 IAC 1-4-4 IS ADDED TO READ AS FOLLOWS:

328 IAC 1-4-4 Monthly reimbursement

Authority: IC 13-14-8
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 4. (a) In any calendar month, the total amount reimbursed from the fund must not exceed ten percent (10%) of the fund balance based on the average fund balance of the previous fiscal quarter unless the unencumbered balance, less the unpaid approved claims, in the fund is equal to or greater than twenty-five million dollars ($25,000,000).

(b) At no time will the fund balance be allowed to fall below twenty-five million dollars ($25,000,000). *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-4)*

SECTION 23. 328 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

Rule 5. Claims

328 IAC 1-5-1 Applications for payment of reimbursable costs

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 1. (a) Claim applications for reimbursement ~~of corrective action costs~~ shall be submitted on forms adopted by the administrator. Claimants shall itemize all ~~charges~~ **reimbursable costs** as required by the application package. Documentation of ~~expenses~~ **reimbursable costs** as required by the administrator must be submitted as part of the application. **The administrator may request additional information and records to substantiate claims submitted including the following:**

(1) A copy of original employee time sheets.

(2) Invoices relating to purchase or other acquisition of equipment and supplies used for corrective action.

(3) Copies of requests for bids for work specified in the CAP.

(b) The application shall contain the following statement, which shall be signed and attested by the person applying to the fund: "I swear or affirm to the best of my knowledge and belief that the costs presented herein represent the ~~actual~~ **reimbursable** costs **actually** incurred in the performance of **site characterization or** corrective action related to this site during the period of time indicated on this application. I also swear or affirm that all charges presented as part of this application were necessary to the performance of **site characterization or** corrective action.". **If the person applying has been assigned the right to reimbursement under this rule, the person who assigned that right shall also sign and attest the application.**

(c) Two (2) copies of all documents required by the administrator shall be submitted by the person applying to the fund to support the application. Original documents must be kept by the person applying to the fund for a minimum of four (4) years after the date the application for payment was submitted or four (4) years after completion of corrective action, whichever is later.

(d) A single claim application may not be submitted to the fund for reimbursement in an amount less than the following:

~~(1) Initial claim may be submitted for any amount, including $0/eligibility preapproval claims.~~

~~(2) Subsequent~~ **(1) For all** claims, five thousand dollars ($5,000) unless the claim is:

(A) the final application for that incident;

~~(B) for a third party liability claim; or~~

~~(C)~~ **(B)** for costs incurred over ~~a period of four (4) months or longer.~~ **six (6) months from the date of the last claim; or**

(C) within fifteen (15) days of a release being categorized to a higher category, with one (1) being the highest category, under 328 IAC 1-4.

(2) Zero dollars ($0)/eligibility preapproval claims.

~~(3) Persons applying to the fund may resubmit claims in any amount if the costs were disallowed for lack of backup documentation.~~

(3) Claims that had costs disallowed may be resubmitted with subsequent claims; however, the portion of the claim that was previously submitted must be identified as being previously submitted and include the dollar value of the original claim.

Persons applying to the fund shall identify the final application as such. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR*

1056; filed Nov 1, 1995, 8:30 a.m.: 19 IR 349; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801)

SECTION 24. 328 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-5-2 Fund payment procedures; eligibility preapproval

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 2. (a) Contingent on the availability of monies as determined by 328 IAC 1-2-3, the administrator shall authorize payment upon determining that the requirements of IC 13-23-9-2 have been met. **Payment will be made as follows:**

~~(b) Processing and payment of claims are contingent upon the availability of monies.~~

~~(c)~~ **(1)** When a person applying to the fund submits an application under section 1 of this rule, which includes ~~expenses~~ **reimbursable costs** for which that person has not made payment, then payment shall be made by check jointly to the person applying to the fund and the contractor involved.

~~(d)~~ **(2)** When a person applying to the fund submits documentation verifying that ~~that~~ **the** person has ~~paid for~~ **incurred reimbursable** costs, ~~of corrective action,~~ payment shall be made by check directly to that person.

(b) A determination under this rule is appealable under IC 13-23-9-4.

~~(e)~~ **(c)** A person who may apply to the fund under 328 IAC 1-3-1 may seek preapproval of ~~a site's~~ eligibility to have ~~corrective action~~ **reimbursable** costs ~~reimbursed~~ **or third party liability claims paid** from the fund. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801)*

SECTION 25. 328 IAC 1-5-3 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-5-3 Deemed approved; reimbursement of costs

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-4

Sec. 3. "Deemed approved", under IC 13-23-8-4, means that the ~~department~~ **administrator** shall consider the CAP approved solely for purposes of reimbursement of ~~reasonable~~ **reimbursable** costs from the fund. A CAP having been deemed approved shall in no way relieve the person applying to the fund of the obligation to ~~comply~~ **be in substantial compliance** with all applicable rules or department standards. **A deemed approved CAP shall be superseded by the administrator's issuance of a determination on the CAP.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-3; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802)*

SECTION 26. 328 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-6-1 Applications for payment of third party liability claims

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-8-3

Sec. 1. (a) Applications for reimbursement of third party liability claims against owners or operators shall be submitted on approved forms established by the ~~department.~~ **administrator.** The claimant must attach either a certified copy of a legally enforceable final judgment against the owner or operator or a reasonable settlement between the owner or operator and the third party.

(b) The owner or operator must submit proof of payment of the deductible amount under IC 13-23-8-3.

(c) When submitting an application to the administrator under subsection (a), the owner or operator must also forward a copy of the request to the attorney general.

(d) The minimum single claim amount contained in 328 IAC 1-5-1(d)(1) does not apply to third party liability claims. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802)*

SECTION 27. 328 IAC 1-6-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-6-2 Fund payment procedures for third party liability

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23-9-3; IC 13-11-2-193.5

Sec. 2. (a) If the attorney general determines that the requirements under IC 13-23-9-3 have been met, the attorney general shall approve a request for ~~indemnification~~ **payment** of a third party **liability claim** not later than sixty (60) days after receiving the request:

(1) if sufficient monies exist after other obligations have been met under 328 IAC 1-2-3;

(2) based upon priority ranking of the site under 328 IAC 1-4 if applicable; and

(3) if the administrator determines that the owner or operator is in compliance with the requirements of IC 13-23 and rules adopted thereunder.

The administrator shall thereafter pay the approved third party liability claim in accordance with this rule.

(b) When ~~an owner or operator submits an acceptable application for indemnification of~~ a third party **liability claim is approved by the attorney general** but the claim has not already been paid by the owner or operator, then payment shall be made jointly by check to the eligible owner or operator and the third party.

(c) When ~~an eligible owner or operator submits an acceptable application for indemnification of~~ a third party ~~along with~~ **liability claim is approved by the attorney general and the owner or operator submits to the administrator** documentation verifying that the owner or operator has paid the third party liability claim, payment shall be made directly to the eligible owner or operator.

(d) Third party liability claims subject to ~~review~~ **approval** by the attorney general shall include the reasonable fees or compensation paid ~~to obtain:~~ **for any of the following:**

(1) Access to **off-site** properties not controlled by the claimant.

(2) Institutional **and engineered** controls **for off-site properties,** including, but not limited to, ~~deed restrictions required by risk integrated system of closure (RISC);~~ ~~or~~ **restrictive covenants as defined under IC 13-11-2-193.5.**

~~(3) subdivisions (1) and (2)~~

(3) Attorney's fees, not to exceed twenty-five percent (25%) of the total claim or thirty thousand dollars ($30,000), whichever is less, shall only be payable if incurred by the owner or operator in defense of a third party liability claim.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802)

SECTION 28. 328 IAC 1-7-2 IS AMENDED TO READ AS FOLLOWS:

328 IAC 1-7-2 Termination of financial assurance

Authority: IC 13-23-8-1; IC 13-23-8-4.5; IC 13-23-8-5; IC 13-23-11-7
Affected: IC 13-23

Sec. 2. ~~If,~~ After consultation with the financial assurance board, the ~~department determines~~ **administrator may determine** that ~~insufficient monies exist to~~ **the fund does not** provide owners or operators evidence of financial assurance. The ~~department~~ **administrator** shall notify all fund participants by certified mail. The fund coverage will continue for sixty (60) days after notice of ~~termination of coverage.~~ **insufficient funds to provide for financial assurance.** Owners or operators shall have ~~sixty (60)~~ **thirty (30)** days after receipt **of the notice** of ~~termination of financial assurance~~ **insufficient funds** to acquire financial assurance ~~by other means.~~ **as required under 329 IAC 9-8. Owners and operators shall provide proof of financial responsibility to the department.** *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 803)*

SECTION 29. THE FOLLOWING ARE REPEALED: 328 IAC 1-1-8; 328 IAC 1-7-3.

Notice of Public Hearing

These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor, Indianapolis, Indiana, (317) 232-3593 or (800) 451-6027 (in Indiana).

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

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #04-16

DIGEST

Amends 345 IAC 7-5-15.1 to remove the requirement to test swine for pseudorabies prior to exhibition. Amends 345 IAC 7-5-22 to remove various testing and vaccination requirements for dogs and cats to be exhibited. Effective 30 days after filing with the secretary of state.

345 IAC 7-5-15.1
345 IAC 7-5-22

SECTION 1. 345 IAC 7-5-15.1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-5-15.1 Pseudorabies tests for swine

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-15-14

Sec. 15.1. ~~(a)~~ ~~Before~~ A person ~~may exhibit~~ **moving** swine ~~in~~ **into** the state ~~each swine to be exhibited must test negative for Pseudorabies using an official Pseudorabies serological test approved by the state veterinarian.~~

~~(b) The test required in subsection (a) must occur within ninety (90) days if the swine are coming from within the state, or thirty (30) days if the swine are coming from out of state, prior to the opening date of~~ **for** exhibition

~~(c) The following are exempt from the requirements of subsections (a) and (b):~~

~~(1) Swine that originate from outside the state from an area that the United States Department of Agriculture has designated as Stage IV or Stage V under the national Pseudorabies eradication program, if the animal has been in the state for ninety (90) days or less.~~

~~(2) Swine that originate from a herd that is located in an area that the United States Department of Agriculture has designated as Stage III under the national Pseudorabies eradication program and the swine originate from a herd that meets the requirements for a qualified Pseudorabies-negative herd or qualified-negative gene-altered virus-vaccinated herd, utilizing monthly testing, under the Program Standards defined in 345 IAC 3-5.1.~~

~~(3) Swine exempted by the state veterinarian.~~

~~(4) Suckling pigs accompanying a dam that has met the testing requirements of subsections (a) and (b).~~

~~(d) Retest requirements for breeding swine established~~ **must meet the applicable requirements** in ~~345 IAC 1-3-13 apply to swine transported into the state that are sold at exhibition.~~ **345 IAC 1-3.** *(Indiana State Board of Animal Health; 345 IAC 7-5-15.1; filed Oct 11, 1996, 2:00 p.m.: 20 IR 751, eff Jan 1, 1997; filed Dec 10, 1997, 11:00 a.m.: 21 IR 1327; errata filed Dec 10, 1997, 3:50 p.m.: 21 IR 1350; errata filed Mar 9, 1998, 9:30 a.m.: 21 IR 2393; filed Sep 1, 2000, 2:03 p.m.: 24 IR 13; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 19, 2002, 12:00 p.m.: 26 IR 1539)*

SECTION 2. 345 IAC 7-5-22 IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-5-22 Vaccinations and tests required for dogs and cats

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-6; IC 15-2.1-15-14

Sec. 22. ~~(a) Before a dog or cat may be exhibited in the state, a licensed and accredited veterinarian must administer the following vaccinations to the animal within the three hundred sixty-five (365) days immediately preceding the date of exhibition:~~

~~(1) Each dog must be vaccinated for distemper, hepatitis, leptospirosis, bordetella (kennel cough), and parvovirus.~~

~~(2) Each cat must be vaccinated for feline panleukopenia, feline rhinotracheitis, and calcivirus.~~

~~(3) The board recommends that each exhibitor consult with his or her veterinarian about vaccination for feline leukemia and feline immunodeficiency virus (FIV) prior to exhibition.~~

~~(b)~~ **(a)** Dogs and cats three (3) months of age or older **must meet the following requirements for exhibition:**

(1) Animals that originate in the state must have a current vaccination for rabies as defined in 345 IAC 1-5 at the time they are exhibited.

~~(c) Before a cat may be exhibited in~~ **(2) Animals that originate from outside** the state ~~a licensed and accredited veterinarian~~ must ~~test~~ **meet** the ~~cat for feline leukemia virus (FeLV) within the one hundred eighty (180) days immediately preceding the date of exhibition. Cats that test positive for feline leukemia may not be exhibited.~~ **applicable requirements in 345 IAC 1-3.**

~~(d)~~ **(b)** A person exhibiting a dog or cat must have with the animal a certificate or other statement from the veterinarian performing the vaccinations and tests required by this section certifying that the vaccinations and tests have been completed and the date each was completed. ~~The statement must be signed by the veterinarian.~~ *(Indiana State Board of Animal Health; Reg 77-2, Title VII, Sec 3; filed Jul 21, 1978, 2:30 p.m.: 1 IR 569; filed Feb 15, 1985, 9:05 a.m.: 8 IR 793; filed Dec 2, 1994, 3:50 p.m.: 18 IR 861; filed Mar 23, 2000, 4:24 p.m.: 23 IR 1914; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 19, 2002, 12:00 p.m.: 26 IR 1539)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 14, 2004 at 9:40 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on proposed amendments to rules concerning animal health requirements to exhibit animals. Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

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

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Proposed Rule
LSA Document #03-245

DIGEST

Adds 460 IAC 1.1 concerning home and community based services (HCBS) including qualifications for approved providers of home and community based services; the process by which the division of disability, aging, and rehabilitative services (DDARS)/bureau of aging and in-home services (BAIHS) approves providers; the BAIHS process for monitor-

ing and ensuring compliance with provider standards and requirements; the rights of individuals receiving services; protection of individuals receiving services; standards and requirements for approved providers of home and community based services; and definitions for home and community based services. Effective 30 days after filing with the secretary of state.

460 IAC 1.1

SECTION 1. 460 IAC 1.1 IS ADDED TO READ AS FOLLOWS:

ARTICLE 1.1. HOME AND COMMUNITY BASED SERVICES

Rule 1. Purpose

460 IAC 1.1-1-1 Purpose
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. The purpose of this article is to establish standards and requirements for the division of disability, aging, and rehabilitative services (DDARS) certified entities and individuals in the provision of home and community based services (HCBS) to aged individuals and individuals with a disability or severe medical condition. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-1-1)*

Rule 2. Applicability

460 IAC 1.1-2-1 Providers of services
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This article applies to the approval and monitoring of providers of home and community based services. This article does allow for the approval of licensed home health agencies in good standing with the Indiana state department of health. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-2-1)*

460 IAC 1.1-2-2 Rules applicable to all providers
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. This rule and 460 IAC 1.1-3 through 460 IAC 1.1-33 apply to all providers of home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-2-2)*

460 IAC 1.1-2-3 Rules applicable to specific providers
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. 460 IAC 1.1-10 through 460 IAC 1.1-33 apply to the providers of home and community based services specified in the respective rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-2-3)*

460 IAC 1.1-2-4 Conflict with Medicaid/Medicare provisions
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. If any provision of this article is deemed to be in conflict with any federal or state statute, regulation, bulletin, or rule that is specifically applicable to the Medicaid/Medicare program, then such other statute, regulation, bulletin, or rule shall supersede that part of this article in which the conflict is found. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-2-4)*

Rule 3. Definitions

460 IAC 1.1-3-1 Applicability of definitions
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. The definitions in this rule apply throughout this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-1)*

460 IAC 1.1-3-2 "Abuse" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. "Abuse" includes, but is not limited to, the following:
(1) Intentional or willful infliction of physical, verbal, or demonstrative harm caused by physical touch, oral or written language, or gestures with disparaging or derogatory implications.
(2) Any unnecessary physical or chemical restraints or isolation not found in the care plan.
(3) Punishment with resulting physical harm or pain.
(4) Sexual molestation, rape, sexual misconduct, sexual coercion, and sexual exploitation.
(5) Any harm caused by:
(A) unreasonable confinement;
(B) intimidation;
(C) humiliation;
(D) harassment;
(E) threats of punishment;
(F) deprivation;
(G) neglect; or
(H) physical or financial exploitation.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-2)

460 IAC 1.1-3-3 "Adaptive aids and devices" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. "Adaptive aids and devices" means any controls, appliances, or supplies necessary to enable the waiver

recipient to increase his or her ability to function in a home or community based setting, or both, with as much independence as is possible and physical safety under their approved care plan, and listed on the approved Medicaid state plan list, as it exists and may be modified to keep up with technology. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-3)*

460 IAC 1.1-3-4 "Adult foster care services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 4. "Adult foster care services" means a living arrangement in which an individual lives in the private home of a principal caregiver who is unrelated to the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-4)*

460 IAC 1.1-3-5 "Adult protective services" or "APS" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-3-1; IC 12-10-10

Sec. 5. "Adult protective services" or "APS" means the program established under IC 12-10-3. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-5)*

460 IAC 1.1-3-6 "Advocate" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. (a) "Advocate" means a person who:
(1) assists an individual with decision making and self-determination; and
(2) is chosen by the individual or the individual's legal representative, if applicable.

(b) An advocate is not a legal representative unless legally appointed. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-6)*

460 IAC 1.1-3-7 "Ancillary services" defined
Authority IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-2
Affected: IC 12-10-1; IC 12-10-10

Sec. 7. "Ancillary services" has the meaning set forth in 460 IAC 1-8, including, but not limited to, the following:
(1) Homemaker type services.
(2) Companion type services.
(3) Assistance with cognitive tasks.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-7)

460 IAC 1.1-3-8 "Applicant" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 8. "Applicant" means a natural person or entity who applies to the BAIHS for approval to provide one (1) or more home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-8)*

460 IAC 1.1-3-9 "Applied behavior analysis services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 9. "Applied behavior analysis services" means therapy services that are highly intensive individualized instruction and behavior intervention to assist an individual in developing skills with social value. Applied behavior analysis therapy is provided:
(1) over a two (2) to three (3) year period; and
(2) to individuals between two (2) and seven (7) years of age.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-9)

460 IAC 1.1-3-10 "Applied behavior analysis support plan" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 10. "Applied behavior therapy analysis support plan" means a plan that addresses the applied behavior analysis support needs of an individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-10)*

460 IAC 1.1-3-11 "BAIHS" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 11. "BAIHS" is the bureau of aging and in-home services created under IC 12-10-10. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-11)*

460 IAC 1.1-3-12 "Basic services" defined
Authority IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-2
Affected: IC 12-10-1; IC 12-10-10

Sec 12. "Basic services" has the meaning set forth in 460 IAC 1-8, including, but not limited to, the following:
(1) Assistance with transferring.
(2) Health-related services.
(3) Bathing and hygiene.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-12)

460 IAC 1.1-3-13 "BDDS" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-11-1.1-1; IC 12-11-2.1

Sec. 13. "BDDS " means the bureau of developmental disabilities services as created under IC 12-11-1.1-1. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-13)*

460 IAC 1.1-3-14 "BDDS behavior management committee" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-11-1.1-1; IC 12-11-2.1; IC 25-33-1-5

Sec. 14. "BDDS behavior management committee" means a group of persons appointed by the director to review the applications of individuals seeking to be approved as level 2 clinicians under 460 IAC 1.1-5-6(c)(1). The committee shall consist of:

(1) at least two (2) division employees, including a BAIHS staff if related to a medical model waiver; and

(2) a licensed psychologist under IC 25-33 who has an endorsement as a health services provider in psychology under IC 25-33-1-5(c) and is not an employee of the division.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-14)

460 IAC 1.1-3-15 "Behavioral support plan" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 15. "Behavioral support plan" means a plan that addresses the behavioral support needs of an individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-15)*

460 IAC 1.1-3-16 "Behavioral support services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 16. "Behavioral support services" means training, supervision, or assistance in the following:

(1) Appropriate expression of emotions and desires.
(2) Compliance.
(3) Assertiveness.
(4) Acquisition of socially appropriate behaviors.
(5) The reduction of inappropriate behaviors.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-16)

460 IAC 1.1-3-17 "Care plan" or "plan of care" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 17. "Care plan" or "plan of care" means a plan that is written by the case manager, from the comprehensive assessment defined in section 22 of this rule, to establish supports and strategies intended to accomplish the individual's long term and short term goals by accommodating the financial and human resources offered, as well as behavioral-related assistance to the individual through paid provider services or volunteer services, or both, as designed and agreed upon by the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-17)*

460 IAC 1.1-3-18 "Case management services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1
Affected: IC 12-10-10-1

Sec. 18. "Case management services" means services found in 460 IAC 1.1-19 that enable an individual to receive a full range of appropriate services in a planned, coordinated, efficient, and effective manner, including, but not limited to, an appropriate, complete, accurate, and comprehensive assessment. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-18)*

460 IAC 1.1-3-19 "Child protection services" or "CPS" defined
Authority: IC 12-7-2-31.5; IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 31-33

Sec. 19. "Child protection services" or "CPS" refers to child protection services established under IC 31-33. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-19)*

460 IAC 1.1-3-20 "Community habilitation and participation services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 20. "Community habilitation and participation services" means services outside of an individual's home that support learning and assistance in any of the following areas:

(1) Self-care.
(2) Sensory-motor development.
(3) Socialization.
(4) Daily living skills.
(5) Communication.
(6) Community living.
(7) Social skills.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-20)

460 IAC 1.1-3-21 "Community transition supports" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 21. "Community transition supports" means supports that are one-time setup expenses for an individual who is transitioning from an institution to supported living setting in the community. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-21)*

460 IAC 1.1-3-22 "Comprehensive assessment" defined
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1
Affected: IC 12-10-10-1

Sec. 22. "Comprehensive assessment" means a process that will provide a complete and accurate assessment done by the

case manager for the appropriate services, which includes the individual and anyone the individual chooses to participate and referred to as the individual support team. This process includes, but is not limited to, the following:

(1) The eligibility screen.

(2) Medical information.

(3) Health care practitioner notes.

(4) Nurses' notes.

(5) The individual's preferences, goals, and needs.

These along with other related information will help drive the case manager developed plan of care for the individual established under section 17 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-22)*

460 IAC 1.1-3-23 "Direct care staff" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-10-1; IC 12-10-10

Sec. 23. "Direct care staff" means a person, or an agent or employee of a provider entity, who provides regular hands-on services to an individual while providing any of the following services including, but not limited to:

(1) Adult day services.

(2) Adult foster care services.

(3) Community habilitation and participation services.

(4) Respite care services.

(5) Supported employment services.

(6) Transportation services.

(7) Homemaker.

(8) Attendant care.

(9) Home-delivered meals.

(10) Any other service listed under 460 IAC 1.1-4-1 or any added in the future.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-23)

460 IAC 1.1-3-24 "Division" or "DDARS" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1-3; IC 12-10-1-4
Affected: IC 12-9-1-1; IC 12-10-1; IC 12-10-10

Sec. 24. "Division" or "DDARS" means the division of disability, aging, and rehabilitative services created under IC 12-9-1-1. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-24)*

460 IAC 1.1-3-25 "Elopement" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 25. "Elopement" means that an individual leaves, without the knowledge, authorization, or consent of the appropriate provider, the level of supervision identified as appropriate for the individual in the individual's care plan. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-25)*

460 IAC 1.1-3-26 "Endangered adult" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-3-2; IC 12-10-10

Sec. 26. "Endangered adult" has the meaning set forth in IC 12-10-3-2. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-26)*

460 IAC 1.1-3-27 "Entity" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 27. "Entity" means any of the following:

(1) An association.

(2) A corporation.

(3) A limited liability company.

(4) A governmental entity.

(5) A partnership.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-27)

460 IAC 1.1-3-28 "Environmental modification supports" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 28. "Environmental modification supports" means a physical adaptation to an individual's home to:

(1) ensure the health, welfare, and safety of the individual; or

(2) enable the individual to function with greater independence in the individual's home, without which the individual would require institutionalization.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-28)

460 IAC 1.1-3-29 "Exploitation" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 35-46-1-12
Affected: IC 12-10; IC 35-46-1-1

Sec. 29. "Exploitation" means:

(1) unauthorized use of the personal services, the property, or the identity of an individual; or

(2) any other type of criminal exploitation, including exploitation under IC 35-46-1-1;

for one's own profit or advantage or for the profit or advantage of another. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-29)*

460 IAC 1.1-3-30 "Facility-based sheltered employment services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9
Affected: IC 12-10-1; IC 12-10-10; IC 12-11.1; IC 12-11-2.1

Sec. 30. "Facility-based sheltered employment services" means an applicant as follows that shall:

(1) Be an entity.

(2) Be accredited by one (1) of the following organizations:

(A) The commission on accreditation of rehabilitation facilities (CARF) or its successor.

(B) The council on quality and leadership in supports for people with disabilities or its successor.

(C) The joint commission on accreditation of healthcare organizations (JCAHO) or its successor.

(D) An independent national accreditation organization approved by the secretary.

(3) Be a not-for-profit entity.

(4) Have sheltered workshop certification from the wage and hour division of the department of labor.

(5) Certify that, if approved, the entity will provide community-based sheltered employment services using only persons who meet the qualifications set out in 460 IAC 1.1-14-5.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-30)

460 IAC 1.1-3-31 "Family and caregiver training services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 31. "Family and caregiver training services" means the following:

(1) Training and education to instruct a parent, family member, or primary caregiver in the treatment regimens and use of equipment specified in an individual's care plan.

(2) Training to improve the ability of the parent, family member, or primary caregiver to provide care to or for the individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-31)

460 IAC 1.1-3-32 "Health care coordination services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 32. "Health care coordination services" means medical coordination services to manage the health care needs of an individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-32)*

460 IAC 1.1-3-33 "Home health agency" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 16-27

Sec. 33. "Home health agency" means an agency licensed and in good standing with the Indiana state department of health under IC 16-27. *(Division of Disability; Aging, and Rehabilitative Services; 460 IAC 1.1-3-33)*

460 IAC 1.1-3-34 "Hospital" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 16-27-1-2

Sec. 34. "Hospital" means a hospital licensed under IC 16-27-1-2. *(Division of Disability; Aging, and Rehabilitative Services; 460 IAC 1.1-3-34)*

460 IAC 1.1-3-35 "Individual" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-10
Affected: IC 12-10-1

Sec. 35. "Individual" means an individual who has been determined eligible for services by a BAIHS waiver specialist or BAIHS designee under 42 CFR 441.302. If the term is used in the context indicating that the individual is to receive information, the term also includes the individual's legal representative. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-35)*

460 IAC 1.1-3-36 "Individual support team" defined

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1
Affected: IC 12-10-10-1

Sec. 36. "Individual support team" means the individual, the case manager, and anyone the individual chooses to participate in the comprehensive assessment process referred to in section 22 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-36)*

460 IAC 1.1-3-37 "Legal representative" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 12-10-13-3.3

Sec. 37. "Legal representative" has the meaning set forth in IC 12-10-13-3.3. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-37)*

460 IAC 1.1-3-38 "Neglect" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 35-46-1-4

Sec. 38. "Neglect" means failure to provide:

(1) supervision;

(2) training;

(3) appropriate care;

(4) food;

(5) medical care; or

(6) medical supervision;

to an individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-38)*

460 IAC 1.1-3-39 "Nutritional counseling services" defined

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 39. "Nutritional counseling services" means services provided under this article by a licensed dietician or a health care practitioner under the scope of his or her duties. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-39)*

460 IAC 1.1-3-40 "Occupational therapy services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 40. "Occupational therapy services" means services provided under this article by a licensed occupational therapist or licensed occupational therapist assistant. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-40)*

460 IAC 1.1-3-41 "Personal emergency response system supports" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 41. "Personal emergency response system supports" means an electronic communication device that allows an individual to communicate the need for immediate assistance in case of an emergency. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-41)*

460 IAC 1.1-3-42 "Physical therapy services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 42. "Physical therapy services" means services provided under this article by a licensed physical therapist or licensed physical therapist assistant. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-42)*

460 IAC 1.1-3-43 "Prevocational services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 43. "Prevocational services" means services aimed at preparing an individual for paid or unpaid employment by teaching such concepts as:
(1) compliance;
(2) attendance;
(3) task completion;
(4) problem solving; and
(5) safety.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-43)

460 IAC 1.1-3-44 "Provider" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 44. "Provider" means a person or entity approved by the BDDS, the BAIHS, or an area agency on aging to provide the individual with agreed upon services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-44)*

460 IAC 1.1-3-45 "Psychological therapy services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-33-1-5.1

Sec. 45. "Psychological therapy services" means services provided under this article by a licensed psychologist with an endorsement as:
(1) a health service provider in psychology under IC 25-33-1-5.1(c);
(2) a clinical nurse specialist under IC 25-33-1-5.1(c)(1);
(3) an applied health specialist in psychology;
(4) a licensed marriage and family therapist;
(5) a licensed clinical social worker; or
(6) a licensed mental health counselor.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-45)

460 IAC 1.1-3-46 "Recreational therapy services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 46. "Recreational therapy services" means services provided under this article and consisting of a medically-approved recreational program to restore, remediate, or rehabilitate an individual in order to do the following:
(1) Improve the individual's functioning and independence.
(2) Reduce or eliminate the effects of an individual's disability.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-46)

460 IAC 1.1-3-47 "Reportable unusual occurrence" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 47. "Reportable unusual occurrence" refers to unusual occurrences described in 460 IAC 1.1-9-5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-47)*

460 IAC 1.1-3-48 "Respite care services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 48. "Respite care services" means services provided to individuals unable to care for themselves that are furnished on a temporary, intermittent, short term basis because of the absence or need for relief of an unpaid caregiver. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-48)*

460 IAC 1.1-3-49 "Secretary" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-8-1-2; IC 12-10-1; IC 12-10-10

Sec. 49. "Secretary" means the secretary of family and social services appointed under IC 12-8-1-2. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-49)*

460 IAC 1.1-3-50 "Specialized medical equipment and supplies supports" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 50. (a) "Specialized medical equipment and supplies supports" means devices, controls, or appliances that:
(1) enable an individual to increase the individual's abilities to:
(A) perform activities of daily living; or
(B) perceive or control the environment; or
(2) enhance an individual's ability to communicate.

(b) The term includes the following:
(1) Communication devices.
(2) Interpreter services.
(3) Items necessary for life support.
(4) Ancillary supplies and equipment necessary for the proper functioning of such items.
(5) Durable and nondurable medical equipment.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-50)

460 IAC 1.1-3-51 "Speech and language therapy services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 51. "Speech and language therapy services" means services provided by a licensed speech therapist under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-51)*

460 IAC 1.1-3-52 "Support team" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 52. "Support team" means the following:
(1) The individual.
(2) The case manager.
(3) Anyone the individual chooses to participate.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-52)

460 IAC 1.1-3-53 "Supported employment services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 53. "Supported employment services" means services that support and enable an individual to secure and maintain paid employment if the individual is paid at or above the federal minimum wage. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-53)*

460 IAC 1.1-3-54 "Transportation services" defined
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 54. "Transportation services" means services for the transportation of an individual in a vehicle by a provider approved under this article to provide transportation services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-3-54)*

Rule 4. Types of Home and Community Based Services

460 IAC 1.1-4-1 Types of home and community based services
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 16-27-1-7

Sec. 1. (a) Home and community based services include, but are not limited to the following, as each is described:
(1) Adaptive aids and devices, which are controls, appliances, or supplies determined necessary to enable the recipient to increase his or her ability to function in a home and community based setting with independence and physical safety. These services are necessary to prevent or delay institutionalization as defined in the plan of care.
(2) Adult day services, which are community based group programs designed to meet the needs of adults with impairments through individual plans of care. These structured, comprehensive, and nonresidential programs provide the following:
(A) Health, social, recreational, and therapeutic activities.
(B) Supervision.
(C) Support services.
(D) Personal care.
A minimum of three (3) hours to a maximum of twelve (12) hours shall be allowable. The three (3) levels of adult day services are basic, enhanced, and intensive.
(3) Attendant care services, which primarily involve hands-on assistance with a recipient's physical dependency needs. These maintenance or supportive services are furnished to frail or impaired persons to ensure health and safety and are defined in the plan of care. Attendant care services mean assistance with nonmedical personal care services such as the following:
(A) Personal hygiene activities.
(B) Ambulation and transfer of the individual.
(C) Assisting the individual with communication.
(D) Disposal of bodily waste.
(E) Meeting the individual's nutritional needs.
(F) Ensuring the individuals' physical safety as defined in IC 16-27-1-7.
(4) Behavior management/behavior program and counseling, which includes training, supervision, or assistance in the following:
(A) Appropriate expression of emotions and desires.
(B) Compliance.
(C) Assertiveness.
(D) Acquisition of socially appropriate behaviors.

(E) The reduction of inappropriate behaviors.

(5) Case management, which is a comprehensive service comprised of a variety of specific tasks and activities designed to coordinate and integrate all other services required in the individual's care plan. Case management is required in conjunction with the provision of any home and community based service.

(6) Community transition services, which include reasonable, one-time setup expenses for individuals who make the transition from an institution to their own home in the community and will not be reimbursable on any subsequent move.

(7) Congregate care, which consists of services that are designed to ensure the health, safety, and welfare of an individual in order for the individual to live successfully in his or her home. Personalized congregate care is provided to the individual who resides in his or her own living unit or apartment, which is part of subsidized housing community. The frequency, duration, and scope of these services are identified in the individual's plan of care.

(8) Day habilitation services, which shall focus on enabling the individual to attain or maintain his or her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies listed in the plan of care. In addition, day habilitation service may serve to reinforce skills or lessons taught in school, therapy, or other settings. Services shall normally be furnished four (4) or more hours per day on a regularly scheduled basis for one (1) or more days per week unless provided as an adjunct to other day activities included in an individual's plan of care.

(9) Environmental accessibility adaptations/environmental modifications, which are those physical adaptations to the home required by the individual's plan of care, that:

(A) are necessary to ensure the health, welfare, and safety of the individual; or

(B) enable the individual to function with greater independence in the home and without which the individual would require institutionalization.

(10) Health care coordination, which includes medical coordination provided by a registered nurse (RN) under the nurse practice act.

(11) Home-delivered meal, which is an appropriate and nutritionally balanced meal that meets one-third (a) of the current recommended dietary allowance (RDA) delivered to:

(A) the home of an older adult or person with disabilities; or

(B) a congregate meal site.

(12) Homemaker services, which offer direct and practical assistance consisting of household tasks and related activities. Homemaker services assist the individual to remain in a clean, safe, and healthy home environment. Homemaker services are provided when the recipient is unable to meet these needs or when an informal caregiver is unable to meet these needs for the recipient.

(13) Minor home modifications, which are selected internal and external modifications to the home environment, related specifically to the individual's functional limitations, that will assist the individual in remaining in the current living situation. Those physical adaptations to the home, required by the individual's plan of care, that are necessary to ensure the health, welfare, and safety of the individual or that enable the individual to function with greater independence in the home and without which the individual would require institutionalization.

(14) Nutritional (dietary) supplements, which include liquid supplements, such as "Boost" or "Ensure", to maintain an individual's health in order to remain in the community. Supplements should be ordered by a health care practitioner based on one (1) or a combination of the specific life stage, gender, or lifestyle.

(15) Occupational therapy services, which are services provided under this article by a licensed occupational therapist or licensed occupational therapist assistant.

(16) Personal emergency response system, or PERS, which is a device that enables certain individuals at high risk of institutionalization to secure help in an emergency. The device should be tested on a regular basis to ensure proper working order. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal a response center once a "help" button is activated. The response center is staffed by trained professionals, as specified in Appendix B-2 of the Medicaid waiver manual. PERS services are limited to those individuals who live alone, or who are alone for significant parts of the day, and have no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision.

(17) Pest control services, which are designed to prevent, suppress, or eradicate anything that:

(A) competes with humans for food and water;

(B) injures humans;

(C) spreads disease to humans; or

(D) annoys humans;

and is causing or is expected to cause more harm than is reasonable to accept.

(18) Physical therapy services, which are services provided under this article by a licensed physical therapist or a licensed physical therapist assistant.

(19) Residential habilitation, which is assistance with acquisition, retention, or improvement in skills related to activities of daily living, such as:

(A) personal grooming and cleanliness;

(B) bed making and household chores;

(C) eating and the preparation of food; and

(D) the social and adaptive skills;

necessary to enable the individual to reside in a noninstitutional setting.

(20) Respite care services, which are those services provided in the absence of the usual unpaid caregiver, provided in accordance with the plan of care.

(21) Specialized medical equipment and supplies, to include devices, controls, or appliances, specified in the plan of care, that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items and durable and nondurable medical equipment not available under the Medicaid state plan. Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the state plan and shall exclude those items that are not of direct medical or remedial benefit to the individual.

(22) Speech, hearing, and language services, which are self-explanatory.

(23) Supported employment services, which consist of paid employment for persons for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting.

(24) Transportation, which involves transporting the individual to and from community services, activities, and resources specified by the plan of care. This service is offered in addition to medical transportation required under 42 CFR 431.53 and transportation services under the state plan, defined at 42 CFR 440.170(a) (if applicable), and shall not replace them. Whenever possible, family, neighbors, friends, or community agencies that can provide this service without charge will be utilized.

(b) Descriptions of these services are expanded in the Medicaid waiver manual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-4-1)*

Rule 5. Provider Qualifications

460 IAC 1.1-5-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-1)*

460 IAC 1.1-5-2 Adult day services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. To be approved to provide adult day services, an applicant shall be a certified entity approved by the DDARS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-2)*

460 IAC 1.1-5-3 Adult foster care services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. To be approved to provide adult foster care services, an applicant shall:

(1) be an entity certified by the DDARS; and

(2) certify that, if approved, the entity will provide adult foster care services using only persons who meet the qualifications set out in 460 IAC 1.1-14-5.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-3)

460 IAC 1.1-5-4 Applied behavior analysis services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-22.5; IC 25-33-1-5.1

Sec. 4. (a) To be approved to provide applied behavior analysis services as a lead therapist, an applicant shall either be a licensed psychiatrist under IC 25-22.5 or:

(1) be a licensed psychologist under IC 25-33 and have an endorsement as a health service provider in psychology under IC 25-33-1-5.1(c); and

(2) have:

(A) completed at least one thousand five hundred (1,500) hours of training or supervised experience in the application of applied behavior analysis or an equivalent behavior modification theory for children with a pervasive developmental disorder; and

(B) at least two (2) years of experience as an independent practitioner and as a supervisor of less experienced clinicians.

(b) To be approved to provide applied behavior analysis services as a senior therapist, an applicant shall either:

(1) be a psychotherapist; or

(2) have:

(A) completed at least three thousand (3,000) hours of training or supervised experience in the application of applied behavior analysis or an equivalent behavior modification theory for children with a pervasive developmental disorder; and

(B) at least four hundred (400) hours of training or supervised experience in the use of applied behavior analysis or an equivalent behavior modification program for children with:

(i) an autistic disorder;

(ii) Asperger's disorder; or

(iii) a pervasive developmental disorder;

which may be included in the three thousand (3,000) hour training requirement in clause (A).

(c) To maintain approval as a senior therapist, a senior therapist shall obtain annually at least ten (10) continuing

education hours related to applied behavior analysis:

(1) from a category I sponsor as provided in 868 IAC 1.1-15; or

(2) as provided by the DDARS/BDDS applied behavior analysis support curriculum list.

(d) For an entity to be approved to provide applied behavior analysis services, the entity shall certify that, if approved, the entity shall provide:

(1) lead therapist services;

(2) senior therapist services; or

(3) line staff services;

using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-4)*

460 IAC 1.1-5-5 Attendant care provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 16-7-1

Sec. 5. To be approved to provide attendant care, an applicant shall be approved by the DDARS or its designee to provide home and community based services under this article, including, but not limited to, providers that are:

(1) licensed, in good standing, home health care agencies under IC 16-7-1;

(2) Medicaid waiver personal attendant care providers;

(3) family members (other than the spouse or the parent or parents of the minor child);

(4) licensed or certified health care professionals in good standing;

(5) approved individual practitioners.

(Division of Disability, Aging, and Rehabilitative Services: 460 IAC 1.1-5-5)

460 IAC 1.1-5-6 Behavioral support services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-23.6; IC 25-33-1-5.1

Sec. 6. (a) Until January 1, 2003, to be approved to provide behavioral support services as a level 1 clinician, an applicant shall meet one (1) of the following requirements as found in the definition section for the waiver:

(1) Be a licensed psychologist under IC 25-33 and have an endorsement as a health service provider in psychology under IC 25-33-1-5.1(c).

(2) Have:

(A) at least a master's degree in:

(i) a behavioral science;

(ii) special education; or

(iii) social work; and

(B) evidence of five (5) years of experience in:

(i) working directly with individuals who require behavioral supports, including the devising, implementing, and monitoring of behavioral support plans; and

(ii) the supervision and training of others in the implementation of behavioral support plans.

(b) Effective January 1, 2003, to be approved to provide behavioral support services as a licensed level 1 clinician, an applicant shall:

(1) be a licensed psychologist under IC 25-33; and

(2) have an endorsement as a health service provider in psychology under IC 25-33-1-5.1(c).

(c) To be approved to provide behavioral support services as a level 2 clinician, an applicant shall meet the following requirements:

(1) Either:

(A) have a master's degree in:

(i) clinical psychology, counseling psychology, school psychology, or another applied health service of psychology;

(ii) special education;

(iii) social work; or

(iv) counseling;

(B) be a licensed marriage and family therapist licensed under IC 25-23.6;

(C) be a licensed clinical social worker under IC 25-23.6;

(D) be a licensed mental health counselor under IC 25-23.6;

(E) have a master's degree in a human services field and be able to demonstrate to the BDDS behavior management committee that the individual has either course work in or five (5) years of experience in devising, implementing, and monitoring behavior support plans; or

(F) meet all of the following requirements:

(i) Have a bachelor's degree.

(ii) Be employed as a behavioral consultant on or before September 30, 2001, by a provider of behavioral support services approved under this article.

(iii) Be working on a master's degree in psychology, special education, or social work.

(iv) By December 31, 2006, complete a master's degree in psychology, special education, or social work.

(2) Be supervised by a level 1 clinician.

(d) To maintain approval as a behavioral support services provider, a behavioral support services provider shall:

(1) obtain annually at least ten (10) continuing education hours related to the practice of behavioral support:

(A) from a category I sponsor as provided in 868 IAC 1.1-15; or

(B) as provided by the behavioral support curriculum list; or

(2) be enrolled in:

(A) a master's level program in psychology, special education, or social work; or

(B) a doctoral program in psychology.

(e) For an entity to be approved to provide behavioral support services, the entity shall certify that, if approved, the entity shall provide level 1 clinician behavioral support services or level 2 clinician behavioral support services using only persons who meet the qualifications set out in this section.

(f) The provisions in subsection (c)(1)(B) expire on December 31, 2006. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-6)*

460 IAC 1.1-5-7 Case management services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-23-1

Sec. 7. (a) To be approved to provide case management services, an applicant shall be certified by the DDARS or its designee.

(b) Minimum qualifications to be certified include:
(1) a bachelor's degree in:
(A) social work;
(B) psychology;
(C) sociology;
(D) counseling;
(E) gerontology; or
(F) nursing;
(2) a registered nurse with one (1) year experience in human services;
(3) a bachelor's degree in any field with a minimum of two (2) years full-time, direct experience; or
(4) a master's degree in a related field may substitute for the required experience.

(c) Under the medically fragile children's waiver, the provision of case management services requires either:
(1) a licensed practical nurse; or
(2) a registered nurse.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-7)

460 IAC 1.1-5-8 Community based sheltered employment services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 8. To be approved to provide community based sheltered employment services, an applicant shall meet the following requirements:
(1) Be an entity.
(2) Be accredited by one (1) of the following organizations:
(A) The commission on accreditation of rehabilitation facilities (CARF) or its successor.
(B) The council on quality and leadership in supports for people with disabilities or its successor.
(C) The joint commission on accreditation of healthcare organizations (JCAHO) or its successor.
(D) An independent national accreditation organization approved by the secretary.
(3) Be a not-for-profit entity.
(4) Certify that, if approved, the entity will provide community based sheltered employment services using only persons who meet the qualifications set out in 460 IAC 1.1-14-5.
(5) Not be a community health center.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-8)

460 IAC 1.1-5-9 Community habilitation and participation services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 9. (a) To be approved to provide community habilitation and participation services, an applicant shall meet the requirements for direct care staff set out in 460 IAC 1.1-14-5.

(b) For an entity to be approved to provide community habilitation and participation services, the entity shall be certified by the DDARS or its designee. If approved, the entity will provide community habilitation and support services using only persons who meet the qualifications set out in 460 IAC 1.1-14-5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-9)*

460 IAC 1.1-5-10 Crisis assistance services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 10. To be approved to provide crisis assistance services, an applicant shall be approved to provide behavioral support services by the DDARS or its designee. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-10)*

460 IAC 1.1-5-11 Environmental modification supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 11. To be approved to provide environmental modification supports, an applicant shall:
(1) be certified by the DDARS or its designee;
(2) be licensed, certified, registered, or otherwise properly qualified under federal, state, or local laws applicable to the particular service that the applicant desires to perform; and

(3) certify that, if approved, the applicant will perform the services in compliance with federal, state, or local laws applicable to the type of modification being made.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-11)

460 IAC 1.1-5-12 Facility-based sheltered employment services provider qualifications
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 12. To be approved to provide facility based sheltered employment services, an applicant shall meet the following requirements:
(1) Be an entity.
(2) Be accredited by one (1) of the following organizations:
(A) The commission on accreditation of rehabilitation facilities (CARF) or its successor.
(B) The council on quality and leadership in supports for people with disabilities or its successor.
(C) The joint commission on accreditation of healthcare organizations (JCAHO) or its successor.
(D) An independent national accreditation organization approved by the secretary.
(3) Be a not-for-profit entity.
(4) Have sheltered workshop certification from the wage and hour division of the department of labor.
(5) Certify that, if approved, the entity will provide community based sheltered employment services using only persons who meet the qualifications set out in 460 IAC 1.1-14-5.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-12)

460 IAC 1.1-5-13 Family and caregiver training services provider qualifications
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 13. To be approved to provide family and caregiver training services, an applicant shall be certified by the DDARS or its designee. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-13)*

460 IAC 1.1-5-14 Heath care coordination services provider qualifications
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-23-1

Sec. 14. (a) To be approved to provide health care coordination services, an applicant shall be either a registered nurse or a licensed practical nurse under IC 25-23-1.

(b) For an entity to be approved to provide health care coordination services, the entity shall certify that, if approved, the entity will provide health care coordination services using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-14)*

460 IAC 1.1-5-15 Homemaker provider qualifications
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 15. To be approved to provide homemaker services, an applicant shall be otherwise approved by the DDARS or its designee to provide home and community based services under section 3 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-15)*

460 IAC 1.1-5-16 Nutritional counseling services provider qualifications
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-14.5

Sec. 16. (a) To be approved to provide nutritional counseling services, an applicant shall be:
(1) a dietitian certified under IC 25-14.5; or
(2) a licensed health care practitioner under the scope of their duties.

(b) For an entity to be approved to provide nutritional counseling services, the entity shall certify that, if approved, the entity will provide nutritional counseling services using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-16)*

460 IAC 1.1-5-17 Occupational therapy services provider qualifications
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-23.5-1-5.5; IC 25-23.5-1-6; IC 25-23.5-5

Sec. 17. (a) To be approved to provide occupational therapy services as an occupational therapist, an applicant shall be an occupational therapist certified under IC 25-23.5.

(b) To be approved to provide occupational therapy services as an occupational therapy assistant, an applicant shall be certified and follow all regulations and guidelines under IC 25-23.5-1-6.

(c) To be approved to provide occupational therapy services as an occupational therapy aide, an applicant shall meet the requirements of IC 25-23.5-1-5.5 and 844 IAC 10-6.

(d) For an entity to be approved to provide occupational therapy services, the entity shall certify that, if approved, the entity will provide occupational therapy services using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-17)*

460 IAC 1.1-5-18 Personal emergency response system supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 18. To be approved to provide personal emergency response system supports, an applicant shall:

(1) be licensed, certified, registered, or otherwise properly qualified under federal, state, or local laws applicable to the particular service that the applicant desires to perform; and

(2) certify that, if approved, the applicant will perform the services in compliance with federal, state, or local laws applicable to a personal emergency response system. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-18)*

460 IAC 1.1-5-19 Physical therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-27-1

Sec. 19. (a) To be approved to provide physical therapy services as a physical therapist, an applicant shall be a physical therapist licensed under IC 25-27-1.

(b) To be approved to provide physical therapy services as a physical therapist assistant, an applicant shall be certified and follow all regulations and guidelines under IC 25-27-1.

(c) For an entity to be approved to provide physical therapy services, the entity shall certify that, if approved, the entity will provide physical therapy services using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-19)*

460 IAC 1.1-5-20 Prevocational services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 20. (a) To be approved to provide prevocational services, an applicant shall meet the requirements for direct care staff set out in 460 IAC 1.1-14-5.

(b) For an entity to be approved to provide prevocational services, the entity shall certify that, if approved, the entity will provide prevocational services using only persons who meet the qualification set out in 460 IAC 1.1-14-5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-20)*

460 IAC 1.1-5-21 Psychological therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-22.5; IC 25-23.6; IC 25-33-1-5.1

Sec. 21. (a) To be approved to provide psychological therapy services, an applicant shall be one (1) of the following:

(1) A psychologist licensed under IC 25-33-1 and have an endorsement as a health service provider in psychology under IC 25-33-1-5.1(c).

(2) A marriage and family therapist licensed under IC 25-23.6, IC 25-22.5.

(3) A clinical social worker licensed under IC 25-23.6.

(4) A mental health counselor licensed under IC 25-23.6.

(b) For an entity to be approved to provide psychological therapy services, the entity shall certify that, if approved, the entity will provide psychological therapy services using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-21)*

460 IAC 1.1-5-22 Recreational therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 22. (a) To be approved to provide recreational therapy services, an applicant shall be certified by the national council for therapeutic recreation certification.

(b) To be approved to provide recreational therapy services, an entity shall certify that, if approved, the entity will provide recreational therapy services using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-22)*

460 IAC 1.1-5-23 Respite care services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 23. (a) To be approved to provide respite care services, an applicant shall meet the requirements for direct care staff set out in 460 IAC 1.1-14-5 and an applicant shall be otherwise approved by the DDARS or its designee to provide home and community based services under section 3 of this rule.

(b) For an entity to be approved to provide respite care services, the entity shall meet both of the following requirements:

(1) Be one (1) of the following types of entities:

(A) A licensed home health agency.

(B) An adult day service provider certified by the DDARS.

(C) An entity providing residential services to unrelated individuals.

(D) A licensed nursing facility.

(2) Certify that, if approved, the entity will provide respite care services using only persons who meet the direct care staff qualifications set out in 460 IAC 1.1-14-5.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-23)

460 IAC 1.1-5-24 Specialized medical equipment and supplies supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 24. To be approved to provide specialized medical equipment and supplies supports, an applicant shall:

(1) be licensed, certified, registered, or otherwise properly qualified under federal, state, or local laws applicable to the particular service that the applicant desires to perform; and

(2) certify that, if approved, the applicant will perform the services in compliance with federal, state, or local laws applicable to the type of equipment and supplies being provided.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-24)

460 IAC 1.1-5-25 Speech-language therapy services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 25-35.6-1-2

Sec. 25. (a) To be approved to provide speech-language therapy services as a speech-language pathologist, an applicant shall be a speech-language pathologist licensed under IC 25-35.6.

(b) To be approved to provide speech-language therapy services as a speech-language pathology aide, an applicant shall meet and follow the definition in IC 25-35.6-1-2(h) and be registered under 880 IAC 1-2.

(c) For an entity to be approved to provide speech-language therapy services, the entity shall certify that, if approved, the entity will provide speech-language therapy services using only persons who meet the qualifications set out in this section. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-25)*

460 IAC 1.1-5-26 Supported employment services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 26. To be approved to provide supported employment services, an applicant shall meet the following requirements:

(1) Be accredited by, or provide proof of an application to seek accreditation from, one (1) of the following organizations:

(A) The commission on accreditation of rehabilitation facilities (CARF) or its successor.

(B) The council on quality and leadership in supports for people with disabilities or its successor.

(C) The joint commission on accreditation of healthcare organizations (JCAHO) or its successor.

(D) The national commission on quality assurance or its successor.

(E) An independent national accreditation organization approved by the secretary.

(2) Certify that, if approved, the applicant will provide services using only persons who meet the qualifications set out in 460 IAC 1.1-14-5.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-26)

460 IAC 1.1-5-27 Transportation services provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 12-17.2-2-4

Sec. 27. (a) To be approved to provide transportation services, an applicant shall be an entity certified by the DDARS.

(b) To be approved to provide transportation services, an applicant shall certify that, if approved, transportation services will be provided using only persons having a valid:

(1) operator's license;

(2) chauffeur's license;

(3) public passenger chauffeur's license; or

(4) commercial driver's license;

issued to the person by a bureau of motor vehicles to drive the type of motor vehicle for which the license was issued. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-27)*

460 IAC 1.1-5-28 Transportation supports provider qualifications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 28. To be approved to provide transportation supports, an applicant shall be certified by the DDARS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-5-28)*

Rule 6. Application and Approval Process

460 IAC 1.1-6-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-1
Affected: IC 12-10-10

Sec. 1. This rule applies to all home and community based services providers. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-6-1)*

460 IAC 1.1-6-2 Initial applications

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. To receive initial approval as a home and community based services provider, an applicant shall submit the following for each service for which the applicant is seeking to be an approved provider:

(1) An application on a form prescribed by the DDARS/BAIHS.

(2) Evidence that the provider meets the qualifications for home and community based services that the provider is seeking to be approved to provide as specified in this article or a licensed home health agency in good standing with no negative findings from ISDH.

(3) Supporting documents specified on the application form to demonstrate the applicant's programmatic, financial, and managerial ability to provide home and community based services as set out in this article.

(4) A written and signed statement of assurance that the applicant will comply with the provisions of this article.

(5) A written and signed statement that the applicant will provide services to an individual as set out in the individual's care plan.

(6) Upon request, documentation, or provide copies during an on-site visit, as proof of the above assurances. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-6-2)*

460 IAC 1.1-6-3 Action on application

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-10-1; IC 12-10-10

Sec. 3. (a) The BAIHS shall determine whether an applicant meets the requirements under this article upon review of an initial application. The BAIHS shall either:

(1) approve the applicant for a period not to exceed three (3) years; or

(2) deny approval to an applicant that does not meet the approval requirements of this article.

(b) If an applicant is seeking to obtain approval as a level 2 clinician under 460 IAC 1.1-5-6(c)(1)(E), the DDARS behavior management committee shall review the applicant's credentials.

(c) The BAIHS shall notify an applicant in writing of the BAIHS determination within sixty (60) days of receipt of a completed application.

(d) If an applicant is adversely affected or aggrieved by the BAIHS 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) calendar days after the applicant receives written notice of the BAIHS determination. Administrative review shall be conducted under IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-6-3)*

460 IAC 1.1-6-4 Renewal of approval

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-10-1; IC 12-10-10

Sec. 4. (a) A provider of home and community based services (HCBS) or supports shall file a written request for renewal of the BAIHS approval at least ninety (90) days prior to expiration of the BAIHS previous approval.

(b) Upon receiving a request for renewal of approved status, the BAIHS shall determine whether a provider continues to meet the requirements of this article, or any amendment to it, and, if applicable, remains licensed and in good standing with the Indiana state department of health (ISDH).

(c) The BAIHS determination on renewal of approval shall be based on verification of the following:

(1) The provider's operations have been surveyed either:

(A) within the preceding fifteen (15) months;

(B) as part of the renewal process; or

(C) they are a licensed entity in good standing with the ISDH and with no outstanding actions pending against them within the ISDH or the DDARS.

(2) There are no outstanding issues that may seriously endanger the health or safety of an individual receiving services from the provider.

(d) In considering a request for the renewal of approval, the BAIHS shall either:

(1) approve the applicant for a period not to exceed three (3) years; or

(2) deny approval to an applicant that does not meet the approval requirements of this article.

(e) If a provider has complied with subsection (a), the BAIHS shall notify a provider in writing of the BAIHS determination at least thirty (30) days prior to the expiration of the provider's approval under this section.

(f) If a provider has complied with subsection (a) and if the BAIHS does not act upon a provider's request for renewal of approved status before the expiration of the provider's approved status, the provider's approved status shall continue until such time as the BAIHS acts upon the provider's request for renewal of approved status.

(g) If a provider is adversely affected or aggrieved by the BAIHS determination, the provider may request administrative review of the determination. The request shall be made in writing and filed with the director of the division within fifteen (15) calendar days after the provider receives written notice of the determination. Administrative review shall be conducted under IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-6-4)*

460 IAC 1.1-6-5 Application to provide additional services

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. (a) A provider seeking approval to provide an additional home and community based service shall comply with section 2 of this rule.

(b) Approval to provide additional services shall be granted by the BAIHS only if:

(1) the provider's operations have been reviewed, including review of any surveys, complaints, or summaries of incident reports; and

(2) there are no outstanding issues that may seriously endanger the health or safety of an individual and, if applicable, the provider remains licensed and in good standing with the Indiana state department of health.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-6-5)

Rule 7. Monitoring; Sanctions; Administrative Review

460 IAC 1.1-7-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-7-1)*

460 IAC 1.1-7-2 Monitoring; corrective action

Authority: IC 12-8-4-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) The BAIHS or its designee shall monitor compliance with the requirements of this article at the following times:

(1) At least every fifteen (15) months.

(2) Upon receiving a complaint or report alleging a provider's noncompliance with the requirements of this article.

(b) The BAIHS or its designee shall monitor compliance with the requirements of this article through any of the following means:

(1) Requesting and obtaining information from the provider.

(2) Site inspections.

(3) Meeting with an individual or the individual's legal representative as applicable.

(4) Review of provider records and the records of an individual.

(5) Follow-up inspection as is reasonably necessary to determine compliance after the BAIHS has requested a corrective action plan.

(6) The provider will submit to the BAIHS or its designee any requested documentation.

(c) After any site inspection, the BAIHS or its designee shall issue a written report, which shall:

(1) be prepared by the BAIHS or its designee;

(2) document the findings made during monitoring;

(3) identify necessary corrective action;

(4) identify the time period in which a corrective action plan shall be completed by the provider;

(5) identify any documentation needed from the provider to support the provider's completion of the corrective action plan; and

(6) be submitted to the provider.

(d) A provider shall do the following:

(1) Complete a corrective action plan to the reasonable satisfaction of the BAIHS or its designee within the time period identified in the corrective action plan, or within such other time period agreed to by the BAIHS or its designee and the provider.

(2) Notify the BAIHS or its designee upon the completion of a corrective action plan.

(3) Provide the BAIHS or its designee with any requested documentation.

(e) If a person other than an individual receiving services files a complaint, BAIHS or its designee shall notify the person filing the complaint of the following:

(1) The completion of the BAIHS monitoring as a result of the complaint.

(2) The completion of any corrective action by the provider as a result of the BAIHS monitoring of a provider.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-7-2)

460 IAC 1.1-7-3 Effect of noncompliance; notice

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-10-1; IC 12-10-10

Sec. 3. (a) If a provider does not comply with the requirements of this article or does not complete a corrective action plan to the reasonable satisfaction of the BAIHS or its designee within the time allowed, the BAIHS shall not authorize either or both of the following:

(1) The continuation of services to an individual or individuals by the provider.

(2) The receipt of services by individuals not already receiving services from the provider.

(b) After an acceptable corrective plan of action has been submitted to the BAIHS, the BAIHS or its designee shall monitor the provider's compliance with the corrective action plan. If the BAIHS determines that the provider has not implemented the corrective action plan, the BAIHS shall not authorize either or both of the following:

(1) The continuation of services to an individual or individuals by the provider if the services do not comply with this article.

(2) The receipt of services by individuals not already receiving services from the provider at the time the determination is made that the provider did not submit a corrective action plan to the reasonable satisfaction of the BAIHS or its designee.

(c) The BAIHS or its designee reserves the right to refer issues to the Medicaid fraud unit pursuant to the signed BAIHS provider agreement.

(d) The BAIHS or its designee shall give written notice of the BAIHS action under subsection (a), (b), or (c) to the following:

(1) The provider.

(2) The individual receiving service from the provider.

(3) The individual's legal representative if applicable.

(e) The written notice under subsection (d) shall include the following:

(1) The requirements of this article with which the provider has not complied.

(2) The effective date, with at least thirty (30) days' notice, of the BAIHS action under subsection (a).

(3) The need for planning to obtain services that comply with this article for an individual or individuals.

(4) The provider's right to seek administrative review of the BAIHS action.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-7-3)

460 IAC 1.1-7-4 Serious endangerment of individual's health and safety

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-10-1; IC 12-10-10; IC 16-28-13

Sec. 4. (a) If a provider's noncompliance with this article seriously endangers the health or safety of an individual such that an emergency exists, as determined by the BAIHS or its designee, the BAIHS may enter an order for any of the following:

(1) Termination of continued authorization for the provider to serve any individual whose health or safety is being seriously endangered.

(2) Denial of authorization for the receipt of services by individuals not already receiving services from the provider at the time the BAIHS determines that a provider's noncompliance with this article endangers the health or safety of an individual.

(3) Termination of continued authorization for the provider to provide any services under this article.

(4) Referral of the provider to the Indiana state department of health or the Medicaid fraud unit, or both.

(b) Any action taken under subsection (a) shall remain in effect until such time as the BAIHS or its designee determines that the provider's noncompliance with this article is no longer endangering the health and safety of an individual.

(c) The BAIHS shall give written notice of an order under subsection (a) to the following:

(1) The provider.

(2) The individual receiving service from the provider.

(3) The individual's legal representative as applicable.

(d) The written notice under subsection (a) shall include the following:

(1) The requirements of this article with which the provider has not complied.

(2) A brief statement of the facts and the law leading to the BAIHS determination that an emergency exists.

(3) The need to immediately obtain services that comply with this article for an individual or individuals.

(4) The provider's right to seek administrative review of the BAIHS action.

(e) The order issued under subsection (a):

(1) shall expire on the date the BAIHS or its designee determines that an emergency no longer exists; and

(2) is subject to review in ninety (90) days.

(f) During the pendency of any related proceedings under IC 4-21.5, the BAIHS may renew an emergency order for successive ninety (90) day periods. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-7-4)*

460 IAC 1.1-7-5 Revocation of approval

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. The BAIHS shall revoke the approval of a provider and may request sanctions up to and including referral to the Medicaid fraud unit under this rule for the following reasons:

(1) The provider's repeated noncompliance with this article.

(2) The provider's continued noncompliance with this article.

(3) The provider's noncompliance with this article that seriously endangers the health or safety of an individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-7-5)

460 IAC 1.1-7-6 Administrative review

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-10-1; IC 12-10-10

Sec. 6. (a) To qualify for administrative review of an action or determination of the BAIHS under this rule, the provider must file a request as follows that:

(1) States in writing facts demonstrating that the provider is the following:

(A) A provider to whom the action is specifically directed.

(B) Aggrieved or adversely affected by the action.

(C) Entitled to review under any law.

(2) Is filed with the director of the division within fifteen (15) calendar days after the provider receives notice of the agency action or determination.

(b) Administrative review shall be conducted in accordance with IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-7-6)*

Rule 8. Rights of Individuals

460 IAC 1.1-8-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-8-1)*

460 IAC 1.1-8-2 Constitutional and statutory rights

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 12-27

Sec. 2. (a) A provider shall ensure that an individual's rights as guaranteed by the Constitution of the United States and the Constitution of the State of Indiana are not infringed upon by the provider.

(b) A provider shall ensure that:

(1) an individual's rights as set out in IC 12-27 are not infringed upon by the provider; and

(2) an individual has the ability to exercise those rights as provided in IC 12-27.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-8-2)

460 IAC 1.1-8-3 Promoting the exercise of rights

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. To protect an individual's rights and enable an individual to exercise the individual's rights, a provider shall do the following:

(1) Provide an individual with humane care and protection from harm.

(2) Provide services in a safe, secure, and supportive environment that:

(A) meet the assessed needs and are appropriate; and

(B) comply with:

(i) standards of professional practice;

(ii) guidelines established by accredited professional organizations if applicable; and

(iii) budgetary constraints.

(3) Obtain written consent from an individual, or the individual's legal representative if applicable, before releasing information from the individual's records unless the person requesting release of the records is authorized by law to receive the records without consent.

(4) Process and make decisions regarding complaints filed by an individual within two (2) weeks after the provider receives the complaint.

(5) Inform an individual in writing and in the individual's usual mode of communication evidenced by signed documentation of the following:

(A) The individual's constitutional and statutory rights using a form approved by the BAIHS.

(B) The complaint procedure established by the provider for processing complaints.

(C) The complaint procedure established by the DDARS or its designee on the approved complaint form.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-8-3)

Rule 9. Protection of an Individual

460 IAC 1.1-9-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-9-1)*

460 IAC 1.1-9-2 Adoption of policies and procedures to protect individuals

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-11-1-1; IC 12-11-2.1

Sec. 2. (a) A provider shall adopt written policies and procedures regarding the requirements of sections 3 and 4 of this rule.

(b) A provider shall require the provider's employees or agents to be familiar with and comply with the policies and procedures required by subsection (a).

(c) Beginning on the date services for an individual commence and at least one (1) time a year thereafter, the case manager shall inform:

(1) the individual in writing and in the individual's usual mode of communication;

(2) the individual's parent, if the individual is less than eighteen (18) years of age or if the individual's parent is the individual's legal representative; and

(3) the individual's legal representative if applicable;

of the policies and procedures adopted under this section and 460 IAC 1.1-8-3. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-9-2)*

460 IAC 1.1-9-3 Prohibiting violations of individual rights

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. (a) A provider shall not:

(1) abuse, neglect, exploit, or mistreat an individual; or
(2) violate an individual's rights as provided in 460 IAC 1.1-8-2.

(b) A provider who delivers services through employees or agents shall adopt policies and procedures that prohibit:
(1) abuse, neglect, exploitation, or mistreatment of an individual; or
(2) violation of an individual's rights.

(c) Practices prohibited under this section include, but are not limited to, the following:
(1) Corporal punishment inflicted by the application of painful stimuli to the body, which includes any of the following:
(A) Forced physical activity.
(B) Hitting.
(C) Pinching.
(D) The application of painful or noxious stimuli.
(E) The use of electric shock.
(F) The infliction of physical pain.
(2) Seclusion by placing an individual alone in a room or other area from which exit is prevented.
(3) Verbal abuse, including:
(A) screaming;
(B) swearing;
(C) name-calling;
(D) belittling; or
(E) other verbal activity;
that may cause damage to an individual's self-respect or dignity.
(4) A practice that denies an individual any of the following without a health care practitioner's order:
(A) Sleep.
(B) Shelter.
(C) Food.
(D) Drink.
(E) Physical movement for prolonged periods of time.
(F) Medical care or treatment.
(G) Use of bathroom facilities.
(5) Work or chores benefiting others without pay unless:
(A) the provider has obtained a certificate from the United States Department of Labor authorizing the employment of workers with a disability at special minimum wage rate;
(B) the services are being performed by an individual in the individual's own residence as a normal and customary part of housekeeping and maintenance duties; or
(C) an individual desires to perform volunteer work in the community.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-9-3)

460 IAC 1.1-9-4 Procedures for protecting individuals

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) Except as specified in this section, this section applies to all providers of home and community based services.

(b) The individual's case manager shall inform the individual at regular intervals, as specified by the individual's care plan, of the following:
(1) The individual's medical condition.
(2) The individual's cognitive and behavioral status.
(3) The advantages and disadvantages of the current plan of care.
(4) The individual's right to refuse treatment.

(c) The individual's support team shall establish a procedure to ensure that an individual as follows:
(1) Has the opportunity for personal privacy.
(2) Is not compelled to perform services for a provider.
(3) Provide that, if an individual works voluntarily for a provider, the individual is compensated:
(A) at the prevailing wage for the job; and
(B) commensurate with the individual's abilities;
unless the provisions of section 3(c)(5) of this rule are met.
(4) Has the opportunity to communicate, associate, and meet privately with persons of the individual's choosing.
(5) Has the means to send and receive unopened mail.
(6) Has access to a telephone with privacy for incoming and outgoing local and long distance calls at the individual's expense.
(7) Has the opportunity to participate in social, religious, and community activities.
(8) Has the right to retain and use appropriate personal possessions and clothing.
(9) Is free of threat of or actual harm from misuse or misappropriation of funds or property.

(d) The BAIHS protocol specified in the incident reporting policy manual describes the responsibilities of the provider of services for conducting an investigation or participating in an investigation of an alleged violation of an individual's rights or a reportable unusual occurrence, including taking all immediate necessary steps to protect an individual who has been the victim of abuse, neglect, exploitation, or mistreatment from further abuse, neglect, exploitation, or mistreatment.

(e) Each provider of services shall establish a written procedure providing for:
(1) administrative action against;
(2) investigating an alleged violation by;
(3) disciplinary action against; and
(4) dismissal of;
an employee or agent of the provider, if the employee or agent is involved in the abuse, neglect, exploitation, or mistreatment of an individual or a violation of an individual's rights.

(f) Each provider of services shall establish a written procedure for employees or agents of the provider to report violations of the provider's policies and procedures to the provider.

(g) Each provider of services shall establish a written procedure for the provider or for an employee or agent of the provider for informing:

(1) adult protective services or child protection services as applicable;

(2) an individual's legal representative if applicable;

(3) any person designated by the individual; and

(4) the provider of case management services to the individual;

of a situation involving the abuse, neglect, exploitation, or mistreatment of an individual or the violation of an individual's rights.

(h) Each provider of services shall establish a written protocol for reporting reportable unusual occurrences to the BAIHS as required by section 5 of this rule.

(i) Each provider of services shall establish a written protocol for the individual receiving services on the right to and how to file a complaint with the BAIHS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-9-4)*

460 IAC 1.1-9-5 "Unusual occurrence" defined; reporting

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10; IC 35-46-1-4; IC 35-46-1-12

Sec. 5. (a) "Unusual occurrence" means an incident of suspected abuse, neglect, or exploitation of an adult or child residing in a community residential setting with home and community based services. All incidents falling in this category must be reported on the prescribed incident reporting form approved by the DDARS and also reported, as applicable, to adult protective services or child protective services.

(b) Examples of an unusual occurrence include, but are not limited to, the following:

(1) Alleged, suspected, or actual abuse, neglect, or exploitation of an individual. An unusual occurrence in this category shall also be reported to adult protective services or child protection services as applicable. The provider shall suspend staff involved in an incident from duty pending investigation by the provider.

(A) "Abuse", for purposes of this subsection, includes, but is not limited to, the following:

(i) Intentional or willful infliction of physical injury.

(ii) Unnecessary physical or chemical restraints or isolation.

(iii) Punishment with resulting physical harm or pain.

(iv) Sexual molestation, rape, sexual misconduct, sexual coercion, and sexual exploitation.

(v) Verbal or demonstrative harm caused by oral or written language or gestures with disparaging or derogatory implications.

(vi) Any harm caused by:

(AA) unreasonable confinement;

(BB) intimidation;

(CC) humiliation;

(DD) harassment;

(EE) threats of punishment;

(FF) deprivation;

(GG) neglect; or

(HH) physical or financial exploitation.

(B) "Neglect", for purposes of this subsection, means either of the following:

(i) Failure to provide supervision, training, or appropriate care.

(ii) Failure to provide food, medical care, or medical supervision to an individual as described under IC 35-46-1-4.

(C) "Exploitation", for purposes of this subsection, means either of the following:

(i) Unauthorized use of the:

(AA) personal services;

(BB) property; or

(CC) identity;

of an individual.

(ii) Any other type of criminal exploitation, including exploitation under IC 35-46-1-12, for one's own profit or advantage or for the profit or advantage of another.

(2) Accidental or unexpected death of an individual. All deaths must also be reported to adult protective services or child protective services. The narrative must include the following:

(A) Name of the person contacted.

(B) Phone number of the contact.

(C) County of the contact.

(3) A residence that compromises the health and safety of an individual due to a significant interruption of a major utility, such as the following:

(A) Electricity.

(B) Heat.

(C) Water.

(D) Air conditioning.

(E) Plumbing.

(F) Fire alarm.

(G) Sprinkler system (if applicable).

(4) Environmental or structural problems associated with a residence that compromises the health and safety of an individual including the following:

(A) Inappropriate sanitation.

(B) Rodents.

(C) Structural damage.

(D) Damage caused by acts of nature, including the following:

(i) Lightning.
(ii) Flood.
(iii) Weather.

(5) Residential fire resulting in the following:
(A) Relocation.
(B) Personal injury.
(C) Property loss.
(D) Other issues.

(6) Observed criminal activity by any of the following:
(A) A staff member, employee, or agent of a provider.
(B) A family member of an individual receiving services.
(C) The individual receiving services.

(7) Injuries of unknown origin. A significant injury of unknown origin to an individual may include, but is not limited to, the following:
(A) A fracture.
(B) A burn greater than first degree.
(C) Choking that requires intervention.
(D) Contusions or lacerations.
(E) Any injury that may involve treatment by a health care practitioner.
(F) A fall from an individual who does not usually fall.

(8) Attempted suicide that results in physical harm or injury, or both, to the individual, plus the need for around-the-clock care (regardless of what type of facility).

(9) Suspected rape, sexual assault, or sexual exploitation by a person receiving services.

(10) A major disturbance or threat to public safety created in the community by the individual. The threat can be toward anyone including staff and can be in an internal setting. It does not have to be on the street.

(11) Police involvement when there is an arrest of the individual.

(12) Elopement or missing person. Questions that should be answered to report a missing person include the following:
(A) How long the individual was gone.
(B) How the individual eloped or became missing without someone's noticing.
(C) Where the staff was and what the staff was doing at the time of the elopement or when the person became missing.
(D) Where the individual was found.
(E) Who found the individual.
(F) How the individual was found, including what the individual was doing and their condition.
(G) Was the individual at risk to himself or herself or to others, or both.
(H) What is the history of previous elopements or missing persons with this individual.
(I) What measures are in place to prevent this in the future.
(J) Is there a behavioral support plan in place to address this.

(13) Medication errors.
(A) This applies only if medication is administered by a paid provider.
(B) Refusal to take medications does not constitute an error and does not require filing of an incident report but should be followed up by medical personnel and the support team to ensure that the health and safety of the individual is safeguarded. This information should also be documented in the individual's record.
(C) If an individual cannot self-medicate, a medication error, except for refusal to take medications, that jeopardizes an individual's health and safety, includes the following:
(i) Medication given that was not prescribed or ordered for the individual.
(ii) Failure to administer medication as prescribed, including the following:
(AA) Incorrect dosage.
(BB) Missed medication.
(CC) Failure to give medication at the appropriate time.

(14) Use of any PRN medication related to an individual's behavior.

(15) Inadequate staff support for an individual including inadequate supervision, with the potential for either of the following:
(A) Significant harm or injury to an individual.
(B) Death of an individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-9-5)

460 IAC 1.1-9-6 Transfer of individual's records upon change of provider

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. (a) If an individual changes providers for any home and community based service, the provider shall do the following:
(1) Discuss with the individual the new provider's need to obtain a copy of the previous provider's records and files concerning the individual.
(2) Provide the individual with a written form used to authorize the previous provider's release of a copy of the records and files concerning the individual to the new provider.
(3) Request the individual to sign the release form.

(b) Upon receipt of a written release signed by the individual, a provider shall forward a copy of the case summary, the most current medical plan of care, and the Medicaid prior authorization plan from the individual's records and files to the new provider no later than seven (7) calendar days after receipt of the written release signed by the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-9-6)*

460 IAC 1.1-9-7 Notice of termination of services
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 7. (a) A provider shall give an individual and an individual's representative written notice as prescribed by the BAIHS provider agreement before terminating the individual's services, if the services being provided to the individual are of an ongoing nature.

(b) If the provider is providing any services to the individual, besides case management services, before terminating services, the provider shall continue providing services to the individual until a new provider providing similar services is in place. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-9-7)*

Rule 10. General Administrative Requirements for Providers

460 IAC 1.1-10-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-1)*

460 IAC 1.1-10-2 Documentation of approvals
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A provider shall maintain documentation that the BAIHS has approved the provider for each service provided. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-2)*

460 IAC 1.1-10-3 Compliance with laws
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. A provider shall comply with all applicable state and federal statutes, rules, regulations, and requirements, including all applicable provisions of the federal Older Americans Act, Public Law 89-73, Americans with Disabilities Act (ADA), 42 U.S.C. 12001 et seq. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-3)*

460 IAC 1.1-10-4 Compliance with state Medicaid plan; Medicaid waivers
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. A provider shall comply with the provisions of:
(1) the state Medicaid plan; and
(2) any Medicaid waiver applicable to the provider's services;
or the provider may face the sanctions set out in 460 IAC 1.1-7. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-4)*

460 IAC 1.1-10-5 Documentation of criminal histories
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-5; IC 12-10-17-12
Affected: IC 12-10-1; IC 12-10-10; IC 12-10-13; IC 12-10-17; IC 16-27-2-5; IC 31-33-22-1; IC 35-42-1; IC 35-42-4; IC 35-43-4; IC 35-46-1-12; IC 35-46-1-13

Sec. 5. (a) A provider shall obtain a full criminal history from each employee involved in the direct management, administration or provision of services from both of the following:
(1) The Indiana central repository.
(2) The county or counties of previous employment for the previous three (3) years.

(b) The full criminal history shall verify that the employee, officer, or agent does not have any evidence of any of the following:
(1) A sex crime (IC 35-42-4).
(2) Exploitation of an endangered adult (IC 35-46-1-12).
(3) Failure to report either of the following:
(A) Battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
(B) Abuse or neglect of a child (IC 31-33-22-1).
(4) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the person's employment application date, except as provided in IC 16-27-2-5(a)(5).
(5) Murder (IC 35-42-1-1).
(6) Voluntary manslaughter (IC 35-42-1-3).
(7) Involuntary manslaughter (IC 35-42-1-4).
(8) Felony battery.
(9) A felony offense relating to a controlled substance.

(c) A provider shall have a report from the state nurse aid registry of the Indiana state department of health verifying that each employee or agent involved in the direct provision of services has not had a finding entered into the state nurse aide registry.

(d) A provider shall have registered nurses and licensed practical nurses checked for findings through the Indiana health professions bureau.

(e) If an individual is utilizing self-directed care, the individual's choice of assistant must be trained as indicated in IC 12-10-17-5 and must be placed on the state DDARS/BAIHS registry under IC 12-10-17-12. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-5)*

460 IAC 1.1-10-6 Provider organizational chart
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. (a) A provider shall maintain a current organiza-

tional chart, including parent organizations and subsidiary organizations.

(b) Upon request, a provider shall supply the BAIHS with a copy of the chart described in subsection (a). *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-6)*

460 IAC 1.1-10-7 Collaboration and quality control
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 7. (a) A provider for an individual shall collaborate with the individual's other service providers to coordinate services to the individual consistent with the individual's care plan.

(b) A provider for an individual shall give the individual's provider of case management services access to the provider's quality assurance and quality improvement procedures.

(c) If a provider administers medication to an individual, the provider for the individual shall implement the medication assistance procedure designed by the individual's provider responsible for medication administration.

(d) If applicable, a provider for an individual shall implement the seizure management procedure designed by the individual's provider responsible for seizure management.

(e) If applicable, a provider for an individual shall implement the health-related unusual occurrence management procedure designed by the individual's provider.

(f) If applicable, a provider for an individual shall implement the behavioral support plan designed by the individual's provider of behavioral support services.

(g) If an individual dies, a provider shall cooperate with the provider responsible for conducting an investigation into the individual's death under 460 IAC 1.1-25-9. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-7)*

460 IAC 1.1-10-8 Resolution of disputes
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 4-21.5; IC 12-11-1.1; IC 12-11-2.1

Sec. 8. (a) If a dispute arises between or among providers, the dispute resolution process set out in this section shall be implemented.

(b) The resolution of a dispute shall be designed to address an individual's needs.

(c) The parties to the dispute shall attempt to resolve the dispute informally through an exchange of information and possible resolution.

(d) If the parties are not able to resolve the dispute within fifteen (15) days:
(1) each party shall document:
(A) the issues in the dispute;
(B) their positions; and
(C) their efforts to resolve the dispute; and
(2) the parties shall refer the dispute to the BAIHS for resolution in coordinating the recipient's needs.

(e) The parties shall abide by the decision of the BAIHS

(f) Any party adversely affected or aggrieved by the BAIHS decision may request an administrative review of the decision within fifteen (15) days after the party receives written notice of the recommendation.

(g) Administrative review shall be conducted under IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-8)*

460 IAC 1.1-10-9 Automation standards
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 9. A provider shall comply with all automation standards and requirements prescribed by the applicable funding agency concerning documentation and processing of services provided under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-9)*

460 IAC 1.1-10-10 Quality assurance and quality improvement system
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 10. (a) A provider shall have an internal quality assurance and quality improvement system that is:
(1) focused on the individual; and
(2) appropriate for the services being provided.

(b) The system described in subsection (a) shall include at least the following elements:
(1) An annual survey of the individual of his or her individual satisfaction.
(2) Records of the findings of annual individual satisfaction surveys.
(3) Documentation of efforts to improve service delivery in response to the survey of individual satisfaction.
(4) An assessment of the appropriateness and effectiveness of each service provided to an individual.
(5) A process for the following, if applicable:
(A) Analyzing data concerning reportable incidents.
(B) Developing recommendations to reduce the risk of future incidents.

(C) Reviewing the recommendations to assess their effectiveness.

(6) If behavioral support services are provided by a provider, a process for the following:

(A) Analyzing the appropriateness and effectiveness of behavioral support techniques used for an individual.

(B) Developing recommendations concerning the behavioral support techniques used with an individual.

(C) Reviewing the recommendations to assess their effectiveness.

(7) If community habilitation and participation are provided by a provider, a process for the following:

(A) Analyzing the appropriateness and effectiveness of instructional techniques used for an individual.

(B) Developing recommendations concerning the instructional techniques used with an individual.

(C) Reviewing the recommendations to assess their effectiveness.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-10)

460 IAC 1.1-10-11 Prohibition against office in residence of individual

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 11. In the instance where residency is a service, a provider shall not:

(1) maintain an office in an individual's residence from which the individual is excluded from entering or from using any or all equipment contained in the office; or

(2) conduct the provider's business operations not related to services to the individual in the individual's residence.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-11)

460 IAC 1.1-10-12 Emergency behavioral support

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 12. (a) In an emergency, chemical restraint, physical restraint, or removal of an individual from the individual's environment may be used:

(1) without the necessity of a behavioral plan; and

(2) only to prevent significant harm to the individual or others.

(b) The individual's support team shall meet not later than five (5) working days after an emergency chemical or physical restraint or removal of an individual from the environment in order to do the following:

(1) Review the circumstances of the emergency chemical or physical restraint or removal of an individual.

(2) Determine the need for either of the following:

(A) A functional analysis.

(B) A behavioral support plan.

(3) Document recommendations.

(c) If a provider of behavioral support services is not a member of an individual's support team, a provider of behavioral support services must be added to the individual's support team.

(d) Based on the recommendations of the support team, a provider of behavioral support services shall do the following:

(1) Complete a functional analysis within thirty (30) days.

(2) Make appropriate recommendations to the support team.

(e) The individual's support team shall do the following:

(1) Document the recommendations of the behavioral support services provider.

(2) Design an accountability system to ensure implementation of the recommendations.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-10-12)

Rule 11. Financial Status of Providers

460 IAC 1.1-11-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-11-1)*

460 IAC 1.1-11-2 Disclosure of financial information

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 5-11-1
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) A provider shall maintain and, upon the BAIHS request, shall make available to the BAIHS or its designee the following information concerning the provider:

(1) Financial status.

(2) Current expenses and revenues.

(3) Projected budgets outlining future operations.

(4) Credit history and the ability to obtain credit.

(b) A provider shall maintain financial records in accordance with generally accepted accounting and bookkeeping practices.

(c) The financial status of a provider shall be audited according to state board of accounts requirements and procedures. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-11-2)*

460 IAC 1.1-11-3 Financial stability

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. A provider shall be financially stable with the

documented ability to deliver services without interruption for at least two (2) months without payment for services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-11-3)*

Rule 12. Insurance

460 IAC 1.1-12-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-12-1)*

460 IAC 1.1-12-2 Property and personal liability insurance
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A provider shall secure sufficient insurance to cover:
(1) personal injury;
(2) loss of life; and
(3) property damage;
to an individual caused by fire, accident, or other casualty arising from the provision of services to the individual by the provider. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-12-2)*

Rule 13. Transportation of an Individual

460 IAC 1.1-13-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-13-1)*

460 IAC 1.1-13-2 Transportation of an individual
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A provider that transports an individual receiving services in a motor vehicle shall do the following:
(1) Maintain the vehicle in good repair.
(2) Properly register the vehicle with the Indiana bureau of motor vehicles or in the state in which the owner of the vehicle resides.
(3) Insure the vehicle as required under Indiana law.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-13-2)

Rule 14. Professional Qualifications and Requirements

460 IAC 1.1-14-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-14-1)*

460 IAC 1.1-14-2 Requirement for qualified personnel
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A provider shall ensure that services provided to an individual:
(1) meet the needs of the individual;
(2) conform to the individual's care plan; and
(3) are provided by qualified personnel as required under this article.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-14-2)

460 IAC 1.1-14-3 Documentation of qualifications
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. A provider shall maintain documentation that:
(1) the provider meets and maintains the requirements for providing services under this article; and
(2) the provider's employees or agents meet and maintain the requirements for providing services under this article.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-14-3)

460 IAC 1.1-14-4 Training
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) A provider shall train the provider's employees or agents in the protection of an individual's rights, including how to do the following:
(1) Respect the dignity of an individual.
(2) Protect an individual from abuse, neglect, and exploitation.
(3) Implement an appropriate comprehensive assessment and an individual's care plan.
(4) Communicate successfully with an individual.

(b) A provider identified in the care plan that develops training goals and objectives for an individual shall train the provider's employees or agents in the following:
(1) The strategies required to assure process toward the outcomes and objectives.
(2) Appropriate documentation of an individual's progress on outcomes and objectives.

(c) A provider shall train staff, within their appropriate job duties, in providing a healthy and safe environment for an individual, including, but not limited to, if applicable, how to do the following:
(1) Assist with medication.
(2) Administer first aid.

(3) Administer cardiopulmonary resuscitation.
(4) Practice infection control.
(5) Practice universal precautions.
(6) Manage individual-specific treatments and interventions, including, where applicable, management of an individual's:
(A) seizures;
(B) behavior;
(C) medication side effects;
(D) diet and nutrition;
(E) swallowing difficulties;
(F) emotional and physical crises; and
(G) significant health concerns.
(7) Conduct and participate in emergency drills and evacuations as identified by the care plan.

(d) A person shall complete applicable training as required in this section prior to that person working alone with an individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-14-4)*

460 IAC 1.1-14-5 Requirements for direct care staff
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. All direct care staff working with individuals shall meet the following requirements:
(1) Be at least eighteen (18) years of age.
(2) Demonstrate the ability to communicate adequately in order to do the following:
(A) Complete required forms and reports of visits.
(B) Follow oral or written instructions.
(3) Demonstrate the ability to provide services according to the individual's care plan.
(4) Demonstrate willingness to accept supervision.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-14-5)

Rule 15. Personnel Records

460 IAC 1.1-15-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-15-1)*

460 IAC 1.1-15-2 Maintenance of personnel files
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) A provider shall maintain, in the provider's office, files for each employee or agent of the provider.

(b) The provider's files for each employee or agent shall contain the following:
(1) A tuberculin skin test prior to providing services and updated in accordance with recommendations of centers for disease control and will include either of the following:
(A) A negative finding or "0" mm reaction.
(B) 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.
(2) Cardiopulmonary resuscitation certification and recertification updated in accordance with the American Red Cross standards.
(3) Auto insurance information, updated when the insurance is paid, if the employee or agent will be transporting an individual in the employee's or agent's personal vehicle.
(4) Full criminal history information that meets the requirements of 460 IAC 1.1-10-5 with the information updated upon renewal.
(5) Professional licensure, certification, or registration, including renewals, as applicable.
(6) A copy of the employee's or agent's driver's license updated when the license is due to expire.
(7) Copies of:
(A) the employee's time records; or
(B) the agent's invoices for services.
(8) Copies of the agenda for each training session attended by the employee or agent, including the following:
(A) Subject matter included in each training session.
(B) The date and time of each training session.
(C) The name of the person or persons conducting each training session.
(D) Documentation of the employee's or agent's attendance at each session, signed by:
(i) the employee or agent; and
(ii) the trainer.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-15-2)

Rule 16. Personnel Policies and Manuals

460 IAC 1.1-16-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) This rule applies to a provider who uses employees or agents to provide services.

(b) This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-16-1)*

460 IAC 1.1-16-2 Adoption of personnel policies
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) A provider shall do the following:

(1) Adopt and maintain a written personnel policy.

(2) Review and update the personnel policy as appropriate.

(3) Distribute the personnel policy to each employee or agent.

(4) Adopt and maintain a job description for each position, including the following:

(A) Minimum qualifications for the position.

(B) Major duties required of the position.

(C) Responsibilities of the employee in the position.

(b) The written personnel policy required by subsection (a) must include, but is not limited to, the following:

(1) A procedure for conducting reference, employment, and criminal background checks on each prospective employee or agent.

(2) A prohibition against employing or contracting with a person convicted of the offenses listed in 460 IAC 1.1-10-5.

(3) A process for evaluating the job performance of each employee or agent at the end of the training period and annually thereafter, including a process for feedback from individuals receiving services from the employee or agent.

(4) Disciplinary procedures.

(5) A description of grounds for disciplinary action against or dismissal of an employee or agent.

(6) A clear description of an employee's rights and responsibilities, including the responsibilities of administrators and supervisors.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-16-2)

460 IAC 1.1-16-3 Policies and procedures documentation

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. (a) A provider shall do the following:

(1) Adopt and maintain a written training procedure.

(2) Review and update the training procedure as appropriate.

(3) Distribute the training procedure to the provider's employees or agents.

(b) The written training procedure required by subsection (a) shall include at least the following:

(1) Mandatory orientation for each new employee or agent to assure the employee's or agent's understanding of and compliance with the following:

(A) The mission, goals, organization, and practices of the provider.

(B) The applicable requirements of this article.

(2) A system for documenting the training for each employee or agent, including the following:

(A) The type of training provided.

(B) The name and qualifications of the trainer.

(C) The duration of training.

(D) The date or dates of training.

(E) The signature of the trainer, verifying the satisfactory completion of training by the employee or agent.

(F) The signature of the employee or agent.

(3) A system for ensuring that a trainer has sufficient education, expertise, and knowledge of the subject to achieve listed outcomes required under the system.

(4) A system for providing annual inservice training to improve the competence of employees or agents in the following areas:

(A) Protection of individual rights, including protection against abuse, neglect, or exploitation.

(B) Unusual occurrence reporting.

(C) Medication assistance if the provider assists with medication to an individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-16-3)

460 IAC 1.1-16-4 Operations manual

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) A provider shall compile the written policies and procedures required by sections 1 through 3 of this rule into a written operations manual.

(b) The operations manual shall be regularly updated and revised.

(c) Upon the request of the BAIHS the provider shall do the following:

(1) Supply a copy of the operations manual to the BAIHS or other state agency at no cost.

(2) Make the operations manual available to the BAIHS or other state agency for inspection at the offices of the provider.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-16-4)

Rule 17. Maintenance of Records of Services Provided

460 IAC 1.1-17-1 Applicability

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-17-1)*

460 IAC 1.1-17-2 Maintenance of records of services provided

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) This section applies to all providers.

(b) A provider shall maintain, in the provider's office, documentation of all services provided to an individual.

(c) Documentation related to an individual required by this article shall be maintained by the provider for at least seven (7) consecutive years following discharge or as specified in law or rule.

(d) A provider shall analyze and maintain the documentation required by the following:

(1) The standards under this article applicable to the services the provider is providing to an individual.

(2) The professional standards applicable to the provider's profession.

(3) The individual's care plan.

(e) A provider shall analyze and update the documentation at least every ninety (90) days if:

(1) the standards under this article do not provide a standard for analyzing and updating documentation;

(2) the professional standards applicable to the provider's profession do not provide a standard; or

(3) a standard is not set out in the individual's care plan.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-17-2)

460 IAC 1.1-17-3 Individual's personal file; site of service delivery

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. (a) A provider specified in the individual's care plan as being responsible for maintaining the individual's personal file shall maintain a personal file for the individual at the individual's residence or:

(1) the primary location where the individual receives services; and

(2) the offices of the provider.

(b) There must be a system in place for the transfer of information from each provider listed on the individual's care plan.

(c) The individual's personal file shall contain the following information:

(1) The individual's full name.

(2) Telephone numbers for emergency services that may be required by the individual.

(3) A current sheet with a brief summary regarding the following:

(A) The individual's diagnosis or diagnoses.

(B) The individual's treatment protocols, current medications, and other health information specified by the individual's care plan.

(C) Behavioral information about the individual if applicable.

(D) Likes and dislikes of the individual that have been identified in the individual's care plan.

(E) Other information relevant to working with the individual.

(4) The individual's history of allergies if applicable.

(5) Consent by the individual or the individual's legal representative for emergency treatment for the individual.

(6) A photograph of the individual if:

(A) a photograph is available; and

(B) inclusion of a photograph in the individual's file is specified by the individual's care plan.

(7) A copy of the individual's current care plan.

(8) A copy of the individual's behavioral support plan if applicable.

(9) Documentation of the following:

(A) Changes in the individual's physical condition or mental status during the last sixty (60) days.

(B) An unusual event such as:

(i) vomiting;

(ii) choking;

(iii) falling;

(iv) injuries with unknown origin;

(v) disorientation or confusion;

(vi) behavioral problems; or

(vii) seizures;

occurring during the last sixty (60) days.

(C) The response of each provider to the observed change or unusual event.

(10) If an individual's goals include bill paying and other financial matters, the individual's file shall contain, if applicable, the following:

(A) The individual's checkbook with clear documentation that the checkbook has been balanced.

(B) Bank statements with clear documentation that the bank statements and the individual's checkbook have been reconciled.

(11) All environmental assessments conducted during the last sixty (60) days with the signature of the person or persons conducting the assessment on the assessment.

(12) All medication administration documentation for the last sixty (60) days if not self-medicating.

(13) All seizure management documentation for the last sixty (60) days.

(14) Health-related unusual occurrence or incident management documentation for the last sixty (60) days.

(15) All nutritional counseling services documentation for the last sixty (60) days.

(16) All behavioral support services documentation for the last sixty (60) days.

(17) All goal directed documentation for the last sixty (60) days.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-17-3)

460 IAC 1.1-17-4 Individual's personal file; provider's office

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) A provider specified in the individual's care plan as being responsible for maintaining the individual's personal file shall maintain a personal file for an individual at the provider's office.

(b) The individual's personal file should include, but is not limited to, documentation of the following:

(1) A change in an individual's physical condition or mental status.

(2) An unusual event for the individual.

(3) All health and medical services provided to an individual.

(4) An individual's training goals.

(c) A change or unusual event referred to in subsection (b) shall include the following:

(1) Vomiting.

(2) Choking.

(3) Falling.

(4) Disorientation or confusion.

(5) Patterns of behavior.

(6) A seizure.

(d) The documentation of a change or an event referred to in subsections (b) and (c) shall, if applicable, include the following:

(1) The date, time, and duration of the change or event.

(2) A description of the response of the provider or the provider's employees or agents to the change or event.

(3) The signature of the provider or the provider's employees or agents observing the change or event.

(e) The documentation of all health and medical services provided to the individual shall:

(1) be kept chronologically; and

(2) include the following:

(A) Date of services provided to the individual.

(B) A description of services provided.

(C) The signature of the health care professional providing the services.

(f) The individual's training file shall include documentation regarding the individual's training goals required by 460 IAC 1.1-24-1. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-17-4)*

Rule 18. Behavioral Support Services

460 IAC 1.1-18-1 Preparation of behavioral support plan

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A behavioral support services provider shall prepare a behavioral support plan for an individual only after the provider has:

(1) directly observed the individual; and

(2) reviewed reports regarding the individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-18-1)

460 IAC 1.1-18-2 Behavioral support plan standards

Authority: IC 12-8-8-4; IC 12-9-2-2
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A behavioral support plan shall be as follows:

(1) Meet the standards set out in this section and be part of an approved care plan for the individual.

(2) Operationally define the targeted behavior or behaviors.

(3) Be based upon a functional analysis of the targeted behaviors.

(4) Contain written guidelines for teaching the individual functional and useful behaviors to replace the individual's maladaptive behavior.

(5) Use nonaversive methods for teaching functional and useful replacement behaviors.

(6) Conform to the individual's care plan, including the needs and outcomes identified in the care plan and the care plan specifications for behavioral support services.

(7) Contain documentation that each person implementing the plan:

(A) has received specific training as provided in the plan in the techniques and procedures required for implementing the behavioral support plan; and

(B) understands how to use the techniques and procedures required to implement the behavioral support plan regardless of whether the person implementing the plan is an employee or agent of the behavioral support services provider.

(8) A behavioral support plan shall contain a documentation system for direct care staff working with the individual to record episodes of the targeted behavior or behaviors. The documentation system shall include a method to record the following information:

(A) Dates and times of occurrences of the targeted behavior.

(B) Length of time the targeted behavior lasted.

(C) Description of what precipitated the targeted behavior.

(D) Description of what activities helped alleviate the targeted behavior.

(E) Signature of staff observing and recording the targeted behavior.

(9) If the use of medication is included in a behavioral support plan, a behavioral support plan shall contain one (1) of the following:

(A) A plan for assessing the use of the medication and the appropriateness of a medication reduction plan by a health care or psychiatric practitioner within the scope of their duties.

(B) Documentation that a medication use reduction plan for the individual was:

(i) implemented within the past five (5) years; and

(ii) proved to be not effective.

(10) If a highly restrictive procedure is included in a behavioral support plan, a behavioral support plan shall contain the following:

(A) A functional analysis of the targeted behavior for which a highly restrictive procedure is designed.

(B) Documentation that the risks of the targeted behavior have been weighed against the risk of the highly restrictive procedure.

(C) Documentation that systematic efforts to replace the targeted behavior with an adaptive skill were used and found to be not effective.

(D) Documentation that the individual and the individual's support team agree that the use of the highly restrictive method is required to prevent significant harm to the individual or others.

(E) Informed consent from the individual or the individual's legal representative.

(F) Documentation that the behavioral support plan is reviewed regularly by the individual's support team including the appropriate health care or psychiatric practitioner.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-18-2)

460 IAC 1.1-18-3 Written policy and procedure standards

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. A provider of behavioral support services shall have written policies and procedures that do the following:

(1) Limit the use of highly restrictive procedures, including physical restraint or medications, to assist in the managing of behavior.

(2) Focus on behavioral supports that begin with less intrusive or restrictive methods before more intrusive or restrictive methods are used.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-18-3)

460 IAC 1.1-18-4 Documentation standards

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) This section applies to all providers of home and community based services and shall not supersede Medicaid statutes, regulations, bulletins, or rules if a conflict is found.

(b) A provider of behavioral support services shall maintain documentation regarding the development of a behavioral support plan that:

(1) the least intrusive method was attempted and exhausted first; and

(2) if a highly restrictive procedure is deemed to be necessary and included in a behavioral support plan, the actions required by section 2 of this rule have been taken.

(c) A provider of behavioral support services shall maintain the following documentation for each individual served:

(1) A copy of the individual's behavioral support assessment.

(2) If applicable, the individual's behavioral support plan.

(3) Dates, times, and duration of each visit with the individual.

(4) A description of the behavioral support activities conducted.

(5) A description of behavioral support progress made.

(6) The signature of the person providing the behavioral support services on each date the behavioral support service is provided.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-18-4)

460 IAC 1.1-18-5 Level 2 clinician standards

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. (a) If a behavioral support plan is developed by a level 2 clinician, the level 2 clinician shall be supervised by a level 1 clinician.

(b) A written approval by a level 1 clinician is required of all behavioral support plans developed by a level 2 clinician. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-18-5)*

460 IAC 1.1-18-6 Implementation of behavioral support plan

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. All providers working with an individual shall implement the behavioral support plan designed by the individual's behavioral support services provider and support team under an approved care plan. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-18-6)*

Rule 19. Case Management

460 IAC 1.1-19-1 Information concerning an individual

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A provider of case management services shall have the following information about an individual receiving case management services from the provider:

(1) The wants and needs of an individual, including the:

(A) health;

(B) safety;

(C) behavioral needs; and

(D) wishes for self-directed care;

of an individual.

(2) The array of services available to an individual whether the services are available under this article or are otherwise available.

(3) The availability of funding for an individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-1)

460 IAC 1.1-19-2 Training and orientation

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) To become a certified case manager, the individual must attend the required case manager orientation training.

(b) To maintain the BAIHS approval to provide case management services under this article, a provider shall complete twenty (20) hours of training regarding case management services in each calendar year.

(c) The training prescribed by subsection (a) shall include at least ten (10) hours of training approved by the DDARS.

(d) If the BAIHS identifies a systemic problem with a provider's services, the provider shall obtain training on the topics recommended by the BAIHS and may refer to 460 IAC 1.1-7. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-2)*

460 IAC 1.1-19-3 Contact information

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. (a) A provider of case management services shall give the individual or the individual's legal representative, if applicable, clear instructions for contacting the provider.

(b) A provider of case management services shall give the individual or the individual's legal representative, if applicable, a summary of information and procedures on whom to contact if the individual needs assistance or has an emergency before or after business hours included in the approved plan of care. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-3)*

460 IAC 1.1-19-4 Distribution of information

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. A provider of case management services shall ensure that:

(1) the individual;

(2) the individual's legal representative, if applicable; and

(3) all other providers of services to the individual, regardless of whether the services are provided under this article;

have copies of relevant documentation, including information on individual rights, an individual's care plan, how to file complaints with the BAIHS, and requesting appeals concerning issues and disputes relating to the services provided to the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-4)*

460 IAC 1.1-19-5 Evaluation of available providers

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. (a) A provider of case management services shall provide the individual or the individual's legal representative upon request, if applicable, with the following information:

(1) A current list of providers approved under this article, including a complete description of services offered by each provider.

(2) Information regarding services the individual may need that are not provided under this article.

(3) The current BAIHS information guide for individuals on how to choose a provider.

(b) The provider of case management services shall assist the individual or the individual's legal representative, if applicable, in evaluating potential service providers. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-5)*

460 IAC 1.1-19-6 Monitoring of services

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. (a) A provider of case management shall monitor and document the quality, timeliness, and appropriateness of the care, services, and products delivered to an individual.

(b) The documentation required under this section shall include an appropriate assessment of the identified needs in the individual's care plan.

(c) The documentation required by this section shall include the following:

(1) Any medication administration procedure for the individual.

(2) An individual's behavioral support plan if applicable.

(3) Any health-related unusual occurrence procedure for the individual.

(4) Any side effect monitoring procedure for the individual.

(5) Any seizure management procedure for the individual if applicable.

(6) Any other procedure for the individual implemented by more than one (1) provider as part of the continuum of care.

(d) A provider of case management services shall continuously monitor the services and outcomes established for the individual in the individual's care plan including, but not limited to, the following:

(1) A provider of case management services shall timely follow-up on identified problems.

(2) A provider of case management services shall act immediately to resolve critical issues and crises in accordance with this article.

(3) If concerns with services or outcomes are identified, a provider of case management services shall do the following:

(A) Address the concerns in a timely manner.

(B) Involve all necessary providers and the individual's support team if necessary.

(e) A provider of case management services who is attempting to resolve a dispute shall follow the dispute resolution procedure described in 460 IAC 1.1-10-8.

(f) No later than thirty (30) days after the implementation of an individual's care plan, unless otherwise specified in the care plan, a provider of case management shall make the first monitoring contact with the individual.

(g) A provider of case management services shall have regular contact in person with the individual as required by the care plan and this section. The provider of case management services shall make at least:

(1) one (1) contact in person with the individual every ninety (90) days to assess the quality and effectiveness of the care plan and utilize the ninety (90) day checklist; and

(2) two (2) contacts in person each year in the individual's residence.

(h) If an individual's care plan requires more contact than required by subsection (g), the individual's care plan shall identify the amount of contact a provider of case management services must make with an individual receiving case management services.

(i) If applicable, a provider of case management services shall coordinate the provision of family and caregiver training services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-6)*

460 IAC 1.1-19-7 Documentation of services provided

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 7. (a) A provider of case management services shall maintain documentation of each contact with the following:

(1) An individual or a representative, or both, as identified.

(2) An individual's providers.

(b) The documentation shall be updated and revised whenever case management services are provided for the individual.

(c) If a provider of case management services visits an individual at the individual's residence, the provider must, if applicable, make their presence known to the provider of environmental and living arrangement supports. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-7)*

460 IAC 1.1-19-8 Documentation; problem resolution

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 8. (a) A provider of case management services shall document, consistent with 460 IAC 1.1-9, the provider's follow-up and resolution of unusual occurrences.

(b) A provider of case management services shall keep the documentation required in this section in an individual's personal record maintained by the case manager. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-8)*

460 IAC 1.1-19-9 Conflict of interest

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 9. If a person provides case management services to an individual, then that person shall not provide any other service under this article to that particular individual, or any other individual under the medical Medicaid waivers, unless a waiver is received and approved by the BAIHS. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-19-9)*

Rule 20. Community Based Sheltered Employment Services

460 IAC 1.1-20-1 Staffing requirements

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. Community based sheltered employment services shall be provided with a staff ratio that does not exceed eight (8) individuals to one (1) staff member. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-20-1)*

Rule 21. Environmental Modification Supports

460 IAC 1.1-21-1 Warranty required

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. All environmental modification supports provided to an individual under this rule shall be warranted for at

least ninety (90) days. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-21-1)*

460 IAC 1.1-21-2 Documentation required
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A provider of environmental modification supports shall maintain the following documentation regarding support provided to an individual:
(1) The installation date of any adaptive aid or device, assistive technology, or other equipment.
(2) The maintenance date of any adaptive aid or device, assistive technology, or other equipment.
(3) A change made to any adaptive aid or device, assistive technology, or other equipment, including any:
(A) alteration;
(B) correction; or
(C) replacement.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-21-2)

Rule 22. Facility Based Sheltered Employment Services

460 IAC 1.1-22-1 Staffing requirement
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-2.1-12
Affected: IC 12-11-1.1; IC 12-11-2.1

Sec. 1. All facility based sheltered employment services shall be provided with a staff ratio that does not exceed twenty (20) individuals to one (1) staff member. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-22-1)*

Rule 23. Family and Caregiver Training Services

460 IAC 1.1-23-1 Requirements for provision of services
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A person providing family and caregiver training services shall have:
(1) education;
(2) training; or
(3) experience;
directly related to the training the person will be providing. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-23-1)*

460 IAC 1.1-23-2 Supervision of providers
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. Any person providing family and caregiver training services shall be supervised by the following:
(1) The individual whose family members or caregiver is receiving training.
(2) The provider of case management services to the individual.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-23-2)

Rule 24. Services

460 IAC 1.1-24-1 Coordination of services and plan
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) A provider designated in an individual's care plan as responsible for providing service to an individual shall create a plan for the individual that shall:
(1) consist of a formal description of goals, objectives, and strategies, including:
(A) desired outcomes; and
(B) persons responsible for implementation; and
(2) be designed to enhance independence.

(b) The provider shall assess the appropriateness of an individual's goals at least once every ninety (90) days as described in 460 IAC 1.1-19.

(c) All providers responsible for providing service to an individual shall:
(1) coordinate the services provided to an individual; and
(2) share documentation regarding the individual's well-being;
as required by the individual's care plan. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-24-1)*

Rule 25. Health Care Coordination Services

460 IAC 1.1-25-1 Provider of health care coordination services
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. Coordination of the health care for an individual shall be the responsibility of the provider identified in an individual's care plan as responsible for the health care of the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-25-1)*

460 IAC 1.1-25-2 Coordination of health care
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. The provider identified in section 1 of this rule shall coordinate the health care received by the individual, including:
(1) annual physical, dental, and vision examinations;
(2) routine examinations;
(3) routine screenings; and
(4) referrals to specialists;
as ordered by the individual's health care practitioner. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-25-2)*

460 IAC 1.1-25-3 Documentation of health care services received by an individual

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. (a) The provider identified in section 1 of this rule shall maintain a personal file for each individual served.

(b) The individual's personal file shall contain the following information:

(1) The date of health and medical services provided to the individual.

(2) A description of the health care or medical services provided to the individual.

(3) The signature of the person providing the health care or medical service for each date a service is provided.

(4) Additional information and documentation required in this rule, if applicable, including, but not limited to, documentation of the following:

(A) An organized procedure for medication assistance.

(B) An individual's refusal to take medication.

(C) Monitoring of medication side effects.

(D) Seizure tracking.

(E) Changes in an individual's status.

(F) An organized procedure of health-related unusual occurrence management.

(G) If applicable to this provider, an investigation of the death of an individual.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-25-3)

460 IAC 1.1-25-4 Organized procedure for assisting with medication administration required

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) The provider identified in section 1 of this rule shall design an organized procedure of medication administration for the individual.

(b) The provider shall do the following:

(1) Document the procedure in writing.

(2) Distribute the document to all providers assisting with medication to the individual.

(c) The document shall be placed in the individual's file maintained by all providers administering medication to the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-25-4)*

460 IAC 1.1-25-5 Individual's refusal to take medication

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. (a) If an individual refuses to take medication, the provider attempting to administer the medication shall do the following:

(1) Document the following:

(A) The name of the medication refused by the individual, if known.

(B) The date, time, and duration of the refusal.

(C) A description of the provider's response to the refusal.

(D) The signature of the person or persons observing the refusal.

(2) Supply the documentation to the provider identified in section 1 of this rule.

(b) The provider identified in section 1 of this rule shall review the individual's refusal to take medication with the:

(1) individual's health care practitioner; and

(2) individual's support team;

to ensure the health and safety of the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-25-5)*

460 IAC 1.1-25-6 Investigation of death

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. (a) If an individual dies unexpectedly, an investigation into the death shall be conducted by the provider identified in section 1 of this rule, except as provided in subsection (b).

(b) If the provider identified in section 1 of this rule is a family member of the individual, then the provider of case management services to an individual shall conduct an investigation into the death of the individual.

(c) A provider conducting an investigation into the death of an individual shall meet the following requirements:

(1) Notify by telephone the BAIHS or its designee central office in Indianapolis not later than twenty-four (24) hours after the death.

(2) Notify adult protective services or child protection services, as applicable, not later than twenty-four (24) hours after the death.

(3) Collect, coordinate with all providers, and review documentation of all events and unusual occurrences in the individual's life for at least the thirty (30) day period immediately before the:

(A) death of the individual;

(B) hospitalization in which the individual's death occurred; or

(C) individual's transfer to a nursing home in which death occurred within ninety (90) days of that transfer.

(4) Document conclusions and make recommendations arising from the investigation.

(5) Document implementation of any recommendations made under this section no later than fifteen (15) calendar days after the individual's death and send to the BAIHS or its designee the following:

(A) A completed notice of an individual's death on a form prescribed by the BAIHS.

(B) A final report that includes all documentation required by subdivisions (1) through (7) for review by the division's mortality review committee.

(d) A provider shall respond to any additional requests for information made by the mortality review committee within seven (7) days of the provider's receipt of a request.

(e) A provider shall submit the documentation to the BAIHS to support the provider's implementation of specific recommendations made by the mortality review committee. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-25-6)*

Rule 26. Nutritional Counseling Services

460 IAC 1.1-26-1 Specialized diet program

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) A provider of nutritional counseling services shall design and document a dining plan for an individual in accordance with the individual's care plan.

(b) An individual's dining plan shall include the following:

(1) Any special dining needs of an individual.

(2) Identification of swallowing difficulties.

(3) Identification of risk of aspiration.

(4) The need for adaptive equipment.

(c) A provider who has designed a dining plan for an individual shall provide assessment and oversight of the following:

(1) The dining plan.

(2) The person or persons implementing the dining plan.

(d) A provider shall follow any specialized diet program designed by the provider of nutritional counseling services to an individual, including any documentation requirements contained in the individual's dining plan. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-26-1)*

Rule 27. Personal Emergency Response System Supports

460 IAC 1.1-27-1 Warranty required

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. All personal emergency response system supports provided to an individual under this rule shall be warranted for at least ninety (90) days by the chosen and approved provider listed in the care plan. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-27-1)*

460 IAC 1.1-27-2 Documentation

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A provider of personal emergency response system supports shall maintain the following documentation regarding support provided to an individual:

(1) The installation date of any device.

(2) The maintenance date of any device.

(3) Testing dates for the device to ensure proper working function.

(4) Any change made to any device, including any:

(A) alteration;

(B) correction; or

(C) replacement.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-27-2)

Rule 28. Physical Environment

460 IAC 1.1-28-1 Environment shall conform to the individual's care plan

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A provider designated in the individual's care plan as responsible for providing or assisting with environmental and living arrangement support for the individual shall ensure that an individual's physical environment conforms to the requirements of the following:

(1) The individual's care plan.

(2) This rule.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-28-1)

460 IAC 1.1-28-2 Safety of individual's environment

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. (a) A provider designated in the individual's care plan as responsible for providing or assisting with environmental and living arrangement support shall provide services in a safe environment that is as follows:

(1) Maintained in good repair, inside and out.

(2) Free from the following:

(A) Combustible debris.

(B) Accumulated waste material.

(C) Offensive odors.

(D) Rodent or insect infestation.

(b) The provider shall ensure the following:

(1) An assessment of the individual's environment is conducted every ninety (90) days.

(2) The results of the assessment are documented.

(c) If an environmental assessment determines that an environment is unsafe for an individual, the provider shall

take the appropriate steps to ensure that the individual is safe, including the following, when appropriate:

(1) Filing an incident report for any unusual occurrence identified in 460 IAC 1.1-9.

(2) Working with the individual and the support team to resolve physical environmental issues.

(3) Contacting APS or CPS.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-28-2)

460 IAC 1.1-28-3 Monitoring an individual's environment

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. The provider designated in an individual's care plan as responsible for providing environmental and living arrangement support shall ensure that appropriate devices or home modifications, or both:

(1) are provided to the individual in accordance with the individual's care plan; and

(2) satisfy the federal Americans with Disabilities Act requirements and guidelines.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-28-3)

460 IAC 1.1-28-4 Compliance of environment with building and fire codes

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 4. (a) A provider designated in an individual's care plan as responsible for providing environmental and living arrangement support shall ensure that an individual's living areas comply with the requirements of this section.

(b) An individual's living areas shall meet Indiana code and local building requirements for single family dwellings or multiple family dwellings as applicable.

(c) An individual's living areas shall contain a working smoke detector or smoke detectors that are as follows:

(1) Tested at least once a month.

(2) Located in areas considered appropriate by the local fire marshal.

(d) An individual's living areas shall follow the requirements of the individual's care plan. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-28-4)*

460 IAC 1.1-28-5 Safety and security policies and procedures

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 5. (a) A provider designated in an individual's care plan as responsible for providing environmental and living arrangement support for the individual shall do the following:

(1) Maintain specific written safety and security policies and procedures for an individual.

(2) Train all employees or agents in implementing the policies and procedures.

(b) The policies and procedures prescribed by subsection (a) shall include at least the following:

(1) When and how to notify law enforcement or emergency response agencies in an emergency or crisis.

(2) Scheduling and completion of evacuation drills.

(3) Adopting procedures that shall be followed in an emergency or crisis, such as:

(A) a tornado;

(B) a fire;

(C) a behavioral unusual occurrence;

(D) an elopement; or

(E) inclement weather.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-28-5)

460 IAC 1.1-28-6 Safety and security training

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 6. (a) A provider designated in an individual's care plan as responsible for providing environmental and living arrangement support shall provide training to the:

(1) provider's employees or agents; and

(2) individual in the individual's mode of communication; concerning procedures to be followed in an emergency or crisis.

(b) The training prescribed by subsection (a) shall include the following:

(1) Evacuation procedures.

(2) Responsibilities during drills.

(3) The designated meeting place outside the site of service delivery in an emergency, requiring evacuation.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-28-6)

460 IAC 1.1-28-7 Individual's inability to follow safety and security procedures

Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 7. If an individual is medically or functionally unable to follow procedures for dealing with an emergency or crisis, the provider of environmental and living arrangement support shall document the following in writing:

(1) That the individual is unable to follow emergency or crisis procedures.

(2) The provider's plan for support of the individual in an emergency or crisis.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-28-7)

460 IAC 1.1-28-8 Emergency telephone numbers
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 8. (a) A provider designated in an individual's care plan as responsible shall ensure that an emergency telephone number list is located:
(1) in an area visible from the telephone used by an individual; or
(2) as indicated in the individual's care plan.

(b) The emergency telephone list shall include the following:
(1) Information given to the individual by the individual's provider of case management services.
(2) The local emergency number, for example, 911.
(3) The telephone number of the individual's legal representative or advocate if applicable.
(4) Any telephone numbers specified in the individual's care plan, including, but not limited to, telephone numbers for the following:
(A) The local area agency on aging office.
(B) The provider of case management services to the individual.
(C) Adult protective services or child protection services as applicable.
(D) The long term care ombudsman.
(E) The DDARS designated complaint number.
(F) Any other service provider identified in the individual's care plan.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-28-8)

Rule 29. Respite Care Services

460 IAC 1.1-29-1 Documentation required by all providers
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. (a) A provider of respite care services shall maintain chronological documentation of the services provided for an individual.

(b) The documentation shall include, but is not limited to, the following:
(1) The date and duration of respite care services provided.
(2) The signature of the person providing respite care services.
(3) The location and setting where the respite care service was provided.
(4) The reason for the respite services.

(c) Documentation shall be updated, reviewed, and analyzed whenever respite care services are provided. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-29-1)*

Rule 30. Specialized Medical Equipment and Supplies Supports

460 IAC 1.1-30-1 Warranty required
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. All specialized medical equipment and supplies supports provided to an individual under this rule shall be warranted for at least ninety (90) days. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-30-1)*

460 IAC 1.1-30-2 Documentation required
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A provider of specialized medical equipment and supplies supports shall maintain the following documentation regarding support provided to an individual:
(1) The installation date of any adaptive aid or device, assistive technology, or other equipment.
(2) The maintenance date of any adaptive aid or device, assistive technology, or other equipment.
(3) Any change made to any adaptive aid or device, assistive technology, or other equipment, including any:
(A) alteration;
(B) correction; or
(C) replacement.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-30-2)

Rule 31. Speech-Language Therapy Services

460 IAC 1.1-31-1 Supervision required
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. Any speech-language pathology aide providing speech-language services under this article shall provide services under the direct supervision of a speech pathologist approved under this article. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-31-1)*

Rule 32. Transportation Services

460 IAC 1.1-32-1 Valid driver's license required
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. A provider of transportation services shall ensure that an individual is transported only by a person who has a valid:
(1) operator's license;
(2) chauffeur's license;
(3) public passenger chauffeur's license; or
(4) commercial driver's license;
that is issued to the person by an appropriate bureau of motor vehicles to drive the type of motor vehicle for which

the license was issued. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-32-1)*

460 IAC 1.1-32-2 Vehicle requirements
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. A provider of transportation services shall ensure that an individual is transported only in a vehicle:
(1) maintained in good repair;
(2) properly registered with a bureau of motor vehicles; and
(3) insured as required under Indiana law.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-32-2)

460 IAC 1.1-32-3 Vehicle liability insurance
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 3. (a) A provider of transportation services shall secure sufficient liability insurance for all vehicles:
(1) owned or leased by the provider; and
(2) used for the transportation of an individual receiving services.

(b) The liability insurance required by subsection (a) shall cover:
(1) personal injury;
(2) loss of life; and
(3) property damage;
to an individual if the loss, injury, or damage occurs during the provision of transportation services to the individual by the provider. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-32-3)*

Rule 33. Code of Ethics

460 IAC 1.1-33-1 Applicability
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 1. This rule applies to all home and community based services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-33-1)*

460 IAC 1.1-33-2 Code of ethics
Authority: IC 12-8-8-4; IC 12-9-2-3
Affected: IC 12-10-1; IC 12-10-10

Sec. 2. All providers, in the provision of services under this article, shall abide by the code of ethics in this section. A provider shall do the following:
(1) Provide professional services with objectivity and with respect for the unique needs and values of the individual being provided services.
(2) Avoid discrimination on the basis of factors that are irrelevant to the provision of services, including, but not limited to, the following:
(A) Race.
(B) Creed.
(C) Gender.
(D) Age.
(E) Disability.
(3) Provide sufficient objective information to enable an individual, or the individual's guardian, to make informed decisions.
(4) Accurately present professional qualifications and credentials.
(5) Accurately present professional qualifications of all employees or agents.
(6) Require all employees or agents to assume responsibility and accountability for personal competence in the practice of the person's profession and in the provision of services under this article.
(7) Require employees or agents to maintain knowledge and skills required for continued professional competence including all requirements necessary for a licensed or accredited professional to maintain the professional's licensure or accreditation.
(8) Require processional, licensed, or accredited employees or agents to adhere to acceptable standards for the employee or agent's area of professional practice.
(9) Require employees or agents to comply with all laws and regulations governing a licensed or accredited professional's profession.
(10) Require all employees or agents to maintain the confidentiality of individual information consistent with the standards of this article and all other laws and regulations governing confidentiality of individual information.
(11) Require all employees or agents to conduct all practice with honesty, integrity, and fairness.
(12) Require all employees or agents to fulfill professional commitments in good faith.
(13) Require all employees or agents to inform the public and colleagues of services by use of factual information.
(14) Not advertise or market services in a misleading manner.
(15) Not engage in uninvited solicitation of potential clients who are vulnerable to undue influence, manipulation, or coercion.
(16) Make reasonable efforts to avoid bias in any kind of professional evaluation.
(17) Notify the appropriate party, which may include:
(A) the DDARS;
(B) the Indiana state department of health;
(C) a licensing authority;
(D) an accrediting agency;
(E) an employer; and
(F) the office of the attorney general, consumer protection division;
of any unprofessional conduct that may jeopardize an individual's safety or influence the individual or individ-

ual's representative in any decision making process.

(18) Develop a written policy for the prevention of conflict of interest.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1.1-33-2)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 22, 2004 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on a proposed new rule at 460 IAC 1.1 concerning home and community based services, including qualifications for approved providers of home and community based services, the process by which the Division of Disability Aging and Rehabilitative Services and Bureau of Aging and In-Home Services (BAIHS) approve providers, the BAIHS process for monitoring and ensuring compliance with provider standards and requirements, the rights of individuals receiving services, protection of individuals receiving services, standards and requirements for approved providers of home and community based services, and definitions for home and community based services. If an accommodation is required to allow an individual with a disability to participate in this meeting, please contact Kevin Wild at (317) 233-2582 at least 48 hours prior to the meeting. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Rachel McGeever
General Counsel
Division of Disability, Aging, and Rehabilitative Services

TITLE 470 DIVISION OF FAMILY AND CHILDREN

Proposed Rule
LSA Document #04-77

DIGEST

Amends 470 IAC 3-1.1, 470 IAC 3-1.2, and 470 IAC 3-1.3 to revise, update, clarify, and add miscellaneous provisions to the rules that govern child care homes. Effective 30 days after filing with the secretary of state.

470 IAC 3-1.1-0.5
470 IAC 3-1.1-1
470 IAC 3-1.1-2
470 IAC 3-1.1-4
470 IAC 3-1.1-6
470 IAC 3-1.1-7.2
470 IAC 3-1.1-7.4
470 IAC 3-1.1-8
470 IAC 3-1.1-9
470 IAC 3-1.1-10
470 IAC 3-1.1-12
470 IAC 3-1.1-12.5
470 IAC 3-1.1-13
470 IAC 3-1.1-14
470 IAC 3-1.1-15
470 IAC 3-1.1-16
470 IAC 3-1.1-20
470 IAC 3-1.1-20.1
470 IAC 3-1.1-22.5
470 IAC 3-1.1-24
470 IAC 3-1.1-28
470 IAC 3-1.1-28.5
470 IAC 3-1.1-29
470 IAC 3-1.1-29.5
470 IAC 3-1.1-32
470 IAC 3-1.1-32.1
470 IAC 3-1.1-33
470 IAC 3-1.1-33.5
470 IAC 3-1.1-34
470 IAC 3-1.1-35
470 IAC 3-1.1-36.5
470 IAC 3-1.1-36.6
470 IAC 3-1.1-37
470 IAC 3-1.1-38
470 IAC 3-1.1-38.5
470 IAC 3-1.1-39
470 IAC 3-1.1-40
470 IAC 3-1.1-41
470 IAC 3-1.1-41.1
470 IAC 3-1.1-41.2
470 IAC 3-1.1-42
470 IAC 3-1.1-44
470 IAC 3-1.1-44.5
470 IAC 3-1.1-45
470 IAC 3-1.1-45.5
470 IAC 3-1.1-46
470 IAC 3-1.1-47
470 IAC 3-1.1-48
470 IAC 3-1.1-50
470 IAC 3-1.1-51
470 IAC 3-1.2-2
470 IAC 3-1.2-3
470 IAC 3-1.2-3.2
470 IAC 3-1.2-4
470 IAC 3-1.2-5
470 IAC 3-1.2-6
470 IAC 3-1.2-7
470 IAC 3-1.2-8
470 IAC 3-1.3-1
470 IAC 3-1.3-2
470 IAC 3-1.3-3
470 IAC 3-1.3-4
470 IAC 3-1.3-5
470 IAC 3-1.3-6
470 IAC 3-1.3-7

SECTION 1. 470 IAC 3-1.1-0.5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-0.5 Minimum standards

Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 0.5. This rule represents the minimum standards necessary to operate a child care home in the state of Indiana, developed under the authority of IC 12-17.2. These rules apply to the home during hours of operation as a child care home. The purpose of these rules is to protect and promote the health and safety of children in care and to support families as consumers of child care services. First and foremost, child care is the responsibility and choice of the parent. Many:

(1) child care advocates;
(2) providers;
(3) licensing ~~specialists~~ **consultants;**
(4) office of family and children directors; and
(5) parents;

participated in the development of these rules. *(Division of Family and Children; 470 IAC 3-1.1-0.5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3057; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 2. 470 IAC 3-1.1-1 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-1 "Applicant" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 1. As used in this rule, "applicant" means a person **at least twenty-one (21) years of age** who applies for a license to operate a child care home. *(Division of Family and Children; 470 IAC 3-1.1-1; filed Nov 14, 1991, 1:00 p.m.: 15 IR 494; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3057; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 3. 470 IAC 3-1.1-2 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-2 "Assistant caregiver" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 2. As used in this rule, "assistant caregiver" means a person eighteen (18) years of age or older who works in a child care home under the ~~direct~~ supervision of the caregiver. *(Division of Family and Children; 470 IAC 3-1.1-2; filed Nov 14, 1991, 1:00 p.m.: 15 IR 494; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3057; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 4. 470 IAC 3-1.1-4 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-4 "Caregiver" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 4. As used in this rule, "caregiver" means a person ~~eighteen (18)~~ **twenty-one (21)** years of age or older who is responsible for the direct care, protection, and supervision of children in a child care home. The caregiver supervises assistant, student assistant, and volunteer caregivers. *(Division of Family and Children; 470 IAC 3-1.1-4; filed Nov 14, 1991, 1:00 p.m.: 15 IR 494; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3058; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 5. 470 IAC 3-1.1-6 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-6 "Child care" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 6. As used in this rule, "child care" means a service for families ~~on behalf of children and their parents which is designed to supplement daily parental care.~~ **that provides for the health, safety, and supervision of a child's social, emotional, and educational growth.** *(Division of Family and Children; 470 IAC 3-1.1-6; filed Nov 14, 1991, 1:00 p.m.: 15 IR 494; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3058; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 6. 470 IAC 3-1.1-7.2 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-7.2 "Class I child care home" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 7.2. (a) As used in this rule, "class I child care home" means a child care home that serves any combination of full-time and part-time children, not to exceed at any one (1) time twelve (12) children plus three (3) children during the school year only who are enrolled in at least grade ~~one~~ 1. The addition of three (3) school ~~aged~~ **age** children may not occur during a break in the school year that exceeds four (4) weeks.

(1) A class I child care home may serve a school age child during a break in the school year that exceeds four (4) weeks when the school age child:

(A) was in the home part time during the four (4) months preceding the break; or

(B) has a sibling attending the child care home.

(2) The child care home must meet the following requirements:

(A) Provide at least thirty-five (35) square feet for each child.

(B) Maintain the child to staff ratio required under rules adopted by the division for each age group of children in attendance.

(C) Provide age appropriate toys, games, equipment, and activities for each age group of children enrolled.

(D) If the licensee does not reside in the child care home, the child care home must have:

(i) at least two (2) exits that comply with the exit requirements for an E-3 building occupancy classification under the Indiana building code adopted by the fire prevention and building safety commission;

(ii) an illuminated exit sign over each required exit; and

(iii) emergency lighting for each required exit.

(3) The licensee for the child care home has maintained a class I child care home license for at least twelve (12) children:

(A) for at least one (1) year; and

(B) without any citations for noncompliance.

(b) A child:

(1) for whom a provider of care is a:

(A) parent;

(B) stepparent;

(C) guardian;

(D) custodian; or

(E) other relative; and

(2) who is at least seven (7) years of age;

shall not be counted in determining whether the child care home is within the limit set forth in subsection (a).

(Division of Family and Children; 470 IAC 3-1.1-7.2; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3059; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 7. 470 IAC 3-1.1-7.4 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-7.4 "Design professional" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 7.4. As used in this rule, "design professional" means:
(1) an architect;
(2) an engineer; or
(3) other professional ~~who is~~ **as** approved ~~to file building plans and is qualified to determine if a structure meets the definition of a residential structure.~~ **by the CDFC.**
(Division of Family and Children; 470 IAC 3-1.1-7.4; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3059; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 8. 470 IAC 3-1.1-8 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-8 "Child care provider" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 8. As used in this rule, ~~"direct~~ "child care provider" means any individual who provides child care services to children. ~~This~~ **The** term includes the following:
(1) **The** licensee, when acting as **a** caregiver.
(2) **The** caregiver, assistant caregivers, and student assistants.
(3) A volunteer **caregiver.**
(Division of Family and Children; 470 IAC 3-1.1-8; filed Nov 14, 1991, 1:00 p.m.: 15 IR 495; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3059; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 9. 470 IAC 3-1.1-10 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-10 "Infant" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 10. As used in this rule, "infant" means a child from birth to ~~twelve (12)~~ **sixteen (16)** months of age. *(Division of Family and Children; 470 IAC 3-1.1-10; filed Nov 14, 1991, 1:00 p.m.: 15 IR 495; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 10. 470 IAC 3-1.1-12 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-12 "Licensee" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 12. As used in this rule, "licensee" means an individual or corporation who is licensed to operate a child care home. A licensee may be licensed to operate more than one (1) child care home. The licensee **must be at least twenty-one (21) years of age at the time of application and** may be the caregiver for only one (1) child care home at a time. *(Division of Family and Children; 470 IAC 3-1.1-12; filed Nov 14, 1991, 1:00 p.m.: 15 IR 495; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3059; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 11. 470 IAC 3-1.1-12.5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-12.5 "Probationary license" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 12.5. (a) As used in this rule, "probationary license" means a ~~document~~ **license** issued to a child care home licensee ~~who~~ **that** is temporarily unable to comply with this rule. The CDFC may grant a probationary license if **the:**
(1) ~~the~~ noncompliance does not present an immediate threat to the health and well-being of the children;
(2) ~~the~~ licensee files a plan with the COFC to correct the areas of noncompliance within the probationary period; and
(3) ~~the~~ COFC approves the plan.

(b) The COFC shall act upon a plan of correction within thirty (30) days of receipt.

(c) A probationary license is valid for not more than six (6) months. The CDFC may extend a probationary license for one (1) additional period of six (6) months.

(d) An existing license is invalidated when a probationary license is issued.

(e) Upon receipt of a probationary license, the licensee shall return to the COFC the previously issued license.

(f) At the expiration of the probationary license, the CDFC shall:
(1) reinstate the original license to the end of the original term of the license;
(2) issue a new license; or
(3) revoke the license.
(Division of Family and Children; 470 IAC 3-1.1-12.5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3060; errata filed Aug 7, 1996, 11:10 a.m.: 19 IR 3471; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 12. 470 IAC 3-1.1-13 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-13 "Protected outdoor play area" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 13. As used in this rule, "protected outdoor play area" means an area that is safely enclosed by ~~either~~ a fence or ~~natural boundaries.~~ **a physical structure.** *(Division of Family and*

Children; 470 IAC 3-1.1-13; filed Nov 14, 1991, 1:00 p.m.: 15 IR 495; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 13. 470 IAC 3-1.1-14 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-14 "Provisional license" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 14. As used in this rule, "provisional license" means a ~~document~~ **license** issued to **an applicant for** a child care home ~~licensee whose services are needed but~~ who is not able to demonstrate compliance with a rule because the child care home is not in full operation. A provisional license may be issued for a period not to exceed twelve (12) months and is subject to review every three (3) months. *(Division of Family and Children; 470 IAC 3-1.1-14; filed Nov 14, 1991, 1:00 p.m.: 15 IR 495; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3060; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 14. 470 IAC 3-1.1-15 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-15 "Relatives" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 15. As used in this rule, "relatives" means a relationship to an individual who is less than eighteen (18) years of age by marriage, blood, or adoption, including:
(1) parents;
(2) grandparents;
(3) brothers;
(4) sisters;
(5) stepparents;
(6) stepgrandparents;
(7) stepsisters;
(8) stepbrothers;
(9) uncles;
(10) aunts; ~~and~~
(11) first cousins; **or**
(12) a foster parent.
(Division of Family and Children; 470 IAC 3-1.1-15; filed Nov 14, 1991, 1:00 p.m.: 15 IR 495; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3060; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 15. 470 IAC 3-1.1-16 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-16 "Residential structure" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 16. (a) As used in this rule, "residential structure" means a dwelling unit as that term is defined in ~~675 IAC 14-4.~~ **the rules of the fire prevention and building safety commission.** It may be the applicant's or licensee's own residence.

(b) If the applicant, or any person, does not presently physically reside in the structure, **the COFC may request that** the applicant or licensee ~~shall~~ provide documentation by a design professional that the structure qualifies as a residential structure before a license for a child care home may be issued.

(c) Licensed child care homes that hold a regular license with the CDFC on the effective date of this rule are exempt from meeting the requirements of subsection (b). *(Division of Family and Children; 470 IAC 3-1.1-16; filed Nov 14, 1991, 1:00 p.m.: 15 IR 495; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3060; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 16. 470 IAC 3-1.1-20 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-20 "Student assistant" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 20. As used in this rule, "student assistant" means an individual fourteen (14) years of age through seventeen (17) years of age who works in a child care home under the ~~direct~~ supervision **and within hearing distance** of the caregiver. *(Division of Family and Children; 470 IAC 3-1.1-20; filed Nov 14, 1991, 1:00 p.m.: 15 IR 496; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3060; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 17. 470 IAC 3-1.1-20.1 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-20.1 "Supervision" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 20.1. As used in this rule, "supervision" means guidance of the children's behavior and activities to ensure their health, safety, and well-being. Children must be within sight and sound of a caregiver at all times. *(Division of Family and Children; 470 IAC 3-1.1-20.1)*

SECTION 18. 470 IAC 3-1.1-22.5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-22.5 "Volunteer caregiver" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 22.5. As used in this rule, "volunteer **caregiver"** means a ~~direct~~ child care provider who is not paid. If the volunteer is counted in the child to staff ratio, he or she must be fourteen (14) years of age or older and must meet the same requirements as paid personnel. *(Division of Family and Children; 470 IAC 3-1.1-22.5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3061; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 19. 470 IAC 3-1.1-24 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-24 Child care home capacity
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 24. ~~A maximum of fifteen (15)~~ **The licensee shall not care for more** children ~~who are less than eleven (11) years of age may be present in the Class I~~ **than is authorized by the** child care home ~~at any one (1) time during any part of the day. This number includes the caregiver's own children, related children, unrelated children and any part-time~~ **license definition in this rule. The licensee may care for three (3) additional children, grade 1 and above as listed in the class I** child care ~~children present. This number~~ **home definition. Capacity** includes:

(1) the licensee's related children under ~~age~~ seven (7) **years of age;**

(2) all unrelated children **under eighteen (18) years of age;** and

(3) any part-time child care children present.

The licensee's related children who are at least seven (7) years of age shall not be counted in the capacity. *(Division of Family and Children; 470 IAC 3-1.1-24; filed Nov 14, 1991, 1:00 p.m.: 15 IR 496; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3061; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 20. 470 IAC 3-1.1-28 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-28 Initial licensure
Authority: IC 12-13-5-3
Affected: IC 5-2-12; IC 12-14-5-2; IC 12-17.2

Sec. 28. (a) An applicant for a child care home license shall do the following:

(1) ~~Attend~~ **Complete** an orientation training arranged or approved by the CDFC.

(2) Comply with application procedures required by this rule.

(3) Submit to the COFC a completed, signed application for a child care home license, including attachments required to demonstrate compliance with this rule.

(4) Submit a statement attesting that the applicant has not been:

(A) convicted of a felony or a misdemeanor relating to the health and safety of children; and

(B) charged with:

(i) a felony; or

(ii) a misdemeanor relating to the health and safety of children;

during the pendency of the application.

(5) ~~Within thirty (30) days of application,~~ Submit a written medical statement, including proof of a Mantoux tuberculin test or chest x-ray, signed by a physician or a certified nurse practitioner. (Refer to section 34 of this rule.)

(6) Submit a **satisfactory** water quality test as required by section 47(b) of this rule.

(7) Provide documentation to the division that the licensee has received a high school diploma or high school equivalency certificate as described in IC 12-14-5-2.

(8) Provide documentation to the division that the licensee has:

(A) an associate's degree or higher with at least twelve (12) hours in early childhood education, child development, or a related field; or

(B) completed, is enrolled in, or agrees to complete within the next three (3) years a child development associate (CDA) credential or a similar program approved by the division.

(i) This applies to class I applicants not licensed prior to July 1, 2001.

(ii) If a licensee is exempt under item (i) and experiences a break in licensing status, the exemption no longer applies.

(9) All applicants who have lived in the state less than two (2) years shall submit a criminal history check from the state last resided in.

(10) All applicants will complete a national criminal history check and send the original results with the child care home application to the county office of family and children.

(11) All applicants, employees, volunteer caregivers, and household members over eighteen (18) years of age must submit to a five (5) panel drug test as required by the division and enroll in a pool for random testing.

(b) The COFC shall do the following:

(1) Conduct a **state** criminal history check on the applicant and the applicant's spouse.

(2) Conduct a check of the applicant, the applicant's spouse, and any others living in the home to determine whether their name appears on the sex offender registry, IC 5-2-12 et seq.

(3) Schedule a visit to the home during normal business hours and complete a child care home inspection checklist.

(4) Submit a written recommendation for child care home licensure to the CDFC based upon the home inspection checklist and the documents submitted by the applicant under subsection (a).

(5) The COFC shall return an incomplete application to **the applicant or** applicants with a notation as to omissions and without acting on the application.

(6) Conduct a child abuse check of the applicant, the applicant's spouse, and any others living in the home to determine if any of them have substantiated abuse or neglect reports.

(c) The CDFC shall approve or deny the application for child home care licensure within sixty (60) days of the date the application is received by the COFC. *(Division of Family and Children; 470 IAC 3-1.1-28; filed Nov 14, 1991, 1:00 p.m.: 15*

IR 497; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3061; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 21. 470 IAC 3-1.1-28.5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-28.5 Annual inspection
Authority: IC 12-13-5-3
Affected: IC 5-2-12; IC 12-17.2

Sec. 28.5. (a) The COFC will send a letter of request to the licensee for an information update ~~which~~ **that** includes **the following:**
(1) The name of the licensee.
(2) The name of the caregiver.
(3) The address and phone number of the child care home. ~~and~~
(4) The license expiration date.

(b) The COFC shall make an annual visit to the home during normal business hours and will complete a limited inspection checklist.

(c) The COFC shall conduct a check of the applicant, the applicant's spouse, and any others living in the home to determine whether their name appears on the sex offender registry, IC 5-2-12 et seq.

~~(c)~~ **(d)** The caregiver shall maintain and make available verification of the following:
(1) Annual Mantoux tuberculin test or chest x-ray for ~~direct~~ child care providers and all family members over eighteen (18) years of age.
(2) **Statewide** criminal history checks conducted for ~~direct~~ child care providers and family members and others over eighteen (18) years of age living in the home.
~~(3) Conduct a check of the applicant, the applicant's spouse, and any others living in the home to determine whether their name appears on the sex offender registry, IC 5-2-12 et seq.~~
~~(4)~~ **(3)** Notification of the local fire department.
~~(5)~~ **(4)** Certification of current first aid training and annual CPR certification for ~~direct~~ child care providers.
~~(6)~~ **(5)** Water quality test as required by section 47(b) of this rule.
(7) Results of a national criminal history check for each applicant.

(Division of Family and Children; 470 IAC 3-1.1-28.5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3062; errata filed Aug 7, 1996, 11:10 a.m.: 19 IR 3471; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 22. 470 IAC 3-1.1-29 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-29 Relicensure
Authority: IC 12-13-5-3
Affected: IC 5-2-12; IC 12-17.2

Sec. 29. (a) The licensee shall submit to the COFC the following prior to relicensure:
(1) A new application completed and signed by the applicant, **accompanied by the original results of a national criminal history check for each applicant.**
(2) Written proof of an annual Mantoux tuberculin test or chest x-ray as required ~~(Refer to section 34 of~~ **under** this rule.
(3) Attachments required to demonstrate compliance of this rule.
(4) A statement by the applicant attesting that the applicant has not been:
(A) convicted of a felony or a misdemeanor relating to the health and safety of children; and
(B) charged with:
(i) a felony; or
(ii) a misdemeanor relating to the health and safety of children;
during the pendency of the application.
(5) Water quality testing as required by section 47(b) of this rule.

(b) The COFC shall do the following:
(1) Conduct a **statewide** criminal history check on the applicant and the applicant's spouse.
(2) Conduct a check of the applicant, the applicant's spouse, and any others living in the home to determine whether their name appears on the sex offender registry, IC 5-2-12 et seq.
(3) Schedule a visit to the home during normal business hours and complete a child care home inspection checklist.
(4) Submit a written recommendation for child care home licensure to the CDFC based upon the completed home inspection checklist and the documents submitted by the applicant under subsection (a).

(c) The CDFC shall approve or deny the application for child care licensure within sixty (60) days of the date the application is received by COFC. *(Division of Family and Children; 470 IAC 3-1.1-29; filed Nov 14, 1991, 1:00 p.m.: 15 IR 497; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3062; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 23. 470 IAC 3-1.1-29.5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-29.5 License provisions
Authority: IC 12-13-5-3
Affected: IC 12-17.2-5-12

Sec. 29.5. (a) A child care home license is valid for two (2) years unless:
(1) revoked;
(2) suspended by the CDFC; or
(3) voluntarily surrendered.

(b) The number of children cared for at any one (1) time shall not exceed the licensed capacity.

(c) The license is valid only for the name and location on the license and is not transferable.

(d) The license shall be publicly displayed in the home. (IC 12-17.2-5-12(c))

(e) Whenever an applicant applies for multiple licenses located within the same structure or building, a signed statement from a design professional must be submitted certifying that each child care home to be licensed meets the state building code requirements for the proposed use ~~which~~ **that** apply to fire and safety issues. Certification must include any modifications required to comply with the state building code requirements for the multiple occupancies requested.

(f) If two (2) or more licensed child care homes are contiguously located within the same residential structure, each licensed facility must be separated by a two (2) hour fire-resistive wall between each licensee.

(g) Whenever an applicant applies for multiple licenses located within the same structure or building, each home must meet the requirements of licensure as independent homes.

(h) Multiple child care homes under one (1) roof ~~which~~ **that** utilize a private well will also be subject to the water testing requirements of 327 IAC 8 whenever twenty-five (25) or more people are present.

(i) Licensees who ~~hold~~ **held** a regular or provisional license ~~upon the effective date of this rule~~ **on August 3, 1996,** are exempted from meeting the requirements of subsections (f) and (g). *(Division of Family and Children; 470 IAC 3-1.1-29.5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3063; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 24. 470 IAC 3-1.1-32.1 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-32.1 Records requirements

Authority: IC 12-13-5-3
Affected: IC 5-2-12; IC 12-17.2-2-1.5

Sec. 32.1. (a) The requirements for staff and adult records are as follows:

(1) The licensee shall maintain the following staff and adult documentation in the child care home for review by the COFC:

(A) Record of initial physical examination documenting that they are free of communicable disease.

(B) Record that they are free of tuberculosis within thirty (30) days of employment or licensure and annually thereafter. Such records shall include the following:

(i) A Mantoux tuberculin skin test, with results recorded in millimeters, or a chest x-ray and result and repeated annually.

(ii) If the Mantoux test is considered positive, they shall have a negative chest x-ray or a statement from a physician that they are free from communicable disease and documented annually.

(C) Certification of a current first aid course, training in "Universal Precautions", annual CPR certification, and inservice training by child care providers.

(D) Results of a five (5) panel drug test signed by a medical review officer for each household member over eighteen (18) years of age and all child caregivers. Drug test results are required before a caregiver is hired or a volunteer begins caring for children.

(2) The COFC shall obtain the following documentation:

(A) Statewide criminal history checks on employees, volunteers, and all household members who are at least eighteen (18) years of age.

(B) A criminal history check indicating a conviction of any of the following offenses is sufficient grounds to revoke or deny licensure:

(i) Adoption schemes.
(ii) Adulterating drugs, controlled substances, or preparations.
(iii) Aiding or abetting the filing of false claims.
(iv) Allowing an establishment to be used for illegal purposes.
(v) Any crime that involves a violent act or a threat of a violent act.
(vi) Armed robbery.
(vii) Arson.
(viii) Assault.
(ix) Attempted armed robbery, robbery, or burglary.
(x) Attempted criminal sexual conduct.
(xi) Attempted homicide or murder.
(xii) Attempted kidnapping.
(xiii) Battery.
(xiv) Bribery.
(xv) Burglary.
(xvi) Child abuse, neglect, or exploitation.
(xvii) Concealing stolen property.
(xviii) Criminal sexual conduct in any degree.
(xix) Cruelty toward or torture of any animal.
(xx) Cruelty toward or torture of any person.
(xxi) Embezzlement.
(xxii) Extortion.
(xxiii) Filing of false claims.
(xxiv) Fraud.
(xxv) Homicide.
(xxvi) Kidnapping.
(xxvii) Larceny by conversion.
(xxviii) Larceny by trick.
(xxix) Manslaughter.
(xxx) Mayhem.
(xxxi) Murder.
(xxxii) Negligent homicide.
(xxxiii) Obtaining property by false pretenses.

(xxxiv) Offenses involving narcotics, alcohol, or controlled substances that result in a felony conviction.
(xxxv) Poisoning.
(xxxvi) Prostitution or related crimes.
(xxxvii) Receiving stolen property.
(xxxviii) Robbery.
(xxxix) Unlawful manufacture or delivery of drugs or possession with intent to manufacture or deliver drugs.

(3) The child care home may request a waiver under subdivision (2) based on the specific circumstances of the case, but a person shall not be employed by a child care home or a child care home approved for licensure unless the waiver is granted.

(4) The child care home shall notify the division immediately of any felony conviction that appears on a criminal history check or is otherwise known by the child care home.

(5) Any felony listed in subdivision (2)(B) is sufficient grounds to revoke or deny licensure. Hiring of an employee with felony convictions not listed in subdivision (2)(B) will require prior approval of the division.

(6) The division must approve any exceptions made under this section.

(7) Checks of the applicant, the applicant's spouse, and any others living in the home to determine whether their name appears on the sex offender registry, IC 5-2-12 et seq.

(b) The requirements for children's records are as follows:

(1) The licensee shall keep records regarding each child as required by this rule. Upon request of the COFC, the licensee shall make these records available for review:
(A) to determine compliance with these rules; and
(B) when information is needed in a child protection investigation.

(2) The CDFC shall keep records regarding children and facts learned about children and their families confidential, and such records shall not be removed from the home except as needed in a negative licensing action or a child protective services (CPS) investigation.

(3) The licensee shall maintain an enrollment form for each child receiving services that shall include the following:
(A) The child's name and date of birth.
(B) Verification of the child's birth date.
(C) Name, address, and home and work telephone numbers of the child's parent or legal guardian.
(D) The telephone number of a responsible adult in case of emergency.
(E) The names of adults authorized to pick the child up from the home.
(F) A release for emergency medical care for each child signed by the child's parent or legal guardian.
(G) A statement as described in section 37(b) of this rule regarding each child's general health within thirty (30) days of admission.
(H) A written permission from a parent or legal guardian that the child may participate in activities away from the child care home.
(I) A written statement of the licensee's discipline policy signed by the child's parent or legal guardian.
(J) Daily attendance records for children in the child care home shall:
(i) be maintained for at least two (2) years at the child care home site;
(ii) include arrival and departure times; and
(iii) include parent or authorized person's signature.

(4) A licensee shall maintain and send, when applicable, a licensed child care center/home report as required by IC 12-17.2-2-1.5.

(5) A licensee shall maintain written records for all injuries that occur while children are under the care of child care home staff, both on and off the premises.
(A) Minor injuries shall be reported in writing to the parents on the day of occurrence, including the following information:
(i) The date and time of injury.
(ii) How the injury occurred.
(iii) A description of the injury.
(iv) The type of treatment administered.
(B) Injuries requiring medical attention shall be reported immediately to the parent verbally and then recorded on forms provided by the division and distributed as follows:
(i) One (1) copy of the report given to parents.
(ii) One (1) copy of the report kept in the child's individual file.
(iii) One (1) copy sent to the division.

(c) The licensee shall maintain documentation of the following other records:

(1) Annual vaccination records for animals that are kept at the child care home subject to rabies.

(2) A record of monthly fire drills containing the following:
(A) The date and time of the fire drill.
(B) The name of the individual who conducted the fire drill.
(C) The weather conditions at the time of the fire drill.
(D) The amount of time required to fully evacuate the facility.

(3) Fire drill records shall be maintained at the licensed home for two (2) years.

(4) A written evacuation plan for the child care home in case of emergency.

(5) A policy prohibiting the use of tobacco, potentially toxic substances in a manner other than their intended purpose, and the use of alcohol or an illegal substance in the child care home while child care is being provided.

(Division of Family and Children; 470 IAC 3-1.1-32.1)

SECTION 25. 470 IAC 3-1.1-33 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-33 Staff requirements
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 33. (a) The licensee may be the caregiver for no more than one (1) child care home. If a licensee operates more than one (1) child care home, the licensee shall maintain or employ a caregiver in each additional child care home.

(b) The assistant caregiver shall work under the ~~direct~~ supervision of the caregiver.

(c) The assistant caregiver shall be responsible for the child care home in the absence of the caregiver.

(d) If an assistant caregiver under twenty-one (21) years of age is left in charge of a child care home, the ~~parent~~ **parents of each child** must be notified in writing.

~~(c)~~ **(e)** Student assistants and volunteers shall work under the ~~direct~~ supervision of a caregiver and shall not be left in charge of a child care home. *(Division of Family and Children; 470 IAC 3-1.1-33; filed Nov 14, 1991, 1:00 p.m.: 15 IR 498; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3064; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 26. 470 IAC 3-1.1-33.5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-33.5 Staff orientation, training, and development
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 33.5. (a) ~~Direct~~ Child care providers, including volunteers, shall receive training in fire prevention and safety procedures within one (1) week of starting employment or volunteer work.

(b) ~~Direct~~ Child care providers, including volunteers, shall receive training in the following within thirty (30) days of starting employment or volunteer work:
(1) The child care home inspection checklist.
(2) Confidential treatment of personal information about children in care and their families.
(3) Procedures for preventing, detecting, and reporting suspected child abuse and neglect.
(4) Universal precautions.

(c) ~~Direct~~ Child care providers shall complete a first aid course every three (3) years ~~which~~ **that** includes training for the emergency treatment of:
(1) poisoning;
(2) seizures;
(3) hemorrhaging; and
(4) choking.
The course must also include training in artificial respiration. Training shall be completed within ninety (90) days of starting employment or volunteer work.

(d) At least one (1) ~~direct~~ child care provider shall be trained in pediatric cardiopulmonary resuscitation training annually and shall be on the premises at all times.

(e) Caregivers shall complete at least twelve (12) clock hours annually of staff development activities that shall consist of inservice training, workshops, conferences, or college courses closely related to group care of children. First aid and CPR cannot be counted for more than six (6) hours of inservice training. Recommended topics include the following:
(1) Child growth and development.
(2) Child care programming and activities.
(3) Health and safety practices.
(4) Inclusion of children with special needs.
(5) Nutrition and eating habits.
(6) Parent communication.
(7) Use of physical space.
(Division of Family and Children; 470 IAC 3-1.1-33.5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3065; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 27. 470 IAC 3-1.1-34 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-34 Medical requirements
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 34. (a) ~~Direct~~ Child care providers who work in the home more than three (3) times a month and all members of the household having direct contact with children receiving care shall have an initial physical examination by a physician or certified nurse practitioner indicating that they:
(1) are free from communicable disease;
(2) have no physical or other condition ~~which~~ **that** would endanger the health or welfare of children in care; and
(3) have an annual Mantoux tuberculin test or chest x-ray.

(b) The requirements stated in subsection (a) shall not be required for ~~direct~~ child care providers who present a signed statement to the COFC that their religious **or personal** beliefs preclude compliance with the aforementioned medical requirements. The licensee shall provide written notice to the parents or legal guardians enrolling their children in the child care home that a religious **or personal** exemption statement has been filed with the COFC by the child care provider.

(c) The above requirements shall be met within thirty (30) days of application. *(Division of Family and Children; 470 IAC 3-1.1-34; filed Nov 14, 1991, 1:00 p.m.: 15 IR 498; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3065; errata filed Aug 7, 1996, 11:10 a.m.: 19 IR 3472; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 28. 470 IAC 3-1.1-35 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-35 Child abuse and neglect
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 35. (a) The caregiver shall report immediately suspected:
(1) physical abuse;
(2) sexual abuse;
(3) child neglect; or
(4) child exploitation;
as required by IC 31-6-11-3 *[IC 31-6 was repealed by P.L.268-1995, SECTION 17, effective July 1, 1995.]* to child protection services (CPS) or local law enforcement.

(b) A substantiated case of abuse or neglect in a child care home constitutes full and sufficient grounds for denial or revocation of the child care home license. *(Division of Family and Children; 470 IAC 3-1.1-35; filed Nov 14, 1991, 1:00 p.m.: 15 IR 499; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3066; errata filed Aug 7, 1996, 11:10 a.m.: 19 IR 3472; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 29. 470 IAC 3-1.1-36.5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-36.5 Child to staff ratio
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 36.5. (a) The maximum capacity in a class I child care home shall be twelve (12) children at any one (1) time plus three (3) children during the school year who are enrolled in at least grade 1. The addition of three (3) school age children may not occur during a break in the school year that exceeds four (4) weeks.

(b) Children shall not be left unattended and shall be supervised at all times **within sight and sound.**

(c) Only ~~direct~~ child care providers shall be counted in determining the child to staff ratio.

(d) The ratio shall include all unrelated children present in the home.

(e) The following child to staff ratios apply:

Type of Home	Child:Staff Ratio
Infant/Toddler Mixed (Birth–24 months)	~~6:1*~~ **4:1**

~~*Two (2) of the six (6) children must be at least sixteen (16) months of age and walking. Otherwise the ratio is 4:1.~~

Mixed Age Groups (Birth–~~6~~ **17** years)	10:1*

*No more than three (3) of the ten (10) children may be under sixteen (16) months of age and must be walking.

3 years and older ~~(3–10 years)~~	12:1

(Division of Family and Children; 470 IAC 3-1.1-36.5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3066; errata filed Aug 7, 1996, 11:10 a.m.: 19 IR 3472; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 30. 470 IAC 3-1.1-36.6 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-36.6 Supervision
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 36.6. (a) The child care provider shall be responsible for the supervision of the children at all times while the children are:
(1) at the facility;
(2) indoors;
(3) outdoors; and
(4) on excursions.

(b) Supervision shall be maintained by a caregiver who is within sight and sound of the children.

(c) The caregiver shall not engage in any activity while on duty during customary business hours that distracts attention from providing child care services. Such activities may include:
(1) other employment;
(2) volunteer services;
(3) recreation;
(4) hobbies; or
(5) frequent or prolonged socialization with adults.
(Division of Family and Children; 470 IAC 3-1.1-36.6)

SECTION 31. 470 IAC 3-1.1-37 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-37 Requirements for admission to the home
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 37. (a) Prior to acceptance of children, the caregiver shall have the parent or legal guardian:
(1) complete and sign an enrollment form for the child;
(2) complete and sign a release for emergency medical care for the child;
(3) sign a copy of the licensee's written discipline policy; and
(4) see all areas of the home and property to be used for child care.

(b) Within thirty (30) days of a child's admission, the licensee shall receive a written statement from the child's parent or legal guardian signed by a physician or a certified nurse practitioner ~~which states~~ **stating** the following:

(1) That the child can participate in the child care home's activities.

(2) That the child has had immunizations ~~which~~ **that** are up-to-date for the child's age **including pneumococcal conjugate and varicella or demonstrated immunity to chicken pox.**

(3) Whether the child has allergies or any chronic health conditions.

(c) **A** caregiver shall inform the parent or legal guardian of their right to request in writing an exemption of the medical requirements as required by this section based upon their religious **or personal** beliefs. Nothing in this subsection precludes the child care home from using emergency measures to treat such a child by first aid techniques or to exclude the child where control of a contagious disease may be necessary.

(d) A child shall not be required to comply with subsection (b)(2) and (b)(3) when the parent or legal guardian has provided a signed statement regarding religious **or personal** exemptions to the care home licensee.

(e) Neither **a** licensee nor **a** caregiver shall discriminate relative to the admission of children on the basis of:

(1) race;
(2) color;
(3) religion;
(4) sex;
(5) national origin;
(6) ancestry; or ~~handicap.~~
(7) disability.

(f) **A** caregiver shall inform the parent or legal guardian that unscheduled visits by a custodial parent or guardian shall be permitted at any time the child care home is in operation.

(g) A licensee shall provide to the COFC proof that each parent provided evidence to the licensee of each child's birth with either a birth certificate or a passport.

(h) A licensee shall complete the COFC's consent form to release the name and date of birth of children in the licensee's care to the Indiana clearinghouse on missing children. *(Division of Family and Children; 470 IAC 3-1.1-37; filed Nov 14, 1991, 1:00 p.m.: 15 IR 499; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3066; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 32. 470 IAC 3-1.1-38 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-38 Activities for healthy development
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 38. ~~(a)~~ The caregiver shall provide **appropriate and safe** activities ~~according~~ to **address** the ~~age~~ developmental needs, **emotional needs,** interests, and number of children in care ~~while including~~ **through the inclusion of** both active and quiet play. ~~which may consist of~~ **Materials for the provision of appropriate activities include the following:**

(1) Safe, age-appropriate toys **for large and small motor development.**
(2) Games.
(3) Puzzles.
(4) Books.
(5) Art material.
(6) Storage.
(7) Activity-related ~~and~~ equipment for both indoor and outdoor play.

~~(b) Opportunity shall be provided for children to play outdoors daily except when:~~

~~(1) the severity of the weather poses a safety or health hazard; or~~

~~(2) when there is a health related reason documented by a parent, legal guardian, or physician for a child to remain indoors.~~

(Division of Family and Children; 470 IAC 3-1.1-38; filed Nov 14, 1991, 1:00 p.m.: 15 IR 500; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3067; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 33. 470 IAC 3-1.1-38.5 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-38.5 Outdoor environment
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 38.5. (a) Opportunity shall be provided for children to play outdoors daily except when:

(1) the severity of the weather poses a safety or health hazard;

(2) the wind chill is at or below twenty-five (25) degrees Fahrenheit as reported by the National Weather Service; or

(3) there is a health-related reason documented by a parent, legal guardian, or physician for a child to remain indoors.

(b) The use of trampolines in the child care area is prohibited.

(c) Climbing and play structures shall not be placed on cement or asphalt.

(d) Play equipment shall not have:
(1) sharp or rough edges; or
(2) pinch points.

(e) Free swinging ropes are prohibited.

(f) Play space must be free of litter and with age-appro-

priate equipment installed safely and in good repair.

(g) Sand used as a play space or ground cover shall be covered when not in use or raked daily before use.

(h) Neighborhood playgrounds, if used, must meet the same requirements for a home play area. *(Division of Family and Children; 470 IAC 3-1.1-38.5)*

SECTION 34. 470 IAC 3-1.1-39 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-39 Swimming
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 39. (a) The caregiver shall be physically present at the swimming ~~or wading~~ pool to supervise when the children in care are swimming or wading.

(b) At least one (1) ~~direct~~ child care provider shall be available to supervise any children not swimming ~~or wading~~ in addition to staff requirements in section 36.5 of this rule.

(c) ~~Child care providers shall empty~~ Portable wading pools ~~immediately after use.~~ **shall not be used.**

(d) All inground or nonportable aboveground swimming pools accessible to children shall be in compliance with local zoning ordinances and surrounded by a fence secured with a locked gate to prevent children from entering the area unsupervised.

(e) Sprinklers may be used for outdoor water play. *(Division of Family and Children; 470 IAC 3-1.1-39; filed Nov 14, 1991, 1:00 p.m.: 15 IR 500; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3067; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 35. 470 IAC 3-1.1-40 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-40 Transportation and activities away from the child care home
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 40. (a) **A** caregiver shall obtain written parental permission before taking a child away from the child care home for field trips or any other activities.

(b) Children may be transported by an individual eighteen (18) years of age or older having a valid driver's license and driving a properly licensed and insured vehicle in safe condition.

(c) Children shall be transported in safety restraint equipment that is in compliance with state laws.

(d) ~~Direct~~ Child care providers shall not leave children unattended in a vehicle.

(e) Emergency contact information for all children and adults engaged in transportation or activities away from the home must be with the supervising caregiver. *(Division of Family and Children; 470 IAC 3-1.1-40; filed Nov 14, 1991, 1:00 p.m.: 15 IR 500; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3067; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 36. 470 IAC 3-1.1-41 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-41 Discipline policy
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 41. ~~(a)~~ The licensee shall provide the parent or legal guardian with a written copy of the discipline policy of the child care home.

~~(b) The following behavior shall be prohibited by all direct child care providers:~~
~~(1) Cruel, harsh, or unusual punishment.~~
~~(2) Withdrawal or the threat of withdrawal of scheduled meals or snacks, rest, or bathroom opportunities.~~
(Division of Family and Children; 470 IAC 3-1.1-41; filed Nov 14, 1991, 1:00 p.m.: 15 IR 500; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3067; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 37. 470 IAC 3-1.1-41.1 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-41.1 Positive discipline
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 41.1. (a) Caregivers shall use positive discipline.

(b) Caregivers shall do the following:
(1) Discipline using positive guidance and redirection and setting clear-cut limits.
(2) Encourage children, with adult support, to use their own words and solutions in order to resolve their own interpersonal conflicts.
(3) Communicate with children by getting down to their eye level and talking to them in a calm, quiet manner about what behavior is expected.
(4) Communicate to children using positive statements.
(Division of Family and Children; 470 IAC 3-1.1-41.1)

SECTION 38. 470 IAC 3-1.1-41.2 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-41.2 Inappropriate discipline
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 41.2. (a) Any person, while on child care home premises, shall not engage in or direct any of the following actions toward children:

(1) Inflict corporal punishment in any manner upon a child's body.

(2) Hit, spank, beat, shake, pinch, bite, or use any other measure that produces physical discomfort.

(3) Use:

(A) cruel;

(B) harsh;

(C) unusual;

(D) humiliating; or

(E) frightening;

methods of discipline, including threatening the use of physical punishment.

(4) Place a child in a locked or dark room.

(5) Use public or private humiliation, yelling, or abusive or profane language.

(b) Staff shall not associate disciplinary action or rewards with rest.

(c) Staff shall not associate disciplinary action with food or use food as a reward.

(d) Staff shall not associate disciplinary action or humiliate a child in regard to toileting.

(e) Caregivers shall not do the following:

(1) Permit time out to exceed one (1) minute per year of age of the child.

(2) Physically restrain children except when it is necessary to ensure the safety of the child or others present.

(Division of Family and Children; 470 IAC 3-1.1-41.2)

SECTION 39. 470 IAC 3-1.1-42 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-42 Nutrition

Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 42. (a) Appropriately timed, nutritious meals and snacks, **as defined by the United States Department of Agriculture (USDA),** shall be made available in such quantity ~~as~~ **and variety** to meet the needs of each child.

(b) Drinking water shall be available at all times.

(c) Menus shall be posted for parents to view.

(d) Milk shall be served with each meal. *(Division of Family and Children; 470 IAC 3-1.1-42; filed Nov 14, 1991, 1:00 p.m.: 15 IR 501; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3068; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 40. 470 IAC 3-1.1-44 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-44 Health

Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 44. (a) The child care home must keep a Red Cross First Aid Manual or its equivalent in the child care home.

(b) The ~~caregiver~~ **child care home** must maintain a**t least one (1)** first aid kit as recommended by the American Red Cross First Aid Manual or its equivalent, **wherever children are in care,** including ~~but not limited to, syrup of ipecac with current date, in the~~ **one (1) for field trips and outings away from the home. Each kit shall be a closed container for storing first aid supplies, accessible to** child care ~~home~~ **staff members at all times but out of the reach of children.**

(c) Child care providers shall see that children's hands are washed at a sink with soap and warm running water before meals and snacks and after toilet use. ~~Direct child care providers shall not permit children to use a common washcloth or towel.~~ **Products used for washing, other than soap, and all drying materials shall not be used by more than one (1) child.**

(d) If a child is ill ~~direct~~ **or has a temperature of over one hundred (100) degrees Fahrenheit, an unexplained rash, or diarrhea, the** child care providers shall:

(1) care for the child in an area separate from the other children;

(2) **immediately** notify the child's parent or legal guardian; and

(3) monitor the child until the parent or legal guardian arrives.

(e) The caregiver shall keep the phone numbers of the **following by the telephone:**

(1) Ambulance.

(2) Police.

(3) Fire department.

(4) Poison control center. ~~and~~

(5) Nearest hospital. ~~by the telephone.~~

(f) Child care providers shall give or apply medication only with prior written permission from a parent or legal guardian, and only with clear, written instructions as to the dosage, time, and reason medication is to be given. Medication must be labeled with the child's name, physician's name, and pharmacy. Over-the-counter medication must also be labeled with the child's name. The caregiver shall keep a record of the date, time, and dosage of medication given.

(g) Pets must present no danger to children in the child care setting and are the sole responsibility of the child care home licensee.

(h) Direct child care providers shall restrict all animals from food areas during preparation and serving of food. *(Division of Family and Children; 470 IAC 3-1.1-44; filed Nov 14, 1991,*

1:00 p.m.: 15 IR 501; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3068; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 41. 470 IAC 3-1.1-44.5 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-44.5 Medication
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 44.5. (a) Child care providers shall give or apply prescription and over-the-counter medication only with prior written permission from a parent or legal guardian.

(b) All prescription medication must be renewed annually and kept in currently labeled containers.

(c) The written order or the prescription label must show the following:
(1) The name of the child.
(2) The name of the medication.
(3) The dosage of medication to be administered.
(4) The frequency or interval to be given.
(5) The physician's name.
(6) The date the prescription was filled.

(d) Over-the-counter medication must be provided by the parent and must also be labeled with the child's name and directions specific to the administration of the medication for that child.

(e) The caregiver shall keep a record of the date, time, staff administering the drug, and dosage of prescription medication or over-the-counter medication, or both, given. *(Division of Family and Children; 470 IAC 3-1.1-44.5)*

SECTION 42. 470 IAC 3-1.1-45 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-45 General environment
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 45. (a) The licensee shall ensure that no conditions exist in the home or on the grounds where child care services are provided that would endanger the health, safety, or welfare of the children.

(b) The licensee shall identify areas in the home that will be used for child care. The child care areas shall contain ~~adequate space for child play and rest for the number of children in care.~~ **thirty-five (35) square feet of usable play space per child excluding the following:**
(1) Hallways.
(2) Restrooms.
(3) Cooking areas.
(4) Utility rooms.
(5) Closets.
(6) Any other areas not used for child care.

(c) The licensee shall maintain a working telephone in the child care home and shall inform the COFC of any change in telephone number.

(d) The licensee shall provide a protected outdoor play area that is safely enclosed by ~~either~~ a fence or ~~natural boundaries~~ **a physical structure** for children in care.

(e) The licensee shall ensure that the child care home is equipped with heat, light, and ventilation for normal occupancy.

(f) The licensee shall provide and maintain screens for windows and exterior doors when windows and doors are open for ventilation.

~~(f)~~ **(g)** The licensee shall ensure that the kitchen is equipped with **a:**
(1) ~~a~~ stove and oven or microwave;
(2) ~~a~~ refrigerator; and
(3) ~~a~~ sink with hot and cold running water;
in operating condition sufficient to accommodate the food requirements of the number of children in care.

(h) The use of tobacco, alcohol, and illegal drugs by caregivers is prohibited at all times in the child care facility and on field trips when caregivers are responsible for the supervision of children.

(i) The provider shall ensure that all:
(1) tobacco products;
(2) alcohol;
(3) drugs;
(4) toxic substances;
(5) lighters; and
(6) matches;
are kept out of reach of the children. *(Division of Family and Children; 470 IAC 3-1.1-45; filed Nov 14, 1991, 1:00 p.m.: 15 IR 502; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3069; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 43. 470 IAC 3-1.1-45.5 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-45.5 Pets
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 45.5. (a) The provider shall be responsible for protecting the health and safety of the children from household pets and other animals at the facility.

(b) Any pet or animal present at the facility, indoors or outdoors, shall be in good health and show no evidence of carrying disease that may be harmful to children.

(c) Animal litter boxes shall not be located in areas accessible to children.

(d) All animal litter shall be removed immediately from areas accessible to children and be discarded as required by local health authorities or by placement in a covered container located outside the area used for child care.

(e) Caregivers and children shall wash their hands after handling or feeding animals.

(f) The facility shall not keep or bring the following into the child care area:
(1) Ferrets.
(2) Turtles.
(3) Iguanas.
(4) Lizards.
(5) Other reptiles.
(6) Psittacine birds (birds of the parrot family).

(g) All animals shall be restricted from food areas during preparation and serving of food. *(Division of Family and Children; 470 IAC 3-1.1-45.5)*

SECTION 44. 470 IAC 3-1.1-46 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-46 Fire prevention
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 46. (a) All child care homes shall have two (2) remotely located means of egress. **If child care is provided on a second or higher story of a facility, each story shall also have two (2) remotely located means of egress.**

(b) A basement area in which child care services are provided shall have a direct exit at ground level not involving stairs or ramps. The interior staircase serving the first floor is acceptable as the second exit for a basement in which child care services are provided. An example of an allowable exit is a level area directly outside the exterior door that is at least thirty-two (32) square feet. This area may be a porch, deck, or stairway landing. Bi-level and tri-level homes ~~which~~ **that** are licensed and hold a regular license with the division of family and children, as of ~~the effective date of this section,~~ **July 3, 1996,** are exempt.

(c) Each room of the home where child care services are provided is required to have at least two (2) means of escape (this may include one (1) window and one (1) door).

(d) All approved exit doors shall be operable from the inside without the use of a key or any special knowledge.

(e) A sliding glass door shall be acceptable as a direct exit provided that it is unobstructed, operable, and maintained in good working condition. If a screen door is attached, it shall meet the same criteria as the sliding door.

(f) A garage or any other area where hazardous materials are stored shall not be considered an approved exit.

(g) Exits shall not be blocked in the child care home.

(h) Portable, unvented oil-burning heating appliances shall not be used unless the heater complies with 675 IAC 22.

(i) Electric or gas heaters and solid fuel-burning appliances shall not be located in such a manner that they block escape in case of fire. ~~arising from a malfunctioning stove, heater, or appliance.~~

(j) When a fireplace serves as the primary source of heat, **the** licensee shall provide glass doors, noncombustible hearth, grates, and proper fireplace tools for each fireplace in use. ~~while children are present.~~ Child care providers shall ensure proper positioning of glass doors. If a fireplace is used at any time, it shall have a noncombustible hearth, screening, and grate. **The** licensee shall have the chimney flue inspected annually and cleaned if recommended. **The** licensee shall retain a written record of the inspections and cleanings for each fireplace used while children are present.

(k) **The** caregiver shall properly dispose of ashes from the fireplace in a noncombustible, covered receptacle which shall then be placed on the ground and away from any building or combustibles.

(l) **The** licensee shall provide **an** electrical or battery-operated smoke detector that is installed ~~to~~ **in accordance with the** manufacturer's specifications and is located and adjusted to operate reliably in case of smoke in any part of the child care home, including not less than one (1) smoke detector at the top of each stairway and adjacent to all sleeping areas. The alarm should be loud enough to alert all occupants in the child care home.

(m) **The** licensee shall provide a two and one-half (2½) pound or greater ABC multiple purpose fire extinguisher which shall be located on each floor of the building in which child care services are provided, including an additional extinguisher located in the kitchen area of the child care home. **Fire extinguishers shall be mounted so that the top of the fire extinguisher is not more than five (5) feet above the floor and the bottom shall be not less than four (4) inches above the floor.**

(n) **The** caregiver shall not permit trash, flammable, and combustible materials, including, but not limited to, paper and rags, to accumulate upon the premises.

(o) ~~Direct~~ Child care providers shall store flammable liquids in tightly sealed, marked containers appropriate to the type of liquid being stored. ~~Direct~~ Child care providers shall store no

more than five (5) gallons of flammable liquids at any one (1) time in buildings used for child care and shall store all flammable liquids, lighters, and matches in an area inaccessible to children or in an approved fire cabinet.

(p) ~~Direct~~ Child care providers shall not store combustible material within five (5) feet of furnaces and water heaters.

(q) The licensee shall identify **or post and train all staff in** the location and operation of the gas, electric, and water shut-offs. ~~and keep accessible the gas, electric, and water shut-offs in case of emergency.~~ **Accessibility to the shut-offs shall exist and be kept clear at all times.**

(r) The caregiver shall have a written plan for evacuating in case of fire or other emergencies.

(s) The caregiver shall conduct and document ~~quarterly~~ **monthly** fire drills.

(t) The electrical wiring shall be sized to provide for the **required** load. There must not be exposed or uninsulated wiring. If used, extension cords shall ~~not~~ be ~~overloaded or over six (6) feet in length.~~ **equipped with circuit breakers.**

(u) The licensee shall notify the local fire department at the time of application or relicensure of the licensed capacity **any special considerations for children enrolled** and the hours of operation of the home.

(v) **The** caregiver shall promptly notify the local fire departments upon discovery of any fire ~~whether or not extinguished,~~ **before attempting to extinguish the fire** and advise of the circumstances and location of the fire.

(w) **The** caregiver shall promptly notify the local fire department upon discovery of:
(1) spontaneous or abnormal heating;
(2) any uncontrolled gas leak; or
(3) a significant spill of hazardous material or flammable or combustible liquid.

(x) **The** licensee shall permit inspection of the child care home by the SFM if requested by the CDFC upon recommendation of the COFC. If such an inspection is requested, approval would be required by the SFM prior to full licensure. *(Division of Family and Children; 470 IAC 3-1.1-46; filed Nov 14, 1991, 1:00 p.m.: 15 IR 502; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3069; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 45. 470 IAC 3-1.1-47 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-47 Sanitation
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 47. (a) The licensee shall provide and maintain screens for windows and exterior doors when windows and doors are kept open for ventilation.

(b) The licensee shall ensure that the child care home has hot and cold running water and at least one (1) **bathroom including a** toilet and sink accessible to children on each floor of the home where services are provided. Water from a source other than a regular municipal water supply shall be tested annually ~~for~~ **and the quality shall be in** compliance with **state regulations for potable** water. ~~quality requirements.~~

(c) ~~Direct~~ Child care providers shall wash and sanitize all food preparation areas, serving areas, and utensils daily.

(d) **The** caregiver shall keep ~~garbage~~ **food waste** in containers with tight-fitting lids and ~~remove it from the premises at least once a week.~~ **empty daily.** Waste paper need not be kept in a closed container. **Garbage shall be removed from the premises at least once a week.**

(e) Toys and equipment shall be cleaned and sanitized weekly, as needed. *(Division of Family and Children; 470 IAC 3-1.1-47; filed Nov 14, 1991, 1:00 p.m.: 15 IR 503; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3071; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 46. 470 IAC 3-1.1-48 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.1-48 Safety
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 48. (a) ~~Direct~~ Child care providers shall keep protective coverings over exposed electrical outlets.

(b) If fans ~~or heaters~~ are used, **the** licensee shall provide models that are protected by safety devices ~~which~~ **that** will not allow a child's fingers to come in contact with the blade ~~or heating element~~ **and shall bear the safety certification of a recognized testing laboratory.**

(c) **The** caregiver shall keep poisonous or hazardous materials that would harm children, including, but not limited to, **the following in areas inaccessible to children:**
(1) Cleaning supplies.
(2) Detergents.
(3) Insect sprays. ~~and~~
~~(4) medication;~~
(4) Drugs.
(5) Household paint and other renovation chemicals.
(6) Lawn care products.
(7) Plants.
~~in areas inaccessible to children.~~

(d) **The** caregiver shall store implements and tools, including, but not limited to, **the following in areas inaccessible to children:**

(1) Power tools.

(2) Hand tools. ~~and~~

(3) Gardening tools.

~~in areas inaccessible to children.~~

(e) When children are present in the child care home, **the** caregiver shall keep all ammunition and firearms in a locked area that is inaccessible to children at all times.

(f) If space heaters are used, they shall:

(1) be inaccessible to children and be stable;

(2) have protective covering to keep hands and objects away from the source of heat;

(3) bear the safety certification of a recognized testing laboratory;

(4) be placed three (3) feet from curtains and all other flammable objects; and

(5) be properly vented so as not to introduce fumes into the child care area.

(Division of Family and Children; 470 IAC 3-1.1-48; filed Nov 14, 1991, 1:00 p.m.: 15 IR 503; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3071; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 47. 470 IAC 3-1.1-50 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-50 School age child care services
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 50. (a) Activities that meet the developmental needs of school age children shall be provided, including the following:

(1) Indoor and outdoor play.

(2) Opportunity for study in a quiet area.

(3) Age-appropriate toys, books, and games, in good repair.

(b) The parent, school, and caregiver shall establish and agree in writing as to areas of responsibility, including, but not limited to, the following:

(1) Child's departure times to and from school.

(2) Transportation arrangements.

(3) Participation in before and after school activities.

(Division of Family and Children; 470 IAC 3-1.1-50)

SECTION 48. 470 IAC 3-1.1-51 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.1-51 Extended hours
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 51. (a) Any facility operating more than twelve (12) hours must meet all the requirements of this rule and must have prior approval from the division.

(b) Caregivers counted in the child to staff ratios shall be awake and alert at all times. *(Division of Family and Children; 470 IAC 3-1.1-51)*

SECTION 49. 470 IAC 3-1.2-2 IS AMENDED TO READ AS FOLLOWS:

Rule 1.2. Infant and Toddler Services

470 IAC 3-1.2-2 "Full-sized crib" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 2. As used in this rule, "full-sized crib" means a child's bed ~~which~~ **that** has an interior dimension greater than ~~fifty-two and three-eighths (52 3/8)~~ **fifty-one and three-fourths (51¾)** inches ~~plus or minus five-eighths (5/8) inch~~ in length and ~~twenty-eight (28)~~ **twenty-seven and three-eighths (27 d)** inches ~~plus or minus five-eighths (5/8) inch~~ in width. With the mattress support in its lowest position and the crib side in its highest position, the vertical distance from the upper surface of the mattress support to the upper surface of the crib side or end panel shall not be less than twenty-six (26) inches. *(Division of Family and Children; 470 IAC 3-1.2-2; filed Nov 14, 1991, 1:00 p.m.: 15 IR 504; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 50. 470 IAC 3-1.2-3 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.2-3 "Portacrib" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 3. As used in this rule, "portacrib" means a child's portable bed ~~which~~ **that** has an interior dimension smaller than ~~forty-nine and three-fourths (49 3/4)~~ **fifty and three-eighths (50 d)** inches ~~plus or minus five-eighths (5/8) inch~~ in length but not less than thirty-six (36) inches in length, and ~~twenty-five and three-eighths (25 3/8)~~ **smaller than twenty-six** inches ~~plus or minus five-eighths (5/8) inch~~ in width but not less than twenty-four (24) inches in width. With the mattress support in its lowest position, the vertical distance from the upper surface of the mattress support to the upper surface of the crib side or end panel shall not be less than twenty-two (22) inches. *(Division of Family and Children; 470 IAC 3-1.2-3; filed Nov 14, 1991, 1:00 p.m.: 15 IR 504; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 51. 470 IAC 3-1.2-3.2 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.2-3.2 Cribs
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 3.2. (a) All cribs shall meet the following guidelines:
(1) Cribs shall be of sturdy construction.
(2) There shall be no corner posts higher than one-sixteenth ($^{1}/_{16}$) inch.
(3) There shall be no cutouts in the headboard.
(4) Spaces between the bars of the crib and between the bars and the end panels of the crib shall not exceed two and three-eighths (2 d) inches.
(5) Each crib shall have a firm mattress at least two (2) inches thick that is securely covered with a waterproof material not dangerous to children.
(6) The gap between the mattress and the interior perimeter of the crib shall not exceed one (1) inch.
(7) Drop-side latches shall be safe and securely hold the sides in the raised position.
(8) Latches shall not be reachable by a child in a crib.

(b) Tiered or stacked cribs are prohibited. *(Division of Family and Children; 470 IAC 3-1.2-3.2)*

SECTION 52. 470 IAC 3-1.2-4 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.2-4 Activities for healthy development
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 4. (a) The caregiver shall have stairways guarded by a gate or closed door **unless a required exit is blocked.**

(b) After discussion with the parent or legal guardian of each infant or toddler in care, **the** caregiver shall:
(1) establish flexible routines for:
(A) naps;
(B) feedings;
(C) diapering; and
(D) toilet training;
(2) provide opportunities for play and exploration of the environment; and
(3) periodically change the available toys and the place and position of infants not yet able to ~~move about~~ **change their location or position** on their own.
(Division of Family and Children; 470 IAC 3-1.2-4; filed Nov 14, 1991, 1:00 p.m.: 15 IR 504; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3072; errata filed Aug 7, 1996, 11:10 a.m.: 19 IR 3472; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)

SECTION 53. 470 IAC 3-1.2-5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.2-5 Naps
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 5. (a) **The** licensee shall provide a separate crib, portacrib, or playpen in which each **nonwalking** infant or toddler can sleep. Each crib, portacrib, or playpen shall be equipped with a firm-fitting mattress or pad made of waterproof materials. A parent or legal guardian may provide or approve the use of a bassinet for an infant and is responsible along with the caregiver to monitor its use closely. (Manufacturers of bassinets indicate that a bassinet should no longer be used once an infant begins moving and turning unassisted.)

(b) The licensee may use washable cots, sleeping bags, or mats for **walking infants and** toddlers. ~~over twenty-four (24) months of age.~~

(c) Infants under twelve (12) months of age shall be placed on their backs to sleep unless the infant's physician indicates otherwise. A firm mattress, mat, or pad manufactured in the United States as infant sleeping equipment shall be used for sleep. The mattress shall be tightly fitted in the crib. There shall be no:
(1) pillows;
(2) quilts;
(3) comforters;
(4) sheepskins;
(5) stuffed toys; or
(6) other soft products;
in the crib. If a light blanket is used, it shall be securely tucked in at the foot of the crib and reach only as far as the infant's chest. *(Division of Family and Children; 470 IAC 3-1.2-5; filed Nov 14, 1991, 1:00 p.m.: 15 IR 504; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3072; errata filed Aug 7, 1996, 11:10 a.m.: 19 IR 3472; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 54. 470 IAC 3-1.2-6 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.2-6 Diaper changing and toilet training
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 6. (a) The licensee shall provide an area for diaper changing with a washable surface on which the infant or toddler may be placed. The diaper changing surface must have waterproof material between the child and the surface of the changing area. This material shall be changed after each use. The diaper changing area shall be sanitized ~~daily~~ and ~~when soiled.~~ **cleaned after each use.**

~~(b) Licensee shall supply a covered container for wet or soiled diapers.~~

~~(c) Direct~~ **(b) All** child care providers ~~changing diapers~~ shall wash their hands with soap and running water **immediately** after each diaper change.

~~(d)~~ **(c)** When a chair designed specifically for toilet training is used, ~~direct~~ **the** child care provider shall empty it ~~after each use~~ and sanitize it ~~at least daily.~~ **after each use.**

(d) The diaper changing area shall not be located in the kitchen.

(e) Diapers shall be kept in a covered container that cannot be opened by children. *(Division of Family and Children; 470 IAC 3-1.2-6; filed Nov 14, 1991, 1:00 p.m.: 15 IR 505; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3072; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 55. 470 IAC 3-1.2-7 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.2-7 Feeding
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 7. (a) ~~Direct~~ Child care providers shall feed infants and toddlers according to their dietary needs and shall hold infants during bottle feedings until they demonstrate ~~their~~ **the** ability to hold their own bottles.

(b) If more than one (1) infant or toddler in care is bottle fed, all bottles shall be labeled with the child's name.

(c) ~~Direct~~ Child care providers shall not prop ~~feeding~~ bottles. *(Division of Family and Children; 470 IAC 3-1.2-7; filed Nov 14, 1991, 1:00 p.m.: 15 IR 505; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3073; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 56. 470 IAC 3-1.2-8 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.2-8 Sanitizing
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 8. All frequently touched toys in rooms in which infants and toddlers are cared for shall be cleaned and sanitized daily. *(Division of Family and Children; 470 IAC 3-1.2-8)*

SECTION 57. 470 IAC 3-1.3-1 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3-1.3-1 Class II child care home services
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 1. A ~~Class II~~ **licensee who provides** child care ~~home serves~~ **services for** more than twelve (12) children but not more than sixteen (16) full-time and part-time children ~~at any one (1) time. A licensee who provides Class II child care~~ shall meet all the requirements of 470 IAC 3-1.1 and 470 IAC 3-1.2 as well as the requirements of this rule. ~~If there is any difference in requirements, the specific information contained in IC 12-17.2-5-6.5 shall prevail.~~ *(Division of Family and Children; 470 IAC 3-1.3-1; filed Sep 27, 1996, 12:35 p.m.: 20 IR 322; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235)*

SECTION 58. 470 IAC 3-1.3-2 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.3-2 "Class II child care home" defined
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 2. (a) As used in this rule, "class II child care home" means a child care home that serves more than twelve (12) children but not more than any combination of sixteen (16) full-time and part-time children at any one (1) time.

(b) A child:
(1) for whom a provider of care in the child care home is a:
(A) parent;
(B) stepparent;
(C) guardian;
(D) custodian; or
(E) other relative; and
(2) who is at least seven (7) years of age;
shall not be counted in determining whether the class II child care home is within the limit set forth in subsection (a). *(Division of Family and Children; 470 IAC 3-1.3-2)*

SECTION 59. 470 IAC 3-1.3-3 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.3-3 Application for class II child care home license
Authority: IC 12-13-5-3
Affected: IC 12-17.2-5

Sec. 3. An applicant for a class II child care home license shall do the following:
(1) Attend orientation training provided or approved by the CDFC if a training has not been attended in the last twelve (12) months.
(2) Comply with application procedures as required by this rule.
(3) Submit to the CDFC child care home licensing consultant a completed, signed application for a class II child care home license.
(4) Provide documentation of the following:
(A) A high school diploma or general equivalency diploma (GED).
(B) One (1) year of experience in a licensed child care home or child care center.
(C) All attachments as required by 470 IAC 3-1.1-28.
(D) Original results of a national criminal history check for each applicant.
(E) Results of a five (5) panel drug test signed by a medical review officer for each household member eighteen (18) years of age or older and all caregivers.
(5) A notarized statement from a design professional on forms provided by the CDFC that the class II child care home is in compliance with the requirements contained in IC 12-17.2-5.

(Division of Family and Children; 470 IAC 3-1.3-3)

SECTION 60. 470 IAC 3-1.3-4 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.3-4 Personnel requirements
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 4. (a) Two (2) caregivers, one (1) at least twenty-one (21) years of age or older, must be on the premises at all times and responsible for the class II child care home.

(b) If the licensee is not the caregiver, the licensee shall ensure that a caregiver is on the premises and is responsible for the direct care, protection, and supervision of children in the class II child care home. *(Division of Family and Children; 470 IAC 3-1.3-4)*

SECTION 61. 470 IAC 3-1.3-5 IS ADDED TO READ AS FOLLOWS

470 IAC 3-1.3-5 Staff orientation, training, and development
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 5. Caregivers shall complete at least twelve (12) clock hours annually of staff development activities that shall consist of inservice training, workshops, conferences, or college courses closely related to group care of children. Recommended topics include the following:
(1) Child growth and development.
(2) Child care programming and activities.
(3) Health and safety practices (first aid and CPR cannot be counted for more than six (6) hours of inservice training).
(4) Inclusion of children with special needs.
(5) Nutrition and eating habits.
(6) Parent communication.
(7) Use of physical space.
(Division of Family and Children; 470 IAC 3-1.3-5)

SECTION 62. 470 IAC 3-1.3-6 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.3-6 Class II child care home capacity
Authority: IC 12-13-5-3
Affected: IC 12-17.2

Sec. 6. The maximum capacity of the class II child care home shall be determined by using the following information:
(1) A minimum of thirty-five (35) square feet of usable space per child, exclusive of:
(A) bathrooms;
(B) storage areas;
(C) food preparation areas;
(D) hallways; and
(E) any rooms that children are prohibited.
The home's indoor premises shall contain adequate space for child play and developmentally appropriate activities for the number and ages of children served.
(2) Sufficient food preparation surfaces in the kitchen and a:
(A) sink with hot and cold running water;
(B) full-size refrigerator; and
(C) full-size stove and oven;
in operating condition.
(Division of Family and Children; 470 IAC 3-1.3-6)

SECTION 63. 470 IAC 3-1.3-7 IS ADDED TO READ AS FOLLOWS:

470 IAC 3-1.3-7 Fire prevention and safety
Authority: IC 12-13-5-3
Affected: IC 12-17.2-5-6.5

Sec. 7. (a) Prior to beginning operation as a class II child care home, the applicant shall secure the services of a design professional and shall submit with the application for a class II child care home a notarized statement from the design professional that the class II child care home is in compliance with IC 12-17.2-5-6.5 and the following items:
(1) Each home that has child care provided on the first story is required to have two (2) exits on that story. These exits must be separated from each other by a distance that is equal to not less than one-half (½) the largest dimension of that story.
(2) All areas used for child care must be located not more than seventy-five (75) feet from an approved exit.
(3) The exit may pass through only one (1) intervening room provided it does not pass through a:
(A) kitchen;
(B) bathroom;
(C) closet;
(D) storage area; or
(E) any room where hazardous materials are stored.
If the only exit from a room is through an allowed room, there must be smoke detectors in both rooms. Detectors must be audible throughout the home.
(4) At least one (1) of the approved exit doors shall be a minimum of thirty-six (36) inches wide and six (6) feet eight (8) inches high.
(5) Exit doors for approved exits shall be either pivoted or swing-hinged doors. Revolving or overhead doors are not acceptable exits. Only one (1) of the required exits on each floor may be a sliding glass door.
(6) All exit doors must be unlocked and must be operable from the inside without the use of a key or any special knowledge or effort.
(7) There shall be a floor or landing on each side of an exit door. The floor or landing shall not be more than one-fourth (¼) inch lower than the threshold of the door. The landing must be:

(A) level;

(B) at least the width of the door; and

(C) at least forty-four (44) inches in length.

(8) An illuminated exit sign and emergency lighting with battery backup is required for each approved exit door. The exit sign shall meet the following specifications:

(A) Internally or externally illuminated by two (2) electric lamps. Current supply to one (1) of the lamps shall be provided by the premises wiring system. Power to the other lamp shall be from storage batteries.

(B) Words shall be in block letters six (6) inches high with a letter width of not less than three-fourths (¾) of an inch.

(C) Placed above approved exit doors.

(9) Provide all child care services on the first story of the child care home unless the class II child care home meets all of the following conditions:

(A) Entire home is equipped with an automatic sprinkler system throughout.

(B) There are at least two (2) exits directly to the exterior of the home for the sole use of the occupants of the second story.

(C) No children under twenty-four (24) months of age are on the second story.

(10) Smoke detectors shall be hard wired to the home's electrical system and wired in such a manner that activates all of the smoke detectors in the home when any one (1) detector is activated.

(11) Smoke detectors shall be installed according to the manufacturer's installation guidelines.

(12) A two and one-half (2½) pound or greater ABC multiple purpose fire extinguisher is required in each room used for child care.

(b) The caregiver shall immediately report any fire or smoke condition to the local fire department. The division of family and children shall be advised of the location and circumstances of the fire or smoke condition within twenty-four (24) hours.

(c) In the event that two (2) licensed class II child care homes are contiguously located within the same residential structure, each licensed facility shall be separated by a two (2) hour fire occupancy wall between each licensed facility. Such wall shall comply with applicable provisions of the Indiana uniform building code in effect at the time of application for licensure. The applicant shall provide certification by a design professional that the fire-resistive wall has been constructed in compliance with the rules of the fire prevention and building safety commission. If there is a door between the two (2) homes, it must be a one and one-half (1½) hour fire-rated door. *(Division of Family and Children; 470 IAC 3-1.3-7)*

SECTION 64. THE FOLLOWING ARE REPEALED: 470 IAC 3-1.1-9; 470 IAC 3-1.1-32.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 23, 2004 at 6:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Auditorium, Indianapolis, Indiana; ***AND*** *on June 24, 2004 at 6:00 p.m., at the Fort Wayne Development Center, 4900 Saint Joe Road, Fort Wayne, Indiana;* ***AND*** *on June 29, 2004 at 6:00 p.m., at the Office of Family and Children Regional Training Center, 604 Quail Run Road, Vincennes, Indiana;* ***AND*** *on June 30, 2004 at 5:45 p.m., at the Gary Public Library, 220 West 5th Avenue, Gary, Indiana;* ***AND*** *on July 1, 2004 at 6:00 p.m., at the Jeffersonville High School Cafeteria, 2315 Allison Lane, Jeffersonville, Indiana the Division of Family and Children will hold a public hearing on proposed amendments to revise, update, clarify, and add miscellaneous provisions to the rules that govern child care homes. Written comments will be accepted through July 16, 2004, and may be directed to the DFC, Bureau of Child Development, Attention: Debbie Sampson, 402 West Washington Street, Room W386, MS 02, Indianapolis, Indiana 46204. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W386 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Stephen E. DeMougin
Director
Division of Family and Children

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

Proposed Rule
LSA Document #03-317

DIGEST

Adds 646 IAC 3-1-12 concerning the wage reporting requirements pertaining to professional employer organizations. Adds 646 IAC 3-1-13 concerning the respective liabilities of a professional employer organization and its client company for unemployment insurance contributions. Adds 646 IAC 3-4-11 concerning the definition of a professional employer organization with respect to qualifying as an employer. Amends 646 IAC 3-5-1 concerning corporate officers and directors. Effective 30 days after filing with the secretary of state.

646 IAC 3-1-12	**646 IAC 3-4-11**
646 IAC 3-1-13	**646 IAC 3-5-1**

SECTION 1. 646 IAC 3-1-12 IS ADDED TO READ AS FOLLOWS:

646 IAC 3-1-12 Initial and wage reporting requirements for professional employer organizations; separate location accounts; notice of termination

Authority: IC 22-4-18-1
Affected: IC 22-4-10-6

Sec. 12. (a) Each professional employer organization, under 646 IAC 3-4-11, that enters into a written agreement to provide services to a business entity during any calendar quarter shall submit to the department no later than the due date for the quarterly unemployment contribution report relating to that quarter, a report identifying the following:

(1) The name of the business entity to which services are provided.

(2) The location of the business entity's operations.

(3) The unemployment insurance account number of the business entity (if any).

(4) The effective date of the written agreement to provide services.

(b) For each separate client, the professional employer organization must obtain a location code to identify the employees related to that business entity's place of operation.

(c) The professional employer organization must include the respective client location codes with every quarterly wage or contribution report, or both, submitted to the department.

(d) A professional employer organization shall provide the department with written notification via registered mail of the termination of a written agreement to provide services to a business entity within ten (10) business days of such termination. *(Department of Workforce Development; 646 IAC 3-1-12)*

SECTION 2. 646 IAC 3-1-13 IS ADDED TO READ AS FOLLOWS:

646 IAC 3-1-13 Responsibility of professional employer organization to pay unemployment contributions; resumption of liability by client business entity upon termination of agreement between professional employer organization and client

Authority: IC 22-4-18-1
Affected: IC 22-4-32-21

Sec. 13. (a) For the duration of the agreement between a professional employer organization and a client business entity under 646 IAC 3-4-11, the professional employer organization, as the employer of the employees whom it engages to perform services for the client, is responsible for the payment of all unemployment contributions related to said employees for which it is liable under IC 22-4, this article, or any other state or federal laws or regulations relating to unemployment insurance that are applicable to employers on behalf of the client.

(b) Upon termination of the agreement between a professional employer organization and a client business entity under 646 IAC 3-4-11 and proper written notice to the department, the professional employer organization must promptly pay its outstanding liability, including contributions, interest, and penalties, that have accrued on payroll amounts paid by the professional employer organization to employees that it formerly engaged to perform services for the client business entity, up to the date of the termination of said agreement. The professional employer organization will remain responsible for contributions, interest, and penalties that may accrue after the date of the termination if it does not promptly pay its outstanding liability and properly notify the department in writing of such termination.

(c) The department shall maintain the employer account of the client business entity for a period of five (5) full calendar years after the beginning of the agreement with the professional employer organization. If the agreement between the professional employer organization and the client business entity terminates prior to the end of the five (5) year period, the client shall resume responsibility for all subsequent liability as the employer of its employees as of the date of the termination. The client business entity will revert to its previous employer account number and merit rate. If the agreement between the professional employer organization and the client business entity terminates after the five (5) year period has passed, the client business entity will assume a new employer account number and new employer merit rate. *(Department of Workforce Development; 646 IAC 3-1-13)*

SECTION 3. 646 IAC 3-4-11 IS ADDED TO READ AS FOLLOWS:

646 IAC 3-4-11 "Professional employer organization" defined

Authority: IC 22-4-18-1
Affected: IC 22-4-7-1

Sec. 11. "Professional employer organization" means any entity that contracts to provide the nontemporary, ongoing employee workforce of a client under a written agreement and that under contract and in fact:

(1) has a right to hire and terminate the employees who perform services for the client;

(2) sets the rate of pay of the employees, whether or not through negotiations;

(3) has the obligation to and pays the employees from its own accounts;

(4) has a general right of direction and control over the employees, including corporate officers, which right may be shared with the client to the degree necessary to allow the client to:

(A) conduct its business;

(B) meet any fiduciary responsibility; or

(C) comply with any applicable statutory or regulatory requirements;

(5) with respect to all employees to whom it pays wages pursuant to an agreement with a client business entity:

(A) assumes responsibility for the unemployment insurance coverage;

(B) files all required reports;

(C) pays all required contributions or reimbursements for which it is liable; and

(D) otherwise complies with IC 22-4, this article, or any other state or federal laws or regulations relating to unemployment insurance that are applicable to employers on behalf of the client; and

(6) provides written notice of the agreement between the professional employer organization and the client to the employees.

(Department of Workforce Development; 646 IAC 3-4-11)

SECTION 4. 646 IAC 3-5-1 IS AMENDED TO READ AS FOLLOWS:

646 IAC 3-5-1 Corporate officers and directors

Authority: IC 22-4-18-1
Affected: IC 22-4-8-1

Sec. 1. (a) An officer of a corporation who receives remuneration for his **or her** services as a corporate officer from a corporation is in employment during the entire term of his **or her** office, and such remuneration shall be considered as wages.

(b) A director of a corporation, as such, is not considered in employment, and fees paid for attendance at meetings of such board of directors shall not be deemed wages.

(c) A member of a board of directors is in employment, however, if he **or she** performs services for remuneration for the corporation other than those required by attendance at, and participation in, the meetings of the board of directors.

(d) The remuneration considered wages in subsection (a) shall be deemed wages paid by a professional employer organization, and the corporate officer of a client business entity shall be deemed the employee of the professional employer organization, in the event the services performed as a corporate officer are subject to a written agreement between the professional employer organization and the client business entity as provided in 646 IAC 3-4-11. *(Department of Workforce Development; Reg 301; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 880; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 36; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 38; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 159; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1916; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-4-1) to the Department of Workforce Development (646 IAC 3-5-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 2004 at 10:00 a.m., at the Indiana Government Center-South, 10 North Senate Avenue, Room 301-A, Indianapolis, Indiana the Department of Workforce Development will hold a public hearing on proposed rules pertaining to professional employer organizations and their responsibilities as employers under the unemployment insurance program laws. Copies of these rules are now on file at the Indiana Government Center-South, 10 North Senate Avenue, SE 105 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Alan Degner
Commissioner
Department of Workforce Development

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule
LSA Document #04-56

DIGEST

Amends 675 IAC 22-2.3, the 2003 Indiana Fire Code, to make substantive and clarifying changes and to add provisions concerning haunted houses. Repeals 675 IAC 22-2.2-49.5, 675 IAC 22-2.2-107.1, 675 IAC 22-2.2-134.5, 675 IAC 22-2.2-183, 675 IAC 22-2.2-221.5, 675 IAC 22-2.2-240.1, 675 IAC 22-2.2-241.1, 675 IAC 22-2.2-243.1, 675 IAC 22-2.2-245.2, 675 IAC 22-2.2-245.5, 675 IAC 22-2.2-365.2, 675 IAC 22-2.2-365.5, 675 IAC 22-2.2-368.1, 675 IAC 22-2.2-369.5, 675 IAC 22-2.2-378.5, 675 IAC 22-2.2-412.5, 675 IAC 22-2.2-437.5, 675 IAC 22-2.2-437.7, 675 IAC 22-2.2-443.5, 675 IAC 22-2.2-511.1, 675 IAC 22-2.2-515.1, and 675 IAC 22-2.2-540. Effective 30 days after filing with the secretary of state.

675 IAC 22-2.2-49.5
675 IAC 22-2.2-107.1
675 IAC 22-2.2-134.5
675 IAC 22-2.2-183
675 IAC 22-2.2-221.5
675 IAC 22-2.2-240.1
675 IAC 22-2.2-241.1
675 IAC 22-2.2-243.1
675 IAC 22-2.2-245.2
675 IAC 22-2.2-245.5
675 IAC 22-2.2-365.2
675 IAC 22-2.2-365.5
675 IAC 22-2.2-368.1
675 IAC 22-2.2-369.5

675 IAC 22-2.2-378.5
675 IAC 22-2.2-412.5
675 IAC 22-2.2-437.5
675 IAC 22-2.2-437.7
675 IAC 22-2.2-443.5
675 IAC 22-2.2-511.1
675 IAC 22-2.2-515.1
675 IAC 22-2.2-540
675 IAC 22-2.3-29.5
675 IAC 22-2.3-35.5
675 IAC 22-2.3-36
675 IAC 22-2.3-36.3
675 IAC 22-2.3-36.4
675 IAC 22-2.3-36.6
675 IAC 22-2.3-36.8
675 IAC 22-2.3-140.5
675 IAC 22-2.3-147.5
675 IAC 22-2.3-147.6
675 IAC 22-2.3-148
675 IAC 22-2.3-148.5
675 IAC 22-2.3-237.5
675 IAC 22-2.3-298.5
675 IAC 22-2.3-304.5

SECTION 1. 675 IAC 22-2.3-29.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-29.5 Section 308.3.6; Group A occupancies

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 29.5. Amend Section 308.3.6 as follows:

(1) Delete the section heading "Group A Occupancies" and insert "Affected Occupancies".

(2) In the first sentence, delete "a Group A Occupancy" and insert "any occupancy other than all Group "R" occupancies".

(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-29.5)

SECTION 2. 675 IAC 22-2.3-35.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-35.5 Section 315.2.1; ceiling clearance

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 35.5. Add an exception to Section 315.2.1 as follows: EXCEPTION: Sidewall storage to a maximum depth of thirty (30) inches (seventy-six and two-tenths (76.2) centimeters) of in-rack storage shall be acceptable to the ceiling. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-35.5)*

SECTION 3. 675 IAC 22-2.3-36 IS AMENDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36 Section 316; outdoor carnivals and fairs

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36. ~~Add~~ **Change** Section 316 Outdoor Carnivals and Fairs to read as follows: SECTION 316. CARNIVALS AND FAIRS
316.1 General. The grounds of carnivals and fairs, including concession booths, shall be in accordance with Section 316.
316.2 Grounds.
316.2.1 General. Grounds shall be in accordance with Section 316.2.
316.2.2 Access. Fire apparatus access roads shall be provided in accordance with Section 503.
316.2.3 Fire appliances.
316.2.3.1 General. Fire appliances shall be provided for the entire midway, as required by the chief.
316.2.3.2 Location. Maximum travel distance to a portable fire extinguisher shall not exceed seventy-five (75) feet ~~(twenty-two thousand eight hundred sixty (22,860) mm).~~ **(twenty-two and eighty-six hundredths (22.86) meters).**
316.2.4 Electrical equipment. Electrical equipment and installations shall comply with the Electrical Code (675 IAC 17).
316.3 Concession Stands.
316.3.1 General. Concession stands shall be in accordance with Section 316.3.
316.3.2 Location. Concession stands utilized for cooking shall have a minimum of ten (10) feet ~~(three thousand forty-eight (3,048) mm)~~ **(three and forty-eight thousandths (3.048) meters)** of clearance on two (2) sides and shall not be located within ten (10) feet ~~(three thousand forty-eight (3,048) mm)~~ **(three and forty-eight thousandths (3.048) meters)** of amusement rides or devices.
316.3.3 Fire extinguishers. A 40-B:C-rated dry chemical fire extinguisher shall be provided where deep-fat fryers are used.
316.3.4 Hinges, awnings, and braces must be safety keyed. Nails shall not be used for hinge or support pins.
316.3.5 When tent stakes and ropes extend into traffic areas, highly visible covers shall be provided.
316.4 Internal Combustion Power Sources.
316.4.1 General. Internal combustion power sources, including motor vehicles, generators, and similar equipment, shall be in accordance with Section 316.4.
~~315.4.2~~ **316.4.2** Fueling. Fuel tanks shall be of adequate capacity to permit uninterrupted operation during normal operating hours. Refueling shall be conducted only when the ride is not in use.
316.4.3 Protection. Internal combustion power sources shall be isolated from contact with the public by either physical guards, fencing, or an enclosure.
316.4.4 Fire extinguishers. A minimum of one (1) fire extinguisher with a rating of not less than 2-A:10-B:C shall be provided.
316.4.5 Notification. The servicing fire department shall be notified not less than seventy-two (72) hours prior to the admission of the public.
316.4.6 Vehicular traffic. No vehicle except emergency fire or rescue equipment shall be permitted on the midway from the time the midway opens until closing (including owners, operators, vendors, and service vehicles). *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36; filed Apr 17, 2003, 5:00 p.m.: 26 IR 2972)*

SECTION 4. 675 IAC 22-2.3-36.3 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36.3 Section 317; haunted houses and similar temporary installations

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36.3. Add Section 317 Haunted Houses and Similar Temporary Installations to read as follows: SECTION 317 HAUNTED HOUSES AND SIMILAR TEMPORARY INSTALLATIONS

This section applies to haunted houses and similar installations set up for temporary use, not exceeding ninety (90) days. Any interior within a structure not designed for this specific use shall comply with the following and all other applicable rules:

(1) In any facility using the maze concept, there shall be no dead-end corridors and there shall be an obvious exit out of the maze for every fifty (50) feet (fifteen and twenty-four hundredths (15.24) meters) of linear travel. All stairways shall be illuminated at a level of a least one (1) foot-candle (eleven (11) lux).

(2) A group shall consist of twenty (20) individuals or fewer. Each group shall be accompanied or supervised by a staff person who is eighteen (18) years of age or older. This staff person shall have in his or her possession an operable flashlight and shall be completely familiar with the facility.

(3) There shall be no smoking allowed at any time by anyone inside the building.

(4) All electrical installations shall meet 675 IAC 17, the Indiana Electrical Code.

(5) The servicing fire department shall be contacted at least three (3) working days prior to the placing of the facility in operation for an inspection and planning of evacuation procedures. A sketch of the floor plan shall be provided to the servicing fire department to facilitate these procedures.

(6) The total number of occupants in the facility at any time shall be limited to the number allowed by the total exits from the installation, as determined by the Indiana Building Code (675 IAC 13) in effect at the time of construction of the building, building system, or alterations.

(7) Fire extinguishers shall be distributed throughout the building so that no more than seventy-five (75) feet (twenty-two and eighty-six hundredths (22.86) meters) must be traversed to each fire extinguisher.

(8) There shall be no open flame devices or temporary heaters used in the building.

(9) Automatic smoke detectors shall be installed in accordance with NFPA 72 (675 IAC 22-2.2). All smoke detectors shall be interconnected so that when one is activated, all are activated. When activated, the alarm shall be loud enough to be heard over all other sounds or the activation shall automatically shut down all sound devices within the facility.

(10) All areas of a maze shall be at least three (3) feet (ninety-one and four-tenths (91.4) centimeters) wide and five (5) feet (one and five hundred twenty-four thousandths (1.524) meters) high, except that a section not exceeding four (4) feet (one and twenty-two hundredths (1.22) meters) in length may be two (2) feet (sixty and ninety-six hundredths (60.96) centimeters) high and two (2) feet (sixty and ninety-six hundredths (60.96) centimeters) wide. There shall not be more than one (1) such four (4) foot (one and twenty-two hundredths (1.22) meter) section in every fifty (50) linear feet (fifteen and twenty-four hundredths (15.24) meters).

(11) All material used in all display areas of a haunted house and all material used in the construction of a maze shall be inherently flame-resistant or made so by treatment with a flame retardant. All substances used to make materials flame-resistant shall be applied in accordance with the manufacturer's instructions, and the containers and proof of purchase of the substances shall be retained for inspection by the code official.

(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36.3)

SECTION 5. 675 IAC 22-2.3-36.4 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36.4 Section 318; fire safety in racetrack stables

Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36.4. Add Section 318 Fire Safety in Racetrack Stables to read as follows: SECTION 318 FIRE SAFETY IN RACETRACK STABLES

318.1 Scope. Racetrack stables shall be in accordance with this section.

318.2 Definitions

For purposes of this section, the following definitions apply:

ASSIGNED BARN. The barn area where a trainer has been allocated stalls and space for the trainer's horses and equipment.

ASSISTANT TRAINER. The person next to the listed trainer of record, and the one who frequently handles the day-to-day affairs in training a horse or horses.

CONCESSIONAIRES. The holders of a concession, such as the track kitchen, granted by the racetrack management.

HALTER. Piece of equipment that fits around a horse's head, like a bridle, but lacking a bit. It is used in handling horses around the stable. In the event of a fire, horses can be led from stalls by halters.

MECHANICAL HOTWALKER. An electrical device that automatically walks a horse or several horses in a circle with an approximate radius of ten (10) to fifteen (15) feet (three and forty-eight thousandths (3.048) to four and fifty-seven hundredths (4.57) meters).

MIXED OCCUPANCY. A building or stable area where both horses and humans reside.

RACETRACK MANAGEMENT. The persons who control or execute the affairs of the track itself.

TACK. Stable gear; also rider's racing equipment.

TACK ROOM. A storage area for tack and stable equipment.

TRACK SECURITY. Persons employed to protect racetrack property and to ensure the proper passage of licensed personnel; track security may be internal or external.

TRAINER. The person responsible for the care and training of a horse or horses.

318.3 Management responsibilities.

318.3.1 All trainers or a designated assistant and all concessionaires or a designated assistant shall serve as liaison between the track security and fire protection supervisors and the employees of the trainers and concessionaires.

318.3.2 All trainers or their assistants and all concessionaires or their assistants shall acquaint themselves with and brief their employees as to the following:

(1) Smoking regulations.

(2) Location of fire alarm notification system devices in the immediate area of an assigned barn.

(3) Location of all fire extinguishers and extinguishing equipment in assigned barn area.

(4) Regulations regarding occupancy, use of extension cords for extending electrical circuits, and use of electrical appliances.

(5) Regulations regarding storage and use of feed, straw, tack, and supplies.

(6) Track regulations with regard to fire and security, copies of which shall be provided to all trainers or their assistants and concessionaires or their assistants. These regulations shall be used in instructing members of the trainers' and concessionaires' staffs assigned to the barn area.

318.3.3 Open burning. Open burning is prohibited. Open flame heating devices are prohibited. Unvented portable oil-burning heating appliances are not permitted in stables.

318.3.4 Smoking. Smoking is prohibited in assigned barns. Approved "No Smoking" signs shall be posted in assigned barns.

318.3.5 Trash removal. All combustible trash and waste shall be removed from all buildings daily. Noncombustible trash and waste containers shall be provided for other than stall waste and shall be emptied daily.

318.3.6 Hay or straw storage. Storage shall not exceed the amount for two (2) days' use by the horses in the assigned barn. All other hay and straw must be in a separate, approved outside storage area. Hay and straw piles shall not exceed twenty (20) bales (rectangular) per pile and shall not exceed seven (7) feet (two and thirteen-hundredths (2.13) meters) in height. Each pile must be separated by a distance of not less than fifty (50) feet (fifteen and twenty-four hundredths (15.24) meters). Hay and straw shall not be stored in aisle space or in aisles.

318.3.7 Electrical systems and appliances.

318.3.7.1 The use of any portable electrical appliance shall be as follows:

(1) Multiple-outlet adapters are prohibited.

(2) Not more than one (1) continuous extension cord shall be used to connect one (1) appliance to the fixed electrical receptacle, and such cord shall be listed for hard service and properly sized for the intended application.

(3) Extension cords shall not be used as a substitute for permanent wiring.

318.3.7.2 Extension cords shall not be supported by any metal object, such as a nail, screw, hook, or pipe.

318.3.7.3 Plug caps and receptacles used in extension cords shall be heavy-duty type equipped with a reliable grounding pole and attached to the cord in a manner to provide strain relief.

318.3.7.4 All electrical appliances used in the stable area shall be listed for the use.

318.3.7.5 Outdoor electrical appliances, for example, mechanical hotwalkers, served by the barn electrical system shall be installed in accordance with the Indiana Electrical Code (675 IAC 17).

318.3.7.6 Portable cooking and heating appliances shall not be used in assigned barns.

318.3.7.7 Use of exposed-element heating appliances is prohibited.

318.3.7.8 The storage of flammable and combustible liquids, except those used for medicinal purposes, is prohibited.

318.3.7.9 Vehicles shall not be permitted in assigned barns. Aisles shall be maintained clear of obstructions at all times, and access to fire equipment shall not be blocked.

318.4 Animal evacuation.

318.4.1 Every horse shall wear a halter at all times while inside the assigned barn.

318.4.2 Horses shall be restricted to ground level stalls.

318.4.3 An assigned barn escape plan shall be established for each stable building.

318.4.4 The assigned barn escape plan shall be posted by each exit from the assigned barn, and a copy shall be given to all stall renters.

318.4.5 A fire safety and evacuation drill shall be conducted quarterly for employees only.

318.4.6 A predetermined location shall be designated for placement of horses when they are evacuated from the assigned barns.

318.4.7 Racetrack management shall ensure that all employees are trained in the assigned barn escape plan.

318.5 Where automatic sprinklers are installed, they shall be installed, tested, and maintained in accordance with the applicable rules of the commission.

318.6 Fire extinguishers shall be provided in all assigned barns as follows:

(1) Fire extinguishers shall have a minimum 2A rating.

(2) Fire extinguishers shall be placed so that travel distance shall be not more than seventy-five (75) feet (twenty-two and eighty-six hundredths (22.86) meters) from any point within a building.

(3) Fire extinguishers within twenty (20) feet (six and ninety-six thousandths (6.096) meters) of electrical control boxes shall have a Class C rating.

(4) Fire extinguishers shall be installed, tested, and maintained in accordance with the applicable rules of the commission.

(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36.4)

SECTION 6. 675 IAC 22-2.3-36.6 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36.6 Section 403.3; fire watch
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36.6. Add a new Section 403.3 Fire Watch to read as follows: Whenever it is essential for public safety in any Class 1 structure, due to the number of persons or the nature of the activity being conducted, the chief may require the owner or lessee to employ one (1) or more qualified persons, to be approved by the chief, to be on duty in such Class 1 structure to serve as a fire watch. Such persons shall:

(1) be subject to the chief's orders at all times;

(2) be in uniform; and

(3) remain on duty at all times that such Class 1 structure is open to the public.

Such persons shall not be required or permitted, while on duty, to perform any duties other than the fire watch. Such persons shall be provided at the ratio of one (1) qualified person per five hundred (500) occupant load. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36.6)*

SECTION 7. 675 IAC 22-2.3-36.8 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-36.8 Section 403.4; overcrowding
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 36.8. Add a new Section 403.4 Overcrowding to read as follows: Section 403.4 Overcrowding

Overcrowding and admittance of persons beyond the approved occupant load are prohibited. The code official, upon finding:

(1) overcrowding conditions or obstructions in aisles, corridors, or other means of egress; or

(2) a condition that constitutes a serious menace to life;

is authorized to cause all activities in the room or space to cease until such overcrowding, obstructions, or conditions are corrected. The code official is also authorized to order the evacuation of the building, if necessary, to eliminate the overcrowding. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-36.8)*

SECTION 8. 675 IAC 22-2.3-140.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-140.5 Section 1003.3.1.3.4; access-controlled egress doors
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 140.5. Delete Section 1003.3.1.3.4 without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-140.5)*

SECTION 9. 675 IAC 22-2.3-147.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-147.5 Section 1005.3.2.2
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 147.5. Delete the last sentence of Section 1005.3.2.2 and insert the following: The open space under exit stairways shall not be used for any purpose. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-147.5)*

SECTION 10. 675 IAC 22-2.3-147.6 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-147.6 Section 1005.3.7; fire escapes
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 147.6. Add Section 1005.3.7 Fire escapes to read as follows: Section 1005.3.7 Fire escapes

A fire escape that is used as an exit shall comply with the provisions of this section as follows:

(1) The fire escape shall not be the primary or the only exit.

(2) The fire escape shall not take the place of stairways required by the applicable rules of the commission or its predecessors in effect at the time the building was built.

(3) Access to a fire escape from a corridor shall not be through an intervening room.

EXCEPTION: Access through an intervening room may be permitted if the intervening door is not lockable and an exit sign is installed above the door directing occupants to the fire escape.

(4) No encumbrances or obstacles of any kind shall be placed on or in front of any fire escape.

(5) Fire escapes shall be kept clear and unobstructed and shall be maintained in a fully operational working condition at all times.

(6) Exit signs shall be maintained in accordance with the Indiana Fire Code, 675 IAC 22, or the code in effect at the time of construction. All doors and windows providing access to a fire escape shall be provided with signs stating "FIRE ESCAPE" in letters at least as large as those required for exit signs under the current rules of the commission.

(7) Fire escape stairways and their balconies shall support their dead load plus a live load of not less than one hundred (100) pounds per square foot (four hundred eighty-eight (488) kilograms per square meter) or a concentrated load of three hundred (300) pounds (one hundred thirty-six (136) kilograms) placed anywhere on the balcony or stairway so as to produce the maximum stress condition.

(8) Fire escape stairways and balconies shall be provided with a top and intermediate handrail on the open side. All stair and balcony railings shall support a horizontal force of not less than fifty (50) pounds per linear foot (seventy-four and four-tenths (74.4) kilograms per meter) applied to the top handrail.

(9) Documentation evidencing compliance with subsections (7) and (8) shall be maintained on site for review by the code official.

(10) Tubular fire escapes shall comply with subsections (1) through (9) and shall be kept rust free.

(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-147.6)

SECTION 11. 675 IAC 22-2.3-148 IS AMENDED TO READ AS FOLLOWS:

675 IAC 22-2.3-148 Section 1008.10; seat stability
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 148. In Section 1008.10 Seat stability:

(1) in Exception 3, after "less than three", insert "tied or staked to the floor"; and

(2) delete the last sentence of Exception 4.

(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-148; filed Apr 17, 2003, 5:00 p.m.: 26 IR 2986)

SECTION 12. 675 IAC 22-2.3-148.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-148.5 Section 1008.10.1; chairs and benches
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 148.5. Add subsection 1008.10.1 Chairs and benches to read as follows: 1008.10.1 Chairs and benches
Chairs and benches used on raised stands or platforms shall be secured to the stands or platforms upon which they are placed. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-148.5)*

SECTION 13. 675 IAC 22-2.3-237.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-237.5 Section 2416.1; crowd managers
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 237.5. Delete Section 2416.1 without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-237.5)*

SECTION 14. 675 IAC 22-2.3-298.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-298.5 Section 3404.3.2.3; number of storage cabinets
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 298.5. Delete Section 3404.3.2.3 without substitution. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-298.5)*

SECTION 15. 675 IAC 22-2.3-304.5 IS ADDED TO READ AS FOLLOWS:

675 IAC 22-2.3-304.5 Section 3405.3.7.5.3; spill control and secondary containment
Authority: IC 22-13-2-2; IC 22-13-2-13
Affected: IC 22-12; IC 22-13; IC 22-14; IC 22-15; IC 36-7; IC 36-8

Sec. 304.5. Change the first sentence of Section 3405.3.7.5.3 to read as follows: Spill control shall be provided in accordance with Section 3403.4 where Class I, II, or IIIA liquids are dispensed into containers exceeding a two (2) gallon (seven and six-tenths (7.6) liter) capacity or mixed or used in open containers or systems exceeding five and three-tenths (5.3) gallon (twenty (20) liter) capacity. *(Fire Prevention and Building Safety Commission; 675 IAC 22-2.3-304.5)*

SECTION 16. THE FOLLOWING ARE REPEALED: 675 IAC 22-2.2-49.5; 675 IAC 22-2.2-107.1; 675 IAC 22-2.2-134.5; 675 IAC 22-2.2-183; 675 IAC 22-2.2-221.5; 675 IAC 22-2.2-240.1; 675 IAC 22-2.2-241.1; 675 IAC 22-2.2-243.1; 675 IAC 22-2.2-245.2; 675 IAC 22-2.2-245.5; 675 IAC 22-2.2-365.2; 675 IAC 22-2.2-365.5; 675 IAC 22-2.2-368.1; 675 IAC 22-2.2-369.5; 675 IAC 22-2.2-378.5; 675 IAC 22-2.2-412.5; 675 IAC 22-2.2-437.5; 675 IAC 22-2.2-437.7; 675 IAC 22-2.2-443.5; 675 IAC 22-2.2-511.1; 675 IAC 22-2.2-515.1; 675 IAC 22-2.2-540.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 17, 2004 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana; ***AND*** *on October 5, 2004 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing on proposed amendments to the 2003 Indiana Fire Code, 675 IAC 22-2.3, to make substantive and clarifying changes. Copies of these rules are now on file at the*

Indiana Government Center-South, 402 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Luther J. Taylor, Sr.
Secretary
Fire Prevention and Building Safety Commission

TITLE 848 INDIANA STATE BOARD OF NURSING

Proposed Rule
LSA Document #04-65

DIGEST

Amends 848 IAC 1-1-2.1 to revise the definitions applied throughout that article. Amends 848 IAC 1-2 to revise the accreditation requirements and procedures for nursing programs. Adds 848 IAC 1-2-8.5 to establish the requirements and procedures to transfer a nursing program to another controlling organization. Effective 30 days after filing with the secretary of state.

848 IAC 1-1-2.1
848 IAC 1-2-1
848 IAC 1-2-5
848 IAC 1-2-6
848 IAC 1-2-7
848 IAC 1-2-8
848 IAC 1-2-8.5
848 IAC 1-2-9
848 IAC 1-2-10
848 IAC 1-2-12
848 IAC 1-2-13
848 IAC 1-2-14
848 IAC 1-2-16
848 IAC 1-2-17
848 IAC 1-2-18
848 IAC 1-2-19
848 IAC 1-2-20
848 IAC 1-2-21
848 IAC 1-2-22
848 IAC 1-2-23
848 IAC 1-2-24

SECTION 1. 848 IAC 1-1-2.1 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-1-2.1 Definitions

Authority: IC 25-23-1-7
Affected: IC 25-23-1-1

Sec. 2.1. The following definitions apply throughout this article:

(1) "Approved" or "accredited", terms used interchangeably, means those programs that have met requirements of the board. The term also includes approval granted by voluntary, regional, and other state agencies.

(2) "Associate degree program" means ~~a~~ **an educational** program leading to an associate degree in nursing, conducted by an educational unit in nursing. ~~within the structure of a college or university.~~

(3) "Audit" means attending a class or course without receiving credit.

(4) "Baccalaureate degree program" means ~~a~~ **an educational** program leading to a baccalaureate degree in nursing conducted by an educational unit in nursing. ~~within the structure of a senior college or university.~~

(5) "Board" means the Indiana state board of nursing.

(6) "Clinical ~~laboratory~~ experience" means the learning experiences provided in facilities appropriate to the curriculum objectives.

(7) "Clinical preceptor" means an individual employed by the cooperating agency who also has the responsibility to supervise ~~a~~ **one (1)** student **at a time** in the clinical facility.

(8) "Controlling organization" means the agency ~~which~~ **that** assumes the responsibility for overall administration of the program.

(9) "Cooperating agency" means an institution ~~which~~ **that** cooperates with the nursing program to provide facilities for the clinical ~~laboratory~~ experiences of students.

(10) "Curriculum" means the whole body of courses offered in the nursing program.

(11) "Deeming authority" means a recognized accrediting organization that has been approved to conduct accreditation surveys and issue accreditation decisions of acute care hospitals by the Center for Medicare and Medicaid Services (CMS).

~~(11)~~ **(12)** "Diploma program" means ~~a~~ **an educational** program leading to a diploma in **registered** nursing. ~~conducted by a school under the control of a hospital.~~

~~(12)~~ **(13)** "Director" means the registered nurse who is delegated responsibility for the implementation and administration of the nursing program regardless of the official title in any specific institution.

~~(13)~~ **(14)** "Enroll" means ~~attending~~ **to matriculate and attend** a class or course for the purpose of receiving credit.

~~(14)~~ **(15)** "Faculty" means individuals employed to administer and to teach in the educational program.

~~(15) "Failure rate" is calculated on the number of first time candidates who fail to be licensed and is computed annually from April 1 through March 31.~~

(16) "May" indicates discretionary use.

(17) "Practical nursing program" means ~~a~~ **an educational** program leading to a diploma or certificate in practical nursing. ~~conducted by an educational institution or hospital.~~

(18) "Primary state of residence" means the state of an individual's declared fixed permanent and principal home for legal purposes; domicile.

(19) "Program" means the curriculum and all the supporting activities organized independently, under an educational institution or hospital, to prepare students for nursing licensure and the practice of nursing.

(20) "Rate of successful completion" means the annual number of first time **U.S. educated and U.S. territory** candidates who successfully complete the National Council Licensure Examination and is computed annually from ~~April~~ **January** 1 through ~~March~~ **December** 31.

(21) "Rule" or "requirement" means a mandatory standard, which a program shall meet in order to be accredited.
(22) "Shall" indicates a mandatory rule, regulation, or requirement.
(23) "Should" indicates a recommendation.
(24) "Survey visit" means an on-site visit of a nursing program, including clinical facilities by a designated representative of the board for the purpose of evaluating the program of learning.

(Indiana State Board of Nursing; 848 IAC 1-1-2.1; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4525; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939; filed Jun 23, 2003, 4:12 p.m.: 26 IR 3652, eff Jul 1, 2003 [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 #02-247 was filed Jun 23, 2003.])

SECTION 2. 848 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-1 Opening a program
Authority: IC 25-23-1-7
Affected: IC 25-23-1

Sec. 1. (a) A controlling organization wishing to open a state accredited nursing program shall submit a letter of intent to the board six (6) ~~to twelve (12)~~ months prior to **the** anticipated ~~opening date.~~ **admission of its first group of students, which shall include the following:**

(1) Expansion plans of the existing programs within a fifty (50) mile radius.

(2) Nursing manpower studies documenting the need for the program.

(b) The controlling organization shall submit **a completed application on forms provided by the board and shall request a personal appearance before the board. The application shall include** documented evidence of resources and needs necessary to start a program. This documentation shall include the following:

(1) Availability of qualified faculty.
(2) Budgeted faculty positions.
~~(3) Expansion plans of existing programs within a fifty (50) mile radius.~~
~~(4) Nursing manpower studies documenting the need for the program.~~
~~(5)~~ **(3)** Availability of adequate clinical facilities for the program.
~~(6)~~ **(4)** Availability of adequate academic facilities for the program.
~~(7)~~ **(5)** Evidence of financial resources adequate for the planning, implementation, and continuation of the program.

(c) The board shall meet with representatives of the controlling organization for review of documented evidence of need.

(d) The board requires that a program in nursing in a state assisted college or university be authorized by the Indiana commission for higher education.

~~(e) The controlling organization shall submit a completed application on forms provided by the board and shall request a hearing with the board.~~

~~(f)~~ **(e)** Prior to the ~~hearing,~~ **board meeting,** the proposed program site shall be visited by a representative of the board ~~and by~~ **or** a survey visitor appointed by the board, **or both.** The visitors shall meet with administrative personnel of the controlling institution and shall examine the academic and clinical facilities in terms of appropriateness for the implementation of the proposed program in nursing.

~~(g)~~ **(f)** After the ~~hearing~~ **meeting** with the controlling organization, the board shall approve or disapprove the application **for initial accreditation** upon evidence:

(1) submitted in the application;
(2) presented at the ~~hearing;~~ **meeting;** and
(3) collected on the survey visit.

~~(h)~~ **(g)** If the program is approved **for initial accreditation,** the board shall stipulate the following:

(1) The maximum class size for the first year.
(2) The maximum number of classes to be admitted during the first year.
(3) Approved clinical facilities for the first year.
(4) The number and qualifications of nursing faculty.

(h) A second site visit shall be made by a representative of the board ~~and by~~ **or** a survey visitor appointed by the board, **or both,** at the end of the first year of the operation of the new program and again prior to granting full accreditation. *(Indiana State Board of Nursing; 848 IAC 1-2-1; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4526; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 3. 848 IAC 1-2-5 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-5 Accreditation status
Authority: IC 25-23-1-7
Affected: IC 25-23

Sec. 5. (a) Initial accreditation shall be granted to a new program that meets the regulations for opening a nursing program until the first class graduates.

(b) Full accreditation shall be granted to a program following the initial accreditation, providing it meets the **following** regulations for Indiana accredited programs in nursing:

(1) Criteria indicating a program's successful attainment of state standards shall include the rate of successful completion of the National Council Licensure Examination (NCLEX). If a program's annual rate of successful

completion of the NCLEX is lower than one (1) standard deviation below the average national pass rate for first time U.S. educated and U.S. territory candidates for three (3) consecutive years, the program shall submit a report to the board outlining the following:

(A) Results of the faculty's review of factors that may have contributed to the low pass rate, including, but not limited to, the following:

(i) Curriculum content.

(ii) Curriculum design.

(iii) Outcome evaluation.

(iv) Admission policies.

(v) Progression policies.

(vi) Graduation policies and annual number of graduates for the period in question.

(vii) Factors of graduate performance documented by faculty to be outside the control of the program.

(B) The faculty's plan for correction with identified implementation dates and expected levels of achievement for any identified problems as result of evaluation.

(2) If the program's next annual rate of successful completion of the NCLEX is lower than one (1) standard deviation below the average national pass rate for first time U.S. educated and U.S. territory candidates, the board shall send a surveyor to review the program's ability to comply with this article. After review of the survey visit report and a meeting with the program representatives, the board shall determine the accreditation status.

(3) The accreditation status shall be communicated to the program **in writing.**

(c) Conditional accreditation shall be granted to a program that fails to maintain the legal requirements for accreditation. Written notification from the board shall specify **requirements to be met in order to comply with accreditation standards and** a definite amount of time that will be given for the program to meet this article. ~~The major outcome criteria indicating a program's successful attainment of state standards is the first time candidate's successful completion of the National Council Licensure examination. If a school's annual rate of successful completion of the National Council Licensure examination is lower than the national total percentage passing for the second consecutive year, the school shall submit a report to the board outlining the following:~~

~~(1) Results of the faculty's review of factors that may have contributed to the low pass rate, including, but not limited to, the following:~~

~~(A) Curriculum content.~~

~~(B) Curriculum design.~~

~~(C) Outcome evaluation.~~

~~(D) Admission.~~

~~(E) Progression.~~

~~(F) Graduation policies.~~

~~(2) The faculty's plan for correcting any problems identified.~~

~~(d) If the program's annual rate of successful completion of the National Council Licensure examination is lower than the national total percentage passing for the third consecutive year, the board shall send a surveyor to review the program's ability to comply with this article. After a hearing, the board shall determine the accreditation status and specify a correction plan if needed. At any point, the board may survey the program to determine whether the program shall be permitted to continue to admit students or continue to operate. The program shall have the burden of proving, with clear and convincing evidence, that the program is able to comply with IC 25-23 and this title.~~

~~(e)~~ **(d) The program shall be revisited by a representative of the board or a survey visitor appointed by board, or both, and be given an opportunity for a hearing before accreditation is withdrawn.** Withdrawal of accreditation ~~shall~~ **may** occur if the program, **which has been placed on conditional accreditation,** fails to prove compliance with ~~IC 23-25 and~~ **IC 25-23,** this title, ~~The program shall be given an opportunity for a hearing before accreditation is withdrawn,~~ and ~~the school shall be visited~~ **any additional requirements imposed** by ~~a representative of~~ the board. The program shall assist students in transferring to accredited programs. A ~~school~~ **program** with accreditation that has been withdrawn may apply for reinstatement by following the procedure established in section 1 of this rule. *(Indiana State Board of Nursing; 848 IAC 1-2-5; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4527; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 4. 848 IAC 1-2-6 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-6 Survey visits

Authority: IC 25-23-1-7
Affected: IC 25-23-1-21

Sec. 6. (a) All ~~schools~~ **programs** with full accreditation status shall be visited at regular intervals as determined by the board. The survey **visitor or** visitors shall evaluate the program's ability to meet the requirements of this article and prepare a written report for review and action by the board. Visits shall be conducted under impartial and objective conditions.

(b) The written report of the survey visit to the educational program is submitted to the director for review to permit comments for clarification by the director prior to board action.

(c) The final survey report accompanied by a written report of board action shall be sent to the administrative officer of the controlling agency. A copy shall be sent simultaneously to the director of the program.

(d) An institution used as a clinical ~~laboratory~~ **facility** for

students may be visited by a representative or representatives of the board as part of the ~~school~~ **program** survey.

(e) In lieu of a regular cycle survey visit, the board may elect to accept the results of an accreditation survey visit by ~~the National League for Nursing~~ **a nationally recognized** accrediting ~~Commission or the Commission on Collegiate~~ **organization of** nursing education, **such as the accrediting organization recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.** The program of nursing shall file:

~~(1) the report of the visitors;~~

~~(2)~~ **(1)** the response by the program to the survey visitors; and

~~(3)~~ **(2)** the **final** report ~~of~~ **including** the action taken by the ~~National League for Nursing~~ **nationally recognized** accrediting ~~Commission or the Commission on Collegiate~~ **organization of** nursing education **programs.**

(Indiana State Board of Nursing; 848 IAC 1-2-6; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4528; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)

SECTION 5. 848 IAC 1-2-7 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-7 Eligible institutions

Authority: IC 25-23-1-7
Affected: IC 25-23-1-20

Sec. 7. (a) The program in nursing shall be incorporated or be a part of an incorporated institution.

(b) Educational institutions, colleges, or universities conducting a nursing program or with which a ~~school~~ **program** of nursing is affiliated shall be accredited by the **Higher Learning Commission of the** North Central Association of Colleges and ~~Secondary~~ Schools or the Indiana commission on proprietary education. Hospitals conducting a nursing program shall be accredited by ~~the Joint Commission on Accreditation of Healthcare Organizations.~~ **an organization that has been granted deeming authority.** Long term care facilities shall be licensed by the Indiana state department of health.

(c) The philosophy and ~~purposes~~ **mission** of the program in nursing shall be in accordance with this rule.

(d) There shall be assurance that the program can meet the requirements for Indiana accredited programs in nursing. *(Indiana State Board of Nursing; 848 IAC 1-2-7; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4528; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 6. 848 IAC 1-2-8 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-8 Change of ownership

Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 8. (a) The board shall be notified in writing of any changes in ownership ~~or control~~ of a ~~school.~~ **program.**

(b) Information shall include the following:

(1) The official name of the ~~school.~~ **program.**

(2) The organizational chart of the contracting agency.

(3) **The** names of administrative officials.

(c) The new controlling organization shall submit any change in curriculum to the board for approval ~~six (6) months~~ prior to implementation. *(Indiana State Board of Nursing; 848 IAC 1-2-8; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4528; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 7. 848 IAC 1-2-8.5 IS ADDED TO READ AS FOLLOWS:

848 IAC 1-2-8.5 Transfer of program to another controlling organization

Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 8.5. (a) A controlling organization transferring a state accredited nursing program from its control to that of another controlling organization shall submit to the board, in writing, within sixty (60) days of the decision to transfer the following:

(1) The terms and conditions or contractual arrangements of the transfer.

(2) The plan identifying the actions being taken to maintain the minimum legal standards for accreditation until completion of the transfer.

(3) The plan for student notification and program completion requirements.

(4) The plan to assist students to transfer to another accredited program if requested by a student.

(5) The provisions for the record retention and accessibility of former students and graduates of the program and the plan for future custody of those records.

(b) The controlling organization accepting the transfer of control shall submit documented evidence of resources necessary to support the program within sixty (60) days of the decision to accept the transferring program. This documentation shall include the following:

(1) Availability of qualified faculty.

(2) Budgeted faculty positions and faculty-student ratio.

(3) Availability of adequate clinical facilities for the program.

(4) Availability of adequate academic facilities for the program.

(5) Evidence of financial resources adequate for the implementation and continuation of the program.

(c) The board shall meet with representatives of both controlling organizations for review of documented

evidence of agreements and resources.

(d) The board requires that a program in nursing in a state assisted college or university be authorized by the Indiana commission for higher education to transfer control from one (1) state assisted college or university to another state assisted college or university.

(e) Prior to board hearing and approval, the controlling organization accepting the program may be visited by a representative of the board or a survey visitor appointed by the board. The visitor shall meet with administrative personnel of the controlling organization accepting the program and shall examine the academic and clinical facilities in terms of appropriateness for the implementation of the program in nursing.

(f) After the hearing with the controlling organization accepting the transfer, the board shall approve or disapprove the transfer based upon evidence:
(1) submitted in the notification of transfer;
(2) presented at the hearing; and
(3) collected on the survey.

(g) The new controlling organization shall submit any change in curriculum to the board for approval prior to implementation. *(Indiana State Board of Nursing; 848 IAC 1-2-8.5)*

SECTION 8. 848 IAC 1-2-9 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-9 Philosophy, mission, and objectives
Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 9. The philosophy, ~~purpose,~~ **mission,** and ~~objective~~ **objectives** of the program in nursing shall be **as follows:**
(1) Clearly defined in writing in the official records.
(2) Consistent with the philosophy **and mission** of the controlling institution.
(3) Formulated and accepted by the faculty.
(4) Inclusive of program beliefs regarding education, nursing, and the learning process.
(5) Descriptive of the practitioner to be prepared.
(6) The basis for planning, implementing, and evaluating the total program. ~~and~~
(7) Reviewed periodically and revised as necessary by the nursing faculty.

(Indiana State Board of Nursing; 848 IAC 1-2-9; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4529; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)

SECTION 9. 848 IAC 1-2-10 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-10 Organization and administration
Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 10. (a) Responsibility for developing and implementing the program in nursing shall be placed in the faculty of the nursing education unit.

(b) The institution shall have an effective plan of organization and administration appropriate to the purpose and implementation of the instructional program in nursing. There shall be an organizational chart of the:
(1) institution indicating the place of the nursing program; and
(2) nursing program.

(c) There shall be a controlling body that recognizes the program in nursing as an educational program and delegates authority to the chief administrative officer of the institution who, in turn, delegates authority to the ~~nurse administrator responsible for the~~ program **director.**

(d) When a program director resigns, it is the responsibility of the administration of the controlling organization to inform the board in writing **within thirty (30) days of notification** of **the following:**
(1) ~~the~~ Intended resignation.
(2) ~~the~~ Effective date. ~~and~~
(3) ~~the~~ Plans for filling the position.
~~within thirty (30) days of the resignation.~~

(e) The program in nursing shall be assured of stable, financial resources adequate for and effectively allocated to support its educational activities. There shall be a budget prepared in accordance with sound educational and financial practices. The financial statement shall give a clear picture of the status of the program. The ~~nurse administrator,~~ **program director,** with documentation of faculty input, shall have the following responsibilities relating to the financial operation of the program in nursing:
(1) Preparing the budget for one (1) year in advance of the fiscal period and recommending it to the proper authorities.
(2) Controlling the use of the approved budget through an accurate system of records.
(3) Reviewing financial reports routinely and making necessary revisions.
(4) Consulting with proper authorities within the institution in regard to interpretation, preparation, and implementation of the budget.

(Indiana State Board of Nursing; 848 IAC 1-2-10; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4529; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)

SECTION 10. 848 IAC 1-2-12 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-12 Faculty
Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 12. (a) The program in nursing shall provide and maintain a qualified faculty. The general qualifications for all nurse faculty members shall include the following:

(1) Graduation from an approved ~~school~~ **program** of nursing accepted by the board.

(2) Current, unencumbered ~~licensure~~ **registered nurse licensed** in Indiana.

(b) The personnel policies for faculty members shall be defined in writing.

~~(c) Faculty qualification data shall be filed on designated forms in the office of the board within thirty (30) days of the hiring date.~~

~~(d)~~ **(c)** Faculty, other than registered nurses, who teach nonclinical nursing courses, including, but not limited to:

(1) issues and trends;
(2) nutrition;
(3) research;
(4) management; and
(5) statistics;

shall hold master's degrees in areas appropriate to the responsibilities inherent in the position.

~~(e)~~ **(d)** Clinical preceptorships may be used for the clinical ~~laboratory~~ experiences of students. When clinical preceptors are used, the following conditions shall be met:

(1) Written agreements between **the** cooperating agency and nursing program shall delineate the functions and responsibilities of the parties involved.

(2) Criteria for selecting clinical preceptors shall be developed and in writing.

(3) The clinical preceptors shall have the following minimum qualifications:

(A) Current licensure as a registered nurse.

(B) Three (3) years of experience as a registered nurse.

(4) Written clinical objectives shall be specific and shared with the clinical preceptor prior to the experience.

(5) The designated faculty member shall:

(A) be responsible for the learning experience of each student; and ~~shall~~

(B) meet with each clinical preceptor and student for the purpose of monitoring and evaluating the learning experience.

(6) The designated faculty member shall be available by phone or in person when students are in the clinical area.

(7) A faculty member shall be responsible for coordinating the clinical ~~preceptorship~~ **preceptorships** of no more than ten (10) students.

(Indiana State Board of Nursing; 848 IAC 1-2-12; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4530; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)

SECTION 11. 848 IAC 1-2-13 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-13 Faculty qualifications; registered nurse programs
Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 13. (a) The director shall be a registered nurse with a minimum of a master's degree ~~preferably~~ in nursing **and be employed full-time, excluding vacations and holidays, during the enrollment period of the students.** A doctoral degree is recommended. The director shall have experience in the following:

(1) The practice of nursing.
(2) Nursing education.
(3) Administration.

~~The director shall be employed full time, excluding vacations and holidays, during the enrollment period of the students.~~

(b) The nurse faculty member shall have experience in the practice of nursing and hold a master's degree. The majority of the faculty shall hold master's degrees with majors in nursing. The remainder of the faculty shall hold master's degrees in a field appropriate to their teaching or clinical responsibilities. The majority of the faculty shall be full-time employees of the institution. ~~Any faculty member hired in the year 2002 or beyond shall have a master's degree in nursing.~~ The ~~appointment~~ **reappointment** of a person who does not hold a master's degree **in nursing** shall be made only if that person, ~~enrolls~~ **within one (1) year of initial appointment, has a written plan of study for degree completion and has matriculated** in a college or university. ~~and within five (5) years of assuming the teaching position completes a master's degree. Faculty members who have been appointed prior to the promulgation of this rule shall be expected to complete master's degrees within five (5) years.~~ **Continuing reappointment of a person who does not hold a master's degree in nursing shall be contingent upon orderly progression toward degree completion.** *(Indiana State Board of Nursing; 848 IAC 1-2-13; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4530; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 12. 848 IAC 1-2-14 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-14 Faculty qualifications; licensed practical nurse programs
Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 14. (a) The director shall be a registered nurse with a minimum of a master's degree, preferably in nursing, **and shall be employed full-time, excluding vacations and holidays, during the enrollment period of the students. A program director appointed prior to the promulgation of this rule**

shall be considered, except the director shall have experience in the following:

(1) The practice of nursing.

(2) ~~Practical~~ Nursing education.

(3) Administration.

~~The director shall be employed full time, excluding vacations and holidays, during the enrollment period of the students.~~

(b) The nurse faculty member shall have experience in the practice of nursing and hold a baccalaureate degree. The majority of the faculty shall hold baccalaureate degrees with majors in nursing. The remainder of the faculty shall hold baccalaureate degrees in a field appropriate to their teaching or clinical responsibilities. The majority of the faculty shall be full-time employees of the institution. ~~Any faculty member hired in the year 2002 or beyond shall have a baccalaureate degree in nursing.~~ *(Indiana State Board of Nursing; 848 IAC 1-2-14; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4530; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 13. 848 IAC 1-2-16 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-16 Curriculum; all programs

Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 16. (a) The:

(1) development;

(2) implementation;

(3) evaluation; and

(4) revision;

of the curriculum shall be the responsibility of the nursing faculty and shall be based on the stated philosophy and objectives of the program.

(b) The program shall provide an opportunity for the student to learn:

(1) facts;

(2) principles;

(3) concepts; and

(4) skills;

which ensure that each graduate meets the minimal qualifications essential for safety to practice as a licensed nurse.

(c) There shall be concurrent didactic instruction and clinical ~~laboratory~~ experiences in the care of patients from all age groups except when students repeat courses for failing or withdrawal. Those students may repeat the failed course by itself without also repeating the concurrent course.

(d) The clinical ~~laboratory~~ experiences shall be determined by the philosophy and objectives of the program. ~~and shall be provided in cooperative agencies approved by the board.~~

(e) Classroom ~~laboratory~~ **and clinical** experiences shall be the responsibility of program faculty.

(f) Observational experiences shall be determined by the philosophy and objectives of the program. As used in this subsection, "observational experiences" means those experiences in which the student is in the role of observer. Observational experiences shall be:

(1) planned for and guided by the faculty, but may not require direct supervision; **and**

~~(2) included in the clinical laboratory experiences; and~~

~~(3)~~ **(2)** included in the program's annual report to the board. ~~but do not require prior approval for implementation.~~

(g) There shall be an outline of the total curriculum showing the placement of courses according to:

(1) year and semester or term;

(2) the ratio of credits to hours; or

(3) the total number of hours.

(h) The school year shall be divided into definite terms with dates set for the beginning and ending of each. The dates shall be communicated to the students at the beginning of the academic year.

(i) Board approval shall be granted prior to the initiation of any major curriculum change. If the change is minor, in that it does not substantially alter the curriculum, it shall be reported to the board in writing **in the program's annual report to the board.**

(j) A major change, which would require the board's approval prior to implementation, includes the following:

(1) Major changes in philosophy, ~~purpose,~~ **mission,** or ~~objective.~~ **objectives.**

(2) The number of credits required for successful completion of the program or the major in nursing.

(3) The number and type of general education courses.

(4) Relocation of the program or any of its components.

~~(5) Addition of clinical sites.~~

~~(6)~~ **(5)** Change in required clinical ~~laboratory~~ hours.

~~(7) Increases or decreases in admission numbers by twenty-five percent (25%).~~

~~(8)~~ **(6)** Admission times.

~~(9)~~ **(7)** Progression options.

~~(10)~~ **(8)** Additions of satellite locations.

~~(k) A minor change, which would not require prior board approval but would be reported in the program's annual report, includes changes in the sequencing of courses or content with the current philosophy and number of credits.~~

~~(l)~~ **(k)** There shall be a systematic written plan for program evaluation that is ongoing according to the time frame specified by the faculty. The findings from the systematic evaluation shall be used for development, maintenance, and revision of the program components. The written plan shall

include, but is not limited to, the following:

(1) Philosophy, ~~purpose,~~ **mission,** and ~~objective~~ **objectives** of the nursing education program.

(2) Expected knowledge, skills, and abilities of the graduates.

(3) Teaching and learning experiences.

(4) Student evaluation of courses.

(5) Instructor evaluation of students.

(6) Pass rates on licensure examination.

(7) Follow-up studies of graduates' evaluation of the program of learning.

(8) Employment performance of graduates.

(Indiana State Board of Nursing; 848 IAC 1-2-16; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4531; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)

SECTION 14. 848 IAC 1-2-17 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-17 Curriculum; registered nurse programs

Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 17. **(a) The length of a full-time program shall be a minimum of two (2) academic years or its equivalent.**

(b) The curriculum shall provide instruction in the following areas:

(1) Physical and biological sciences, including content drawn from the areas of:

(A) anatomy;

(B) physiology;

(C) chemistry;

(D) microbiology;

(E) pharmacology;

(F) physics; and

(G) nutrition;

that may be integrated, combined, or presented as separate courses.

(2) Social and behavioral sciences shall include content drawn from the areas of:

(A) **interpersonal** communications, **English composition, or speech;**

(B) psychology; and

(C) sociology;

that may be integrated, combined, or presented as separate courses.

(3) The nursing content shall establish the following:

(A) Provide concurrent theory and clinical experience in the following areas:

(i) Adult nursing.

(ii) ~~Obstetric~~ **Maternity** nursing.

(iii) Nursing of children.

(iv) ~~Psychiatric~~ **Mental health** nursing.

(v) ~~Geriatric~~ **Gerontological** nursing.

(vi) For baccalaureate programs, community health nursing **and research.**

(B) Include:

(i) history;

(ii) trends;

(iii) legal aspects; and

(iv) ethical aspects;

of nursing that may be integrated, combined, or presented as separate courses.

(C) Include content about chemical substance abuse among professionals.

(D) Computer technology shall be integrated, combined, or presented as a separate course.

(E) ~~Universal~~ **Standard** precautions education shall be integrated, combined, or presented as a separate course.

~~(F) The length of a full-time program shall be a minimum of four (4) semesters or two (2) academic years.~~

(Indiana State Board of Nursing; 848 IAC 1-2-17; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4532; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)

SECTION 15. 848 IAC 1-2-18 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-18 Curriculum; licensed practical nurse program

Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 18. (a) The length of a full-time program shall be ~~two (2) semesters and one (1) summer session or four (4) quarters within~~ **a minimum of** one (1) calendar year **or its equivalent.**

(b) The curriculum shall provide instruction in the following areas:

(1) Physical and biological sciences, including content drawn from the areas of:

(A) anatomy;

(B) physiology;

(C) nutrition; and

(D) pharmacology;

that may be integrated, combined, or presented as separate courses.

(2) Social and behavioral sciences, including content drawn from the concepts of mental health that may be integrated, combined, or presented as separate courses.

(3) The nursing content shall establish the following:

(A) Provide concurrent theory and clinical experience in the following areas:

(i) Adult nursing.

(ii) ~~Obstetric~~ **Maternity** nursing.

(iii) Nursing of children.

(iv) ~~Geriatric~~ **Gerontological** nursing.

(B) Include:

(i) history;

(ii) trends;

(iii) legal aspects; and

(iv) ethical aspects;

of nursing that may be integrated, combined, or presented as separate courses.

(C) Include content about chemical substance abuse among professionals.

(D) Computer technology shall be integrated, combined, or presented as a separate course.

(E) ~~Universal~~ **Standard** precautions education shall be integrated, combined, or presented as a separate course.

(Indiana State Board of Nursing; 848 IAC 1-2-18; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4532; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)

SECTION 16. 848 IAC 1-2-19 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-19 Clinical experience; all programs

Authority: IC 25-23-1-7
Affected: IC 25-23-1-20

Sec. 19. (a) Clinical facilities used for learning experiences shall be approved by ~~the Joint Commission on Accreditation of Healthcare Organizations~~ **an organization that has been granted deeming authority** or appropriate licensing bodies. **Long term care facilities shall be licensed by the Indiana state department of health.**

(b) There shall be written agreements between the ~~school~~ **program** and any institution or agency, which is used for clinical ~~laboratory~~ experiences. Agreements shall state the responsibilities and privileges of both parties. ~~A copy of the written agreement shall be submitted to the board for approval six (6) months prior to the beginning of the experience.~~ Written agreements are not necessary for observational experiences.

~~(c) A request for approval of clinical facilities shall be submitted to the board for initial approval six (6) months prior to the use of that facility on forms provided by the board. A site visit may be made to any clinical facility not previously visited by a representative of the board, prior to approval of the facility. A site visit shall be made by a representative of the board prior to denial of the use of any clinical facility. The site visitor shall secure data concerning:~~

~~(1) the size of the facility;~~

~~(2) the number of other nursing programs using the facility; and~~

~~(3) the time of use and problems of overcrowding;~~

~~as well as other aspects of the learning environment.~~

~~(d) School~~ **(c) Nursing program** faculty shall:

(1) assign;

(2) guide;

(3) evaluate; and

(4) supervise;

the learning activities of students in ~~their learning experiences.~~ **the clinical experience.**

~~(e) Clinical facilities no longer being utilized by the nursing program shall be indicated on forms provided by the board.~~

~~(f)~~ **(d)** The ratio of faculty to students shall be a maximum of 1:10 or any portion thereof in the clinical ~~laboratory~~ **or observational** experience, exclusive of the nurse director or coordinator. *(Indiana State Board of Nursing; 848 IAC 1-2-19; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4532; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 17. 848 IAC 1-2-20 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-20 Educational resources

Authority: IC 25-23-1-7
Affected: IC 25-23-1-20

Sec. 20. (a) Classrooms, laboratories, and conference rooms shall be provided to meet the needs of the students.

(b) The library shall be adequate in size and have current holdings to meet the educational needs of the students and faculty. There shall be a variety of current audiovisual and computer aids for individual and group instruction. The annual budget shall provide for accessions to the library.

(c) Furnishings, supplies, and office equipment shall be provided for the director, faculty, and clerical staff.

(d) Adequate office space shall be provided for the director, faculty, and clerical staff.

(e) There shall be adequate support services and secretarial personnel to meet the needs of the program.

(f) There shall be adequate support for faculty development. *(Indiana State Board of Nursing; 848 IAC 1-2-20; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4533; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 18. 848 IAC 1-2-21 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-21 Progression and graduation

Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 21. (a) There shall be written requirements for progression and graduation prepared by the faculty of each program. There shall be a written policy and procedure for academic probation and termination from the program. There shall be a code of conduct for students.

(b) The nursing program shall provide to enrolled students a student handbook that shall include all information specific to the nursing program.

(c) Candidates for the registered nurse licensing examination shall have successfully completed the educational program with

an accumulative average grade of "C" or better, and a grade of "C" or better in each ~~nursing~~ course as identified in section 17 of this rule.

(d) Candidates for the practical nurse licensing examination shall have successfully completed the educational program with a grade of "C" or better in each course. *(Indiana State Board of Nursing; 848 IAC 1-2-21; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4533; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 19. 848 IAC 1-2-22 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-22 Records and program catalog
Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 22. (a) There shall be a record system that provides for accurate recording of admission data and student academic records. Provisions shall be made for safe storage of records to prevent loss by destruction and unauthorized use.

(b) Individual student files, maintained by the program of nursing during the student's enrollment, shall include, at a minimum, the following:
(1) Documents required for admission.
(2) Results of performance evaluation relating to the student's progression or lack thereof.
(3) Documentation of ~~universal~~ **standard** precautions training.

(c) The institution must maintain in readily accessible form, or cause to be maintained in readily accessible form, sufficient records to generate an official student transcript for a period of sixty (60) years after the date the student attended the institution.

(d) Information about the ~~school~~ **program** shall be published periodically, at least every two (2) years. The publication shall be dated and include the following:
(1) Philosophy, **mission,** and objectives of the ~~school.~~ **nursing program.**
(2) A general description of the program.
(3) The curriculum plan.
(4) Brief course descriptions.
(5) Facilities and conditions provided for student learning and welfare.
(6) Faculty information.
(7) A statement of tuition, fees, and refund policies.
(8) A statement regarding nondiscriminatory ~~practices in~~ **policies for** student and faculty recruitment.
(9) A statement regarding student complaint and grievance procedures.
(10) Housing and residence facilities information.
(11) Admission, progression, and graduation ~~practices.~~ **policies.**

(Indiana State Board of Nursing; 848 IAC 1-2-22; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4533; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)

SECTION 20. 848 IAC 1-2-23 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-23 Reports to the board
Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 23. ~~(a)~~ The director of the nursing program shall submit an annual report to the board on forms provided by the board. The report shall provide current data on the following:
(1) Administrative personnel, credit hours, and faculty to student ratios.
(2) Organizational, administrative, and physical changes.
(3) Any curriculum changes.
(4) Student statistics.
(5) A faculty list with **a:**
(A) ~~a~~ completed faculty qualification record for each new member;
(B) ~~a~~ supplemental qualification record for each faculty member pursuing a master's degree; and
(C) ~~a~~ list of faculty no longer employed by the institution since the last annual report.
(6) A clinical agency list and a list of those agencies no longer used since the last annual report.
(7) An organizational chart for the nursing program and for the parent institution.

~~(b) A list of graduates applying for licensing examinations shall be submitted on forms provided by the board prior to requesting applications for distribution to students.~~ *(Indiana State Board of Nursing; 848 IAC 1-2-23; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4534; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

SECTION 21. 848 IAC 1-2-24 IS AMENDED TO READ AS FOLLOWS:

848 IAC 1-2-24 Records
Authority: IC 25-23-1-7
Affected: IC 25-23-1-7

Sec. 24. A copy of each annual report to the board, the ~~school~~ **program** catalog, and nursing student handbook shall be maintained in the permanent records of the institution. *(Indiana State Board of Nursing; 848 IAC 1-2-24; filed Jul 30, 1998, 4:59 p.m.: 21 IR 4534; readopted filed Nov 6, 2001, 4:18 p.m.: 25 IR 939)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 15, 2004 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Auditorium,

Indianapolis, Indiana the Indiana State Board of Nursing will hold a public hearing on proposed amendments to revise the definitions applied throughout that article, to revise the accreditation requirements and procedures for nursing programs, and to establish the requirements and procedures to transfer a nursing program to another controlling organization. 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 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

Proposed Rule
LSA Document #04-74

DIGEST

Amends 888 IAC 1.1-6-1 concerning the deadline for applying to take the examination for licensure. Effective 30 days after filing with the secretary of state.

888 IAC 1.1-6-1

SECTION 1. 888 IAC 1.1-6-1 IS AMENDED TO READ AS FOLLOWS:

888 IAC 1.1-6-1 Application content; examination applicant; application deadline

Authority: IC 15-5-1.1-8
Affected: IC 15-5-1.1-11; IC 15-5-1.1-12

Sec. 1. (a) An applicant for license by examination shall submit the following information:

(1) Official transcripts or a letter from the dean, certified by the school or college, recording the degree earned in a school or college of veterinary medicine accredited under IC 15-5-1.1-11(a) or a notarized copy of the applicant's diploma.

(2) Official score report of the applicant's National Board Examination (NBE) and the Clinical Competency Test (CCT) or the North American Veterinary Licensing Examination (NAVLE) approved under IC 15-5-1.1-12(b) if the applicant is not applying to take these examinations in Indiana.

(3) Two (2) unmounted, duplicate, passport-quality photographs taken not earlier than eight (8) weeks prior to the date of application, dated and signed across the back in the applicant's handwriting, "I certify that this is a true photograph of me.".

(4) A statement from the appropriate agency in each state where the applicant has been licensed, verifying the date the applicant's license was originally issued and certifying whether or not disciplinary proceedings have ever been initiated or are presently pending against the applicant.

(5) The fee required by 888 IAC 1.1-3-2.

(b) An applicant who has not graduated from an accredited school of veterinary medicine and who submits satisfactory proof that he or she is participating in an Educational Commission for Foreign Veterinary Graduates (ECFVG) program of the American Veterinary Medical Association may take the NAVLE. The applicant is not eligible for licensure until he or she submits satisfactory proof that he or she holds an ECFVG certificate issued by the American Veterinary Medical Association.

(c) All applications for the NAVLE must be received by the board at least ~~seventy-five (75)~~ **ninety-five (95)** days prior to the administration of the NAVLE in which the applicant desires to participate. *(Indiana Board of Veterinary Medical Examiners; 888 IAC 1.1-6-1; filed Jan 22, 1991, 4:50 p.m.: 14 IR 1284; filed Dec 27, 1993, 9:00 a.m.: 17 IR 1004; filed Aug 7, 2000, 2:19 p.m.: 24 IR 24; readopted filed Jul 18, 2001, 10:20 a.m.: 24 IR 4238; filed Dec 20, 2002, 12:31 p.m.: 26 IR 1563)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 30, 2004 at 9:15 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room W064, Indianapolis, Indiana the Indiana Board of Veterinary Medical Examiners will hold a public hearing on proposed amendments concerning the deadline for applying to take the examination for licensure. Copies of these rules are now on file at the Health Professions Bureau, Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau

Indiana Register

Readopted Rules

TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD

Notice of Intent
LSA Document #04-124

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 readopted without changes is as follows:

685 IAC 1 INDIANA AMUSEMENT DEVICE CODE

Questions or comments are invited and may be directed by mail to the Department of Fire and Building Services, Attention: Technical Services, Indiana Government Center-South, 402 West Washington Street, Room W246, Indianapolis, Indiana 46204 or by electronic mail to: jweesner@sema.state.in.us. Statutory authority: IC 22-13-2-8.

TITLE 760 DEPARTMENT OF INSURANCE

Notice of Intent
LSA Document #04-143

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: Rules to be readopted without changes are as follows:

760 IAC 1-60-1 Authority
760 IAC 1-60-2 Purpose and scope
760 IAC 1-60-4 Doctors of osteopathy

Written comments may be submitted to the Indiana Department of Insurance, Attention: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204 or e-mail to astrati@doi.state.in.us. Statutory authority: IC 34-18-5-2.

TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION

Proposed Rule
LSA Document #04-71

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.

315 IAC 1

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

315 IAC 1 ADJUDICATORY PROCEEDINGS BEFORE ENVIRONMENTAL LAW JUDGES

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on June 25, 2004 at 9:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room N1045, Indianapolis, Indiana the Office of Environmental Adjudication 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:

Catherine Gibbs
Environmental Law Judge
Indiana Office of Environmental Adjudication
Indiana Government Center-North, Room N1049
Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Office of Environmental Adjudication, 150 West Market Street, Suite 618 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Catherine Gibbs
Administrative Law Judge
Office of Environmental Adjudication

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #04-47

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

511 IAC 1-9
511 IAC 6-7-1
511 IAC 6-7-6
511 IAC 6.1-2-2.5
511 IAC 6.1-5-4
511 IAC 8

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

511 IAC 1-9	Alternative Education Grant Program
511 IAC 6-7-1	Definitions
511 IAC 6-7-6	Required and elective credits
511 IAC 6.1-2-2.5	Safe schools and emergency preparedness planning
511 IAC 6.1-5-4	High school curriculum
511 IAC 8	VOCATIONAL EDUCATION

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on August 5, 2004 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room (Room 119), Indianapolis, Indiana the Indiana State Board of Education 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:

Mr. Jeffery P. Zaring
State Board Administrator
Indiana Department of Education
229 State House
Indianapolis, Indiana 46204.

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 540 INDIANA EDUCATION SAVINGS AUTHORITY

Proposed Rule
LSA Document #04-54

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.

540 IAC 1-1-11
540 IAC 1-1-17

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

540 IAC 1-1-11 "Eligible educational institution" defined
540 IAC 1-1-17 "Scholarship" defined

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on August 1, 2004 at 10:30 a.m., at the Indiana Education Savings Authority, One North Capitol, Suite 110, Indianapolis, Indiana the Indiana Education Savings Authority 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:

Indiana Education Savings Authority
Attention: Executive Director
One North Capitol, Suite 444
Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana Education Savings Authority, One North Capitol, Suite 444 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Susan Loftus
Executive Director
Indiana Education Savings Authority

60 Day Requirement (IC 4-22-2-19)

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #04-136

To: Honorable Jerry Denbo, Chairperson
C/o Ms. Susan Burkman
The Administrative Rules Oversight Committee

From: Kevin Wild, Staff Attorney

Re: LSA #04-136

Date: May 7, 2004

Cc: Steve Barnes, Indiana Register
Rachel McGeever, General Counsel, FSSA
Sherry Gray, Deputy Director, Bureau of Aging and In-Home Services

On behalf of the Family and Social Services Administration, Division of Disability, Aging and Rehabilitative Services, I am submitting this memo to the Administrative Rules Oversight Committee because this filing of the above-captioned rule will not comply with 4-22-2-19(c)(1).

Promulgation of this rule was initially begun as LSA #03-229 within 60 days of the enabling statute, with a Notice of Intent filed with LSA before August 10, 2003 and published on September 1, 2003 (26 IR 3907). However, because of several personnel changes within the section developing the rule and the need for meetings with interested parties to ensure the rule best met the needs of both the State and providers, the rule would not have been completed within one year and the decision was made to begin the process again with a new Notice of Intent to be published June 1, 2004 rather than request a lengthy extension of the original time period.

Please feel free to contact me at 233-2582 if you have any further questions about this rule or this notice.

365 Day Notice (IC 4-22-2-25)

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #03-231

To: The Honorable Jerry Denbo, Chairperson
C/o Ms. Susan Kennell
The Administrative Rules Oversight Committee

From: Kevin Wild, Staff Attorney
Office of General Counsel
Family and Social Services Administration

Re: LSA #03-231, Caretaker Support Program Rule

Date: May 7, 2004

Cc: Steve Barnes, LSA
Rachel McGeever, General Counsel, FSSA
Kristen Schunk, Director, DDARS

On behalf of the Family and Social Services Administration, Division of Disability, Aging and Rehabilitative Services, I am submitting this memo to the Administrative Rules Oversight Committee in compliance with IC 4-22-2-25, because the agency has determined that the promulgation of the captioned rule may not be completed within one year after publication of the notice of intent to adopt a rule.

The agency published its notice of intent to adopt a rule for the captioned document on September 1, 2003 (26 IR 3907). Due to the several personnel changes within the Division, including the departure of those working with development of this rule, and the need for further research and discussion regarding its provisions, this rule has taken longer than expected to fully develop. In order to complete the research and development of the rule, the agency needs additional time.

In addition, any rule adopted by the agency must be approved by the Family and Social Services Committee (see IC 12-8-3), a committee that meets only once per month. It is possible a monthly meeting could occur without a quorum and therefore without any action being taken on an adopted rule. This would mean delayed approval until the next monthly meeting of the committee and presence of a quorum. Following approval by the FSSA committee, the rule must be submitted to the Attorney General's office. Pursuant to IC 4-22-2-32, the Attorney General has forty-five days to complete his review of a rule. Whether a quorum is present at a monthly meeting of the FSSA Committee and the Attorney General's time frame for rule review are outside of the agency's control. For these reasons, it may not be possible for the rule to be approved by the governor within one year of the date of publication of the notice of intent. The agency expects that the rule can be approved by the governor by December 1, 2004.

This notice setting forth the expected date of approval of LSA# 03-231 as December 1, 2004, is being submitted in a timely manner. May 8, 2004 is the two hundred fiftieth day after the date of publication of the notice of intent to adopt a rule.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #03-232

To: Honorable Jerry Denbo, Co-Chairperson
Honorable Luke Kenley, Co-Chairperson
c/o Ms. Sarah Burkman
Administrative Rules Oversight Committee

From: Erin M. McQueen, Staff Attorney
Office of General Counsel
Family and Social Services Administration

Re: LSA #03-232 -Emergency Closure Rule for Child Care Licensing

Date: May 6, 2004

Cc: Chuck Mayfield, Legislative Services Agency
Rachel McGeever, General Counsel, FSSA
Lanier DeGrella, Deputy Director, DFC/BCD
Keith Carver, Manager, Child Care Licensing, DFC/BCD

On behalf of the Family and Social Services Administration, Division of Family and Children, Bureau of Child Development, I am submitting this notice to the Administrative Rules Oversight Committee in compliance with IC 4-22-2-25, because the division has determined there is a possibility that the promulgation of the captioned rule may not be completed within one year after publication of the notice of intent to adopt a rule.

The division published its notice of intent to adopt a rule for the captioned document on September 1, 2004 (26 IR 3907). The proposed rule was published on February 1, 2004 (27 IR 1626). There was a delay in publishing the proposed rule because division was giving careful consideration to the list of violations and procedures to be used. Three public hearings were held on February 26, 2004; March 2, 2004 and March 4, 2004 in the northern, central and southern parts of the state. The written comment period was left open to April 2, 2004 to allow additional time for all interested persons to give comments on the proposed rule. The division received comments both at the public hearings and in written form. The division is still in the process of giving careful consideration to all the public comments and taking the necessary steps for program implementation. Consequently, the rule still needs to be finalized and adopted by the division.

Once the rule is adopted by the division, it has to be approved by the Family and Social Services Committee (see IC 12-8-3), a committee that only meets once a month. The committee currently have some vacancies for the committee and it is possible a monthly meeting could occur without a quorum and therefore without any action taken on an adopted rule. This would mean delayed approval until the next monthly meeting of the committee and presence of a quorum. Following approval by the FSSA committee, the rule must be submitted to the Attorney General's office. Pursuant to IC 4-22-2-32, the Attorney General has forty-five days to complete his review of a rule. Whether a quorum is present at a monthly meeting of the FSSA Committee and the Attorney General's time frame for rule review are outside of the agency's control. For these reasons, it is unlikely that the rule will be approved by the governor within one year of the date of publication of the notice of intent. The agency expects that the rule can be approved by the governor by December 31, 2004.

This notice setting forth the expected date of approval of LSA Document #03-232 by December 31, 2004 is being submitted in a timely manner. May 7, 2004 is the two hundred fiftieth day after publication of the notice of intent to adopt a rule.

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE
#04-148(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT STATUS DESIGNATIONS FOR THE 8-HOUR OZONE NATIONAL AMBIENT AIR QUALITY STANDARD

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-4-1, concerning attainment status designations for the 8-hour ozone National Ambient Air Quality Standard ("the 8-hour ozone standard"). The purpose of this notice is to seek public comment on the draft 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 1-4-1.

AUTHORITY: IC 13-14-8; 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 forego 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.

BACKGROUND

Basic Purpose and Explanation of Limited Rulemaking Policy Alternatives

Under the Clean Air Act, U.S. EPA is responsible for (1) establishing ambient air quality standards to protect the public health and welfare; (2) determining which areas of the country have air quality that does not meet those standards; and (3) overseeing states' efforts to develop and implement plans to improve air quality in those areas. The Clean Air Act establishes basic requirements and procedures for the clean air planning process, but U.S. EPA issues more specific guidance to help states, citizens, businesses and local governments comply with the Clean Air Act's requirements. U.S. EPA also promulgates rules to meet the Clean Air Act requirements. In this case, U.S. EPA is promulgating a rule designating certain counties, entirely or in part, as nonattainment for the 8-hour ozone standard.

On December 3, 2003, U.S. EPA made a preliminary determination, based on two (2) letters from IDEM, that certain Indiana counties should be designated as nonattainment for the 8-hour ozone standard. On February 6, 2004, IDEM presented additional information regarding U.S. EPA's findings. U.S. EPA issued the final designations on April 30, 2004 (69 FR 23858).

From U.S. EPA's final determination, the following twenty-four (24) counties, entirely or in part, have been designated as nonattainment of the 8-hour ozone standard on April 30, 2004: Allen, Boone, Clark, Dearborn (Lawrenceburg Township), Delaware, Elkhart, Floyd, Greene, Hamilton, Hancock, Hendricks, Jackson, Johnson, Lake, LaPorte, Madison, Marion, Morgan, Porter, St. Joseph, Shelby, Vanderburgh, Vigo, and Warrick. All of these counties are designated in basic nonattainment, except for Lake, Porter, and LaPorte counties which are in moderate nonattainment for the 8-hour ozone standard.

In order to apply the state nonattainment rules to the newly designated counties, Indiana must adopt the federal designations as soon as possible. Because this can be accomplished through incorporation by reference of the federal rules, IDEM proposes the use of IC 13-14-9-8 to adopt the designations. A provision has been added to clarify the applicability of the nonattainment emission offset rules under 326 IAC 2-3 to the newly designated counties.

Proper designation of the counties determined to be nonattainment for the 8-hour ozone standard will provide the basis in state law for IDEM to develop attainment plans for the newly designated counties. It will also ensure that air permits in these counties are issued under the correct permitting rules. If Indiana does not adopt the federal ozone designations, it is possible that U.S. EPA would have to issue new source review permits for certain types of projects in the affected areas. Stricter permitting rules will apply in nonattainment counties for new and expanding sources, however, these rules only apply to certain larger sources.

IC 13-14-9-4 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. This rule is required by the Clean Air Act.

Potential Fiscal Impact

There is no fiscal impact imposed as a result of this state rule that is not currently imposed by the federal standard. Any fiscal impact was addressed during the federal rulemaking process. The rule may impact economic development in the counties designated nonattainment of the 8-hour ozone standard, but that impact would be difficult to quantify.

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 Christine Pedersen, Rules Development Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana).

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on attainment status designations for 8-hour ozone NAAQS as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) This rule contains both the direct adoption of a federal requirement that is applicable to Indiana and a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule. The direct adoption of the federal requirement 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 to adopt federal attainment status designations as established by the United States Environmental Protection Agency.

(3) Prompt adoption of this rule will be beneficial because regulated sources in newly designated nonattainment counties will be subject to the state nonattainment rules, rather than the federal permitting process.

(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

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality (317) 233-6868 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-4-1, AS AMENDED AT 27 IR 1167, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-4-1 Designations

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

Sec. 1. **(a)** The air pollution control board incorporates by reference **the following documents concerning attainment status designations:**

(1) 40 CFR 81.315*.

(2) 66 FR 53665 (October 23, 2001)*. ~~and~~

(3) 68 FR 1370 (January 10, 2003)*.

(4) 69 FR 23858 (April 30, 2004)*.

~~concerning attainment status designations.~~

(b) For purposes of permits that are subject to 326 IAC 2-3 due to the designations in subsection (a)(4), notwithstanding 326 IAC 2-3-2(a) and 326 IAC 2-3-2(e), the requirements of 326 IAC 2-3 apply to any permit that:

(1) would otherwise be subject to 326 IAC 2-3; and

(2) is issued on or after the effective date of the incorporation of 69 FR 23858.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2379; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed Dec 30, 1992, 9:00 a.m.: 16 IR 1382; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; filed Oct 22, 1997, 8:45 a.m.: 21 IR 932; filed Apr 17, 1998, 9:00 a.m.: 21 IR 3342; filed Apr 29, 1998, 3:15 p.m.: 21 IR 3341; filed May 21, 2002, 10:20 a.m.: 25 IR 3056; filed Nov 15, 2002, 11:17 a.m.: 26 IR 1077; filed Dec 1, 2003, 10:00 a.m.: 27 IR 1167)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on July 7, 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 1-4-1.

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.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

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

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

or call (317) 233-0855), (TDD): (317) 233-6565. 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 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 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
#03-130(WPCB)

DEVELOPMENT OF A NEW RULE CONCERNING A STREAMLINED PROCESS FOR OBTAINING A VARIANCE FROM THE WATER QUALITY CRITERION FOR MERCURY

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM), in consultation with a workgroup of interested persons, has developed draft rule language for a new rule to establish a process and application

requirements for obtaining a variance from the existing water quality criterion used to establish a water quality-based effluent limitation for mercury in wastewater discharges permitted under the National Pollutant Discharge Elimination System (NPDES) program. 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 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: #03-130(WPCB) June 1, 2003, Indiana Register (26 IR 3171).

CITATIONS AFFECTED: 327 IAC 5-3.5.

AUTHORITY: IC 13-13-5-1; 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Mercury is a toxic metal that has high bioconcentration and bioaccumulation rates when in the form of methylmercury. Water quality criteria treat all mercury as if it is in the form of methylmercury, the most common organic mercury compound in the environment. The water quality-based effluent limitations for mercury are based on total mercury within the GLI and acid soluble mercury outside the GLI. Note that the term "GLI" refers to the Great Lakes Initiative rules that apply to dischargers within the Great Lakes Basin.

Method 1631, Revision E is a new mercury analytical method approved by U.S. EPA in October 2002 that can measure the concentration of mercury at a level below Indiana's existing aquatic life, human health, and wildlife water quality criteria. Prior to the availability of this method, laboratory analysis could only measure mercury at a level well above these water quality criteria. With the use of Method 1631, compliance assessment indicates that many wastewater discharging facilities in Indiana will not be able to consistently meet applicable NPDES permit limits for mercury.

Existing rules allow a wastewater discharging facility to apply for an individual variance from the applicable NPDES permit limit for mercury. A rule that allows for a streamlined process for obtaining a variance from the existing mercury water quality-based effluent limit has been developed to simplify the process for the applicant, the department, and the public because enough is currently known to show that there is a lack of economically viable, end-of-pipe, treatment options and widespread existence of mercury in the environment. This rulemaking establishes the conditions under which a streamlined variance may be granted and renewed and requirements for a mercury minimization plan to assure that all efforts are being made to minimize mercury discharges.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

This statute requires IDEM to identify, as part of the second notice published in the Indiana Register, the estimated fiscal impact and expected benefits of any elements of the draft rule that are not imposed under federal law. IDEM seeks comments on these elements as well as specific fiscal impact information. The following elements of the draft rule are "not imposed under federal law" (NIFL elements) and have been identified as either having an estimated fiscal impact or providing an expected benefit to entities regulated under the draft rule:

The concept of a streamlined mercury variance is not explicitly identified in federal law. While the applicants for the SMV will incur cost, it will be less than what would be incurred in applying for an individual mercury variance. The SMV simplifies and lessens the information that the applicant for a variance will have to provide relative to an individual variance primarily because the applicant does not have to prove social and economic hardship as a condition of the SMV. The development and implementation of a pollutant minimization program plan (PMPP), required as part of a SMV, will require expenditure and effort on the part of an applicant for a SMV. Such a plan would also be required as part of an individual variance so no additional cost or burden is imposed by this rule relative to a PMPP.

Regulated entities in Indiana with mercury discharge limits in their NPDES permits have been requesting a streamlined alternative to the existing statutory variance process. Similar streamlined variance options have been made available in other states. This request is based on the lack of economically viable, end-of-pipe treatment options.

IDEM and the mercury workgroup established for this rule have consulted many mercury studies, journal papers, and other states' programs in developing the SMV. These materials are available on the IDEM Triennial Rulemaking web page or are available during normal business hours at the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.

Potential Fiscal Impact

IDEM believes the streamlined mercury variance rule will provide the regulated facilities a net cost reduction when compared to the expense of fulfilling the requirements of applying for an individual variance from a mercury discharge limit in a NPDES permit. Further, given the inability of technological treatment options to meet the water quality criterion for mercury, the SMV will provide a mechanism to alleviate facility noncompliance and IDEM enforcement action which will be a cost saving to both groups.

IDEM does not believe that this rule will have a significant fiscal impact. IDEM requests public comment on the economic impact and benefit from this rule.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a cross-section of stakeholders including regulated facilities and members of environmental groups and began meeting in October 2002 to discuss whether a streamlined approach to applying for a variance would serve the need concerning mercury in wastewater discharges. Upon deciding that a streamlined mercury variance is necessary, the workgroup held monthly meetings to come to near consensus on the application and issuance requirements for a streamlined mercury variance, its duration, and availability for renewal.

Based on workgroup discussions, IDEM is specifically looking for comments on the content required in a pollutant minimization program plan (PMPP) and the approach selected for establishing the interim limit for mercury discharge throughout the duration of a SMV. The draft rule would not be available to dischargers with proposed mercury limits greater than thirty (30) ng/l in order to be consistent with expected federal requirements for endangered species.

Information concerning the mercury workgroup activities may be found on the IDEM Triennial Rulemaking web page at:

http://www.in.gov/idem/rules/progress/water/wpcb03130/index.html

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact MaryAnn Stevens, Rules Section, Office of Water Quality at (317) 232-8635 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.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from June 1, 2003, through July 30, 2003, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comment letters from the following parties by the comment period deadline:

Brownsburg, Town of, Kathy Dillon, Wastewater Treatment Plant Superintendent (BRO)

Elkhart, City of, Art Umble, Manager of Water and Wastewater Operations (ELK)

Gary, City of, James B. Meyer, Attorney (GARY)

Improving Kids Environment, Tom Neltner (IKE)

Indiana Association of Cities and Towns, James Trobaugh, President (IACT)

Indiana Water Quality Coalition and the Indiana Manufacturers Association, represented by Barnes and Thornburg (IWQC-IMA)

Indiana Water Quality Coalition, represented by Barnes and Thornburg, first notice comment letter submitted in July 2002 and resubmitted in July 2003 (IWQC-2002)

Indianapolis, City of, Barbara A. Lawrence, Director of Department of Public Works (INDP)

Michigan City, Sanitary District, Dan R. Olson, Wastewater Treatment Plant Superintendent (SDMC)

Northern Indiana Public Service Company (NIPSCO)

Save the Dunes Council, Charlotte Read (SDC)

United States Steel Company (USS)

Following is a summary of the comments received and IDEMs responses thereto:

Comment: IDEM should expedite the rulemaking process to establish a streamlined procedure and National Pollutant Discharge Elimination System (NPDES) permit conditions specific to mercury variances. There is a need for a mercury variance process due to the ubiquitous nature of mercury in the environment, the uncertain effectiveness, prohibitive costs, and adverse multimedia impacts associated with available mercury control technologies, and the costs to both dischargers and the state in preparing and evaluating individual mercury variance applications. (ELK, GARY, IACT, IKE, INDP, IWQC-2002, IWQC-IMA, NIPSCO, USS)

Response: IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process to address the concerns expressed in this comment.

Comment: Cost to a municipality for preparation of an individual variance application is approximately one hundred thousand dollars ($100,000). (INDP)

Response: IDEM does not dispute the estimated cost of preparing an individual variance application. IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide opportunity under certain circumstances to forego the need to prepare an individual variance application.

Comment: An individual variance application, as informally determined according to conversations with consulting firms, would likely cost between fifty and seventy-five thousand dollars. A municipality having mercury limits in the extended permit and compliance measured by the limit of detection for Method 425.1 would need two variances, one from WQBELs to provide time to convert analysis to Method 1631/1669 and collect ample data to measure variability and the second variance from final effluent limits based upon the data collected using the new methodology. Therefore, the individual mercury variances would cost approximately one hundred to one hundred fifty thousand dollars for the initial permit renewal and between fifty and seventy-five thousand dollars for subsequent permit renewals. (SDMC)

Response: IDEM does not dispute the estimated cost of preparing an individual variance application. IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide opportunity under certain circumstances to forego the need to prepare an individual variance application. Water analysis using Method 425.1 will not be utilized in determining compliance or the need to obtain mercury effluent limits.

Comment: The annual cost to treat for mercury, as suggested in the workgroup consideration, is several times the total budget per year for a class III municipal treatment plant. (BRO)

Response: IDEM does not dispute the estimated cost of treating wastewater to remove mercury. IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide an alternative to unreasonable costs associated with treating wastewater to further remove mercury.

Comment: The Association of Metropolitan Sewerage Agencies (AMSA) reports findings that indicate unit operations directly associated with mercury removal (for example, reverse osmosis and ion exchange) result in an annualized treatment cost for mercury of one million nine hundred twenty-two thousand dollars ($1,922,000) per million gallons per day. (INDP)

Response: IDEM does not dispute the estimated cost of treating wastewater to remove mercury. IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide an alternative to unreasonable costs associated with treating wastewater to further remove mercury.

Comment: Industries within the Great Lakes system are beginning to analyze costs associated with using treatment technologies to attempt to meet the 1.3 ng/l wildlife criteria. An economic analysis performed by the state of Ohio determined that the average cost to reduce mercury below 12 ng/l from a wastestream through end-of-pipe treatment would exceed ten million dollars per pound of mercury removed. This cost finding was a major reason Ohio developed a statewide mercury variance as part of its Great Lakes water quality regulations. (IWQC-2002)

Response: IDEM does not dispute the estimated cost of treating wastewater to remove mercury. IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide an alternative to unreasonable costs associated with treating wastewater to further remove mercury.

Comment: End-of-pipe treatment estimates ignore the potential gains of activities that prevent mercury from entering the sewer system and remediate the reservoirs of mercury that are already in the sewer system. Prevention first type approaches to mercury treatment will yield the biggest reduction that, when combined with the array of other mercury reduction efforts at work at the national, state, and local level, may demonstrate compliance in the next ten years. Since these efforts are just now reaching maturity in a few locations, they may still show that they can achieve compliance with the permit limits without a variance when the full panoply of efforts goes into effect. (IKE)

Response: The streamlined mercury variance will require facilities to initiate mercury pollution prevention measures that are designed to reduce the amount of mercury entering the wastewater treatment system of municipal and industrial facilities. IDEM is optimistic about the eventual possibility of achieving compliance with the water quality-based effluent limits through the implementation of pollution prevention measures.

Comment: Over four years have passed since draft rule language for a mercury variance was proposed in the 1999 Triennial Review

rulemaking. IDEM currently is issuing final and draft permits with mercury limits that will take effect following a three or five year schedule of compliance. Without a streamlined mercury variance process, these dischargers will need to apply for individual mercury variances or be faced with mercury limits they will not be able to meet. A streamlined mercury variance process needs to be available to dischargers prior to the time that compliance schedules end. A streamlined mercury variance rule must be adopted by the Indiana Water Pollution Control Board and must also be reviewed and approved by EPA before it can be used by dischargers. Finally, dischargers will need time to request the variance, and their permits will need to be modified. All of this must happen before the compliance schedule ends. Therefore, IDEM needs to complete rulemaking for the streamlined mercury variance even sooner than the agency's projected completion date of December 2004. (IWQC-2002, IWQC-IMA, NIPSCO)

Response: IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide opportunity under certain circumstances to forego the need to prepare an individual variance application. IDEM intends to complete the rulemaking process in time for the affected facilities to obtain a streamlined mercury variance before the end of their compliance schedules.

Comment: The streamlined mercury variance process is necessary because it is wasteful and inefficient for dischargers to prepare, and agencies to review, numerous redundant individual variance requests. The most important aspect of the streamlined mercury variance process is the up-front establishment of the socio-economic need for the variance so that each applicant will not have to make an independent socio-economic demonstration. (IWQC-2002, IWQC-IMA, USS)

Response: IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide opportunity under certain circumstances to forego the need to prepare an individual variance application. The streamlined mercury variance rule will establish the socio-economic need for the variance.

Comment: The statewide mercury variance rule should not contain any reference to a discharger having to prove that there is no economically manageable treatment option as is stated in the published first notice of rulemaking. Proving no existing manageable treatment option could be as difficult as meeting the economic hardship portion of the existing state variance procedure. The economic treatment demonstration should be handled once as part of the streamlined variance for the state. If each applicant for the statewide mercury variance submitted individually derived proof of no economically manageable treatment, IDEM's workload would greatly increase especially if the Great Lakes Initiative (GLI) criteria of 1.3 ng/l is applied to all waters in Indiana. (NIPSCO)

Response: IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide opportunity under certain circumstances to forego the need to prepare an individual variance application. The streamlined mercury variance rule will establish that there is not currently an economically manageable treatment option available to meet the water quality-based limits for mercury.

Comment: The WPCB, in addition to adopting a streamline mercury variance rule, should modify the mercury standard outside the Great Lakes Basin so it is consistent with the standard in the Great Lakes Basin. This change should include the longer, thirty day, averaging period for calculating the mercury standard as the statewide calculation method. (IKE)

Response: Amendments to criteria and standards will, for the most part, be addressed in a subsequent, second round of rulemaking in the triennial process. This issue will be addressed at that time.

Comment: A variance procedure would not be necessary if Indiana did not include mercury limits in major discharge permits. The federal government did not mandate the placement of mercury limits in NPDES permits. Indiana has created a regulatory problem by committing to EPA to place mercury limits in major permits. State resources could be better spent on a state pollution prevention program for potential dischargers that use mercury in their operation and products. (BRO)

Response: IDEM has included mercury limits in permits that either had mercury limits in previously issued permits or where the discharger had mercury effluent data using analytical method 1631 that indicated the discharge has a reasonable potential to exceed the water quality criteria for mercury. All other reissued major permits are being required to monitor the effluent for mercury using method 1631. Both state and federal rules require IDEM to place limits on pollutants found in discharges subject to the NPDES Permit Program when the pollutants are found to be present in a concentration that shows the reasonable potential to exceed the water quality criterion for that pollutant.

Comment: Indiana should follow the leads of Illinois, Ohio, and Pennsylvania and adopt the mercury GLI human health criterion of 3.1 ng/l, reflective of the revised reference dose. Revising the mercury human health criteria from 1.8 to 3.1 ng/l would provide facilities needing a variance from the 1.3 ng/l wildlife criteria with assurance that human health is being protected. (USS)

Response: Data has not been presented to IDEM to indicate that all dischargers who will need a variance from the 1.3 ng/l criterion will be able to meet the 3.1 ng/l criterion. This particular rulemaking focuses on providing a SMV option for a variance regardless of the specific mercury criteria.

Comment: A phased pretreatment regulatory approach would better address the mercury issue instead of placing limits on municipal dischargers that only convey pollutants and provide very little treatment for mercury. Pretreatment permits of potential mercury dischargers could contain language regarding the required reduction and control of mercury waste as a first phase of compliance. Water sampling results following phase I could dictate areas needing additional attention, monitoring, or the imposition of a limit. (BRO)

Response: Pretreatment and pollution prevention techniques each have shown some success in removing mercury from the untreated wastewater. The streamlined mercury variance rule will include a requirement to implement a pollution prevention program to minimize the amount of mercury entering wastewater treatment systems. The influent and effluent of several sanitary wastewater treatment plants have been sampled for mercury, and sanitary wastewater treatment plants have shown a removal rate of approximately ninety (90) to ninety-five (95) percent for mercury.

Comment: Incentives should be given to encourage facilities to seek reductions in the use of mercury in instruments and equipment. U.S. Steel supports and currently participates in the Binational Toxics Strategy Stakeholders - Mercury Agreement Reduction Plan, creating mercury inventories, evaluating options to replace or remove mercury containing equipment, and implementing viable replacement options to mercury containing equipment and materials. (USS)

Response: IDEM applauds US Steel for participating in the Mercury Agreement Reduction Plan. US Steel is providing much needed leadership in the field of mercury use reduction efforts for industrial facilities. Please provide IDEM with some examples of the types of incentives thought to be helpful in reducing or eliminating the use of mercury at industrial facilities.

Comment: The 2003 amendments to IC 13-14-8-9 concerning requirements for a variance from a water quality standard must be taken

into consideration in any proposal for a streamlined variance from mercury limits in all Indiana waters unless IDEM decides to develop alternative procedures for limiting mercury discharges that do not rely on a variance. (SDC)

Response: The 2003 amendments to IC 13-14-8-9 add a requirement that a variance based in part on a NPDES permit must meet the conditions specified in 40 CFR Part 132, Appendix F, Procedure 2.C and rules adopted by the board. IDEM will take the 2003 amendments to IC 13-14-8-9 into consideration when developing the statewide mercury variance (SMV) because the SMV will be based on a standard in a NPDES permit.

Comment: Will mixing zones for mercury or any other biological contaminate of concern (BCC) be prohibited in the non-Great Lakes basin area of the state after January 1, 2004, as it will be prohibited in the Great Lakes area? (SDC)

Response: Mixing zones are not currently allowed for new dischargers of BCCs in the non-Great Lakes basin, and, beginning on January 1, 2004, mixing zones will not be allowed for any, neither new nor existing, discharge of a BCC. These are similar requirements to that of the Great Lakes areas.

Comment: Little or no consideration has been given by the mercury workgroup to exploring either alternative effluent mercury limits or a compliance schedule for attainment of the applicable mercury standard. As well, little discussion has focused on setting one statewide mercury standard for all dischargers to state waters. It is inappropriate that one area of the state has a standard less stringent than another. (SDC)

Response: The rules for determining the water quality-based effluent limits that are placed in NPDES permits will not allow IDEM to consider radically different effluent limits for mercury. Some permits have been given a compliance schedule to meet newly imposed limits for mercury, but the compliance schedules are limited to either a three or five year period of time for the permitted facility to achieve compliance with the final effluent limits for mercury. IDEM is certain that most, if not all, facilities will not be able to meet the final effluent limits for mercury within the period of time allotted by a compliance schedule. Therefore, the facilities that have been given a compliance schedule to achieve the final effluent limits for mercury will also need a variance from the final effluent limits for mercury before the end of the compliance schedule.

Comment: The state is imposing a mercury limit that in practicality cannot be met. Municipal treatment plants are being expected to remove background concentration of constituents in drinking water that are already present in the environment. Wastewater facilities should not be forced to remove background levels and create a negative mercury discharge. Municipalities are investing large amounts of money in capital projects for CSO elimination and minimization. There should be a non-review mercury variance procedure established for the municipalities that are working on CSO projects. (BRO)

Response: IDEM is engaged in the rulemaking process to establish a streamlined mercury variance process that will provide opportunity under certain circumstances to forego the need to prepare an individual variance application. The streamlined mercury variance rule will require municipalities and industries to implement a pollution prevention program to minimize the amount of mercury in the untreated wastewater and final effluent. IDEM recognizes the capital needs of the municipalities regarding the projects for CSO elimination and minimization. Each affected facility will be required to demonstrate a good faith effort to reduce or eliminate mercury from its discharge. The level of effort each discharger achieves may be affected by the amount of funding available to implement the reduction effort.

Comment: The average concentration of mercury in rain and snow fall in Indiana is approximately thirteen (13) parts per trillion. All storm water potentially will require advanced treatment in order to achieve compliance with the water quality criteria for mercury. (INDP)

Response: IDEM does not intend to place effluent limitations for mercury on storm water only discharges. Recently promulgated Rule 13 (327 IAC 15-13) requires the development and implementation of storm water quality management plans by municipalities to utilize appropriate structural and nonstructural best management practices to control the pollutants occurring in storm water.

Comment: Background concentrations are sometimes greater than 1.3 ng/l, and these sources are not directly controllable by the facility. (IWQC-2002, USS, NIPSCO)

Response: The streamlined mercury variance rule will require municipalities and industries to implement a pollution prevention program to minimize the amount of mercury in the untreated wastewater and final effluent. Each affected facility will be required to demonstrate a good faith effort to reduce or eliminate mercury from its discharge. IDEM recognizes that some sources of mercury may be beyond a facility's ability to control.

Comment: Water quality regulations at 327 IAC 2-1.5-8 require installation of cooling towers for new wastewater heat discharges above 500 million British Thermal Units to Lake Michigan, and upcoming Clean Water Act (CWA) Section 316(b) regulations for cooling water intake structures will likely cause a significant increase in the use of cooling towers. For facilities that use cooling water towers, mercury should be regulated by mass only and not concentration. (USS, NIPSCO)

Response: Where rules and statute allow for the implementation of effluent limits for mass only, IDEM will consider if it is appropriate to limit mercury in that manner during the permit issuance process.

Comment: There is no guarantee that technology will be available to reduce mercury levels below WQBELs within the next five (5) to ten (10) years or, even if it is available, that it will be affordable. An annualized cost of $5.5 million per pound of mercury removed (as provided in the first notice) without achieving WQBELs simply is not affordable. Therefore, the use of a compliance schedule as an alternative to a streamlined mercury variance is unworkable. (INDP, IWQC-2002, IWQC-IMA, NIPSCO)

Response: IDEM does not dispute the estimated cost of achieving compliance with the mercury effluent limits or the possibility that treatment technology may not be available in the foreseeable future to achieve the effluent limits for mercury. Compliance schedules are a means to delay the implementation of final effluent limits for three to five years during which time it is possible for treatment technology to be developed or pollution prevention techniques to be implemented that may achieve compliance with the final effluent limits for mercury. If the three to five years are inadequate to achieve compliance with the final effluent limits for mercury, then the facility has the option of applying for a variance.

Comment: No feasible wastewater treatment methods have been found capable of attaining the 1.3 ng/l criterial. Enormous amounts of additional electricity are required to run ion exchange removal technologies which can achieve 5 ng/l. (USS)

Response: IDEM does not dispute the fact that an economically feasible treatment system does not currently exist to consistently achieve the final effluent limits for mercury nor that large amounts of electricity may be necessary to operate some treatment systems.

Comment: The Indianapolis individual mercury variance application contains the following report on significant multi-media environmental impacts caused by adding ion exchange treatment to an advanced wastewater treatment plant to further reduce mercury in the wastewater discharge: (1) additional discharge of nine million one hundred twenty-five thousand (9,125,000) pounds per year of salt to the river; (2) solid

waste generation requiring three thousand eight hundred (3,800) cubic yards per year of landfill space; (3) additional use of fifty-two million six hundred thousand (52,600,000) kilowatts per hour per year of electricity; and (4) as a result of the additional electrical power consumption there are additional emissions of carbon dioxide (fifty seven thousand eight hundred (57,800) tons per year), sulfur oxides (one thousand three hundred sixty-eight (1,368) tons per year), nitrous oxides (one hundred six (106) tons per year), and mercury (ten and eight tenths (10.8) pounds per year). As mercury is an element and can never be degraded or destroyed, its treatment for removal from wastewater discharges will cause increases to land pollutants and air emissions. (INDP)

Response: IDEM does not dispute the city's claims about the amount of additional pollutants, energy use, and solid waste landfill space that could be used to meet the final effluent limits for mercury. This type of information helps to demonstrate the need for a streamlined mercury variance.

Comment: Feasible control methodologies capable of attaining the WQBEL were not found by the City of Indianapolis during its preparation of an individual mercury variance application. A feasible control methodology that could reduce mercury in the city's effluent by fifty percent was identified. The overall annualized cost of pollutant removal utilizing the control methodology identified as feasible is one hundred sixty-four and nine tenths million dollars ($164.9M) per year. The cost effectiveness of adding ion exchange is five billion four hundred seventy-eight thousand four hundred dollars ($5,478,400) per pound of mercury removed. (INDP)

Response: IDEM does not dispute the city's estimate of the cost to implement wastewater treatment for the removal of mercury. This type of information helps to demonstrate the need for a streamlined mercury variance.

Comment: The option of requiring monitoring for at least one (1) permit cycle is sensible in many circumstances, but it is not an alternative to providing a streamlined mercury variance process. Rather, this option will only provide better data to establish the need for a variance. (IWQC-IMA)

Response: IDEM is considering many alternatives while working toward the development of a rule for a streamlined mercury variance.

Comment: The mercury variance rule must require POTWs to better regulate direct dischargers of mercury to their treatment plants. This would assume that the authority of POTWs to regulate their indirect dischargers results in a reduction of mercury in the POTW's discharge to the receiving stream. Does the lack of delegated authority from EPA limit Indiana's effectiveness to enforce existing pretreatment requirements? (SDC)

Response: IDEM does not believe that the lack of a delegated pretreatment program limits Indiana's effectiveness to enforce existing pretreatment program requirements.

Comment: The mercury variance rule must provide POTWs with tools to reduce direct discharges of mercury to the POTW such as dentists and hospitals being required to remove mercury from traps. POTWs need to undertake changes to their sewer user ordinances and embark on public education as a part of a required pollution minimization plan about reducing discharges of mercury from households and commercial establishments and proper disposal of mercury containing products. (IKE, SDC)

Response: There will be no requirements imposed on dental offices through this rulemaking. Individual municipalities are required to evaluate dental facilities in development of their PMPP and they may regulate dental offices as a measure within their PMPP to lower a municipality's mercury according to its authority.

Comment: All dentists offices and healthcare facilities should be subject to consistent standards whether discharging to ground water through a septic system, to a municipal wastewater treatment system, or whether the facility has or has not requested a mercury variance. Uniform standards will ensure fairness and consistency among facilities and avoid implementation delays. Municipalities that obtain a streamlined variance should be responsible for enforcing the provisions. The standards should be based on reasonably available control technology. Municipalities that have on-going mercury problems should be allowed to pursue more aggressive controls through their pretreatment programs. (IKE)

Response: There will be no requirements imposed on dental offices through this rulemaking. Individual municipalities are required to evaluate dental facilities in development of their PMPP and they may regulate dental offices as a measure within their PMPP to lower a municipality's mercury according to its authority.

Comment: Significant reduction in the total mercury influent concentration to a municipal advanced wastewater treatment plant can only be achieved by initiating a source control program involving non-regulated sources, such as dentists, hospitals, laboratories, and domestic sources. Municipal-wide pollution prevention programs can reduce influent levels of total mercury given a minimum of five to twenty years to achieve success. These programs require major public outreach and education, complete stakeholder involvement and commitment, and guaranteed sources of funding. (INDP)

Response: The required PMPP must address these potential sources of mercury and the applicant must go through a public process in the development of the PMPP.

Comment: It is unclear what is meant by the alternative of directly regulating direct and indirect dischargers of mercury. IDEM and municipalities with delegated pretreatment programs already regulate dischargers and are able to impose limitations as necessary. (IWQC-IMA)

Response: The term "indirect dischargers" refers to facilities that do not have a NPDES permit for wastewater discharge and instead discharge to another wastewater treatment facility. The often-used example is the dental office. IDEM does not have unequivocal authority to regulate indirect discharges; therefore, there will be no requirements imposed on dental offices through this rulemaking. Individual municipalities may regulate dental offices to lower a municipality's mercury according to its authority.

Comment: If mercury is environmentally dangerous then there should be a total ban on the use and sale of products containing mercury. Is the possibility of such a ban what the first notice is referencing with the discussion of directly regulating the indirect dischargers of mercury? Instead of imposing mercury limits for wastewater dischargers, the state could target mercury users/dischargers and regulate them through an inspection and permitting program. (BRO)

Response: IDEM is not proposing a rule that would place a total ban on the use and sale of products containing mercury since that is outside of the authority given to IDEM by the state legislature. IDEM does not intend to place requirements in the rule for a streamlined mercury variance that will directly target mercury users through an inspection and permitting program other than the existing NPDES program that includes permitting and inspecting.

Comment: The mercury variance rule needs to have a state goal of achieving the existing water quality standard for mercury in Indiana waters by a date certain. It is now possible to verify whether mercury limits are being met by using the EPA approved method 1631 that can detect mercury levels in the part per trillion range. The rule should provide IDEM with flexibility to assess the best way for a discharger to achieve the mercury standard in the shortest time possible if not

currently capable of meeting the standard. These options should include: (1) assessing the effectiveness of imposing alternative effluent limits for a limited duration to be followed by more stringent final effluent limits or issuing a compliance schedule with timetables for meeting the standard that extends beyond the expiration date of a particular permit; and (2) issuance of an individual variance based upon Indiana's existing rules. (SDC)

Response: In light of existing evidence that shows most dischargers are not capable of achieving compliance with final limits for mercury using any of the known treatment systems, IDEM is not comfortable establishing a firm deadline for requiring all dischargers to achieve compliance with the final limits for mercury.

Comment: New, low level, mercury analysis (EPA Method 1631) has demonstrated that the advanced wastewater treatment technologies currently utilized in Indiana are capable of achieving up to ninety-five to ninety-eight percent reduction of mercury in effluent. Despite this removal efficiency, these treated effluents are still incapable of consistently achieving the water quality criteria for mercury. Reverse osmosis and ion exchange appear to be the only remaining feasible treatment options. (INDP)

Response: These stated treatment results are consistent with IDEM's findings.

Comment: IDEM has been issuing NPDES permits for facilities that contain a three-year monitoring requirement with a fifty-nine (59) month overall compliance schedule. This approach delays the need for a variance for almost five years and facilities still feel obligated to apply for a variance whenever a limit becomes effective even if covered by a compliance schedule. The requirement to monitor for mercury should not be extended any longer than is necessary to demonstrate that mercury discharges exceed the standard. The proper mechanism for dealing with the issue is a variance rather than distorting the permit conditions. (IKE)

Response: Some permitted facilities have demonstrated a reasonable potential to exceed the final effluent limits for mercury. Since a streamlined mercury variance process has not been established in Indiana that would allow these facilities to receive a variance in a timely manner, IDEM has included a compliance schedule in the renewed permits that would allow the affected facilities to operate without being in violation of their permits. The purpose of this rulemaking is to develop a streamlined mercury variance process and rules so that affected facilities will have the ability to obtain a variance in as timely a manner as practical.

Comment: Indiana's power plants and industries should be encouraged to request individual variances or compliance schedules if and only if current mercury data using the approved test method confirm that they are not meeting the new mercury limits. Otherwise, they should be required to meet the new limits. (SDC)

Response: IDEM agrees with the concept that a discharger capable of meeting the final effluent limits for mercury does not need a variance and should not receive a variance. The draft rule establishes an interim mercury limit based on a review of the most recent mercury discharge information.

Comment: Indiana should consider patterning its streamlined mercury variance after Ohio's general mercury variance, codified at R. 3745-33-07(D)(10), which was developed because Ohio has determined that widespread social and economic impacts from end-of-pipe treatment necessary to comply with mercury limits below twelve (12) ng/L has been sufficiently demonstrated through a number of studies. Therefore, Ohio has streamlined the variance process to eliminate the requirement that the applicant make its own socio-economic demonstration. The general mercury variance is available to existing (as of June 22, 1999) dischargers who need relief from a monthly average mercury limit and will be able to comply with a 12 ng/L annual average by the time its permit expires. Permittees who need a variance from a maximum mercury limit or who cannot meet the annual average must apply for an individual variance. (IWQC-IMA, NIPSCO)

Response: IDEM and the workgroup have reviewed the approaches taken by Ohio and other states. Some concepts from other states' provisions have been included in the draft rule.

Comment: The often cited Ohio study of the high cost of end-of-pipe mercury removal is at least five years old. When contacted for more recent information and attempts to update the Ohio study, EPA says no more up to date information on end-of-pipe technology has been sought. Imposition of end-of-pipe controls should be retained as an alternative because they may stimulate better and cheaper controls if and when it is determined that pollution prevention and source reduction alone will not achieve the standard. (SDC)

Response: IDEM retains the ability to require the use of end-of-pipe treatment or controls to meet the effluent limits for mercury. However, until it has been demonstrated that an end-of-pipe treatment or control system can achieve the effluent limits for mercury in an economically achievable manner, a variance from the effluent limits for mercury is the only viable alternative available under the applicable statutes and rules.

Comment: In Ohio, permittees applying for the general mercury variance must have data collected using Method 1631 to support their applications and must also include a description of mercury reduction and elimination measures taken to date, as well as a Plan of Study (POS) to further identify and evaluate known and potential mercury sources. In addition, applicants must explain why there are no readily available means to meet their mercury limits without end-of-pipe controls. If the variance application is granted, the permit will include an initial monthly average limit based on historical performance and will require the development and implementation of a Pollutant Minimization Program (PMP). Implementation may take more than one permit term as long as the permittee is making reasonable progress. After the POS and PMP have been completed, the permittee must submit a certification of completion to be approved by the state. If the annual average mercury effluent concentration of 12 ng/L is exceeded after approval of that certification, the permittee will be required to submit an individual variance application or meet the WQBEL for mercury. If the POS and PMP have been completed (or the permit expires) and the permittee is still unable to meet the WQBEL, the general mercury variance may be renewed. The renewal permit will include the annual average limit of 12 ng/L, as well as a new monthly average limit based on performance data from the previous twelve months. Ohio chose 12 ng/L as an annual average limit based on the statewide human health criterion for mercury prior to 1997 after determining that establishing a cutoff of 12 ng/L would avoid antidegradation review for most applicants. However, if a permittee cannot meet the annual average limit primarily because of mercury concentrations in its intake waters, the requirement to meet the 12 ng/L may be removed. (IWQC-IMA, SDMC)

Response: IDEM and the workgroup have reviewed Ohio's rule and some of the concepts are included in the draft SMV rule.

Comment: The rulemaking for a streamlined mercury variance needs to recognize that new methodologies 1631 and 1669 are expensive and very few laboratories are certified to conduct this analysis; therefore, the maximum monitoring frequency should be established at once per month for publicly owned treatment works. The potential cost for monitoring influent and effluent using Methods 1631/1669 according to estimates sought from an independent testing laboratory is estimated at twenty-two thousand six hundred twenty ($22,620) dollars annually for weekly sampling frequency. (SDMC)

Response: IDEM does not dispute the stated cost estimate to sample and analyze for mercury using Methods 1631/1669. This type of information will be considered in the establishment of the appropriate monitoring frequency.

Comment: Michigan has established a multiple discharger variance (MDV) for mercury because the state has determined that imposition of end-of-pipe treatment technologies would result in an unreasonable economic burden on permittees. The state encourages the use of pollution prevention, source control, and other waste minimization programs instead of end-of-pipe treatment to address mercury discharges. The MDV is used in the re-issuance of permits containing mercury limits or monitoring provisions, and eliminates the requirement that the permittee submit feasibility, antidegradation, and risk characterization demonstrations. Michigan includes a MDV with a reissued permit without requiring an application from the permittee. The reissued permits generally allow at least one year of monitoring using Method 1631 before a new limit becomes effective. The MDV requires that a limit be set at a level currently achievable (ALCA), that a PMP be implemented, and that the discharger make reasonable progress toward achieving the WQBEL. Michigan has established the default LCA at 30 ng/L as a rolling 12-month average. Dischargers may request a higher limit based on at least twelve months of Method 1631 data demonstrating a higher LCA. Unlike in Ohio, however, permittees need not apply for an individual variance to obtain a higher limit. (IWQC-IMA)

Response: IDEM and the workgroup have reviewed Michigan's approach and some of the concepts are included in the draft SMV rule.

Comment: The Indiana streamlined variance rule needs to clarify that a discharger is still able to apply for an individual variance if qualification for or compliance with the statewide mercury permit conditions does not mesh with site-specific conditions. (INDP)

Response: Every NPDES permit holder is eligible to apply for an individual variance under existing rules. The passage of a rule for a streamlined mercury variance will not prevent any discharger from applying for an individual variance.

Comment: As with Ohio and Michigan, Wisconsin has determined that requiring treatment technology to meet water quality standards for mercury would result in substantial and widespread adverse social and economic impacts and that mercury source reduction activities are environmentally preferable to implementation of treatment technologies in many cases due to adverse environmental impacts in other media. Therefore, as of November 1, 2002, Wisconsin's regulations allow existing dischargers to apply for an alternative mercury effluent limitation when they apply for a renewal permit. Applicants for an alternative mercury limit must state the basis for concluding that treatment technology for mercury is impracticable, supply at least two years of mercury effluent monitoring data, and include a PMP plan. If an alternative limitation is granted, the permit will establish a daily maximum mercury limit equal to the upper 99th percentile of representative daily discharge concentrations and will require that the permittee implement a mercury PMP. Although it does not seem necessary, if Indiana wishes to establish a shorter-term daily maximum mercury limit, a percentile approach like that taken in Wisconsin is recommended. (IWQC-IMA)

Response: The draft rule establishes a procedure for establishing an interim mercury limit that is based on a review of the most available mercury effluent data from the facility.

Comment: IDEM should establish the mercury limit under variance using log-normal procedures found in the EPA Technical Support Document for Water Quality-Base Toxics Control, EPA/505/2-90-001. The monthly average would be based on the 95th probability percentile and the daily maximum would be based on the 99th probability percentile. (SDMC)

Response: This approach is one of many being considered as the basis for the interim effluent limits for mercury for a facility that obtains a mercury variance.

Comment: The EPA approved statewide mercury variance programs in Ohio, Michigan, and Wisconsin should be use in Indiana as a model supplemented with information specific to Indiana. The language developed for the Triennial Review draft rule published at second notice in February 1999 should by used for the statewide mercury variance. A long term average to qualify for a statewide mercury variance should be modified from the initially proposed 12 ng/l. as an annual average to 30 to 40 ng/l as a rolling average. Backsliding prohibition should not be an issue. (IWQC-2002, USS)

Response: IDEM and the workgroup have studied and will continue to study the streamlined variance processes and rules developed by other states and approved for use by EPA. IDEM will utilize the knowledge gathered by studying the other states rules and processes to develop Indiana's streamlined variance rule. As well, the rule language contained in the February 1999 Triennial Rule draft has been be considered in this rulemaking.

Comment: It is suggested that the Indianapolis 2001 updated individual variance application be used as the specific information to supplement the Ohio economic impact analysis to support a statewide mercury variance in Indiana. (INDP)

Response: All applicable information including the individual mercury variance application from the City of Indianapolis will be considered in the rulemaking.

Comment: Current Great Lakes system rules at 327 IAC 5-2-11.5(b) require that IDEM establish reasonable potential based on even an available single datum point, a process that does not account for the natural variability of data. Existing or extended NPDES permits may not contain a requirement for using the new, more sensitive EPA Method 1631, but if a municipality voluntarily measures effluent with the new procedure then data are available to perform a RPE (reasonable potential to exceed) analysis when the permit is renewed with permit limits then established based on the wildlife criteria. Based on this situation, any streamlined variance process must start with ample time for permittees to collect sufficient data to capture the variability of mercury in the effluent and influent data. An initial renewal period should be used for developing and implementing a PMP with specific measurable milestones. Six months prior to the expiration of the initial renewal period, IDEM will conduct a RPE analysis to determine if the permittee is eligible for a statewide variance. If the RPE analysis indicates the permittee can comply with the WQBELs, then the permittee is not eligible for a statewide variance. (SDMC)

Response: The current Great Lakes system rules do allow IDEM to establish the reasonable potential to exceed (RPE) water quality standards using just one datum point, and the multiplying factor is designed to account for the variability of data. For that reason, the multiplying factor decreases with an increase in the number of data points. It is correct to say that an RPE analysis will take place during a permit renewal, and, if mercury effluent data are available using Method 1631/1669, then IDEM is required to conduct an RPE analysis for mercury. IDEM encourages facilities to collect and analyze their effluent using Method 1631/1669 so that the RPE analysis can be conducted using as large a data set as possible. IDEM agrees that when a facility does not demonstrate a RPE for mercury then limits for mercury will not be placed in that facility's permit.

Comment: If mercury variance permit limits are necessary, those limits should be expressed as a rolling annual average. Mercury is regulated to prevent long-term effects on human health and wildlife from bioaccumulation of mercury in fish. Such bioaccumulation occurs

over time and only after methylation of any mercury in wastewater discharges. Permit limits should be expressed as a long-term average to correspond with the long-term effects sought to be prevented. (IWQC-IMA)

Response: The existing rule at 327 IAC 5-2-11(d) regarding the period of time addressed by permit limits states: "For continuous dischargers, all interim and final permit effluent limitations, including those necessary to achieve water quality standards, shall be stated, unless impracticable, as maximum daily and average monthly discharge limitations for all dischargers, except that, for POTWs average weekly and average monthly discharge limitations shall be used for BOD, TSS, and ammonia nitrogen.". The use of these established time periods must be shown to be impracticable before a different time period can be used.

Comment: The long-term (annual average) limit in each permit should be determined based on historical performance data analyzed using Method 1631. If insufficient low-level data is available, the variance process should allow the discharger adequate time to gather the necessary data before a lower limit is imposed. In the interim, a compliance level consistent with the existing compliance level of 500 ng/l should be applied. (IWQC-IMA)

Response: The draft rule provides for the establishment of an interim mercury limit based on a review of the most recently available mercury effluent data.

Comment: A streamlined variance should allow a long-term average effluent concentration higher than the current 12 parts per trillion (ppt). Valid low-level data since 1999 shows total mercury in Indiana municipal effluents ranging from 1 to 70 ppt. IDEM should establish a reasonable long-term average threshold to be used to qualify a discharger for application of the statewide mercury variance. (INDP)

Response: The draft rule provides for the establishment of an interim mercury limit based on a review of the most recently available mercury effluent data.

Comment: If Indiana elects to establish an initial default annual average mercury limit statewide, that limit should be determined by using existing discharge data to determine the level that most dischargers can comply with while implementing mercury reduction measures. A default limit should be in the range of 30 to 40 ng/L. Individual dischargers should be allowed to obtain a higher annual average limit upon submission of supporting historical performance and/or intake water data. (IWQC-IMA)

Response: The draft rule provides for the establishment of an interim mercury limit based on a review of the most recently available mercury effluent data.

Comment: Indiana's streamlined mercury variance process should allow dischargers to apply for a mercury variance at any time including in conjunction with a renewal permit application. In the alternative, Indiana may wish to consider adopting a procedure similar to Michigan's, which does not require an application but is automatically applied during the permit renewal process. If the majority of permittees must seek variances, this option may be preferable to requiring applications because it promotes efficiency. (IWQC-IMA)

Response: The draft rule does allow submission of an SMV application at any time. At renewal, the SMV application can accompany the renewal application.

Comment: Dischargers should not be required to demonstrate why implementation of treatment technology is not feasible and should not be required to demonstrate widespread social and economic impact of implementing treatment technology. Numerous studies have demonstrated the feasibility issues of mercury treatment technologies and their socioeconomic effects have been sufficiently demonstrated. It is therefore unnecessary to require each discharger to perform the same analysis. (IWQC-IMA)

Response: The draft SMV rule is consistent with this comment.

Comment: Indiana should not require individual dischargers to submit antidegradation demonstrations when applying for the streamlined mercury variance because of the widespread inability to comply with low-level mercury limitations. (IWQC-IMA)

Response: The draft rule language does not require submission of an antidegradation requirement.

Comment: The mercury limits established pursuant to the variance process should be renewable as long as the discharger continues to make reasonable progress toward meeting water quality standards through implementation of such feasible, cost-effective mercury reduction measures as are available. (IWQC-IMA)

Response: The draft rule language establishes the procedure for obtaining a renewal that is consistent with this comment.

Comment: How is human health or fish life benefitted by requiring dischargers to perform extensive research projects or costly variance procedures? (BRO)

Response: This rule is intended to provide a mechanism consistent with the federal Clean Water Act that addresses the difficulty of complying with the required mercury limit.

Comment: Pollutant Minimization Plans (PMPs) are a common element of many variance programs. However, as it concerns a streamlined mercury variance process, if PMPs are required, they should not impose onerous requirements on wastewater dischargers. It is unfair and unnecessary to saddle already strained point sources with expensive PMP requirements that will likely have no significant affect on mercury in fish. (IWQC-IMA, NIPSCO)

Response: IDEM does not intend to impose onerous requirements on wastewater dischargers as part of a pollutant minimization program. IDEM recognizes that mercury levels in fish are not attributable to only point source dischargers. IDEM is working under the authority of the Clean Water Act to implement the NPDES Permit program in accordance with federal regulations and statutes.

Comment: The rule must require PMPs that are actually implemented for dischargers of mercury. In fact, PMPs should be a requirement of all dischargers of bio-accumulating chemicals of concern (BCCs). (SDC)

Response: The draft rule requires the development of a PMPP to assure that all reasonable efforts are being made to minimize mercury discharges.

Comment: A streamlined mercury variance rule should avoid detailed planning processes that delay the actual implementation of reasonable steps to eliminate mercury form getting into the sewer system. Planning should be reserved for those facilities that make progress in reducing mercury in the influent but still have average levels over twenty (20) parts per trillion in the outfall at the end of the first streamlined variance period. An individual variance application for mercury should be required for facilities not showing demonstrated progress in reducing mercury levels in the influent at the end of the first streamlined variance period. (IKE)

Response: These suggestions were discussed in the workgroup rulemaking discussions.

Comment: If the streamlined mercury variance process includes a PMP requirement, the language should be flexible enough to account for the differences between dischargers. Ohio's PMP approach is a good model and consists of the following three elements: "1) A control strategy for locating, identifying, and, where cost-effective, reducing the sources of the pollutant that contribute to discharge levels. A PMP is not necessarily related to pollution prevention, but examining pollution prevention alternatives is encouraged. PMP strategies may include any cost-effective process for reducing pollutant levels,

including pollution prevention, treatment, best management practices or other control mechanisms; 2) monitoring to track the progress of the PMP; and 3) an annual report of the results of the PMP.". Dischargers should be allowed to extend PMP implementation into subsequent permit renewal terms rather than be required to complete the plan during a single permit cycle. (IWQC-2002, IWQC-IMA)

Response: The draft rule is generally consistent with this comment. In Indiana, there is a statutory constraint on the renewal of variances to water quality standards.

Comment: IDEM should assist municipalities in designing source surveys and pollution prevention programs, including finding funding for the programs, conduction community outreach programs, and coordinating mercury reduction within the land, air, water quality, drinking water, and pollution prevention departments of IDEM and with other state and federal agencies. (INDP)

Response: IDEM plans to assist municipalities in the design of PMPs. IDEM agrees that mercury reduction efforts should be coordinated between all affected offices within IDEM.

Comment: U.S. Geological Survey studies find only a moderate correlation between total mercury and the mercury content in fish. (*A National Pilot Study of Mercury Contamination of Aquatic Ecosystems Along Multiple Gradients: Bioaccumulation in Fish*, Dave Krabbenhoft, *et. al*. (2001)). The studies indicate that methylmercury in the water column correlates best with mercury content in fish. Therefore, regulating total mercury likely is not a good measure of potential environmental harm. In the above referenced study there was no correlation between total mercury in sediments and mercury content in fish. Also, the initial results from the Metaalicus (Mercury Experiment to Assess Atmospheric Loading in Canada and the U.S.) project may indicate that direct deposition mercury is more bio-available than mercury input from the watershed. In other words, mercury from point sources may not have a significant affect on the mercury content in fish. (IWQC-IMA)

Response: This draft rule focuses on providing individual wastewater direct dischargers having more than the allowable amount of mercury in their wastewater with a mechanism for addressing the situation and directing their efforts toward meeting the required mercury effluent limit.

Comment: Certain stakeholders have proposed that IDEM should require reductions in mercury emissions from air sources as a prerequisite either for adopting a streamlined mercury variance process or for dischargers to be eligible for the variance. Air emission reductions cannot be mandated by the Water Pollution Control Board, which only possesses authority to adopt rules concerning water quality and pollution. (*See generally*, Ind. Code ' 13-18-3, which addresses the powers and duties of the Water Pollution Control Board.) Therefore, IDEM should not include this requirement in its mercury variance process. (INDP, IWQC-IMA, BRO)

Response: IDEM agrees that the air pollution control board has the authority to address mercury air deposition and is the correct board to address such matters. The water pollution control board, in accordance with IC 13-18-3-1 and the CWA Sec. 1251, has the authority to address only the discharge of pollutants into water. Reductions in air sources are not being considered as an element of a SMV.

Comment: The first notice ignores the contributions of mercury to Indiana waterways from nonpoint sources such as storm water run-off, land application of farm biosolids, and air deposition of mercury primarily from power plants. Indiana needs to develop a comprehensive multimedia mercury policy that utilizes regulation, encourages cooperation, and includes public education to ultimately reduce mercury in our water. It is not beyond Indiana's power to begin a multimedia strategy that engages all of IDEMs rulemaking boards in developing such a multimedia process. (SDC)

Response: The streamlined mercury variance rule will only be directed toward point source dischargers that hold NPDES permits because they are the facilities that need a variance from the water quality standards for mercury. IDEM recognizes that there are other sources of mercury, but they do not need a variance from the water quality standards for mercury.

Comment: IDEM records show that Indiana had more than one billion gallons of bypasses and sanitary sewer overflows (SSO) in 2002. In the first eight months of 2002, the combined sewer overflows (CSO) totaled about ten billion gallons. Highest priority should be placed on indirect dischargers to cities that have more than a few CSOs, SSOs, or bypasses whether these events occur in wet weather or not. The estimated removal costs in the published first notice ignore the fact that much of the mercury is bypassing treatment. Getting bypasses, SSOs, and CSOs through biological treatment will remove a great deal of mercury at costs far below those cited in the notice. These sewage discharges are already subject to a plan to get them to receive biological treatment. The goal of any rulemaking should be to reduce the levels of mercury in these untreated discharges until municipalities get them under control consistent with the Long Term Control Plan and other legal requirements. (IKE)

Response: IDEM concurs that PMPs developed by municipalities with CSOs and SSOs should address the mercury being discharged by these point sources.

Comment: Are mercury monitoring and limits in wastewater consistent with the land application program? Are the limits of the land application of biosolids going to be affected? If dischargers do recover mercury, how will it be disposed? Are we creating a larger danger of human health and environmental impairment by concentrating the metal instead of presently allowing it to exist in the environment while potential sources of mercury are identified and reduced? (BRO)

Response: According to IDEM's Office of Land Quality (OLQ) there is not a problem with the levels of mercury in municipal biosolids. OLQ has provided the following: The ceiling limit for mercury in biosolids that are land applied is 57 mg/kg on a dry weight basis. For a biosolid to meet "exceptional quality" criteria, it must contain less than 17 mg/kg mercury. For the year 2002, the average mercury concentration in biosolids that were land applied was less than 2.3 mg/kg. This doesn't include biosolids that were under the marketing and distribution program or any of the industrial waste products regulated by OLQ. In the case of an analysis result that is a non-detect, IDEM requires the detection limit to be used. This would mean 2.3 mg/kg would be worst case, but the real number could be much lower. OLQ has recently implemented a rule change that requires mercury detection limits be no more than 2 mg/kg; therefore, future annual average mercury concentrations will be lower and closer to actual values present. OLQ reports rarely seeing actual concentrations even approaching the exceptional quality limit or an analysis that exceeded the ceiling limit unless it was just a detection limit problem.

Comment: EPA has issued a "desk statement" that contains the agency's official response, as follows: "Domestic control programs, like the Clear Skies Initiative and existing MACT Standards for municipal and medical waste incineration, will decrease mercury contamination of surface waters in the United States. In many locations, full implementation of Clear Skies and the MACT standards will be sufficient to eliminate health advisories and meet water quality standards. In some locations, however, the contribution of sources outside the United States will have to be decreased if mercury levels are to be brought below water quality standards.". It is notable that this statement from EPA makes no mention of the need to reduce mercury in wastewater discharges. (IWQC-IMA)

Response: Point source discharges are acknowledged as but one of the contributors to the problem of mercury levels in fish. Under the authority granted to the water pollution control board, this rulemaking is underway to provide a streamlined mechanism to address situations in which dischargers may not meet their required mercury effluent limit.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#03-130(WPCB) [Mercury SMV]
MaryAnn Stevens
Rules Section
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, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana. Comments also may be submitted 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. Please note it is not necessary to follow a faxed comment letter with another sent through the postal system.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by June 30, 2004.

Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or technical information concerning the streamlined mercury variance may be obtained from Steve Roush, Industrial Permit Section, Office of Water Quality, 317-232-8706 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 5-3.5 IS ADDED TO READ AS FOLLOWS:

Rule 3.5. Streamlined Mercury Variance Requirements and Application Process

327 IAC 5-3.5-1 Purpose

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish a process and application requirements for obtaining a streamlined variance from a water quality criterion used to establish a water quality-based effluent limitation established for mercury in a National Pollutant Discharge Elimination System (NPDES) permit. *(Water Pollution Control Board; 327 IAC 5-3.5-1)*

327 IAC 5-3.5-2 Applicability

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-14-8-9; IC 13-18-4

Sec. 2. (a) A streamlined mercury variance (SMV) shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has a NPDES permit in effect containing a discharge limitation for mercury that cannot be achieved by the facility.

(b) Application for a variance under this rule meets the requirements for a variance under IC 13-14-8-9 and rules adopted by the board.

(c) A SMV is not available for the following:
(1) New or recommencing Great Lakes system dischargers except as provided under 327 IAC 2-1.5-17(a)(3).
(2) Applicants seeking an interim limit whose effluent contains mercury at an average concentration greater than thirty (30) ng/l (parts per trillion).
(Water Pollution Control Board; 327 IAC 5-3.5-2)

327 IAC 5-3.5-3 Definitions

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 3. In addition to the definitions contained in IC 13-11-2 and 327 IAC 5, the following definitions apply throughout this rule:
(1) "Department" means the Indiana department of environmental management.
(2) "Facility" means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. For a municipality, "facility" means a publicly owned treatment works (POTW).
(3) "Pollutant minimization program" or "PMP" means a program developed by a SMV applicant to identify and minimize the discharge of mercury into the environment.
(4) "Pollutant minimization program plan" or "PMPP" means the plan for development and implementation of the PMP.
(5) "Publicly owned treatment works" or "POTW" means a treatment works as defined by Section 212(2) of the Federal Water Pollution Control Act owned by the state or a municipality as defined by Section 502(4) of the Federal Water Pollution Control Act.
(6) "Streamlined mercury variance" or "SMV" means a process established under this rule for obtaining a variance from the water quality criterion used to establish a water quality-based effluent limitation (WQBEL) established for mercury in a NPDES permit.
(Water Pollution Control Board; 327 IAC 5-3.5-3)

327 IAC 5-3.5-4 Initial SMV application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 4. (a) The initial SMV application shall be submitted on forms provided by the department.

(b) An applicant for a SMV may submit the application as a part of an application for a:
(1) new;
(2) renewed; or
(3) modified;
NPDES permit.

(c) The initial SMV application must include all information required under section 9 of this rule, PMPP requirements.

(d) Upon receipt of a complete SMV application, the department will publish a notice of completeness and availability of the SMV in accordance with section 5 of this rule, public notice of SMV application.

(e) In order for an application to be considered complete, it must contain all information required under section 9 of this rule, PMPP requirements. *(Water Pollution Control Board; 327 IAC 5-3.5-4)*

327 IAC 5-3.5-5 Public notice of SMV application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 4-21.5; IC 13-18-4

Sec. 5. (a) The department shall publish notice of each complete SMV application for public comment:
(1) in the newspaper with the greatest circulation in the city or county of the applicant's location; and
(2) with a thirty (30) day public comment period.

(b) Public notice may be held simultaneously with the public notice procedures of a new, renewed, or modified NPDES permit.

(c) The department may hold a public hearing on the complete SMV application if a request is received during the public comment period. The public hearing may be held simultaneously with the public hearing or a new, renewed or modified NPDES permit.

(d) The department shall consider public comments received during:
(1) the public comment period; and
(2) the public hearing, if one is held.

(e) If the SMV application meets the requirements of this rule, the department shall incorporate the SMV into the NPDES permit in accordance with this rule within ninety (90) days, unless the applicant agrees to a longer time frame, following the close of the later of the following:
(1) The public comment period.
(2) The public hearing.

(f) A final determination under subsection (e) is an appealable decision under IC 4-21.5. *(Water Pollution Control Board; 327 IAC 5-3.5-5)*

327 IAC 5-3.5-6 Issuance of SMV

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-14-8-9; IC 13-18-4

Sec. 6. When a SMV is issued under this rule, the SMV shall be incorporated as a condition of the applicant's NPDES permit through issuance, renewal, or modification of the NPDES permit. The SMV remains in effect until the NPDES permit expires under IC 13-14-8-9. *(Water Pollution Control Board; 327 IAC 5-3.5-6)*

327 IAC 5-3.5-7 Renewal of SMV

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-14-8-9; IC 13-18-4

Sec. 7. (a) An eligible applicant may apply for a renewal of the SMV:
(1) one hundred eighty (180) days prior to the expiration of its NPDES permit; or
(2) within one hundred eighty (180) days after issuance of a revised NPDES permit that establishes a revised mercury discharge limit based on the water quality criteria.

(b) The department may renew an initial SMV in accordance with IC 13-14-8-9 if the applicant demonstrates that implementation of the PMPP has achieved progress toward the goal of reducing mercury from its discharge.

(c) A renewal application shall contain the following:
(1) All information required for an initial SMV application under section 4 of this rule, including revisions to the PMPP, if applicable.
(2) A report on implementation of each provision of the PMPP.
(3) An analysis of the mercury concentrations in the influent and effluent for the two (2) year period prior to the SMV renewal application.
(4) A proposed alternative mercury discharge limit, if appropriate, based on the most recent two (2) years of representative sampling information from the facility.

(d) A PMPP must be revised if implementation of the original PMPP does not lead to demonstrable progress in minimizing the discharge of mercury. If the applicant can provide information, as part of a revision to a PMPP, that demonstrates there is no known reasonable additional action that will reduce mercury in the influent or effluent, the PMPP may remain as previously approved.

(e) A renewal SMV shall be issued in accordance with the requirements for the issuance of an initial SMV under this rule. *(Water Pollution Control Board; 327 IAC 5-3.5-7)*

327 IAC 5-3.5-8 SMV interim discharge limitation

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 8. (a) The interim limit for mercury discharge during the duration of a SMV shall be based on representative effluent data that has been analyzed using Analytical Method 1631. The interim limit shall be expressed as a twelve (12) month rolling average that is derived by using the highest daily value for mercury from a data set that includes a minimum of ten (10) data points equally spaced over a twelve (12) month period up to a maximum period using the most recent two (2) years of data. The highest daily value will become the value for the twelve (12) month rolling average. A SMV is not available to an applicant that requests an interim limit above thirty (30) ng/l.

(b) The interim discharge limit shall be evaluated upon receipt of a renewal SMV application based upon available, valid, and representative data of the effluent levels for mercury collected and analyzed over the most recent two (2) year period. Data collection and analyses must be done according to the analytical method approved by the department. *(Water Pollution Control Board; 327 IAC 5-3.5-8)*

327 IAC 5-3.5-9 PMPP requirements

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 9. (a) A PMPP for a facility must be submitted with an application for a SMV. The PMPP must contain the following:

(1) Results of a preliminary inventory of potential uses and sources of mercury in all buildings and departments and a plan and schedule for providing the department results of a complete inventory.

(2) Preliminary identification of known mercury-bearing equipment, waste streams, and mercury storage sites.

(3) A list of planned activities to be conducted to eliminate or minimize the release of mercury to the water. The list of planned activities must include, at a minimum, the following:

(A) A review of purchasing policies and procedures.

(B) Necessary training and awareness for facility staff.

(C) Evaluation of alternatives to the use of any mercury-containing equipment or materials.

(D) Other specific activities related to the type of mercury on-site.

(E) An identification of the facility's responsibilities under P.L.225-2001.

(4) For each activity specified in subdivision (3), the plan must contain the goal to be accomplished, a measure of performance, and a schedule for action.

(5) Available mercury influent and effluent data and biosolids, if applicable, for the two (2) year period preceding the SMV application.

(6) Identification of the resources and staff necessary to implement the PMPP.

(7) Proof of completion of public notice activities required under this section.

(8) A schedule for submission of annual reports describing the facility's progress toward:

(A) fulfilling each of the requirements of the PMPP;

(B) results of mercury monitoring; and

(C) implementation of each planned activity to reduce or eliminate mercury from the facility's water.

Upon approval of the SMV, the applicant must submit an annual report according to the schedule in the PMPP.

(b) In addition to subsection (a), a PMPP for a publicly owned treatment works must include the following:

(1) Results of a preliminary evaluation of possible mercury sources in the facility's influent and a plan and schedule for providing the department results of a complete evaluation. The evaluation shall include, at a minimum, the following:

(A) Medical facilities, for example, the following:

(i) Hospitals.

(ii) Clinics.

(iii) Nursing homes.

(iv) Veterinarians.

(B) Dental clinics.

(C) Public and private educational laboratories.

(D) General industry.

(E) Residential and retail contributions of mercury, for example, the following:

(i) Thermostats.

(ii) Automobile and appliance switches.

(iii) Dairy manometers.

(iv) Others specific to the community served.

(F) An identification of the responsibilities under P.L.225-2001 for the significant industrial users for the POTW.

(2) A list of planned activities designed to reduce or eliminate mercury loadings from the sources identified in subdivision (1).

(3) For each activity specified in subdivision (2), the plan must contain the goal to be accomplished, a measure of performance, and a schedule for action.

(4) In addition to activities required under subsection (a)(3), activities must also include an education program for the facility employees and the public within the service area of the facility.

(c) Prior to submitting the draft PMPP to the department as part of the SMV application, an applicant shall publish notice of the availability of the draft PMPP in a daily or weekly newspaper of general circulation throughout the area affected by the discharge. The applicant shall also post a copy of the information required by this section at the principal office of the municipality or political subdivision affected by the facility or discharge and at the United States post office and, if one is available, library serving those premises.

(d) All notices published under this section shall contain the following information:

(1) The name and address of the applicant that prepared the PMPP.

(2) A general description of the elements of the PMPP.

(3) A brief description of the activities or operations that result in the discharge for which a SMV is being requested.

(4) A brief description of the purpose of this notice and the comment procedures.

(5) The name of a contact person, a mailing address, an internet address, if available, and a telephone number where interested persons may obtain additional information and a copy of the PMPP.

(e) The applicant shall provide a minimum comment period of thirty (30) days and include a copy of the comments received and the applicant's responses to those comments in the SMV application submitted to the department.

(f) The department shall consider a PMPP to be complete if it meets the requirements of this section. *(Water Pollution Control Board; 327 IAC 5-3.5-9)*

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 September 8, 2004, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board (board) will hold a public hearing on amendments to rules concerning water quality.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of this rule by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the drafted 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 MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 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) 233-1785 (V) or (317) 232-7589 (TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method
Deputy Commissioner
Indiana Department of Environmental Management

TITLE 329 SOLID WASTE MANAGEMENT BOARD

SECOND NOTICE OF COMMENT PERIOD
#02-11(SWMB)

DEVELOPMENT OF NEW RULES CONCERNING COMPOSTING OF SOURCE-SEPARATED BIODEGRADABLE SOLID WASTE AND VEGETATIVE MATTER

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule at 329 IAC 14 concerning the composting of source-separated biodegradable solid waste and vegetative matter. By this notice, IDEM is soliciting public comment on the draft rule language including suggestions for specific amendments to the draft rule language. IDEM seeks 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: February 1, 2002, Indiana Register (25 IR 5).

CITATIONS AFFECTED: 329 IAC 14.

AUTHORITY: IC 4-22-2; IC 13-14-9; IC 13-14-8-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Composting of source-separated biodegradable solid waste and vegetative matter is addressed in two ways under current IDEM statutes and rules. IC 13-20-10 governs composting of vegetative matter (grass clippings, wood chips, etc.) utilizing a registration process. Composting of other source-separated biodegradable solid waste such as sewage sludge, vegetable food waste, and animal manure would be considered processing under the solid waste processing rule (329 IAC 11) where a permit is required. IDEM has considered permitting non-vegetative composting facilities utilizing the solid waste processing rule. This is costly, cumbersome, and overly restrictive. It is too much regulation for a facility with a limited capacity for detrimental impact on the environment. IDEM has also considered maintaining the status quo. This creates problems because not all similar facilities are treated equally and because non-vegetative composting can adversely affect the environment.

A new rule is needed to regulate the composting of various types of source-separated biodegradable solid waste including the composting of vegetative matter regulated under IC 13-20-10. The solid waste processing rule (329 IAC 11) will be proposed to be amended in another rulemaking to exclude the activities to be regulated under this new rule. Persons who produce or generate a source-separated biodegradable solid waste that may be composted may be affected by this rule. Persons who receive or store this type of material with the intent to compost may also be affected by this rule.

Relevant issues in the development of the rule include:

- Definitions of terminology
- Exclusions of activities and operations
- Classification of facilities
- Registration requirements
- Location and siting
- Design and construction standards
- Operational requirements
- Reporting and record keeping requirements
- Closure
- Financial responsibility and assurances
- Certification of facility operators and accreditation of training providers
- Other related issues

This proposed rule would have several benefits. It would encourage the utilization of source-separated biodegradable solid waste in the composting process. This would minimize disposal of these wastes in landfills. It would allow Class 2 and Class 3 type facilities to register under this rule and not obtain a processing facility permit under 329 IAC 11. The cost of disposal would be saved and the waste would be processed into an environmentally friendly product with economic benefit to the producer. The facilities would be regulated in a consistent manner. Financial assurance will guarantee that no community will be left with an economic and environment burden because of improper closure or abandonment of one of these facilities.

IDEM requests the submission of comments and suggestions including any specific language that might be incorporated into the proposed rule.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL elements). Currently, few elements of the proposed rule are covered by any federal law. The facility siting requirements, excluding setback distances, are partially addressed in 40 CFR 257.3. Many elements in the proposed rule relating to Class I facilities are now regulated by state law (IC 13-20-10). The elements listed below impose a restriction or requirement not covered by federal law. They present a fiscal impact to the regulated community over and above the existing costs of doing business.

NIFL Element A: The registration of composting facilities not regulated by IC 13-20-10. 329 IAC 14-5

(1) Facilities that currently compost waste other than vegetative matter are not required to registered under the existing compost facility regulation but obtain a processing facility permit under 329 IAC 11. The state is unaware of the existence of many of these facilities. These facilities may use unsound composting practices and procedures that create an environmental threat to the surrounding environment and community or transfer that threat via the distribution of compost containing environmentally harmful components. The purpose of the registration process is to make the state aware of all facilities that are or wish to compost source-separated biodegrad-

able solid waste. By initiating this registration process, the state can monitor facilities to insure that environmental hazards are minimized. These rules can also protect communities from the environmentally unsafe or nuisance conditions that could be associated with these facilities.

(2) The estimated fiscal impact of this element is a result of the plan preparation costs involved in the registration process. The cost of plan preparation to satisfy the registration requirements could range between $1,000 and $4,000 depending on site-specific variables. The process of preparing the registration forms, writing the plans, and acquiring the necessary data could be done "in-house" or by an external consultant. Data analysis costs are site specific based on geographic and geological variables. Existing facilities are exempt from this cost. An existing facility that continued to operate in the same class distinction was determined to have an approximate re-registration cost of one thousand ($1,000) dollars. A new facility or facility planning to move to a Class II or Class III facility status would have an approximate registration cost of four thousand ($4,000) dollars.

The benefits of this element are to insure that proposed composting sites and facilities are well planned and placed in environmentally safe and secure locations. Registration requirements necessitate a thorough analysis of the business operation practices and procedures. Potential environmental hazards and harmful practices can be eliminated.

Facilities currently registered as a composting facility and regulated by IC 13-20-10 will not need to register under this proposed rule until their current registration expires. The exception to this requirement is (1) if an existing facility wishes to compost source-separated biodegradable solid waste in conjunction with the composting of vegetative matter or (2) if an existing facility reported processing over ten thousand (10,000) short tons of compostable matter to the commissioner in the last annual report required by IC 13-20-10 or this article. Based on data from the last reporting period, thirty-one (31) existing facilities would fall under the first exception and require a new registration under Class II or Class III. In addition, eight (8) of the existing facilities would require financial assurance based on their volume of material processed. This is a total of thirty-nine (39) existing facilities that must reregister.

Based on an analysis of past data, IDEM projects an average increase of ten (10) new sites registering every year. Of the existing facilities, seventy-seven (77) would not need to re-register assuming they do not dramatically increase their capacity or add Class II and/or Class III source-separated biodegradable solid wastes to their compost. The life of the current registration is five (5) years. We can project that one-fifth or twenty percent (20%) of the current population of seventy-seven (77) Class I facilities registration will expire every year. This equates to fifteen (15) re registrations of existing facilities every year plus the projected ten (10) new facilities means a total of twenty-five (25) registrations every year except the first year of the new regulation that would include thirty-nine (39) of the existing facilities required to submit a new registration immediately.

To project the fiscal impact of this element, we extend this out over the new rule's lifecycle which means the rule will expire in seven (7) years unless readopted. This population projection is displayed in the following table. 1-A

Fiscal Element A: The registration of composting facilities

Year	Existing	New	Total	Subtotal costs	Total costs
Initial	39 CI,CII,CIII		39	39 × $4,000 existing	$156,000
	15 renewal CI		15	15 × $1,000 existing	$15,000
		10	10	10 × $4,000 new	$40,000
1	15 existing CI		15	15 × $1,000 existing	$15,000
		10	10	10 × $4,000 new	$40,000
2	15 existing CI		15	15 × $1,000 existing	$15,000
		10	10	10 × $4,000 new	$40,000
3	15 existing CI		15	15 × $1,000 existing	$15,000
		10	10	10 × $4,000 new	$40,000
4	15 existing CI		15	15 × $1,000 existing	$15,000
		10	10	10 × $4,000 new	$40,000
5	15 existing CI		15	15 × $1,000 existing	$15,000
		10	10	10 × $4,000 new	$40,000
6	54 existing		54	54 × $1,000 existing	$54,000
		10	10	10 × $1,000 new	$10,000
7	10 existing		10	10 × $1,000 existing	$10,000
		10	10	10 × $4,000 new	$40,000
Totals	193	80	273		$590,000

(3) IDEM utilized a variety of materials in the development of this element. Data from existing facilities composting vegetative matter was analyzed to determine if they would continue to operate as a Class I facility or be included as a Class II or Class III facility. Rules in other land quality programs were used to provide the level of detail needed for the registration application. States in regional proximity were surveyed to collect data on existing practices and procedures employed in the regulation process of composting facilities. Several consultants experienced in the environmental assessment of potential composting sites were consulted on the cost of preparing an application and all necessary components for the registration process.

Below is a list of materials utilized in the development of the NIFL element (if applicable) and the availability of relevant material for public inspection.

A. Health criteria: Protection of surface soil and protection of ground water. Data from existing programs; available at OLQ, Rules, Planning and Outreach Section.

B. Analytical methods: Data from existing programs available at the OLC, Rules, Outreach and Planning Section.

C. Treatment technology: This type of material was not applicable to the development of the NIFL element.
D. Economic impact data: Data from existing programs available at the OLC, Rules, Outreach and Planning Section.
E. Environmental assessment data: Data from existing programs available at the OLC, Rules, Outreach and Planning Section
F. Analysis of methods to effectively implement the proposed rule: Data from existing programs available at the OLC, Rules, Outreach and Planning Section.
G. Other background data: Data from existing programs available at the OLC, Rules, Outreach and Planning Section.

NIFL Element B: Design and siting of composting facilities 329 IAC 14-6 & 329 IAC 14-7

(1) Design and siting standards for composting facilities are crucial to protect the quality of Indiana's environment and protect the public health, safety, and well-being of its citizens. The inappropriate siting of a composting facility has lead to numerous health and safety concerns. Nuisance conditions such as dust, noise, and odor can affect the quality of life for those in proximity of a composting site. Unsound siting can contaminate ground and surface water. These design and siting elements were instituted to prevent violations of state and federal environmental and natural resources laws. These elements also help to insure a safe operation.

(2) The estimated fiscal impact of this component could range between $9,550 and $200,450 depending on site-specific variables. The process of site design and preparation will depend on location and waste materials to be utilized. Data analysis costs are site specific based on geographic and geological variables. Costs of design and siting are also determined by the classification of the facility where a Class III facility is much more expensive to design and site than a Class I facility.

The benefits of this element insure that proposed composting sites and facilities are well planned and placed in environmentally safe and secure locations because siting requirements necessitate a through analysis of the proposed location.

(3) IDEM utilized a variety of materials in the development of this element. States in regional proximity were surveyed to collect data on existing practices and procedures employed in the regulation process of composting facilities. Several consultants experienced in the environmental assessment of potential composting sites were consulted on the cost-benefit analysis utilized to determine the feasibility of potential sites.

Below is a list of materials utilized (if applicable) and their availability for public inspection.

A. Health criteria: This type of material was not applicable to the development of the NIFL element.
B. Analytical methods: The information was based on engineering and compliance knowledge for registered composting facilities; available at OLQ, Rules, Planning and Outreach Section.
C. Treatment technology: This type of material was not applicable to the development of the NIFL element.
D. Economic impact data: This type of material was not applicable to the development of the NIFL element.
E. Environmental assessment data: This type of material was not applicable to the development of the NIFL element.
F. Analysis of methods to effectively implement the proposed rule: This type of material was not applicable to the development of the NIFL element.
G. Other background data: This type of material was not applicable to the development of the NIFL element.

NIFL Element C: Operational standards for composting facilities 329 IAC 14-8

(1) Improperly operated compost facilities can cause serious harm to the environment. Facilities must be operated to negate all potential hazards. Many potential environmental concerns can be minimized, and environmentally safe and effective compost can be produced, by using proper operational standards and techniques.

(2) The estimated fiscal impact of this element could range between $5,090 and $188,800 depending on several facility-specific variables. The process of determining the fiscal impact of this element will depend on the composting technique utilized and solid waste to be used.

(3) IDEM utilized a variety of materials in the development of this element. Data from existing facilities that compost vegetative matter was analyzed to determine the elements crucial to the production of environmentally safe compost. States in regional proximity were surveyed to collect data on existing practices and procedures employed in the regulation process of composting facilities.

Below is a list of materials utilized in the analysis of this element (if applicable) and their availability for public inspection.

A. Health criteria: This type of material was not applicable to the development of the NIFL element.
B. Analytical methods: The information was based on engineering and compliance knowledge for registered composting facilities; available at OLQ, Rules, Planning and Outreach Section.
C. Treatment technology: This type of material was not applicable to the development of the NIFL element.
D. Economic impact data: This type of material was not applicable to the development of the NIFL element.
E. Environmental assessment data: This type of material was not applicable to the development of the NIFL element.
F. Analysis of methods to effectively implement the proposed rule: This type of material was not applicable to the development of the NIFL element.
G. Other background data: This type of material was not applicable to the development of the NIFL element.

NIFL Element D: Record keeping and reporting requirements 329 IAC 14-9

(1) Proper record keeping and reporting will aid IDEM in making a determination if a facility is not operating according to performance standards outlined in the proposed rules. By analysis of the reporting data provided to IDEM, a potential compliance problem can be eliminated. There is no applicable federal law to provide this protection for the state of Indiana.

(2) The estimated fiscal impact of this element could range between $11,200 and $56,000 depending on facility-specific variables. The process of determining the fiscal impact of this element will depend on the composting techniques utilized and solid waste to be used. The size of the facility and the amount of waste processed and compost produced will have a major impact on the fiscal impact of this element. The major benefit of this element will allow IDEM to provide early detection of any potential environmentally threatening problem.

(3) IDEM utilized information provided by Purdue University on the appropriate information to require in the record keeping section of the rule and the cost of maintaining this information.

Below is a list of materials utilized in the analysis of this element (if applicable) and their availability for public inspection.

A. Health criteria: This type of material was not applicable to the development of the NIFL element.
B. Analytical methods: The information was based on engineering and compliance knowledge for registered composting facilities; available at OLQ, Rules, Planning and Outreach Section.
C. Treatment technology: This type of material was not applicable to

the development of the NIFL element.

D. Economic impact data: This type of material was not applicable to the development of the NIFL element.

E. Environmental assessment data: This type of material was not applicable to the development of the NIFL element.

F. Analysis of methods to effectively implement the proposed rule: This type of material was not applicable to the development of the NIFL element.

G. Other background data: This type of material was not applicable to the development of the NIFL element.

NIFL Element E: Cost of Financial Assurance 329 IAC 14-11

(1) The use of a financial assurance mechanism will insure that the funds will be available to properly close any facility that is not properly closed under a closure plan. If a facility were to terminate business without proper closure, the community and the state of Indiana would be faced with an environmental problem and the expense of cleaning up and closing the facility. There is no current federal law that would protect the citizens of Indiana and the environment should this situation arise.

(2) The estimated fiscal impact of this element will depend on several facility-specific variables. The most important variable is the amount of solid waste processed. Fiscal impact surveys performed by IDEM indicate the financial assurance cost to be equivalent to two and one-half (2.5%) percent of the maximum capacity of solid waste and other materials on-site (short tons) multiplied by $50/ton. The estimated disposal fee is fifty dollars ($50) per ton. Financial assurance costs would be approximately $1.25 per ton. There is no current federal law to require this financial assurance.

(3) IDEM utilized materials in the development of this element. The information was obtained from banking and financial institutions and current financial assurance documents on file with the department.

Below is a list of materials utilized in the analysis of this element (if applicable) and their availability for public inspection.

A. Health criteria: This type of material was not applicable to the development of the NIFL element.

B. Analytical methods: Banking and Financial Institutions providing financial assurance to the solid waste industry were called to determine what the cost would be; available at OLQ, Rules, Planning and Outreach Section.

C. Treatment technology: This type of material was not applicable to the development of the NIFL element.

D. Economic impact data: This type of material was not applicable to the development of the NIFL element.

E. Environmental assessment data: This type of material was not applicable to the development of the NIFL element.

F. Analysis of methods to effectively implement the proposed rule: This type of material was not applicable to the development of the NIFL element.

G. Other background data: This type of material was not applicable to the development of the NIFL element.

NIFL ELEMENT F: Closure

(1) By including a closure requirement for each of the compost facilities, the rule is ensuring that each facility will be cleaned up upon closure. This will provide protection for the public by removal of the solid waste and material when the facility is no longer composting. Proper closure of each site will also make sure that environmental contamination to the groundwater will not occur when personnel is not available at the site to monitor any problems.

(2) The fiscal impact is variable based on the amount of waste, compost, and materials that will be on-site. It has been estimated that if the waste, etc. is loaded, transported, and disposed of the cost would be about $50 per ton. It is possible that the cost of closure would be $0, if all the waste and materials were first composted and the compost either given away or sold.

(3) The only material used to develop this NIFL element is a list of disposal rates for the State of Indiana. However, these disposal rates can fluctuate or be based on a contact between the compost facility and the landfill.

Below is a list of materials utilized (if applicable) and their availability for public inspection.

A. Health criteria: This type of material was not applicable to the development of the NIFL element.

B. Analytical methods: This type of material was not applicable to the development of the NIFL element.

C. Treatment technology: This type of material was not applicable to the development of the NIFL element.

D. Economic impact data: Costs of disposing of waste in the State of Indiana; available at OLQ, Rules, Planning and Outreach Section.

E. Environmental assessment data: This type of material was not applicable to the development of the NIFL element.

F. Analysis of methods to effectively implement the proposed rule: This type of material was not applicable to the development of the NIFL element.

G. Other background data: This type of material was not applicable to the development of the NIFL element.

NIFL ELEMENT G: Operator Certification

(1) This provision was added to the rule to ensure the waste and materials are composted properly. The regulated community did not want specific rules setting out the process but did believe that the facilities would best be run by operators that were required to be tested and trained in the process. Operator Certification can ensure environmental protection as the operator will know how to properly store the waste, compost and any other materials, will know how to achieve optimal compost production with a minimum of environmental or health threat, and will know all safety standards and cleanup procedures. Operator Certification will allow for flexibility in compost production by providing for a trained, knowledgeable person to run the site.

(2) This element will have no estimated fiscal impact to the state, except for approving testing and training providers and the issuance of certificates to the operators. This will be done by current staff. The fiscal impact will be on the operators that need training and certification testing. There is no training requirement but the operator must take and pass a test to be certified and take the yearly update training. Initially, one operator per registered facility must be certified. At present, there are 113 facilities that will be registered under these new rules. Based on past growth patterns, it is expected that ten (10) new composting facilities will be registered every year. In the first year under this rule, approximately one hundred twenty-five (125) operators would be certified. Over the seven (7) years of the life of the rule, approximately forty (60) more operators would fall under this requirement for a total of one hundred sixty-five trained operators. The cost of training is $300-$800 for the test and subsequent yearly update training. The total would be 185 operators × $300-$800 = $55,500 to $148,000.

(3) Information was obtained from associations and schools offering the testing and training to the operators. Consultants experienced in the area of testing and training were consulted to determine the cost involved.

Below is a list of materials utilized (if applicable) and their availability for public inspection.

A. Health criteria: Data from existing program available from the department; available at OLQ, Rules, Planning and Outreach

Section.

B. Analytical methods: This type of material was not applicable to the development of the NIFL element.
C. Treatment technology: This type of material was not applicable to the development of the NIFL element.
D. Economic impact data: This information waste obtained from the Solid Waste Association of North America (SWANA) Headquarters based on composting operator training and testing currently provided; available at OLQ, Rules, Planning and Outreach Section
E. Environmental assessment data: This type of material was not applicable to the development of the NIFL element.
F. Analysis of methods to effectively implement the proposed rule: This type of material was not applicable to the development of the NIFL element.
G. Other background data: This type of material was not applicable to the development of the NIFL element.

Potential Fiscal Impact

The potential fiscal impact of this proposed rule will be a function of the total costs of the seven (7) NIFL elements, with elements B through G multiplied by seven (7) years (the life-time of the rule), and then multiplied by (64), the number of current and projected new facilities to be affected by the rule.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a cross-section of stakeholders. A complete list of workgroup members is available upon request. The external workgroup has had two meetings. The first meeting was held on January 19, 2003 at the IGCN. The second external workgroup meeting was held on December 4, 2003 in the IGCS, Conference room B. A list of workgroup attendees is available upon request.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Lynn West, Rules Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana). Please provide your name, phone number and email address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from February 1, 2002, through March 4, 2002, 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:

#02-11(SWMB)[Composting rule]
Marjorie Samuel
Rules, Outreach and Planning 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 11th floor reception desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 1, 2004.

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).

DRAFT RULE

SECTION 1. 329 IAC 14 IS ADDED TO READ AS FOLLOWS:

ARTICLE 14. COMPOSTING OF SOURCE-SEPARATED BIODEGRADABLE SOLID WASTE AND VEGETATIVE MATTER

Rule 1. General Provisions

329 IAC 14-1-1 Scope

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 1. This article regulates and provides standards for composting of the following:

(1) Source-separated biodegradable solid wastes.
(2) Vegetative matter as described in IC 13-20-10.

(Solid Waste Management Board; 329 IAC 14-1-1)

329 IAC 14-1-2 Applicability

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. (a) This article is applicable to facilities engaged in composting the following:

(1) Source-separated biodegradable solid wastes, except those excluded under 329 IAC 14-3.
(2) Vegetative matter, except those excluded under 329 IAC 14-3.
(3) A mixture of compostable matter from both subdivisions (1) and (2).

(b) Based on a calendar quarter, a facility must have not more than ten percent (10%) by volume of the compostable matter that passes through the facility ultimately taken for final disposal at a permitted solid waste facility or the facility is considered a transfer station and must be permitted under 329 IAC 11. *(Solid Waste Management Board; 329 IAC 14-1-2)*

329 IAC 14-1-3 Enforcement

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-14-2-6; IC 13-20-10; IC 13-30-3

Sec. 3. This article shall be enforced through the provisions of IC 13-14-2-6, IC 13-30-3, or any combination thereof, as appropriate. *(Solid Waste Management Board; 329 IAC 14-1-3)*

329 IAC 14-1-4 Penalties

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10; IC 13-30

Sec. 4. Penalties for violation of this article are provided for at IC 13-30-4, IC 13-30-5 and IC 13-30-6. *(Solid Waste Management Board; 329 IAC 14-1-4)*

329 IAC 14-1-5 Records and reporting
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-14-2-2; IC 13-20-10

Sec. 5. (a) All operating records of monitoring activities and results, as governed by this article, must be retained by the registrant for five (5) years. The five (5) year period shall be extended automatically during the course of any unresolved litigation between the commissioner and a registrant or as required by registration conditions described in this article.

(b) Such records must be:
(1) located at the registered facility or at a readily available approved alternative site; and
(2) made available to representatives of the commissioner during normal business hours for inspection as set forth in IC 13-14-2-2.

(c) A registrant must submit an annual report to the commissioner before February 1 of each year, on a form provided by the commissioner, that indicates the number of short tons of compostable matter, additives, and bulking agents processed or used in the composting process by the facility and the final disposition of the compost during the previous calendar year or any part of the year that the facility was in operation. The form may require other information relevant to the administration of this article. A closure cost estimate under 329 IAC 14-10-2 must be submitted with the annual report. *(Solid Waste Management Board; 329 IAC 14-1-5)*

329 IAC 14-1-6 Severability
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 6. (a) If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or applications of this article that can be given effect without the invalid provision or application.

(b) Nothing in these standards shall be construed as relieving any applicant or registrant from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, or reports or other requirements of other regulatory or enforcement agencies, including, but not limited to, the following:
(1) Local health entities.
(2) Regional water quality control boards.
(3) Air quality management districts or air pollution control districts.
(4) Local land use authorities.
(5) Fire authorities.
(6) Solid waste management districts.
(Solid Waste Management Board; 329 IAC 14-1-6)

329 IAC 14-1-7 Incorporation by reference
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 7. Unless specified in the incorporated by reference documents incorporated in this article, the version of the documents referenced in the incorporated by reference documents is the latest version that is in effect on the date of latest adoption of the incorporated by reference documents in this article. *(Solid Waste Management Board; 329 IAC 14-1-7)*

329 IAC 14-1-8 Duration of registration; site specific registrations
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 8. (a) A certificate of registration issued under this article will expire five (5) years after the date the certificate is issued unless the registration is renewed or as stated in the registration.

(b) A certificate of registration is valid only for the specific site described in the registration application for which the registration was issued.

(c) A renewal application for registration must be submitted to the commissioner at least sixty (60) days prior to the expiration of the current registration or the registration will expire. *(Solid Waste Management Board; 329 IAC 14-1-8)*

329 IAC 14-1-9 Requirements for all facility operators
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 9. (a) The operator of a facility regulated under this article must:
(1) possess a valid certificate of registration issued under this article to operate a facility; and
(2) comply with all applicable requirements of this article and conditions of the registration.

(b) All facility operators shall be trained, tested, and certified by a department-approved certification program. The person responsible for daily operation of the facility shall be certified under 329 IAC 14-12. *(Solid Waste Management Board; 329 IAC 14-1-9)*

329 IAC 14-1-10 Right of entry
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-14-2-2; IC 13-14-5; IC 13-20-10

Sec. 10. The commissioner or an authorized representative of the commissioner may make inspections in accordance with IC 13-14-2-2 and IC 13-14-5. *(Solid Waste Management Board; 329 IAC 14-1-10)*

Rule 2. Definitions

329 IAC 14-2-1 Applicability
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-11-2; IC 13-20-10

Sec. 1. In addition to the definitions found in IC 13-11-2, the definitions in this rule apply throughout this article. *(Solid Waste Management Board; 329 IAC 14-2-1)*

329 IAC 14-2-2 "Access road" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. "Access road" means a road that leads to the entrance of a facility, normally a county, state, or federal highway but may also include any private road or lane. *(Solid Waste Management Board; 329 IAC 14-2-2)*

329 IAC 14-2-3 "Accredited examination" defined
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 3. "Accredited examination" means a written examination accredited by the commissioner for the purposes of testing individuals seeking to become certified as a composting operators. *(Solid Waste Management Board; 329 IAC 14-2-3)*

329 IAC 14-2-4 "Accredited examination provider" defined
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 4. "Accredited examination provider" means a person or a postsecondary learning institution that provides an accredited examination for the purpose of certifying operators in accordance with 329 IAC 14-12 and 329 IAC 14-13. *(Solid Waste Management Board; 329 IAC 14-2-4)*

329 IAC 14-2-5 "Accredited training course" defined
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 5. "Accredited training course" means a course accredited by the commissioner for the purposes of providing composting facility operator training for recertification. *(Solid Waste Management Board; 329 IAC 14-2-5)*

329 IAC 14-2-6 "Accredited training course provider" defined
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 6. "Accredited training course provider" means a person or a postsecondary learning institution that provides an accredited training course for the purpose of recertifying operators in accordance with 329 IAC 14-12 and 329 IAC 14-13. *(Solid Waste Management Board; 329 IAC 14-2-6)*

329 IAC 14-2-7 "Active area" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-11-2-1; IC 13-20-10

Sec. 7. (a) "Active area" has the meaning set forth in IC 13-11-2-1 and means the:
(1) raw compostable matter storage area;
(2) composting matter area;
(3) compost curing area; or
(4) compost storage area;
of a facility for vegetative matter.

(b) For purposes of this article, the term also means any of the areas in subsection (a) used in composting source-separated biodegradable solid waste.

(c) Examples of an active area include the following:
(1) The additives and bulking agents staging area.
(2) The liquid storage area.
(3) The curing compostable matter area.
(Solid Waste Management Board; 329 IAC 14-2-7)

329 IAC 14-2-8 "Active compostable matter"or "composting matter" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 8. "Active compostable matter" or "composting matter" means matter that is in the process of being rapidly decomposed. Active compostable matter is generating temperatures between ninety (90) degrees Fahrenheit and one hundred forty (140) degrees Fahrenheit during decomposition. This includes the curing of active compostable matter where temperatures will fall below one hundred (100) degrees Fahrenheit. *(Solid Waste Management Board; 329 IAC 14-2-8)*

329 IAC 14-2-9 "Additive" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 9 "Additive" means a supplemental material mixed with or otherwise added to compostable matter and bulking agents to create a favorable condition for the composting process and includes, but is not limited to, the following source-separated materials:
(1) Urea.
(2) Fertilizers.
(3) Earthworms.
(4) Soil or clay.
(5) Gypsum material.
(6) Bacterial or fungal inoculum consisting only of micro-organisms that may also include a commercially prepared medium designed to sustain the micro-organisms during storage and transport that is manufactured and distributed for the purpose of use in a composting process as an inoculant.
(Solid Waste Management Board; 329 IAC 14-2-9)

329 IAC 14-2-10 "Aerated static pile" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 10. "Aerated static pile" means a composting process that uses an air distribution system to either blow or draw air through a pile of composting matter where little or no pile agitation or turning is performed. *(Solid Waste Management Board; 329 IAC 14-2-10)*

329 IAC 14-2-11 "Aerobic decomposition" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 11. "Aerobic decomposition" means the biological decomposition of compostable matter, bulking agents, and additives, if applicable, in the presence of oxygen. *(Solid Waste Management Board; 329 IAC 14-2-11)*

329 IAC 14-2-12 "Agricultural plant materials" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 12. " Agricultural plant materials" means source-separated plant materials such as the following:

(1) Stems.

(2) Leaves.

(3) Vines or roots.

(4) Corn stalks.

(5) Soy bean plant residuals.

(6) Other plant remnants from an agricultural process.

(Solid Waste Management Board; 329 IAC 14-2-12)

329 IAC 14-2-13 "Animal bedding" defined

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-20-10

Sec. 13. "Animal bedding" means the dry straw material used in animal confinement as a surface cover that may contain de minimis amounts of the following:

(1) Animal excreta.

(2) Bedding.

(3) Wash waters.

(4) Waste feed.

(Solid Waste Management Board; 329 IAC 14-2-13)

329 IAC 14-2-14 "Applicant" defined

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-20-10

Sec. 14. "Applicant" means the person who applies for the registration. *(Solid Waste Management Board; 329 IAC 14-2-14)*

329 IAC 14-2-15 "Batch" defined

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-20-10

Sec. 15. "Batch" means the compostable matter, bulking agents, and additives, as applicable, used to fill the vessel or other container used for in-vessel composting. *(Solid Waste Management Board; 329 IAC 14-2-15)*

329 IAC 14-2-16 "Biodegradable" defined

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-20-10

Sec. 16. "Biodegradable" means the ability of a substance to be broken down physically or chemically, or both, by micro-organisms. *(Solid Waste Management Board; 329 IAC 14-2-16)*

329 IAC 14-2-17 "Bulking agent" defined

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-20-10

Sec. 17. (a) "Bulking agent" means an organic or inorganic material used to:

(1) increase porosity;

(2) improve aeration; or

(3) absorb moisture from;

composting matter.

(b) The term does not include the following:

(1) Wood bonded or treated with any type of preservatives.

(2) Rocks, bricks, asphalt, or concrete.

(3) Construction or demolition debris.

(Solid Waste Management Board; 329 IAC 14-2-17)

329 IAC 14-2-18 "Certificate" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 18. "Certificate" means a document issued by the commissioner to an individual meeting the testing requirements of 329 IAC 14-12 and 329 IAC 14-13. *(Solid Waste Management Board; 329 IAC 14-2-18)*

329 IAC 14-2-19 "Certified operator" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 19. "Certified operator" means an individual:

(1) with responsibility for the daily operation of the facility; and

(2) who holds a current certificate of training issued by the commissioner.

(Solid Waste Management Board; 329 IAC 14-2-19)

329 IAC 14-2-20 "Closure" defined

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-20-10

Sec. 20. "Closure" means the process of terminating facility operations under this article and includes the following:

(1) Registration expiration without filing for renewal.

(2) Intentional permanent cessation of acceptance of compostable matter, bulking agents, and additives.

(Solid Waste Management Board; 329 IAC 14-2-20)

329 IAC 14-2-21 "Compost" defined

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-11-2-37; IC 13-20-10

Sec. 21. (a) "Compost" has the meaning set forth in IC 13-11-2-37 and means the product:

(1) produced by the process of composting vegetative matter and other types of organic material; and

(2) that may be used:

(A) as a soil conditioner;

(B) as a cover material for a solid waste landfill;

(C) as erosion control;

(D) as mulch; or

(E) for another use approved by the commissioner.

(b) For purposes of this article, the term also means the product derived from composting source-separated biodegradable solid waste and additives or bulking agents, or both. *(Solid Waste Management Board; 329 IAC 14-2-21)*

329 IAC 14-2-22 "Compostable matter" or "raw compostable matter" defined

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-20-10

Sec. 22. "Compostable matter" or "raw compostable matter" means either of the following:

(1) Any vegetative matter.

(2) Source-separated biodegradable solid waste that when accumulated will become active compostable matter.
(Solid Waste Management Board; 329 IAC 14-2-22)

329 IAC 14-2-23 "Composting" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-11-2-38; IC 13-20-10

Sec. 23. (a) "Composting" has the meaning set forth in IC 13-11-2-38(a) and means the biological treatment process by which microorganisms decompose the organic component of vegetative matter and other types of organic material.

(b) For purposes of this article, "other types of organic material" includes source-separated biodegradable solid waste. *(Solid Waste Management Board; 329 IAC 14-2-23)*

329 IAC 14-2-24 "Contaminant" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-11-2-42; IC 13-20-10

Sec. 24. "Contaminant" has the meaning set forth in IC 13-11-2-42. *(Solid Waste Management Board; 329 IAC 14-2-24)*

329 IAC 14-2-25 "Continuously flowing stream" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 25. "Continuously flowing stream" means a body of water that has measurable velocity of flow for at least nine (9) months of the year or is designated as a perennial flowing stream on a United States Geological Survey (USGS) seven and one-half (7 ½) minute series topographical map, but is not labeled as a river. *(Solid Waste Management Board; 329 IAC 14-2-25)*

329 IAC 14-2-26 "Curing" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 26. "Curing" means the final stage of the composting process that occurs after the following:
(1) The active compostable matter has undergone pathogen reduction.
(2) Most of the readily metabolized waste or additive has been decomposed.
(3) The product is stabilized and still maintains a temperature below one hundred (100) degrees Fahrenheit.
(Solid Waste Management Board; 329 IAC 14-2-26)

329 IAC 14-2-27 "Facility" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 27. "Facility" means one (1) or more current or proposed composting operations that stage, process, or store compostable matter, bulking agents, additives, active compostable matter, curing compost, or compost. The term includes:
(1) all land and structures on-site related to the facility registration;
(2) other appurtenances related to the facility registration; and
(3) improvements on the land relating to the facility registration.
(Solid Waste Management Board; 329 IAC 14-2-27)

329 IAC 14-2-28 "Facility boundary" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 28. "Facility boundary" means the outermost perimeter of land related to the facility as defined in section 27 of this rule. *(Solid Waste Management Board; 329 IAC 14-2-28)*

329 IAC 14-2-29 "Grading" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 29. "Grading" means the contouring of land so that surface water flow and erosion are controlled according to a predetermined plan. *(Solid Waste Management Board; 329 IAC 14-2-29)*

329 IAC 14-2-30 "Ground water" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 30. "Ground water" means such accumulations of underground water, natural and artificial, public and private, or parts thereof, that are wholly or partially within, flow through, or border upon this state, but excluding manmade underground storage or conveyance structures. *(Solid Waste Management Board; 329 IAC 14-2-30)*

329 IAC 14-2-31 "Handling" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 31. "Handling" means the processing, transfer, staging, and storage of compostable matter, bulking agents, and additives. Handling of compostable matter results in controlled biological decomposition. The term includes the following:
(1) Composting.
(2) Screening.
(3) Chipping and grinding.
(4) Storage activities related to the production of compost.
(Solid Waste Management Board; 329 IAC 14-2-31)

329 IAC 14-2-32 "Hazardous waste" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-11-2-99; IC 13-20-10

Sec. 32. "Hazardous waste" has the meaning set forth in IC 13-11-2-99. *(Solid Waste Management Board; 329 IAC 14-2-32)*

329 IAC 14-2-33 "Industrial process waste" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 33. (a) "Industrial process waste" means solid waste generated by a manufacturing or industrial process that is not a hazardous waste regulated under 329 IAC 3.1. The term may include, but is not limited to, waste resulting from any of the following manufacturing processes:
(1) Electric power generation.
(2) Fertilizer or agricultural chemicals production.

(3) Food and related products or byproducts production.
(4) Inorganic chemicals production.
(5) Iron and steel manufacture or foundries.
(6) Leather and leather products production.
(7) Nonferrous metals manufacture or foundries.
(8) Organic chemicals production.
(9) Plastics and resins manufacture.
(10) Pulp and paper industry.
(11) Rubber and miscellaneous plastic products production.
(12) Stone, glass, clay, and concrete products.
(13) Textile manufacture.
(14) Transportation equipment.
(15) Oil and gas process and refinery wastes and disposed products.
(16) Painting, printing, and allied industries.
(17) Contaminated, off-specification, or outdated wholesale products.
(18) Recycling activities and process residues.

(b) The term does not include mining operations, waste, or oil and gas recovery waste. *(Solid Waste Management Board; 329 IAC 14-2-33)*

329 IAC 14-2-34 "Infectious waste" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 34. "Infectious waste" has the meaning set forth in the rules of the Indiana state department of health at 410 IAC 1-3-10, as supported by the ancillary definitions of 410 IAC 1-3. *(Solid Waste Management Board; 329 IAC 14-2-34)*

329 IAC 14-2-35 "Interim operator" defined
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 35. "Interim operator" means an individual:
(1) with responsibility for the daily operation of the facility; and
(2) that does not yet hold a current certificate issued by the commissioner.
(Solid Waste Management Board; 329 IAC 14-2-35)

329 IAC 14-2-36 "In-vessel composting" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 36. "In-vessel composting" means a method of producing compost in which compostable matter, bulking agents, and additives are contained in a:
(1) drum;
(2) silo;
(3) building;
(4) reactor vessel; or
(5) other container;
that protects the compostable matter, bulking agents, and additives while controlling moisture and air flow. *(Solid Waste Management Board; 329 IAC 14-2-36)*

329 IAC 14-2-37 "Leachate" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 37. "Leachate" means a liquid that has passed through or emerged from any:
(1) waste;
(2) compostable matter;
(3) bulking agent;
(4) additive;
(5) active compostable matter;
(6) curing compost; or
(7) compost;
in the active area of the facility and contains soluble, suspended, or miscible materials removed from such materials. *(Solid Waste Management Board; 329 IAC 14-2-37)*

329 IAC 14-2-38 "Liquid storage area" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 38. "Liquid storage area" means the location of a tank or container that is leak-proof and capable of holding liquid. *(Solid Waste Management Board; 329 IAC 14-2-38)*

329 IAC 14-2-39 "Manure" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 39. "Manure" includes animal feces and urine and any bedding material, spilled feed, or soil that is mixed with animal feces or urine. *(Solid Waste Management Board; 329 IAC 14-2-39)*

329 IAC 14-2-40 "Mulch" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 40. "Mulch" means a material suitable for a protective covering placed around plants to prevent and control one (1) or more of the following:
(1) Erosion.
(2) Compaction.
(3) Moisture loss.
(4) Freezing.
(5) Weeds.
(Solid Waste Management Board; 329 IAC 14-2-40)

329 IAC 14-2-41 "On-site" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 41. "On-site" means all areas within the facility boundary. *(Solid Waste Management Board; 329 IAC 14-2-41)*

329 IAC 14-2-42 "Operating personnel" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 42. "Operating personnel" means persons necessary to properly operate a registered compost facility. *(Solid Waste Management Board; 329 IAC 14-2-42)*

329 IAC 14-2-43 "Operator" defined
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 43. "Operator" means the person or persons responsible for the overall operation of a facility or part of a facility. *(Solid Waste Management Board; 329 IAC 14-2-43)*

329 IAC 14-2-44 "Owner" defined
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 44. "Owner" means the person who owns a facility or part of a facility. *(Solid Waste Management Board; 329 IAC 14-2-44)*

329 IAC 14-2-45 "Pathogenic" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 45. "Pathogenic" means capable of causing disease. *(Solid Waste Management Board; 329 IAC 14-2-45)*

329 IAC 14-2-46 "Person" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-11-2-158; IC 13-20-10

Sec. 46. "Person" has the meaning set forth in IC 13-11-2-158(a). *(Solid Waste Management Board; 329 IAC 14-2-46)*

329 IAC 14-2-47 "Plant food waste" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 47. (a) "Plant food waste" means raw or cooked vegetable material from any of the following:
(1) Residences.
(2) Farms.
(3) Cafeterias.
(4) Restaurants.
(5) Food processors.
(6) Food distributors.
(7) Food merchandisers.

(b) The term also includes food containers that are composed entirely of readily biodegradable materials, such as waxed or unwaxed paper products or corn starch, if the containers have been contaminated with vegetable food by virtue of use.

(c) The term does not include food containers composed or containing materials that are not readily biodegradable, such as metal, glass, or petroleum derived plastic used in container coatings, layers, or other components. *(Solid Waste Management Board; 329 IAC 14-2-47)*

329 IAC 14-2-48 "Public building" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 48. "Public building" means any of the following, whether publicly or privately owned:
(1) A church.
(2) A nursing home.
(3) A hospital.
(4) A school.
(5) A commercial or industrial building.

(Solid Waste Management Board; 329 IAC 14-2-48)

329 IAC 14-2-49 "Recertification" defined
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 49. "Recertification" means the procedures under 329 IAC 14-12-6 to renew a certification for a certified operator meeting the applicable training requirements. *(Solid Waste Management Board; 329 IAC 14-2-49)*

329 IAC 14-2-50 "Registrant" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 50. "Registrant" means any person to whom a registration has been issued under this article. *(Solid Waste Management Board; 329 IAC 14-2-50)*

329 IAC 14-2-51 "Residue" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 51. "Residue" means any of the following solid waste remaining:
(1) After handling or processing, that has not completely become composted or recovered including any of the following:
(A) Ceramics.
(B) Glass.
(C) Metal.
(D) Other inorganic substances or organic substances.
(E) Material resulting from a screening process after composting.
(2) Material resulting from a sorting or screening prior to composting.
(Solid Waste Management Board; 329 IAC 14-2-51)

329 IAC 14-2-52 "Site" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 52. "Site" means the land area on which the registered facility is situated. *(Solid Waste Management Board; 329 IAC 14-2-52)*

329 IAC 14-2-53 "Sludge" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 53. "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant. *(Solid Waste Management Board; 329 IAC 14-2-53)*

329 IAC 14-2-54 "Source-separated" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 54. "Source-separated" means solid waste, additives, or bulking agents that have been separated, at the point of generation

or at the point of collection, from other solid wastes. *(Solid Waste Management Board; 329 IAC 14-2-54)*

329 IAC 14-2-55 "Static pile" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 55. "Static pile" means a composting process that is similar to the aerated static pile except that the air source may or may not be controlled. *(Solid Waste Management Board; 329 IAC 14-2-55)*

329 IAC 14-2-56 "Storage" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-20-10

Sec. 56. "Storage" means the retention, containment, or accumulation for a period of more than twenty-four (24) hours of:
(1) compostable matter;
(2) additives;
(3) bulking agents;
(4) curing compost; or
(5) residue;
in such a manner that it does not threaten or potentially threaten human health or impact or potentially impact the environment. The storage must be done in such a manner as not to constitute disposal. It is a rebuttable presumption that storage of residue for more than six (6) months constitutes disposal. *(Solid Waste Management Board; 329 IAC 14-2-56)*

329 IAC 14-2-57 "Surface water" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 57. "Surface water" means water present on the surface of the earth, including the following:
(1) Continuously flowing streams.
(2) Lakes.
(3) Ponds.
(4) Rivers.
(5) Swamps.
(6) Marshes.
(7) Wetlands.
(8) Rainwater present on the earth.
(Solid Waste Management Board; 329 IAC 14-2-57)

329 IAC 14-2-58 "Vegetative matter" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 58. "Vegetative matter" means any yard or landscaping waste, including:
(1) crop residuals;
(2) leaves;
(3) grass;
(4) brush;
(5) limbs;
(7) branches; and
(8) uncontaminated sawdust;
resulting from commercial, industrial, or agricultural operations or from community activities or homeowners. *(Solid Waste Management Board; 329 IAC 14-2-58)*

329 IAC 14-2-59 "Vermi-composting" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 59. "Vermi-composting" means a technique that utilizes worms to expedite composting of compostable matter into worm castings or compost. *(Solid Waste Management Board; 329 IAC 14-2-59)*

329 IAC 14-2-60 "Washout" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 60. "Washout" means the carrying away of organic material by flood waters or storm water. *(Solid Waste Management Board; 329 IAC 14-2-60)*

329 IAC 14-2-61 "Water pollution" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-11-2-260; IC 13-20-10

Sec. 61. "Water pollution" has the meaning set forth in IC 13-11-2-260. *(Solid Waste Management Board; 329 IAC 14-2-61)*

329 IAC 14-2-62 "Water table" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 62. "Water table" means the upper surface of the ground water at which the fluid pressure of the ground water is equal to atmospheric pressure. *(Solid Waste Management Board; 329 IAC 14-2-62)*

329 IAC 14-2-63 "Windrow" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 63. "Windrow" means a row of active or curing compostable matter in the process of biological degradation or composting. It is piled in this manner to facilitate turning. *(Solid Waste Management Board; 329 IAC 14-2-63)*

329 IAC 14-2-64 "Windrow composting process" defined
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 64. "Windrow composting process" means the process in which active or curing compostable matter is placed in elongated piles. The piles or windrows are aerated or mechanically turned on a periodic basis, or both. *(Solid Waste Management Board; 329 IAC 14-2-64)*

Rule 3. Exclusions

329 IAC 14-3-1 Excluded activities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10-1

Sec. 1. The following activities are excluded from regulation under this article:
(1) Land application activities, and all other activities regulated by 327 IAC 6.1 and 327 IAC 7.1.
(2) Confined feeding activities regulated by 327 IAC 16.

(3) Wastewater discharge activities regulated by 327 IAC 3 and 327 IAC 5.
(4) Composting performed at a site where less than two thousand (2,000) pounds of compostable matter is processed in any twelve (12) month period.
(5) Chipping and grinding operations for vegetative matter and untreated and uncontaminated natural growth wood.
(6) Activities described in IC 13-20-10-1(b)(1) through IC 13-20-10-1(b)(3).
(7) Concentrated animal feeding operations regulated under 327 IAC 15-15.
(Solid Waste Management Board; 329 IAC 14-3-1)

329 IAC 14-3-2 Excluded operations
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. Excluded from regulation under this article are the following operations that:
(1) Store vegetative matter for a period of not more than thirty (30) days and are not composting.
(2) Produce mulch or store mulch.
(3) Produce wood chips or store wood chips using untreated and uncontaminated wood.
(4) Are permitted under 329 IAC 11.
(5) Are permitted under 329 IAC 3.1 that are storing, treating, or disposing of nonhazardous solid waste where such nonhazardous solid waste is treated or disposed of as a hazardous waste at the hazardous waste receiving facility.
(6) Are permitted under 329 IAC 10.
(7) Produce sawdust as a result of a manufacturing or milling process.
(8) Conduct a composting operation for vegetative matter or other organic material at the person's residence or farm, where the compostable matter is generated by the person's activities and is stored, treated, or disposed of at the person's residence or farm.
(Solid Waste Management Board; 329 IAC 14-3-2)

Rule 4. Composting of Vegetative Matter and Source-Separated Solid Waste: Facility Classification

329 IAC 14-4-1 Class I facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 1. (a) Class I facilities are facilities that accept only vegetative matter or agricultural plant materials, or both.

(b) Class I facilities may also use the following source-separated bulking agents with the source-separated biodegradable compostable matter listed in subsection (a):
(1) Wood chips.
(2) Straw.
(3) Uncontaminated sawdust.
(4) Shredded brush.
(Solid Waste Management Board; 329 IAC 14-4-1)

329 IAC 14-4-2 Class II facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. (a) Class II facilities are facilities that accept plant food waste alone or in addition to one (1) or more of the following:
(1) Vegetative matter.
(2) Agriculture plant materials.

(b) Class II facilities may also use the following source-separated bulking agents with the source-separated biodegradable compostable matter listed in subsection (a):
(1) Wood chips.
(2) Straw.
(3) Shredded paper.
(4) Shredded cardboard.
(5) Uncontaminated sawdust.
(6) Shredded brush.
(7) Animal bedding.

(c) Other materials to be used as a bulking agent or used as an additive shall be used only after written approval by the commissioner as specified in section 3(c) of this rule. *(Solid Waste Management Board; 329 IAC 14-4-2)*

329 IAC 14-4-3 Class III facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 3. (a) Class III facilities are facilities that accept one (1) or more of the following wastes alone or in addition to vegetative matter, plant food waste, or agricultural plant materials:
(1) Manure.
(2) Sludge.
(3) Animal carcasses not regulated under the rules of the Indiana state board of animal health at 345 IAC 7-7.
(4) Source-separated biodegradable compostable matter not listed in subdivisions (1) through (3) only after written approval by the commissioner as specified in subsection (c).

(b) Class III facilities may also use the following source-separated bulking agents with the source-separated biodegradable compostable matter listed in subsection (a):
(1) Wood chips.
(2) Straw.
(3) Shredded paper.
(4) Shredded cardboard.
(5) Uncontaminated sawdust.
(6) Shredded brush.
(7) Animal bedding.

(c) Other source-separated biodegradable solid waste may be composted, used as a bulking agent, or used as an additive after written approval by the commissioner if the source-separated biodegradable solid waste to be composted or used as a bulking agent or other additive:
(1) does not exceed the limits specified in Table 3 of 327 IAC 6.1; and
(2) lacks the potential to harm human health or the environment, or both.
(Solid Waste Management Board; 329 IAC 14-4-3)

Rule 5. Registration for Composting Facilities

329 IAC 14-5-1 Transition for facilities currently registered under IC 13-20-10

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 1. (a) Facilities registered under IC 13-20-10 on the effective date of this article shall continue to operate with a current registration. The current registration under IC 13-20-10 will serve as a registration under this rule until the registration under IC 13-20-10 expires. The operator of the facility must submit an application for registration under this article sixty (60) days prior to expiration of the registration issued under IC 13-20-10 or the registration will expire on the expiration date.

(b) If a preexisting facility currently registered under IC 13-20-10 desires to include source-separated biodegradable solid wastes listed in Class II or Class III in its composting process, the registrant must submit a new application for registration under this article. This application for registration must be submitted within ninety (90) days after the effective date of this article.

(c) The facility must submit proof of operator certification under this article within twelve (12) months after the effective date of this article. *(Solid Waste Management Board; 329 IAC 14-5-1)*

329 IAC 14-5-2 Registration for Class I

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. (a) An application for a registration to operate as a Class I facility must be completed on forms provided by the commissioner. An application, including renewal registration applications, must provide complete information as requested on the form. Renewal registration applications must be sent to the commissioner sixty (60) days before the expiration date of the current registration.

(b) The following must be submitted with the application form:
(1) A United States Geological Survey (USGS) seven and one-half (7½) minute topographic map or equivalent that shows the facility boundaries.
(2) Detailed plans and specifications as required by 329 IAC 14-6 and 329 IAC 14-7.
(3) A description of the:
(A) buildings;
(B) equipment;
(C) signs; and
(D) notices;
to be used at the facility.

(c) The applicant must provide a management plan that includes the following:
(1) A brief narrative description of the facility, including the geographic area (state, county, municipality) from which compostable matter will be received.
(2) An estimate of the number of short tons of compostable matter, bulking agents, and additives to be processed in the first calendar year of operation.
(3) An estimate of the maximum volume in cubic yards and the number of short tons of material, including stored or staged:
(A) compostable matter;
(B) active compostable matter;
(C) curing compost;
(D) compost;
(E) additives; and
(F) bulking agents;
that could be kept on-site at any given time.
(4) A description of the proposed final use of compost produced.
(5) A description of the procedures or methods used to produce compost at the facility, including controls for dust, odors, and noise.
(6) A description of the methods proposed for collecting, removing, and disposing of residue received or produced at the facility.
(7) A description of the method to be used for ensuring a minimum five (5) foot separation distance at all times from any part of the active area to the ground water. The applicant must submit information to demonstrate how this requirement will be met including a soil boring report, soil maps, or other verification indicating the distance to the water table at the site.
(8) A description of surface water drainage control and leachate management procedures to be utilized at the facility.

(d) The applicant must provide a written closure plan as required by 329 IAC 14-10.

(e) The applicant must provide proof of financial assurance to insure closure if:
(1) a new facility or facility not previously registered with the commissioner estimates processing more than fifteen thousand (15,000) short tons of compostable matter, additives, and bulking agents during any calendar year; or
(2) an existing facility or facility currently registered with the commissioner has previously reported a quantity of fifteen thousand (15,000) short tons or more of compostable matter processed to the commissioner in the last annual report required by IC 13-20-10 or this article.

(f) If required to have financial assurance under subsection (e), the applicant must submit evidence of financial assurance in the amount of fifty dollars ($50) per short ton of staged or stored:
(1) compostable matter;
(2) active compostable matter;
(3) curing compost;
(4) compost;
(5) additives; and
(6) bulking agents;
based on the maximum capacity of the facility as provided for in 329 IAC 14-11.

(g) The applicant must submit a contingency plan that is designed to control the hazards to human health and the environment. The plan must address, at a minimum, the following issues:
(1) Equipment breakdown.
(2) Odors.
(3) Unauthorized solid waste delivered to the facility.
(4) Ground water contamination.
(5) Any accidental release of contaminants.
(6) Contingencies for the following:
(A) Fires.
(B) Dust.
(C) Noise.
(D) Vectors.
(E) Power outages.
(F) Unusual traffic conditions.
(7) Unauthorized entry onto the site.

(h) The applicant must submit an affidavit signed and dated by the applicant that the facility is in compliance with the siting and design requirements of 329 IAC 14-6-1 and 329 IAC 14-7-1 and will be operated in accordance with 329 IAC 14-8.

(i) The registration application must contain all the information requested regarding siting requirements for a Class I facility as specified in 329 IAC 14-6.

(j) The registration application must contain all the information requested regarding design requirements for a Class I facility as specified in 329 IAC 14-7.

(k) The registration application must contain a copy of a valid operator certification in accordance with this article.

(l) Renewal registration applications must include the following:
(1) A completed application on the prescribed form.
(2) Proof of financial assurance.
(3) A copy of the operator's certification.
(4) Notification of any changes to the existing registration.
(Solid Waste Management Board; 329 IAC 14-5-2)

329 IAC 14-5-3 Registration for Class II facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 3. (a) An application for registration to operate as a Class II facility must be completed on forms provided by the commissioner. An application, including a renewal registration application, must provide complete information as requested on the form. Renewal registration applications must be submitted to the commissioner sixty (60) days before the expiration date of the current registration.

(b) The following must be submitted with the application form:
(1) A United States Geological Survey (USGS) seven and one-half (7½) minute topographic map or equivalent that shows the facility boundaries.
(2) Detailed plans and specifications as required by 329 IAC 14-6 and 329 IAC 14-7.
(3) A description of the:
(A) buildings;
(B) equipment;
(C) signs; and
(D) notices;
to be used at the facility.

(c) The applicant must provide a management plan that includes the following:
(1) A brief narrative description of the facility, including the geographic area (state, county, municipality) from which compostable matter will be received.
(2) An estimate of the number of short tons of compostable matter, bulking agents, and additives to be processed in the first calendar year of operation.
(3) An estimate of the maximum volume in cubic yards and the number of short tons of material, including stored or staged:
(A) compostable matter;
(B) active compostable matter;
(C) curing compost;
(D) compost;
(E) additives; and
(F) bulking agents;
that could be kept on-site at any given time.
(4) A description of the proposed final use of compost produced.
(5) A description of the procedures or methods used to produce compost at the facility, including controls for dust, odors, and noise.
(6) A description of the methods proposed for collecting, removing, and disposing of residue received or produced at the facility.
(7) A description of the method to be used for ensuring a minimum three (3) foot separation distance at all times from any part of the active area to the ground water. The applicant must submit information to demonstrate how this requirement will be met including a soil boring report, soil maps, or other verification indicating the distance to the water table at the site.
(8) A description of the surface water drainage controls.
(9) A description of the:
(A) collection;
(B) containment;
(C) recirculation;
(D) treatment;
(E) removal;
(F) disposal; and
(G) prevention of generation;
of leachate and how leachate will be prevented from entering surface and ground waters.

(d) The applicant must provide a written closure plan that contains the information required by 329 IAC 14-10.

(e) The applicant must submit evidence of financial assurance in the amount of fifty dollars ($50) per short ton of staged or stored:
(1) compostable matter;
(2) active compostable matter;
(3) compost;
(4) additives; and
(5) bulking agents;
based on the maximum capacity of the facility as provided for in 329 IAC 14-11.

(f) The applicant must submit a contingency plan that is designed to control the hazards to human health and the environment. The plan must address, at a minimum, the following issues:
(1) Equipment breakdown.
(2) Odors.
(3) Unauthorized solid waste delivered to the facility.
(4) Ground water contamination.
(5) Any accidental release of contaminants.
(6) Contingencies for the following:
(A) Fires.
(B) Dust.
(C) Noise.
(D) Vectors.
(E) Power outages.
(F) Unusual traffic conditions.
(7) Unauthorized entry onto the site.

(g) The applicant must submit a certification statement signed and dated by the applicant that the facility is in compliance with the siting and design requirements of 329 IAC 14-6-1 and 329 IAC 14-7-1 and will be operated in accordance with 329 IAC 14-8.

(h) The registration application must contain all the information requested regarding siting requirements for a Class II facility as specified in 329 IAC 14-6.

(i) The registration application must contain all the information requested regarding design requirements for a Class II facility as specified in 329 IAC 14-7.

(j) The registration application must contain a copy of a valid operator certification in accordance with this article.

(k) Renewal registration applications must include the following:
(1) A completed application on the prescribed form.
(2) Proof of financial assurance.
(3) A copy of the operator's certification.
(4) Notification of any changes to the existing registration.
(Solid Waste Management Board; 329 IAC 14-5-3)

329 IAC 14-5-4 Registration for Class III facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 4. (a) An application for registration to operate as a Class III facility must be completed on forms provided by the commissioner. An application, including a renewal registration applications, must provide complete information as requested on the form. Renewal registration applications must be submitted to the commissioner sixty (60) days before the expiration date of the current registration.

(b) The following must be submitted with the application form:
(1) A United States Geological Survey (USGS) seven and one-half (7½) minute topographic map or equivalent that shows the facility boundaries.
(2) Detailed plans and specifications as required by 329 IAC 14-6 and 329 IAC 14-7.
(3) A description of the:
(A) buildings;
(B) equipment;
(C) signs; and
(D) notices;
to be used at the facility.

(c) The applicant must provide a management plan that includes the following:
(1) A brief narrative description of the facility, including the geographic area (state, county, municipality) from which compostable matter will be received.
(2) An estimate of the number of short tons of compostable matter, bulking agents, and additives to be processed in the first calendar year of operation.
(3) An estimate of the maximum volume in cubic yards and the number of short tons of material, including stored or staged:
(A) compostable matter;
(B) active compostable matter;
(C) curing compost;
(D) compost;
(E) additives; and
(F) bulking agents;
that could be kept on-site at any given time.
(4) A description of the proposed final use of compost produced.
(5) A description of the procedures or methods used to produce compost at the facility, including controls for dust, odors, and noise.
(6) A description of the methods proposed for collecting, removing, and disposing of residue received or produced at the facility.
(7) A description of the method to be used for ensuring a minimum three (3) foot separation distance at all times from any part of the active area to the ground water. The applicant must submit information to demonstrate how this requirement will be met including a soil boring report, soil maps, or other verification indicating the distance to the water table at the site.
(8) A description of the surface water drainage controls.
(9) A description of the:
(A) collection;
(B) containment;
(C) recirculation;
(D) treatment;
(E) removal;
(F) disposal; and
(G) prevention of generation;
of leachate and how leachate will be prevented from entering surface and ground waters.

(d) The applicant must provide a written closure plan that contains the information required by 329 IAC 14-10.

(e) The applicant must submit evidence of financial assurance in the amount of fifty dollars ($50) per short ton of staged or stored:
(1) compostable matter;
(2) active compostable matter;
(3) compost;
(4) additives; and
(5) bulking agents;
based on the maximum capacity of the facility as required by 329 IAC 14-11.

(f) The applicant must submit a contingency plan that is designed to control the hazards to human health and the environment. The plan must address, at a minimum, the following issues:
(1) Equipment breakdown.
(2) Odors.
(3) Unauthorized solid waste delivered to the facility.
(4) Ground water contamination.
(5) Any accidental release of contaminants.
(6) Contingencies for the following:
(A) Fires.
(B) Dust.
(C) Noise.
(D) Vectors.
(E) Power outages.
(F) Unusual traffic conditions.
(7) Unauthorized entry onto the site.

(g) The applicant must submit an affidavit signed and dated by the applicant that the facility is in compliance with the siting and design requirements of 329 IAC 14-6 and 329 IAC 14-7 and will be operated in accordance with 329 IAC 14-8.

(h) The registration application must contain all the information requested regarding siting requirements for a Class III facility as specified in 329 IAC 14-6.

(i) The registration application must contain all the information

requested regarding design requirements for a Class III facility as specified in 329 IAC 14-7.

(j) The registration application must contain a copy of a valid operator certification in accordance with this article.

(k) Renewal registration applications must include the following:
(1) A completed application on the prescribed form.
(2) Proof of financial assurance.
(3) A copy of operator certification.
(4) Notification of any changes to the existing registration.
(Solid Waste Management Board; 329 IAC 14-5-4)

329 IAC 14-5-5 Action on application
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-15-7; IC 13-20-10; IC 13-30-6; IC 36-9-30-35

Sec. 5. (a) The commissioner shall issue or renew a certificate of registration only after the applicant has met the following criteria:
(1) The applicant has submitted a complete registration form as applicable, in accordance with this rule.
(2) The facility is in compliance with the applicable requirements of this article.
(3) The applicant has established financial assurance in compliance with this article, as applicable.

(b) The commissioner may:
(1) deny a registration application or renewal application;
(2) limit the length of a Class II or Class III registration to less than five (5) years; or
(3) place additional conditions on or modify a registration or renewal registration;
if the commissioner determines that one (1) or more of the criteria in subsection (c) demonstrate the applicant's inability or unwillingness to comply with the requirements of this article.

(c) The commissioner may deny, limit the length of, or place additional conditions on a registration or a renewal registration based on one (1) or more of the following:
(1) The applicant has been convicted of a crime under IC 13-30-6 or IC 36-9-30-35.
(2) The commissioner, under IC 13-15-7, has revoked the applicant's previous registration to operate under this article.
(3) The applicant has a history of one (1) or more violations of IC 13 or rules promulgated by the authority of IC 13.
(4) The applicant was the subject of one (1) or more administrative or judicial enforcement actions concerning this article or IC 13-20-10.
(5) The applicant is the subject of one (1) or more pending administrative or judicial enforcement actions commenced under authority of IC 13.
(6) The applicant knowingly submitted inaccurate, incorrect, or false information on the application.

(d) The application for a registration or the issuance of a registration does not:
(1) convey any property rights of any sort or any exclusive privileges to the applicant or registrant;
(2) authorize:
(A) any injury to any person or private property;
(B) invasion of other property rights; or
(C) any infringement of federal, state, or local laws or regulations; or
(3) preempt any duty to comply with other federal, state, or local requirements.
(Solid Waste Management Board; 329 IAC 14-5-5)

329 IAC 14-5-6 Updating information
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 6. If the information in the registration application changes, the applicant or registrant must provide the new information to the commissioner not more than fifteen (15) days after the initial application information changes. Based on the new information submitted, the commissioner may deny, modify, or limit the registration as provided in section 5(c) of this rule. *(Solid Waste Management Board; 329 IAC 14-5-6)*

329 IAC 14-5-7 Registration conditions
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 7. (a) The commissioner may include any conditions in a registration to ensure compliance with this article in addition to the applicable requirements of this article.

(b) A registration is site-specific and not transferable from one (1) location to another.

(c) A registration issued under this article may be transferred to another person by a registrant if:
(1) the registrant notifies the commissioner of the proposed transfer at least forty-five (45) days prior to the date of the proposed transfer of the registration; and
(2) a written agreement is submitted to the commissioner containing:
(A) a specific date for transfer of registration responsibilities; and
(B) coverage between the current and the new registrant including acknowledgment that the:
(i) existing registrant is liable for noncompliance up to that date; and
(ii) new registrant is liable for any noncompliance after the date of transfer.

(d) The commissioner shall notify the current registrant and proposed new registrant within thirty (30) days if the transfer is denied under section 5(c) of this rule. *(Solid Waste Management Board; 329 IAC 14-5-7)*

329 IAC 14-5-8 Revocation or modification
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 8. The commissioner may revoke or modify a certificate of registration for:
(1) failure by the applicant to:
(A) disclose all relevant facts or misrepresentation by the applicant in obtaining a registration; or
(B) correct within the time established by the commissioner a violation of:
(i) this article; or
(ii) a condition of the registration; or

(2) knowingly providing incorrect or inaccurate information on the application.

(Solid Waste Management Board; 329 IAC 14-5-8)

Rule 6. Siting Requirements for Composting Facilities

329 IAC 14-6-1 Class I facility siting requirements

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-15-3; IC 13-20-10

Sec. 1. (a) The active area of a facility must not be located:

(1) within two hundred (200) feet of a:

(A) well that supplies water unless the water is used for composting activities; and

(B) dwelling or public building that exists at the time that the applicant submits an initial registration application;

(2) in a manner that would result in the washout from flooding of any surface water; and

(3) within one hundred (100) feet of the facility property boundaries.

(b) The active area of a facility must be located outside the ten (10) year flood plain, except for a facility that is either:

(1) operated in conjunction with a publicly owned treatment works permitted under IC 13-15-3; or

(2) designed and operated to provide adequate controls to prevent ground water and surface water contamination in the event of a ten (10) year flood.

(c) The facility must be sited to prevent an active area from being placed within five (5) feet of the highest point of a water table or provide adequate controls to prevent ground water and surface water contamination. *(Solid Waste Management Board; 329 IAC 14-6-1)*

329 IAC 14-6-2 Class II facility siting requirements

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-15-3; IC 13-20-10; IC 14-22-34; IC 14-31-1; IC 36-7-11

Sec. 2. (a) The active area of a facility must not be located:

(1) within two hundred (200) feet of a:

(A) well that supplies potable water unless the water is used for composting activities; and

(B) dwelling or public building that exists at the time that the applicant submits an initial registration application;

(2) in a manner that would result in the washout from flooding of any:

(A) stream;

(B) pond;

(C) creek;

(D) river water; or

(E) surface water; or

(3) within one hundred (100) feet of:

(A) the real property boundary of the facility; or

(B) surface water, including a drinking water reservoir and a wetland.

(b) The active area of a facility must be located outside of the one hundred (100) year flood plain, except a facility that is either:

(1) operated in conjunction with a publicly owned treatment works permitted under IC 13-15-3; or

(2) designed and operated to provide adequate controls to prevent ground water and surface water contamination in the event of a one hundred (100) year flood.

(c) The facility must be sited to prevent an active area from being placed:

(1) within three (3) feet of the highest point of a water table; or

(2) provide adequate controls to prevent ground water and surface water contamination.

(d) Lowering of the water table beneath the active area of the facility is allowed so that a minimum of a three (3) foot separation distance is provided between the active area and the highest point of the water table.

(e) The facility location must not:

(1) violate the endangered species laws and regulations;

(2) result in the destruction or adverse modification of the critical habitat for such species; or

(3) cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under IC 14-22-34.

(f) The facility must not be located in any area where:

(1) an irreplaceable historic or archaeological site has been listed pursuant to 16 U.S.C. 470 et seq. or IC 36-7-11;

(2) a natural landmark has been designated by the National Park Service or the Indiana state historic preservation office; or

(3) a natural area has been designated as a dedicated Indiana nature preserve under the Indiana Natural Areas Preservation Act (IC 14-31-1 et seq.).

(g) Facilities must not locate any active area:

(1) in violation of Section 404 of the Clean Water Act under 33 U.S.C. 1344, as amended February 4, 1987;

(2) so as to cause or contribute to violations of Section 401 water quality certification of the Clean Water Act under 33 U.S.C. 1341, as amended December 27, 1977; or

(3) so as to impair or dredge and fill wetlands under the Clean Water Act, 33 U.S.C. 1344, as amended February 4, 1987, without an appropriate permit.

(Solid Waste Management Board; 329 IAC 14-6-2)

329 IAC 14-6-3 Class III facility siting requirements

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10

Affected: IC 13-15-3; IC 13-20-10; IC 14-22-34; IC 14-31-1; IC 36-7-11

Sec. 3. (a) The active area of a facility must not be located:

(1) within six hundred (600) feet of a:

(A) well that supplies potable water unless the water is used for composting activities; and

(B) dwelling or public building that exists at the time that the applicant submits an initial registration application;

(2) in a manner that would result in the washout from flooding of any:

(A) stream;

(B) pond;

(C) creek;

(D) river water; or

(E) surface water; or

(3) within one hundred (100) feet of:

(A) the real property boundary of the facility; or

(B) surface water, including a drinking water reservoir and a wetland.

(b) The active area of a facility must be located outside of the one hundred (100) year flood plain, except a facility that is either:
(1) operated in conjunction with a publicly owned treatment works permitted under IC 13-15-3; or
(2) designed and operated to provide adequate controls to prevent ground water and surface water contamination in the event of a one hundred (100) year flood.

(c) The facility must be sited to prevent an active area from being placed:
(1) within three (3) feet of the highest point of the water table; or
(2) provide adequate controls to prevent ground water and surface water contamination.

(d) Lowering of the water table beneath the active area of the facility is allowed so that a minimum of a three (3) foot separation distance is provided between the active area and the highest point of the water table.

(e) The facility location must not:
(1) violate the endangered species laws and regulations;
(2) result in the destruction or adverse modification of the critical habitat for such species; or
(3) cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under IC 14-22-34.

(f) The facility must not be located in any area where:
(1) an irreplaceable historic or archaeological site has been listed pursuant to 16 U.S.C. 470 et seq. or IC 36-7-11;
(2) a natural landmark has been designated by the National Park Service or the Indiana state historic preservation office; or
(3) a natural area has been designated as a dedicated Indiana nature preserve under the Indiana Natural Areas Preservation Act (IC 14-31-1 et seq.)

(g) Facilities must not locate any active area:
(1) in violation of Section 404 of the Clean Water Act, under 33 U.S.C. 1344, as amended February 4, 1987;
(2) so as to cause or contribute to violations of Section 401 water quality certification of the Clean Water Act under 33 U.S.C. 1341, as amended December 27, 1977; or
(3) so as to impair or dredge and fill wetlands under the Clean Water Act, 33 U.S.C. 1344, as amended February 4, 1987, without an appropriate permit.

(h) The distance established in subsection (a)(1)(B) applies unless written consent to shorten the distance is obtained from the dwelling owner or the dwelling owner and dwelling occupant if the dwelling owner and dwelling occupant are different persons. *(Solid Waste Management Board; 329 IAC 14-6-3)*

Rule 7. Design Requirements for Composting Facilities

329 IAC 14-7-1 Design requirements for Class I facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 1. (a) If an active area is closer than five (5) feet of the highest point of the water table, any of the following designs are considered acceptable for a Class I facility:
(1) Construction of a clay pad liner with a thickness of at least two (2) feet and a hydraulic conductivity no greater than 1×10^{-6} cm/second.
(2) Placement of a concrete or asphalt pad.
(3) Utilization of a synthetic liner system.
(4) Lowering of the water table beneath the active area of the facility so that a minimum of a three (3) foot separation distance is provided between the active area and the water table.

(b) The facility must be designed to adequately control storm water run-on and run-off from the facility. The following practices, if implemented, will assure adequate control of storm water and properly manage run-on and run-off from the facility:
(1) Run-on is diverted and managed from the facility through the use of:
(A) ditches;
(B) dikes;
(C) berms; or
(D) swales.
(2) Run-off from the active area is collected in a holding pond or tank and managed properly so as not to create a pollution condition.
(3) The active area of the facility is designed and operated to prevent ponding of water in between windrows and static piles. Windrows or static piles placed parallel to the slope must allow for proper drainage.
(4) The active area of the facility is graded and maintained to provide a slope of not less than two percent (2%) and not greater than six percent (6%) unless otherwise approved by the commissioner based on site-specific conditions.

(c) The facility must be designed to control:
(1) nuisance conditions, such as noise and odors; and
(2) dust from leaving the site.

(d) The design must include a legible map of the facility that delineates the following:
(1) Property boundaries.
(2) On-site buildings.
(3) The location of the active area including length, width, and height of each windrow or static pile.
(4) The separation distance between the windrows or static piles.
(5) Staging areas of:
(A) compostable matter;
(B) bulking agents;
(C) additives; and
(D) curing compost.
(6) Storage areas of compost.
(Solid Waste Management Board; 329 IAC 14-7-1)

329 IAC 14-7-2 Design requirements for Class II facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. (a) A Class II facility must be constructed using one (1) of the following designs:
(1) A clay pad liner constructed:
(A) over a stable foundation;
(B) with a thickness of at least two (2) feet; and
(C) with a hydraulic conductivity not greater than 1×10^{-7}

cm/second.
(2) A concrete or asphalt pad.
(3) A synthetic liner system.

(b) The facility must be designed to adequately control run-on and run-off from the facility and manage leachate that is generated by the facility. The following practices may be implemented to properly manage run-on and run-off and manage leachate from the facility:
(1) Surface water drainage run-on must be diverted away from the facility through the use of ditches, dikes, berms, or swales. The diversion of run-on away from the active area must control the amount of leachate and run-off that must be managed.
(2) Leachate and run-off from the active area must be collected in a holding pond or tank, discharged or disposed of in accordance with all applicable local, state, and federal laws, and only disposed of by one (1) of the following:
(A) Transported to a treatment plant.
(B) Land applied.
(C) Managed on-site as approved by the commissioner under subdivision (5).
(3) The facility must be designed and operated to prevent ponding of water in between windrows and static piles. Windrows or static piles placed parallel to the slope must allow for proper drainage.
(4) The active area of the facility must be graded and maintained to provide a slope of not less than two percent (2%) and not greater than six percent (6%).
(5) Other specific practices to be approved by the commissioner. For approval, the applicant must describe the management practice to be employed to protect the ground water and properly manage leachate and run-off and provide the following:
(A) Specifics to demonstrate that the design will adequately protect the ground water and properly manage leachate and run-off.
(B) Design drawings to show that the facility will properly manage leachate and protect ground water. Drawings must include detailed views and necessary cross sections to show all the elements of the design.

(c) The facility must be designed to adequately control:
(1) nuisance conditions, such as noise and odor; and
(2) dust from leaving the site.

(d) All facilities must have utilities necessary for the safe operation of the facility including the following:
(1) Lights.
(2) Electricity.
(3) Water supply.
(4) Communications equipment.

(e) The facility must be designed in such a manner to prevent and control fires.

(f) The operator must design measures, such as the use of wheel washing units or rumble strips, to prevent tracking of mud by delivery vehicles onto access roads.

(g) The plan must include a facility map depicting existing features and existing topographic contours of the area on which the facility is going to be located. The minimum scale must be one (1) inch equals four hundred (400) feet (1″ = 400′). This map must include the following:
(1) The proposed facility boundary.
(2) Property lines.
(3) Easements and rights-of-way.
(4) Buildings.
(5) Foundations.
(6) Roads.
(7) Wells.
(8) Utilities and other structures.
(9) Topography.
(10) Drainage swales.
(11) Surface waters.
(12) Wetlands.
(13) Flood plains and similar drainage features.
(14) Wooded areas.
(15) Location of soil borings and test pits.
(16) Features of historical and archaeological significance.
(17) Other features, as appropriate.

(h) A facility plan must include the following:
(1) Proposed facility access roads and traffic patterns.
(2) Buildings.
(3) Scales.
(4) Utility lines.
(5) Drainage diversion.
(6) Screening means of access control.
(7) Final topography.
(8) Areas to be cleared of vegetation.
(9) Other design features.
The extent of coverage and scale must be the same as that for the existing conditions map.

(i) The design plan must include a proposed layout of the facility, including buildings, sanitary facilities, and receiving, staging, processing, and storage areas. The minimum scale must be one (1) inch equals twenty (20) feet (1″ = 20′). The facility layout must also show the following:
(1) The location of the active area including the:
(A) length;
(B) width; and
(C) height;
of each windrow or static pile.
(2) Separation distances between the windrows or static piles.
(3) Staging areas of:
(A) compostable matter;
(B) additives; and
(C) bulking agents.
(4) The compost storage area.
(5) The location of all major facility equipment, including material handling equipment such as the following:
(A) Chippers.
(B) Screening equipment.
(C) Compost turning equipment.
(6) Berms and drains to control and collect leachate from the active area.
(7) Other pertinent design features.

(j) A description of the procedures at the staging area for processing the compostable matter prior to incorporation into the windrow or other composting process, such as debagging or size reduction.

(k) The design plan must include a specification of the maximum:
(1) size;
(2) volume:
(3) height; and
(4) width;
for staging piles, composting windrows, or other composting processes, curing piles, and finished compost storage.

(l) The design plan must include the following:
(1) A specification of the methods of measuring critical parameters within the windrow and other composting processes.
(2) A description of methods used to ensure the critical parameters are met. Critical parameters addressed must include the following:
(A) Carbon to nitrogen ratio.
(B) Temperature.
(C) Moisture content.
(D) pH.
(E) Stability.

(m) Any changes, modifications, or deviations from the design are changes that require approval of the updated information by the commissioner under 329 IAC 14-5-6. *(Solid Waste Management Board; 329 IAC 14-7-2)*

329 IAC 14-7-3 Design requirements for Class III facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 3. (a) A Class III facility must be constructed using one (1) of the following designs:
(1) A clay pad liner constructed:
(A) over a stable foundation;
(B) with a thickness of at least two (2) feet; and
(C) with a hydraulic conductivity not greater than 1×10^{-7} cm/second.
(2) A concrete or asphalt pad.
(3) A synthetic liner system on an acceptable foundation.

(b) The facility must be designed to adequately control run-on and run-off from the facility and manage leachate that is generated by the facility. The following practices must be implemented to properly manage run-on and run-off and leachate from the facility:
(1) Surface water drainage run-on must be diverted away from the facility through the use of ditches, dikes, berms, or swales. The diversion of run-on away from the active area must control the amount of leachate and run-off that must be managed.
(2) Leachate and run-off from the active area must be collected in a holding pond or tank, discharged or disposed in accordance with all applicable local, state, and federal laws, and disposed of by one (1) of the following:
(A) Transporting to a treatment plant.
(B) Land applied.
(C) Managed on-site as approved by the commissioner under subdivision (5).
(3) The facility must be designed and operated to prevent ponding of water in between windrows. Windrows placed parallel to the slope must allow for proper drainage.
(4) The active area of the facility must be graded and maintained to provide a slope of not less than two percent (2%) and not greater than six percent (6%).
(5) Other specific practices must be approved by the commissioner. The management practice to be employed to protect the ground water and properly manage leachate and run-off must be described and provide the following:.
(A) Specifics to demonstrate that the design will adequately protect the ground water and properly manage leachate and run-off.
(B) Design drawings to show that the facility will properly manage leachate and protect ground water. Drawings must include detailed views and necessary cross sections to show all the elements of the design.

(c) The facility must be adequately designed to control:
(1) nuisance conditions, such as noise and odors, and
(2) dust from leaving the site.

(d) All facilities must have utilities necessary for the safe operation of the facility, including the following:
(1) Lights.
(2) Electricity.
(3) Water supply.
(4) Communications equipment.

(e) The facility must be designed in such a manner to prevent and control fires.

(f) The owner must design measures, such as the use of wheel washing units or rumble strips, to prevent tracking of mud by delivery vehicles onto access roads.

(g) The plan must include a facility map depicting existing features and existing topographic contours of the area on which the facility is going to be located. The minimum scale must be one (1) inch equals four hundred (400) feet (1″ = 400′). This map must include the following:
(1) The proposed facility boundary.
(2) Property lines.
(3) Easements and rights-of-way.
(4) Buildings.
(5) Foundations.
(6) Roads.
(7) Wells.
(8) Utilities and other structures.
(9) Topography.
(10) Drainage swales.
(11) Surface waters.
(12) Wetlands.
(13) Flood plains and similar drainage features.
(14) Wooded areas.
(15) The location of soil borings and test pits.
(16) Features of historical and archaeological significance.
(17) Other features, as appropriate.

(h) A design plan must include the following:
(1) Proposed facility access roads and traffic patterns.
(2) Buildings.
(3) Scales.
(4) Utility lines.
(5) Drainage diversion.
(6) Screening means of access control.
(7) Final topography.
(8) Areas to be cleared of vegetation.
(9) Other design features.

The extent of coverage and scale must be the same as that for the existing conditions map.

(i) The design plan must include a proposed layout of the facility including buildings, sanitary facilities, and receiving, staging, active area, processing, and storage areas. The minimum scale must be one (1) inch equals twenty (20) feet (1″ = 20′). The facility layout must also show the following:

(1) The location of the active area, including the following information for each windrow or static pile:
(A) Length.
(B) Width.
(C) Height.
(2) Separation distances between the windrows or static piles.
(3) Staging areas of the following:
(A) Compostable matter.
(B) Curing compostable matter.
(C) Additives.
(D) Bulking agents.
(4) The compost storage area.
(5) The location of all major facility equipment, including material handling equipment such as the following:
(A) Chippers.
(B) Screening equipment.
(C) Compost turning equipment.
(6) Berms and drains to control and collect leachate from the active area.
(7) Other pertinent design features.

(j) The design plan must include a description of the procedures at the staging area for processing the compostable matter prior to incorporation into the windrow or other composting process, such as debagging or size reduction.

(k) The design plan must include a specification of the maximum:
(1) size;
(2) volume;
(3) height; and
(3) width;
for staging piles, composting windrows, or other composting processes, curing piles, and finished compost storage.

(l) The design plan must include the following:
(1) A specification of the methods of measuring critical parameters within the windrow and other composting processes.
(2) A description of methods used to ensure the critical parameters are met. Critical parameters addressed must include the following:
(A) Carbon to nitrogen ratio.
(B) Temperature.
(C) Moisture content.
(D) pH.
(E) Stability.

(m) The design plan must include information on physical and chemical characteristics of bulking agents and additives.

(n) Any changes, modifications, or deviations from the design are changes that require approval of the updated information by the commissioner under 329 IAC 14-5-6. *(Solid Waste Management Board; 329 IAC 14-7-3)*

Rule 8. Operational Requirements for Composting Facilities

329 IAC 14-8-1 Operational requirements for Class I facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 1. (a) Facilities must do the following:
(1) Control dust in such a manner as to minimize the amount of fugitive dust that leaves the site.
(2) Implement management practices adequate to control offensive and noxious odors from leaving the site.
(3) Operate in such a manner that excessive noise from facility operation is controlled.
(4) Control litter from leaving the facility or accumulating on-site.
(5) Control vermin so as not to become a nuisance or health hazard.
(6) Take immediate action to correct any problems listed in subdivisions (1) through (5) occurring at the facility.
(7) Implement controls for surface water run-on and run-off.

(b) Facilities must control and dispose of solid waste as follows:
(1) Any solid waste received that is unsuitable for composting must be stored in enclosed, leakproof containers and disposed of in accordance with applicable rules. Any leachate generated from the solid waste must be contained and properly disposed of.
(2) Noncompostable solid waste must not be left at the facility for more than thirty (30) days.

(c) Vegetative matter must be removed from containers and bags unless:
(1) contained in biodegradable bags; or
(2) other methods of container and bag removal are approved by the commissioner based on an equivalent degree of litter control.

(d) Grass clippings must be mixed with bulking agents or active compostable matter within seventy-two (72) hours of receipt.

(e) Compostable matter must be turned or manipulated to facilitate the biological process if required by the composting procedure.

(f) The composting facility site must be monitored by operating personnel, and access to the facility must be controlled by an appropriate method or methods sufficient to control open dumping.

(g) Waste screening procedures must be adequate to prevent the composting of any unauthorized waste including hazardous waste and infectious waste. Compost offered for sale or public distribution or otherwise used by the operator must be inspected to minimize:
(1) particles that could cause injury to persons handling the compost; and
(2) contaminants that could cause detrimental impacts to public health or the environment.

(h) Adequate measures must be in place to eliminate fire hazards, and equipment must be available to control fires. Plans must be submitted to local fire departments.

(i) Employees must be trained in accordance with the facility's management plan and certified under this article.

(j) The owner of a facility must not cause or allow the:
(1) storage;
(2) containment;
(3) processing; or
(4) disposal;
of solid waste in a manner that creates a threat to human health or the environment, including the creation of air or water pollution.

(k) A sign must be posted at each point of access to the facility that indicates the following:
(1) The name of the facility.
(2) The registration number of the facility.
(3) The hours of operation.
(4) A list of materials accepted for composting.
(5) That no dumping is allowed.
(6) The penalty for violations.
(7) All necessary safety precautions.
(8) The name and phone number to call in case of an emergency.
(9) Any other pertinent information.

(l) Storage time of raw materials must be controlled as necessary to prevent excessive stockpiling.

(m) Unloading of compostable matter, bulking agents, and additives must take place in designated areas as specified in the registration.

(n) Facilities must use best management practices as described in Indiana Yard Waste Solutions, a manual adopted by the Indiana department of environmental management and the Indiana Recycling Coalition, Inc., revised September 1993. *(Solid Waste Management Board; 329 IAC 14-8-1)*

329 IAC 14-8-2 Operational requirements for Class II facilities
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. (a) Facilities must do the following:
(1) Control dust in such a manner as to minimize the amount of fugitive dust that leaves the site.
(2) Implement management practices to adequately control offensive and noxious odors from leaving the site.
(3) Operate in such a manner that excessive noise from facility operation is controlled.
(4) Control litter from leaving the facility or accumulating on-site.
(5) Control vermin so as not to become a nuisance or health hazard.
(6) Take immediate action to correct any problems listed in subdivisions (1) through (5) occurring at the facility.

(b) Class II facilities must control and dispose of solid waste as follows:
(1) Any solid waste received that is unsuitable for composting must be stored in enclosed, leakproof containers and disposed of in accordance with the applicable rules.
(2) Noncompostable solid waste must not be left at the facility for more than thirty (30) days.

(c) Staged source-separated biodegradable solid waste and vegetative matter must be removed from containers and bags within twenty-four (24) hours of receipt at the facility unless:
(1) contained in biodegradable bags; or
(2) other methods of container and bag removal are approved by the commissioner.

(d) Grass clippings and food waste shall be incorporated into windrows or other composting process within seventy-two (72) hours of receipt at the facility unless otherwise approved by the commissioner.

(e) Vegetative matter, plant food waste, wood waste, and crop residues shall be size reduced if necessary to provide adequate particle surface area for effective composting.

(f) The composting site must be monitored by operating personnel at least once a day, and access to the facility must be controlled by an appropriate method or methods sufficient to control open dumping.

(g) Waste screening procedures must be adequate to prevent the composting of any unauthorized waste including hazardous waste and infectious waste. Compost offered for sale or public distribution or otherwise used by the operator must be inspected to minimize the following:
(1) Sharp particles that could cause injury to persons handling the compost.
(2) Contaminants that could cause detrimental impacts to public health or the environment.
(3) Must be stabilized to eliminate pathogenic organisms and to ensure that the materials do not reheat upon standing.

(h) Adequate measures must be in place to eliminate fire hazards, and equipment must be available to control fires. Plans must be submitted to local fire departments.

(i) Employees must be trained in accordance with the facility's management plan.

(j) The owner or operator of a facility must not cause or allow the:
(1) storage;
(2) containment;
(3) processing; or
(4) disposal;
of solid waste in a manner that creates a threat to human health or the environment, including the creation of air or water pollution.

(k) A sign must be posted at each point of access to the facility that indicates the following:
(1) The name of the facility.
(2) The registration number of the facility.
(3) The hours of operation.
(4) A list of materials accepted for composting.
(5) That no dumping is allowed.
(6) The penalty for violations.
(7) All necessary safety precautions.
(8) The name and phone number to call in case of an emergency.
(9) Any other pertinent information.

(l) Storage time of raw materials must be controlled, and the product must be marketed, used, or given away to prevent excessive stockpiling.

(m) Unloading of compostable matter, bulking agents, and

additives must take place in designated areas as specified in the registration.

(n) The registrant must obtain a permit in accordance with 327 IAC 6.1-5 to sell or distribute the finished compost product.

(o) Facilities must use best management practices as described in Indiana Yard Waste Solutions, a manual adopted by the Indiana department of environmental management and the Indiana Recycling Coalition, Inc., revised September 1993.

(p) Internal temperature of active compostable matter must be tested biweekly to ensure temperature is sufficient to reduce pathogens to a level as required by rules of the water pollution control board at 327 IAC 6.1, Table 3. Other operational methods to monitor reduction of pathogens may be approved by the commissioner. *(Solid Waste Management Board; 329 IAC 14-8-2)*

329 IAC 14-8-3 Operational requirements for Class III facilities

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 3. (a) Facilities must do the following:
(1) Control dust in such a manner that controls the amount of fugitive dust that leaves the site.
(2) Implement management practices to control offensive and noxious odors from leaving the site.
(3) Operate in such a manner that excessive noise from facility operation is controlled.
(4) Control litter from leaving the facility or accumulating on-site.
(5) Control vermin so as not to become a nuisance or health hazard.
(6) Take immediate action to correct any problems listed in subdivisions (1) through (5) occurring at the facility.

(b) Class III facilities must control and dispose of solid waste as follows:
(1) Any solid waste received that is unsuitable for composting must be stored in enclosed, leakproof containers and disposed of in accordance with the applicable rules.
(2) No unapproved or noncompostable solid waste should be left at the facility for more than thirty (30) days.

(c) Staged source-separated biodegradable solid waste and vegetative matter must be removed from containers and bags within twenty-four (24) hours of receipt by the facility unless contained in biodegradable bags.

(d) Grass clippings, manure, and plant food waste shall be incorporated into windrows or other composting process within seventy-two (72) hours of receipt at the facility unless otherwise approved by the commissioner.

(e) Vegetative matter, plant food waste, wood waste, and agricultural plant materials shall be size reduced if necessary to provide adequate particle surface area for effective composting.

(f) Compost must be produced by a process to further reduce pathogens. Three (3) acceptable methods of pathogen reduction processes are as follows:
(1) The windrow method for reducing pathogens consists of an unconfined composting process involving periodic aeration and mixing. Aerobic conditions must be maintained during the composting process. A temperature of fifty-five (55) degrees Celsius or one hundred thirty-one (131) degrees Fahrenheit must be maintained in the windrow for at least three (3) weeks. The windrow must be turned at least once every three (3) to five (5) days.
(2) The static aerated pile method for reducing pathogens consists of an unconfined composting process involving mechanical aeration of insulated compost piles. Aerobic conditions must be maintained during the compost process. The temperature of the compost pile must be maintained at fifty-five (55) degrees Celsius or one hundred thirty-one (131) degrees Fahrenheit for at least seven (7) days.
(3) The enclosed vessel method for reducing pathogens consists of a confined compost process involving mechanical mixing of compost under controlled environmental conditions. The retention time in the vessel must be at least twenty-four (24) hours with the temperature maintained at fifty-five (55) degrees Celsius. A stabilization period of at least seven (7) days must follow the enclosed vessel retention period. Temperature in the compost pile must be maintained at least fifty-five (55) degrees Celsius or one hundred thirty-one (131) degrees Fahrenheit for three (3) days during the stabilization process.

(g) Public access to facilities must be allowed only when operating personnel are on duty, and access must be controlled by the use of gates, fences, or other appropriate means.

(h) Waste screening procedures must be in place to ensure that only approved compostable matter, bulking agents, and additives are accepted by the facility. These procedures must include methods for detecting hazardous waste, infectious waste, or any unauthorized waste. The facility must reject unauthorized waste.

(i) Adequate measures must be in place to eliminate fire hazards, and equipment must be available to control fires. Plans must be submitted to local fire departments.

(j) Training procedures must be established to ensure that operators and employees adhere to environmental laws and rules not to pollute by using the best management practices and available technology. The operator must be certified under this article.

(k) The owner or operator of a facility must not cause or allow the:
(1) storage;
(2) containment;
(3) processing; or
(4) disposal;
of solid waste in a manner that creates a threat to human health or the environment, including the creation of air or water pollution.

(l) A sign must be posted at each point of access to the facility that indicates the following:
(1) The name of the facility.
(2) The registration number of the facility.
(3) The hours of operation.
(4) A list of materials accepted for composting.
(5) That no dumping is allowed.
(6) The penalty for violations.
(7) All necessary safety precautions.
(8) The name and phone number to call in case of an emergency.

(9) Any other pertinent information.

(m) Compost and materials resulting from composting or similar processes and offered for sale or public distribution or otherwise used by the operator must be inspected to minimize or eliminate the following:

(1) Sharp particles that could cause injury to persons handling the compost.

(2) Toxins that could cause detrimental impacts to public health or the environment.

(3) Pathogenic organisms.

(4) Materials do not reheat upon standing.

(n) Storage time of completed materials must be controlled to maintain the quality of the compost, and the product must be marketed, used, or given away to prevent excessive stockpiling.

(o) Unloading of compostable matter, bulking agents, and additives must take place in designated areas as specified in the registration.

(p) The registrant must obtain a permit in accordance with 327 IAC 6.1-5 to sell or distribute the finished compost product.

(q) Facilities must use best management practices as described in Indiana Yard Waste Solutions, a manual adopted by the Indiana department of environmental management and the Indiana Recycling Coalition, Inc., revised September 1993.

(r) The management plan must provide for each type of compostable matter to be composted. Either laboratory data or literature data documenting the:

(1) carbon;

(2) nitrogen;

(3) phosphorus content;

(4) potassium content;

(5) moisture content; and

(6) pH content;

of the mixture must be provided.

(s) Internal temperature of active compostable matter must be tested biweekly to ensure temperature is sufficient to reduce pathogens to a level as required by rules of the water pollution control board at 327 IAC 6.1, Table 3. *(Solid Waste Management Board; 329 IAC 14-8-3)*

Rule 9. Record Keeping and Reporting Requirements

329 IAC 14-9-1 Record keeping and reporting requirements for Class I facilities

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 1. (a) The following must be furnished upon request and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner:

(1) The average daily quantity of compostable matter received (monitored weekly; calculated as the quantity received in a week divided by the number of days open that week).

(2) The origin, type, and quantity of any additive received at the facility.

(3) The type and quantity of any bulking agent used in the composting process, as quantified based on a monthly review of bulking agents remaining. Water added during composting need not be quantified.

(4) The dates of turning of each windrow or pile.

(5) All monitoring data required in the facility's management plan.

(6) The quantity of compost removed from the facility.

(7) Proof of financial assurance, as applicable.

(8) Proof of operator certification.

(b) A person who operates a Class I facility must submit an annual report on forms provided by the department to the commissioner:

(1) before February 1 of each year for January through December of the previous year;

(2) indicating the of compostable matter, additives, and bulking agents processed by the facility and the final disposition of the compost during the previous calendar year; and

(3) including a closure cost estimate made in accordance with 329 IAC 14-10-2.

(Solid Waste Management Board; 329 IAC 14-9-1)

329 IAC 14-9-2 Record keeping and reporting requirements for Class II facilities

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10; IC 15-5

Sec. 2. (a) The following must be furnished upon request and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner:

(1) The daily quantity of compostable material received.

(2) The origin, type, and quantity of any bulking agent or additive accepted when received at the facility.

(3) The type and quantity of any bulking agent or additive used in the composting process, as quantified based on a monthly review of bulking agents and additives remaining. Water added during composting need not be quantified.

(4) The dates of turning of each windrow or pile.

(5) All monitoring data required in the facility management plan.

(6) For any odor complaint received, the information collected under this article.

(7) Details of all incidents that require implementation of the facility's contingency plan, in accordance with this article and methods used to resolve them.

(8) The quantity of compost removed from the facility.

(9) Proof of approved financial assurance.

(10) Proof of operator certification.

(b) A person that operates a Class II facility must submit an annual report on forms provided by the department to the commissioner:

(1) before February 1 of each year for January through December of the previous year;

(2) indicating the short tons of compostable matter, additives, and bulking agents processed by the facility and the final disposition during the previous calendar year;

(3) including a:

(A) copy of a storm water permit in accordance with IC 15-5; and

(B) closure cost estimate made in accordance with 329 IAC 14-10-2.

(Solid Waste Management Board; 329 IAC 14-9-2)

329 IAC 14-9-3 Record keeping requirements for Class III facilities

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10; IC 15-5

Sec. 3. (a) The following must be furnished upon request and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner:

(1) The quantity of each load of compostable material received.

(2) The origin, type, and quantity of any bulking agent or additive accepted when received at the facility.

(3) The type and quantity of any bulking agent or additive used in the composting process, as quantified based on a monthly review of bulking agents or additives remaining. Water added during composting need not be quantified.

(4) The dates of turning of each windrow or pile.

(5) All monitoring data required in the facility management plan.

(6) For any odor complaint received, the information collected under this article.

(7) Details of all incidents that require implementation of the facility's contingency plan in accordance with this article and methods used to resolve them.

(8) The following records pertaining to sampling and testing as applicable:

(A) Locations in the active area from which samples are obtained.

(B) Number of samples taken.

(C) Volume of each sample taken.

(D) Date and time of collection samples.

(E) Name and signature of person responsible for sampling.

(F) Name and address of the laboratory receiving samples if applicable.

(9) The quantity of compost removed from the facility.

(10) Proof of approved financial assurance.

(11) Proof of operator certification.

(b) A person that operates a Class III facility must submit an annual report to the commissioner on forms provided by the commissioner:

(1) before February 1 of each year for January through December of the previous year;

(2) indicating the short tons of compostable matter, additives, and bulking agents processed by the facility and the final disposition of the compost during the previous calendar year; and

(3) including a:

(A) copy of a storm water permit in accordance with IC 15-5; and

(B) closure cost estimate made in accordance with 329 IAC 14-10-2.

(Solid Waste Management Board; 329 IAC 14-9-3)

Rule 10. Closure

329 IAC 14-10-1 Final closure

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 1. (a) The operator must initiate implementation of the closure plan within thirty (30) days following the intentional cessation of accepting solid waste and of composting activities.

(b) Not later than seventy-two (72) hours following the beginning of closure, the operator must post signs easily visible at all access roads leading into the facility. The text of such signs must read, in letters not less than three (3) inches high, "This facility is closed for all composting activities and all receipt of compostable matter. No dumping allowed.". Such signs must be maintained in legible condition until certification of completion of closure for the facility is issued by the commissioner.

(c) Final closure of a facility is complete when all of the following occur:

(1) All storage and processing of compostable matter has stopped.

(2) All equipment used at the operation has been removed.

(3) All compost, compostable matter, bulking agents, and additives have been:

(A) collected;

(B) removed from the site; and

(C) disposed of properly in accordance with this article and 329 IAC 10.

(d) The commissioner notifies the owner or operator of the facility in writing that final closure has been completed and financial responsibility is no longer required to be maintained. *(Solid Waste Management Board; 329 IAC 14-10-1)*

329 IAC 14-10-2 Closure cost estimate

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. (a) The owner or operator of a facility shall submit to the commissioner a written estimate of the cost of completing final closure of the site in accordance with this section. The original closure cost estimate must be submitted, on a form provided by the commissioner, with the application for a certificate of registration. The closure cost estimate must include the following:

(1) The methods that will be used to remove and properly dispose of all solid waste and materials stored at the site.

(2) The final destination of all solid waste and materials removed from the site.

(3) The name and address of the contractor or contractors, if applicable, to be used to remove the materials and solid waste and complete final closure of the site.

(4) The estimated cost of completing all activities required by this rule.

(b) The owner or operator of a facility shall submit to the commissioner a revised written closure cost estimate:

(1) annually, no later than February 1 with the annual report required by 329 IAC 14-9; and

(2) whenever a change in the removal plan increases the closure cost estimate.

The revised closure cost estimate must meet the requirements of subsection (a).

(c) The closure cost estimate must be based on the cost of removing the maximum amount of materials, calculated in short tons, that the owner or operator anticipates will be accumulated at the site at any time.

(d) The closure cost estimate must be based on the projected costs

of contracting a third party to complete final closure of the site.

(e) Once the owner or operator of a facility has completed an activity required in this rule, the owner or operator may revise:

(1) the closure cost estimate indicating that the activity has been completed; and

(2) that element of the closure cost estimate to zero (0).

(Solid Waste Management Board; 329 IAC 14-10-2)

Rule 11. Financial Responsibility for Composting Facilities

329 IAC 14-11-1 Applicability

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 1. All registrants except those excluded by 329 IAC 14-5-2(e). *(Solid Waste Management Board; 329 IAC 14-11-1)*

329 IAC 14-11-2 Compliance dates

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 2. (a) Facilities currently registered under IC 13-20-10 must submit renewal applications sixty (60) days before the current registration expires and be in compliance with all applicable provisions under this article.

(b) Financial responsibility will be required with the registration application for new facilities.

(c) Class II and Class III facilities shall comply with this rule immediately. *(Solid Waste Management Board; 329 IAC 14-11-2)*

329 IAC 14-11-3 Amount and scope of financial responsibility

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 3. (a) No financial responsibility is required if a Class I facility processes less than fifteen thousand (15,000) short tons of compostable matter, bulking agents, and additives per year.

(b) The amount of financial responsibility for a Class I facility that has a maximum capacity of more than fifteen thousand (15,000) short tons of compostable matter, bulking agents, and additives per year is fifty dollars ($50) per short ton based on the maximum capacity of the facility.

(c) The amount of financial responsibility for a Class II facility is fifty dollars ($50) per short ton for the maximum capacity of the facility for compostable matter, bulking agents, and additives.

(d) The amount of financial responsibility for a Class III facility is fifty dollars ($50) per short ton for the maximum capacity of the facility for compostable matter, bulking agents, and additives. *(Solid Waste Management Board; 329 IAC 14-11-3)*

329 IAC 14-11-4 Mechanisms of financial assurance

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 4. The owner or operator of a facility shall do the following:

(1) Prepare and submit to the commissioner a closure cost estimate in accordance with section 3 of this rule.

(2) Maintain financial assurance for closure costs, in an amount equal to or greater than the closure cost estimate, using one (1) of the following mechanisms:

(A) A trust fund in accordance with section 6 of this rule.

(B) A surety bond in accordance with section 7 of this rule.

(C) A letter of credit in accordance with section 8 of this rule.

(D) Insurance in accordance with section 9 of this rule.

(E) A performance bond in accordance with section 10 of this rule.

(F) A negotiable certificate of deposit in accordance with section 11 of this rule.

(G) A negotiable letter of credit in accordance with section 12 of this rule.

(H) The local government financial test option as specified in 329 IAC 10-39-2(6) and 329 IAC 10-39-2(7).

(3) Maintain financial assurance for closure as required by this rule until the commissioner notifies the owner or operator of the facility that final closure has been completed in accordance with 329 IAC 14-10.

(Solid Waste Management Board; 329 IAC 14-11-4)

329 IAC 14-11-5 Use of financial mechanism for multiple sites

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 5. (a) The owner or operator of a facility may use a single financial responsibility mechanism to meet the requirements for more than one (1) facility. Evidence of financial responsibility submitted to the commissioner must include a list showing the following for each facility:

(1) The registration number of the composting facility.

(2) The name and address of the composting facility.

(3) The amount of funds available in the financial mechanism.

(b) The amount of funds available through the mechanism must be not less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility.

(c) The owner or operator may use a combination of two (2) or more financial mechanisms to satisfy the total amount of financial assurance required. *(Solid Waste Management Board; 329 IAC 14-11-5)*

329 IAC 14-11-6 Trust fund

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 6. (a) The owner or operator of a facility may comply with this section by establishing a trust agreement on:

(1) forms provided by the commissioner; or

(2) other forms approved by the commissioner.

(b) Each trust agreement must do the following:

(1) Identify facility and corresponding closure cost estimates covered by the trust agreement.

(2) Establish a trust fund, in an amount determined by section 3 of this rule, that guarantees that payments from that fund either:

(A) reimburse the owner or operator of the facility for commissioner-approved closure work done; or

(B) pay the commissioner for doing required closure work.

(3) Require that annual valuations of the trust be submitted to the commissioner.
(4) Require successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days before the effective date of the appointment.
(5) Require the trustee to notify the commissioner, in writing, of the failure of the owner or operator of the facility or facilities to make a required payment into the fund.
(6) Establish that the trust is irrevocable unless terminated, in writing, with the approval of the:
(A) owner or operator of the facility;
(B) trustee; and
(C) commissioner.
(7) Certify that the signer of the trust agreement for the owner or operator of the facility was duly authorized to bind the owner or operator of the facility.
(8) All signatures must be notarized by a notary public commissioned to be a notary public in Indiana at the time of the notarization.
(9) Establish that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal or state of Indiana agency.
(10) Require that annual payments into the fund be made within thirty (30) days of each anniversary of the initial payment.

(c) Payments into the trust must be made as follows:
(1) The owner or operator of the facility shall make a payment into the trust fund each year during the pay-in period.
(2) The maximum pay-in period is five (5) years. The pay-in period commences on the date the site first receives materials.
(3) Annual payments are determined by the following formula:

$$\text{Annual Payment} = \frac{CE - CV}{Y}$$

Where: CE = Current cost estimate.
CV = Current value of the trust fund.
Y = Number of years remaining in the pay-in period.

(4) The owner or operator of the facility shall make the initial payment before the beginning of the pay-in period. The owner or operator of the facility shall also, before the beginning of the pay-in period, submit to the commissioner a receipt from the trustee for this first annual payment.
(5) Subsequent payments must be made no later than thirty (30) days after each anniversary of the first payment.
(6) The owner or operator of the facility may accelerate payments into the trust fund or may deposit the full amount of the current cost estimate at the time the fund is established.
(7) The owner or operator of the facility shall maintain the value of the fund at not less than the value would have been if annual payments were made as specified in subdivision (3).
(8) If the owner or operator of the facility establishes a trust fund after having used one (1) or more alternative mechanisms, the first payment must be in at least the amount the fund would contain if the trust fund were established initially and payments made as provided in subdivision (3).

(d) The trustee shall evaluate the trust fund annually, as of the day the trust was created or on such earlier date as may be provided in the agreement. The trustee shall notify the owner or operator of the facility and the commissioner within thirty (30) days after the evaluation date.

(e) Release of excess funds may be requested as follows:
(1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the owner or operator of the facility may submit a written request to the commissioner for release of the amount in excess of the current cost estimate.
(2) Within sixty (60) days after receiving a request from the owner or operator of the facility for a release of funds, the commissioner shall instruct the trustee to release to the owner or operator of the facility such funds as the commissioner specifies in writing to be in excess of the current cost estimate.

(f) Reimbursement for removal expenses may be requested as follows:
(1) After initiating removal, the owner or operator of the facility or any other person authorized to perform removal may request reimbursement for removal expenditures by submitting itemized bills to the commissioner.
(2) Within sixty (60) days after receiving the itemized bills for removal activities, the commissioner shall determine whether the expenditures are in accordance with the removal plan. The commissioner shall instruct the trustee to make reimbursement in such amounts as the commissioner specifies in writing in accordance with the removal plan.
(3) If the commissioner determines, based on available information, that the cost of removal will be greater than the value of the trust fund, the commissioner shall withhold reimbursement of such amounts necessary to accomplish removal until it is determined that the owner or operator of the facility is no longer required to maintain financial assurance for removal. In the event the fund is inadequate to pay all claims, the commissioner shall pay claims according to the following priority:
(A) A person with whom the commissioner has contracted to perform removal activities.
(B) A person who has completed removal authorized by the commissioner.
(C) A person who has completed work that furthered the removal.
(D) The owner or operator of the facility and related business entities.

(Solid Waste Management Board; 329 IAC 14-11-6)

329 IAC 14-11-7 Surety bond

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 7. (a) The owner or operator of a facility may comply with this rule by establishing a surety bond on:
(1) forms provided by the commissioner; or
(2) other forms approved by the commissioner.

(b) All surety bonds must contain the following:
(1) The establishment of penal sums in the amount determined by section 3 of this rule.
(2) Provision that the surety will be liable to fulfill the closure obligations upon notice from the commissioner that the owner or operator of the facility has failed to do so.
(3) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator of the facility and the commissioner at least one hundred twenty (120) days before the effective date of the

cancellation.

(4) Provision that the owner or operator of the facility may not terminate the bond without prior written authorization by the commissioner.

(c) The owner or operator of the facility shall establish a standby trust fund to be utilized in the event the owner or operator of the facility fails to fulfill closure obligations and the bond guarantee is exercised. Such a trust fund must be established in accordance with section 6 of this rule.

(d) The surety company issuing the bond must be among those listed as acceptable sureties for federal bonds in the most recent Circular 570 of the United States Department of the Treasury.

(e) The surety will not be liable for deficiencies in the performance of closure by the owner or operator of the facility after the commissioner releases the owner or operator in accordance with section 13 of this rule. *(Solid Waste Management Board; 329 IAC 14-11-7)*

329 IAC 14-11-8 Letter of credit

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 8. (a) The owner or operator of a facility may comply with this rule by establishing a letter of credit on:

(1) forms provided by the commissioner; or

(2) forms approved by the commissioner.

(b) All letters of credit must contain the following:

(1) The establishment of credit in the amount determined by section 3 of this rule.

(2) Irrevocability.

(3) An effective period of at least one (1) year and automatic extensions for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of cancellation.

(4) Provision that, upon written notice from the commissioner, the institution issuing the letter of credit will:

(A) state that the obligations of the owner or operator of the facility have not been fulfilled; and

(B) deposit funds equal to the amount of credit into a trust fund to be used to ensure closure obligations of the owner or operator are fulfilled.

(c) The owner or operator of the facility shall establish a standby trust fund to be utilized in the event the owner or operator of the facility fails to fulfill closure obligations and the letter of credit is utilized. Such a trust fund must be established in accordance with section 6 of this rule.

(d) The issuing institution must be an entity that has the authority to issue letters of credit and whose letters of credit operations are regulated and examined by a federal or state of Indiana agency. *(Solid Waste Management Board; 329 IAC 14-11-8)*

329 IAC 14-11-9 Insurance

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 9. (a) The owner or operator of a facility may comply with this rule by providing evidence of insurance on:

(1) forms provided by the commissioner; or

(2) other forms approved by the commissioner.

(b) All insurance must include the following requirements:

(1) The establishment of insurance coverage in the amount determined by section 3 of this rule.

(2) Provision that the insurer shall make payments:

(A) in any amount, not to exceed the amount insured; and

(B) to any person authorized by the commissioner;

if the commissioner notifies the insurer in writing that the owner or operator of the facility has failed to perform final closure.

(3) Provision that the owner or operator of the facility shall maintain the policy in full force and effect unless the commissioner consents in writing to termination of the policy.

(4) Provision that the insurer may not cancel, terminate, or fail to renew the policy unless the owner or operator of the facility fails to pay the premium. No cancellation, termination, or failure to renew may occur unless the commissioner and the owner or operator of the facility are notified by the insurer in writing at least one hundred twenty (120) days before such event

(c) The insurer shall either be licensed to transact the business of insurance or be eligible to provide insurance as an excess or surplus lines insurer in one (1) or more states. *(Solid Waste Management Board; 329 IAC 14-11-9)*

329 IAC 14-11-10 Bond for performance

Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 10. (a) A facility may comply with this rule by establishing a performance bond on:

(1) forms provided by the commissioner; or

(2) other forms approved by the commissioner.

(b) All performance bonds must contain the following:

(1) The establishment of performance bond for the amount in accordance with section 3 of this rule.

(2) Provision that the surety will be liable to fulfill the obligations of the facility upon notice from the commissioner that the facility has failed to fulfill all obligations of this article.

(3) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the facility and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.

(4) Provision that the facility may not terminate the bond without prior written authorization by the commissioner.

(5) Provision that the surety will pay to the commissioner, for deposit in the management fund established for this purpose, the entire amount of the penal sum described in subdivision (1) in the event the facility fails to fulfill all obligations under this article.

(c) The facility shall establish a standby trust fund to be utilized in the event the facility fails to fulfill all obligations under this article and the bond guarantee is exercised. Such a trust fund must be established in accordance with section 6 of this rule.

(d) The surety company issuing the bond must be among those listed as acceptable sureties for federal bonds in the most recent

Circular 570 of the United States Department of the Treasury.

(e) The surety will not be liable for deficiencies in the performance of the facility after the commissioner releases the facility in accordance with section 13 of this rule. *(Solid Waste Management Board; 329 IAC 14-11-10)*

329 IAC 14-11-11 Negotiable certificate of deposit
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 11. (a) A facility may comply with this rule by establishing a negotiable certificate of deposit that meets the requirements of this section.

(b) A negotiable certificate of deposit must contain the following:
(1) A principal amount established in accordance with section 3 of this rule.
(2) Provision that the certificate of deposit may not be withdrawn by the facility unless released in writing by the commissioner under section 3 of this rule.
(3) The principal must be deposited for a period of at least one (1) year, with automatic redeposit thereafter for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the facility and the commissioner at least one hundred twenty (120) days before the date on which the certificate of deposit matures.
(4) Provision that the certificate of deposit must be payable to the commissioner, for deposit in the management fund, upon written notice from the commissioner, stating that obligations of the facility under this article have not been fulfilled.

(c) The issuing institution must be an entity that has the authority to issue certificates of deposit and whose operations are regulated and examined by a federal agency or an agency or commissioner of the state. *(Solid Waste Management Board; 329 IAC 14-11-11)*

329 IAC 14-11-12 Negotiable letter of credit
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 12. (a) A facility may comply with this rule by establishing a negotiable letter of credit on:
(1) forms provided by the commissioner; or
(2) forms approved by the commissioner.

(b) All negotiable letters of credit must contain the following:
(1) The establishment of credit in accordance with section 3 of this rule.
(2) Irrevocability.
(3) An effective period of at least one (1) year and automatic extensions thereafter for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the facility and the commissioner at least one hundred twenty (120) days before the effective date of cancellation.
(4) Provision that the institution will deposit funds equal to the amount of credit into the management fund to be used to ensure that all obligations of the facility under this article are fulfilled, if notified in writing by the commissioner that the obligations of the facility have not been fulfilled.

(c) The facility shall establish a standby trust fund to be utilized in the event the facility fails to fulfill all obligations under this article and the letter of credit is utilized. Such a trust fund must be established in accordance with the requirements of section 6 of this rule.

(d) The issuing institution must be an entity that has the authority to issue letters of credit and whose letters of credit operations are regulated and examined by a federal agency or an agency or department of the state. *(Solid Waste Management Board; 329 IAC 14-11-12)*

329 IAC 14-11-13 Release of financial responsibility obligations
Authority: IC 13-14-9-1; IC 13-14-8-2; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-10-10
Affected: IC 13-20-10

Sec. 13. When the requirements for closure in 329 IAC 14-10 have been completed, the commissioner will notify the registrant of the facility in writing that financial responsibility is no longer required to be maintained. *(Solid Waste Management Board; 329 IAC 14-11-13)*

Rule 12. Facility Operator Certification

329 IAC 14-12-1 Applicability
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 1. This rule shall apply to operators. *(Solid Waste Management Board; 329 IAC 14-12-1)*

329 IAC 14-12-2 General provisions
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 2. (a) Composting facilities to which this rule applies must have at least one (1) interim or certified operator available when the facility registered under this article is in operation. If the interim or certified operator is absent from the facility, the interim or certified operator shall remain available through contact by electronic communication device or telephone.

(b) Except as provided in subsection (c), (e), or (f), an individual shall not perform the duties of an operator unless that individual has a valid certificate from the commissioner.

(c) An individual who performs the duties of an operator on or before the effective date of this rule shall be considered an interim operator and may continue to perform the duties of a certified operator. However, an interim operator shall pass an accredited examination and receive a certificate under this rule and 329 IAC 14-13 no later than one (1) year after the effective date of this rule.

(d) For each interim operator, the composting facility designated in section 1(a) of this rule shall keep the following information in the operating record:
(1) The name of the interim operator.
(2) The date on which the interim operator was designated responsible for the operation of the facility.

(e) A composting facility may operate a facility with an interim operator if the certified operator:

(1) leaves the employment of the facility; or

(2) is unable to fulfill the responsibilities of certified operator for a period of time.

(f) An interim operator designated under subsection (e) may serve for up to one hundred twenty (120) days after the departure of the certified operator.

(g) A request for an extension of the one hundred twenty (120) day time period may be made by:

(1) submitting a written request for extension to the commissioner; and

(2) providing an explanation of the reason the extension is being requested.

(h) The certificate shall be posted in the office at the facility for the certified operator. Certified operators shall have available at the permitted facility a photographic identification card, such as a driver's license or other picture identification card, when serving as the facility's certified operator. The certificate and photographic identification card shall both be available for inspection by the department representatives during an inspection. *(Solid Waste Management Board; 329 IAC 14-12-2)*

329 IAC 14-12-3 Operator certification: certification; classification and application

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 3. (a) A certification shall be issued by the commissioner to an individual who demonstrates the skill and knowledge necessary to operate the appropriate composting facility through:

(1) testing for the initial certification; or

(2) attendance in an accredited training course for recertification.

(b) An individual seeking certification or recertification must complete an application provided by the approved examination provider or the accredited training course provider that contains the following:

(1) The name of the individual seeking certification or recertification.

(2) The name, full address, and telephone number of the facility at which the individual is currently employed if applicable.

(3) The type of facility at which the individual is currently employed if applicable.

(4) A statement to be signed by the individual seeking certification or recertification. The statement must read, "I certify under penalty of law that this document and all attachments are to the best of my knowledge true, accurate, and complete.".

(c) An initial certificate granted under subsection (a)(1) or section 5 of this rule shall be valid for one (1) year from the date of issuance. *(Solid Waste Management Board; 329 IAC 14-12-3)*

329 IAC 14-12-4 Certification; verification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 4-21.5-3-4; IC 13-20-10; IC 36-9-30

Sec. 4. (a) Within one (1) week after each examination, providers of an approved examination shall provide verification of testing to the commissioner by submission of the following:

(1) The completed application for all individuals taking the approved examination.

(2) The examination scores for all individuals taking the approved examination.

(b) Within one (1) week after each course, accredited training course providers shall provide verification of training to the commissioner by submission of the completed application for all individuals trained in the accredited training course.

(c) The verification from the provider of an approved examination or the accredited training course provider shall be reviewed by the commissioner and compared to the list of people having had their certification revoked as provided for in section 7(a) of this rule.

(d) The commissioner will deny certification to an individual that has a revoked certification for which the time period of the penalty has not lapsed.

(e) A denied certification may be appealed under IC 4-21.5-3-4. *(Solid Waste Management Board; 329 IAC 14-12-4)*

329 IAC 14-12-5 Reciprocity

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 5. (a) Any individual seeking certification who has been certified as a compost facility operator by an accrediting institution in another state may be designated a certified operator for a facility that is comparable to the facility that the individual was certified to operate in another state.

(b) A request for a certificate from the commissioner may be made by submitting the following:

(1) An application on forms prescribed by the commissioner.

(2) A copy of a compost facility operator certification from an accrediting institution in another state.

(c) Upon receipt of a certificate from the commissioner, the individual seeking reciprocity may begin to operate a facility comparable to the facility for which certification was received from another state. *(Solid Waste Management Board; 329 IAC 14-12-5)*

329 IAC 14-12-6 Operator certification: recertification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 6. (a) To renew, an operator must take an accredited training course approved by the commissioner under 329 IAC 14-13. A certified operator must complete an accredited training course prior to expiration of the operator's valid certificate.

(b) A certified operator completing one (1) or more accredited training courses in the twelve (12) months prior to the expiration of that operator's valid certificate shall be recertified. Recertification renews that operator's valid certificate for one (1) year from the expiration date of the certificate that was valid at the time of the training. *(Solid Waste Management Board; 329 IAC 14-12-6)*

329 IAC 14-12-7 Certification revocation
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 4-21.5; IC 13-20-10; IC 36-9-30

Sec. 7. (a) The commissioner may make a decision to revoke a certificate if the certified operator commits any of the following:
(1) Repeatedly violates a requirement or requirements of this article.
(2) Endangers human health, safety, or the environment by knowingly or intentionally violating operating procedures of a composting facility.
(3) Falsifies information provided to the department, a provider of an accredited examination, or an accredited training course provider for certification purposes.
(4) Falsifies information on an extension request for interim status.

(b) A revoked certificate must be for a period established by the commissioner, but not less than six (6) months.

(c) The certification may be revoked following the procedures under IC 4-21.5.

(d) Unless specified otherwise by the commissioner in a revocation of certification, a certified operator having a revoked certification must pass an accredited examination after the time period designated under subsection (b) of the revocation has expired to become certified after a revocation.

(e) Permanent revocation of certification may be made by the commissioner for an operator with multiple violations or revocations. *(Solid Waste Management Board; 329 IAC 14-12-7)*

329 IAC 14-12-8 Duplicate certificate
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 8. In order to replace a certificate that has been lost or stolen, a certified operator must do the following:
(1) Submit a request for a duplicate certificate to the commissioner.
(2) Include a statement indicating the reason a duplicate certificate is needed.
(Solid Waste Management Board; 329 IAC 14-12-8)

Rule 13. Facility Operator Testing Requirements

329 IAC 14-13-1 Applicability
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 1. This rule shall apply to a person or postsecondary learning institution that provides an accredited examination for the purpose of certifying individuals under 329 IAC 14-12 and this rule. *(Solid Waste Management Board; 329 IAC 14-13-1)*

329 IAC 14-13-2 Examination requirements
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 2. (a) Examinations shall consist of at least fifty (50) multiple choice questions. Hands-on testing may also be included as part of the examination to demonstrate knowledge and skill of the subject matter.

(b) An individual taking the accredited examination must receive a score of at least seventy percent (70%) correct responses to receive certification.

(c) Except as indicated in subsection (d), the examination shall include a question or questions that address each of the topics outlined in section 3 of this rule.

(d) Books, notes, charts, or other informational sources must not be used by the applicant during the examination.

(e) Accredited providers of an accredited examination shall develop a new examination for purposes of this rule and 329 IAC 14-12 at least once every three (3) years.

(f) All examinations developed by the provider of an accredited examination for the purpose of testing composting facility operators must not be shown or given to any person except for the following:
(1) The commissioner for approval under section 7 of this rule.
(2) The individual taking the examination during the time that the examination is administered.
(Solid Waste Management Board; 329 IAC 14-13-2)

329 IAC 14-13-3 Examination requirements for certification
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 3. (a) In order to qualify for accreditation as an accredited examination provider for a composting facility certification for operators of composting facilities, the written examination must meet the requirements of this section.

(b) The commissioner may approve an examination for certification for a specific site.

(c) A certification examination shall adequately address the following topics:
(1) Purpose of training course.
(2) Overview of the following current Indiana composting rule requirements:
(A) Registration requirements.
(B) Classes of composting facilities.
(C) Allowable materials to be composted.
(D) Design requirements.
(E) Set back requirements.
(F) Reporting requirements.
(G) Closure requirements.
(H) Financial assurance requirements.
(3) Overview of the following other state and federal requirements:
(A) 327 IAC 15 –storm water rule requirements.
(B) Land application rule requirements.
(C) Marketing and distribution permit requirements.
(D) Overview of other environmental rules as pertaining to composting facility siting, construction, and operation.
(4) General overview of composting methods.
(5) The following composting process fundamentals:
(A) The following best management practices for proper composting:
(i) Temperature control testing.

(ii) Moisture control testing.
(iii) Nitrogen to carbon ratio.
(B) Pathogen control.
(6) The following operational and site maintenance practices to control:
(A) Odor.
(B) Dust.
(C) Litter.
(D) Run-off/sedimentation control.
(E) Contaminated water/leachate storage and management.
(7) Monitoring and the control of incoming materials and solid waste as follows:
(A) Site access control.
(B) Incoming waste screening procedures.
(C) Management of unauthorized waste and its disposal.
(8) Proper storage of compostable materials and waste.
(9) Occupational and environmental safety, as follows:
(A) Occupational Safety and Health Administration (OSHA).
(B) Facility workplace.
(C) Waste handling and exposure.
(10) The following facility contingency plans:
(A) Fire prevention and control.
(B) Spill control.
(11) The following record keeping and notification requirements:
(A) Annual reporting requirements.
(B) Inventory of material on-site.
(Solid Waste Management Board; 329 IAC 14-13-3)

329 IAC 14-13-4 Accredited examination providers; qualifications for accreditation
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 4. A person or postsecondary learning institution wishing to be approved as a provider of an examination for composting facility operator certification shall provide the following:
(1) Documentation that the examination meets or exceeds the applicable requirements of section 3 of this rule, this section, and section 5 of this rule.
(2) Verification of testing to the commissioner in accordance with 329 IAC 14-12-4.
(3) At least two (2) weeks in advance of the examination, notice to the commissioner of the location and time accredited examinations are to be conducted.
(4) Allow department representatives to attend and take any examination, for the purposes of auditing, evaluating, and monitoring, without charge to the department. The department is not required to give advanced notice of such an audit.
(Solid Waste Management Board; 329 IAC 14-13-4)

329 IAC 14-13-5 Accredited examination providers; application for accreditation
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 5. (a) A provider of an examination seeking accreditation of an examination by the commissioner shall complete the following:
(1) Submit a completed application on forms prescribed by the commissioner.
(2) Provide the following information:
(A) The provider's name, full address, telephone number, and primary contact person.
(B) The type of examination.
(C) A copy of the examination and information on scoring.
(D) A detailed statement about the development of the examination.
(E) A schedule and plans for revisions of the examination.

(b) A letter of accreditation from the commissioner shall be issued to a provider that receives approval of an examination.

(c) A letter of accreditation from the commissioner shall be valid for three (3) years from the date it is issued.

(d) Examination providers shall not be approved to provide examinations unless they have a valid letter of accreditation from the commissioner.

(e) Within thirty (30) days of any change to an examination, a provider of an accredited examination shall submit a copy of the changed examination to the commissioner. *(Solid Waste Management Board; 329 IAC 14-13-5)*

329 IAC 14-13-6 Reaccreditation
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 6. (a) An accredited examination provider seeking reaccreditation by the commissioner shall:
(1) have possessed a valid letter of accreditation from the commissioner within the previous six (6) months for providing accredited examinations for operators; and
(2) submit a completed application on forms prescribed by the commissioner and include updated information as required in section 5(a)(2) of this rule.

(b) Upon review, the commissioner shall make an initial determination as to the eligibility of the examination for reaccreditation. The commissioner shall issue a letter of reaccreditation to an accredited examination provider that fulfills the requirements of this rule.

(c) A letter of reaccreditation shall be valid for three (3) years from the date of issuance.

(d) Within thirty (30) days of a change, an accredited examination provider shall notify the commissioner in writing of a change in the examination or primary contact person. *(Solid Waste Management Board; 329 IAC 14-13-6)*

329 IAC 14-13-7 Representation of examination accreditation
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 7. No person shall make a representation as providing an accredited examination for the purpose of accrediting an individual under 329 IAC 14-12 and this rule without being currently accredited by the commissioner under this rule. *(Solid Waste Management Board; 329 IAC 14-13-7)*

329 IAC 14-13-8 Accreditation revocation
Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 4-21.5; IC 13-20-10; IC 36-9-30

Sec. 8. (a) The commissioner may revoke the accreditation of an examination if the examination provider commits any of the following:

(1) Violates a requirement of this rule.

(2) Falsifies information on an application to provide accredited examinations for individuals taking the examination.

(3) Falsifies information on individuals taking the examination.

(4) Fails to meet a qualification specified in sections 2 through 5 of this rule.

(5) Fails to provide a quality examination based on documented complaints registered with the commissioner about an examination.

(6) Has a continual failure rate of more than twenty percent (20%) of the individuals taking the examination.

(b) The accreditation may be revoked following procedures under IC 4-21.5. *(Solid Waste Management Board; 329 IAC 14-13-8)*

Rule 14. Facility Operator Training Requirements

329 IAC 14-14-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 1. This rule shall apply to a person or postsecondary learning institution that provides an accredited training course for the purpose of recertifying individuals under 329 IAC 14-12, 329 IAC 14-13, and this rule. *(Solid Waste Management Board; 329 IAC 14-14-1)*

329 IAC 14-14-2 Accredited training course requirements for recertification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 2. (a) The accredited training course must include, at a minimum, applicable topics relating to a composting facility operation as follows:

(1) An update on applicable Indiana legislation and regulations.

(2) Discussion of applicable department policy.

(3) Information on new or improved technologies.

(4) Information on changes to processes.

(5) Information on changes in management practices.

(b) The accredited training course must be at least four (4) hours in length. *(Solid Waste Management Board; 329 IAC 14-14-2)*

329 IAC 14-14-3 Accredited training course providers; qualifications for accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 3. A person or postsecondary learning institution wishing to be approved as a provider of an accredited training course shall do the following:

(1) Provide documentation that the training course or courses meet or exceed the applicable requirements of section 2 of this rule.

(2) Provide verification of training to the commissioner in accordance with 329 IAC 14-12-4.

(3) Allow department representatives to attend, for purposes of auditing, evaluating, and monitoring, any training course without charge to the department. The department is not required to give advanced notice of such an audit.

(4) At least two (2) weeks in advance of the first day of the course, provide notice to the commissioner of the location and time of accredited training courses.

(Solid Waste Management Board; 329 IAC 14-14-3)

329 IAC 14-14-4 Accredited training course providers; application for accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 4. (a) A training course provider seeking accreditation of a training course by the commissioner shall complete the following:

(1) Submit a completed application on forms prescribed by the commissioner, including the following:

(A) The training course provider's name, full address, telephone number, and primary contact person.

(B) The name and category of the training course.

(2) Provide the following additional information:

(A) The course curriculum and course objectives.

(B) A letter from the training course provider that clearly indicates how the course meets the applicable requirements of section 2 of this rule, including the following information:

(i) Length of training in hours.

(ii) Amount and type of practical exercises.

(iii) Topics and objectives for the course.

(C) Provide a copy of all course materials, such as the following:

(i) Student manuals.

(ii) Instructor notebooks.

(iii) Handouts.

(D) Provide the names and qualifications of all potential course instructors, including academic credentials and field experience in composting management.

(b) A letter of accreditation shall be issued to a training course provider that receives accreditation from the commissioner.

(c) A letter of accreditation from the commissioner shall be valid for three (3) years from the date it is issued.

(d) Training course providers shall not be approved to provide accredited training courses for recertification unless they have a valid letter of accreditation from the commissioner.

(e) The use of subcontractors to conduct accredited training courses must be approved by the commissioner before such courses are provided.

(f) Not later than thirty (30) days after a change, an accredited training course provider shall notify the commissioner in writing of a change in the course curriculum, instructional staff, or primary contact person. *(Solid Waste Management Board; 329 IAC 14-14-4)*

329 IAC 14-14-5 Reaccreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 5. (a) A training course provider seeking reaccreditation of an accredited training course by the commissioner shall:

(1) have possessed a valid letter of accreditation from the

commissioner within the previous six (6) months for providing accredited training courses for operators; and

(2) submit a completed application on forms prescribed by the commissioner and include updated information as required in section 4(a)(2) of this rule.

(b) Upon review, the commissioner shall make a determination as to the eligibility of the training course for reaccreditation. The commissioner shall issue a letter of reaccreditation to a training course provider that fulfills the requirements of this rule.

(c) A letter of reaccreditation shall be valid for three (3) years from the date of issuance.

(d) Not later than thirty (30) days after a change, an accredited training course provider reaccredited under this section shall notify the commissioner in writing of a change in the course curriculum, instructional staff, or primary contact person. *(Solid Waste Management Board; 329 IAC 14-14-5)*

329 IAC 14-14-6 Representation of training course accreditation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-20-10; IC 36-9-30

Sec. 6. No person shall make a representation as conducting an accredited training course for the purpose of accrediting an individual under 329 IAC 14-12 and this rule without being currently accredited by the commissioner under this rule. *(Solid Waste Management Board; 329 IAC 14-14-6)*

329 IAC 14-14-7 Accreditation revocation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 4-21.5; IC 13-20-10; IC 36-9-30

Sec. 7. (a) The commissioner may revoke the accreditation of a training course if the training course provider commits any of the following:

(1) Violates a requirement of this rule.

(2) Falsifies information on an application under section 4 of this rule to provide accredited training courses for operators.

(3) Falsifies certified operator information.

(4) Fails to meet a qualification specified in sections 2 through 5 of this rule.

(5) Fails to provide a quality course based on an audit by department personnel.

(b) The accreditation may be revoked following procedures under IC 4-21.5. *(Solid Waste Management Board; 329 IAC 14-14-7)*

Notice of First Hearing/Meeting

These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the Change in Notice of Public Hearing 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).

Copies of these rules are now on file at the Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor, Indianapolis, Indiana and are open for public inspection.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Identification # LSA 04-95

Date originally adopted: May 10, 2004
Date last revised: May 10, 2004

In accordance with I.C. 4-22-7-7, the Office of the Secretary of Family and Social Services is publishing notice of the following document that will be filed with the Secretary of State on June 1, 2004 to take effect on June 1, 2004 as an emergency rule. The document filed on June 1, 2004 will amend 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, and 405 IAC 6-5-6 provisions affecting eligibility and benefits under the Indiana Prescription Drug Program; amends definition and duration of eligibility, and the benefits for enrollees.

SECTION 1. (405 IAC 6-2-5) "Complete application" means an application which 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 currently has insurance that includes a prescription drug benefit, **except for a Medicare Drug Discount Card**.
(7) Whether the applicant is on Medicaid, with prescription drug assistance.
(8) Whether the applicant intends to reside in Indiana permanently.
(9) Proof of income.
(10) Signature.

SECTION 2. (405 IAC 6-3-3) (a) After July 1, 2002, program availability will be no sooner than the date complete application is received and approved.

(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.

(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.

(d) All current enrollees shall be automatically enrolled in a new benefit period on June 1, 2004.

SECTION 3. (405 IAC 6-4-2) (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	~~$1,011~~ **$1,048**
2	~~$1,364~~ **$1,406**
3	~~$1,717~~ **$1,764**

(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 (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 income disregard of twenty dollars ($20) is allowed and applied per household. It is deducted from the total monthly net income.

SECTION 4. (405 IAC 6-4-3) Notwithstanding any other provision [of this document], an individual is not eligible for the program if any of the following apply:

(1) ~~The individual has health insurance with a prescription drug benefit at the time of application.~~ **The applicant currently has insurance that includes a prescription drug benefit, except for a Medicare Drug Discount Card.**

(2) The individual is not domiciled in Indiana.

(3) The individual does not intend to reside permanently in Indiana.

(4) The individual is an inmate of a correctional facility.

SECTION 5. (405 IAC 6-5-1) 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 co-payment.

(7) Whether the individual has a Medicare Drug Discount Card and has spent the $600 annual transitional assistance credit. The provider shall encourage the enrollee to use the Medicare Drug Discount Card benefit first.

SECTION 6. (405 IAC 6-5-2) (a) ~~The benefit at the time of purchase, which is issued to an enrollee per benefit period, is limited by family monthly net income as follows:~~ **The amount of benefit will be limited to a maximum of $1,200 over a period of 19 months, and prorated, depending on time of enrollment.**

~~Income Guideline~~	~~Individual's Monthly Net Income~~	~~Couple's Monthly Net Income~~	~~Annual Benefit~~
~~Up to 135% of federal poverty guideline~~	~~Up to $940 $1,011 per month~~	~~Up to $1344 $1,364 per month~~	~~50% benefit up to $500 benefit/year~~
~~Up to 120% of federal poverty guideline~~	~~Up to $835 $898 per month~~	~~Up to $1194 $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~~
$1,200 if enrolled June–September 2004	**$1,000 if enrolled October–December 2004**	**$800 if enrolled January–March 2004**	**Prorate $200 per quarter after March 2005**

(b) An enrollee and spouse who are enrolled in the program will each receive the maximum 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) The Prescription Drug Program will pay 75% of the cost of prescription drugs, up to the individual's maximum limit. Enrollee will pay 25% of the cost of prescription drugs, up to the individual's maximum limit.

~~(c)~~ **(d)** Upon such time as the enrollee exceeds the ~~annual~~ **maximum** 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.

SECTION 7. (405 IAC 6-5-3) The point of service benefit shall be ~~one (1) year of continuous eligibility up to the~~ **for a period of continuous eligibility up to the individual's maximum** benefit limit in accordance with SECTION 6 [of this document].

SECTION 8. (405 IAC 6-5-4) (a) The point of service benefit is available to an enrollee ~~for one (1) year of continuous benefits~~ **through December of 2005.**

(b) Following the expiration of the enrollee's last benefit period, the individual must reenroll for the point of service benefit. A new application must be submitted to the office in accordance [with this document].

SECTION 9. (405 IAC 6-5-6) (a) At the point of service**,** benefits are available under this program on a first come, first served basis.

(b) If eligible, enrollees are encouraged to enroll in the Medicare Drug Discount Card program and apply for the $600 annual transitional assistance available for low-income beneficiaries. Seniors are encouraged to use the $600 annual Medicare benefit first before using the Prescription Drug Program benefit.

~~(b)~~ **(c)** Benefits will exist under this program to the extent that appropriations are available for the program.

~~(c)~~ **(d)** The state budget director shall determine if appropriations are available to continue offering and paying benefits to enrollees.

SECTION 10. **This document expires on August 29, 2004.**

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-8

FOR: GIFT-GIVING TO EXECUTIVE BRANCH EMPLOYEES

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the State of Indiana is served by tens of thousands of public employees who strive daily to do their jobs well for the benefit of their fellow Hoosiers; and

WHEREAS, many state employees have contact with a variety of vendors, contractors, and others who do business with the state; and

WHEREAS, current ethics rules regarding receipt of gifts by state employees have proved unnecessarily difficult to understand and cumbersome to apply; and

WHEREAS, simplification of the rules regarding receipt of gifts by state employees will advance public confidence in the integrity of government, which is essential to the exercise of good government.

NOW, THEREFORE, I, JOSEPH E. KERNAN, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. As of July 5, 2004, no agency employee shall accept gifts, favors, services, entertainment, food, or drink in any amount from a person who has a business relationship with the employee's agency, except as permitted under 40 Indiana Administrative Code § 2-1-6(a) or 40 Indiana Administrative Code § 2-1-6(b)(1)-(6), or any amendments thereto.
2. As of July 5, 2004, no person who has a business relationship with an employee's agency shall provide gifts, favors, services, entertainment, food, or drink in any amount to such employee, except as permitted under 40 Indiana Administrative Code § 2-1-6(a) or 40 Indiana Administrative Code § 2-1-6(b)(1)-(6), or any amendments thereto.
3. The Indiana State Ethics Commission shall educate agency employees regarding their new obligations under this Executive Order.
4. The Indiana State Ethics Commission shall educate persons who have a business relationship with an agency regarding their new obligations under this Executive Order.
5. The Indiana State Ethics Commission shall consider amending the state ethics rules to reflect the changes contained in this Executive Order.
6. The Commissioner of the Department of Administration shall ensure that all future contracts and other agreements with persons who contract with agencies shall contain a provision requiring that the contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with an agency, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and this Executive Order. The Commissioner shall further require that if the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at http://www.in.gov/ethics/. The Commissioner shall further require that if the contractor or its agents violate any applicable ethical standards, the agency may terminate the contract immediately in its sole discretion.
7. Independent bodies corporate and politic shall follow the requirements of this Executive Order if they have adopted State Ethics Commission rules. Independent bodies corporate and politic that have not adopted State Ethics Commission rules shall revise their ethics policies to substantially comply with the terms of this Executive Order.
8. Terms used herein have the same meaning as like terms defined in Indiana Code § 4-2-6-1.

IN TESTIMONY WHEREOF, I, **Joseph E. Kernan**, have herewith set my hand and caused to be affixed the Great Seal of the State of Indiana on this 27th day of April, 2004.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-9

FOR: OFFICE OF CHIEF INVESTIGATOR

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the Executive Branch of state government has nearly 35,000 employees and its agencies spend more than $10 billion annually for the benefit of Hoosiers; and

WHEREAS, the Executive Branch of state government has investigative capabilities within the Indiana State Police, state agencies, the Indiana State Ethics Commission, and the Indiana State Board of Accounts to ensure that all Executive Branch employees meet the highest standards of conduct; and

WHEREAS, these investigative units have uncovered instances of state employees who have engaged in fraudulent or unethical behavior which have been referred to proper authorities for action; and

WHEREAS, agency investigative units would benefit from additional coordination of efforts and resources, and from consultation regarding fraud detection programs; and

WHEREAS, a fraud prevention program based upon national best practices will complement these investigative efforts by deterring fraud by state employees and other persons from occurring in the first instance; and

WHEREAS, the best method to institute best practices in fraud prevention is to create a new office that is independent of other state agencies and has the Governor's authority.

NOW, THEREFORE, I, JOSEPH E. KERNAN, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Office of Chief Investigator is established.
2. The Chief Investigator is appointed by, and reports to, the Governor.
3. The Chief Investigator shall work with the State Police, State Ethics Commission, State Board of Accounts, and agency investigative units to coordinate efforts and resources, and consult with agency investigators regarding fraud detection;
4. The Chief Investigator shall examine fraud prevention procedures in all state agencies and may conduct interviews with, and obtain documents from, any and all Executive Branch employees as part of the Chief Investigator's responsibilities.
5. The Chief Investigator shall develop and implement best practices to build upon existing fraud prevention efforts.
6. The Chief Investigator shall be authorized to call upon the resources of the Indiana State Police, state agencies' internal investigators, the Indiana State Board of Ethics, and the Indiana State Board of Accounts to examine, develop, and implement fraud prevention practices.

IN TESTIMONY WHEREOF, I, **Joseph E. Kernan**, have herewith set my hand and caused to be affixed the Great Seal of the State of Indiana on this 27th day of April, 2004.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-10

FOR: SENIOR-LEVEL EXECUTIVE BRANCH EMPLOYEES LEAVING STATE GOVERNMENT

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, Executive Branch policymakers collaborate closely with other members of their office or agency to fulfill their public responsibilities;

WHEREAS, Executive Branch policymakers sometimes leave state government to work in the private sector for parties who are affected by the policymaking decisions of state government; and

WHEREAS, the public should be confident that adequate protections are in place to ensure Executive Branch policymakers who accept employment with private parties do not have greater access to their counterparts in state government;

NOW, THEREFORE, I, JOSEPH E. KERNAN, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. Within twelve months after retirement or termination of employment, the Governor's and Lieutenant Governor's Chief of Staff; Counsel; Press Secretary; Deputy Chiefs of Staff; and Policy Directors shall not knowingly make, with the intent to influence, any communication to or appearance before any employee of the Governor's Office or Lieutenant Governor's Office, or any agency appointing authority, if that communication or appearance is made on behalf of any other person (other than the state, an agency, a political subdivision, or other public institution), in connection with any matter concerning which he or she seeks official action by that employee.
2. Within twelve months after retirement or termination of employment, agency appointing authorities shall not knowingly make, with the intent to influence, any communication to or appearance before any employee of the Governor's Office or Lieutenant Governor's Office, any other agency appointing authority, or any employee of the agency in which the appointing authority served if that communication or appearance is made on behalf of any other person (other than the state, an agency, a political subdivision, or other public institution), in connection with any matter concerning which he or she seeks official action by that employee.

IN TESTIMONY WHEREOF, I, **Joseph E. Kernan**, have herewith set my hand and caused to be affixed the Great Seal of the State of Indiana on this 27th day of April, 2004.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-11

FOR: REGISTRATION OF EXECUTIVE BRANCH LOBBYISTS

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, many individuals and businesses seek to influence the decisions of the Executive Branch of government relating to policies, procurement, and other business;

WHEREAS, the Executive Branch decisions that these individuals and businesses seek to influence involve the expenditure of billions of taxpayers' dollars and the operations of all aspects of government;

WHEREAS, it is important that Executive Branch business be conducted in the most transparent manner possible, so that citizens have full information about efforts directed at influencing Executive Branch policies and procurement, including funds expended by private individuals and businesses in an effort to influence these matters; and

WHEREAS, the General Assembly already has undertaken a similar process to register persons who lobby the General Assembly by establishing the Lobby Registration Commission and procedures for lobbyists to register and report their activities and expenditures.

NOW, THEREFORE, I, JOSEPH E. KERNAN, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. The Commissioner of the Indiana Department of Administration (the "Commissioner") shall promulgate rules requiring registration for individuals who lobby the Executive Branch in order to influence Executive Branch action (the "Executive Branch Lobbying Rules").
2. For purposes of the Executive Branch Lobbying Rules, "lobby" means contacts made to promote, support, influence, modify, oppose, or delay the outcome of an Executive Branch action by direct communication with designated Executive Branch officials and employees.
3. The Executive Branch Lobbying Rules shall require such lobbyists to report their lobbying activities to the Commissioner on at least a semi-annual basis.
4. The Commissioner shall be authorized to create enforcement mechanisms for the Executive Branch Lobbying Rules to the extent permitted under applicable law.
5. The Commissioner shall submit proposed Executive Branch Lobbying Rules for inclusion in the Indiana Register no later than July 5, 2004.
6. Nothing herein shall restrict the Commissioner's authority, through the rulemaking process, to promulgate the Executive Branch Lobbying Rules with such definitions, standards, and requirements as the Commissioner deems to be in the best interests of public policy.

IN TESTIMONY WHEREOF, I, **Joseph E. Kernan**, have herewith set my hand and caused to be affixed the Great Seal of the State of Indiana on this 27th day of April, 2004.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 04-12

FOR: ETHICS EDUCATION REQUIREMENTS

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, the duties of state government must be carried out according to the highest ethical standards; and

WHEREAS, those who work for, or have a business relationship with, an agency must be fully educated regarding their ethical obligations; and

WHEREAS, current statutes and rules contain no provisions requiring state employees or those doing business with the State of Indiana to receive initial or ongoing ethics education; and

WHEREAS, public confidence in the integrity of government is essential to the exercise of good government.

NOW, THEREFORE, I, JOSEPH E. KERNAN, by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. As of July 5, 2004, the appointing authority of each agency shall ensure and document that each of its new employees reviews the "Ethics Orientation for State Employees" training video or receives in-person training.
2. For each new employee, an agency shall:
    a. Obtain a signed "Acknowledgment of Receipt of the State Ethics Rules," which shall be placed in the new employee's file;
    b. Provide (i) the contact information for the agency's ethics officer and (ii) a fraud hotline number, to which the employee may report alleged ethical violations anonymously to the Indiana State Ethics Commission.
3. As of July 5, 2004, the appointing authority for each agency shall ensure that every one of its employees completes ethics "refresher" training at least every two years by reviewing the most current version of the Indiana State Ethics Commission training video, receiving in-person ethics training, or in some other manner deemed equally effective by the State Ethics Commission.
4. The Indiana State Ethics Commission shall conduct annual education programs (potentially including continuing legal education) that explain the ethical obligations for those parties who have a business relationship with an agency. The Commission also shall provide other education for parties with business relationships with agencies, including Internet-based education.
5. The Indiana State Ethics Commission shall consider amending the state ethics rules to reflect the changes contained in this Executive Order.
6. Terms used herein have the same meaning as like terms defined in Indiana Code § 4-2-6-1**.**

IN TESTIMONY WHEREOF, I **Joseph E. Kernan**, have herewith set my hand and caused to be affixed the Great Seal of the State of Indiana on this 27th day of April, 2004.

Joseph E. Kernan
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

OFFICE OF THE ATTORNEY GENERAL

January 13, 2004

OFFICIAL OPINION 2004-1

The Honorable Thomas Saunders
Indiana House of Representatives
200 West Washington Street
Indianapolis, Indiana 46204

Re: Constitutionality of "special legislation"

Dear Representative Saunders:

This letter is in response to your request for an opinion on the constitutionality of Ind. Code § 6-3.5-7-22.5 as amended by P.L.224-2003 § 258. In particular you have asked if it is advisable for Randolph County to expend county option income tax funds collected under this statute on volunteer fire department buildings, apparatus and other equipment.

BRIEF ANSWER

We have sufficient constitutional concerns regarding Ind. Code § 6-3.5-7-22.5, as amended by P.L.224-2003 § 258, to advise that additional legislative direction is warranted prior to the expenditure of any funds associated with the increased CEDIT rate other than for the renovation of the former county hospital.

FACTUAL BACKGROUND

Indiana Code § 6-3.5-7-22.5 was first enacted in 2001 as P.L.185-200 § 4; it was also included in the same form in the 2001 budget bill as P.L.291-2001 § 180. It authorized Randolph County (described by population but not by name) to impose a county economic development income tax ("CEDIT") in excess of that otherwise allowed by law if the county council adopted an ordinance finding that the funds were needed for:

> financing, constructing, acquiring, renovating, and equipping the county courthouse and for renovating the former county hospital for additional office space, educational facilities, nonsecure juvenile facilities, and other county functions, including the repayment of bonds issued, or leases entered into for renovating the former county hospital for additional office space, educational facilities, nonsecure juvenile facilities, and other county functions.[1] (emphasis added)

The 2001 version of the law further provided that if such an ordinance was adopted, the tax rate could not be imposed at a rate or for a time greater than necessary to pay the costs incurred in connection with the programs so described (courthouse and county jail modification)[2], that the county treasurer was required to establish a "county courthouse revenue fund" into which all revenues derived from the increased tax rate would be deposited,[3] and that tax revenues derived from the CEDIT could be used for these two stated purposes (courthouse and county hospital renovation).[4] Finally, the 2001 version of the statute explicitly stated:

> (g) A county described in subsection (a) possesses:
>
> (1) unique fiscal challenges to finance the operations of county government due to the county's ongoing obligation to repay amounts received by the county due to an overpayment of the county's certified distribution under IC 6-3.5-1.1-9 for a prior year; and
>
> (2) unique capital financing needs due to the imminent transfer from the governing board of the county hospital of facilities no longer needed for hospital purposes and the need to undertake immediate improvements in order to make those facilities suitable for use by the county for additional office space, educational facilities, nonsecure juvenile facilities, and other county functions.[5]

The statute was amended in 2002 by P.L.90-2002 § 299 by redefining the population to conform to Randolph County's 2000 census figures and changing a reference to the "board of tax commissioners" to "department of local government finance." No other changes were made.

In 2003 the statute was amended by P.L.224-2003 § 258 as part of the budget bill. The 2003 amendments:

(1) eliminated renovation of the county courthouse as one of the purposes for which the CEDIT funds could be used and added a provision affirmatively stating that the revenues could NOT be used for renovating the courthouse;[6]

(2) added two subsections providing that the council could adopt an ordinance to use the increased CEDIT revenues for "financing constructing, acquiring, renovating" buildings for firefighting apparatus for a volunteer fire department servicing any part of the county;[7]

(3) changed the name of the fund into which these CEDIT revenues are to be deposited from the "county courthouse revenue fund" to the "county option tax revenue fund";[8] and

(4) eliminated the specific reference in the final subparagraph relating to the imminent transfer of the county hospital facilities and replaced it with the more generic statement that the county "possesses … unique capital financing needs related to the purposes described in [new] subsection (c).[9] The original language of subparagraph (g)(1) relating to the county's ongoing obligation to repay certain amounts remains.

You are particularly concerned about the County's expenditure of these CEDIT funds on volunteer fire department matters in light of the Indiana Supreme Court's recent decision in *Municipal City of South Bend v. Kimsey*, 781 N.E.2d 683 (Ind. 2003).

LEGAL ANALYSIS

Indiana Constitution Art. 4, § 22 specifically forbids the General Assembly from passing "local or special laws" on subjects falling in any of sixteen categories, including the "assessment and collection of taxes for State, county, township, or road purposes."

At issue *in State v. Hoovler*[10], a 1996 case based on facts quite similar to those of concern in this opinion, was P.L.44-1994, which permitted a county (defined by population, but not by name) to impose a CEDIT rate in excess of that otherwise allowed by law if revenues were required to enable the county to fund its obligations as a potentially responsible party in the clean-up of a Superfund site. Tippecanoe County was the only county falling within the population parameters, and the only county to have been identified as an operator of a Superfund site.

The Indiana Supreme Court held that, while P.L.44-1994 was a "special law" because it "authoriz[ed] a special tax rate to be available only to one Indiana County", in as much as it allowed "a limited increase in the rate of existing taxes but [did] not authorize any new property valuations or changes in the system of tax gathering" it did not provide "for the assessment and collection of taxes" and thus, as a matter of law did not violate Art. 4, § 22[11].

Having concluded that a statute permitting an enhanced CEDIT rate does "not fall within any of the categories enumerated in Section 22"[12], the *Hoovler* court considered the statute's validity under Indiana Constitution Art. 4 § 23, which provides:

> In all cases enumerated in [Art. 4, § 22], and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

Reviewing the record before it, the *Hoovler* court determined that "permitting increased taxes due to Tippecanoe County's unique exposure to Superfund liability is not a matter necessarily subject to a general law applicable in all counties" (emphasis added) and found that the enhanced CEDIT statute did not violate Ind. Const. Art. IV § 23.[13] The court noted, however, that the population range language alone would have been insufficient to identify eligible counties because that "fails to bear a rational relationship to the subject mater in question and the reason for which does not inhere in the statute."[14]

More recently, the court revisited Art. 4 § 23 in *Municipal City of South Bend v. Kimsey*[15]. At issue in *Kimsey* was IC 36-4-3-13(g), which allowed a simple majority (50%) of landowners in St. Joseph County (defined by population, but not by name) to defeat annexation by a municipality, whereas opposition of 65% of affected landowners in the other 91 counties was required to defeat annexation. The court had little difficulty determining that the legislation, if "special", did not accomplish any of the enumerated results prohibited by Art. IV § 22.[16] Having done so, it set about determining whether this special legislation "had a factual basis upon which to rest [the] assertion that a general statute could not apply."[17] Based on a thorough review of the record, the court found that although there were justifications for subsection (g)'s application to a county with a population of between 200,000 and 300,000, "none of these justifications are inherent in the population range and none turn on facts unique to St. Joseph County."[18] The court concluded:

Although reasons have been advanced to explain why annexation in St. Joseph County must be handled differently than it is in every other county in the state, no facts supporting those reasons have been set forth in the record by the proponents of the special legislation, and we are directed to judicial notice of none. Therefore, under Article IV, Section 23, the application of subsection (g) to prevent the City of South Bend from annexing the Copperfield area is unconstitutional.[19]

Applying the holdings of both *Hoovler* and *Kimsey* to Ind. Code § 6-3.5-7-22.5, as amended by P.L.224-2003 § 258, we note that the General Assembly took specific notice of the fact that Randolph County faced unique fiscal challenges due to an ongoing obligation to repay an overpayment on a certified distribution. In its earlier iterations, the statute also made specific reference to the imminent transfer of the county hospital facilities requiring immediate improvements. Thus, there would certainly appear to be an adequate basis to support the necessity of an increased CEDIT rate for renovations to the former county hospital.

We are less convinced about the 2003 amendment permitting these increased revenues to be used in connection with volunteer fire departments in Randolph County. Under *Kimsey*, we are not convinced that Randolph County's obligation to repay a previous overpayment is by itself sufficient to justify a "special legislation where a general law may apply", unless of course it is the only county having such a burden. Perhaps there are also facts capable of judicial notice that make Randolph unique among our 92 counties in its need for additional CEDIT revenue to pay for volunteer fire department improvements, but those are not stated in the statute.

CONCLUSION

We have sufficient constitutional concerns regarding Ind. Code § 6-3.5-7-22.5, as amended by P.L.224-2003 § 258, to advise that additional legislative direction is warranted prior to expenditure of any funds associated with the increased CEDIT rate other than for the renovation of the former county hospital.

By way of general advice, I would recommend that the legislature give careful attention to the drafting of "special legislation". The Supreme Court has made clear in *Kimsey* that legislation which may fall under the type prohibited by Indiana Constitution Art. 4, § 22 must have a "factual basis upon which to rest assertion that a general statute could not apply."[20] This could be in the form of language included in a preamble or within the statute that specifies the legislature's rationale to support the special legislation.

Please feel free to contact me further on this important subject.

Sincerely,

Stephen Carter
Attorney General

Jennifer Thuma
Deputy Attorney General

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[1] Ind. Code § 6-3.5-7-22.5(c), P.L.291-2001.
[2] Ind. Code § 6-3.5-7-22.5(d) P.L.291-2001, § 180.
[3] Ind. Code § 6-3.5-7-22.5(e) P.L.291-2001, § 180.
[4] Ind. Code § 6-3.5-7-22.5(f). P.L.291-2001, § 180.
[5] Ind. Code 6-3.5-7-22.5(g) P.L.291-2001, § 180.
[6] Ind. Code § 6-3.5-7-22.5 (c), (c)(1), and (d), P.L.224-2003 § 258.
[7] Ind. Code § 6-3.5-7-22.5 (c)(2) and (c)(3), P.L.224-2003 § 258.
[8] Ind. Code § 6-3.5-7-22.5 (e), P.L.224-2003 § 258
[9] Ind. Code § 6-3.5-7-22.5 (e), P.L.224-2003 § 258
[10] 668 N.E.2d 1229 (Ind. 1996)
[11] *Id* at. 1233.
[12] *Id.*
[13] *Id* at 1235.
[14] *Id* at 1234.
[15] 781 N.E.2d 683 (Ind. 2003).
[16] *Id.* at 686.

[17] *Id.* at 694. Both *Kimsey and Indiana Gaming Commission v. Moseley*, 643 N.E.2d 296 (Ind. 294) give a comprehensive review of the constitutional underpinnings and case law precedent for Art. IV § 23.
[18] *Id.*
[19] *Id* at 697.
[20] *Id* at 697.

OFFICE OF THE ATTORNEY GENERAL

March 24, 2004

OFFICIAL OPINION 2004-2

The Honorable Gregory Porter
Indiana House of Representatives
Third Floor State House
Indianapolis, Indiana 46204

Re: Indiana Education Roundtable Recommendations to the Indiana State Board of Education

Dear Representative Porter:

This letter is in response to your request for an opinion regarding the following question:

With respect to the authority of the Indiana Education Roundtable ("Roundtable") in recommending passing scores to the Indiana State Board of Education ("Board") under Indiana Code section 20-1-20.5-10, does the Roundtable have statutory authority to fix the passing scores and is the Board's authority limited to approving or disapproving the Roundtable's recommendation?

BRIEF ANSWER

The legislature has devised a specific statutory scheme allowing experts from the Roundtable to evaluate information and then recommend to the Board the passing scores for ISTEP+. The Board maintains the authority to reject the recommendations, but it would not be in the spirit of the legislature's intent or statutory direction to allow the Board to independently formulate the passing scores outside of the method devised by the legislature.

ANALYSIS

Under Article 8, section 1 of the Indiana Constitution, the legislature is given the authority to provide for a system of public schools in the state. The legislature maintains the exclusive authority to determine how the public school system of the state should be administered and carried out.[1] A board or commission created by the legislature to carry out the administration of the public school system possesses only the authority granted by statute.[2] The State Board of Education has no power except that which has been granted to the Board by statute.[3]

Among the general statutory duties of the State Board of Education, the Board must establish the educational goals of the state by developing standards and objectives for local school corporations, assess the attainment of those goals, and assure compliance with the standards set by the Board.[4] Additionally, the legislature has given the Board the authority to "authorize the development and implementation of the Indiana statewide testing for educational progress program ("ISTEP")" and determine the date the test is administered.[5] The ISTEP+ program, as it has been referred to since 1995, is the statewide program measuring student achievement relative to national norms and to the academic standards set by the Board. By statute, the state superintendent is charged with the responsibility for overall development, implementation, and monitoring of the ISTEP+ program, while the Department of Education maintains the authority to prepare the detailed design specifications for the ISTEP+ program.[6]

According to statutory guidelines for ISTEP+, the Department of Education develops academic standards on subject matters set out in the statute, such as English, mathematics, and social studies. "Academic standards" refer to the skills and knowledge expected of a student at a particular grade level.[7] The State Superintendent appoints an academic standards committee consisting

of teachers with expertise in the relative subject area. The academic standards committee submits recommendations on academic standards to the Education Roundtable for review.[8]

The Education Roundtable was created by statute in 1999 and consists of members appointed by the Governor and the state superintendent.[9] By statute, the Roundtable's primary responsibility is to provide recommendations related to education to the Governor, superintendent of public instruction, the legislature and the Board.[10] Specifically, as related to ISTEP+ testing, the Roundtable's statutory duties include the following:

Indiana Code section 20-1-20.5-9:

> The roundtable shall make recommendations to the board for improving the academic standards under IC 20-10.1-16.

Indiana Code section 20-1-20.5-10:

> The roundtable shall review and recommend to the board for the board's approval the following:
> (1) The academic standards under IC 20-10.1-16 for all grade levels from kindergarten through grade 12.
> (2) The content and format of the ISTEP program, including the following:
> (A) The graduation examination.
> (B) The passing scores required at the various grade levels tested under the ISTEP program.

Indiana Code section 20-1-20.5-11:

> In making recommendations under section 10 of this chapter, the roundtable shall consider:
> (1) a variety of available national and international assessments and tests;
> (2) the development of an assessment or test unique to Indiana; and
> (3) any combination of assessments or tests described under subdivisions (1) and (2).

When the meaning of a statute is at issue, first and foremost, one should determine the intent of the legislature.[11] The words of the statute are to be given their plain and ordinary meaning.[12] The "goals of the statute and the reasons and policy underlying the statute's enactment" should be considered.[13] One must presume that the legislature is aware of existing statues in the same area and must construe differing statutes together to produce a harmonious result.[14]

The Roundtable is required to "recommend to the board for the board's approval... the passing scores required at the various grade levels tested under the ISTEP program."[15] The legislature's use of the term "recommend" or "recommendation" is not defined in the statute. Given its plain and ordinary meaning, to "recommend" means to advise or endorse as appropriate.[16] The Roundtable acts solely in an advisory capacity and has no legislative authority to make its passing score recommendations effective; that duty is left to the Board. Such limited statutory authority to simply advise or counsel is not uncommon among governmental entities. Many other state agency actions are based on recommendations from advisory boards or committees.[17] At the same time, the Board is limited by statute in its ultimate approval of the Roundtable's recommendations. "Approval," also left undefined by the statute, commonly means to accept or to ratify.[18] The Board has been given no additional statutory authority to modify or amend the Roundtable's recommendations. Elsewhere, statutory language granting the Board the authority to "authorize the development and implementation" of the ISTEP program under Indiana Code section 20-10.1-16-4, is additional confirmation of the Board's more general endorsement and sanctioning powers.

The Board of Education has historically relied on the expertise of advisory committees to provide technical and professional assistance to the Board and has been granted the statutory authority to rely on such committees under Indiana Code section 20-1-1-1.[19] Presumably, the legislature recognized that the Board's general supervisory role over the public school system could be assisted significantly by the aid of advisory committees whose members possess special knowledge and expertise.

The Education Roundtable brings leaders from business, industry, labor, education, communities, and the legislature together with the Governor and Superintendent of Public Instruction in order to improve student achievement in the state. Before giving recommendations to the Board regarding ISTEP+, the Education Roundtable must consider national and international assessments.[20] The statute expressly and clearly requires the Roundtable recommend passing scores to the Board. The legislature has devised a detailed statutory scheme allowing experts from the Roundtable to evaluate information and then advise the Board regarding the passing scores for ISTEP+. The Board maintains the authority to reject the recommendations, but it would not be in the spirit of the legislature's intent or statutory direction to allow the Board to formulate the passing scores outside of the method devised by the legislature.

CONCLUSION

It is my opinion that the Education Roundtable was created by the legislature in order to provide expertise to the Board of Education in making a final determination of passing ISTEP+ scores. The statute expressly provides the Roundtable should consider a variety of data and then provide the Board with recommended passing scores. The current statutory scheme provides the Board with the authority to reject the recommendations should it disagree with the Roundtable's analysis.

Sincerely,

Stephen Carter
Attorney General

Gregory F. Zoeller
Deputy Attorney General

cc: The Honorable Joseph E. Kernan
Dr. Suellen Reed

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[1] Cottongim v. Congleton, 199 N.E.2d 96, 100 (Ind. 1964).
[2] State v. Haworth, 122 Ind. 462, 23 N.E. 946 (Ind. 1890).
[3] Silver Burdett & Co. v. Indiana State Bd. of Educ., 72 N.E. 829, 834 (Ind. Ct. App. 1905).
[4] Ind. Code § 20-1-1-7.
[5] Ind. Code § 20-10.1-16-4.
[6] *Id.*
[7] Ind. Code § 20-10.1-16-1.
[8] Ind. Code § 20-10.1-16-6.
[9] Ind. Code § 20-1-20.5-4.
[10] Ind. Code§ 20-1-20.5-8.
[11] MDV Inv. v. City of Carmel, 740 N.E.2d 929, 934 (Ind. Ct. App. 2000).
[12] Ind. Code § 1-1-4-1(1); Town of Merrillville v. Merrillville Conservancy Dist., 649 N.E.2d 645, 649 (Ind. Ct. App. 1995).
[13] *Id.*
[14] *Id.*
[15] Ind. Code § 20-1-20.5-10(2)(B).
[16] Webster's New Collegiate Dictionary 984 (9th ed. 1988).
[17] *See generally* Ind. Code§ 4-12-5-4 (Indiana Health Care Trust Fund Advisory Board); Ind. Code § 5-20-4-15 (Housing Trust Fund Advisory Committee); Ind. Code § 11-12-2-3 (Community Corrections Advisory Board); Ind. Code § 12-10-16-3 (Prescription Drug Advisory Committee to the Secretary of Family and Social Services); Ind. Code § 15-5-5.5-1 (Indiana Standardbred Advisory Committee to the Indiana Horse Racing Commission);
[18] Webster's New Collegiate Dictionary 98 (9th ed. 1988).
[19] Ind. Code § 20-1-1-1(d).
[20] Ind. Code § 20-1-20.5-11.

OFFICE OF THE ATTORNEY GENERAL

March 26, 2004

OFFICIAL OPINION 2004-3

The Honorable Kathy Richardson
Indiana House of Representatives
Third Floor, State House
Indianapolis, IN 46204

RE: Solemnization of marriages under Indiana law

Dear Representative Richardson:

This letter responds to your request on behalf of the Association of Clerks of the Circuit Courts of Indiana for an advisory opinion on whether the ceremony solemnizing a marriage under a license issued by an Indiana circuit court must occur in Indiana.

BRIEF ANSWER

Indiana generally accepts the validity of a marriage that complies with the legal requirements of the jurisdiction in which it was performed. An exception is a marriage between persons of the same sex, which is "void in Indiana even if the marriage was lawful in the place where it was solemnized."[1] Accordingly, a couple obtaining an Indiana marriage license but intending to be married outside of Indiana should be advised to check the legal requirements of the jurisdiction in which they will be married to determine what is necessary for a legally binding marriage in that jurisdiction. If a couple intends to use (or has used) an Indiana marriage license for an out-of-state marriage, it is advisable to recommend that the marriage be re-solemnized in Indiana to avoid future questions about its validity.

ANALYSIS

Indiana cases arising prior to 1958 frequently find a valid marriage absent full compliance with the statutory requirements based on Burns Indiana Statutes Annotated 44-302 (repealed 1958) which provided that "no marriage shall be void or voidable for want of a license or other formality required by law, if either of the parties thereto believed it to be a legal marriage at the time." However, this law was repealed effective January 1, 1958 at the time the General Assembly abolished common law marriages.

Our law now requires that all couples wishing to marry in Indiana follow a number of statutory requirements:

> Individuals who intend to marry must obtain a marriage license from the clerk of the circuit court of the county of residence of either of the individuals. If neither of the individuals who intends to marry is a resident of Indiana, the individuals must obtain the marriage license from the clerk of the circuit court of the county in which the marriage is to be solemnized.[2]

Obtaining a license is, however, only the first step a couple must take to ensure they enter into legally recognizable marriage in Indiana. They must, within 60 days after its issuance[3], present the license "to an individual who is authorized by IC 31-11-6[4] to solemnize marriages,"[5] with the license being "the legal authority for an individual who is authorized to solemnize marriages to marry two (2) individuals."[6] After the ceremony,

> [t]he individual who solemnizes a marriage shall do the following:
> (1) Complete the original and duplicate certificates described in section 15 of this chapter.
> (2) Give the original certificate to the individuals who married each other.
> (3) Not later than thirty (30) days after the date of the marriage, file the duplicate certificate and the license to marry with the clerk of the circuit court who issued the marriage license.[7]

Since the 1958 abolition of common law marriages, Indiana courts have confirmed the importance of statutory compliance. *See, e.g., Williams v. Williams*[8], finding that because the parties did not obtain a marriage license in 1968, they "did not enter into a legally recognized marriage", and the court lacked subject matter jurisdiction to grant a divorce because it "cannot dissolve a marriage that is not a marriage because it is already void."

What our statutes do not address is whether the marriage of a couple that has obtained an Indiana license must occur within the state of Indiana. This omission, however, does not seem to be a mere oversight. Indiana, with the notable exception of same-sex marriages, follows the general rule of marriage validation that the validity of a marriage is "governed by the law of the place of its celebration."[9]

Thus, the question you raise involves not the "jurisdiction" of an Indiana license, but the license's effect as part of the process constituting a valid marriage. The "regulation of marriage and divorce has been fully recognized as a matter within the exclusive province of the Legislatures of the States,"[10] and the legislature has full power to prescribe reasonable regulations relating to marriage because "the relations, duties, obligations, and consequences flowing from the marriage contract are so important to the peace and welfare of society."[11]

The license and other formalities imposed by statute may be viewed as steps necessary to establish that a marriage has in fact occurred. *See, e.g., Sweigart v. State*[12] noting that one of the main purposes of requiring a marriage license is "to prevent hasty and

secret marriages". " legislative presumption that the celebration of the marriage will take place in this state is evidenced from the requirement of Indiana Code ' 31-11-4-15 that the marriage certificate's form contain language that includes the Indiana county in which the ceremony occurred:

> I _____(name) certify that on _____ (date) at _____**in** _____ **County, Indiana**, _____ of _____ County, _____ (state) and _____ of _____ County, _____ (state) were married by me as authorized under a marriage license that was issued by the Clerk of the Circuit Court of _____ County, Indiana, dated _____.") (emphasis added).

This is not to say that a couple that has obtained an Indiana marriage license cannot be legally married outside of Indiana. "On comity grounds, Indiana will accept as legitimate a marriage validly contracted in the place where it is celebrated," even if the marriage could not be validly contracted in Indiana.[13]

To summarize, compliance with Indiana's statutory requirements has no effect if the marriage does not comply with the legal requirements of the jurisdiction in which the marriage actually occurs.

Based upon the foregoing, we conclude that an Indiana marriage license will have only the weight and validity given it by the jurisdiction in which the marriage actually takes place.

CONCLUSION

With the notable exception of same-sex marriages, Indiana generally accepts the validity of a marriage that complied with the legal requirements of the jurisdiction in which it was performed. A couple obtaining an Indiana marriage license but intending to be married outside of Indiana should be advised to check the legal requirements of the jurisdiction in which they will be married to determine what is necessary for a legally binding marriage in that jurisdiction. If a couple intends to use (or has used) an Indiana marriage license for an out-of-state marriage, it is advisable to recommend that the marriage be re-solemnized in Indiana to avoid future questions about its validity.

This advisory letter is based on the assumption that the license is issued to persons who have the right to marry under Indiana law and have otherwise satisfied all statutory requirements for issuance of an Indiana license.

Sincerely,

Stephen Carter
Attorney General

Susan W. Gard
Deputy Attorney General

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[1] Indiana Code § 31-11-1-1.
[2] Indiana Code § 31-11-4-3
[3] Indiana Code § 31-11-9
[4] Indiana Code § 31-11-6 states that "[p]ersons authorized to solemnize a marriage are (1) A member of the clergy of a religious organization (even if the cleric does not perform religious functions for an individual congregation), such as a minister of the gospel, a priest, a bishop, an archbishop, or a rabbi; (2) A judge; (3) A mayor, within the mayor's county; (4) A clerk or a clerk-treasurer of a city or town, within a county in which the city or town is located; (5) A clerk of the circuit court; (6) The Friends Church, in accordance with the rules of the Friends Church; (7) The German Baptists, in accordance with the rules of their society; (8) The Bahai faith, in accordance with the rules of the Bahai faith; (9) The Church of Jesus Christ of Latter Day Saints, in accordance with the rules of the Church of Jesus Christ of Latter Day Saints; and (10) An imam of a masjid (mosque), in accordance with the rules of the religion of Islam."
[5] Indiana Code section 31-11-4-13
[6] Indiana Code § 31-11-4-14
[7] Indiana Code § 31-11-4-16 (a)
[8] 460 N.E.2d 1226, 1228 (Ind. Ct. App. 1984)
[9] *Gunter v. Dealer's Transportation Co.*, 91 N.E.2d 377, 379 (Ind. Ct. App. 1950), citing *Roche v. Washington*, 19 Ind. 53 (Ind. 1862). *See also Bolkovac v. State*, 98 N.E.2d 250, 254 (Ind. 1951) (the "validity of a marriage depends upon the law of the place where it occurs.")

[10] *Sweigart v. State*, 12 N.E.2d 134, 138 (Ind. 1938) *citing Maynard v. Hill*, 125 U.S. 190 (1888)
[11] *Wiley v. Wiley*, 75 Ind. App. 456, 466, 123 N.E. 252, 255 (Ind. App. 1919).
[12] 12 N.E.2d at 139
[13] *Mason v. Mason*, 775 N.E.2d 706, 709 (Ind. Ct. App. 2002) (recognizing a Tennessee marriage between first cousins that could not be validly contracted between residents of Indiana, but distinguishing recognition of foreign first cousin marriages from recognition of foreign same-sex marriages, which is explicitly precluded by statute).

OFFICE OF THE ATTORNEY GENERAL

April 29, 2004

OFFICIAL OPINION 2004-4

The Honorable Kathy Richardson
Indiana House of Representatives
Third Floor, State House
Indianapolis, Indiana 46204

Re: Official Duties

Dear Representative Richardson:

This letter is in response to your request for an opinion regarding the following question:

Pursuant to Title 31, article 11 of the Indiana Code, individuals must obtain a marriage license from the clerk of the circuit court in the county of residence of either of the individuals seeking the license. What are the requirements of a clerk of court in the performance of this duty and what may result if a clerk of court knowingly disregards state law regarding the issuance of marriage licenses?

ANALYSIS

Pursuant to Article 6, section 2 of the Indiana Constitution, each county elects a clerk of the circuit court.[1] While the office was created by the Constitution, the duties and authority of the clerk are prescribed by statute.[2] A constitutional officer may have his or her duties increased or diminished by statute, but the officer "has only such power as is enumerated within the four corners of the statutory enactment defining his duties, and he has no residual common law rights or powers."[3]

Clerks of the circuit court derive their power solely from statute and may exercise only those powers delegated by the legislature.[4] As a public officer, the clerk's execution of statutory duties is an exercise of the sovereign power of the state.[5] The clerk of the circuit court takes an oath to faithfully support the Constitutions of the United States and the State of Indiana and to faithfully discharge the duties of the office.[6] A clerk must execute a bond conditioned upon the faithful discharge of the duties of the office.[7] The performance of the state's sovereign power by the clerk is for the public's benefit and the office may not be used in order to further the official's own private interests which may be in conflict with the public interest.[8] If a statute directs a public officer to perform duties in a specific manner, the officer's actions in direct violation of the law are void.[9] Public officers may not bind the State to illegal actions if the performance of such actions violates the law.[10]

State laws governing marriage in Indiana at Indiana Code title 31, article 11 require individuals who intend to marry to apply for a marriage license from the clerk of the circuit court of the county of residence of either of the individuals or, if the individuals are not residents of Indiana, from the clerk of the circuit court in the county where the marriage is to be solemnized.[11] The law vests the clerk of the circuit court with the statutory duty to issue marriage licenses to individuals who apply for the license and who have the authority to marry each other under the state's laws governing marriage.[12] The clerk's duties under Article 11 include verifying statutorily required information contained on the application for marriage, witnessing the signatures on a consent to marriage, recording the application for a marriage license, distributing information concerning communicable diseases, and recording marriage certificates after the solemnization of a marriage.[13] The clerk also issues licenses as authorized by the circuit or superior court of the county.[14] Additionally, a clerk of the circuit court may solemnize marriages.[15]

The clerk is instructed by statute to refuse to issue the marriage license if the applicants for licensure do not have a right to marry under state law, if either applicant has been adjudged mentally incompetent, or if either applicant is under the influence of alcohol or narcotic drugs.[16] Upon request from those applicants who have been refused a license, the clerk may certify the refusal to the circuit court and notify the applicants of the submission to the court.[17] Pursuant to statute, applicants who have been refused a marriage license by the clerk are entitled to a hearing before the circuit court regarding whether a marriage license should be issued.[18] The court makes the final determination concerning the issuance of the license, and the clerk must comply with the court's order.[19]

Notably, the statutes do not provide the clerks with discretion as to whether to issue a marriage license. If an applicant fulfills the statutory prerequisites, or if the court orders the clerk to issue a licensee, the clerk must issue the marriage license. Conversely, if an applicant does not fulfill all of the statutory requirements, or seeks a license to solemnize a marriage prohibited by statute, the clerk has no discretion to issue the license.

More particularly, the clerk – whether relying on advice of counsel or independent of counsel – does not have the authority to determine the constitutionality of any statute providing for or prohibiting the issuance of marriage licenses. Thus, a clerk may not decide to ignore particular statutory prohibitions, for example the prohibition against issuing licenses to same-sex couples, simply because the clerk believes that this prohibition is either ill-advised or, in the clerk's opinion, unconstitutional. Nor may a clerk decide not to issue any licenses to any couples simply because the clerk believes it unfair or unconstitutional to issue marriage licenses to opposite-sex couples but not same-sex couples. The statutes dictate the clerks' duties and clerks are not free to deviate from those duties based on their personal views of the law.

The State of Indiana may seek an injunction and penalties against a clerk who issues marriage licenses that are not authorized by statute. For example, in 1938, the state took action against the clerk of the Lake County circuit court as a result of the improper issuance of marriage licenses by the clerk.[20] The laws of the state at the time required marriage licenses be obtained and issued in the county where the female applicant resided.[21] The clerk, contrary to statutory requirements at the time, had issued several thousand marriage licenses to women who were not residents of Lake County. After the clerk refused to issue licenses only in compliance with the law, the State sought and received a temporary injunction and a penalty provided by statute for violation of the law. The Indiana Supreme Court, upholding the trial court's injunction, noted a court may enjoin a public officer who is acting in breach of trust, unlawfully, or without authority.[22]

Current Indiana law imposes criminal penalties for actions associated with obtaining and issuing unauthorized marriage licenses.[23] A clerk of the circuit court may be charged with a Class B misdemeanor if the clerk, or a deputy of the clerk, issues a marriage license "knowing that the information concerning the physical condition of the applicant is false."[24] Additionally, a clerk who solemnizes a marriage in violation of Article 11 commits a Class C infraction, or a Class B misdemeanor if the individuals are prohibited from marrying under Indiana Code chapter 31-11-1.[25] Finally, the failure to comply with a statutory duty may be prosecuted under the official misconduct provision of Indiana Code section 35-44-1-2. That subsection provides that a public servant who knowingly or intentionally performs an act he or she is forbidden by law to perform commits a Class A misdemeanor.

County officers may be impeached, resulting in suspension or removal from office, for the commission of any misdemeanor in office.[26] Furthermore, a clerk who refuses to issue marriage licenses at all may be subject to an impeachment or removal action for refusing to perform official duties.[27] Additionally, there is the possibility of immediate judicial action in the form of the issuance of a temporary restraining order, followed by a preliminary injunction or an order of mandate, when public officials do not act in accordance with their statutory duties.

CONCLUSION

Clerks of the county circuit courts are public officials whose duties include the issuance of marriage licenses. Public officials must perform their duties in accordance with their given statutory authority and in compliance with state statutes. The act of issuing a marriage licenses is prescribed by statute and the clerk of the circuit court must carry out the act as required by statute to be performed. Clerks have no authority to undertake their own evaluations of the constitutionality of these statutes. And they may neither issue licenses that are not authorized by statute nor refuse to issue marriage licenses altogether.

Sincerely,

Stephen Carter
Attorney General

Rebecca Walker
Deputy Attorney General

[1] "There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner and Surveyor, who shall severally, hold their offices for four years; and no person shall be eligible to the office of Clerk, Auditor, Record, Treasurer, Sheriff, or Coroner more than eight years in any period of twelve years." Ind. Const. art. VI, § 2.
[2] State v. Market, 302 N.E.2d. 528, 533-34 (Ind. App. 1973).
[3] *Id; see also* Monts v. State, 496 N.E.2d 37, 39 (Ind. 1986).
[4] State ex rel. Young v. Niblack, 99 N.E.2d 839, 841 (Ind. 1951); see generally Ind. Code ch. 33-17-1.
[5] Union Township of Montgomery Co. v. Hays, 207 N.E.2d 223, 224 (Ind. App. 1965).
[6] IND. CONST. art 15, § 4; Ind. Code § 5-4-1-1.
[7] IND. CODE § 33-17-1-3.
[8] Mosby v. Bd. of Comm'rs of Vanderburgh Co., 186 N.E.2d 18, 20 (Ind. App. 1963); Indiana Ethics Comm'n v. Nelson, 656 N.E.2d 1172, 1175 (Ind. Ct. App. 1995).
[9] Campbell v. Brackett, 90 N.E. 777, 778 (Ind. App. 1910).
[10] State ex rel. Socialist Labor Party v. State Election Bd., 241 N.E.2d 69, 75 (Ind. 1968) (citing Julian v. State, 39 N.E. 923 (Ind. 1895)).
[11] IND. CODE § 31-11-4-3.
[12] IND. CODE § 31-11-4-2.
[13] IND. CODE ch. 31-11-2, -4, 5-2.
[14] IND. CODE § 31-11-1-6.
[15] IND. CODE § 31-11-6-1.
[16] IND. CODE § 31-11-4-2, -11.
[17] IND. CODE § 31-11-4-12.
[18] *Id*.
[19] *Id*.
[20] Sweigart v. State, 12 N.E.2d 134 (Ind. 1938).
[21] *Id.* at 136-37. (Act of 1939, ch. 100 § 1, p. 513 revised the requirement and allowed for a license to be issued by a clerk in the county where either of the applicants reside.)
[22] *Id*. at 137.
[23] IND. CODE ch. 31-11-11.
[24] IND. CODE § 31-11-11-4.
[25] IND. CODE § 31-11-11-5, -7
[26] IND. CODE § 5-8-1-1; Ind. Const. art VI, § 8
[27] IND. CODE § 5-8-1-35; Beesley v. State, 37 N.E.2d 540 (Ind. 1941).

OFFICE OF THE ATTORNEY GENERAL

May 7, 2004

OFFICIAL OPINION 2004-5

The Honorable Tim Berry
Treasurer of the State of Indiana
Indianapolis, IN 46204

Dear Treasurer Berry:

You have requested our opinion on Indiana law relating to contracts for banking services[1] for state agencies. In your letter you advised us that some banks have solicited various state agencies for deposit, checking and cash handling services without the knowledge or consent of your office. Several individual agencies are considering entering into a contract with a bank with fees and charges much less favorable than those that your office negotiates on behalf of the state as a whole. Moreover, the agencies would not be required to purchase their own banking services by paying these fees and charges. Instead, banks would charge their fees

against the investment income on state treasury funds your office has invested pursuant to Indiana Code article 5-13.

Your office wishes to clarify the underlying statutory authority to contract for banking services on behalf of agencies of the State of Indiana. Accordingly, you have asked for an official opinion on whether a state agency may deposit public funds and earn interest and incur transaction fees on an account without the prior approval and consent of the state treasurer.

SHORT ANSWER

It is our opinion that the authority to contract for banking services for state agencies rests exclusively with the treasurer of the state. Individual state agencies are not authorized to enter into independent contracts for banking services.

STATUTORY ANALYSIS

The deposit and investment of public funds[2] is extensively regulated by law. We begin with the receipt of funds by a state agency. Indiana Code section 4-13-2-21 requires that

> All receipts from any source coming into the possession of any state agency[3] shall be deposited with the state treasurer each day or as soon as practicable after the same is received, unless otherwise provided by law.... (emphasis added).

Our laws further provide that "[t]he treasurer of state shall receive, account for, and pay over all moneys which are required by law to be paid into the state treasury"[4], the state treasury being composed of, among other things "all monies from any source paid, belonging, or accruing to the state for the use of the state or to a state fund for any purpose."[5] It is the treasurer of state, and not an employee of a state agency, who "is responsible for the safekeeping and investment of moneys and securities paid into the state treasury."[6] It is the treasurer of the state, and not an employee of an individual agency, who is required to "give bond in an amount determined by the auditor of the state and the governor... conditioned on the faithful performance of the duties as treasurer."[7]

The deposit of public funds is governed by Indiana Code chapter 5-13-6, and the investment "of the money in the state treasury is governed by IC 5-13."[8] Indiana Code article 5-13 details the deposit and investment powers both of the state treasurer and the various political subdivisions and local government entities.[9] In order to be designated a depository for state public funds, a financial institution must make an application through the state treasurer for submission to the state board of finance and be approved by that body.[10] All depositories that have public funds on deposit are required to make monthly reports to the state board of depositories and pay an assessment to the public deposit insurance fund, which assessment "shall be deducted from the interest otherwise payable on that account."[11]

Indiana Code section 5-13-6-1(b) directly addresses where public funds may be deposited, and it is clear that it is the state treasurer who makes the selection:

> (b)... all public funds collected by state officers[12], other than the treasurer of state, shall be deposited with the treasurer of state, or an approved depository selected by the treasurer of state not later than the business day following the receipt of the funds. The treasurer of state shall deposit daily on business days of the depository all public funds deposited with the treasurer of state.... (emphasis added).

Thus, if an agency comes into the possession of "receipts" at a time of day that they can be deposited anywhere, the only place they may be deposited is "with the state treasurer, or an approved depository selected by the treasurer". Given the availability of statewide banking and the routine electronic transfer of funds, we can perceive of no practical reason why a state agency should find it necessary to independently contract with a bank to accept the deposit of public funds.[13]

Selection of the designated depository is particularly important when one considers the investment authority of the state. "Upon determination by the treasurer of state that cash of the state on deposit is in excess of its anticipated daily cash requirements, the treasurer of state may deposit the excess funds in deposit accounts of designated depositories,"[14] and these deposit accounts "must bear interest at rates of interest not less than the rates of interest paid from time to time by each financial institution to all its depositors making comparable investments."[15]

The state treasurer does not, however, have the unfettered discretion to decide which designated depository receives state funds. Indiana Code section 5-13-10-3 states:

> The treasurer of state may not deposit aggregate funds in deposit accounts in any one (1) designated depository in an amount

> aggregating at any one (1) time more than fifty percent (50%) of the combined capital, surplus, and undivided profits of that depository as determined by its last published statement of condition filed with the treasurer of state....

The treasurer is required to publish semi-annual reports of the funds maintained in each depository, listing separately "funds in accounts subject to withdrawal on demand or by negotiable orders of withdrawal and funds evidenced by other accounts".[16] All interest derived from investments of public funds in these deposit accounts must be "receipted to the general fund except as otherwise provided by law."[17]

Thus, Indiana law assumes that all deposits will be made by the state treasurer (or pursuant to his/her direction), sets a maximum ceiling on the aggregate amount of public funds that may be held in any one designated depository at one time, requires public reporting of the amount and type of each account in which public funds are held, and requires that all interest go into the general fund. In order to be able to carry out this responsibility, the treasurer must be able to determine the "aggregate funds in deposit accounts", a determination that may be impossible if individual state agencies maintain separate deposit accounts and move funds into and out of those accounts without the approval and knowledge of the treasurer.

The type of investments that may be made with state funds is detailed, and in each instance the investment is contemplated to be made by the state treasurer. For example, Indiana Code section 5-13-9-2.5 describes the permitted investments. It provides, in pertinent part:

> (a) An officer designated in section 1 of this chapter [*the state treasurer and county officer, or fiscal officer of a political subdivision*] may invest or reinvest funds that are held by the officer and available for investment in investments commonly known as money market mutual funds that are in the form of securities of or interests in an open-end, no-load, management-type investment company or investment trust registered under the provisions of the federal Investment Company Act of 1940, as amended (15 U.S.C. 80a et seq.)…
>
> (b) The investments described in subsection (a) shall be made through depositories designated by the state board of finance as depositories for state deposits under IC 5-13-9.5.

Finally, Indiana Code section 5-13-10.5-2 provides:

> In addition to any other statutory power to make investments under any other law:
> (1) the treasurer of state, under the guidelines established by the state board of finance; and
> (2) any other public officer of the state authorized by statute or court order to make investments;
> may invest or reinvest funds held by the treasurer of state or other public officer in any combination of the investments authorized under this chapter. In making the investment, the public official shall comply with the requirements in this chapter that apply to the investment.

One of the requirements with which the public officer must comply is Indiana Code section 5-13-10.5-17:

> Any public officer of the state that makes a deposit in any deposit[18] or other account may be required to pay a service charge to the depository in which the funds are deposited, if the depository requires all customers to pay the charge for providing that service. If the total service charge cannot be computed before the investment, the investing officer of the state shall estimate the service charge and adjust the interest rate based on this estimate. The service charge may be paid by direct charge to the deposit or other account or in any other manner mutually agreed upon by the investing officer and the depository.

Again, our statutes contemplate that the treasurer will be making unified deposit and investment decisions on behalf of the State, and is mandated to make his investment decisions after taking into account service charges made by the depository. This intent is frustrated if individual agencies maintain deposit accounts for their own use, but banks charge the service fees and public deposit insurance fund assessments against accounts maintained by the treasurer.[19]

Having reviewed Indiana Code article 5-13, we find no authorization for a state agency to enter into any independent contract or agreement with any financial institution (even a depository otherwise approved by the state board of finance) either to receive or invest public funds. If the agency is not paying bank fees and assessments out of funds appropriated for that purpose, it could be argued that the practice violates article 10, section 3 of the Indiana Constitution, which provides that "no money shall be drawn from the treasury, but in pursuance of appropriations made by law." Although a general appropriation has been made to the treasurer to pay fees and assessments on deposits and investments made by that office, no such appropriation has been made to pay fees and

assessments on behalf of deposits and investments made by governmental agencies.[20]

Our laws regulating public purchasing by state agencies are not inconsistent with this analysis. Although the General Assembly has given the Department of Administration the authority "to supervise and regulate the making of contracts by state agencies"[21] and has enacted a comprehensive statutory framework governing public purchasing,[22] the general procurement statutes do not "apply to... (5) an investment of public funds."[23] Rather, the legislature has reserved that activity to the constitutionally created office of the treasurer of state.

In summary, the General Assembly clearly recognizes the fact that financial institutions pay higher rates of interest, make certain types of investment opportunities available, and waive or substantially reduce service charges on larger accounts. By requiring that the oversight and responsibility for the deposit and investment of state funds be centralized in one office – that of the state treasurer – our laws are structured to maximize the earning potential of the state treasury within explicitly drawn parameters calculated to minimize risk, and contemplates that the treasurer will use the State's aggregate investment portfolio to secure the optimum combination of interest earnings and banking fees by negotiating for all of the State's investment and deposit services on a unified basis.

CONCLUSION

It is our opinion that the authority to contract for banking services for state agencies rests exclusively with the treasurer of the state. Individual state agencies are not authorized to enter into independent contracts for banking services.

We trust the foregoing is responsive to your question.

Sincerely,

Stephen Carter
Attorney General

Susan W. Gard
Deputy Attorney General

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[1] For the purposes of this Advisory Opinion, "banking services" shall mean the maintenance of any checking, deposit or other account into which public funds are placed, the computation, posting and payment of any interest thereon, the transfer of any public funds (whether by warrant, check, wire transfer, ACH or other means), the making of any loans or advancements on any account in which public funds are placed, and the preparation and maintenance of all statements, notices, computations, postings and charges in connection with such accounts.

[2] "Public funds" means "all fees and funds of whatever kind or character coming into the possession of any public officer by virtue of that office." Ind. Code § 5-13-4-20

[3] As used in Ind. Code § 4-13-2-1:

[T]he term 'agencies of the state', 'agency', or 'agencies' shall mean and include every officer, board, commission, department, division, bureau, committee, employee, and other instrumentality of the state including without limiting the effect of the foregoing, state hospitals, state penal institutions, and other state institution enterprises and activities wherever located, but excepting, unless specifically included, military officers and military and armory boards of the state, the state fair commission, the Supreme Court and the Court of Appeals, the legislative department of state government, including but not limited to the Senate, the House of Representatives, the legislative council, and the legislative services agency, and state colleges and universities supported in whole or in part by state funds, and persons and institutions under their control and excepting all counties, cities, towns, townships, school towns, townships and cities, and other municipal corporations or political subdivisions of the state.

[4] IND. CODE § 4-8.1-2-2

[5] IND. CODE § 4-8.1-1-1

[6] IND. CODE § 4-8.1-2-1. *See generally* IND. CODE §§ 4-8.1-2-6 through 4-8.1-2-14 for additional requirements placed upon the treasurer of state relative to reports, acknowledgements, and reconciliation of deposits made to the state treasury, and payments made from the state treasury.

[7] IND. CODE § 4-8.1-2-4.

[8] IND. CODE § 4-8.1-1-4.

[9] The scope of this advisory letter is limited to banking services for state agencies and intentionally does not address requirements placed upon political subdivisions and other governmental entities.

[10] IND. CODE § 5-13-9.5, *et. seq.*
[11] IND. CODE §§ 5-13-12-1, -5; IND. CODE § 5-13-10.5-15.
[12] IND. CODE § 5-13-4-21 states: "Public officer" means any person elected or appointed to any office of the state or any political subdivision. "Public officer" includes an officer of all boards, commissions, departments, institutions, and other bodies established by law to function as a part of the government of the state or political subdivision that are supported wholly or partly by appropriations of money made from the treasury of the state or political subdivision or that are supported wholly or partly by taxes or fees. "Public officer" does not include an officer of an independent body politic and corporate set up as an instrumentality of the state but not constituting a political subdivision.
[13] Compliance with the "next business day" requirement is not required for detached offices of the department of natural resources or the department of state revenue if the funds on hand do not exceed one hundred dollars ($100), although funds must be deposited not later than the business day following the day that they exceed one hundred dollars ($100). IND. CODE § 5-13-6-1(f).
[14] IND. CODE § 5-13-10-1
[15] IND. CODE § 5-13-10-2
[16] IND. CODE § 5-13-10-4
[17] IND. CODE § 5-13-10-5
[18] IND. CODE § 5-13-4-7 defines "Deposit account" as any of the following: (1) Any account subject to withdrawal by negotiable orders of withdrawal, unlimited as to amount or number, and without penalty, including NOW accounts. (2) Passbook savings accounts. (3) Certificates of deposit. (4) Money market deposit accounts. (5) Any interest bearing account that is authorized to be set up and offered by a financial institution in the course of its respective business.
[19] There are indeed criminal sanctions for public officers who violate the requirements of title 5, article 13: " A public officer who knowingly fails to deposit public funds, or knowingly deposits or draws any check or negotiable order of withdrawal against the funds except in the manner prescribed in this article [IC 5-13], commits a Class B felony. The public officer also is liable upon the officer's official bond for any loss or damage that may accrue." Ind. Code § 5-13-4-3. See, *Cole v. State*, 790 N.E.2d 1049 (Ind. Ct. App. 2003) at 1053 holding that the lack of a "knowing or intentional" mens rea proof in Indiana Code section 5-13-4-3 does not violate the proportionality clause of article I, section 16 of the Indiana Constitution because the harm to the public "may be more pervasive yet difficult to detect."
[20] *See, e.g.*, IND. CODE § 5-13-10.5-17 (bank service charges) and Indiana Code § 5-13-10.5-15 (public depository insurance assessments). See generally Orbison v. Welsh, 179 N.E.2d 727, 736 (Ind. 1962) ("[N]o particular form need be followed in making of appropriation and it is not necessary that any particular language or words be used. The Legislature must merely indicate purpose for which money is to be used, the source from which it is to come, and indicate in some manner either sum to be used or method of ascertaining a maximum that may be used.").
[21] IND. CODE § 4-13-1-4(2). A "state agency" to which Indiana Code 4-13 applies "means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government. The term 'state agency' does not include the judicial or legislative departments of state government, nor does that term include a state educational institution as defined in IC 20-12-0.5-1". IND. CODE § 4-13-1-1(b).
[22] IND. CODE § 5-22, *et. seq.*
[23] IND. CODE § 5-22-1-3(5)

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
FRATERNAL ORDER OF EAGLES #1717
DOCKET NO. 29-2002-0381

PROPOSED ORDER

The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Fraternal Order of Eagles No. 1717 on April 19, 2002. As a result of the investigation, on July 17, 2002, the Petitioner's pull tab license was not renewed and the Petitioner was prohibited from conducting any charity gaming in Indiana for a period of three (3) years from July 1, 2002. The Petitioner protested in a timely manner.

FINDINGS OF FACTS

1) Petitioner protested the Department's proposed actions on August 8, 2002.
2) The Department acknowledged the Petitioner's appeal in a letter dated August 8, 2002.
3) The Department contacted the Petitioner a second time regarding setting a hearing on August 8, 2002.
4) The Department sent Petitioner a letter dated May 21, 2003 regarding the legislative changes that directly affected the procedures governing the administrative hearing.
5) The Department contacted the Petitioner a second time regarding setting a hearing on January 14, 2004.
6) Pursuant to IC 4-21.5-3-1 notice was given to the Petitioner on January 14, 2004, via certified mail return receipt requested, regarding a possible dismissal of its appeal.
7) The notice was delivered and signed for by Petitioner's representative on January 20, 2004.
8) Petitioner has repeatedly failed to respond to the Department's correspondence.

STATEMENT OF LAW

1) IC 4-21.5-3-24 states, "(a) At any stage of a proceeding, if a party fails to:
(1) file a responsive pleading required by statute or rule;
(2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
(3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;
the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.
(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.
(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

CONCLUSIONS OF LAW

1) IC 4-21.5-3-24 states, "(a) At any stage of a proceeding, if a party fails to: (1) file a responsive pleading required by statute or rule; (2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or (3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action; the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
2) The Petitioner's failure to respond to the Department's numerous letters is grounds for a proposed dismissal order pursuant to IC 4-21.5-3-24.

PROPOSED ORDER

The Administrative Law Judge orders the following:
Petitioner's appeal is dismissed.
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

04-990051LOF

LETTER OF FINDINGS NUMBER: 99-0051
Sales/Use Tax
For the Years 1995-1997

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 Assessment—Booth Rental

Authority: 45 IAC 2.2-4-8; 45 IAC 2.2-4-9

Taxpayer protests the Department's timely proposed assessment of tax on the taxpayer's rental of vendor booths.

II. Tax Administration—Penalty and Interest

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2; IC 6-8.1-10-1

The taxpayer protests the imposition of a negligence penalty and interest.

STATEMENT OF FACTS

The taxpayer operates two flea markets. At the flea markets, the taxpayer rents booth space to vendors and operates food concessions. The flea markets are open to the public three (3) days a month. Vendors pay rent on booths supplied by the taxpayer. The taxpayer had two types of vendors: (1) occasional; and (2) long term (consecutive months). The taxpayer collected sales tax on occasional vendors, but only collected tax for the first month on vendors who returned monthly. Also, some category (2) vendors opted to pay their rental amounts annually. Neither side disputes whether category (1) vendors are taxable, but there is a dispute regarding (2).

I. Sales Tax Assessments—Booth Rental

DISCUSSION

The auditor argues that since the flea markets are only open three days a month, and that the buildings are locked when the flea markets are not open (and per the auditor, the vendors do not have access save for the three days each month), the taxpayer's rental of booths was taxable under 45 IAC 2.2-4-8, which states in pertinent part, "Every person engaged in the business of renting or furnishing for periods of less than thirty (30) days any accommodation including booths … is a retail merchant making retail transactions…." "Accommodation," for our purposes, is defined at 45 IAC 2.2-4-9(a)(7):

(a) For purposes of the state gross retail and use tax, an "accommodation" is any space, facility, structure, or combination thereof including booths, display spaces and banquet facilities, together with all associated personal or real property (including land), which is intended for occupancy by human beings for a period less than thirty (30) days including:

* * * *

(7) Booths or display spaces in a building, coliseum or hall.

The auditor's position is that vendors are only renting for three days, and not the full month. As for the vendors that pay annually, the auditor characterizes those payments as "simply three days rent paid several months in advance."

The taxpayer also relies on 45 IAC 2.2-4-8, but cites different language for a different result:

(b) In general, the gross receipts from renting or furnishing accommodations are taxable. An accommodation which is rented for a period of thirty (30) days or more is not subject to the gross retail tax.

The taxpayer provided the Department sample copies of contracts between the taxpayer and vendors. The contracts are signed monthly and contain the following relevant language:

I [Vendor] am a permanent dealer in the [flea market] of [City of X].

YES NO [The Vendor is to circle the appropriate answer]

The taxpayer states "permanent" means that the vendor will have the same, discrete, booth space for a continual period (unlike the non-permanent, occasional vendors).

The taxpayer notes:

While open to the public only three days each month, Vendors rent the space for the entire month, or longer period. Vendors may store merchandise in the space on a permanent basis so long as the rent is paid. Moreover, many Vendors leave their

fixtures, booths, tables, advertising materials, and banners in the rented space from month to month.

Also, at hearing, the taxpayer disputed whether or not vendors had access to their booths. The taxpayer stated that if, for example, a vendor wanted access to their booth space when the flea market is closed, that the vendor has a contact person, who also does custodial work for the flea market, that can let them inside.

Also of import is the example provided by 45 IAC 2.2-4-9:

If a person moves into a room for an indefinite period, but pays weekly, sales tax must be collected until a person has rented the room for longer than 30 consecutive days.

To recapitulate: the contracts between the taxpayer and its vendors are monthly (the contract does not say for "three days a month"); taxpayer states that the vendors can and do leave various items (listed earlier) in their specific booth for periods that exceed thirty days; vendors have access to the booths by going through the contact person who can let them inside the flea market when it is closed (also, the taxpayer states that the flea markets are open to all of the vendors the day before the three days the flea market is open to the general public); and the rental booth is for a specific, discrete, location in one the flea markets. Based upon these facts, the Department finds for the taxpayer.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Penalty and Interest

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty. The Indiana Code section 6-8.1-10-2.1 imposes a penalty if the tax deficiency was due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2(b) states that negligence is "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was "due to reasonable cause and not due to willful neglect." 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).

Beyond the issue discussed above in part **I**, which the taxpayer has prevailed on and therefore cannot be a basis for negligence, the taxpayer also was assessed for food sales made at its concessions at the flea markets. Under Indiana law food sold at the concessions is taxable, and the taxpayer explains that the "error resulted from Taxpayers' understanding that the only tax imposed on food and beverage sales was the county tax." Since 45 IAC 2.2-5-43 clearly indicates that so-called "food for immediate consumption" is taxable, the taxpayer was negligent in this respect.

Additionally, The taxpayer also protests the imposition of interest. Pursuant to IC 6-8.1-10-1(e) the Department may not "waive the interest imposed under this section."

FINDING

The taxpayer's protest of the penalty and interest is denied.

DEPARTMENT OF STATE REVENUE

02990057.LOF

LETTER OF FINDINGS: 99-0057
Indiana Adjusted Gross Income Tax
For Tax Years 1995 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax: Partnership Distributions

Authority: IRC §63; IC 6-3-2-1

Taxpayer protests the Department's characterization of income received from an Indiana partnership.

II. Tax Administration: Negligence Penalty

Authority: IC 6-8-10-2.1; 45 IAC 15-11-2

Taxpayer protests the assessment of a negligence penalty.

STATEMENT OF FACTS

Taxpayer provides financial products and services to individual and institutional investors. Additionally, Taxpayer offers investment and banking services to corporate, governmental, and municipal clients.

In 1985, Taxpayer formed an Indiana partnership ("Partnership"). The stated purpose behind formation of the Partnership was to purchase, rehabilitate, and market residential buildings in downtown Indianapolis. Taxpayer's *planned* participation in the Partnership consisted, primarily, of bond underwriting and equity syndication. Taxpayer, as the initial equity investor ($6.5 million capital investment), intended to offer limited interests in the Partnership to its retail customers. (The general partner was an unrelated third party.) Taxpayer also intended to reserve, for itself, a limited interest in the Partnership.

Taxpayer's partnership plans proved untenable. Federal tax law changed. The residential real estate market weakened. The general partner, a local builder, declared bankruptcy. Limited partnership interests could not be sold. Consequently, Taxpayer chose to retain its ninety-nine percent (99%) limited partnership interest. A new general partner, an affiliated corporation, acquired the remaining one-percent (1%) partnership interest. Additional limited partners were never found.

Despite the absence of outside investors, the Partnership, over the next eleven (11) years, operated as intended; the Partnership rehabilitated residential properties. The Partnership operations, though, were not profitable. Taxpayer continued to fund the Partnership's residential real estate activities. Taxpayer "advanced" the Partnership $31 million. For federal income tax purposes, Taxpayer characterized the $31 million "advancements" as capital contributions (i.e., equity). Taxpayer explains:

> For federal tax purposes…the advances did not possess sufficient characteristics of debt and were therefore treated as equity. Annual losses were recognized [by Taxpayer] for federal tax purposes because the additional equity contributions gave the company sufficient tax basis to claim such losses.

In 1996, Taxpayer liquidated the Partnership. According to Taxpayer, the liquidation proceeds were sufficient to return Taxpayer's initial capital investment of $6.5 million. The liquidation proceeds, however, were insufficient to "cover" any of Taxpayer's $31 million "advancements." The proper characterization of these liquidation proceeds is at issue.

Taxpayer *initially* characterized the $31 million liquidation proceeds as income. Taxpayer explains:

> [Taxpayer's] department that prepared the [Partnership's] returns used the financial statement information that included the COD income [received by Taxpayer from the Partnership] as the basis for amounts reported on the [federal] return. This department was unaware that the appropriate federal tax treatment of the transaction was different from the treatment on the financial statement and included COD income of approximately $31 million on the partnership return as additional rental income.

Furthermore (again, according to Taxpayer):

> The [Partnership's] federal partnership return, Schedule K-1, erroneously reported partnership income of $26,423,497 that included $31 million of COD income. … Building on the mistake on the K-1, Taxpayer's tax compliance group deducted $26,423,497 as foreign source income before apportionment on Taxpayer's Indiana Corporate Income Tax Return….

Upon review, Audit disallowed Taxpayer's $26,423,497 foreign source income deduction. Audit re-characterized the $26,423,497 as non-unitary partnership income. Accordingly, Audit allocated the entire amount to Indiana. These adjustments "resulted in a significant increase to [Taxpayer's] Indiana adjusted gross income." Specifically, Audit proposed an additional $1,966,645 of assessments. Taxpayer protests these additional assessments.

DISCUSSION

I. Adjusted Gross Income Tax: Partnership Distributions

This assessment is based on Audit's disallowance of the foreign source income deduction and subsequent re-characterization of the reported income as non-unitary partnership income. Audit explains:

> During the audit period, the [T]axpayer [received]…distributions from…an Indiana partnership [Partnership]. The distributions were reported on line 31 of Schedule B as other adjustments before apportionment. The [T]axpayer failed to add back non-unitary partnership distributions attributed to Indiana on line 37.

Taxpayer does not directly contest either Audit's disallowance of the foreign source income deduction, or Audit's subsequent re-characterization of the income as non-unitary partnership income. Rather, taxpayer contends the amounts in question were not "income."

Taxpayer explains:

> [Taxpayer] treated certain book accounting entries related to contributions of capital improperly as partnership rental income. For federal income tax purposes, the book accounting entries erroneous characterization does not cause federal taxable income. In the case of a partner and its partnership, the Internal Revenue Code classifies the amount in question as contributions of capital. Return of capital does not result in IRC §63 taxable income to the recipient.

The threshold question, then, is whether the amounts reported as income by Taxpayer (and subsequently re-characterized as non-unitary partnership income by Audit—i.e., the liquidation proceeds), were, in fact, income. If the reported amounts were income, then the Department must determine whether this income should have been apportioned as unitary partnership income, or allocated to Indiana as non-unitary partnership income.

The Liquidation Proceeds

Despite Taxpayer's initial characterization of the liquidation proceeds as "partnership rental income," the underlying transactions belie such a portrayal. The Partnership, while in operation, never realized $31 million in rental income. Consequently,

the liquidation proceeds could not, when in the hands of Taxpayer (a corporate partner), be characterized as rental income.

Similarly, Taxpayer's "advancements" did not represent loans to the partnership. The Partnership, upon liquidation did not realize $31 million of income from the cancellation of debt. Consequently, the liquidation proceeds could not, when in the hands of Taxpayer (a corporate partner), be characterized as cancellation of debt income.

The $31 million of "advancements" transferred to the Partnership by Taxpayer are best characterized as contributions of capital. Amounts characterized as "return of capital" do not represent "income." See IRC §63 and IC 6-3-2-1. While the amounts denominated as "liquidation proceeds" were sufficient to guarantee a return on Taxpayer's initial capital contribution, these proceeds failed to cover (or return) Taxpayer's subsequent capital contributions. Taxpayer, that is, failed to realize income when it received the liquidation proceeds. And absent realization, Taxpayer has nothing to recognize.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration: Negligence Penalty

The Department may impose, in certain situations, a ten percent (10%) negligence penalty. IC 6-8-10-2.1 and 45 IAC 15-11-2. Taxpayer's failure to timely file income tax returns, generally, will result in penalty assessment. IC 6-8.1-10-2.1(a)(1). The Department, however, may waive the penalty if Taxpayer can establish that its failure to file "was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). A Taxpayer may demonstrate reasonable cause by showing "that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed…." *Id.* Since Taxpayer has prevailed on the only issue upon which this penalty was assessed, the penalty must be waived.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220010127; 0220010128.LOF

LETTER OF FINDINGS: 01-0127; 01-0128
Indiana Corporate Income Tax
For the Years 1996 and 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of 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; IC 6-3-2-2; IC 6-3-2-2(e); IC 6-3-2-2(n); IC 6-3-2-2(n)(1); Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992); 45 IAC 3.1-1-53(5); 45 IAC 3.1-1-64.

Taxpayer argues that the Department of Revenue (Department) erred when it determined that the income received from sales of auto parts to its Illinois customer was subject to Indiana adjusted gross income tax.

II. Management Fees and Royalty Payments as Indiana Source Income – Adjusted Gross Income Tax.

Authority: IC 6-3-2-1; IC 6-3-2-2(a); 45 IAC 3.1-1-38; 45 IAC 3.1-1-38(4); 45 IAC 3.1-1-55.

Taxpayer argues that as the out-of-state parent company, money it received in the form of management fees and royalties from its Indiana manufacturing division was not subject to the state's adjusted gross income tax.

STATEMENT OF FACTS

Taxpayers are in the business of manufacturing and selling original equipment auto parts. There are two separate but related entities involved in this protest. The first entity is the out-of-state parent company; the second entity is the manufacturing division which operates a manufacturing facility in Indiana.

The Department of Revenue conducted an audit review of taxpayers' 1996 and 1997 business records and tax returns concluding that both taxpayers owed additional Indiana corporate income tax. Taxpayer manufacturing division (located in Indiana) argues that money received from the sale of its auto parts to an Illinois auto manufacturer should not have been "thrown back" to Indiana. Taxpayer parent company (located in Michigan) argues that money received from taxpayer manufacturing division in the form of management fees and royalties was not subject to Indiana's corporate income tax.

Taxpayers both challenged the audit's conclusions and the assessment of additional income tax. They submitted a protest to that effect, an administrative hearing was conducted during which taxpayers explained the basis for their protest, and this Letter of Findings results.

DISCUSSION

I. Applicability of the Throw-Back Rule – Adjusted Gross Income Tax.

Taxpayer manufacturing division argues that the Department erred when it "threw back" the Illinois sales to Indiana. Taxpayer argues that the decision was inappropriate because it was subject to income tax in Illinois.

The audit determined that, for purposes of calculating taxpayer's Indiana tax liability, sales of auto parts to Illinois should be thrown back to Indiana because the sales were made within a state where taxpayer (the Indiana manufacturing division) was not subject to the state's income tax. The audit arrived at this conclusion because taxpayer did not have an Illinois situs, Illinois property, Illinois payroll, or an Illinois nexus. The audit found that taxpayer's only Illinois in-state activity was "sporadic."

The audit found authority for its decision to throw back the Illinois sales in 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." These sales are called "throw-back" sales. Id.

The underlying 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." Accordingly, in order to properly allocate 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, in order to avoid having the Illinois sales receipts thrown back to Indiana, the taxpayer must show its Illinois activities are such that it was brought within the orbit of the Illinois tax scheme. In support of the proposition that the sales should be thrown back to Indiana, the audit report noted that taxpayer did not pay Illinois income tax during 1996 and 1997 and that it had not filed Illinois returns during that period. In addition, the audit reported that taxpayer did not maintain an Illinois business location, did not have property within Illinois, and did not have payroll attributable to Illinois.

The fact that taxpayer did not pay Illinois income tax during this period and – in fact – did not even file Illinois returns is useful in resolving the throw-back issue, but it is not determinative. Instead, whether or not Indiana can throw back these sales hinges on whether or not "taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States." 45 IAC 3.1-1-64.

15 U.S.C.S. § 381 (Public Law 86-272) controls those occasions in which a state – such as Illinois – can impose a tax on the net income, derived from sources within that state, received by foreign (out-of-state) taxpayers. 15 U.S.C.S. § 381 sets a minimum standard for the imposition of a state income based on the solicitation of interstate sales. Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447, 2453 (1992). 15 U.S.C.S. § 381 prohibits Illinois from imposing its net income tax on taxpayer if taxpayer's only business activity within that state is the solicitation of sales. Illinois may impose its net income tax on income received from an out-of-state entity's business activities unless those business activities exceed the mere solicitation of sales. Conversely, the effect of Indiana's throw-back rule is to revert this sales income back to Indiana in those situations where 15 U.S.C.S. § 381 deprives the purchaser's own state of the authority to impose a net income tax. 45 IAC 3.1-1-64. In effect, 15 U.S.C.S. § 381 allows Indiana to tax out-of-state business activities, without violating the Commerce Clause and without 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 power to tax income derived from the sale of tangible personal property; if the state wherein the sale occurred is forbidden to do so by 15 U.S.C.S. § 381, then that income is "thrown back" to the originating state.

The Department is unable to agree with taxpayer's conclusion that its Illinois activities subjected it to the Illinois net income tax during 1996 and 1997. During that period, taxpayer's only Illinois activity – aside from soliciting sales of its auto parts – consisted of sending one or two employees "on a sporadic basis" to inspect nonconforming auto parts at the Illinois customer's location. This would appear to be the extent of taxpayer's non-solicitation Illinois activity; if Illinois customer complained that one of taxpayer's auto parts did not conform to the customer's original specification, taxpayer would send one (or two) of its Indiana employees to examine that part. Even if it is possible to separate these inspections from the solicitation of the original sale, these investigative activities plainly fall within the de minimis exception described by the Court in Wrigley. As explained by the Court, "[A] company does not necessarily forfeit its tax immunity under § 381 by performing *some* in-state business activities go beyond 'solicitation of orders.'" Wrigley 112 S.Ct. at 2457. (*Emphasis in original*). Taxpayer's sporadic inspection of non-conforming parts "is sufficiently *de minimis* to avoid loss of the tax immunity conferred by § 381." Id. at 2458. The inspection of the auto parts did not void the immunity from Illinois income taxes conferred under 15 U.S.C.S. § 381 and Illinois may not tax these particular receipts. Accordingly, the audit was correct in concluding that the income received from the Illinois sales should have been thrown back to Indiana.

FINDING

Taxpayer's protest is respectfully denied.

II. Management Fees and Royalty Payments as Indiana Source Income – Adjusted Gross Income Tax.

Taxpayer parent company (Michigan) and taxpayer manufacturing division (Indiana) had an arrangement by which taxpayer manufacturing division paid money to taxpayer parent company. Taxpayer parent company provided taxpayer manufacturing division with "patented proprietary technology," "ancillary technical services," the right to use taxpayer parent company's trade name, and the right to use proprietary "just in time computer technology." In return, taxpayer manufacturing division agreed to manufacture auto parts which met taxpayer parent company's standards for quality of materials, procedures, and manufacturing methods. Taxpayer manufacturing division agreed to pay taxpayer parent company a five percent royalty fee based on the invoice price of the auto parts.

Taxpayer parent company also provided management services to taxpayer manufacturing division. Taxpayer parent company's personnel visited the Indiana facility, provided engineering services, research and development services, and provided various management functions. In return, taxpayer manufacturing division paid taxpayer parent company a "management fee."

The audit review concluded that taxpayer parent company should have been paying Indiana adjusted gross and supplemental net income tax on the royalties and management fees. Taxpayer – in the most general of terms – disagrees.

IC 6-3-2-1 imposes a tax on the adjusted gross income derived from "sources within Indiana." IC 6-3-2-2(a) provides that adjusted gross income derived from sources within Indiana includes "income from doing business in this state." IC 6-3-2-2(a). 45 IAC 3.1-1-38, in interpreting IC 6-3-2-2(a), provides that for apportionment purposes a taxpayer is "doing business" in Indiana if it operates a business enterprise or activity in Indiana including "[r]endering services to customers in the state." 45 IAC 3.1-1-38(4).

Taxpayer parent company entered into an agreement by which it provided management and other services to taxpayer manufacturing division. Taxpayer sent its employees into the state to provide these services. Therefore, the management fees taxpayer manufacturing division paid to taxpayer parent company constitute "income from doing business in this state." IC 6-3-2-2(a). Taxpayer parent company was providing services to its manufacturing division, and the resultant income is subject to the state's adjusted gross income tax.

In addition, taxpayer parent company received royalty payments from taxpayer manufacturing division. These royalty payments resulted when taxpayer parent company licensed its trademark rights to taxpayer manufacturing division; in return for the right to use the trademarks, taxpayer manufacturing division paid five percent of the sales of its branded auto parts to taxpayer parent company.

In order for Indiana to tax the money received from an intangible – such as taxpayer parent company's trademarks – the intangible must have acquired a "business situs" within the state. 45 IAC 3.1-1-55 states that "[t]he situs of intangible personal property is the commercial domicile of the taxpayer... unless the property has acquired a 'business situs' elsewhere. 'Business situs' is the place at which the intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property."

Taxpayer parent company's commercial domicile is in Michigan. However, it is clear from the arrangement between taxpayer parent company and taxpayer manufacturing division, that the intellectual property has acquired a "business situs" within Indiana. Taxpayer parent company has licensed to taxpayer manufacturing division to make use of the trademarks within Indiana in conjunction with the manufacture and sale of taxpayer manufacturing division's auto parts. The "substantial use or value" which attaches to these particular trademark rights is inherent in the ability to transfer the trademarks for use at the Indiana manufacturing facility. The royalty payments here at issue are merely the economic benefits which flow from the fact that taxpayer manufacturing division exploits the trademarks' value within Indiana. Under 45 IAC 3.1-1-55, the trademarks have acquired an Indiana business situs; under IC 6-3-2-2(a), the royalty payments are subject to Indiana's adjusted gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 01-0224
Motor Carrier
For Tax Period 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

I. Motor Carrier–Overweight Vehicle Permits

Authority: Black Beauty Trucking, Inc. v. Indiana Department of State Revenue, 527 N.E.2d 1163, 1165 (Ind. Tax 1988); IC 6-8.1-1-1; IC 6-8.1-4-4; IC 8.1-5-1; IC 6-8.1-5-4; IC 9-13-2-121; IC 9-20-1-1; IC 9-20-1-2; IC 9-20-4-1; IC 9-20-4-3; IC 9-20-6-1

Taxpayer protests imposition of fees for overweight vehicle permits.

II. Tax Administration–Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer ships steel for steel industry customers. The Indiana Department of Revenue ("Department") determined that taxpayer had not purchased a sufficient number of overweight trip permits for overweight loads it shipped for its customers. The Department issued proposed assessments for the permit fees, a ten percent negligence penalty and interest. Taxpayer protests the imposition of fees, penalty and interest. Further facts will be provided as necessary.

I. Motor Carrier–Overweight Vehicle Permits

DISCUSSION

Taxpayer protests the imposition of fees for oversized and overweight permits for trucks carrying overweight loads. The Department reviewed taxpayer's records and taxpayer's customer's records and determined that taxpayer should have purchased overweight trucking permits for some loads it was carrying for its customer. The Department issued proposed assessments for the permit fees as well as penalties and interest. Taxpayer protests that the assessments are not valid.

Taxpayer's first point of protest is that the Department is not authorized to audit and assess it for overweight permit fees, penalties and interest, and that no statute or regulation affords feepayers notice of what records they should maintain for an audit with which they will be able to defend themselves in the event of an assessment. Taxpayer believes that the Department based its audit and assessment powers on IC 6-8.1-1-1, but that IC 6-8.1-1-1 only contains vague references to the fees and penalties assessed for overweight vehicles. IC 6-8.1-1-1 states:

> "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the gross income tax (IC 6-2.1) (repealed); the utility receipts tax (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the county adjusted gross income tax (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county economic development income tax (IC 6-3.5-7); the municipal option income tax (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various county food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and hazardous chemical inventory form fee (IC 6-6-10); the penalties assessed for oversize vehicles (IC 9-20-3 and IC 9-30); *the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30)*; the underground storage tank fee (IC 13-23); the solid waste management fee (IC 13-20-22); and any other tax or fee that the department is required to collect or administer.
>
> (Emphasis added.)

Taxpayer believes that "the fees and penalties assessed for overweight vehicles" language is vague and that the reference to IC 9-20-4 and IC 9-30 limits the scope of IC 6-8.1-1-1. Taxpayer claims that no provision of IC 9-20-4 establishes any sort of fee system for overweight vehicles. Also, taxpayer states that the only penalty provision in IC 9-20-4 is found in IC 9-20-4-3, which states:

> (a) The gross weight declared by an applicant in an application for registration under this title determines and fixes the limit of the load, including the unladen weight of the vehicle or combination of vehicles fully equipped for service, that may be transported by a vehicle or combination of vehicles on the highways for the period for which the registration or license is granted. Except as provided in subsection (b), the transportation of a load on a registered and licensed vehicle or combination of vehicles in excess of the limit fixed in the application for registration subjects the person violating a provision of this title to the penalty provisions in this title or to the revocation of the license for the vehicle, or both.
>
> (b) Because of the various types of scales used and the variance in scale weights, a penalty may not be assessed if the actual scale weight of a vehicle or combination of vehicles with load does not exceed one and one-half percent (1 1/2%) of the registered weight of the vehicle or combination of vehicles, including load.
>
> (c) A person who violates this section commits a Class C infraction. In addition, the person shall pay the difference between the fee paid for registration of the vehicle and the fee for the registration of the vehicle plus a maximum load of a weight equal

to the excess load being transported. Until the fee is paid, the person transporting the excess load is not permitted to move the transporting vehicle.

The Department refers to IC 6-8.1-4-4, which states:

(a) The department shall establish a registration center to service owners of commercial motor vehicles.

(b) The registration center is under the supervision of the department through the motor carrier services division.

(c) An owner or operator of a commercial motor vehicle may apply to the registration center for the following:

(1) Vehicle registration (IC 9-18).

(2) Motor carrier fuel tax annual permit.

(3) Proportional use credit certificate (IC 6-6-4.1-4.7).

(4) Certificate of operating authority.

(5) Oversize vehicle permit (IC 9-20-3).

(6) Overweight vehicle permit (IC 9-20-4).

(7) Payment of the commercial vehicle excise tax imposed under IC 6-6-5.5.

(d) Funding for the development and operation of the registration center shall be taken from the motor carrier regulation fund (IC 8-2.1-23-1).

(e) The department shall recommend to the general assembly other functions that the registration center may perform.

Next the Department refers back to IC 6-8.1-1-1, which states in relevant part:

"Listed taxes" or "taxes" includes

....

the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30)

....

and any other tax or fee that the department is required to collect or administer.

Since IC 6-8.1-4-4 states that the Department shall establish a registration center to service owners of commercial motor vehicles, including overweight vehicle permits, the Department is required to collect or administer the overweight vehicle permit fees. According to IC 6-8.1-1-1, this fee that the Department is required to collect or administer is a listed tax. The Department has authority to audit taxpayers and issue assessments of a "listed tax".

Also, taxpayer protests that there is no statute or regulation that explains what records it should keep since there is no return filed for the permit fees. The Department refers to IC 6-8.1-5-4, which states:

(a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person filed:

(1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or

(2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.

In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.

(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

As previously explained, taxpayer is subject to a listed tax since the overweight permit fee is a listed tax under IC 6-8.1-1-1. IC 6-8.1-5-4(a) explains that such a person must keep all source documents so that the department can determine the existence and size of a tax liability. IC 6-8.1-5-4(b)(2) explains that a taxpayer must keep such documents for a period of three years after the due date of such a tax.

Taxpayer's second point of protest is that the forty-two dollar and fifty cent ($42.50) overweight permit fee may be a flat tax, and as such may be unconstitutional. Taxpayer refers to the Indiana Tax Court's decision regarding a Supplemental Highway User fee (SHU) in Black Beauty Trucking, in which the court explained:

The SHU is a flat tax unapportioned to actual use of the highways, indistinguishable from Pennsylvania's tax. It fails the internal consistency test because if each state applied a flat tax of this type, i.e., $50 per commercial vehicle passing through its jurisdiction, an impermissible interference with free trade would result. The interstate carrier traveling from New York to Los Angeles through Indiana covers only a fraction of the miles traveled by an Indiana intrastate carrier, yet both pay the same tax. Furthermore, the interstate carrier my be subject to another flat tax in every other state, regardless of whether the miles traveled in a particular state amount to ten or ten thousand. At year's end, the interstate carrier and intrastate carrier might show

the same mileage, but the interstate carrier would have paid as much as forty-eight times the tax paid by the intrastate carrier. The discriminatory impact on the interstate carrier is readily apparent.

Black Beauty Trucking, Inc. v. Indiana Department of State Revenue, 527 N.E.2d 1163, 1165 (Ind. Tax 1988)

Taxpayer believes that the overweight permit fee at issue in the instant case could result in a similar advantage for an intrastate carrier. The overweight permit fee at issue covers only one trip and the permit is good for only one twenty-four (24) hour period, unlike the annual Supplemental Highway User fee discussed in Black Beauty Trucking. Whereas the intrastate trucking company would have an entire year to get additional value from an annual fee, any trucking company has only 24 hours to use the overweight permit. Even then, once a trip is completed, anyone wanting to take another overweight load will need to pay for a new permit. Unlike the annual SHU fee, here there is no advantage for an in-state trucking company over an out-of-state trucking company, and so the decision in Black Beauty Trucking does not support taxpayer's position.

Taxpayer's third point of protest is that it was a broker rather than a transporter. Taxpayer explained that while it was listed as a carrier on its customer's transport agreements, and taxpayer's Director of Sales and Marketing signed them on taxpayer's behalf, those agreements were standard forms that the customer presented to anyone it was doing shipping with and taxpayer had no other forms to choose from. Also, taxpayer states that its employee on-site at its customer's business only organized and dispatched loads, with no personal observation of the actual loading operations. Taxpayer believes that, since it did not own the trucks doing the hauling, it was not responsible for paying the permit fee. Taxpayer refers to IC 9-20-1-1, which states:

Except as otherwise provided in this article, a person, including a transport operator, may not operate or move upon a highway in Indiana a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in this article.

Taxpayer also refers to IC 9-20-1-2, which states:

Except as otherwise provided in this article, an owner of a vehicle may not cause or knowingly permit to be operated or moved upon a highway in Indiana a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in this article.

Taxpayer also refers to IC 9-20-4-1(a), which states in part:

Except as provided in subsections (b) and (c), a person may not operate or cause to be operated upon an Indiana highway a vehicle or combination of vehicles having weight in excess of one (1) or more of the following limitations:

...

Taxpayer also refers to IC 9-13-2-121(a), which states:

(a) "Owner" means, except as otherwise provided in this section, when used in reference to a motor vehicle:

(1) a person who holds the legal title of a motor vehicle;

(2) a person renting or leasing a motor vehicle and having exclusive use of the motor vehicle for more than thirty (30) days; or

(3) if a motor vehicle is the subject of an agreement for the conditional sale or lease vested in the conditional vendee or lessee, or in the event the mortgagor, with the right of purchase upon the performance of the conditions stated in the agreement and with an immediate right of possession of a vehicle is entitled to possession, the conditional vendee or lessee or mortgagor.

Taxpayer reads these statutes collectively to mean that only a vehicle driver, the legal title holder or a motor carrier leasing the vehicle exclusively for more than thirty (30) days is responsible for purchasing the overweight permit. Since taxpayer leased the vehicles for single trips of less than 30 days, taxpayer believes that it does not qualify as an owner of the vehicles and therefore is not responsible for purchasing overweight permits for the vehicles which made the trips in question.

IC 9-20-4-1 does not mention IC 9-20-1-1 or IC 9-20-1-2, and taxpayer provides no analysis of why IC 9-20-4-1 should be limited in such a manner by the provisions of IC 9-20-1-1 and IC 9-20-1-2. IC 9-20-1-1 and IC 9-20-1-2 both describe duties of individuals regarding overweight trucks, but neither statute states that only those individuals are eligible or responsible to purchase overweight permits. In fact, both contain the phrase, "Except as otherwise provided in this articleY", which plainly means that even those two statutes for individuals regarding overweight trucks have exceptions and are not all-encompassing.

The Department notes that one of the exceptions referred to in IC 9-20-4-1(a), which provides that a person may not operate or *cause to be operated* upon an Indiana highway a vehicle or combination of vehicles having excess weight is IC 9-20-4-1(b), which states:

(b) The enforcement of weight limits under this section is subject to the following:

(1) It is lawful to operate within the scope of a permit, under weight limitations established by the Indiana department of transportation and in effect on July 1, 1956, as provided in IC 9-20-6.

Next, the Department refers to IC 9-20-6-1(a)(1), which states:

(a) This chapter applies to the issuance of the following permits:

(1) A permit for the transportation of oversized or overweight vehicles and loads under section 2 of this chapter.

Therefore, reading IC 9-20-4-1(a), IC 9-20-4-1(b) and IC 9-20-6-1(a)(1) together, a person who causes an overweight load to be transported may purchase the permit to do so. The owner of the truck is not the only one able to purchase an overweight permit.

Since taxpayer caused the trucks to operate with overweight loads either by owning or hiring them, taxpayer may be held responsible for purchase of the permits.

Taxpayer's fourth point of protest is that it charged its customer an amount less than the cost of the overweight permit load fee itself, and taxpayer would lose money on each load if it were responsible for the overweight fee. Taxpayer submits that this would be an illogical arrangement. Taxpayer does not refer to any statute, regulation or court decision to explain why this is relevant. Here, the Department is only concerned with its duty to collect overweight permit fees. The Department is not concerned with the profitability of a taxpayer's business.

Taxpayer's fifth point of protest is that the Department's calculations were based on documents provided by taxpayer's customer, and that those documents indicate that some trucks were listed as making multiple overweight trips in a single day. The documents upon which the Department relied listed: Carrier code, Ship date, Company code, Bill of lading number, Origin city, Destination city, State for destination city, Weight of load hauled for this shipment, Dollar amount paid for services for hauling and the Carrier vehicle number for load. Taxpayer states that the beginning and ending points of these trips are physically too far apart to allow the number of trips listed to have been completed in a single day by a single truck. Taxpayer believes that the listing of these trucks as making more trips than possible in a day brings into question the Department's assessments which were based on those listings.

The Department based the proposed assessments on the best information available to it. The relevant statute is IC 6-8.1-5-1(a), which states:

> If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

The Department notes that each load listed in the customer's records indicate a different load weight and cost. Elsewhere in its protest, taxpayer made the point that its customer did not tailor each document to individual companies it was doing business with. It appears that taxpayer's customer operated in a similar fashion here, paying more attention to the information it considered important (weight, cost, carrier) and less attention to the information it did not consider as important (truck identifying number). Despite the repetition of truck numbers, all other information on taxpayer's customer's records is nonrepetitive and it is reasonable for the Department to believe that taxpayer did not report the proper amount of tax (permit fees) due.

Additionally, taxpayer has not provided sufficient documentation verifying its position that the recorded trips were impossible to make in the recorded time. IC 6-8.1-5-1(b) provides in relevant part that the Department's notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid and that the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. Taxpayer has not met this burden.

In conclusion, regarding taxpayer's first point of protest, the Department is authorized to administer the overweight trucking permits and fees. Second, the permit fee is not a flat tax and there is no advantage for in-state trucking firms over out-of-state firms, unlike the situation in Black Beauty Trucking. Third, the permits are not the sole responsibility of truck owners, but also of anyone who causes overweight loads to be transported. Fourth, the Department is charged with collecting overweight permit fees, and it is irrelevant if someone who owes a fee makes a profit or loss in its business. Fifth, the Department based its proposed assessments on the best information available to it, and it is reasonable for it to believe that the permit fees at issue were not properly paid. Taxpayer has not proven the proposed assessments wrong.

FINDING

Taxpayer's protest is denied.

II. Tax Administration–Interest and Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of interest and a ten percent (10%) negligence penalty. The Department refers to IC 6-8.1-10-1(e), which states, "Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section." Therefore, the Department may not waive interest.

Taxpayer also protests the imposition of a ten percent negligence penalty. The relevant statute is IC 6-8.1-10-1(a), which states:

> If a person:
> (1) fails to file a return for any of the listed taxes;
> (2) fails to pay the full amount of tax shown on the person's tax return on or before the due date for the return payment;
> (3) *incurs, upon examination by the department, a deficiency that is due to negligence*;
> (4) fails to timely remit any tax held in trust for the state; or
> (5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;
> the person is subject to a penalty.

(Emphasis added)

Negligence is described in 45 IAC 15-11-2(b), which 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.

Since taxpayer failed to pay all fees it was required to pay, taxpayer demonstrated carelessness, thoughtlessness, disregard or inattention to its duties placed upon it by the Indiana Code or department regulations. Therefore, taxpayer was negligent under 45 IAC 15-11-2(b). Taxpayer incurred, upon examination by the department, a deficiency that is due to negligence, and so is subject to a penalty under IC 6-8.1-10-1(a)(3).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20020029.LOF

LETTER OF FINDINGS: 02-0029
Indiana Corporate Income Tax
For Tax Periods 1993, 1994, 1995, and 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales of Equipment and Automobile Parts – Gross Income Tax.

Authority: IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); IC 6-2.1-2-2(b); IC 6-2.1-2-3; IC 6-2.1-2-4; IC 6-2.1-2-5; IC 6-2.1-3-3; IC 6-8.1-5-1(b); Dept. of State Revenue v. Brown Boveri, 439 N.E.2d 561 (Ind. 1982); Indiana-Kentucky Elec. v. Dept. of State Revenue, 598 N.E.2d 647 (Ind. Tax Ct. 1992); 45 IAC 1.1-1-3(a); 45 IAC 1.1-3-3(c), (d); 45 IAC 1.1-3-3(d); 45 IAC 1.1-3-3(d)(7).

Taxpayer argues that the money it received from the sale of certain equipment and automobile parts was not subject to Indiana's gross income tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of manufacturing and selling metal parts and fasteners. It is organized into an "industrial group" and a "home construction group." These two groups are further divided into various operating divisions. Taxpayer has manufacturing plants and warehouses within Indiana. It does business with customers inside and outside the state.

The Department of Revenue (Department) conducted an audit review of taxpayer's business operations and tax returns. This audit review resulted in an assessment of additional gross income tax attributable to sales completed during 1993 through 1996. The taxpayer protested the additional assessments, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings results.

DISCUSSION

I. Sales of Equipment and Automobile Parts – Gross Income Tax.

Taxpayer's business is organized into a number of operating divisions. Taxpayer argues that money received by three of these divisions is not subject to gross income tax.

IC 6-2.1-2-2(a)(1) imposes a gross income tax on "the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana...." For a non-resident, the tax is imposed on, "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana." IC 6-2.1-2-2(a)(2) "The gross income tax is imposed at two rates, a "high rate" of 1.2 percent and a "low rate" of.3 percent. IC 6-2.1-2-3 "The rate of tax is determined by the type of transaction from which the taxable gross income is received." IC 6-2.1-2-2(b). The receipts from wholesale sales and from selling at retail are taxed at the low rate. IC 6-2.1-2-4. Receipts from service activities and other business activities are taxed at the high rate. IC 6-2.1-2-5.

However, taxpayer argues that the receipts here at issue were not subject to gross income tax because they were receipts attributable to business conducted between different states. Taxpayer's argument is based upon IC 6-2.1-3-3 which states that, "Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign

country is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution."

However, not all gross income received from transactions in interstate commerce is exempt from gross income tax; only those transactions which the federal constitution proscribes. Indiana-Kentucky Elec. v. Dept. of State Revenue, 598 N.E.2d 647, 652 (Ind. Tax Ct. 1992). The decision as to whether a taxpayer's particular activities constitute protected interstate commerce "must be made on a case by case basis." Dept. of State Revenue v. Brown Boveri, 439 N.E.2d 561, 564 (Ind. 1982).

A. Division One.

Taxpayer's Division One is headquartered in Michigan; it is in the business of producing metal parts for automobiles. Division One owned and operated – during the years under consideration by the audit – two Indiana manufacturing plants. Taxpayer argues that the sales of the auto parts built in Indiana to customers outside the state are not subject to gross income tax. However, other than the suggestion that these receipts originate from sales of goods which cross the Indiana border, taxpayer has not provided sufficient information to determine whether the sales are exempt from tax or whether the receipts are subject to the tax. There is not enough information to determine whether these particular sales are "not completed in Indiana prior to or after shipment in interstate commerce" or whether the "sale is completed in Indiana prior to or after shipment in interstate commerce" 45 IAC 1.1-3-3(c), (d). Taxpayer has not met its burden of presenting sufficient information upon which to make a determination of whether the Division One Indiana source sales to out-of-state customers are exempt from gross income tax. "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).

B. Division Two.

Taxpayer's Division Two manufactures metal and plastic parts for automobiles. Division Two had manufacturing facilities outside the state. It also had an Indiana manufacturing plant and an Indiana warehouse facility. The audit found that "[taxpayer] did not report [Division Two's] sales to Indiana customers shipped from out of state for which [taxpayer's] resident salesmen were responsible for gross income tax." The audit did not find that all of the Division Two's sales to Indiana customers were subject to gross income tax. Instead, "Only those sales shipped from out of state attributable to the Indiana resident salesmen are being subject to gross income tax. The Indiana destination sales not attributable to Indiana resident salesmen are not subject to gross income tax."

The audit correctly differentiated between those sales which gave rise to gross income tax liability and those which did not. By virtue of Division Two's manufacturing plant and warehouse facility and by virtue of its Indiana sales persons, Division Two established an Indiana "business situs." *See* 45 IAC 1.1-1-3(a). Division Two's sales of goods to Indiana customers – even when the goods originated from one of Division Two's out-of-state locations – are subject to gross income tax because the sales were "completed in Indiana prior to or after shipment in interstate commerce." 45 IAC 1.1-3-3(d). The regulation provides an example of a sale that is "completed in Indiana." "The following are situations where a sale is completed in Indiana prior to or after shipment in interstate commerce... [a] sale to an Indiana buyer by a nonresident seller if the sale: (A) originated from; (B) was channeled through; or (C) was otherwise connected with; an Indiana business situs established by the seller." 45 IAC 1.1-3-3(d)(7). In addition, a sale is "completed in Indiana" when it is "[a] sale to an Indiana buyer by a resident seller even though such goods are shipped from outside Indiana." These sales were completed upon acceptance of the Indiana customer's order by one of Division Two's Indiana salespersons and/or at the time the Indiana customer accepted delivery of the goods at the customer's Indiana location.

C. Division Three.

Division Three manufactures and distributes fasteners, metal assemblies, and metal stamps. Division Three has an Indiana plant which manufactures construction fasteners. Division Three also has an Illinois manufacturing plant which builds automobile parts. The audit found that "[Division Three] did not report receipts from the sale of goods to customers in Indiana which were shipped from out of state for gross income tax at the low rate." The audit review concluded that the receipts from these sales were subject to gross income tax.

Taxpayer suggests that money received from the sale of parts to Indiana customers is not subject to gross income tax. Although taxpayer does not state as much, presumably taxpayer's argument is based upon Division Three's sales of its Illinois automobile parts to Indiana customers.

As a non-domiciliary, taxpayer's Division Three gross receipts are taxable only if the receipts were "derived from activities or businesses or any other sources within Indiana." IC 6-2.1-2-2(a)(2).

Division Three's sales of its Illinois auto parts are subject to Indiana gross income tax because the sales were "completed in Indiana." The regulation states that, "Gross income derived from the sale of tangible personal property in interstate commerce *is* subject to the gross income tax if the sale is completed in Indiana." 45 IAC 1.1-3-3(d) (*Emphasis added*). "The following are situations where a sale is completed in Indiana prior to or after shipment in interstate commerce... [a] sale to an Indiana buyer by a nonresident seller if the sale: (A) originated from; (B) was channeled through; or (C) was otherwise connected with; an Indiana business situs established by the seller." 45 IAC 1.1-3-3(d)(7). In addition, a sale is "completed in Indiana" when it is "[a] sale to an Indiana buyer by a resident seller even though such goods are shipped from outside Indiana." The sales at issue took place because Indiana customers contacted taxpayer's Indiana based salespersons and because the Indiana salespersons worked with the

individual customers to obtain suitable goods at an acceptable price.

The Division Three Illinois-to-Indiana sales are interstate transactions. However, taxpayer – by virtue of its Indiana manufacturing and distribution facilities and by virtue of the activities of its Indiana-based salespersons – has established a substantial nexus with this state. *See* 45 IAC 1.1-1-3(a). Under 45 IAC 1.1-3-3(d) these sales were completed in Indiana because the sales originated when the Indiana customers contacted one of taxpayer's Indiana-based salespersons and because the transaction was completed when the goods were delivered to and received by the Indiana customer. The Division Three sales receipts – derived from the sale of Illinois sourced goods to Indiana customers – are subject to Indiana's gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

6520020090.LOF

LETTER OF FINDINGS NUMBER: 02-0090
Motor Carrier
For Tax Period 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.

ISSUES

I. Motor Carrier–Overweight Vehicle Permits

Authority: Black Beauty Trucking, Inc. v. Indiana Department of State Revenue, 527 N.E.2d 1163, 1165 (Ind. Tax 1988); IC 6-8.1-1-1; IC 6-8.1-4-4; IC 6-8.1-5-2; IC 6-8.1-5-4; IC 9-13-2-121; IC 9-20-1-1; IC 9-20-1-2; IC 9-20-4-1; IC 9-20-4-3; IC 9-20-6-1

Taxpayer protests the imposition of fees for overweight vehicle permits.

II. Tax Administration–Interest and Negligence Penalty

Authority: IC 6-8.1-10-1; 45 IAC 15-11-2

Taxpayer protests imposition of interest and a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a trucking company which serves customers in the steel industry in Indiana. The Indiana Department of Revenue ("Department") determined that taxpayer had not paid for enough oversized and overweight permits to cover the number of oversized and overweight loads it had trucked for its customers. The Department assessed the fees and imposed a ten percent negligence penalty and interest. Taxpayer protests the imposition of fees, penalty and interest. Further facts will be supplied as necessary.

I. Motor Carrier–Overweight Vehicle Permits

DISCUSSION

Taxpayer protests the imposition of fees for oversized and overweight permits for trucks carrying overweight loads. The Department reviewed taxpayer's records and taxpayer's customer's records and determined that taxpayer should have purchased overweight trucking permits for some loads it was carrying for its customer. The Department issued proposed assessments for the permit fees as well as penalties and interest. Taxpayer protests that the assessments are not valid.

Taxpayer's first point of protest is that the Department is not authorized to audit and assess it for overweight permit fees, penalties and interest, and that no statute or regulation affords feepayers notice of what records they should maintain for an audit with which they will be able to defend themselves in the event of an assessment. Taxpayer believes that the Department based its audit and assessment powers on IC 6-8.1-1-1, but that IC 6-8.1-1-1 only contains vague references to the fees and penalties assessed for overweight vehicles. IC 6-8.1-1-1 states:

> "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the gross income tax (IC 6-2.1) (repealed); the utility receipts tax (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the county adjusted gross income tax (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county economic development income tax (IC 6-3.5-7); the municipal option income tax (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the

wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various county food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and hazardous chemical inventory form fee (IC 6-6-10); the penalties assessed for oversize vehicles (IC 9-20-3 and IC 9-30); *the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30)*; the underground storage tank fee (IC 13-23); the solid waste management fee (IC 13-20-22); and any other tax or fee that the department is required to collect or administer.

(Emphasis added.)

Taxpayer believes that "the fees and penalties assessed for overweight vehicles" language is vague and that the reference to IC 9-20-4 and IC 9-30 limits the scope of IC 6-8.1-1-1. Taxpayer claims that no provision of IC 9-20-4 establishes any sort of fee system for overweight vehicles. Also, taxpayer states that the only penalty provision in IC 9-20-4 is found in IC 9-20-4-3, which states:

(a) The gross weight declared by an applicant in an application for registration under this title determines and fixes the limit of the load, including the unladen weight of the vehicle or combination of vehicles fully equipped for service, that may be transported by a vehicle or combination of vehicles on the highways for the period for which the registration or license is granted. Except as provided in subsection (b), the transportation of a load on a registered and licensed vehicle or combination of vehicles in excess of the limit fixed in the application for registration subjects the person violating a provision of this title to the penalty provisions in this title or to the revocation of the license for the vehicle, or both.

(b) Because of the various types of scales used and the variance in scale weights, a penalty may not be assessed if the actual scale weight of a vehicle or combination of vehicles with load does not exceed one and one-half percent (1 1/2%) of the registered weight of the vehicle or combination of vehicles, including load.

(c) A person who violates this section commits a Class C infraction. In addition, the person shall pay the difference between the fee paid for registration of the vehicle and the fee for the registration of the vehicle plus a maximum load of a weight equal to the excess load being transported. Until the fee is paid, the person transporting the excess load is not permitted to move the transporting vehicle.

The Department refers to IC 6-8.1-4-4, which states:

(a) The department shall establish a registration center to service owners of commercial motor vehicles.

(b) The registration center is under the supervision of the department through the motor carrier services division.

(c) An owner or operator of a commercial motor vehicle may apply to the registration center for the following:

(1) Vehicle registration (IC 9-18).

(2) Motor carrier fuel tax annual permit.

(3) Proportional use credit certificate (IC 6-6-4.1-4.7).

(4) Certificate of operating authority.

(5) Oversize vehicle permit (IC 9-20-3).

(6) Overweight vehicle permit (IC 9-20-4).

(7) Payment of the commercial vehicle excise tax imposed under IC 6-6-5.5.

(d) Funding for the development and operation of the registration center shall be taken from the motor carrier regulation fund (IC 8-2.1-23-1).

(e) The department shall recommend to the general assembly other functions that the registration center may perform.

Next the Department refers back to IC 6-8.1-1-1, which states in relevant part:

"Listed taxes" or "taxes" includes

...

the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30)

...

and any other tax or fee that the department is required to collect or administer.

Since IC 6-8.1-4-4 states that the Department shall establish a registration center to service owners of commercial motor vehicles, including overweight vehicle permits, the Department is required to collect or administer the overweight vehicle permit fees. According to IC 6-8.1-1-1, this fee that the Department is required to collect or administer is a listed tax. The Department has authority to audit taxpayers and issue assessments of a "listed tax".

Also, taxpayer protests that there is no statute or regulation that explains what records it should keep since there is no return filed for the permit fees. The Department refers to IC 6-8.1-5-4, which states:

(a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person filed:

(1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or

(2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.

In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.

(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

As previously explained, taxpayer is subject to a listed tax since the overweight permit fee is a listed tax under IC 6-8.1-1-1. IC 6-8.1-5-4(a) explains that such a person must keep all source documents so that the department can determine the existence and size of a tax liability. IC 6-8.1-5-4(b)(2) explains that a taxpayer must keep such documents for a period of three years after the due date of such a tax.

Taxpayer's second point of protest is that the forty-two dollar and fifty cent ($42.50) overweight permit fee may be a flat tax, and as such may be unconstitutional. Taxpayer refers to the Indiana Tax Court's decision regarding a Supplemental Highway User fee (SHU) in Black Beauty Trucking, in which the court explained:

The SHU is a flat tax unapportioned to actual use of the highways, indistinguishable from Pennsylvania's tax. It fails the internal consistency test because if each state applied a flat tax of this type, i.e., $50 per commercial vehicle passing through its jurisdiction, an impermissible interference with free trade would result. The interstate carrier traveling from New York to Los Angeles through Indiana covers only a fraction of the miles traveled by an Indiana intrastate carrier, yet both pay the same tax. Furthermore, the interstate carrier my be subject to another flat tax in every other state, regardless of whether the miles traveled in a particular state amount to ten or ten thousand. At year's end, the interstate carrier and intrastate carrier might show the same mileage, but the interstate carrier would have paid as much as forty-eight times the tax paid by the intrastate carrier. The discriminatory impact on the interstate carrier is readily apparent.

Black Beauty Trucking, Inc. v. Indiana Department of State Revenue, 527 N.E.2d 1163, 1165 (Ind. Tax 1988)

Taxpayer believes that the overweight permit fee at issue in the instant case could result in a similar advantage for an intrastate carrier. The overweight permit fee at issue covers only one trip and the permit is good for only one twenty-four (24) hour period, unlike the annual Supplemental Highway User fee discussed in Black Beauty Trucking. Whereas the intrastate trucking company would have an entire year to get additional value from an annual fee, any trucking company has only 24 hours to use the overweight permit. Even then, once a trip is completed, anyone wanting to take another overweight load will need to pay for a new permit. Unlike the annual SHU fee, here there is no advantage for an in-state trucking company over an out-of-state trucking company, and so the decision in Black Beauty Trucking does not support taxpayer's position.

Taxpayer's third point of protest is that the automated call-in center advises callers that the overweight permit is good for 24 hours and the carriers would therefore be misled into believing that they could make multiple trips with one permit within the twenty-four hour period. The permit form itself (Form M-233ST) specifically states that it is a Special Weight/Single Trip Permit. Therefore, taxpayer should have understood that the validity of the permit would expire with the completion of a single trip or at the end of 24 hours regardless of whether or not a trip was completed.

Taxpayer's fourth point of protest states that a related company may have paid some of the permit fees which have been imposed here. The related company also shipped steel during the audit period and taxpayer believes that, since the Department conducted an audit of that company at approximately the same time it conducted the audit of taxpayer, the Department may have information that shows that the other company paid some of the permit fees which have been imposed on taxpayer.

The related company is not part of the audit conducted on taxpayer, and was not factored into the proposed assessments on taxpayer. The Department refers to IC 6-8.1-5-2(b), which explains in relevant part that the burden of proving a proposed assessment is wrong rests with the person against whom the proposed assessment is made. While the Department will review any documentation a taxpayer wishes to submit in support of its protest, it will not search through other taxpayer's records to support a taxpayer's protest. Since taxpayer states that the other company may have paid the permit fees in question, the two companies would presumably have a close enough relationship for the other company to supply taxpayer with the documentation to support this contention. Taxpayer did not supply documentation to support this contention, and has not met its burden under IC 6-8.1-5-2(b).

Taxpayer's fifth point of protest is that it was not the owner of the trucks which were hauling the steel and that, since it did not own the trucks, it was not responsible for paying the permit fee. Taxpayer refers to IC 9-20-1-1, which states:

Except as otherwise provided in this article, a person, including a transport operator, may not operate or move upon a highway in Indiana a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in this article.

Taxpayer also refers to IC 9-20-1-2, which states:

Except as otherwise provided in this article, an owner of a vehicle may not cause or knowingly permit to be operated or moved upon a highway in Indiana a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in this article.

Taxpayer also refers to IC 9-20-4-1(a), which states in part:

Except as provided in subsections (b) and (c), a person may not operate or cause to be operated upon an Indiana highway a vehicle or combination of vehicles having weight in excess of one (1) or more of the following limitations:

...

Taxpayer also refers to IC 9-13-2-121(a), which states:

(a) "Owner" means, except as otherwise provided in this section, when used in reference to a motor vehicle:

(1) a person who holds the legal title of a motor vehicle;

(2) a person renting or leasing a motor vehicle and having exclusive use of the motor vehicle for more than thirty (30) days; or

(3) if a motor vehicle is the subject of an agreement for the conditional sale or lease vested in the conditional vendee or lessee, or in the event the mortgagor, with the right of purchase upon the performance of the conditions stated in the agreement and with an immediate right of possession of a vehicle is entitled to possession, the conditional vendee or lessee or mortgagor.

Taxpayer reads these statutes collectively to mean that only a vehicle driver, the legal title holder or a motor carrier leasing the vehicle exclusively for more than thirty (30) days is responsible for purchasing the overweight permit. Since taxpayer leased the vehicles for single trips of less than 30 days, taxpayer believes that it does not qualify as an owner of the vehicles and therefore is not responsible for purchasing overweight permits for the vehicles which made the trips in question.

IC 9-20-4-1 does not mention IC 9-20-1-1 or IC 9-20-1-2, and taxpayer provides no analysis of why IC 9-20-4-1 should be limited in such a manner by the provisions of IC 9-20-1-1 and IC 9-20-1-2. IC 9-20-1-1 and IC 9-20-1-2 both describe duties of individuals regarding overweight trucks, but neither statute states that only those individuals are eligible or responsible to purchase overweight permits. In fact, both contain the phrase, "Except as otherwise provided in this article...", which plainly means that even those two statutes for individuals regarding overweight trucks have exceptions and are not all-encompassing.

The Department notes that one of the exceptions referred to in IC 9-20-4-1(a), which provides that a person may not operate or *cause to be operated* upon an Indiana highway a vehicle or combination of vehicles having excess weight is IC 9-20-4-1(b), which states:

(b) The enforcement of weight limits under this section is subject to the following:

(1) It is lawful to operate within the scope of a permit, under weight limitations established by the Indiana department of transportation and in effect on July 1, 1956, as provided in IC 9-20-6.

Next, the Department refers to IC 9-20-6-1(a)(1), which states:

(a) This chapter applies to the issuance of the following permits:

(1) A permit for the transportation of oversized or overweight vehicles and loads under section 2 of this chapter.

Therefore, reading IC 9-20-4-1(a), IC 9-20-4-1(b) and IC 9-20-6-1(a)(1) together, a person who causes an overweight load to be transported may purchase the permit to do so. The owner of the truck is not the only one able to purchase an overweight permit. Since taxpayer caused the trucks to operate with overweight loads either by owning or hiring them, taxpayer may be held responsible for purchase of the permits.

Taxpayer's sixth point of protest is that it did not own the business until November 1, 1999, and that it should not be held responsible for assessments for overweight permits prior to that time. Taxpayer provided documentation establishing that it bought the business from a third party on November 1, 1999. The trucking business was disincorporated under the old ownership and reincorporated under the new ownership with the result that two different corporations with identical names and business functions, but otherwise different account and identifying numbers, existed for the first ten months of 1999 and the last two months of 1999 and thereafter. Therefore, taxpayer is correct that it is not responsible for the assessments for overweight permits for the first ten months of 1999.

In conclusion, regarding taxpayer's first point of protest, the Department is authorized to administer the overweight trucking permits and fees. Second, the permit fee is not a flat tax and there is no advantage for in-state trucking firms over out-of-state firms, unlike the situation in Black Beauty Trucking. Third, whether or not taxpayer was confused by the automated call center's message, taxpayer should have known that the permits were good for one load or twenty-four hours. Fourth, taxpayer has not provided sufficient documentation to support its assertion that another company may have paid some of the permit fees at issue. Fifth, the permits are not the sole responsibility of truck owners, but also of anyone who causes overweight loads to be transported. Sixth, taxpayer is not responsible for the permit fees for the first ten months of 1999.

FINDING

Taxpayer's protest is denied in part and sustained in part.

II. Tax Administration–Interest and Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of interest and a ten percent (10%) negligence penalty. The Department refers to IC 6-8.1-10-1(e), which states, "Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section."

Therefore, the Department may not waive interest.

Taxpayer also protests the imposition of a ten percent negligence penalty. The relevant statute is IC 6-8.1-10-1(a), which states:

If a person:

(1) fails to file a return for any of the listed taxes;

(2) fails to pay the full amount of tax shown on the person's tax return on or before the due date for the return payment;

(3) *incurs, upon examination by the department, a deficiency that is due to negligence*;

(4) fails to timely remit any tax held in trust for the state; or

(5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(Emphasis added)

Negligence is described in 45 IAC 15-11-2(b), which 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.

Since taxpayer failed to pay all fees it was required to pay, taxpayer demonstrated carelessness, thoughtlessness, disregard or inattention to its duties placed upon it by the Indiana Code or department regulations. Therefore, taxpayer was negligent under 45 IAC 15-11-2(b). Taxpayer incurred, upon examination by the department, a deficiency that is due to negligence, and so is subject to a penalty under IC 6-8.1-10-1(a)(3).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020259.LOF

LETTER OF FINDINGS NUMBER: 02-0259
Sales and Use Tax
For the Tax Year's 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-Imposition of Use Tax

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-3-2, IC 6-8.1-5-4(a), 45 IAC 2.2-4-22(d).

The taxpayer protests the imposition of use tax on property purchased pursuant to time and materials contracts.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

The taxpayer is a real estate corporation. During the audit period, the taxpayer had homes built on property it owned. The taxpayer later sold these homes. A contractor, who billed the taxpayer on a time and materials basis, failed to collect sales tax on the materials used in many of the homes built for the taxpayer. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest, and penalty for the tax years 1999 and 2000. The taxpayer protested the assessment of tax on the materials the taxpayer purchased pursuant to the time and materials contracts and penalty. A telephone hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Imposition of Tax

DISCUSSION

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.

The responsibility for payment of gross retail (sales and use) tax in situations where a contractor is installing tangible personal

property on real estate owned by another is set out at 45 IAC 2.2-4-22(d) as follows:

Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

(1) Time and material contract. He converts the construction material into realty on land he does not own and states separately the cost for the construction materials and the cost for the labor and other charges (only the gross proceeds from the sale of the construction material are subject to tax);

Clearly, pursuant to the cited Regulation, the contractor should have collected sales tax from the taxpayer and remitted that sales tax to the state. All parties agree that the contractor did not collect and remit the sales tax on the protested items. Therefore, since the taxpayer used the construction materials in Indiana and did not pay sales tax at the time of purchase, the taxpayer owes tax on the use of those construction materials.

Pursuant to IC 6-8.1-5-1 (b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-4(a) requires the taxpayer 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."

The taxpayer and audit indicate that during 1999, the contractor was also in the building supply business. The taxpayer contends that it does not owe the assessed use tax on materials used during the period the contractor was in the building supply business, the contractor collected sales tax and remitted it to the state. The contractor was not, however, registered with the state as a retail merchant. There is no evidence that the contractor ever remitted the allegedly collected sales tax to the state.

The taxpayer contends that after the contractor closed its building supply business, the contractor passed the cost of the building supplies through to the taxpayer. In these cases, the taxpayer contends that the contractor paid sales tax on the supplies at the time of purchase. There were not, however, adequate books and records to indicate that the contractor stopped marking up the cost of the materials. Further, the audit determined that the contractor did not always pay sales tax on building supplies at the time of purchase.

The audit indicates that the contractor was given credit for sales taxes it paid on building materials used in the taxpayer's situation. The protested assessment properly assesses the use tax against the taxpayer.

FINDING

The taxpayer's protest is denied.

II. Tax Administration-Penalty

DISCUSSION

The taxpayer also protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. 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 it did not know the contractor should have been collecting sales tax on the sales of construction supplies pursuant to the time and materials contracts. However, earlier in the relationship between the taxpayer and the contractor, the contractor was collecting sales tax. Since there was no change in the transaction, it was negligent that the taxpayer did not realize it should continue to pay the sales tax to the contractor.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20020317.LOF

LETTER OF FINDINGS NUMBER: 02-0317
Sales/Use 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. Tax Administration-Best information available

Authority: IC 6-8.1-5-1

Taxpayer protests the Department's assessment of sales tax with respect to Indiana sales at auctions, based on auditor reliance on bank deposit records and lack of properly completed exemption certificates.

STATEMENT OF FACTS

Taxpayer is a self-employed auctioneer doing business in both Indiana and Kentucky. During those years, taxpayer deposited sums of money into his personal bank account in excess of reported sales for taxable years 1998, 1999, and 2000. During the course of audit, taxpayer was asked about the excess deposits. Taxpayer provided sales tickets for several sales and documents that taxpayer maintained showed that several sales took place in Kentucky. Taxpayer also attempted to show that various sales were made for exempt purposes, primarily for goods that would be resold. After discussions with the taxpayer's representative regarding the proposed assessment and alternative methodology for determining the liability, the auditor accepted some of the information provided as showing that sales were not subject to Indiana sales tax. However, audit did not accept certain information, and accordingly assessed sales tax against taxpayer. Taxpayer protested audit's assessment, and accordingly a Departmental hearing was held via telephone.

I. Tax Administration-Best information available

DISCUSSION

Under Ind. Code § 6-8.1-5-1(a), "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." Further, under Ind. Code § 6-8.1-5-1(b), "[t]he 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." This is the nature of the Department's assessment.

Taxpayer has no issue with the Department's use of taxpayer's bank deposits as a starting place for determining taxable sales. Taxpayer, however, takes issue with a portion of the deposits being subjected to tax. In addition, taxpayer takes issue with Department's review of exemption certificates for several purchasers, and refusal to accept taxpayer's sampling of sales. Further, taxpayer has noted that, since taking on additional compliance measures, taxpayer's sales taxes for the past years have been an amount much lower than the Department's assessments.

First, taxpayer has stated that the nature of taxpayer's business caused taxpayer to engage in significant withdrawals and deposits of the same cash. An example of these transactions is this: taxpayer receives $10,000 in an auction, and makes a deposit of the cash. Taxpayer withdraws $9,000 to buy articles from an estate to sell at auction. Taxpayer buys $1,000 of items, and deposits the $8,000 back into the bank. While this is plausible, and would permit the Department to reconsider taxpayer's liability, taxpayer has not provided documentation, such as bank records and supporting documentation, that would show that a deposit of taxable proceeds was made, and then a cash withdrawal followed by subsequent redeposit was made.

Second, with respect to exemption certificates, taxpayer has not provided further evidence to permit review of the certificates. Also, taxpayer has not made a presentation of information consistent with an alternative method that would permit the Department to make an alternative determination. Thus the auditor's determination, with a presumption of correctness, has not been rebutted.

Third, with respect to the years after the audit period, even if the last three years are a better reflection of taxpayer's true tax liability, the nature of the liability is for the three years at issue, and is presumed to be correct per Ind. Code § 6-8.1-5-1(b). Taxpayer's burden is to show, by virtue of appropriate records and/or legal arguments, that the auditor's determination is incorrect for the years in question. For the years in question, taxpayer has not met that burden.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20020567.LOF

LETTER OF FINDINGS NUMBER: 02-0567
Sales and Use Tax
For The Period: 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.

ISSUES

I. Sales and Use Tax: Tax Records

Authority: IC 6-2.5 *et seq.*; IC 6-8.1-5-1(a); IC 6-8.1-5-4(a); IC 6-8.1-5-1(b**)**

The taxpayer protests the proposed assessment of retail sales tax.

II. Tax Administration: Penalty and Interest

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2; IC 6-8.1-10-1(e)

The taxpayer protests the imposition of a negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer operated a retail vehicle dealership in Indiana. In January 2001 a fire occurred at the taxpayer's place of business, destroying most of its sales records. The taxpayer protests the Department's proposed sales tax assessment for the years 1999 and 2000. The taxpayer disagrees with the Department's reliance on information provided by the Bureau of Motor Vehicles (BMV).

I. Sales and Use Tax: Tax Records

DISCUSSION

As noted, the taxpayer lost most of its business records for 1999 and 2000 in a fire. Given this, the Auditor relied on BMV information to come up with a proposed assessment. The Auditor describes the BMV information relied upon thusly:

> The purchaser presents the ST-108 to the Bureau of Motor Vehicles (BMV) when the vehicle is registered. The BMV records the ST-108 data, including sales tax collected, using the dealer identification number as an account number. At year-end, all sales tax collected by that dealer is totaled. Those year-end reports are available to [the] Indiana Department of Revenue.

The Auditor goes on to describe her methodology:

> Taxpayer was given the BMV list of vehicle sales attributed to their dealer number and asked to identify them using the Vehicle Identification Number (VIN). Since a large volume of records was lost in a fire, taxpayer prepared a list of vehicle sales that were definitely their sales, giving all the information available. Taxpayer's list included vehicles sold to out-of-state purchasers and leased vehicles. Audit compared taxpayer's list to the BMV list.

After doing the comparing, over a hundred vehicles in each year were "unidentified." Or as the taxpayer puts it,

> For 1999 and 2000 … the Department did find material discrepancies between the amounts reported by the taxpayer on the Form ST-103 and certain records of the Indiana Bureau of Motor Vehicles ("BMV").

Regarding the unidentified vehicles, the Auditor had a title check performed, for the year 2000, through the BMV. The Auditor then "attempted to contact the registered owner of each vehicle." As the Auditor describes it:

> Some registered owners have an unlisted telephone number and others have no listing at all. Eventually, forty-one owners were contacted by audit. All but one confirmed they had purchased their vehicle at taxpayer's dealership. That one vehicle was removed from the BMV list. Of those customers not contacted, all resided in [taxpayer's county] or neighboring counties; those sales remain on the taxpayer's BMV list.

The Auditor further notes that additionally "[t]wo obvious keying errors were made by BMV when the sales tax was entered." The Auditor "adjusted" those figures to reflect "the actual tax collected."

The taxpayer states that

> [t]he Department admits that "obvious keying errors were made by the BMV when the sales tax was entered." This alone makes any reliance on the BMV records unreasonable. In all likelihood, there were additional keying errors that were not obvious to the auditor

The taxpayer also states that the BMV "probably [made] additional keying errors" while "entering the sales tax amount from the ST-108s" and that the dealer number data may have also suffered from errors.

The taxpayer goes on to note that it used "the same procedures to report 1999 and 2000 tax liability as it did to report its 2001 tax liability." The taxpayer concludes that since the 2001 records were deemed accurate by audit, and that there were what the taxpayer characterizes as "manifest errors in the BMV records" that another method should be used. The taxpayer proposes two such methods: (1) accept its 1999 and 2000 reported tax; or (2) accept its alternate records.

IC 6-8.1-5-4(a) requires the taxpayer 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." The taxpayer's records were destroyed in a fire. The Department, based on IC 6-8.1-5-1(a), made a "proposed assessment of the amount of unpaid tax on the basis of the *best information available* to the department." (*Emphasis* added) The taxpayer argues in essence that the BMV information is not the best information available.

First the taxpayer argues that the Department should accept its reported tax liability for 1999 and 2000:

> The taxpayer used the same procedures to report its 1999 and 2000 tax liability as it did to report its 2001 tax liability. Based upon the undisputed accuracy of the taxpayer's 2001 records, and the manifest errors in the BMV records, the Department should accept the taxpayer's reported amount of tax due for 1999 and 2000.

The taxpayer's position--in a sense--begs the question, since it presupposes there were no discrepancies for 1999 and 2000 when in fact the Auditor found discrepancies. The Auditor reviewed the year-end reports "from the BMV and [the] Indiana

Department of Revenue" and found only 2001 to be "materially correct."

Next, the taxpayer argues that its additional records should be used. The taxpayer describes these records as follows:

These records survived the fire because they were in the dealership's safe. They were rejected by the auditor, however, because they did not contain vehicle identification numbers ("VIN numbers").

The taxpayer goes on to state that VIN numbers were obtained for "substantially all of the vehicles" by using service records. However the alternate records provided by the taxpayer show neither the sales amount, nor the tax collected. And as the taxpayer stated, it does not include all of the VIN numbers.

It should be kept in mind that under IC 6-8.1-5-1(b) the taxpayer bears the burden of proving the proposed assessment is wrong, and that the Department's proposed assessment is considered "prima facie evidence that the department's claim … is valid." The steps outlined above that Auditor used (*viz.*, BMV information, title search, verifying with a large block of purchasers that they in fact purchased from the taxpayer, etc.) did result in the best information available being used for the audit.

FINDING

Taxpayer's protest is denied.

II. Tax Administration: Penalty and Interest

DISCUSSION

Indiana Code 6-8.1-10-2.1(d) states, in part, that if "the deficiency determined by the department was due to reasonable cause and not willful neglect, the department shall waive the penalty." Regulation 45 IAC 15-11-2 also states,

(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.

The taxpayer states that it was not negligent and that it "has always made a diligent effort to timely pay the proper tax." The taxpayer also states that business records were lost in the fire.

The taxpayer in correspondence also mentions it is protesting the imposition of interest. Pursuant to IC 6-8.1-10-1(e) the Department may not "waive the interest imposed under this section."

FINDING

The taxpayer's penalty protest is sustained; the protest of the interest is denied.

DEPARTMENT OF STATE REVENUE

6520020574.LOF

LETTER OF FINDINGS NUMBER: 02-0574
Motor Carrier
For Tax Period 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

I. Motor Carrier—Overweight Vehicle Permits

Authority: IC 6-8.1-5-1

Taxpayer protests the imposition of overweight vehicle permit fees.

II. Tax Administration—Interest and Negligence Penalty

Authority: IC 6-8.1-10-1; 45 IAC 15-11-2

Taxpayer protests imposition of interest and a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a trucking company which serves customers in the steel industry in Indiana. The Indiana Department of Revenue ("Department") determined that taxpayer had not paid for enough oversized and overweight permits to cover the number of overweight loads it had trucked for its customers. The Department assessed the fees and imposed a ten percent negligence penalty and interest. Taxpayer protests the imposition of fees, penalty and interest. Further facts will be supplied as necessary.

I. Motor Carrier—Overweight Vehicle Permits

DISCUSSION

Taxpayer protests the imposition of overweight vehicle permit fees. The Department issued proposed assessments for unpaid overweight vehicle permit fees after reviewing the best information available to it, as provided in IC 6-8.1-5-1(a). Also of relevance is IC 6-8.1-5-1-(b), which states in pertinent part:

…

The notice of proposed assessment is prima facie evidence that the department's claim for 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.

In the course of its protest, taxpayer has provided sufficient documentation to prove that it is not liable for the unpaid permit fees. Therefore, taxpayer has met its burden under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Interest and Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of interest and a ten percent (10%) negligence penalty. The Department refers to IC 6-8.1-10-1(e), which states, "Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section." Therefore, the Department may not waive interest.

Taxpayer also protests the imposition of a ten percent negligence penalty. The relevant statute is IC 6-8.1-10-1(a), which states:

If a person:

(1) fails to file a return for any of the listed taxes;

(2) fails to pay the full amount of tax shown on the person's tax return on or before the due date for the return payment;

(3) *incurs, upon examination by the department, a deficiency that is due to negligence*;

(4) fails to timely remit any tax held in trust for the state; or

(5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(Emphasis added)

Negligence is described in 45 IAC 15-11-2(b), which 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.

Since taxpayer was sustained in Issue I of this protest, it has not failed to use such reasonable care as would be expected of an ordinary taxpayer. Therefore, taxpayer was not negligent under 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

6520020575.LOF

LETTER OF FINDINGS NUMBER: 02-0575
Motor Carrier
For Tax Period 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

I. Motor Carrier—Overweight Vehicle Permits

Authority: IC 6-8.1-5-1

Taxpayer protests the imposition of overweight vehicle permit fees.

II. Tax Administration—Interest and Negligence Penalty

Authority: IC 6-8.1-10-1; 45 IAC 15-11-2

Taxpayer protests imposition of interest and a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a trucking company which serves customers in the steel industry in Indiana. The Indiana Department of Revenue ("Department") determined that taxpayer had not paid for enough oversized and overweight permits to cover the number of overweight loads it had trucked for its customers. The Department assessed the fees and imposed a ten percent negligence penalty

and interest. Taxpayer protests the imposition of fees, penalty and interest. Further facts will be supplied as necessary.

I. Motor Carrier—Overweight Vehicle Permits

DISCUSSION

Taxpayer protests the imposition of overweight vehicle permit fees. The Department issued proposed assessments for unpaid overweight vehicle permit fees after reviewing the best information available to it, as provided in IC 6-8.1-5-1(a). Also of relevance is IC 6-8.1-5-1-(b), which states in pertinent part:

…

The notice of proposed assessment is prima facie evidence that the department's claim for 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.

In the course of its protest, taxpayer has provided sufficient documentation to prove that it is not liable for the unpaid permit fees. Therefore, taxpayer has met its burden under IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Interest and Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of interest and a ten percent (10%) negligence penalty. The Department refers to IC 6-8.1-10-1(e), which states, "Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section." Therefore, the Department may not waive interest.

Taxpayer also protests the imposition of a ten percent negligence penalty. The relevant statute is IC 6-8.1-10-1(a), which states:

If a person:

(1) fails to file a return for any of the listed taxes;

(2) fails to pay the full amount of tax shown on the person's tax return on or before the due date for the return payment;

(3) *incurs, upon examination by the department, a deficiency that is due to negligence*;

(4) fails to timely remit any tax held in trust for the state; or

(5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(Emphasis added)

Negligence is described in 45 IAC 15-11-2(b), which 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.

Since taxpayer was sustained in Issue I of this protest, it has not failed to use such reasonable care as would be expected of an ordinary taxpayer. Therefore, taxpayer was not negligent under 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20030164P.LOF

LETTER OF FINDINGS NUMBER: 03-0164P
Sales & Use Tax
For the Years 1997, 1998, 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration – Interest

Authority: Ind. Code § 6-8.1-10-1; 11 U.S.C. § 502(b)(2).

Taxpayer protests the imposition of interest after the date taxpayer filed for bankruptcy.

II. Tax Administration - Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is a business engaged in automobile glass repair and replacement. From 1997 to 1999, taxpayer claimed sales tax exemption with respect to one customer, and did not remit sales or use tax with respect to several purchases of both capital and non-capital equipment and tangible personal property that taxpayer rented. As a result of Department audit, taxpayer was assessed additional sales and use tax as well as interest and a ten percent (10%) penalty for negligence. Taxpayer has agreed with the Department's sales and use tax assessment; however, taxpayer protests the Department's imposition of interest after the date on which it filed for bankruptcy. Taxpayer also protests the imposition of the statutory penalty for negligence.

I. Tax Administration – Interest

DISCUSSION

Taxpayer protests the imposition of interest from the date taxpayer filed for bankruptcy to present. Taxpayer argues that the ruling on the bankruptcy petition precludes the Department from assessing interest against the taxpayer, and therefore this should be waived.

Under Ind. Code § 6-8.1-10-1(e), interest cannot be waived by the Department. However, due to 11 U.S.C. §502(b)(2), the Bankruptcy Court's ruling prohibiting post-petition interest must be permitted to stand.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration-Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent (10%) negligence penalty for all taxes that the Department has imposed.

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 argues that penalty should be waived in this case for two reasons. First, it argues that the taxpayer took immediate steps to correct the issue that gave rise to the tax in question. Second, taxpayer argues that it has had an excellent compliance history with the Department. While its changes in procedures are certainly commendable, taxpayer's failure to utilize the other appropriate procedures in the first place did not meet the duty of reasonable care expected of a taxpayer. Further, even accepting taxpayer's statement of an excellent compliance history, in this instance taxpayer's operations did not meet the duty of ordinary business care expected of taxpayers.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

18-20030276.LOF

LETTER OF FINDINGS NUMBER: 03-0276
FINANCIAL INSTITUTIONS TAX
For Year 1999

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. Financial Institutions Tax – Regularly conducted business

Authority: 45 IAC 17-2-1(b)(1); 45 IAC 17-2-6(a)(8); 45 IAC 17-2-9

Taxpayer protests the imposition of the Financial Institutions Tax on the proceeds from the sale of the servicing rights associated with an Indiana mortgage.

STATEMENT OF FACTS

Taxpayer is an approved mortgagee by HUD/FHA, FNMA, and GNMA. Affiliated entities provide a substantial portion of the revenues and expenses of the company. Taxpayer reports the following types of income: financing fees, service fees, and interest income.

During 1999, taxpayer sold its servicing rights on an Indiana mortgage. On audit, the Financial Institutions Tax (FIT) was assessed on the proceeds of this sale.

Taxpayer owns no property, has no presence, and services no other loans in Indiana.

I. Financial Institutions Tax – Regularly conducted business

DISCUSSION

The Financial Institutions Tax is a franchise tax imposed upon a corporation that is transacting the business of a financial institution in Indiana. 45 IAC 17-2-1(b)(1). A taxpayer is transacting business within Indiana if the taxpayer *regularly* engages in transactions with Indiana customers that involve intangible property, including loans. 45 IAC 17-2-6(a)(8). (Emphasis added)

Taxpayer, with its corporate domicile in a taxing jurisdiction outside Indiana, conducts the business of a financial institution.

45 IAC 17-2-9 lays the groundwork for determining whether a taxpayer regularly conducts business within Indiana. It reads:

A taxpayer is presumed, subject to rebuttal, to regularly solicit business within Indiana during a taxable year if at any time during the taxable year, the sum of the taxpayer's assets, including the assets arising from loan transactions, and the absolute value of the taxpayer's deposits attributable to Indiana, equal at least five million dollars ($ 5,000,000), or if the taxpayer does any of the following during the taxable year:

(1) Sells products or services of any kind or nature to twenty (20) or more Indiana customers who receive the product or service in Indiana.

(2) Solicits business from twenty (20) or more potential Indiana customers.

(3) Performs services outside Indiana that are consumed within Indiana by twenty (20) or more customers.

(4) Engages in transactions with twenty (20) or more Indiana customers that involve intangible property, including loans, but not property described in section 7 of this rule and result in receipts flowing to the corporation from such customers within Indiana.

While the regulation creates a rebuttable presumption of regular business activity when a taxpayer meets the above criteria, it also *ipso facto* creates a rebuttable presumption that a taxpayer does not regularly conduct business activity in Indiana when it fails to meet the above criteria. Therefore, the fact that taxpayer does not meet the above criteria (its loan servicing rights were sold for less than $50,000, and it services only one Indiana customer) does not automatically mean that taxpayer does not regularly conduct business in Indiana; rather, it creates a presumption that the Department may rebut.

However, the Department has failed to show any indication that taxpayer's activities show a pattern of regular business. Indeed, the fact that taxpayer has but one Indiana customer shows not a pattern of regular business, but an isolated occurrence.

Taxpayer therefore does not fit the standard for which the FIT may be applied.

FINDINGS

The taxpayer is sustained.

DEPARTMENT OF STATE REVENUE

1820030370.LOF

LETTER OF FINDINGS: 03-0370
FINANCIAL INSTITUTIONS TAX
For the 1997 and 1998 Tax Years

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ISSUE

I. Statute of Limitations – Financial Institutions Tax.

Authority: IC 6-5.5-1-17(a); IC 6-5.5-2-1(a); IC 6-5.5-6-1; IC 6-8.1-1-1; IC 6-8.1-5-2(a); IC 6-8.1-5-2(e); 45 IAC 15-5-7; 45 IAC 15-5-7(f); 45 IAC 17-2-3(a); 45 IAC 17-3-5; 45 IAC 17-3-5(a); 45 IAC 17-3-5(c); 45 IAC 17-3-5(d).

Taxpayer maintains that the Financial Institutions Tax (FIT) assessment for the years 1997 and 1998 is barred by the three-year statute of limitations.

STATEMENT OF FACTS

Taxpayer is a holding company which directly or indirectly controls financial institution subsidiaries throughout the United States and in foreign countries. The Department of Revenue (Department) conducted an audit review of taxpayer's business records and various tax returns for 1997 and 1998. In an audit report completed May 2003, the Department concluded that taxpayer owed additional FIT. As a result, in July 2003, the taxpayer issued notices of "Proposed Assessment." Taxpayer received the notices, submitted a protest challenging the propriety of the FIT assessment, an administrative hearing was conducted during which taxpayer explained the basis for its protest, and this Letter of Findings results.

DISCUSSION

I. Statute of Limitations – Financial Institutions Tax.

Taxpayer argues that the assessment of additional 1997 and 1998 FIT is barred by the statute of limitations because taxpayer "[did] not have an executed waiver extending the statute of limitations for these years."

The statute of limitations is defined under IC 6-8.1-5-2(a) which states that, "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...." IC 6-8.1-5-2(e) defines certain circumstances under which the three-year limitations period is tolled. "If a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment." Id. *See also* 45 IAC 15-5-7.

On their face, the proposed assessments are untimely because the audit report was completed in May 2003 and the consequent assessments were issued by the Department in July 2003; both dates are well outside the three-year limitations period for assessing additional 1997 and 1998 taxes pursuant to IC 6-8.1-5-2(a).

The issue is whether one of the exceptions contained within IC 6-8.1-5-2(e) is applicable under taxpayer's own circumstances and that – as a result – the usual three-year limitations period was tolled by virtue of that exception.

Taxpayer is a holding company which owns, controls, and operates a large of number of financial institutions including a number of Indiana based institutions.

Within Indiana, "There is imposed on each taxpayer a franchise tax measured by the taxpayer's adjusted gross income or apportioned income for the privilege of exercising its franchise or the corporate privilege of transacting the business of a financial institution in Indiana." IC 6-5.5-2-1(a). For purposes of determining the FIT liability, a "'[t]axpayer' means a corporation that is transacting the business of a financial institution, including any of the following:

(1) A holding company

(2) A regulated financial corporation.

(3) A subsidiary of a holding company or regulated financial corporation.

(4) Any other corporation organized under the laws of the United States, this state, another taxing jurisdiction, or a foreign government that is carrying on the business of a financial institution." IC 6-5.5-1-17(a).

The term "Financial Institution" is defined at 45 IAC 17-2-3(a) which states as follows:

The "business of a financial institution" means the activities of a holding company, a regulated financial corporation, or a subsidiary of either that each is authorized to perform under federal or state law, including the activities authorized by regulation or order of the Federal Reserve Board for such a subsidiary under Section (4)(C)(8) of the Bank Holding Act of 1956 (12 U.S.C. 1843(c)(8)).

Because taxpayer is a "holding company" it comes within the definition of a "financial institution" as set out in IC 6-5.5-1-17(a) and 45 IAC 17-2-3(a). Therefore, taxpayer was itself required to file 1997 and 1998 FIT returns as a "holding company." It is evident that, upon a fair reading of the statute and regulation, that this particular filing requirement was not met when certain

constituent Indiana members of the holding company filed individual FIT returns for that period.

In addition, 45 IAC 17-3-5 requires that members of a "Unitary Group" file a single, combined return for the purposes of determining the unitary group's FIT liability. The regulation states, in relevant part, as follows:

> A "unitary business" means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually, or as a group, in transacting the business of a financial institution. Unity of ownership exists when a corporation is a member of a group of two (2) or more entities and more than fifty percent (50%) of the voting stock of each member of the group is directly or indirectly owned by: (1) a common owner or common owners, either corporate or noncorporate.... 45 IAC 17-3-5(c).

The regulation further specifies that "A unitary group for purposes of the FIT is composed of those taxpayer members that are engaged in a unitary business transacted wholly or partially within Indiana." Id. Once it has been determined that a unitary group is conducting the business of a financial institution, "A designated taxpayer who is a member of a unitary group shall file a *combined return covering all the operations of the unitary business and including all taxpayer members of the unitary group.*" 45 IAC 17-3-5(a) (*Emphasis added*). "Therefore, if one (1) 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." 45 IAC 17-3-5(d). The language of both the statute and the regulation indicate that the annual filing requirement is mandatory and not merely advisory or suggestive.

Therefore, whether as a holding company or as a unitary group, taxpayer was required to file a FIT combined return in which it reported all the operations of its business including those entities within the state and those without. Taxpayer failed to meet its reporting requirement because it did not file the combined return.

The regulation provides that, "The running of the statue of limitations for purposes of assessing unpaid taxes will not start if the taxpayer fails to file a return which is required under any listed tax provision." 45 IAC 15-5-7(f). The term "listed tax" is defined at IC 6-8.1-1-1 which specifically includes "financial institutions tax" as one of Indiana's "listed taxes." Under that portion of the Indiana Code outlining a taxpayer's responsibilities under the Financial Institutions Tax, IC 6-5.5-6-1 states that "[a]nnual returns with respect to the tax imposed by this article *shall* be made by every taxpayer: (1) having for the taxable year adjusted gross income or apportioned income subject to taxation under this article...." (*Emphasis added*). The filing requirement is repeated at 45 IAC 17-3-5(a) which states, "A designated taxpayer who is a member of a unitary group *shall* file a combined return covering all the operations of a unitary business and including all taxpayer members of the unitary group." (*Emphasis added*).

Taxpayer – as a holding company – failed to file the necessary combined 1997 and 1998 returns covering all the operation of its unitary group. Therefore, under IC 6-8.1-5-2(e), the three-year statute of limitations did not begin to run and does not now preclude the Department from an assessment of taxes for those two reporting periods.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420030371.LOF

LETTER OF FINDINGS NUMBER: 03-0371
Sales Tax
For The Tax Period 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 and UseTax-Services

Authority: IC 6-8.1-5-1(b), IC 6-2.5-4-1, IC 6-2.5-2-1, 45 IAC 2.2-4-2 (b),

The taxpayer protests the assessment of sales tax on certain service charges.

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 taxpayer is a retailer of toys and associated items. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use taxes, interest and penalty against the taxpayer for the tax period 1998-2000. The taxpayer protested a portion of the assessment of tax and penalty and a hearing was held.

1. Sales and UseTax-Services

DISCUSSION

The department assessed sales tax on the taxpayer's receipts from bicycle assembly and delivery charges. The taxpayer protests these assessments contending that they are nontaxable services. The Notice of Proposed Assessment is presumed to be accurate and taxpayers carry the burden of proving that a proposed liability is incorrect. IC 6-8.1-5-1(b).

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequent selling of tangible personal property. IC 6-2.5-4-1. Sales of services are generally not retail transactions and are not subject to sales tax. There are, however, certain situations where services are subject to the sales tax.

The taxpayer sells bicycles and offers the buyers the option of an assembly service. Customers choosing to buy the assembly service first purchase the bicycle at the register in the normal manner. The customer is given a receipt including a line item for the bicycle assembly service and a pick-up date and time. After the bicycle is assembled, the customer picks up the bicycle.

The taxpayer also offers delivery service for its larger items such as swing sets. When purchasing a large item, the customer first pays for the item at the register as in any other transaction. A delivery fee is separately stated and included in the cost paid by the customer. The taxpayer contracts with an unrelated company for delivery of the item to the customer. If a problem develops after delivery of a large item, the taxpayer pays the delivery company to retrieve the malfunctioning item and deliver another to the customer.

The law governing the taxpayer's fact situation is very specific. To the extent service income represents "any bona fide charges which are made for the preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records," the income becomes part of the retail merchant's gross retail receipts. IC 6-2.5-4-l (e)(2).

The Regulations provide guidance on how to determine the taxability of a transaction at 45 IAC 2.2-4-2 (b) as follows:

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

In Taxpayer's situation, the services are performed prior to the delivery of the product to the customer. Sales tax must be collected on the total price of the finished product.

FINDING

The taxpayer's protest is denied.

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 argued that the negligence penalty was improperly imposed because the sales tax was not assessed on the bicycle assembly and delivery charges in the 1990-1992 audit. That audit, however, was an income tax audit. The taxpayer disregarded the department's instructions and was inattentive to its duties to collect and remit sales tax as required by Indiana law. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220030372.LOF

LETTER OF FINDINGS: 03-0372
Indiana Corporate Income Tax
For 1999 and 2000

NOTICE: Under 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Interest Assessment – Corporate Income Tax.

Authority: IC 6-3-4-4.1(d); IC 6-8.1-10-1; IC 6-8.1-10-1(a); IC 6-8.1-10-1(b); IC 6-8.1-10-1(b)(3); Income Tax Information Bulletin #64 (January 2003).

Taxpayer argues that interest charges – levied against unpaid 1999 and 2000 corporate income taxes – should be abated in their entirety.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business within Indiana. During 2001 and 2002, the Department of Revenue (Department) conducted an audit review of taxpayer's business records and previous tax returns.

Following the review, the Department concluded that taxpayer owed approximately $5,000 in additional corporate income taxes for 1999 and 2000. In 2003, the Department sent taxpayer a bill for the unpaid tax. In addition to the amount of unpaid tax, the Department also included interest charges of approximately $1,000.

Taxpayer agreed with the Department's conclusion that it owed the additional $5,000 in tax. However, it concluded that the $1,000 in interest charges was ill-advised and that the interest charges should be abated. Therefore, the taxpayer submitted a protest. An administrative hearing was conducted during which taxpayer explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Interest Assessment – Corporate Income Tax.

Taxpayer's argument goes back to the time it reported its 1998 income. Taxpayer filed a corporate income tax return in early 1999. In that return, taxpayer indicated that it had overpaid its 1998 taxes by $6,000. However, rather than asking for a $6,000 refund, it directed the Department to carry forward the $6,000 to cover any unexpected 1999 liability.

Taxpayer filed a tax return in early 2000. Taxpayer did not owe any income tax for 1999. Again, taxpayer asked that the same $6,000 be carried forward to cover any unexpected 2000 liability.

In November of 2000, taxpayer filed a "short period" return. Again, taxpayer did not owe any additional taxes. However, taxpayer failed to indicate that the $6,000 should be carried forward. Instead taxpayer asked for a refund. The Department obligingly issued a refund check. Taxpayer decided that it did not want the $6,000 check; taxpayer wanted the $6,000 carried forward, and it returned the uncashed check asking that the amount be applied toward any potential 2001 liability.

When taxpayer submitted its 2001 return, it determined that it did not owe any additional taxes. It asked that the $6,000 be carried forward again to cover any unexpected 2002 liability.

For reasons not related to the stray $6,000, the Department decided it was time that taxpayer's business records and past tax returns should be audited. That audit was conducted during 2001 and 2002. The "Audit Summary" was completed in May 2003. The audit report's bottom-line conclusion was that taxpayer had erroneously underreported its 1999 and 2000 income and that it owed additional taxes. Therefore, the Department sent taxpayer notices of "Proposed Assessment" stating that taxpayer owed approximately $5,000 in taxes together with $1,000 in accrued interest.

Taxpayer does not challenge the $5,000 tax assessment. What it does challenge is the $1,000 interest charge. Taxpayer's argument is based on the fact that it had carried over the $6,000 overpayment from year-to-year-to-year. In effect, taxpayer argues that – in taxpayer's words – the $6,000 was in its "account" at all relevant times. Taxpayer believes that the $6,000 was available at all times to offset any unexpected liability including the tax liability for its underreported 1999 and 2000 income.

IC 6-8.1-10-1 imposes an interest charge when a taxpayer has not paid the proper amount of taxes due.

IC 6-8.1-10-1(a) provides that, "If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on his return by the due date for the return or the payment, or *incurs a deficiency upon a determination by the department*, the person is subject to interest on the nonpayment." (*Emphasis added*).

The statute also establishes the amount against which interest is calculated. IC 6-8.1-10-1(b) states that, "The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c), from the due date for payment. The interest applies to: (1) the full amount of the unpaid tax due if the person failed to file the return; (2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return; or (3) the amount of the deficiency."

Income Tax Information Bulletin #64 (January 2003) reflects the Department's interpretation of IC 6-8.1-10-1. "If a taxpayer fails to file a return, fails to pay the full amount of tax, or files a late return with tax due, the taxpayer is subject to interest (and possible penalty) on any outstanding balance of tax due after the due date of the return under IC 6-8.1-10-1. The interest on nonpayment of tax accrues at the rate established by the Commissioner from the due date until the date on which full payment of the tax is received."

It is not disputed that taxpayer owed additional corporate income tax for 1999 and 2000. Therefore, it would seem apparent that the amount of unpaid tax is subject to an interest charge pursuant to IC 6-8.1-10-1(b)(3) which states that an interest charge is imposed on "the amount of the deficiency." Similarly, Income Tax Information Bulletin #64 restates the statutory imperative; interest is charged "on any outstanding balance of tax due after the due date of the return...." That interest charge "accrues... from the due

date until the date on which full payment of the tax is received."

The statutory language reads in the imperative and does not vest in the Department any discretion regarding whether or not to impose the interest charge. "If a person... incurs a deficiency upon a determination by the department, the person *is* subject to interest on the nonpayment." IC 6-8.1-10-1(a) (*Emphasis added*).

Nevertheless, taxpayer maintains that because it previously had overpaid its taxes by $6,000 and repeatedly directed that the full amount be carried forward, the interest charge on the 1999 and 2000 assessment should be abated. Taxpayer's argument is that it deposited into its account a discretionary, free-floating asset which could be shuttled back-and-forth in order to instantly meet whatever tax liability – past, present, or future – might arise. In effect, taxpayer argues that the $6,000 should have been shuttled backwards to cover the 1999 – 2000 assessment the moment that particular liability arose. However, taxpayer misapprehends the status of the $6,000 overpayment once taxpayer directed that the amount be carried forward. At the time taxpayer filed its 2001 tax return, taxpayer had two choices; it could request that the $6,000 be returned or it could request that the amount be carried forward to pay its 2002 tax liability. During the time taxpayer considered its options, taxpayer had discretionary control over the $6,000. However, once taxpayer directed the Department to carry forward the $6,000, taxpayer lost control over and possessory interest in the money.

Once the amount was carried-forward, the $6,000 was no longer taxpayer's asset. Instead, the carryforward was a "locked-in" payment of 2002 corporate income tax liability. IC 6-3-4-4.1(d) provides, "Every corporation subject to the adjusted gross income tax liability... shall be required to report and pay an estimated tax equal to twenty-five (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year...." In other words, while taxpayer had the momentary discretion to obtain a refund check or carry forward the amount, it nonetheless had to pay *something* (25%) on its estimated 2000 tax liability. Once taxpayer carried forward the $6,000, that amount was *gone*. The $6,000 was not on deposit in taxpayer's "account." The $6,000 was a fixed payment of 2002 taxes.

In addition, IC 6-8.1-10-1 provides no leeway whatsoever on the question of whether or not to impose interest against a tax deficiency or on the question of when that interest begins to accrue. Under IC 6-8.1-10-1(b), the interest clock started ticking on the day that the 1999 and 2000 taxes first became due. The 1999 and 2000 taxes became due on the date that taxpayer first reported its 1999 and 2000 income. The fact that taxpayer had directed the $6,000 overpayment be carried forward in order to pay for future tax liability did nothing to change the fact that its 1999 and 2000 tax liability was originally underreported. Taxpayer seems to liken the Department to a quasi-financial institution; taxpayer deposited $6,000 into its "account," the $6,000 was available to offset any unexpected charge against taxpayer, and the Department had enjoyed the "use" of the $6,000 until 2003 when the notices of proposed assessment were first issued. The Department must decline the opportunity to cast itself into such a role. In addition, it must be fairly pointed out that taxpayer had the "use" of the $5,000 in unpaid taxes since 1999 and 2000.

Taxpayer underreported its 1999 and 2000 tax liability. Interest statutorily accrued on that particular liability from the moment that the 1999 and 2000 taxes first became due until the liability was ultimately satisfied in 2003. The fact that taxpayer carried forward an overpayment of earlier taxes as a payment on its estimated 2002 liability is an irrelevancy. The $6,000 carryforward did nothing to stop interest from accruing on the 1999 and 2000 tax liability.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

02-20030384.LOF

LETTER OF FINDINGS: 03-0384
ADJUSTED GROSS INCOME, GROSS INCOME, and FINANCIAL INSTITUTIONS TAXES
For the Years 1996 through 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Taxpayer's Qualifications to File Under Indiana's Financial Institutions Tax.

Authority: IC 6-5.5 et seq.; IC 6-5.5-1-17(d)(1); IC 6-5.5-1-17(d)(2)(A), (B); IC 6-5.5-1-17(d)(2)(B); IC 6-5.5-3-1; 45 IAC 17-2-1(a); 45 IAC 17-2-4(b), (c); 45 IAC 17-2-4(b)(1)-(3); 45 IAC 17-2-4(e)(2).

Taxpayer argues that it is qualified to file under Indiana's Financial Institutions Tax and that further review of taxpayer's previous arguments will support that conclusion.

II. Lease Payments Subject to Gross Income Tax.

Authority: IC 6-2.1-2-2(a); IC 6-2.1-2-2(a)(2); Comdisco, Inc. v. Indiana Dept. of Revenue, No. 49T10-9903-TA-19, 2002 Ind. Tax LEXIS 93 (Ind. Tax Dec. 18, 2002); Enterprise Leasing v. Indiana Dept. of Revenue, 779 N.E.2d 1284 (Ind. Tax Ct. 2002); First National Leasing 598 N.E.2d 640 (Ind. Tax. Ct. 1992); 45 IAC 1.1-1-3(a), (b).

Taxpayer maintains that if it is not qualified to file under the state's Financial Institutions Tax, money received from sales/lease agreements with Indiana customers is not subject to the state's gross income tax.

III. Including the Value of Leased Equipment in Taxpayer's Property Factor – Adjusted Gross Income Tax

Authority: IC 6-3-2-2(b); IC 6-3-2-2(c).

Taxpayer argues that the value of equipment leased to its Indiana customers and clients should not have been included in its property factor for purposes of calculating taxpayer's adjusted gross and supplemental net income taxes.

STATEMENT OF FACTS

Taxpayer is a Delaware corporation headquartered in Illinois. Taxpayer is in the business of leasing and financing the purchase of construction equipment and engines. The equipment and engines are manufactured by a related company and are made available through a related network of local dealerships. Taxpayer earns money by entering into various forms of transactions with taxpayer's local dealerships, municipalities, and with individual customers. The "lease" transactions hereinafter described are – to a substantial degree – "sales/lease" agreements which provide a means by which the lessee acquires ownership of the leased equipment but which permit taxpayer to retain a security interest in the equipment during the term of the lease itself.

DISCUSSION

I. Taxpayer's Qualifications to File Under Indiana's Financial Institutions Tax.

Taxpayer submitted Financial Institutions Tax (FIT) returns for 1996 through 1997 on the ground that it was properly classified as a "Financial Institution" and that it was entitled to pay Indiana tax on that basis.

The Department of Revenue (Department) conducted an audit of those returns after which it concluded that taxpayer was not qualified to file as a Financial Institution. Under the Department's analysis, taxpayer did not meet the 80 percent threshold set out in IC 6-5.5-1-17(d)(2)(B). Therefore, the Department found that taxpayer should pay Indiana tax under the state's gross income, adjusted gross income, and supplemental net income scheme.

Taxpayer submitted a protest to the Department's decision, an administrative hearing was conducted, and a Letter of Findings (LOF) was issued in which it was concluded that "a cursory review of the taxpayer's 1996 and 1997 federal tax returns indicate that taxpayer is ineligible to qualify to file under the Indiana FIT."

In a request for a rehearing on the matter, taxpayer asked the Department to reconsider its decision; taxpayer was granted the opportunity for a second administrative hearing. The Department reexamined taxpayer's sales/lease transactions, reconsidered the taxpayer's arguments, and reviewed taxpayer's business transactions in light of the FIT statutes and regulations. A Supplemental Letter of Findings (SLOF) was issued which concluded that, "No matter upon which basis [taxpayer's] numbers are calculated, the percentages fall short of the 80% FIT benchmark. Taxpayer is not qualified to file under the state's Financial Institutions Tax."

Taxpayer was dissatisfied with the conclusions contained in the SLOF. Taxpayer requested and was granted a second rehearing. That second rehearing was held, taxpayer's business transactions and lease arrangements were again reviewed, and a second SLOF was issued. The second SLOF concluded that "taxpayer fails to meet the 80 percent benchmark necessary to file under the state's Financial Institution's tax."

Subsequent to the issuance of the second SLOF, taxpayer sought a clarification of the means by which it was required to calculate its gross income for purposes of qualifying to file under the FIT. The Department responded by issuing a Revenue Ruling (RR) in January of 2003. The RR stated that taxpayer was "required to include the gross income derived from finance lease/conditional sales in calculating the 80% test to determine the requirement to file and pay under the Indiana Financial Institutions Tax."

Taxpayer requested further clarification of the RR. After receiving that clarification dated May 26, 2003, taxpayer submitted requests for refunds based upon it 1996 and 1997 tax payments. Those requests were denied. In October 29, 2003, the Department issued a second clarification letter in which it essentially repudiated the first clarification letter.

Taxpayer now asks the Department to revisit the FIT issue, to arrive at a conclusion that taxpayer is entitled to report its Indiana income under the state's FIT, and to arrange for a refund of taxes paid as a result of the Department's purportedly mistaken decisions.

Indiana imposes a franchise tax, known as the Financial Institution Tax (FIT), on corporations transacting the business of a financial institution inside the state. IC 6-5.5 et. seq. The FIT is imposed on resident financial institutions, nonresident financial institutions, and on certain non-bank entities that transact the business of a financial institution. 45 IAC 17-2-1(a). Non-resident corporations, such as the taxpayer, transacting the business of a financial institution, are included in the FIT, after they first meet one of the eight tests set out in IC 6-5.5-3-1 whereby the non-resident corporation demonstrates that it has established an economic presence in Indiana. It is not disputed that taxpayer has established an economic presence in Indiana. That particular issue will not be revisited.

Because the taxpayer is not conducting the business of a traditionally regulated financial institution as defined in IC 6-5.5-1-17(d)(1), the taxpayer predicates its claim to FIT status under the provisions of IC 6-5.5-1-17(d)(2)(A), (B) which grant FIT status to those corporations which receive 80 percent of their gross income from the "[m]aking, acquiring, selling, or servicing loans or extensions of credit" or from the "leasing [of] real and personal property that is the economic equivalent of the extension of credit if the transaction is not treated as a lease for federal income tax purposes"

The benchmark for determining whether a taxpayer is "conducting the business of a financial institution" is if 80 percent of the corporation's gross income is derived from the economic equivalent of extending credit. 45 IAC 17-2-4(b), (c). The taxpayer may reach this 80 percent benchmark in one of three ways. It may do so by deriving 80 percent of its income from "(1) Extending credit... (2) Leasing that is the economic equivalent of extending credit [or] (3) Credit card operations." 45 IAC 17-2-4(b)(1)-(3).

An explanation of "the economic equivalent of the extension of credit" is found within the Department's regulations. 45 IAC 17-2-4(b), (c). The corporation must not only derive 80 percent of its income from collecting interest, that interest must be derived from a lease that is "*not* treated as a lease for federal income tax purposes." 45 IAC 17-2-4(e)(2) (Emphasis added). Therefore, to satisfy the requisite 80 percent benchmark, the interest must be both "the economic equivalent of the extension of credit" and from a lease "*not* treated as a lease for federal income tax purposes."

The Department has previously considered taxpayer's qualifications to file under the state's Financial Institution's Tax and has concluded that it is not entitled to do so. The Department has considered and reconsidered taxpayer's various lease transactions and determined that some of the lease agreements are "qualifying transactions" – the proceeds of which can be accumulated to reach the 80 percent threshold – while some of the leases are not qualifying transactions – the proceeds may not be accumulated to reach that threshold.

Taxpayer's lease agreements and business practices have been closely reviewed. The Department has carefully considered taxpayer's arguments on repeated occasions. The Department has issued a number of documents explaining the state's FIT and whether taxpayer is qualified to file under that tax regime. Despite taxpayer's obvious persistence, the Department is not prepared to expend further resources in revisiting these same issues in yet another detailed reanalysis of these same Indiana transactions. Neither the facts nor the law warrant yet further consideration of taxpayer's argument that it is entitled to report its Indiana income under the FIT; taxpayer is not.

FINDING

Taxpayer's protest is denied.

II. Lease Payments Subject to Gross Income Tax.

Taxpayer maintains that it is not subject to gross income tax on the money it received as sales/lease payments from Indiana customers. Taxpayer's argument is that it has a de minimis amount of property located within the state, that the sales/lease agreements were negotiated and accepted by taxpayer at a location outside of Indiana, and that the sales/lease payments were received at locations all of which were outside the state. In effect, taxpayer concludes that these receipts were not Indiana source income for gross income tax purposes.

Taxpayer describes its sales/lease business as follows. A potential Indiana customer will contact one of taxpayer's local Indiana dealerships. If the customer decides to finance or lease the equipment, the dealer will forward the customer's application to taxpayer's regional office in Chicago. Taxpayer will review the customer's information, determine the customer's credit-worthiness, and decide on the terms of the sales/lease agreement. That draft agreement is returned to the dealership. If the customer decides to accept the proposed agreement, customer signs the agreement, and it is returned to the Chicago office. The agreement is again reviewed to assure that everything is in order; if the taxpayer gives final approval, the financing is completed, and the customer arranges to accept delivery of the equipment.

Taxpayer summarizes, "All Lease Agreements entered into by [taxpayer] were created, negotiated, and accepted by [taxpayer] outside of Indiana." Under those conditions, taxpayer concludes that the sales/lease payments were not Indiana source income for gross income tax purposes. The issue is whether Indiana can tax the gross income earned as a result of sales/lease agreements with Indiana customers.

IC 6-2.1-2-2(a) imposes a gross income tax on the receipt of "the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana." IC 6-2.1-2-2(a)(2).

There is no disagreement that the sales/lease payments are "gross income." However, in order for the payments to be subjected to Indiana gross income tax, the payments must have been derived from "sources within Indiana." Id. Income is from a "source[] within Indiana" if the taxpayer has an Indiana "commercial domicile" or an Indiana "business situs." First National Leasing 598 N.E.2d 640, 643 (Ind. Tax. Ct. 1992). Since taxpayer maintains that it does not have a commercial domicile within the state, the issue becomes whether it has established an Indiana "business situs."

45 IAC 1.1-1-3(a), (b) provides that, "A 'business situs' arises where possession and control of a property right have been localized in some business or investment activity away from the owner's domicile. A taxpayer may establish a business situs in many ways, including, but not limited to.... [o]wnership. leasing, rental, or other business activity connected with income-producing property...." However, taxpayer maintains that it does have an Indiana business situs because all the activities associated with the

sales/lease agreements were conducted outside the state. Taxpayer states that although it maintained a secured ownership interest in the leased equipment, it did not exercise any control over the equipment once it was leased to the Indiana customer.

Taxpayer believes its own circumstances are similar to that of the petitioner-taxpayers in Enterprise Leasing v. Indiana Dept. of Revenue, 779 N.E.2d 1284 (Ind. Tax Ct. 2002). In that case, the Tax Court found that an out-of-state company did not receive Indiana source income when it rented Indiana-titled cars to its customers; therefore, the rental income was "not subject to Indiana's gross income tax." Id. at 1292. The court found that that money received from renting Indiana-titled cars was not Indiana source income because it was not the petitioners who decided to register and operate the cars within the state. Id. at 1291. Rather, it was the decision of the individual customers to register and operate the cars in Indiana. Id. The petitioners' activities in sending the cars to its customers "did not rise to the level of 'active participation' in the 'ownership, leasing' or rental' of property in Indiana." Id. The court determined that the "critical transaction" related to the leasing of the cars occurred at the petitioners' out-of-state location. Id. at 1290. Therefore, because the petitioners' activities within the state were "not more than minimal" and were "remote and incidental to the lease transaction from which [petitioners'] income [was] derived," and because the critical transaction occurred outside the state, the petitioners did not have an Indiana "tax situs." Id. at 1292. The court concluded that the petitioners' lease income was not "derived from sources within Indiana" and was not subject to the state's gross income tax. Id.

In further support of its own position, taxpayer cites to Comdisco, Inc. v. Indiana Dept. of Revenue, No. 49T10-9903-TA-19, 2002 Ind. Tax LEXIS 93 (Ind. Tax Dec. 18, 2002), in which the court found that income received from leasing "high technology and medical equipment" to customers within Indiana was not subject to gross income tax. Id. at *5. The court found that the "critical transaction" took place outside Indiana and that "sole activity by the Petitioners in Indiana is ownership of high technology equipment that is located [in Indiana] pursuant to the lessees' direction." Id. at *23. The court concluded that the "[p]etitioners' ownership of equipment located in Indiana is an activity that is not more than minimal, and is remote and incidental to the lease transaction from which [petitioners'] gross income is derived." Id. at *24.

Taxpayer's various Indiana sales/lease transactions are somewhat more complicated than those described in the Enterprise and Comdisco decisions. For example, taxpayer enters into "Conditional Sales Contracts" whereby taxpayer purchases an item of equipment from one of its dealers and simultaneously sells the machine to the Indiana customer by means of a "conditional sales contract." Under this form of agreement, the customer is able to purchase the equipment at the end of the lease term for a nominal amount. The arrangement is less like a lease and more like arrangement in which the taxpayer finances a customer's purchase of the equipment; the customer nominally owns the equipment but the taxpayer maintains a security interest in the equipment during the term of the contract.

Taxpayer also enters into "Installment Sales Agreements" with Indiana customers. In this form of arrangement, one of taxpayer's local dealers sells an item of equipment to an Indiana customer and enters into an installment sales agreement between itself (the dealership) and the customer. Thereafter, taxpayer purchases the installment sales agreement from the dealership. As a result, the relationship between taxpayer and customer is similar to that found under a conditional sales contract; the customer nominally owns the equipment but makes monthly payments until the term of the agreement is complete. After the last payment is made, the customer owns the equipment free-and-clear, and taxpayer's security interest in the equipment is relinquished.

These are representative of the forms of sales/lease agreements by which taxpayer conducts business in this state. What all the agreements have in common is that they enable an Indiana customer to acquire equipment by means of sales/lease transaction. However, taxpayer's sales/lease transactions are not similar to the lease agreements described in either Comdisco or Enterprise. In both those cases, the court found that because the leased equipment had little or no connection with the state of Indiana, the petitioner-lessors did not acquire an Indiana tax situs. Instead, the automobiles and medical equipment was simply cast adrift into a stream of commerce by means of a "critical transaction" which occurred entirely outside the state; that the cars and medical equipment happened to find their way into Indiana, was an occurrence beyond the contemplation or control of the petitioner-lessors. As the court described, "The Petitioners do not exert control over their lessees' use or possession of the leased equipment. The decision as to where the equipment is located and used rests with the lessees alone." Comdisco, 2002 Ind. Tax LEXIS 93, at *23. However, in taxpayer's sales/lease agreements, the Indiana customer (lessee) does not control the location of the equipment. Instead, it is taxpayer which decides whether the equipment will be located in Indiana or whether the lessee may change the location to another state. "Lessee shall not... change the use of a Unit from that specified in the Application Survey/Usage Rider attached hereto or *change the location of a Unit from that specified above*, without the prior written consent of the [taxpayer]." The meaning of this proviso in the parties' sales/lease agreement is plain; the leased equipment will not be used in a way not anticipated by the contracting parties and will not be removed from the state unless taxpayer explicitly gives permission.

Taxpayer's sales/lease agreements are essentially sales devices by which taxpayer maintains a security interest in the equipment until the customer completes purchasing the equipment. During the term of the sales/lease agreement, taxpayer exercises a substantial degree of control over the use and location of that equipment. By means of these agreements, taxpayer has created for itself an Indiana "tax situs" such that the income attributable to the agreement is subject to Indiana gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

III. Including the Value of Leased Equipment in Taxpayer's Property Factor – Adjusted Gross Income tax.

Taxpayer suggests that except for "a de minimis amount of repossessed property and property returned at the end of the lease," it has no other property located within Indiana; taxpayer maintains that because the "lessees exercise complete control over the use and location of the leased equipment," the leased equipment should not be included in the apportionment formula for determining its Indiana adjusted gross income and supplemental net income tax."

Indiana imposes the adjusted gross income tax on each corporation's adjusted gross income derived from sources within this state. IC 6-3-2-2(b). Where a corporation – such as taxpayer – receives income from both Indiana and out-of-state sources, the amount of tax is determined by the apportionment formula set out in IC 6-3-2-2(b). That formula operates by multiplying taxpayer's total business income by a fraction composed of a property factor, a payroll factor, and a sales factor. IC 6-3-2-2(b). The property factor consists of a fraction "the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year." IC 6-3-2-2(c).

Taxpayer owns equipment located within this state which it leases to Indiana customers. Taxpayer retains title and ownership over the equipment until such time that the lessee decides to buy the equipment or – by the terms of the parties' agreement – the lease term is complete and ownership passes to the lessee. During the term of the agreement, taxpayer retains all the attributes of ownership including the right to unilaterally transfer title to the equipment to a third-party, to prevent the lessee from using the equipment in a manner not originally anticipated by the contracting parties, and to restrict the lessee from moving the equipment to a location not contemplated within the terms of that agreement.

The Department disagrees with taxpayer's contention that – except for the de minimis property cited above – it "has no property located within Indiana" and that the "lessees exercise complete control over the use and location of the leased equipment."

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04-20030477P.LOF

LETTER OF FINDINGS NUMBER: 03-0477P
Negligence Penalty
For Years 1999, 2000, and 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

Taxpayer is a distributor of medica and surgical supplies. Taxpayer sells over 140,000 different medical and surgical supplies such as gloves, syringes, dressings, intravenous products, gowns, and wound-closure products. Taxpayer sells the supplies throughout the Midwest and Northeast. Taxpayer has a distribution warehouse in Indiana. The majority of Indiana's sales are shipped from the distribution warehouse located in Indiana. Taxpayer ships the products in company-owned vehicles. Taxpayer's customers include hospitals, nursing homes, medical clinics, doctors, surgery centers, group purchasing organizations, and other distributors. Taxpayer negotiates long-term contracts to provide all medical and surgical supplies to larger customers.

A review of taxpayer's records revealed exempt sales for which taxpayer had no valid exemption certificate. Taxpayer was given an opportunity to obtain a valid exemption certificate for all exempt sales. The sales by year for all three years was prorated over the audit period as the best information available. An adjustment was made to assess sales tax on sales exempted in error.

For all three years under audit, a statistical sample was used to determine the expense purchases subject to use tax. The adjustment for purchases subject to use tax was determined in the following manner: A sample of invoices was reviewed for each expense account. Those invoices on which no sales tax was charged and no use tax was remitted were considered errors. The total errors were divided by the total of the sample for each expense account to determine the error rate. The error rate was applied to the total expense for each account for each year.

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.

Determining whether a negligence penalty applies is a factual determination. In this case, taxpayer was assessed sales tax on items for which exemption certificates could not be produced and use tax for items for which sales tax was not paid and which were not purchased for resale. This was taxpayer's first audit, and despite the complexity of the transactions involved, taxpayer maintained a less than 2% error rate.

Taxpayer has paid the liability and the corresponding interest without protest. Taxpayer has shown a good faith effort to comply with the tax laws of Indiana.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0120030482.LOF

LETTER OF FINDINGS: 03-0482
Indiana Adjusted Gross Income Tax
For 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sufficiency of Taxpayer's Indiana Tax Return.

Authority: IC 6-3-1-3.5; Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003); Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-1; I.R.C. § 62.

Taxpayer maintains that he has fulfilled his obligation under state and federal law by filing federal and state income tax returns which are filled out with "zeroes."

II. Definition of "Income" for Purposes of Imposing the State's Individual Adjusted Gross Income Tax.

Authority: U.S. Const. amend. XIV; New York v. Graves, 300 U.S. 308 (1937); Merchant's Loan & Trust Co. v. Smietanka, 255 U.S. 509 (1921); Doyle v. Mitchell, 247 U.S. 179 (1918); Eisner v. Macomber, 252 U.S 189 (1920); United States v. Connor, 898 F2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F2d 1328 (7th Cir. 1984); United States v. Romero, 640 F2d 1014 (9th Cir. 1981); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994); *Report of Committee on Ways and Means to Accompany HR. Res. 8300,* 83rd Cong. (1954); *Report of the Committee on Finance to Accompany H.R. Res. 8300,* 83rd Cong. (1954).

Taxpayer argues that the money he received during 2002 was not subject to the state's adjusted gross income tax because only corporate income is subject to income tax.

III. Voluntary Nature of Indiana's Adjusted Gross Income Tax.

Authority: IC 6-3-2-1(a); IC 6-8.1-11-2; Couch v. United States, 409 U.S. 322 (1975); Helvering v. Mitchell, 303 U.S. 391 (1938); United States v. Gerads, 999 F.2d 1255 (9th Cir. 1993); McLaughlin v. United States, 832 F.2d 986 (7th Cir. 1987); McKeown v. Ott, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985); Black's Law Dictionary (7th ed. 1999).

Taxpayer maintains that payment of income taxes is voluntary and that nowhere in the law is an individual made "liable" for the payment of income tax.

STATEMENT OF FACTS

Taxpayer filed a federal and a state income tax return for 2002. On both those returns, taxpayer filled in all of the entries with zeroes. Taxpayer attached a note to the Indiana return indicating that "This Return Is Not Filed Voluntarily." Also attached to the return was a W-2 form containing information indicating that taxpayer obtained "wages" during 2002. The Department of Revenue (Department) determined that taxpayer had incorrectly reported his 2002 income; thereafter, the Department sent notices of

"Proposed Assessment" based on the information reported on the W-2 form. Taxpayer responded in writing challenging the Department's assessment. Additional correspondence between taxpayer and the Department followed; the upshot of the correspondence was that taxpayer eventually submitted a formal "protest" of the assessment. An administrative hearing was conducted during which taxpayer was provided an opportunity to explain the basis for his protest. This Letter of Findings results.

DISCUSSION

I. Sufficiency of Taxpayer's Indiana Tax Return.

Taxpayer maintains that he was not required to file an Indiana income tax return containing anything more than numerous "zeroes." According to taxpayer, because his corresponding federal return was also filled out with "zeroes," he was compelled by force of law to file his Indiana return as he did.

The Indiana tax return here at issue employs federal adjusted gross income as the starting point for determining the taxpayer's state individual income tax liability. Line one of the Indiana IT-40 form instructs the taxpayer to "Enter your federal adjusted gross income from your federal return (see page 10)."

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code)...." Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department's own regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

> Adjusted Gross Income for Individuals Defined. For Individual, "Adjusted Gross Income" is Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:
>
> (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
>
> (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
>
> (3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer's Indiana adjusted gross income.

Taxpayer's contention – that he was compelled by force of law to declare "0" as Indiana adjusted gross income because he declared "0" federal adjusted gross income – is patently without merit. The statute is plainly written and is unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62 not merely as reported by the taxpayer. *See* Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated directions for completing the form and not the means for determining the taxpayer's adjusted gross income. The Indiana tax form instructs the taxpayer to put what number in what box. However, the taxpayer must not only put *a* number in the box, he must put the *correct* number in the box. The directions on the tax form notwithstanding, taxpayer is nonetheless required to actually perform the calculations necessary to determine his liability for Indiana adjusted gross income tax.

The Indiana Tax Court addressed taxpayer's contention in Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003). "[I]t must be remembered that tax forms are used merely as an aid for taxpayers in calculating their taxable income in accordance with the income tax law. Therefore, calculating Indiana's adjusted gross income begins with federal taxable income as *defined* by Section 61(a) of the United States Code, not as what a taxpayer *reports* on its federal tax form." Eibeck 779 N.E.2d at 1214 n.6 (*Emphasis in original*).

FINDING

Taxpayer's protest is denied.

II. Definition of "Income" for Purposes of Imposing the State's Individual Adjusted Gross Income Tax.

Taxpayer maintains that only corporate profits are subject to either state or federal income tax. According to taxpayer, because he is not a corporation and did not receive corporate profits, any money which he received during 2002 is not subject to the state's income tax. In partial support of this contention, taxpayer cites to *Report of Committee on Ways and Means to Accompany HR. Res. 8300,* 83rd Cong. (1954) and to *Report of the Committee on Finance to Accompany H.R. Res. 8300,* 83rd Cong. (1954). The reports respectively indicate that the term "gross income" is "based upon the 16th Amendment and the word 'income' is used in its constitutional sense;" the second report states that the term "is based upon the sixteenth amendment and the word 'income is used... in its constitutional sense."

Taxpayer takes these committee reports to mean that the "gross income" – as defined in the Internal Revenue Code – refers to money received by corporations and that the Congress never intended "gross income" to include the sort of income and wages received by ordinary citizens. In arriving at this conclusion, taxpayer cites specifically to Merchants' Loan Trust Company v. Smietanka, 255 U.S. 509 (1921). In that case, the Court held that when a provision in a will created a trust, the increase of the value of the trust resulted in taxable "income" under the provisions of the U.S. Const. amend. XVI. Id. at 519. In arriving at that conclusion, the Court stated that "the word [income] must be given the same meaning and content in the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and that what that meaning is has now become definitely settled

by decisions of [the] court." Id.

However, the case does not support taxpayer's contention that only corporate gain is subject to income tax. While the Court did conclude that the increase in the value of the trust resulted in taxable income, the Court never stated that only an increase in value or only corporate gain was subject to income tax. To the contrary, the court stated that, "Income may be defined as the gain derived from capital, *from labor*, or from both combined...." Id at 518 (*Emphasis added*). *See also* Eisner v. Macomber, 252 U.S. 189 (1920); Doyle v. Mitchell, 247 U.S. 179, 207 (1918).

There is not a single court case which has ever held that the ordinary wages or the income received by everyday citizens is not subject to income tax. The United States Supreme has clearly stated that the wages of individual citizens may be subjected to an adjusted gross income tax. In New York v. Graves, 300 U.S. 308 (1937), Justice Stone stated "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized." Id. at 312.

Since that 1937 decision, the Federal courts have consistently, repeatedly, and without exception, determined that individual wages are income. United States v. Connor, 898 F.2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F.2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable") (Emphasis in original); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable.... [Taxpayer] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves.").

In addressing the identical issue raised by taxpayer, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and Federal circuit courts, and this Court's opinion... all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer's contention is not well taken because there is not a single shred of evidence that Congress and the Indiana General Assembly did not fully intend to subject the wages of ordinary citizens to income tax or that they lacked the constitutional authority to do precisely that.

FINDING

Taxpayer's protest is denied.

III. Voluntary Nature of Indiana's Adjusted Gross Income Tax.

Taxpayer argues that whether or not he received taxable income is academic because payment of income tax is voluntary. In addition, taxpayer sets out a somewhat parallel argument to the effect that there is nothing in the income tax laws which makes him "liable" for federal or state income tax.

Taxpayer's "voluntary" argument is apparently in reference to IC 6-8.1-11-2 which states as follows:

> The general assembly makes the following findings: (3) The Indiana tax system is based largely on *voluntary compliance*. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve *voluntary compliance* and the relationship between the state and taxpayers. (*Emphasis added*).

Taxpayer's argument is without merit. In describing the nature of the federal tax system, the Court has stated that, "In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil." Helvering v. Mitchell, 303 U.S. 391, 399 (1938).

Taxpayer's basic contention – that Indiana depends on its citizens' voluntary compliance with the tax laws – is undeniable. Indeed, the state also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that failure to comply with the law is without predictable consequences. "Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary." United States v. Gerads, 999 F.2d 1255, 1256 (9th Cir. 1993). "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." McLaughlin v. United States, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law*." McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (*Emphasis Added*). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." Id. at *1.

The Supreme Court has stated that the government's entire tax system is "largely dependent upon honest self-reporting." Couch v. United States, 409 U.S. 322, 335 (1975). Taxpayer's bare assertion, that, based on the precatory language contained within IC

6-8.1-11-2, he no longer "volunteers" to pay income taxes and that it is sufficient to fill in his tax returns with numerous "zeroes," does not fall within any reasonable definition of "honest self-reporting."

Taxpayer's secondary argument – stating that there is nothing in the tax law which makes him liable for income tax – is also meritless. Taxpayer's argument is no more than an exercise in semantic word-games. IC 6-3-2-1(a) states that, "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 non-resident person." (*Emphasis added*). The word "impose" means "to levy or exact a tax or duty." Black's Law Dictionary 759 (7th ed. 1999); "levy" means the "imposition of a fine or tax." Id. at 919. As a matter of law and simple common sense, whether a tax is levied or imposed, the person against whom the levy is made is "liable" for that amount.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040015.LOF

LETTER OF FINDINGS: 04-0015
GROSS RETAIL TAX
For 2002 and 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

I. Aircraft Lease Payments – Gross Retail Tax.

Authority: IC 6-2.5-4-10(a); IC 6-2.5-4-10(b); IC 6-2.5-2-1; IC 6-2.5-5-1 to 70; IC 6-2.5-5-8; 45 IAC 2.2-4-27(a); 45 IAC 2.2-4-27(c); 45 IAC 2.2-4-27(d); 45 IAC 2.2-4-27(d)(1); Blacks Law Dictionary (7th ed. 1999).

Taxpayer argues that the Department of Revenue (Department) erred when it calculated the amount of gross retail (sales) tax taxpayer purportedly should have been collecting from pilot/lessee.

STATEMENT OF FACTS

In August of 2002, taxpayer entered into an "Aircraft Hourly Rental Agreement" with pilot/lessee. Pilot/lessee agreed to pay an "hourly rent" of $1,275. In addition, pilot/lessee agreed to assume the costs of maintaining, repairing, hangering, and insuring the aircraft. Pilot/lessee also agreed to pay for fuel, crew expenses, landing fees, and taxes. Thereafter, the amount of "hourly rent" would be offset by the amount pilot/lessee spent for these specific aircraft-related expenses.

In September 2002, taxpayer submitted an "Application for Aircraft Registration or Exemption." On that form, taxpayer indicated that the initial purchase price of the aircraft – approximately three million dollars – was not subject to sales tax because the aircraft was purchased for "Rental or Lease to others per IC 1971-6-2.5-5-8."

In June of 2003, the Department sent a letter to taxpayer indicating that the Department was conducting a review to determine if the taxpayer's aircraft "is being predominately used in the exempt manner claimed." In that letter, the Department requested that taxpayer provide certain documentation substantiating the proposition that the aircraft was purchased for an exempt purpose and that the aircraft was thereafter used for that purpose.

Later that same month, taxpayer responded by providing the requested information.

The Department reviewed the submitted information, and – in a letter dated August 2003 – issued its decision finding that "sales/use tax due was computed incorrectly." The Department concluded that taxpayer should have been collecting sales tax on the $1,275 base amount listed in the parties' "Aircraft Hourly Rental Agreement." However, the Department stated that taxpayer was not entitled to "a deduction for expenses incurred in operating and maintaining the aircraft from the gross rental amount." In other words, the Department found that the provision in the parties' agreement permitting pilot/lessee to deduct from the base hourly rate the amount pilot/lessee spent on maintaining, repairing, and operating the aircraft was a nullity for purposes of determining sales tax liability. Thereafter, the Department issued notices of "Proposed Assessment" imposing sales tax calculated on the base hourly rate of $1,275.

In October of 2003, the taxpayer protested the assessment of additional sales tax arguing that taxpayer was only required to collect sales tax based upon the formula contained in the parties' lease agreement. Taxpayer maintains that amount charged to the pilot/lessee – the base-hourly rate less the amount of the pilot/lessee's aircraft expenses – was "the fair market value of the underlying equipment of a comparable charter."

An administrative hearing was conducted during which taxpayer's representative explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. Aircraft Lease Payments – Gross Retail Tax.

Taxpayer maintains that the Department erred when it decided that taxpayer should have been collecting sales tax on the base-hourly rate provided for in the lease agreement between taxpayer and pilot/lessee.

Indiana imposes a gross retail (sales) tax on retail transactions in Indiana. IC 6-2.5-2-1. The state legislature has provided a number of exemptions to the imposition of that tax. *See* IC 6-2.5-5-1 to 70. One of those exemptions is found at IC 6-2.5-5-8 which states that, "Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property."

Therefore, if taxpayer bought the aircraft for the purpose of leasing it to others, taxpayer was not required to pay sales tax on the purchase price because taxpayer bought the plane for "an exempt purpose."

However, once a person – such as taxpayer – gets into the business of leasing tangible personal property, that person is required to collect sales tax on the lease payments. IC 6-2.5-4-10(a) states that, "A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person."

The Department's regulation defines what it is that a person in the leasing business should be collecting sales tax on. 45 IAC 2.2-4-27(a) states that, "In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation [] only exempts from tax those transactions which would have been exempt in an equivalent sales transaction."

The regulation defines "gross receipts" obtained from leasing tangible personal property. "The rental or leasing of tangible personal property, by whatever means effected and irrespective of any terms employed by the parties to such transaction is taxable." 45 IAC 2.2-4-27(d).

If the above language is in any way ambiguous, the regulation further explains that, "The amount of actual receipts means the gross receipts from the leasing of tangible personal property without any deduction whatever for expenses of costs incidental to the conduct of the business. The gross receipts include *any consideration* received from the exercise of an option contained in the rental [or] lease agreement...." 45 IAC 2.2-4-27(d)(1) (*Emphasis added*).

Taxpayer has a lease agreement with pilot/lessee which requires that pilot/lessee pay $1,275 for each hour that pilot/lessee uses the taxpayer's aircraft. If pilot/lessee uses taxpayer's aircraft for 10 hours, pilot/lessee owes taxpayer $12,750. However, the parties' agreement also provides that if pilot/lessee incurs expenses associated with maintaining and operating the aircraft, the pilot/lessee must pay those expenses but is thereafter entitled to deduct the amount of expenses from the base lease amount. Therefore, if pilot/lessee incurs $10,000 in aircraft-related expenses, pilot/lessee can deduct $10,000 from the example cited above. Instead of paying $12,750, pilot/lessee will pay $2,750; taxpayer will collect that amount along with the sales tax due on the lesser amount. If pilot/lessee should incur aircraft expenses equal to the amount of the base lease amount due during a particular period, pilot/lessee will owe $0 and taxpayer will collect $0 in sales tax.

When a lessor rents tangible personal property, it must collect sales tax on the "gross receipts" received. 45 IAC 2.2-4-27(c). The amount of the tax liability is never affected by the terms of the parties' lease agreement. As stated in the regulation, "The rental or leasing of tangible personal property, by *whatever means effected and irrespective of the terms employed* by the parties to describe such transaction, is taxable." 45 IAC 2.2-4-27(d) (*Emphasis added*). The term "gross receipts" means, "The total amount of money or other consideration received by a business taxpayer for goods sold or services performed in a year, before deductions." Black's Law Dictionary 710 (7th ed. 1999). The gross receipts means the amount of consideration received by the lessor "without any deduction whatever for expenses or costs incidental to the conduct of the business." 45 IAC 2.2-4-27(d)(1).

Taxpayer contends that it should collect sales tax based upon the hourly rate of $1,275 reduced by the amount of expenses the pilot/lessee incurred during a particular lease period. Under taxpayer's interpretation of the sales tax statute, taxpayer will collect sales tax on an amount somewhere between $1,275 and $0 depending on the extent of pilot/lessee's associated expenses.

Setting aside the issue of whether the parties' "Aircraft Hourly Rental Agreement" is actually a "lease" between two disinterested parties, taxpayer's argument fails because – in allowing a deduction for pilot/lessee's expenses – taxpayer is ignoring a substantial portion of the consideration it receives by virtue of that agreement. Pilot/lessee is paying to maintain and repair *taxpayer's* aircraft. Pilot/lessee is paying to insure *taxpayer's* aircraft. Pilot/lessee is paying to provide hanger space for *taxpayer's* aircraft. Pilot/lessee is paying the costs associated with taxpayer's ownership of *taxpayer's* aircraft and the operation of *taxpayer's* leasing business. All of these expenses are a portion of the consideration taxpayer receives from pilot/lessee, and taxpayer is ignoring the fact that it is required to collect sales tax on "any consideration" obtained as a result of the lease agreement between itself and pilot/lessee. "Consideration" is defined as "[s]omething of value (such as an act, a forbearance, or a return promise) received by a promisor from a promisee." Black's Law Dictionary 300 (7th ed. 1999). In the parties' lease agreement, taxpayer is receiving additional consideration from pilot/lessee beyond the adjusted $1,275 base hourly amount. Pilot/lessee is promising to pay for the entire cost of insuring, maintaining, and operating an aircraft which pilot/lessee does not own. Taxpayer owns this aircraft; therefore, the fact that the pilot/lessee pays for all the variable expenses attendant upon the operation of ownership and operation of the aircraft is a substantial benefit which flows in taxpayer's direction. The cost of the variable expenses is one portion for the consideration which taxpayer receives in exchange for which taxpayer grants pilot/lessee the right to use taxpayer's aircraft. Therefore, taxpayer

should have been collecting sales tax on the total amount of consideration it received from pilot/lessee which would have included the adjusted base hourly rate together with the amount of money pilot/lessee spent on taxpayer's behalf in maintaining and operating the aircraft.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420040016.LOF

LETTER OF FINDINGS: 04-0016
GROSS RETAIL TAX
For 2002 and 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Aircraft Purchase – Gross Retail Tax.

Authority: IC 6-2.5-4-10(a); IC 6-2.5-4-10(b); IC 6-2.5-2-1; IC 6-2.5-5-1 to 70; IC 6-2.5-5-8; Gregory v. Helvering, 293 U.S. 465 (1935); Horn v. Commissioner of Internal Revenue, 968 F.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); 45 IAC 2.2-4-27(a); 45 IAC 2.2-4-27(d); 45 IAC 2.2-4-27(d)(1); 45 IAC 2.2-5-15(b)(1), (c)(2); Blacks Law Dictionary (7th ed. 1999).

Taxpayer argues that it was not required to pay gross retail (sales) tax when it purchased an airplane because the airplane was purchased in order to lease it to others during the regular course of taxpayer's business.

STATEMENT OF FACTS

Pilot/lessee formed and invested money in an S-Corporation (taxpayer). Taxpayer bought an airplane in August of 2002. The airplane cost $275,000.

In August of 2002, pilot/lessee and taxpayer entered into an "Aircraft Hourly Rental Agreement." Pilot/lessee agreed to pay a "base rent" of $2,000 as a "Deposit on the First Year's Rent." In addition, the pilot/lessee agreed to pay a regular hourly rate for the use of the aircraft. Under the terms of the agreement, the "[t]otal hourly rent shall be the sum of the hourly rent amount of $380 per hour, multiplied by flight time... reduced by offset expense payments...." Those "expense payments" were defined elsewhere in the agreement to include "scheduled and non-scheduled maintenance... hangar and storage charges while at home base, insurance premiums for insurance coverage... and property and ad valorem taxes."

In October 2002, taxpayer submitted to the Department an "Application for Aircraft Registration or Exemption." On that form, taxpayer indicated that the aircraft was purchased "for the following exempt use." Taxpayer specified that the aircraft was purchased for "Rental or Lease to Others per IC 1971-6-2.5-5-8."

In November 2002, taxpayer was issued by the Department a "Registered Retail Merchant Certificate." The certificate directed taxpayer to report its estimated sales – lease income – on a monthly basis and that the "first remittance [was] due on or before 09/30/2002."

The Department sent taxpayer a letter dated December 2002 in which it stated that – based upon the information taxpayer supplied to the Department – the aircraft was not being used for the purpose of rental to others. Therefore, the Department denied taxpayer the sought-after exemption directing that taxpayer pay the approximately $15,000 in sales tax based upon the original purchase price of the airplane. In January of that same year, taxpayer's representative protested the denial.

The Department sent taxpayer a letter dated June 2003 in which it noted that taxpayer had failed to file monthly sales tax returns for December of 2002 though April of 2003. In addition, the Department pointed out that taxpayer had filed "zero" returns for September, October, and November of 2002. In sum, taxpayer failed to file sales tax returns or filed "zero" returns for eight months. The Department requested clarification from taxpayer or indicated that "the claim for sales/use tax exemption on the purchase of the subject aircraft will be denied...."

Taxpayer's representative responded in July indicating that the $2,000 base rent amount – specified in the parties lease agreement – which had been due November 2002 was not paid until July 2003 and that this "payment and all future rental payments will be reported and paid timely."

The Department responded later that same month questioning the basis for the numerous "zero" returns. The Department pointed out the that parties' agreement specified that the pilot/lessee would pay $380 for each hour the plane was used; therefore, taxpayer was to pay sales tax on a monthly basis even if the taxpayer and the pilot/lessee chose to reconcile the amount due on a

yearly basis.

In August of 2003, taxpayer's representative responded indicating that taxpayer "is a cash basis taxpayer that rents the aircraft on an annual basis." The representative pointed out that taxpayer had paid sales tax on the $2,000 "base lease" but that no other lease amounts had been invoiced and that "there are no rental invoices to provide to you."

The Department sent a letter dated September 2002 stating that taxpayer "has not provided any evidence of rental or lease transaction between [taxpayer] and the [pilot/lessee] including the billing and collection of the initial payment." The Department concluded that the "exemption from sales tax due on the purchase of the aircraft has been denied and a proposed assessment of sales tax due has been issued." True to its word, the Department issued notices of "Proposed Assessment" for the amount of the sales tax that would have been otherwise due on the initial purchase price of the airplane if taxpayer had not claimed that the airplane was being bought for an exempt purpose.

Additional correspondence between taxpayer and the Department followed. Taxpayer protested the assessment of additional sales tax, an administrative hearing was conducted during which taxpayer was given the opportunity to explain the basis for its protest, and this Letter of Findings results.

DISCUSSION

I. Aircraft Purchase – Gross Retail Tax.

Taxpayer argues that the Department erred in rejecting its assertion that the aircraft was purchased for an exempt purpose.

Indiana imposes a gross retail (sales) tax on retail transactions in Indiana. IC 6-2.5-2-1. The legislature has provided a number of exemptions to the imposition of that tax. *See* IC 6-2.5-5-1 to 70. One of those exemptions is provided at IC 6-2.5-5-8 which states that, "Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property."

Therefore, if taxpayer bought the airplane for the purpose of leasing it to others, taxpayer was not required to pay sales tax on the purchase price because taxpayer bought the plane for "an exempt purpose."

However, once a person – such as taxpayer – gets into the business of leasing personal property, that person is required to collect sales tax on the lease payments. IC 6-2.5-4-10(a) states that, "A person, other than a public utility, is a retail merchant making a retail transaction when he rent or leases tangible personal property to another person."

The Department's regulation defines what it is that a person in the leasing business should be collecting sales tax on. 45 IAC 2.2-4-27(a) states that, "In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation [] only exempts from tax those transactions which would have been exempt in an equivalent sales transaction."

The regulation further defines "gross receipts" obtained from leasing tangible personal property. "The rental or leasing of tangible personal property, by whatever means effected and irrespective of any terms employed by the parties to such transaction is taxable." 45 IAC 2.2-4-27(d).

For the benefit of those lessors who feel that the above language is in anyway ambiguous, the regulation further states that, "The amount of actual receipts means the gross receipts from the leasing of tangible personal property without any deduction whatever for expenses of costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental [or] lease agreement...." 45 IAC 2.2-4-27(d)(1).

Taxpayer has a lease agreement with pilot/lessee. The agreement provides that the pilot/lessee will pay $380 for each hour that the pilot/lessee uses the aircraft. Therefore, if pilot/lessee uses the aircraft for 10 hours, the pilot/lessee owes taxpayer $3,800. However, the parties' agreement also provides that if taxpayer incurs expenses associated with the aircraft, the total amount due from the pilot/lessee will be reduced by the amount of those expenses. For example, if taxpayer incurs $3,000 in related expenses during the lease period cited in the example above, pilot/lessee will owe $800. If – by sheer happenstance – taxpayer incurs $3,800 in expenses during this same period, pilot/lessee will owe $0.

It may be reasonably assumed that taxpayer will incur substantial expenses in maintaining, hangaring, and insuring this aircraft; thus, it may also be assumed the pilot/lessee's lease payments will be reduced by a corresponding amount.

The specific agreement provision – reflecting an unparalleled spirit of generosity on the part of taxpayer – offsetting lease payment by the amount of aircraft expenses, is in derogation of 45 IAC 2.2-4-27(d)(1). That regulation requires a lessor to collect sales tax on gross receipts "without any deduction whatever for expenses or costs incidental to the conduct of the [lessor's] business." Id. Taxpayer may not side-step this requirement by means of the parties' artfully drafted agreement. In plain words, the regulation provides that "The rental or leasing of tangible personal property, *by whatever means effected and irrespective of the terms employed by the parties to describe such transaction*, is taxable." 45 IAC 2.2-4-27(d) (*Emphasis added*). However, whether taxpayer should have been collecting sales tax on the basis of the $380 per-hour charge or on the basis of a $0 per-hour charge is finally irrelevant. Similarly, whether taxpayer should have been collecting and paying sales tax on a monthly or yearly basis is also irrelevant because – as a matter of fact, law, and simple common sense – there is no lessee/lessor relationship here.

A lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Blacks Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that pilot/lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. Instead, the "Aircraft Hourly Rental

Agreement" falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A corporate business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 F.2d 1229, 1236-37 (D.C. Cir. 1992).

The Department was correct in determining that taxpayer owed sales tax on the initial purchase price of the aircraft because taxpayer was never engaged in leasing the aircraft in the ordinary course of its business. *See* IC 6-2.5-4-10(b); 45 IAC 2.2-5-15(b)(1), (c)(2). The "Aircraft Hourly Rental Agreement" was not an agreement to rent or lease an airplane but was a fanciful document drafted "for no other motive but to escape taxation." Transp. Trading and Terminal Corp., 176 F.2d 570, 572. The parties' lease agreement has no economic substance or rationale and, for purposes of determining sales tax liability, should be entirely ignored.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220040041.LOF

LETTER OF FINDINGS NUMBER: 04-0041
Corporate Income Tax
For the Years 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-Imposition of Tax

Authority: IC 6-8.1-5-1 (b), IC 6-2.1-2-2(a)(2), 45 IAC 1.1-2-5(f)(2).

The taxpayer protests the imposition of tax on certain income.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

The taxpayer sold direct broadcasting services (DBS) to customers in Indiana. The DBS services consisted of programming that was first collected by an affiliate of the taxpayer from numerous providers at "uplink" centers in states other than Indiana. At the uplink centers, sophisticated computer hardware and software was used to encrypt and reformat the signals. The signal was then transmitted to various satellites owned by one of taxpayer's affiliates. The satellites transmitted the programming signals to customers throughout the Untied States, including Indiana. The taxpayer sold its services primarily through independent retailers. These retailers solicited orders from potential customers and obtained approval of such customers from sales centers located outside of Indiana. Upon acceptance of his or her order, the customer may personally install or utilize a contractor affiliated with the retailer to install the satellite receiver and "set top" box at the customer's residence. In such instances, the independent retailers received the necessary equipment directly from manufactures. The taxpayer never acquired title to such equipment. In the recent past, the taxpayer sold its services directly to customers, complementing the sales by retailers. The taxpayer consummated all such direct sales from sales centers located outside Indiana. Until recently, all of the taxpayer's customers were required to purchase the equipment when they initiated programming service, and thereafter, retained title to the equipment. In approximately mid-1999, the taxpayer acquired the assets of a competitor, including that competitor's Indiana customers. Because certain of those customers had leased their equipment, the taxpayer allowed these customers to continue to lease the equipment after the acquisition. During the tax period, all the taxpayer's employees and offices were located outside Indiana. The taxpayer's records indicate that the company may have stored a small amount of inventory in Indiana in facilities owned by others.

After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional gross income tax, interest, and penalty for 2001. The taxpayer protested the assessment and penalty. A hearing was held and this Letter of Findings results.

I. Gross Income Tax-Imposition of Tax

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 a gross income tax on the "taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." IC 6-2.1-2-2(a)(2). The taxpayer contends that since its gross income in 1999 and 2000 was derived in the same manner as the 1998 nontaxable income, the 1999 and 2000 income is also not subject to Indiana gross income tax.

The distinction lies in the regulation promulgated by the department and effective as of January 1, 1999 that clarifies the department's interpretation of the gross income tax for the telecommunications industry. The definition of "services performed within Indiana," for the telecommunications industry is found at 45 IAC 1.1-2-5(f)(2) as follows:

> ...sale of telecommunications, including telephone, telegraph, and non-cable television, if the telecommunications originate or terminate in Indiana and are charged to an Indiana address, and the charges are not taxable under the laws of another state.

The taxpayer and department agree that the taxpayer is selling telecommunications that are received in Indiana and charged to an Indiana address. The taxpayer contends, however, that the income received from Indiana is taxable under the laws of California and Colorado. To substantiate this contention, the taxpayer submitted copies of federal tax returns, California tax returns, and Colorado tax returns. Those returns indicate that in California and Colorado the taxpayer pays tax on less than fifty percent (50%) of its total federal income. This does not satisfy the taxpayer's burden of proving that it is properly subject to tax in California and Colorado on the income derived from its Indiana customers.

The taxpayer also argues that the regulation is unconstitutional. An administrative hearing is not the proper forum to determine the constitutionality of an administrative regulation.

FINDING

The taxpayer's protest is denied.

II. 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 ignored the listed regulations and failed to report its income as required by said regulation. This failure to follow department's instructions constitutes negligence.

FINDING

The taxpayer's protest to the imposition of the penalty is denied.

DEPARTMENT OF STATE REVENUE

0420040050.LOF

LETTER OF FINDINGS: 04-0050
GROSS RETAIL TAX
For 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Aircraft Purchase – Gross Retail Tax.

Authority: IC 6-2.5-4-10(a); IC 6-2.5-4-10(b); IC 6-2.5-2-1; IC 6-2.5-5-1 to 70; IC 6-2.5-5-8; Gregory v. Helvering, 293 U.S. 465 (1935); Horn v. Commissioner of Internal Revenue, 968 F.2d 1229 (D.C. Cir. 1992); Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570 (2nd Cir. 1949); 45 IAC 2.2-4-27(a); 45 IAC 2.2-4-27(c); 45 IAC 2.2-4-27(d); 45 IAC 2.2-4-27(d)(1); 45 IAC

2.2-5-15(b)(1), (c)(2); Blacks Law Dictionary (7th ed. 1999).

Taxpayer argues that the Department of Revenue (Department) erred when it determined that the aircraft it bought in 2001 was not purchased for an exempt purpose and that – as a result – taxpayer now owes gross retail (sales) tax on the initial purchase price of that aircraft.

STATEMENT OF FACTS

Pilot/lessee organized and invested money in a Nevada Limited Liability Company (LLC). The LLC (hereinafter "taxpayer") bought an aircraft in January of 2001. The selling price of the aircraft was approximately $1,500,000. Taxpayer traded in another airplane worth approximately $600,000 and paid the dealer the $900,000 difference. Taxpayer paid no sales tax on the $900,000 claiming that the "the aircraft is purchased by a retail merchant to be rented or leased to others as provided in IC 1971-6-2.5-5-8." The pilot/lessee signed the Indiana "Application for Aircraft Registration or Exemption" listing the taxpayer as the owner of the aircraft and signing individually as the "Authorized Person." On that application, taxpayer specified that the purchase was exempt from sales tax because it was purchased for "Rental or Lease to others per IC 1971-6-2.5-5-8."

Prior to the date of the purchase, taxpayer and pilot/lessee entered into an "Aircraft Lease" agreement which was dated December 2000. Pilot/lessee signed the document indicating that he was the "lessee." Pilot/lessee signed the document – on behalf of taxpayer – indicating that he was the "lessor."

In September of 2003, the Department sent taxpayer a letter in which it sought documentation verifying that the aircraft was purchased for an exempt purpose. The Department asked for flight schedules, flight logs, and for a copy of the lease agreement.

Taxpayer – through its representative – responded in November providing a signed copy of the lease and indicating that a lease payment of $5,000 was made during 2001 and a second lease payment of approximately $7,000 was made during 2002.

The Department responded that same month "disallowing the exemption claimed for rental/leasing of the aircraft... as the lease agreement submitted contains a rental rate of $75 per hour for use of the aircraft." The Department indicated that it had verified with another aircraft dealer that a "fair market" hourly lease rate would be "substantially higher" than the $75 paid by pilot/lessee. In addition, the Department questioned whether the lease agreement was an "arms-length" transaction and noted that pilot/lessee had signed the agreement as both lessee and lessor. In its letter, the Department concluded that the aircraft was not purchased for an exempt purpose but that the lease "transaction is most beneficial to [pilot/lessee] at the expense of the State of Indiana." Accordingly, the Department indicated that it intended to propose an assessment for sales tax based on the original purchase price of the aircraft with an allowance made for the trade-in value of the predecessor airplane.

That same month, the Department sent taxpayer a notice of "Proposed Assessment" indicating that taxpayer owed approximately $50,000. That amount consisted of the original sales tax amount, a ten-percent penalty, and an additional amount of interest which had accumulated since the time that the aircraft was first purchased.

In January of 2004, taxpayer's representative responded, challenging the proposed assessment on the ground that the Department misunderstood or misinterpreted the terms of the parties' lease agreement. Taxpayer admitted that, under the terms of the agreement, pilot/lessee was required to pay taxpayer only $75 for each hour pilot/lessee used the aircraft. However, pilot/lessee was also required – under the terms of the lease agreement – to pay the costs of providing fuel, maintaining and repairing the aircraft, insuring the aircraft, and hangering the aircraft. Therefore, while only $75 was ever paid by the pilot/lessee each time he used the aircraft for an hour, the pilot/lessee's actual hourly costs were considerably greater than the $75 base rate. After factoring in fuel, repair, maintenance, insurance, and hanger expenses, the pilot/lessee purportedly spent approximately $630 for every hour the pilot/lessee used the aircraft. According to taxpayer, this $630 amount represents the "fair market value based on similar transactions between unrelated parties."

DISCUSSION

I. Aircraft Purchase – Gross Retail Tax.

Taxpayer maintains that the Department erred in concluding that the aircraft was not purchased for the purpose of leasing it to other persons and concluding that taxpayer should now be required to pay sales tax on the original purchase price of that aircraft.

Indiana imposes a gross retail (sales) tax on retail transactions in Indiana. IC 6-2.5-2-1. The state legislature has provided a number of exemptions to the imposition of that tax. *See* IC 6-2.5-5-1 to 70. One of those exemptions is found at IC 6-2.5-5-8 which states that, "Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property."

Therefore, if taxpayer bought the aircraft for the purpose of leasing it to others, taxpayer was not required to pay sales tax on the purchase price because taxpayer bought the plane for "an exempt purpose."

However, once a person – such as taxpayer – gets into the business of leasing tangible personal property, that person is required to collect sales tax on the lease payments. IC 6-2.5-4-10(a) states that, "A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person."

The Department's regulation defines what it is that a person in the leasing business should be collecting sales tax on. 45 IAC 2.2-4-27(a) states that, "In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation [] only exempts from tax those transactions which would have been exempt in an equivalent sales transaction."

The regulation further defines "gross receipts" obtained from leasing tangible personal property. "The rental or leasing of tangible personal property, by whatever means effected and irrespective of any terms employed by the parties to such transaction is taxable." 45 IAC 2.2-4-27(d).

For the benefit of those lessors who may find that the above language is in any way ambiguous, the regulation further states that, "The amount of actual receipts means the gross receipts from the leasing of tangible personal property without any deduction whatever for expenses of costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental [or] lease agreement...." 45 IAC 2.2-4-27(d)(1).

Taxpayer has a lease agreement with pilot/lessee. The agreement calls for pilot/lessee to pay taxpayer $75 for every hour that pilot/lessee uses the aircraft. In addition, the agreement requires that pilot/lessee assume the costs of operating, maintaining, and storing the aircraft. According to taxpayer's representative, because those costs – together with the $75 base rental – average out to approximately $630 per hour, pilot/lessee is paying a fair market price for the cost of using the aircraft even though taxpayer only reports $75 of that amount as subject to sales tax.

When a lessor rents tangible personal property it must collect sales tax on the "gross receipts" received. 45 IAC 2.2-4-27(c). The amount of the tax liability is never affected by the terms of the parties' lease agreement. As stated in the regulation, "The rental or leasing of tangible personal property, by *whatever means effected and irrespective of the terms employed* by the parties to describe such transaction, is taxable." 45 IAC 2.2-4-27(d) (*Emphasis added*). The term "gross receipts" means, "The total amount of money or other consideration received by a business taxpayer for goods sold or services performed in a year, before deductions." Black's Law Dictionary 710 (7th ed. 1999). The gross receipts means the amount of consideration received by the lessor "without any deduction whatever for expenses or costs incidental to the conduct of the business." 45 IAC 2.2-4-27(d)(1).

Nevertheless, taxpayer neatly side-steps this provision because taxpayer does not appear to deduct anything from the $75 base hourly rate. Taxpayer – in effect – argues that the Department should accept the proposition that it is renting a million-dollar-plus aircraft for $75 an hour and be content with collecting $3.75 in sales tax on that base amount. However, taxpayer's somewhat far-fetched argument fails because taxpayer is overlooking a major portion of the consideration it receives when it rents the aircraft to pilot/lessee and because taxpayer ignores the fact that it is required to collect sales tax on "any consideration" obtained as a result of the lease agreement between itself and pilot/lessee. "Consideration" is defined as "[s]omething of value (such as an act, a forbearance, or a return promise) received by a promisor from a promisee." Black's Law Dictionary 300 (7th ed. 1999). In the parties' lease agreement, taxpayer is receiving additional consideration from pilot/lessee beyond the $75 hourly base fee. Pilot/lessee is promising to pay for the entire cost of insuring, maintaining, and operating an aircraft which pilot/lessee does not own. Taxpayer owns this aircraft; therefore the fact that the pilot/lessee pays for all the variable expenses attendant upon the operation and ownership of the aircraft is a substantial benefit which flows in taxpayer's direction. The cost of the variable expenses is one portion of the consideration which taxpayer received in exchange for which taxpayer granted pilot/lessee the right to use taxpayer's aircraft. Therefore, taxpayer should have been collecting and paying sales tax on the total amount of consideration it received from pilot/lessee which would have included the $75 base fee and the amount of money pilot/lessee spent on taxpayer's behalf in maintaining and operating the aircraft.

Nonetheless, whether taxpayer should have been collecting sales tax on a $75 or $630 hourly rate is finally irrelevant because there simply is no lessee/lessor relationship here. As a matter of law and simple common sense, there is no "lessee" and there is no "lessor." The taxpayer and the pilot/lessee are wholly identical parties and the purported lease agreement is an entirely transparent effort to avoid sales tax liability. As such, the Department is entitled to entirely ignore the lease agreement and to treat – for tax purposes – the initial acquisition of the aircraft as undertaken for a non-exempt purpose because the self-styled "Aircraft Lease" agreement falls squarely within the definition of a "sham transaction." The "sham transaction" doctrine is long established both in state and federal tax jurisprudence dating back to Gregory v. Helvering, 293 U.S. 465 (1935). In that case, the Court held that in order to qualify for a favorable tax treatment, a corporate reorganization must be motivated by the furtherance of a legitimate corporate business purpose. Id at 469. A business activity undertaken merely for the purpose of avoiding taxes was without substance and "[t]o hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose." Id at 470. The courts have subsequently held that "in construing words of a tax statute which describe [any] commercial transactions [the court is] to understand them to refer to transactions entered upon for commercial or industrial purposes and not to include transactions entered upon for no other motive but to escape taxation." Commissioner v. Transp. Trading and Terminal Corp., 176 F.2d 570, 572 (2nd Cir. 1949), *cert denied*, 338 U.S. 955 (1950). "[t]ransactions that are invalidated by the [sham transaction] doctrine are those motivated by nothing other than the taxpayer's desire to secure the attached tax benefit" but are devoid of any economic substance. Horn v. Commissioner of Internal Revenue, 968 F.2d 1229, 1236-37 (D.C. Cir. 1992).

The Department was correct in determining that taxpayer owed sales tax on the initial purchase price of the aircraft because taxpayer was never engaged in leasing the aircraft in the ordinary course of its business. *See* IC 6-2.5-4-10(b); 45 IAC 2.2-5-15(b)(1), (c)(2). The "Aircraft Lease" agreement was not an agreement to rent or lease an airplane but was a fanciful document drafted "for no other motive but to escape taxation." Transp. Trading and Terminal Corp., 176 F.2d 570, 572. The parties' lease agreement has no economic substance or rationale and, for purposes of determining sales tax liability, should be entirely ignored.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04-20040061P.LOF

LETTER OF FINDINGS NUMBER: 04-0061P
Tax Administration—Penalty
For the Years 2000, 2001 &2002

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer had not self-assessed and remitted use tax even though taxpayer was aware of its duty to do so, and had an accrual system in place. Taxpayer argued it did not deliberately avoid paying its tax liabilities, and merely made normal mistakes.

I. Tax Administration-Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the regulation cited *supra*, and can be waived based on a showing of sufficient cause:

> 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 did not act with reasonable care because clerical omissions and/or mistakes constitute negligence. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

0420040062P.LOF

LETTER OF FINDINGS NUMBER: 04-0062P
Sales and Use Tax
For the Years 2000-2002

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.

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 wholesales automotive cooling systems, including radiators, radiator cores, radiator tanks, heater cores, and air-conditioning parts, tools, chemicals, and equipment. After an audit, the Indiana Department of Revenue, hereinafter referred to as

the "department," assessed additional sales tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. The taxpayer was given ample opportunity to schedule a hearing on the protest and/or submit additional information. Since the taxpayer did neither, this finding is based on the information in the file.

I. Tax Administration-Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer did not obtain and keep valid exemption certificates from several of its customers as clearly required by Indiana law and regulations. The taxpayer's inattention to this duty and failure to follow the department's instructions constitute 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	03-235	27 IR 909	*AROC (27 IR 2079) **27 IR 2710**
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) *ARR (27 IR 2745)

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 4-346	N	04-130	*ER (27 IR 2748)
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 1-1-1	A	04-117	*ER (27 IR 2753)
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)
	A	04-117	*ER (27 IR 2754)
71 IAC 3-9-4	A	04-21	*ER (27 IR 1912)
71 IAC 3.5-2-9	A	04-117	*ER (27 IR 2754)
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 8-12	N	04-117		*ER (27 IR 2755)
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 8.5-12	N	04-117		*ER (27 IR 2756)
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 4-1-23	A	04-68	27 IR 2765	
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	**27 IR 2712**

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**
				*ERR (27 IR 2742)
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 6.5	N	04-3	27 IR 2767	
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	*ARR (27 IR 2745)
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	**27 IR 2713**
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	**27 IR 2714**
312 IAC 25-9-8	A	03-169	27 IR 249	**27 IR 2714**
312 IAC 26	RA	03-315	27 IR 2339	

TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION

315 IAC 1	RA	04-71	27 IR 2879	

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 7-4-13	A	03-282	27 IR 2768	
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**

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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 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

328 IAC 1-1-2	A	02-204	27 IR 2778
328 IAC 1-1-3	A	02-204	27 IR 2778
328 IAC 1-1-4	A	02-204	27 IR 2778
328 IAC 1-1-5.1	A	02-204	27 IR 2778
328 IAC 1-1-7.5	N	02-204	27 IR 2779
328 IAC 1-1-8	R	02-204	27 IR 2797
328 IAC 1-1-8.3	N	02-204	27 IR 2779
328 IAC 1-1-8.5	A	02-204	27 IR 2779
328 IAC 1-1-9	A	02-204	27 IR 2779
328 IAC 1-1-10	A	02-204	27 IR 2779
328 IAC 1-2-1	A	02-204	27 IR 2779
328 IAC 1-2-3	A	02-204	27 IR 2780
328 IAC 1-3-1	A	02-204	27 IR 2780
328 IAC 1-3-1.3	N	02-204	27 IR 2780
328 IAC 1-3-1.6	N	02-204	27 IR 2781
328 IAC 1-3-2	A	02-204	27 IR 2781
328 IAC 1-3-3	A	02-204	27 IR 2781
328 IAC 1-3-4	A	02-204	27 IR 2783
328 IAC 1-3-5	A	02-204	27 IR 2784
328 IAC 1-3-6	A	02-204	27 IR 2791
328 IAC 1-4-1	A	02-204	27 IR 2791
328 IAC 1-4-3	A	02-204	27 IR 2794
328 IAC 1-4-4	N	02-204	27 IR 2795
328 IAC 1-5-1	A	02-204	27 IR 2795
328 IAC 1-5-2	A	02-204	27 IR 2796
328 IAC 1-5-3	A	02-204	27 IR 2796
328 IAC 1-6-1	A	02-204	27 IR 2796
328 IAC 1-6-2	A	02-204	27 IR 2796
328 IAC 1-7-2	A	02-204	27 IR 2797
328 IAC 1-7-3	R	02-204	27 IR 2797

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)					*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 9-1-14.3	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 9-1-10.1	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 9-1-14.5	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 9-1-10.2	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 9-1-14.7	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 9-1-10.4	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 9-1-25	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 9-1-10.6	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 9-1-27	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 9-1-10.8	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 9-1-29.1	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 9-1-14	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 9-1-36	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 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367)	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)
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 7-5-15.1	A	04-16	27 IR 2797	
345 IAC 7-5-22	A	04-16	27 IR 2798	
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	**27 IR 2718**
410 IAC 15-1.7-1	A	03-216	27 IR 1622	**27 IR 2720**
410 IAC 15-2.5-7	A	03-216	27 IR 1623	**27 IR 2721**
410 IAC 15-2.7-1	A	03-216	27 IR 1625	**27 IR 2722**
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)
				27 IR 2715
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)
				27 IR 2718

TITLE 414 HOSPITAL COUNCIL

414 IAC	N	03-277	27 IR 1625	**27 IR 2723**

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 1.1	N	03-245	27 IR 2799	
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	**27 IR 2724**
460 IAC 6-2-3	A	03-123	26 IR 3935	**27 IR 2724**
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	**27 IR 2724**
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	**27 IR 2724**
460 IAC 6-14-7	N	03-123	26 IR 3935	**27 IR 2724**
460 IAC 6-15-2	A	03-123	26 IR 3935	**27 IR 2724**
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	**27 IR 2725**
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	**27 IR 2725**
460 IAC 6-35	N	02-326	26 IR 2678	**27 IR 115**
460 IAC 6-36	N	03-123	26 IR 3937	**27 IR 2726**
460 IAC 8	N	03-99	26 IR 3392	**27 IR 2489**

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-1.1-0.5	A	04-77	27 IR 2837	
470 IAC 3-1.1-1	A	04-77	27 IR 2838	
470 IAC 3-1.1-2	A	04-77	27 IR 2838	
470 IAC 3-1.1-4	A	04-77	27 IR 2838	
470 IAC 3-1.1-6	A	04-77	27 IR 2838	
470 IAC 3-1.1-7.2	A	04-77	27 IR 2838	
470 IAC 3-1.1-7.4	A	04-77	27 IR 2839	
470 IAC 3-1.1-8	A	04-77	27 IR 2839	
470 IAC 3-1.1-9	R	04-77	27 IR 2857	
470 IAC 3-1.1-10	A	04-77	27 IR 2839	
470 IAC 3-1.1-12	A	04-77	27 IR 2839	
470 IAC 3-1.1-12.5	A	04-77	27 IR 2839	
470 IAC 3-1.1-13	A	04-77	27 IR 2839	
470 IAC 3-1.1-14	A	04-77	27 IR 2840	
470 IAC 3-1.1-15	A	04-77	27 IR 2840	
470 IAC 3-1.1-16	A	04-77	27 IR 2840	
470 IAC 3-1.1-20	A	04-77	27 IR 2840	
470 IAC 3-1.1-20.1	N	04-77	27 IR 2840	
470 IAC 3-1.1-22.5	A	04-77	27 IR 2840	
470 IAC 3-1.1-24	A	04-77	27 IR 2841	
470 IAC 3-1.1-28	A	04-77	27 IR 2841	
470 IAC 3-1.1-28.5	A	04-77	27 IR 2842	
470 IAC 3-1.1-29	A	04-77	27 IR 2842	
470 IAC 3-1.1-29.5	A	04-77	27 IR 2842	
470 IAC 3-1.1-32	R	04-77	27 IR 2857	
470 IAC 3-1.1-32.1	N	04-77	27 IR 2843	
470 IAC 3-1.1-33	A	04-77	27 IR 2845	
470 IAC 3-1.1-33.5	A	04-77	27 IR 2845	
470 IAC 3-1.1-34	A	04-77	27 IR 2845	
470 IAC 3-1.1-35	A	04-77	27 IR 2846	
470 IAC 3-1.1-36.5	A	04-77	27 IR 2846	
470 IAC 3-1.1-36.6	N	04-77	27 IR 2846	
470 IAC 3-1.1-37	A	04-77	27 IR 2846	
470 IAC 3-1.1-38	A	04-77	27 IR 2847	
470 IAC 3-1.1-38.5	N	04-77	27 IR 2847	
470 IAC 3-1.1-39	A	04-77	27 IR 2848	
470 IAC 3-1.1-40	A	04-77	27 IR 2848	
470 IAC 3-1.1-41	A	04-77	27 IR 2848	
470 IAC 3-1.1-41.1	N	04-77	27 IR 2848	
470 IAC 3-1.1-41.2	N	04-77	27 IR 2848	
470 IAC 3-1.1-42	A	04-77	27 IR 2849	
470 IAC 3-1.1-44	A	04-77	27 IR 2849	
470 IAC 3-1.1-44.5	N	04-77	27 IR 2850	
470 IAC 3-1.1-45	A	04-77	27 IR 2850	
470 IAC 3-1.1-45.5	N	04-77	27 IR 2850	
470 IAC 3-1.1-46	A	04-77	27 IR 2851	
470 IAC 3-1.1-47	A	04-77	27 IR 2852	
470 IAC 3-1.1-48	A	04-77	27 IR 2852	
470 IAC 3-1.1-50	N	04-77	27 IR 2853	
470 IAC 3-1.1-51	N	04-77	27 IR 2853	
470 IAC 3-1.2-2	A	04-77	27 IR 2853	
470 IAC 3-1.2-3	A	04-77	27 IR 2853	
470 IAC 3-1.2-3.2	N	04-77	27 IR 2853	
470 IAC 3-1.2-4	A	04-77	27 IR 2854	
470 IAC 3-1.2-5	A	04-77	27 IR 2854	
470 IAC 3-1.2-6	A	04-77	27 IR 2854	
470 IAC 3-1.2-7	A	04-77	27 IR 2855	
470 IAC 3-1.2-8	N	04-77	27 IR 2855	
470 IAC 3-1.3-1	A	04-77	27 IR 2855	
470 IAC 3-1.3-2	N	04-77	27 IR 2855	
470 IAC 3-1.3-3	N	04-77	27 IR 2855	
470 IAC 3-1.3-4	N	04-77	27 IR 2856	
470 IAC 3-1.3-5	N	04-77	27 IR 2856	
470 IAC 3-1.3-6	N	04-77	27 IR 2856	
470 IAC 3-1.3-7	N	04-77	27 IR 2856	
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	*AROC (27 IR 2882)
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 1-9	RA	04-47	27 IR 2879	
511 IAC 6-7-1	RA	04-47	27 IR 2879	
511 IAC 6-7-6	RA	04-47	27 IR 2879	
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 6.1-2-2.5	RA	04-47	27 IR 2879	
511 IAC 6.1-5-4	RA	04-47	27 IR 2879	
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	
511 IAC 8	RA	04-47	27 IR 2879	

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	*I (27 IR 2727)

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 1-1-11	RA	04-54	27 IR 2880	
540 IAC 1-1-15	RA	03-112	26 IR 3754	**27 IR 570**
540 IAC 1-1-17	RA	04-54	27 IR 2880	
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	**27 IR 2728**
610 IAC 4-6-23	A	03-252	27 IR 564	**27 IR 2728**

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

646 IAC 3-1-12	N	03-317	27 IR 2858	
646 IAC 3-1-13	N	03-317	27 IR 2858	
646 IAC 3-4-11	N	03-317	27 IR 2858	
646 IAC 3-5-1	A	03-317	27 IR 2859	

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 22-2.2-49.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-107.1	R	04-56	27 IR 2864	
675 IAC 22-2.2-134.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-183	RA	04-19	27 IR 2340	
	R	04-56	27 IR 2864	
675 IAC 22-2.2-221.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-240.1	R	04-56	27 IR 2864	
675 IAC 22-2.2-241.1	R	04-56	27 IR 2864	
675 IAC 22-2.2-243.1	R	04-56	27 IR 2864	
675 IAC 22-2.2-245.2	R	04-56	27 IR 2864	
675 IAC 22-2.2-245.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-365.2	R	04-56	27 IR 2864	
675 IAC 22-2.2-365.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-368.1	R	04-56	27 IR 2864	
675 IAC 22-2.2-369.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-378.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-412.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-437.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-437.7	R	04-56	27 IR 2864	
675 IAC 22-2.2-443.5	R	04-56	27 IR 2864	
675 IAC 22-2.2-511.1	R	04-56	27 IR 2864	
675 IAC 22-2.2-515.1	R	04-56	27 IR 2864	
675 IAC 22-2.2-540	R	04-56	27 IR 2864	
675 IAC 22-2.3-29.5	N	04-56	27 IR 2860	
675 IAC 22-2.3-35.5	N	04-56	27 IR 2860	
675 IAC 22-2.3-36	A	04-56	27 IR 2860	
675 IAC 22-2.3-36.3	N	04-56	27 IR 2861	
675 IAC 22-2.3-36.4	N	04-56	27 IR 2861	
675 IAC 22-2.3-36.6	N	04-56	27 IR 2863	
675 IAC 22-2.3-36.8	N	04-56	27 IR 2863	
675 IAC 22-2.3-140.5	N	04-56	27 IR 2863	
675 IAC 22-2.3-147.5	N	04-56	27 IR 2863	
675 IAC 22-2.3-147.6	N	04-56	27 IR 2863	
675 IAC 22-2.3-148	A	04-56	27 IR 2864	
675 IAC 22-2.3-148.5	N	04-56	27 IR 2864	
675 IAC 22-2.3-237.5	N	04-56	27 IR 2864	
675 IAC 22-2.3-298.5	N	04-56	27 IR 2864	
675 IAC 22-2.3-304.5	N	04-56	27 IR 2864	

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	**27 IR 2729**

760 IAC 1-60-5	A	03-258	27 IR 2072	**27 IR 2730**
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 848 INDIANA STATE BOARD OF NURSING

848 IAC 1-1-2.1	A	04-65	27 IR 2865	
848 IAC 1-2-1	A	04-65	27 IR 2866	
848 IAC 1-2-5	A	04-65	27 IR 2866	
848 IAC 1-2-6	A	04-65	27 IR 2867	
848 IAC 1-2-7	A	04-65	27 IR 2868	
848 IAC 1-2-8	A	04-65	27 IR 2868	
848 IAC 1-2-8.5	N	04-65	27 IR 2868	
848 IAC 1-2-9	A	04-65	27 IR 2869	
848 IAC 1-2-10	A	04-65	27 IR 2869	
848 IAC 1-2-12	A	04-65	27 IR 2870	
848 IAC 1-2-13	A	04-65	27 IR 2870	
848 IAC 1-2-14	A	04-65	27 IR 2870	
848 IAC 1-2-16	A	04-65	27 IR 2871	
848 IAC 1-2-17	A	04-65	27 IR 2872	
848 IAC 1-2-18	A	04-65	27 IR 2872	
848 IAC 1-2-19	A	04-65	27 IR 2873	
848 IAC 1-2-20	A	04-65	27 IR 2873	
848 IAC 1-2-21	A	04-65	27 IR 2873	
848 IAC 1-2-22	A	04-65	27 IR 2874	
848 IAC 1-2-23	A	04-65	27 IR 2874	
848 IAC 1-2-24	A	04-65	27 IR 2874	
848 IAC 5-1-1	A	03-34	26 IR 3947	**27 IR 1571**
848 IAC 5-1-3	A	03-34	26 IR 3948	**27 IR 1573**

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	**27 IR 2731**
858 IAC 2-1-2	A	03-281	27 IR 1286	**27 IR 2731**
858 IAC 2-1-3	A	03-281	27 IR 1286	**27 IR 2731**
858 IAC 2-1-4	A	03-281	27 IR 1286	**27 IR 2732**

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	**27 IR 2732**
				*ERR (27 IR 2744)
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)
				27 IR 2733
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)
				27 IR 2733
872 IAC 1-1-6.4	A	03-126	27 IR 277	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2734
872 IAC 1-1-6.5	A	03-126	27 IR 278	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2734
872 IAC 1-1-6.6	A	03-126	27 IR 278	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2734
872 IAC 1-1-8	A	03-126	27 IR 278	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2734
872 IAC 1-1-8.3	A	03-126	27 IR 279	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2735
872 IAC 1-1-9	A	03-126	27 IR 279	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2735
872 IAC 1-1-9.5	A	03-126	27 IR 279	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2735
872 IAC 1-1-10	A	03-126	27 IR 279	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2735
872 IAC 1-1-12	A	03-126	27 IR 280	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2736
872 IAC 1-1-14	A	03-126	27 IR 280	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2737
872 IAC 1-1-17	R	03-126	27 IR 282	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2738
872 IAC 1-1-19	A	03-126	27 IR 281	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2737
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*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
I:	Document Ineffective
N:	New Text
NRA:	Notice of Rule Adoption
OAC:	Objection to Errata
ON:	Other Notices of Administrative Action
R:	Repealed Text
RA:	Readopted Rule
SAC:	Solicitation of Advance Comment
SPE:	Statutory Period for Promulgation Expired
SPE-SE:	Statutory Period for Promulgation Expired; Signed After Expiration
††:	Renumbered or Added in Final Rule

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