Indiana Register

Volume 27, Number 12
Pages 3863-4344

September 1, 2004

Retain this issue as a supplement to the Indiana Administrative Code (See p. 3864)

The Indiana Register is on the Internet at: www.in.gov/legislative/

Published By Legislative Services Agency 317/232-9557

recycled paper

This issue contains documents officially filed through 4:45 p.m., August 10, 2004

IN THIS ISSUE

INDIANA REGISTER

is published monthly by the Indiana Legislative Council, Room 302 State House, Indianapolis, Indiana 46204-2789. An order form is on the back of this issue. Subscription price is $60 for Volume 27, in advance.

Indiana Register
Legislative Services Agency
200 West Washington Street, Suite 302
Indianapolis, IN 46204-2789

RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

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

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

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

RETENTION SCHEDULE

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

(1) 2004 Indiana Administrative Code (CD-ROM version).

(2) Volume 27 of the Indiana Register (CD-ROM version).

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

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

JUDICIAL NOTICE AND CITATION FORM

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

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

PRINTING CODE

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

REFERENCE TABLES AND INDEX

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

FILING AND PUBLISHING SCHEDULE

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

PUBLICATION SCHEDULE

Closing Dates:	Publication Dates:	Closing Dates:	Publication Dates:
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
December 10, 2004	January 1, 2005	July 11, 2005	August 1, 2005
January 10, 2005	February 1, 2005	August 10, 2005	September 1, 2005
February 10, 2005	March 1, 2005	September 9, 2005	October 1, 2005

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

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

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

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

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

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

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

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

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

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

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

State Agencies

ALPHABETICAL LIST

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

NUMERICAL LIST

TITLE NUMBER

GENERAL GOVERNMENT

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

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

CORRECTIONS, POLICE, AND MILITARY

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

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

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

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

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610 Department of Labor
615 Board of Safety Review
620 Occupational Safety Standards Commission
†630 Industrial Board of Indiana
631 Worker's Compensation Board of Indiana
†635 Wage Adjustment Board
†640 Indiana Unemployment Insurance Board
†645 Department of Employment and Training Services
646 Department of Workforce Development
650 State Fire Marshal
655 Board of Firefighting Personnel Standards and Education
†660 Administrative Building Council of Indiana
†670 Elevator Safety Board
675 Fire Prevention and Building Safety Commission
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750 Department of Financial Institutions
760 Department of Insurance
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808 State Boxing Commission
812 Indiana Auctioneer Commission
816 Board of Barber Examiners
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824 Indiana Grain Buyers and Warehouse Licensing Agency
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836 Indiana Emergency Medical Services Commission
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852 Indiana Optometry Board
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858 Controlled Substances Advisory Committee
860 Indiana Plumbing Commission
862 Private Detectives Licensing Board
864 State Board of Registration for Professional Engineers
865 State Board of Registration for Land Surveyors
868 State Psychology Board
872 Indiana Board of Accountancy
876 Indiana Real Estate Commission
878 Home Inspectors Licensing Board
880 Speech-Language Pathology and Audiology Board
884 Board of Television and Radio Service Examiners
888 Indiana Board of Veterinary Medical Examiners
†892 Indiana State Board of Examiners in Watch Repairing
896 Board of Environmental Health Specialists
898 Indiana Athletic Trainers Board

MISCELLANEOUS

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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 35 BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND

LSA Document #04-18(F)

DIGEST

Amends 35 IAC 8-1-1, 35 IAC 8-1-2, and 35 IAC 8-2-1 concerning rollover requirements to conform to changes made to the Internal Revenue Code by the federal Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Adds 35 IAC 10 to conform to changes made to the Internal Revenue Code by the federal Economic Growth and Tax Relief Reconciliation Act of 2001 and provide enhanced retirement savings opportunities concerning rollovers and service purchases for Fund members. Adds 35 IAC 12 concerning annual compensation limits to conform to changes made to the Internal Revenue Code by EGTRRA. Effective 30 days after filing with the secretary of state.

35 IAC 8-1-1
35 IAC 8-1-2
35 IAC 8-2-1
35 IAC 10
35 IAC 12

SECTION 1. 35 IAC 8-1-1 IS AMENDED TO READ AS FOLLOWS:

35 IAC 8-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

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

(b) "Board of trustees" means the board of trustees of the public employees' retirement fund.

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

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

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

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

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

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

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

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

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

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

~~(e)~~ **(f)** "Fund" or "funds" means the legislators' retirement system, public employees' retirement fund, state excise police and conservation **enforcement** officers' retirement plan, judges' retirement fund, 1977 fund, **the prosecuting attorneys retirement fund,** and funds funded through the pension relief fund.

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

~~(g)~~ **(h)** "UCA" refers to the federal Unemployment Compensation Amendments of 1992, P.L.102-318, and all applicable regulations and amendments related thereto. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-1-1; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1992; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3868)*

SECTION 2. 35 IAC 8-1-2 IS AMENDED TO READ AS FOLLOWS:

35 IAC 8-1-2 Introduction

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8-6-2; IC 36-8-7-3; IC 36-8-7.5-2

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

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

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

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

~~(b) The funds do not accept rollover contributions from other retirement plans. However, the funds permit rollover contributions to be paid directly to other retirement plans under certain circumstances. Accordingly, the rules governing the funds need to be amended to conform to the direct rollover requirements under~~ **of** the UCA ~~to allow such rollovers at the member's or member's spouse's election.~~ **were subsequently amended by EGTRRA.**

~~(c)~~ **(b)** 35 IAC 8-2 includes the model language set forth in Revenue Procedure 93-12, issued December 30, 1992, to amend the fund to comply with the requirements of Section 401(a)(31) of the Code. 35 IAC 8-2 reflects the Model Amendment drafted by the IRS, **as amended by EGTRRA.** The board of trustees recognizes that some provisions included in the model amendment language are not applicable to a governmental plan as defined in Section 414(d) of the Code. As a result, those provisions that are not applicable to a governmental plan will not be applied by the board of trustees. Any local board may elect to use a different compliance mechanism should they decide, through adoption of appropriate bylaws, ~~pursuant to~~ **under** IC 36-8-6-2(g)(5), IC 36-8-7-3(c), or IC 36-8-7.5-2(g)(5). *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-1-2; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1992; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3868)*

SECTION 3. 35 IAC 8-2-1 IS AMENDED TO READ AS FOLLOWS:

35 IAC 8-2-1 Model amendment language

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 1. (a) **The amendments to** this rule ~~applies~~ **required by EGTRRA apply** to distributions made on or after January 1, ~~1993.~~ **2002.** Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

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

(1) "Eligible rollover distribution" ~~An eligible rollover distribution is~~ **means** any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more;

(B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; ~~and~~

(C) the portion of any distribution that is not includible in gross income, ~~(determined without regard to the exclusion for net unrealized appreciation with respect~~ **provided that any portion of any distribution that is not includible in gross income may be an eligible rollover distribution for purposes of a rollover** to ~~employer securities).~~ **either:**

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

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

(D) any distribution that is made upon hardship by the member.

(2) "Eligible retirement plan" ~~An eligible retirement plan is~~ **means:**

(A) an individual retirement account described in Section 408(a) of the Code;

(B) an individual retirement annuity described in Section 408(b) of the Code;

(C) an annuity plan described in Section 403(a) of the Code; ~~or~~

(D) a qualified trust described in Section 401(a) of the Code;

(E) an eligible deferred compensation plan under Section 457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (so long as the plan agrees to separately account for amounts rolled into the plan); or

(F) an annuity contract under Section 403(b) of the Code;

that accepts the distributee's eligible rollover distribution. ~~However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~

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

(4) "Direct rollover" ~~A direct rollover is~~ **means** a payment by the plan to the eligible retirement plan specified by the distributee.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 8-2-1; filed Mar 23, 1995, 3:00 p.m.: 18 IR 1993; errata, 18 IR 2412; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3869)

SECTION 4. 35 IAC 10 IS ADDED TO READ AS FOLLOWS:

ARTICLE 10. ROLLOVERS AND TRUSTEE-TO-TRUSTEE TRANSFERS

Rule 1. Acceptance of Rollovers and Trustee-to-Trustee Transfers

35 IAC 10-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

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

(b) "Board of trustees" means the board of trustees of the public employees' retirement fund.

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

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

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

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

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

(h) "Fund" or "funds" means the legislators' retirement system, public employees' retirement fund, state excise police and conservation enforcement officers' retirement plan, judges' retirement fund, prosecuting attorneys retirement fund, and the 1977 fund.

(i) "IRS" means the Internal Revenue Service. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-1; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3870)*

35 IAC 10-1-2 Rollover for purchase of service

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 2. The fund may accept any portion of an eligible rollover distribution in payment of all or a portion of a member's purchase of service credit authorized under the fund's statutes. The fund may accept an eligible rollover distribution paid directly to the system in a direct rollover. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-2; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3870)*

35 IAC 10-1-3 Trustee-to-trustee transfer

Authority: IC 2-3.5-3-4; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 3. The fund may accept a direct trustee-to-trustee transfer from a deferred compensation plan under Code Section 457(b) or a tax-sheltered annuity under Code

Section 403(b) for the purchase of permissive service credit, as defined in Code Section 415(n)(3)(A), or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3). *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 10-1-3; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3870)*

SECTION 5. 35 IAC 12 IS ADDED TO READ AS FOLLOWS:

ARTICLE 12. ANNUAL COMPENSATION LIMIT

Rule 1. Limits

35 IAC 12-1-1 Definitions

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

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

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

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

(d) "Fund" or "funds" means the following:
(1) Legislators' retirement system.
(2) Public employees' retirement fund.
(3) State excise police and conservation enforcement officers' retirement plan.
(4) Judges' retirement system.
(5) 1977 police officers' and firefighters' pension and disability fund.
(6) Prosecuting attorneys retirement fund.
(7) Local public safety funds funded through the pension relief fund.

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

(f) "OBRA '93" refers to the federal Omnibus Budget Reconciliation Act of 1993, P.L.103-66, and all applicable regulations and amendments related thereto. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 12-1-1; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871)*

35 IAC 12-1-2 Introduction

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 2. (a) OBRA '93 was signed into law on August 10, 1993. Among other things, OBRA '93 contained amendments to Section 401(a)(17) of the Code relating to the annual compensation limit for tax-qualified retirement plans. Section 401(a)(17) of the Code provides an annual compensation limit for each employee under a qualified plan. The annual compensation limit was subsequently amended by EGTRRA effective for plan years beginning after December 31, 2001. A plan may not base contributions or benefits on annual compensation in excess of this annual compensation limit.

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

(c) OBRA '93, however, provides a grandfather clause for certain eligible participants in governmental plans. This grandfather rule applies to individuals who already were participants in governmental plans before the first plan year beginning after December 31, 1995, or, if earlier, the first plan year for which the plan is amended to comply with OBRA '93. Under the grandfather rule, the annual compensation limit contained in OBRA '93 will not apply to those eligible participants to the extent that the annual compensation limit in OBRA '93 would reduce the amount of compensation taken into account under the plan below the amount that was allowed to be taken into account under the plans as in effect on July 1, 1993. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 12-1-2; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871)*

35 IAC 12-1-3 Purpose

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 3. The purpose of this rule is to comply with OBRA '93 and EGTRRA as those acts amended Section 401(a)(17) of the Code. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 12-1-3; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871)*

35 IAC 12-1-4 Text

Authority: IC 2-3.5-3-4; IC 5-10-5.5-3; IC 5-10.3-3-8; IC 5-10.3-11-2; IC 33-13-8-25; IC 33-14-9-10; IC 36-8-8-5
Affected: IC 2-3.5; IC 5-10-5.5; IC 5-10.2; IC 5-10.3; IC 33-13-8; IC 33-14-9; IC 36-8

Sec. 4. The annual compensation limitations of Code Section 401(a)(17) shall be applied as follows:

(1) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93 and EGTRRA, shall not apply to any eligible participant, in any future year, to the extent that the application of the annual compensation limit in Code Section 401(a)(17), as amended by OBRA '93 and EGTRRA, would reduce the amount of annual compensation that is allowed to be taken into account under the fund below the amount that was allowed to be taken into account under the fund as in effect on July 1, 1993. As used in this subdivision, "eligible participants" includes all members who participated in the fund prior to July 1, 1996.

(2) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, will be effective with respect to noneligible participants as of July 1, 1996. As used in this subdivision, "noneligible participants" includes all members who did not participate in the fund prior to July 1, 1996. Effective for years beginning after December 31, 2001, the annual compensation limit under Code Section 401(a)(17), as amended by EGTRRA, will be effective with respect to noneligible participants.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 12-1-4; filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871)

LSA Document #04-18(F)
Notice of Intent Published: February 1, 2004; 27 IR 1615
Proposed Rule Published: April 1, 2004; 27 IR 2305
Hearing Held: April 27, 2004
Approved by Attorney General: July 8, 2004
Approved by Governor: July 9, 2004
Filed with Secretary of State: July 14, 2004, 9:35 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

LSA Document #03-193(F)

DIGEST

Amends 170 IAC 7-1.1-19 to provide for the use of an electronic letter of agency in authorizing a change in telephone carriers. Effective 30 days after filing with the secretary of state.

170 IAC 7-1.1-19

SECTION 1. 170 IAC 7-1.1-19 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.1-19 Unauthorized switching of telecommunications providers; billing for telecommunications or other services added without customer's consent

Authority: IC 8-1-1-3; IC 8-1-29
Affected: IC 8-1-2-4

Sec. 19. (a) For purposes of this rule, the following definitions apply:

(1) "Electronic letter of agency" or "ELOA" means an electronically signed written statement that:

(A) authorizes a change to the customer's primary interexchange carrier or primary local exchange carrier; and

(B) includes the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001(c).

~~(1)~~ **(2)** "Express authorization" means an express, affirmative act by the customer clearly agreeing to the change in PIC or LEC in the form of:

(A) a written authorization;

(B) a customer-initiated call to the prospective IXC or LEC;

(C) an oral authorization verified and recorded by an independent third party;

(D) a recorded electronic authorization; ~~or~~

(E) some other form of recorded authorization, such as personal identification numbers (PINs) or passwords; **or**

(F) an electronic authorization.

~~(2)~~ **(3)** "Letter of agency" or "LOA" means a written statement that the customer signs that authorizes a change to that customer's primary interexchange carrier or primary local exchange carrier.

~~(3)~~ **(4)** "Local exchange carrier" or "LEC" means a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.

~~(4)~~ **(5)** "Long distance telecommunications service" means service that carries calls to exchanges that are not within the local calling area of the originating number.

~~(5)~~ **(6)** "Primary interexchange carrier" or "PIC" means a provider of presubscribed inter-LATA or intra-LATA long distance telecommunications services. **The term includes the following:**

(A) Presubscribed facilities-based carriers of long distance service.

(B) Resellers of long distance service. ~~and~~

(C) Local exchange carriers providing long distance service.

~~are included in this definition.~~ In those local exchanges where intra-LATA equal access is available, customers may receive presubscribed long distance service from more that one (1) PIC (one (1) for inter-LATA and one (1) for intra-LATA toll) or may select a single PIC that provides both inter-LATA and intra-LATA toll service.

~~(6)~~ **(7)** "Primary local exchange carrier" or "PLEC" means a

carrier to which a customer has presubscribed for local exchange service.

~~(7)~~ **(8)** "Properly disputed" means the filing of a complaint, either verbally or in writing, with the commission.

~~(8)~~ **(9)** "Telemarketing" means the use of telecommunications in marketing campaigns to reach prospective purchasers and sell them goods or services.

(b) No prospective PIC shall submit to a LEC a PIC change order generated by telemarketing unless the prospective PIC has first obtained express authorization from the customer. No prospective LEC shall submit a PLEC change order generated by telemarketing unless the prospective LEC has first obtained express authorization from the customer.

(c) The prospective PIC or prospective LEC shall confirm such express authorization through one (1) of the following three (3) procedures:

(1) The prospective PIC or prospective LEC shall obtain the customer's written **or electronic** authorization in a form that meets the requirements of subsections (e) through ~~(m).~~ **(n).**

(2) The prospective PIC or prospective LEC shall obtain the customer's electronic authorization, placed from the telephone ~~number(s)~~ **number or numbers** on which the PIC or PLEC is to be changed, to submit a PIC or PLEC change order. The authorization shall include the information described in subsection (i). Prospective PICs or prospective LECs electing to confirm sales electronically shall establish one (1) or more toll-free telephone numbers exclusively for that purpose. A call to the ~~number(s)~~ **number or numbers** will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC or PLEC change, including automatically recording the automatic number identification (ANI).

(3) An appropriately qualified and independent third party shall obtain the customer's oral authorization to submit the PIC or PLEC change order. Such authorization shall confirm and include appropriate verification data, for example, the customer's date of birth, mother's maiden name, or Social Security number or part thereof. Such authorization is valid only if the entity that obtained the authorization:

(A) is independent of the prospective PIC or prospective LEC or the telemarketing representative of the prospective PIC or prospective LEC;

(B) complies with this section regarding changes to telecommunications carriers;

(C) has a written policy regarding customer complaints and abides by that policy;

(D) has a written policy requiring the maintenance and storage of recorded electronic authorizations for a minimum period of one (1) year and abides by that policy;

(E) has a written script that it uses when obtaining verifications, and the script provides clear and unambiguous notice to the customer: ~~of the following:~~

(i) that the customer is authorizing a change in primary interexchange or primary local exchange carrier;

(ii) **of** the identity of the new primary interexchange or primary local exchange carrier;

(iii) **of** a toll-free or local number of the LEC that the customer can call to verify whether the change has occurred;

(iv) that, for any one (1) telephone number:

(AA) only one (1) prospective PIC may be designated as the subscriber's inter-LATA primary interexchange carrier;

(BB) only one (1) prospective PIC may be designated as the subscriber's intra-LATA primary interexchange carrier; and

(CC) only one (1) intrastate primary LEC may be designated as the subscriber's primary LEC; **and**

(v) that the PIC change will automatically apply to both inter-LATA and intra-LATA long distance service offerings unless the customer directs otherwise; and

(F) is in a location that is physically separate from that of the prospective PIC or prospective LEC or the telemarketing representative of the prospective PIC or prospective LEC.

(d) A PIC or PLEC change made in violation of any of the requirements of this section is invalid. A prospective PIC or PLEC must provide all information regarding disputed carrier changes and services billings to the commission within thirty (30) days of a commission request for said information.

(e) If the prospective PIC or prospective LEC utilizes **the** authorization procedure in subsection (c)(1), ~~above,~~ the prospective PIC or LEC shall obtain any necessary written authorization from a subscriber for a PIC or PLEC change by using a letter of agency **or electronic letter of agency** as specified in subsections (f) through ~~(m).~~ **(n).** Any letter of agency **or electronic letter of agency** that does not conform ~~with~~ **to** those subsections is invalid.

(f) The letter of agency **or electronic letter of agency** shall be a separate document **(or** an easily separable document) **or located on a separate screen or Web page** containing only the authorizing language described in subsection (i), whose sole purpose is to authorize a prospective PIC or LEC to initiate a primary interexchange carrier or PLEC change. The letter of agency must be signed and dated by the subscriber to the telephone ~~line(s)~~ **line or lines** requesting the primary interexchange carrier or PLEC change. The subscriber (or authorized agent in the case of a business customer) whose name appears on bills for local and interexchange service shall be the only party authorized to execute a letter of agency.

(g) The letter of agency shall not be combined with inducements of any kind on the same document, **screen, or Web page.**

(h) Notwithstanding subsections (f) and (g), the letter of

agency may be combined with checks that contain only the required letter of agency language prescribed in subsection (i) and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier or PLEC change by signing the check. The letter of agency language ~~also~~ shall **also** be placed near the signature line on the back of the check.

(i) At a minimum, the letter of agency must be printed with a typeface of sufficient size and clarity to be clearly legible and must contain clear and unambiguous language that confirms:

(1) the subscriber's billing name and address and each telephone number to be covered by the primary interexchange carrier or PLEC change order;

(2) the subscriber's decision to change the primary interexchange carrier or PLEC from the current interexchange carrier or LEC to the prospective interexchange carrier or prospective LEC;

(3) that the subscriber designates the prospective interexchange carrier or prospective LEC to act as the subscriber's agent for the primary interexchange carrier or PLEC change;

(4) that the subscriber understands that, for any one (1) telephone number:

(A) only one (1) prospective PIC may be designated as the subscriber's inter-LATA primary interexchange carrier;

(B) only one (1) prospective PIC may be designated as the subscriber's intra-LATA primary interexchange carrier; and

(C) only one (1) intrastate primary LEC may be designated as the subscriber's intrastate primary LEC;

(5) that the subscriber understands that any change in primary interexchange carrier or primary LEC may result in a charge to the subscriber; and

(6) the LEC's toll-free or local number that the customer can call to verify whether the change has occurred.

(j) To the extent a customer selects separate carriers for inter-LATA, intra-LATA, and LEC services, the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier for inter-LATA service must be the carrier directly setting the inter-LATA service rates for the subscriber. Any carrier designated as a primary interexchange carrier for intra-LATA services must be the carrier directly setting the intra-LATA service rates for the subscriber. Any carrier designated as a primary local exchange carrier must be the LEC directly setting the local exchange service rates for the subscriber. One (1) interexchange carrier can be both a subscriber's inter-LATA primary interexchange carrier and a subscriber's intra-LATA primary interexchange carrier.

(k) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier or LEC.

(l) If any portion of a letter of agency is translated into a language other than English, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency.

(m) The letter of agency shall provide the toll-free telephone number and mailing address of the consumer affairs division of the Indiana utility regulatory commission and shall inform the customer of his or her right to file a complaint with that division.

(n) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001(c).

~~(n)~~ **(o)** Upon request of the customer, offers to provide telecommunications interexchange or local exchange services shall be sent to the customer in written form describing the terms and conditions of service.

~~(o)~~ **(p)** Except for tariff-regulated, customer-initiated, one-time use products, such as collect calling services, optional pay-per-use services (including automatic callback, repeat dialing, and three-way calling), no PIC or LEC or any billing agent acting for said PIC or LEC shall bill a customer for any service unless the PIC, LEC, or billing agent possesses written or electronic documentation that shows:

(1) the name of the customer requesting the service;

(2) a description of the service requested by the customer;

(3) the date on which the customer requested the service;

(4) the means by which the customer requested the service; and

(5) the name, address, and telephone number of all sales agents involved.

~~(p)~~ **(q)** No PIC, LEC, or billing agent for any PIC or LEC shall be entitled to any compensation from a customer for services rendered in violation of this rule.

~~(q)~~ **(r)** The customer's local exchange company shall not disconnect the customer's phone service for nonpayment where the customer has properly disputed a carrier change or service billing.

(s) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than sixty (60) days of obtaining a written or electronically signed letter of agency. However, letters of agency for multiline and/or multilocation business customers that have entered into negotiated agreements with carriers to add

presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

~~(t)~~ **(t)** This rule shall apply only to the extent not preempted by federal law. *(Indiana Utility Regulatory Commission; 170 IAC 7-1.1-19; filed Jan 18, 1999, 1:18 p.m.: 22 IR 1938; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; filed Mar 4, 2002, 2:57 p.m.: 25 IR 2209; filed Jul 14, 2004, 9:45 a.m.: 27 IR 3872)*

LSA Document #03-193(F)
Notice of Intent Published: August 1, 2003; 26 IR 3674
Proposed Rule Published: April 1, 2004; 27 IR 2309
Hearing Held: April 22, 2004
Approved by Attorney General: July 6, 2004
Approved by Governor: July 9, 2004
Filed with Secretary of State: July 14, 2004, 9:45 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-215(F)

DIGEST

Amends 312 IAC 10-5, governing general licenses within floodways (with application, as well, to navigable waters under limited circumstances), by restructuring so provisions having universal application to these general licenses are set forth at the beginning of the rule in new 312 IAC 10-5-0.3 and 312 IAC 10-5-0.6, to allow logjam and obstruction removal activities, from a qualified waterway listed on the Outstanding Rivers List, according to the approval requirements that ordinarily apply to logjam and obstruction removals under a general license, and to place time restrictions on the effectiveness of these general licenses. Effective 30 days after filing with the secretary of state.

312 IAC 10-5-0.3	**312 IAC 10-5-5**
312 IAC 10-5-0.6	**312 IAC 10-5-6**
312 IAC 10-5-3	**312 IAC 10-5-7**
312 IAC 10-5-4	**312 IAC 10-5-8**

SECTION 1. 312 IAC 10-5-0.3 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-0.3 Determining project eligibility for a general license; general criteria

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 0.3. (a) Except as provided in subsections (b) and (c), a project for a utility line crossing, the removal of logjams and obstructions, or the placement of outfall projects within a floodway is eligible for a general license if the project satisfies the requirements of this rule. For the removal of logjams and obstructions, these requirements include the procedures established by section 0.6 of this rule.

(b) Subsection (a) does not authorize a project in any of the following circumstances:

(1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana unless prior written approval from the division of water's environmental unit has been obtained.

(2) Within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3).

(3) Within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.

(4) For a utility line crossing, below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 in the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of the waterway under section 4(b) of this rule.

(5) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) Subsection (a) does not authorize the removal of logjams or obstructions within one-half (½) mile of any of the following:

(1) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.

(2) A known mussel resource.

(3) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

(d) The limitations contained in subsection (b) and subsection (c) *[subsections (b) and (c)]* **do not apply to section 7 of this rule.** *(Natural Resources Commission; 312 IAC 10-5-0.3; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3875)*

SECTION 2. 312 IAC 10-5-0.6 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-0.6 Relief from general criteria for determining project eligibility for a general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 0.6. (a) This section establishes procedures by which a person may seek a general license for the removal of logjams and obstructions or for an activity that is governed by section 0.3(b)(1) of this rule.

(b) A person must file a written notice, upon a department form if for a logjam removal, with the division of water's environmental unit, including the following information:

(1) A description of the river or stream where the project would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks (for example, a bridge or a dam). The project shall be designated with access routes to the site on:

(A) a United States Geological Survey topographic map;

(B) a national wetlands inventory map; or

(C) another map determined by the department to satisfy the purposes of this section.

(2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor must also be provided.

(3) The person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform the proposed work. Permission must be demonstrated for an access route and disposal site.

(4) Photographs, videotapes, or other graphic documentation that demonstrate existing site conditions.

(c) Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (b), the department shall provide a written response that does one (1) of the following:

(1) Approves the terms of the notice.

(2) Provides additional conditions to the approval.

(3) Requires additional information.

(4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1, or both.

(5) A statement by the person seeking a general license that their project will be completed subject to the conditions set forth under the applicable sections of sections 4, 6, and 8 of this rule.

(d) If the department does not respond in a timely fashion under subsection (c), the written notice is deemed approved.

(e) A copy of the written notice provided under subsection (b), and any additional conditions provided by the department under subsection (c), must be posted by the person in a conspicuous location at the site of the project.

(f) A person who acts under this general license must comply with each of the following:

(1) The terms of the written notice provided under subsection (b).

(2) The applicable conditions set forth under sections 4, 6, and 8 of this rule.

(3) Any additional conditions provided by the department under subsection (c).

Failure to comply with this subsection may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a license issued under IC 14-28-1 or, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-0.6; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3875)*

SECTION 3. 312 IAC 10-5-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-3 Aerial electric, telephone, or cable television lines; general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1; IC 14-29-6

Sec. 3. The placement of an aerial electric, telephone, or cable television line is ~~exempted from the licensing requirements of~~ **authorized without a written license issued by the department under** IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 if:

(1) the activity does not disturb the bed of the waterway beneath the line;

(2) the activity conforms with the minimum clearance requirements of section ~~4(c)(9)~~ **4(b)(9)** of this rule;

(3) the support mechanisms are located at least seventy-five (75) feet from the top of the bank; and

(4) the utility line crossing is not within the floodway of a natural river, scenic river, or recreational river designated under 312 IAC 7-2.

(Natural Resources Commission; 312 IAC 10-5-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3876)

SECTION 4. 312 IAC 10-5-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-4 Qualified utility line crossings; general license

Authority: IC 14-10-2-4; IC 14-28-2-24
Affected: IC 13-11-2-260; IC 14-27-7; IC 14-28-1-29; IC 14-33; IC 36-9-27

Sec. 4. (a) This section establishes ~~an exemption~~ **a general license** for the placement of a qualified utility line crossing in a floodway.

~~(b) This section does not authorize the placement of a qualified utility line crossing in the following locations:~~

~~(1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.~~

~~(2) Within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3).~~

~~(3) Below the ordinary high watermark of a navigable~~

~~waterway listed in the Indiana Register at 20 IR 2920 (1997) in the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of waterway under subsection (c)(8).~~

~~(4) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.~~

~~(c)~~ **(b)** A person who wishes to ~~place~~ **implement** a **project for the placement of a qualified** utility line crossing ~~under this section must conform~~ **on a river or stream, other than on a river or stream identified in section 0.3(b) or 0.3(c) of this rule, may do so without notice to the department if the project conforms** to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the utility line crossing area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) No pesticide will be used on the banks.

(7) If a utility line transports a substance that may cause water pollution as defined in IC 13-11-2-260, the utility line will be equipped with an emergency closure system.

(8) If a utility line is placed beneath the bed of a river or stream, the following conditions are met:

(A) Cover of at least three (3) feet measured perpendicularly to the utility line is provided between the utility line and the banks.

(B) If the placement of a utility line is not subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(C) If the placement of the utility line is subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(D) Negative buoyancy compensation is provided where the utility line has a nominal diameter of at least eight (8) inches and transports a substance having a specific gravity of less than one (1).

(9) If a utility line is placed above the bed of a river or stream, the following conditions are met:

(A) Except as provided in clauses (B) and (C), minimum clearance is provided from the lowest point of the utility line (determined at the temperature, load, wind, length of span, and type of supports that produce the greatest sag) calculated as the higher of the following:

(i) Twelve and one-half (12½) feet above the ordinary high watermark.

(ii) Three (3) feet above the regulatory flood elevation.

(B) If the river or stream is a navigable waterway that is subject to IC 14-28-1, the utility line that crosses over the waterway must be placed to provide the greater of the following:

(i) The minimum clearance required under clause (A).

(ii) The minimum clearance required for the largest watercraft that is capable of using the waterway. The utility must consult in advance with the department to determine the minimum clearance for watercraft at the crossing.

(C) If a utility line is attached to or contained in the embankment of an existing bridge or culvert, no portion of the utility line or its support mechanism may project below the low structure elevation or otherwise reduce the effective waterway area.

(10) A utility line placed in a dam or levee regulated under IC 14-27-7 does not qualify for ~~an exemption~~ **a general license** under this subsection.

~~(d)~~ **(c)** A person who elects to act under this section must comply with the general conditions under subsection ~~(c).~~ **(b).** Failure to comply with these terms and conditions may result in the revocation of the general ~~authorization,~~ **license,** a civil penalty, a commission charge, and any other sanction provided by law for the violation of a ~~permit~~ **license** issued under IC 14-

28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1545; errata filed Mar 13, 2002, 11:51 a.m.: 25 IR 2521; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3876)*

SECTION 5. 312 IAC 10-5-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-5 Utility line placement that does not qualify for a general license; waivers for burial depth or clearance

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1-29; IC 14-29-1; IC 14-33; IC 25-31-1; IC 36-9-27

Sec. 5. The placement of a utility line that is not ~~exempt~~ **authorized** under section 4 of this rule requires a license under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 and is subject to the following:

(1) Except as provided in subdivisions (2) and (3), a license application must be filed with the department to demonstrate the construction activities within the utility project area conform with section ~~4(c)(1)~~ **4(b)(1)** through ~~4(c)(9)~~ **4(b)(9)** of this rule.

(2) The department may waive the minimum clearance requirements set forth in section 4(b)(8) of this rule if this subdivision is satisfied. The following information must be provided by the applicant:

(A) A technical justification that clearly establishes a need for the waiver.

(B) An economic analysis of the cost required to provide the minimum cover and the savings that would be realized if the minimum cover is waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line would fail as a result of the waiver.

(D) If the placement of the line is beneath the bed of a waterway and is subject to regulation as a flood control project, under the conservancy district act, or under the drainage code, documentation the county or municipality that has maintenance authority over the waterway has also waived the cover requirements. This documentation must:

(i) be on the letterhead of the county or municipality;

(ii) contain a copy of the statute or ordinance under which the county or municipality has regulatory authority over the waterway;

(iii) contain a statement that clearly waives the minimum cover requirements; and

(iv) contain a statement that the waiver will not impede future maintenance or reconstruction projects on the waterway.

(3) The department may waive the minimum clearance requirements set forth in section ~~4(c)(9)~~ **4(b)(9)** of this rule if this subdivision is satisfied. The following information must be provided by the applicant:

(A) A technical justification that establishes the need for the waiver.

(B) An economic analysis of the cost required to provide the minimum clearance and the savings realized if waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line fails as a result of the waiver.

(D) Documentation of the regulatory flood elevation that includes either of the following:

(i) A photocopy of the latest flood insurance study profile with the site and low point of the line clearly indicated.

(ii) Computations by a certified professional engineer licensed under IC 25-31-1.

(Natural Resources Commission; 312 IAC 10-5-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3878)

SECTION 6. 312 IAC 10-5-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-6 Removal of logjams from a waterway; general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 6. (a) This section establishes a general ~~authorization~~ **license** for the removal of logjams from a waterway for the purpose of providing maintenance to help control flooding.

(b) This section does not authorize ~~an obstruction removal activity in the following areas:~~

~~(1) Within one-half (½) mile of any of the following:~~

~~(A) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.~~

~~(B) A known mussel resource.~~

~~(C) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.~~

~~(2) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.~~

the removal of logjams and obstructions from a waterway identified under section 0.3 of this rule.

(c) A person who wishes to implement a project for obstruction removal ~~under this general authorization shall~~ **from a waterway not under section 0.3 of this rule must** file a written notice, upon a department form, with the division of ~~fish and wildlife,~~ **water's environmental unit,** including the following information:

(1) A description of the river or stream where obstruction

removal would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks, for example, a bridge or a dam. The project shall be designated with access routes to the obstruction on:

(A) a United States Geological Survey topographic map;

(B) a national wetlands inventory map; or

(C) another map determined by the department to satisfy the purposes of this section.

(2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor shall also be provided.

(3) The person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform logjam removal. Permission must be demonstrated for an access route and for a site where logs or other debris will be secured following removal from the waterway. The person must also show participation or agreement by other interested persons in the following circumstances:

(A) With respect to a regulated drain, by the drainage board.

(B) With respect to a mutual drain, by all the beneficiaries to the drain.

(C) By the governing body of any county, municipality, or conservancy district in which the project is located.

(4) Photographs, videotapes, or other graphic documentation that demonstrate the following conditions exist on the waterway:

(A) Accumulations of logs, root wads, and other debris that occasionally or frequently span the waterway and may be interlocked.

(B) Large amounts of fine sediments have not covered ~~nor~~ **or** become lodged in the obstruction.

(C) Accumulations are extensive enough to cause bank erosion and upstream ponding damages.

(5) A statement by the person, including the following terms and agreements:

(A) Obstructions will be removed through the use of hand-operated equipment, such as axes, chain saws, and portable winches.

(B) Any site will be identified within the project for which the use of hand-operated equipment is determined to be impracticable. If a site is identified under this subdivision, the statement must include what equipment would be used and that the equipment will not be equipped for excavation. Examples of equipment that may be suitable include the following:

(i) A small tractor.

(ii) A backhoe equipped with a hydraulic thumb.

(iii) A bulldozer with its blade up.

(iv) A log skidder.

(C) Free logs or affixed logs that are crossways in the channel will be cut, relocated, and removed from the flood plain unless the logs are piled and secured by cables in an area not threatened by the flow of water. Logs will be removed and secured with a minimum damage to vegetation and placed outside any wetlands.

(D) Isolated or single logs that are embedded, lodged, or rooted in the channel and do not span the channel or cause flow problems will not be removed unless:

(i) associated with or in close proximity to larger obstructions; or

(ii) posing a hazard to navigation.

(E) A severely damaged, leaning, or other damaged tree that is in immediate danger of falling into the waterway may be cut and removed, but only if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree will be left in place.

(F) No access road will be constructed that will do any of the following:

(i) Destroy more than one (1) acre of trees within a floodway.

(ii) Traverse a wetland indicated on the national wetlands inventory map unless pads are used.

(iii) Raise the elevation of the flood plain.

(iv) Cross a waterway.

(G) Work shall be conducted exclusively from one (1) side of a river or stream.

(d) ~~Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (c),~~ The department shall ~~provide a~~ **act upon the** written ~~response that does one (1) of the following:~~

~~(1) Approves the terms of the notice.~~

~~(2) Provides additional conditions to the approval.~~

~~(3) Requires additional information.~~

~~(4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1, or both.~~

notice as set forth under section 0.6 of this rule.

~~(e) If the department does not respond in a timely fashion under subsection (d), the written notice is deemed approved.~~

~~(f) A copy of the written notice provided under subsection (c) and any additional conditions provided by the department under subsection (d) must be posted by the person in a conspicuous location at the site of the project.~~

(e) A general license for obstruction removal under this section expires:

(1) Ninety (90) days after the receipt of the department's written approval under section 0.6(c) of this rule.

(2) If there is no response by the department under section 0.6(c) of this rule and the applicant acts under section 0.6(d) of this rule, one hundred five (105) days after the date recorded on the applicant's certificate of mailing.

~~(g)~~ **(f)** A person who elects to act under this general ~~authorization~~ **license** must comply with the terms of the written notice provided under subsection (c) and with any additional conditions provided by the department under ~~subsection (d).~~ **section 0.6(c) of this rule.** Failure to comply with these terms and conditions may result in the revocation of the general ~~authorization,~~ **license,** a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 or, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3878)*

SECTION 7. 312 IAC 10-5-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-7 Qualified logjam and sandbar removals from beneath bridges; general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 7. ~~A person is exempted from the licensing requirements under IC 14-28-1, IC 14-29-1, 312 IAC 10-4, and 312 IAC 6 for~~ The removal of logjams and sandbars beneath or adjacent to a bridge ~~where:~~ **is authorized without a written license issued by the department under IC 14-28-1, IC 14-29-1, 312 IAC 10-4, and 312 IAC 6 where:**

(1) equipment is operated from the bridge or the bank within the right-of-way, with no equipment placed in the river or stream;

(2) an access corridor for the placement of equipment extends no more than fifty (50) feet beyond the right-of-way; and

(3) the logjam or sandbar to be removed is located partially or exclusively within the right-of-way.

(Natural Resources Commission; 312 IAC 10-5-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3397, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3880)

SECTION 8. 312 IAC 10-5-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-5-8 Qualified outfall projects; general license

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-1

Sec. 8. (a) This section establishes ~~an exemption~~ **a general license** for the placement of a qualified outfall project in a floodway.

~~(b) This section does not authorize the placement of an outfall project:~~

~~(1) within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana;~~

~~(2) within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3);~~

~~(3) below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 in the Roster of Indiana Waterways Declared Navigable; or~~

~~(4) where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.~~

~~(c)~~ **(b)** A person who wishes to ~~place an outfall~~ **implement a** project ~~under this section must conform~~ **for the placement of a qualified outfall project on a river or stream, other than on a river or stream identified in section 0.3(b) or 0.3(c) of this rule, may do so without notice to the department if the project conforms** to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the outfall project area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) Areas in the vicinity of concentrated discharge points shall be protected with structural armament to the normal water level of the waterway. Any riprap must have an average minimum diameter of six (6) inches and extend below the normal water level.

(7) The size of the outfall project shall not exceed any of the following dimensions:

(A) Ten (10) square feet in cross-sectional flow area as determined by the summation of cross-sectional area of conduits within the outfall project area for an outfall structure.

(B) Five (5) feet deep as determined by the difference in elevation between the lowest bank elevation and the bottom of the swale for an outfall structure.

(C) An area of disturbance thirty (30) feet wide.

(8) Adequate cover shall be provided to ensure the structural integrity of the outfall conduit and to allow suitable vegetative growth.

(9) Within the project area, the postconstruction ground surface elevation shall be less than six (6) inches above the preconstruction elevation.
(10) The outlet structure shall:
(A) be supported by a headwall, slopewall, or anchored end section; and
(B) conform to the bank of the waterway.
(11) If flow passing through the outfall project in a reverse direction would induce flood damages during a regulatory flood, the outfall project shall be equipped with a closure mechanism.
(12) Construction debris and material not used as backfill shall be removed from the floodway.

~~(d)~~ **(c)** A person who elects to act under this section must comply with the general conditions under subsection ~~(c).~~ **(b).** Failure to comply with these terms and conditions may result in the revocation of the general ~~authorization,~~ **license,** a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3398, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1546; errata filed Jan 16, 2002, 1:14 p.m.: 25 IR 1906; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3880)*

LSA Document #03-215(F)
Notice of Intent Published: September 1, 2003; 26 IR 3906
Proposed Rule Published: March 1, 2004; 27 IR 1940
Hearing Held: March 25, 2004
Approved by Attorney General: July 13, 2004
Approved by Governor: July 29, 2004
Filed with Secretary of State: August 2, 2004, 3:18 p.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-251(F)

DIGEST

Amends 312 IAC 16, which governs the drilling, operation, and proper abandonment of wells drilled for oil and gas purposes, by updating the definitions and standards governing the plugging and abandoning to incorporate best management practices and including specifications for the use of oil field cements and other materials, the certification of plugging adequacy, the use of alternate materials and methods in well plugging, and quality control measures to ensure the adequacy of plugs. Amends 312 IAC 16-5-15 governing mechanical integrity standards to provide that an operator use a minimum of 300 pounds of pressure during the running of a mechanical integrity test and cause these standards to harmonize with those in 312 IAC 16-5-20. Makes numerous technical changes. Effective 30 days after filing with the secretary of state.

312 IAC 16-1-9.5 **312 IAC 16-5-15**
312 IAC 16-1-39.5 **312 IAC 16-5-19**
312 IAC 16-1-44.6

SECTION 1. 312 IAC 16-1-9.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 16-1-9.5 "Completed zone" defined
Authority: IC 14-37-3
Affected: IC 14-37

Sec. 9.5. "Completed zone" means a geologic formation in which production, injection, gas storage, gas storage observation, or water supply was established. *(Natural Resources Commission; 312 IAC 16-1-9.5; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3881)*

SECTION 2. 312 IAC 16-1-39.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 16-1-39.5 "Permanent plugback" defined
Authority: IC 14-37-3
Affected: IC 14-37

Sec. 39.5. "Permanent plugback" means a mechanical or cement plug placed between the completed zones of an active oil or gas related well. *(Natural Resources Commission; 312 IAC 16-1-39.5; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3881)*

SECTION 3. 312 IAC 16-1-44.6 IS ADDED TO READ AS FOLLOWS:

312 IAC 16-1-44.6 "Static well" defined
Authority: IC 14-37-3
Affected: IC 14-37

Sec. 44.6. "Static well", for purposes of 312 IAC 16-5-19, means a well in which the liquid level in the well bore, after two (2) tests on the well performed in the presence of a division representative and conducted at least eighteen (18) hours apart using comparable acoustic measuring devices, has changed no more than the lesser of:
(1) ten percent (10%) of the distance between the bottom of the hole and the top of the fluid column, taken from the first test; or
(2) ninety (90) feet.
(Natural Resources Commission; 312 IAC 16-1-44.6; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3881)

SECTION 4. 312 IAC 16-5-15 IS AMENDED TO READ AS FOLLOWS:

312 IAC 16-5-15 Mechanical integrity
Authority: IC 14-37-3
Affected: IC 14-37

Sec. 15. (a) A Class II well has mechanical integrity if there is the following:

(1) No significant leak in the casing, tubing, or packer.

(2) No significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(b) One (1) of the following methods must be used to evaluate mechanical integrity under subsection (a)(1):

(1) After an initial pressure test, monthly monitoring of annulus pressure (at a positive value) by the owner or operator to be reported to the division no less frequently than quarterly.

(2) Pressure testing with liquid.

(c) Where pressure testing is performed under subsection (b)(2), the casing-tubing annulus above the packer must be filled with fluid and tested, with no more than a three percent (3%) pressure differential over a thirty (30) minute period, not less than once every five (5) years under the supervision of a ~~commission~~ **division** representative at a pressure of **no less than** three hundred (300) pounds per square inch.

(d) One (1) of the following methods must be used to evaluate mechanical integrity under subsection (a)(2):

(1) The results of a temperature or noise log.

(2) Records demonstrating the presence of cement adequate to prevent the migration of fluids in the well bore.

(3) A radioactive tracer survey.

(e) The division director may authorize a test to demonstrate mechanical integrity other than those listed in subsections (b) and (d). The division director may authorize an alternative test only where the test reliably demonstrates the mechanical integrity of a well.

(f) In conducting and evaluating a test authorized by this section, the owner or operator and the director shall apply methods and standards generally accepted in the petroleum industry. When reporting the results of a mechanical integrity test to the director, an owner or operator shall include a description of any test and method used. When evaluating a mechanical integrity test, the division director shall review monitoring and other test data submitted since the previous evaluation. *(Natural Resources Commission; 312 IAC 16-5-15; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2342; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3881)*

SECTION 5. 312 IAC 16-5-19 IS AMENDED TO READ AS FOLLOWS:

312 IAC 16-5-19 Plugging and abandoning wells

Authority: IC 14-37-3-6
Affected: IC 14-37-8

Sec. 19. (a) Wells **for oil and gas purposes** shall be plugged in accordance with IC 14-37-8.

(b) With respect to a well for oil and gas purposes, an owner or operator ~~shall~~ **must** place ~~cement~~ **bottom** plugs using ~~the pump and plug or displacement method from the bottom to the surface or must do~~ **one (1) of** the following **procedures:**

(1) ~~Place~~ A cement plug from **total depth to three (3) feet below ground elevation.**

~~(A)~~ **(2) A cement plug from the shallower of total depth of** fifty (50) feet below ~~an oil or natural gas formation;~~

~~(B) an injection zone; or~~

~~(C) the bottom of a hole~~ to **no less than** one hundred (100) feet above ~~the top of the formation.~~

~~(2) Place a cement plug from fifty (50) feet below to one hundred (100) feet above a commercially mineable coal resource. Where a hole terminates less than fifty (50) feet below a commercially mineable coal resource, the cement plug shall commence at the bottom of the hole. A commission representative may require use of a mechanical plug, packer, or other suitable material where appropriate to securing~~ **each completed zone unless the** placement of the ~~cement~~ plug **would require the removal of a permanent plugback and one (1) of the following:**

~~(3) Place an appropriate mechanical plug or packer at the top of a producing formation or injection zone and set a fifty (50) foot cement plug above the mechanical plug or packer.~~

~~(4) Where insufficient casing was set or where surface casing was not cemented to the surface, the production string of casing shall be removed from fifty (50) feet below the deepest underground source of drinking water. The owner or operator shall place a cement plug from the remaining production string of casing to three (3) feet below the surface.~~

~~(5) A dry hole that does not enter a commercially mineable coal resource may be filled with mud-laden fluid, well cuttings, pea gravel, or crushed rock from the bottom of the hole to fifty (50) feet below the deepest underground source of drinking water. The owner or operator shall place a cement plug from fifty (50) feet below the deepest underground source of drinking water to three (3) feet below the surface.~~

~~(c) Within six (6) months of abandoning a well, an owner or operator shall do the following:~~

~~(1) Clear the area of refuse and equipment.~~

~~(2) Dispose of waste fluids.~~

~~(3) Drain and fill excavations.~~

~~(4) Remove substructures.~~

~~(5) Restore the surface as nearly as practicable to its condition prior to drilling.~~

~~(d) The owner of surface rights may with consent of the owner or operator apply to the division to retain equipment, fixtures, or pits placed with respect to a well drilled for oil and gas purposes. The application shall be made on a departmental form releasing the owner or operator and its agents from responsibility for restoration of the well site, except as provided in the application.~~

~~(e) An owner or operator may apply to the commission to convert a well for oil and gas purposes otherwise to be abandoned to a fresh water well. The application shall be made on a division form and shall include the following information:~~

~~(1) The depth to which an owner or operator proposes to plug a well.~~

~~(2) Written consent by persons who hold a recorded interest at or above the elevation of the plug.~~

~~(3) A statement by the owner or owners of surface rights to release the owner or operator from an obligation to abandon the well, except as provided in the application.~~

~~The division shall authorize the conversion to a fresh water well upon a finding that the application has been properly completed and that the conversion will not violate IC 14-37 or this article.~~

~~(f) The use of bridges in plugging wells is prohibited. The owner or operator shall drill out and replug the hole if unfilled below the bridge.~~

~~(g) If unauthorized material is placed in a hole, the division may require the material to be removed before plugging operations are commenced.~~

~~(h) A permanent plugback, other than a plugback in a cased hole, shall be witnessed by a commission representative.~~

~~(i) If a hole is obstructed by equipment associated with drilling or operating a well, and if the removal of that equipment is impracticable, the division director may authorize a special method to abandon the well. The owner or operator shall obtain approval of the special method from a commission representative before implementation.~~

(A) A mechanical plug set inside cemented casing within two hundred (200) feet above the uppermost completed zone with a ten (10) gallon cement plug placed on top of the mechanical plug.

(B) A cement plug from the top of to no less than two hundred fifty (250) feet above the uppermost completed zone.

(3) A mechanical plug between each completed zone unless the placement of the plug would require the removal of a permanent plugback and one (1) of the following:

(A) A mechanical plug set inside cemented casing within two hundred (200) feet above the uppermost completed zone with a ten (10) gallon cement plug placed on top of the mechanical plug.

(B) A cement plug from the top of to no less than two hundred fifty (250) feet above the uppermost completed zone.

(4) A dry hole that does not enter a commercially mineable coal resource may be filled with mud-laden fluid, well cuttings, pea gravel, or crushed rock from the bottom of the hole to fifty (50) feet below the deepest underground source of drinking water. The owner or operator shall place a cement plug from fifty (50) feet below the deepest underground source of drinking water to three (3) feet below the surface.

(5) If a well is flowing at the surface, however, the operator must place plugs under one (1) of the following:

(A) Subdivision (1).

(B) Subdivision (2) and (2)(A).

(C) Subdivision (3) and (3)(A).

(c) An owner or operator must place any top plug as a cement plug from fifty (50) feet below:

(1) the deeper of the lowest commercially mineable coal seam or underground source of drinking water to three (3) feet below ground elevation; or

(2) to no less than one hundred (100) feet above each commercially mineable coal seam, and a cement plug from fifty (50) feet below the deepest underground source of drinking water to three (3) feet below ground elevation.

Notwithstanding subdivision (1) and subdivision (2) *[subdivisions (1) and (2)]***, fallback of a top plug may be topped off by surface placement of cement slurry.**

(d) Uncemented casing from fifty (50) feet below the deeper of the lowest commercially mineable coal seam or underground source of drinking water to three (3) feet below ground elevation must be:

(1) removed;

(2) ripped; or

(3) cemented in place using a method approved by the division.

(e) Uncemented intervals must be filled with pea gravel, crushed rock, drilling mud, gel, or fresh water.

(f) An owner or operator must obtain prior approval from the division for the use of cement. Cement must meet American Petroleum Institute (API) specification 10(A) or American Society for Testing and Materials (ASTM) Specification C150 Standards for Portland cement. If a pozzalan cement mixture is used, the pozzalanic content by volume must not exceed fifty percent (50%).

(g) An owner or operator must obtain prior approval from the division for the use of a mechanical plug. The mechanical plug must meet API specification 11D1.

(h) An owner or operator must place any cement plug using one (1) of the following methods:

(1) Dump bailing on top of a mechanical plug.

(2) Pump and plug or displacement through tubing, coiled tubing, or drill pipe.

(3) For any well with two (2) or fewer completed zones and circulated casing, surface pumping or bullhead plugging from the uppermost completed zone to three (3) feet below ground elevation.

(i) To ensure the proper plugging of wells, the division may require one (1) or more of the following:

(1) Use of mechanical plugs in nonstatic wells (as defined in 312 IAC 16-1-44.6).

(2) Submission of cement and service company tickets.

(3) Removal of any unauthorized material placed in a hole before plugging.

(4) Sampling and testing of cement plugs.

(j) The division director may authorize the use of alternative plugging materials and methods to achieve any of the following:

(1) To protect human health or safety.

(2) To protect the environment.

(3) To prevent unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(4) To avoid unreasonable efforts to remove obstructions below the deepest underground source of drinking water.

An owner or operator must obtain prior approval from the division director before using an alternative material or method.

(k) Except as provided in subsection (l) or (m), an owner or operator must not plug a well unless a division representative is present to witness the plugging. If a well is plugged without a division representative present to witness the plugging, the owner or operator may be required by the division director to drill out and plug the well in the presence of a division representative.

(l) If an owner or operator and a division representative have scheduled the plugging of a well, but a division representative is not present at the scheduled time or place, the owner or operator may plug the well in the absence of a division representative only after making a reasonable attempt to have another division representative present to witness the plugging. If a division representative did not witness the plugging, the owner or operator may seek approval for the plugging from the division director under a Special Plugging Affidavit. To qualify for approval of a Special Plugging Affidavit, the owner or operator must do the following:

(1) Provide a confirmation number to establish that the plugging was scheduled with the division.

(2) Demonstrate that a reasonable attempt was made to have another division representative present to witness the plugging.

(3) Submit a cement ticket that identifies the well and shows the amount of cement delivered.

(4) Submit the completed Special Plugging Affidavit.

(m) If a well was plugged by a former owner or operator before the effective date of this section and a division representative was not present to witness the plugging, the owner or operator shall request the approval of a Special Plugging Affidavit from the division director. To qualify for a Special Plugging Affidavit under this subsection, the owner or operator must submit the following:

(1) A cement ticket that identifies the well and shows the amount of cement delivered.

(2) The completed Special Plugging Affidavit.

(n) The owner or operator must submit a report of each permanent plugback on a form approved by the division.

(o) A plugging and abandonment report must be signed by the following persons:

(1) The owner or operator or an authorized agent for the owner or operator.

(2) The person who supplied or prepared the cement.

(3) The division representative who witnessed the plugging.

(4) The division employee who reviewed the information contained in the report.

(p) Within six (6) months after plugging a well, the owner or operator must perform the following acts:

(1) Cut off and remove all casing from three (3) feet below ground elevation to the surface.

(2) Remove substructures.

(3) Clear the well site of refuse and equipment.

(4) Remove and properly dispose of waste fluids from the well site.

(5) Fill all excavations at the well site.

(6) Restore the well site as nearly as practicable to its condition before drilling.

(7) If necessary, initiate a cleanup at the well site under sections 24 through 29 of this rule.

(q) In addition to the requirements of subsection (p), the owner or operator must, within six (6) months after the plugging of the last well on the lease, perform the following acts:

(1) Remove and properly dispose of waste fluids.

(2) Remove the tank battery from the lease.

(3) Clear the lease of refuse and equipment.

(4) Fill all excavations.

(5) Restore the tank battery and excavation site as nearly as practicable to its condition before operation.

(6) If necessary, initiate a cleanup of the tank battery and excavation site under sections 24 through 29 of this rule.

(r) The owner of surface rights may, with the consent of the owner or operator, accept responsibility for either or both of the following, by so indicating on the division's well completion form:

(1) Equipment, fixtures, or excavations placed with respect to a well drilled for oil and gas purposes.

(2) A well plugged up to a zone containing fresh water.

If the owner of surface rights accepts responsibility under this

subsection, the owner or operator and its agents are released from responsibility for those items for which the owner of surface rights accepts responsibility. *(Natural Resources Commission; 312 IAC 16-5-19; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2344; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3882)*

LSA Document #03-251(F)
Notice of Intent Published: October 1, 2003; 27 IR 209
Proposed Rule Published: January 1, 2004; 27 IR 1206
Hearing Held: January 29, 2003
Approved by Attorney General: July 13, 2004
Approved by Governor: July 29, 2004
Filed with Secretary of State: August 6, 2004, 12:00 p.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference:
Notice received by Publisher August 10, 2004: American Society for Testing and Materials (ASTM) Specification C150 Standards for Portland Cement.
Second notice received by Publisher August 11, 2004: American Petroleum Institute (API) Specifications 10(A) and 11D1.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-316(F)

DIGEST

Adds 312 IAC 5-12.5, concerning the operation of watercraft and the boat excise tax, to authorize the operator of a sailboat to display excise tax decals on the mast or boom if they are not clearly visible, as otherwise required to be affixed under IC 6-6-11-24(2), while the boat is underway. Effective 30 days after filing with the secretary of state.

312 IAC 5-12.5

SECTION 1. 312 IAC 5-12.5 IS ADDED TO READ AS FOLLOWS:

Rule 12.5. Boat Excise Tax

312 IAC 5-12.5-1 Excise tax decals
Authority: IC 6-6-11-24
Affected: IC 6-6-11

Sec. 1. If both excise tax decals that are required by IC 6-6-11-24(2) would not be clearly visible when a sailboat is underway, the taxpayer may display the decals on the mast or boom if the decals are clearly visible in both directions. *(Natural Resources Commission; 312 IAC 5-12.5-1; filed Jul 22, 2004, 10:10 a.m.: 27 IR 3885)*

LSA Document #03-316(F)
Notice of Intent Published: January 1, 2004; 27 IR 1198
Proposed Rule Published: April 1, 2004; 27 IR 2315
Hearing Held: April 27, 2004
Approved by Attorney General: July 6, 2004
Approved by Governor: July 19, 2004
Filed with Secretary of State: July 22, 2004, 10:10 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-4(F)

DIGEST

Amends 312 IAC 6-4-3, 312 IAC 8-2-13, and 312 IAC 11-4-1 concerning the construction and maintenance of marinas along or within public waters to clarify that the operators of marinas must maintain functioning watercraft pumpout facilities and to authorize the department's division of law enforcement to exempt marinas that only service watercraft without marine sanitation devices or those with qualified agreements to have pumpout services provided by a nearby marina or similar facility. Effective 30 days after filing with the secretary of state.

312 IAC 6-4-3
312 IAC 8-2-13
312 IAC 11-4-1

SECTION 1. 312 IAC 6-4-3, AS READOPTED AT 27 IR 286, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 6-4-3 Sewage pumpout facilities for watercraft
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8
Affected: IC 14-29-1-8

Sec. 3. (a) ~~No~~ **Except as provided in subsection (c), a** person ~~shall~~ **must not** operate a marina unless the person **provides a pumpout that is in good working order and readily accessible to patrons of the marina and** secures and maintains one (1) of the following:

(1) A license under 327 IAC 3-2 for the construction and operation of a wastewater treatment facility or sanitary sewer.

(2) A license under 410 IAC 6-10 for the construction of a commercial on-site wastewater disposal facility.

(3) An alternative written approval for wastewater disposal from an authorized governmental agency.

(b) The department shall require compliance with subsection (a) as a condition for the issuance of a license under section 2 of this rule.

(c) A person may apply to the division of law enforcement for an exemption from this section. The exemption shall be

granted, for a period not to exceed five (5) years, where the person demonstrates either of the following:

(1) The marina is designed to serve exclusively watercraft that are neither required nor likely to be equipped with a marine sanitation device.

(2) The operator of the marina has entered a binding agreement with another marina or similar facility along the waterway to provide pumpout services where the other marina or similar facility:

(A) maintains a lawful pumpout as described in subsection (a);

(B) is in proximity to the marina seeking the exemption so patrons to be served at a pumpout, which would otherwise be required at the exempted marina, would not be significantly inconvenienced; and

(C) has sufficient pumpout capacity and accessibility to effectively serve the patrons of both parties to the agreement.

(Natural Resources Commission; 312 IAC 6-4-3; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3885)

SECTION 2. 312 IAC 8-2-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-13 Marinas and wastewater holding facilities for watercraft

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

Sec. 13. (a) As used in this section, "marina" means a structure that:

(1) services simultaneously at least five (5) watercraft; and

(2) provides, for a fee, one (1) or more of the following:

(A) Watercraft engine fuel.

(B) Docks.

(C) Watercraft repair.

(D) Watercraft sales or rental.

(b) ~~No~~ **Except as provided in subsection (d), a** person ~~shall~~ **must not** operate a marina unless the person **provides a pumpout that is in good working order and readily accessible to patrons of the marina and** secures and maintains one (1) of the following:

(1) A license under 327 IAC 3-2 for the construction and operation of a wastewater treatment facility or sanitary sewer.

(2) A license under 410 IAC 6-10 for the construction of a commercial on-site wastewater disposal facility.

(3) An alternative written approval for wastewater disposal from an authorized governmental agency.

(c) The requirements of subsection (b) shall be made a condition for a license issued by the department to construct a new marina or to modify an existing marina.

(d) A person may apply to the division of law enforcement for an exemption from subsection (b). The exemption shall be granted, for a period not to exceed five (5) years, where the person demonstrates either of the following:

(1) The marina is designed to serve exclusively watercraft that are neither required nor likely to be equipped with a marine sanitation device.

(2) The operator of the marina has entered a binding agreement with another marina or similar facility along the waterway to provide pumpout services where the other marina or similar facility:

(A) maintains a lawful pumpout as described in subsection (b);

(B) is in proximity to the marina seeking the exemption so patrons to be served at a pumpout, which would otherwise be required at the exempted marina, would not be significantly inconvenienced; and

(C) has sufficient pumpout capacity and accessibility to effectively serve the patrons of both parties to the agreement.

(Natural Resources Commission; 312 IAC 8-2-13; filed Oct 28, 1998, 3:32 p.m.: 22 IR 743, eff Jan 1, 1999; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3886)

SECTION 3. 312 IAC 11-4-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-1 Marinas

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 1. (a) A written license under IC 14-26-2 and this rule is required to place a marina within a public freshwater lake.

(b) ~~No~~ **Except as provided in subsection (d), a** person ~~shall~~ **must not** operate a marina unless the person **provides a pumpout that is in good working order and readily accessible to patrons of the marina and** secures and maintains one (1) of the following:

(1) A license under 327 IAC 3-2 for the construction and operation of a wastewater treatment facility or a sanitary sewer.

(2) A license under 410 IAC 6-10 for the construction of a commercial on-site wastewater disposal facility.

(3) An alternative written approval for wastewater disposal from an authorized governmental agency.

(c) The requirements of subsection (b) shall be made a condition for a license issued by the department to construct a new marina or to modify an existing marina.

(d) A person may apply to the division of law enforcement for an exemption from subsection (b). The exemption shall be granted, for a period not to exceed five (5) years, where the person demonstrates either of the following:

(1) The marina is designed to serve exclusively watercraft that are neither required nor likely to be equipped with a marine sanitation device.

(2) The operator of the marina has entered a binding agreement with another marina or similar facility along the lake to provide pumpout services where the other marina or similar facility:

(A) maintains a lawful pumpout as described in subsection (b);

(B) is in proximity to the marina seeking the exemption so patrons to be served at a pumpout, which would otherwise be required at the exempted marina, would not be significantly inconvenienced; and

(C) has sufficient pumpout capacity and accessibility to effectively serve the patrons of both parties to the agreement.

(Natural Resources Commission; 312 IAC 11-4-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3886)

LSA Document #04-4(F)
Notice of Intent Published: February 1, 2004; 27 IR 1615
Proposed Rule Published: April 1, 2004; 27 IR 2315
Hearing Held: April 26, 2004
Approved by Attorney General: July 6, 2004
Approved by Governor: July 19, 2004
Filed with Secretary of State: July 22, 2004, 10:05 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #03-67(F)

DIGEST

Adds 326 IAC 2-2.2 concerning clean unit designations in attainment areas, 326 IAC 2-2.3 concerning pollution control project exclusion procedural requirements in attainment areas, 326 IAC 2-2.4 concerning actuals plantwide applicability limitations in attainment areas, 326 IAC 2-2.6 concerning federal NSR requirements for sources subject to P.L.231-2003, SECTION 6, 326 IAC 2-3.2 concerning clean unit designations in nonattainment areas, 326 IAC 2-3.3 concerning pollution control project exclusion procedural requirements in nonattainment areas, and 326 IAC 2-3.4 concerning actuals plantwide applicability limitations in nonattainment areas. Amends 326 IAC 2-1.1-7 concerning permitting fees, 326 IAC 2-2-1 concerning definitions relating to Prevention of Significant Deterioration (PSD) requirements, 326 IAC 2-2-2 concerning applicability of PSD requirements, 326 IAC 2-2-3 concerning requirements for control technology review, 326 IAC 2-2-4 concerning requirements for an air quality analysis, 326 IAC 2-2-5 concerning requirements relating to an air quality impact, 326 IAC 2-2-6 concerning requirements for increment consumption, 326 IAC 2-2-7 concerning requirements for additional analysis, 326 IAC 2-2-8 concerning source obligations, 326 IAC 2-2-10 concerning source information, 326 IAC 2-3-1 concerning definitions relating to emission offsets, 326 IAC 2-3-2 concerning applicability of emission offsets, 326 IAC 2-3-3 concerning applicable requirements, 326 IAC 2-5.1-4 concerning transition procedures, 326 IAC 2-7-10.5 concerning source modifications relating to Part 70 permits, 326 IAC 2-7-11 concerning administrative permit amendments, and 326 IAC 2-7-12 concerning permit modifications. Repeals 326 IAC 2-2.5. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2003, Indiana Register (26 IR 2473).

Second Notice of Comment Period and Notice of First Hearing: September 1, 2003, Indiana Register (26 IR 3962).

Change in Notice of First Hearing: December 1, 2003, Indiana Register (27 IR 905).

Date of First Hearing: January 7, 2004.

Proposed Rule and Notice of Second Hearing: March 1, 2004, Indiana Register (27 IR 1966).

Third Comment Period: March 1, 2004, Indiana Register (27 IR 1967).

Date of Second Hearing: June 2, 2004.

326 IAC 2-1.1-7
326 IAC 2-2-1
326 IAC 2-2-2
326 IAC 2-2-3
326 IAC 2-2-4
326 IAC 2-2-5
326 IAC 2-2-6
326 IAC 2-2-7
326 IAC 2-2-8
326 IAC 2-2-10
326 IAC 2-2.2
326 IAC 2-2.3
326 IAC 2-2.4
326 IAC 2-2.5
326 IAC 2-2.6
326 IAC 2-3-1
326 IAC 2-3-2
326 IAC 2-3-3
326 IAC 2-3.2
326 IAC 2-3.3
326 IAC 2-3.4
326 IAC 2-5.1-4
326 IAC 2-7-10.5
326 IAC 2-7-11
326 IAC 2-7-12

SECTION 1. 326 IAC 2-1.1-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-1.1-7 Fees

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

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

fees are established as follows:

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

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

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

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

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

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

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

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

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

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

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

(D) Fees for control technology analyses for best available control technology (BACT) under 326 IAC 2-2-3, ~~or~~ lowest achievable emission rate (LAER) under 326 IAC 2-3-3, **or comparison of control technology to BACT or LAER for purposes of a clean unit designation as described in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2** shall be assessed as follows per emissions unit or group of identical emissions units for which a control technology analysis is required:

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

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

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

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

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

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

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

(F) Fees for establishing a plantwide applicability limitation (PAL) in a PAL permit shall be assessed as follows:

(i) A separate fee shall be assessed for each PAL pollutant.

(ii) The fee for each PAL pollutant shall be assessed at forty dollars ($40) per ton of the allowable emissions for that PAL pollutant.

(iii) The maximum combined fee for all PAL pollutants shall not exceed forty thousand dollars ($40,000).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-1.1-7; filed Nov 25, 1998, 12:13 p.m.: 22 IR 991; filed May 21, 2002, 10:20 a.m.: 25 IR 3057; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3887)*

SECTION 2. 326 IAC 2-2-1, AS AMENDED AT 27 IR 2216, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-1 Definitions

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

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

(b) "Actual emissions" means the actual rate of emissions of a **regulated NSR** pollutant from an emissions unit as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two (2) year~~ **consecutive twenty-four (24) month** period preceding the particular date and representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit ~~other than an electric utility steam generating unit described in subdivision (4), which~~ **that** has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source postchange operations.~~

(4) The term shall not apply for calculating a significant emissions increase under section 2(d) of this rule or for establishing a PAL under 326 IAC 2-2.4. Instead, subsections (e) and (rr) shall apply for those purposes.

(c) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area as defined in section 13 of this rule. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(1) times of visitor use of the federal Class I area; and

(2) the frequency and timing of natural conditions that reduce visibility.

(d) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless a source is subject to enforceable permit limits that restrict the operating rate or hours of operation, or both) and the most stringent of the:

(1) applicable standards as set forth in 40 CFR **Part** 60* and 40 CFR **Part** 61*;

(2) state implementation plan emissions limitation, including those with a future compliance date; or

(3) emissions rate specified as an enforceable permit condition, including those with a future compliance date.

(e) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

(1) For any existing electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation. The baseline actual emissions shall be determined in accordance with the following:

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(D) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clause (B).

(2) For an existing emissions unit other than an electric utility steam generating unit, "baseline actual emissions" means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the department for a permit required by this rule, except that the ten (10) year period shall not include any period earlier than November 15, 1990. The baseline actual emissions shall be determined in accordance with the following:

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had the major stationary source been required to comply with the limitations during the consecutive twenty-four (24) month period. However, if an emission limitation is part of a maximum achievable control technology standard that the U.S. EPA proposed or promulgated under 40 CFR Part 63*, the baseline actual emissions need only be adjusted if the department has applied the emissions reductions to an attainment demonstration or maintenance plan consistent with the requirements of 326 IAC 2-3-3(b)(14).

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clauses (B) and (C).

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero (0) and thereafter, for all other

purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated as follows:

(A) For an existing electric utility steam generating unit, in accordance with subdivision (1).

(B) For an existing emissions unit except an existing electric utility steam generating unit, in accordance with subdivision (2).

(C) For a new emissions unit, in accordance with subdivision (3).

~~(e)~~ **(f)** "Baseline area" means the following:

(1) Any intrastate area (and every part thereof) designated as attainment or unclassifiable in accordance with 326 IAC 1-4 in which the major stationary source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) microgram per cubic meter ($\mu g/m^3$) (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under 326 IAC 1-4 and Section 107(d)(1) (D) or 107(d)(1)(E) of the Clean Air Act (CAA) cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(A) establishes a minor source baseline date; or

(B) is subject to 40 CFR **Part** 52.21* and this rule and would be constructed in the same state as the state proposing the redesignation.

(3) Any baseline area established originally for the total suspended particulate (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that ~~such~~ **the** baseline area shall not remain in effect if U.S. EPA rescinds the corresponding minor source baseline date in accordance with 40 CFR **Part** 52.21(b)(14)(iv)*.

~~(f)~~ **(g)** "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. ~~The~~ **A** baseline concentration is determined for each pollutant for which a **minor source** baseline date is established and shall include the following:

(1) The actual emissions, **as defined in subsection (b),** representative of sources in existence on the applicable minor source baseline date except as provided in subdivision (3).

(2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(3) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase or increases:

(A) Actual emissions, **as defined in subsection (b),** from any major stationary source on which ~~the~~ construction commenced after the major source baseline date.

(B) ~~Actual emissions~~ Increases and decreases **of actual emissions, as defined in subsection (b),** at any stationary source occurring after the minor source baseline date.

~~(g)~~ **(h)** "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, the following:

(1) Installation of building supports and foundations.

(2) Laying underground pipework.

(3) Construction of permanent storage structures.

With respect to a change in method of operations, the term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

~~(h)~~ **(i)** "Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA, which~~ **that** would be emitted from any proposed major stationary source or major modification, that the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for ~~such~~ **the** source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of ~~such~~ **the** pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Part 60* and 40 CFR Part 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard not feasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirements for the application of best available control technology. ~~Such~~ **The** standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of ~~such~~ **the** design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

~~(i)~~ **(j)** "Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group, for example, ~~which~~ **that** have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office)*.

~~(j)~~ **(k)** "Clean coal technology" means any technology,

including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~(k)~~ **(l)** "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy–Clean Coal Technology", up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology or similar projects funded through appropriations for U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(m) "Clean unit" means an emissions unit that meets one (1) of the following criteria:

(1) An emissions unit that:

(A) has been issued a major NSR permit that requires compliance with BACT or LAER;

(B) is complying with the BACT or LAER requirements; and

(C) qualifies as a clean unit under 326 IAC 2-2.2-1.

(2) An emissions unit that has been designated by the department as a clean unit based on the criteria in 326 IAC 2-2.2-2.

(3) An emissions unit that has been designated as a clean unit by the U.S. EPA in accordance with 40 CFR Part 52.21(y)(3)(i) through 40 CFR Part 52.21(y)(3)(iv)*.

~~(l)~~ **(n)** "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(m)~~ **(o)** "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

~~(n)~~ **(p)** "Construction" means any physical change or change in the method of operation, including:

(1) fabrication;

(2) erection;

(3) installation;

(4) demolition; or

(5) modification;

of an emissions unit, that would result in a change in ~~actual~~ emissions.

(q) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule to complete the following:

(1) Sample emissions on a continuous basis.

(2) If applicable, condition emissions.

(3) Analyze emissions on a continuous basis.

(4) Provide a record of emissions on a continuous basis.

(r) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(s) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) record the average operational parameter value on a continuous basis.

~~(o)~~ **(t)** "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (a) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~(p)~~ **(u)** "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any **regulated NSR** pollutant. ~~regulated under the provisions of the CAA.~~ **For purposes of this rule, there are the following two (2) types of emissions units:**

(1) A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (1). A replacement unit is an existing emissions unit.

~~(q)~~ **(v)** "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over ~~such~~ **the** lands.

(w) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(1) those requirements developed pursuant to 40 CFR Part 60* and 40 CFR Part 61*;

(2) requirements within the state implementation plan; and

(3) any permit requirements established pursuant to 40 CFR Part 52.21* or under regulations approved pursuant to 40 CFR Part 51, Subpart I*, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

~~(r)~~ **(x)** "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~(s)~~ **(y)** "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of the stack of a source.

~~(t)~~ **(z)** "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

~~(u)~~ **(aa)** "Indian reservation" means any federally recognized reservation established by:

(1) treaty;

(2) agreement;

(3) executive order; or

(4) act of Congress.

~~(v)~~ **(bb)** "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(cc) "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on the most stringent emissions limitation of the following:

(1) Contained in the state implementation plan for the class or category of stationary source unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable.

(2) Achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

~~(w)~~ **(dd)** "Low terrain" means any area other than high terrain.

~~(x)~~ **(ee)** "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant ~~net~~ emissions increase ~~of any pollutant that is being regulated under the CAA.~~ **and a significant net emissions increase of a regulated NSR pollutant from the major stationary source.** The following shall apply:

(1) Any ~~net~~ **significant** emissions increase **from any emissions units or net emissions increase at a major stationary source** that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(C) Use of an alternative fuel by reason of an order under Section 125 of the CAA.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source that the source:

(i) was capable of accommodating before January 6, 1975, unless ~~such~~ **the** change would be prohibited under any enforceable permit condition that was established after January 6, 1975, pursuant to:

(AA) 40 CFR **Part** 52.21*;

(BB) this rule;

(CC) 326 IAC 2-3; or

(DD) minor new source review regulations approved pursuant to 40 CFR **Part** 51.160 through 40 CFR **Part** 51.166*; or

(ii) is approved to use under any permit issued under 40 CFR **Part** 52.21* or under this rule.

(F) An increase in the hours of operation or in the production rate unless ~~such~~ **the** change would be prohibited under any enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR **Part** 52.21* or under this rule or 326 IAC 2-3.

(G) Any change in ownership at a source.

(H) The addition, replacement, or use of a pollution control project ~~as defined in subsection (dd)~~ at an existing ~~electric steam generating~~ **emissions** unit ~~unless:~~

~~(i) the commissioner and U.S. EPA determine that such addition, replacement, or use renders the unit less environmentally beneficial; or~~

~~(ii) the commissioner determines that the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.~~

~~A pollution control project that is exempt under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8) or 326 IAC 2-7-10.5(f)(9).~~ **meeting the requirements of 326 IAC 2-2.3. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.**

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

(J) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(K) The reactivation of a very clean coal-fired electric utility steam generating unit.

(3) The term shall not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 326 IAC 2-2.4 for a PAL for that pollutant. Instead, the definition at 326 IAC 2-2.4-2(g) shall apply.

~~(y)~~ **(ff)** "Major source baseline date" means the following:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975.

(2) In the case of nitrogen dioxide, February 8, 1988.

~~(z)~~ **(gg)** "Major stationary source" means the following:

(1) Any of the following stationary sources of air pollutants that are located or proposed to be located in an attainment or unclassifiable area as designated in 326 IAC 1-4 and that emit or have the potential to emit one hundred (100) tons per year or more of any **regulated NSR** pollutant: ~~subject to regulation under the CAA:~~

(A) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.

(B) Coal cleaning plants (with thermal driers).

(C) Kraft pulp mills.

(D) Portland cement plants.

(E) Primary zinc smelters.

(F) Iron and steel mill plants.

(G) Primary aluminum ore reduction plants.

(H) Primary copper smelters.

(I) Municipal incinerators capable of charging more than fifty (50) tons of refuse per day.

(J) Hydrofluoric, sulfuric, and nitric acid plants.

(K) Petroleum refineries.

(L) Lime plants.

(M) Phosphate rock processing plants.

(N) Coke oven batteries.

(O) Sulfur recovery plants.

(P) Carbon black plants (furnace process).

(Q) Primary lead smelters.

(R) Fuel conversion plants.

(S) Sintering plants.

(T) Secondary metal production plants.

(U) Chemical process plants.

(V) Fossil fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.

(W) Taconite ore processing plants.

(X) Glass fiber processing plants.

(Y) Charcoal production plants.

(Z) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels.

(2) Any stationary source with the potential to emit two hundred fifty (250) tons per year or more of ~~any air~~ **a regulated NSR** pollutant. ~~subject to regulation under the CAA.~~

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

(A) Primary lead smelters.

(B) Secondary lead smelters.

(C) Primary copper smelters.

(D) Lead gasoline additive plants.

(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivisions (1) through (4) if the change would by itself qualify as a major stationary source under subdivisions (1) through (4).

(6) Notwithstanding subdivisions (1) through (5), a source or modification of a source shall not be considered a major stationary source if it would qualify under subdivisions (1) through (5) only if fugitive emissions, to the extent quantifiable, are considered in calculating potential to emit of the stationary source or modification and ~~such~~ **the** source does not belong to any of the categories listed in subdivision (1) or

any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the CAA (42 U.S.C. 7411 or 42 U.S.C. 7412).

(7) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

~~(aa)~~ **(hh)** "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or major modification subject to the requirements of this rule or to 40 CFR **Part** 52.21* submits a complete application under the relevant regulations, including the following:

(1) The trigger date is the following:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977.

(B) In the case of nitrogen dioxide, February 8, 1988.

(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under 326 IAC 1-4 for the pollutant on the date of its complete application under this rule; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(3) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the commissioner may rescind a minor source baseline date where it can be shown, to the satisfaction of the commissioner, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

~~(bb)~~ **(ii)** "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and air quality control laws and regulations that are part of the state implementation plan.

~~(cc)~~ **(jj)** "Net emissions increase", with ~~reference to a significant net emissions increase, means the tons per year amount by which the sum of the following exceeds zero (0):~~ **respect to any regulated NSR pollutant emitted by a major stationary source, means the following:**

(1) ~~Any~~ **The amount by which the sum of the following exceeds zero (0):**

(A) The increase in ~~actual~~ emissions from a particular physical change or change in the method of operation at a **stationary** source **as calculated under section 2(d) of this rule.**

~~(2)~~ **(B)** Any other increases and decreases in actual emissions at the **major stationary** source that are contemporaneous with the particular change and are otherwise creditable. ~~as follows:~~ **Baseline actual emissions for calculating increases and decreases under this clause shall be determined as provided in subsection (e), except that subsection (e)(1)(C) and (e)(2)(D) shall not apply.**

~~(A)~~ **(2)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between ~~the date~~ **the following:**

~~(i)~~ **(A) The date** five (5) years before construction ~~on~~ **of** the particular change commences. ~~and~~

~~(ii)~~ **(B) The date** that the increase from the particular change occurs.

~~(B)~~ **(3)** An increase or decrease in actual emissions is creditable only if:

(A) the department has not relied on the increase or decrease in **actual emissions in** issuing a permit ~~for~~ **to** the source under **40 CFR Part 52.21* or** this rule and the permit is in effect when the increase in actual emissions from the particular change occurs; **and**

(B) the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-2.2-1(h) and 326 IAC 2-2.2-2(j).

~~(C)~~ **(4)** An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. ~~With respect to particulate matter, only PM_{10} emissions shall be used to evaluate the net emissions increase for PM_{10}.~~

~~(D)~~ **(5)** An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

~~(E)~~ **(6)** A decrease in actual emissions is creditable only to the extent that:

~~(i)~~ **(A)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~(ii)~~ **(B)** it is enforceable **as a practical matter** at and after the time that actual construction on the particular change begins; ~~and~~

~~(iii)~~ **(C)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; **and**

(D) the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2. Once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit. However, any new emission reductions that were not relied upon in a PCP excluded under 326 IAC 2-2.3-1

or for a clean unit designation are creditable to the extent they meet the requirements in 326 IAC 2-2.3-1(g)(4) for the PCP and 326 IAC 2-2.2-1(h) and 326 IAC 2-2.2-2(j) for a clean unit.

~~(F)~~ **(7)** An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

(8) Subsection (b)(1) shall not apply for determining creditable increases and decreases.

(kk) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

~~(dd)~~ **(ll)** "Pollution control project" **or "PCP"** means ~~for purposes of this rule,~~ any activity, **set of work practices,** or project, **including pollution prevention** undertaken at an existing ~~electric utility steam generating unit for purposes of reducing~~ emissions ~~from such~~ unit ~~Such~~ **that reduces emissions of air pollutants from the unit. The qualifying** activities or projects ~~are limited to the following:~~ **can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects not listed in this subsection may qualify for a case-specific PCP exclusion under 326 IAC 2-2.3-1(c) and 326 IAC 2-2.3-1(f). The following projects are presumed to be environmentally beneficial under 326 IAC 2-2.3-1(c)(1):**

(1) ~~The installation of~~ Conventional or ~~innovative pollution control technology, including, but not limited to, the following:~~

~~(A)~~ advanced flue gas desulfurization **or**

~~(B)~~ sorbent injection for **control of** sulfur dioxide. ~~and nitrogen oxides controls.~~

~~(C) Electrostatic precipitators.~~

~~(2) An activity or project to accommodate switching to a fuel that is less polluting than the fuel in use prior to the activity or project, including, but not limited to, the following:~~

~~(A) Natural gas or coal reburning.~~

~~(B) The cofiring of natural gas and other fuels for the purpose of controlling emissions.~~

~~(3) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 42 U.S.C. 5903(d)*, or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000), for commercial demonstration of clean coal technology or similar projects funded through appropriations for U.S. EPA.~~

~~(4) A permanent clean coal technology demonstration project that constitutes a repowering project.~~

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.

(3) Flue gas recirculation, low-NO_x burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion engines, and oxidation/absorption catalyst for control of nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this rule, "hydrocarbon combustion flare" means either a flare:

(A) used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(B) that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than two hundred thirty (230) mg/dscm hydrogen sulfide.

(5) Activities or projects undertaken to accommodate switching or partially switching to an inherently less polluting fuel to be limited to the following fuel switches:

(A) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five-hundredths percent (0.05%) sulfur diesel.

(B) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal.

(C) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood.

(D) Switching from coal to No. 2 fuel oil with a five-tenths percent (0.5%) maximum sulfur content.

(E) Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths percent (1.2%) sulfur content.

(6) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting substance (ODS) to the use of a substance with a lower or zero (0) ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(A) The productive capacity of the equipment is not increased as a result of the activity or project.

(B) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. This determination shall be made using the following procedure:

(i) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B*.

(ii) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS.

(iii) Calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP.

(iv) If the value calculated in item (ii) is more than the value calculated in item (iii), then the projected use of the new substance is lower than the baseline usage of the replaced ODS, on an ODP-weighted basis.

(mm) "Pollution prevention" means the following:

(1) Any activity that eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal, through:

(A) process changes;

(B) product reformulation or redesign; or

(C) substitution of less polluting raw materials.

(2) The term does not include:

(A) recycling, except certain in-process recycling practices;

(B) energy recovery;

(C) treatment; or

(D) disposal.

~~(ee)~~ **(nn)** "Potential to emit" means the maximum capacity of a **stationary** source ~~or major modification~~ to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable **as a practical matter.** Secondary emissions do not count in determining the potential to emit of a **stationary** source.

(oo) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to, on a continuous basis:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) calculate and record the mass emissions rate, such as pounds per hour.

(pp) "Prevention of significant deterioration program" or "PSD program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the state implementation plan to implement the requirements of 40 CFR Part 51.166 or the program in 40 CFR Part 52.21. Any permit issued under the program is a major NSR permit.

(qq) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(rr) "Projected actual emissions" means the following:

(1) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any consecutive twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any consecutive twelve (12) month period of the ten (10) years following the date the unit resumes regular operation, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions under this subsection, before beginning actual construction, the owner or operator of the major stationary source:

(A) shall:

(i) consider all relevant information, including, but not limited to:

(AA) historical operational data;

(BB) the company's own representations;

(CC) the company's expected business activity and the company's highest projections of business activity;

(DD) the company's filings with the state or federal regulatory authorities; and

(EE) compliance plans under the approved state implementation plan;

(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project; and

(iii) exclude, in calculating any increase in emissions that result from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions under subsection (e) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(B) in lieu of using the method set out in clause (A), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection (nn).

~~(ff)~~ **(ss)** "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in

the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) has not been in operation for the two (2) year period prior to the enactment of the CAA Amendments of 1990, and the emissions from ~~such~~ **the** unit continue to be carried in the department's emissions inventory at the time of enactment;

(2) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five percent (85%) and a removal efficiency for particulates of no less than ninety-eight percent (98%);

(3) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(4) is otherwise in compliance with the requirements of the CAA.

(tt) "Reasonably available control technology" or "RACT" means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(1) the necessity of imposing the controls in order to attain and maintain a national ambient air quality standard;

(2) the social, environmental, and economic impact of the controls; and

(3) alternative means of providing for attainment and maintenance of the standard.

(uu) "Regulated NSR pollutant" means any of the following:

(1) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the pollutants identified by the U.S. EPA.

(2) Any pollutant that is subject to any standard promulgated under Section 111 of the CAA.

(3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the CAA.

(4) Any pollutant that otherwise is subject to regulation under the CAA, except that any or all hazardous air pollutants either listed in Section 112 of the CAA or added to the list pursuant to Section 112(b)(2) of the CAA, which have not been delisted pursuant to Section 112(b)(3) of the CAA, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the CAA.

(5) Notwithstanding subdivision (4), any pollutant listed in subsection (xx)(1)(A) through (xx)(1)(U).

~~(gg)~~ **(vv)** "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

(1) Atmospheric or pressurized fluidized bed combustion.

(2) Integrated gasification combined cycle.

(3) Magnetohydrodynamics.

(4) Direct and indirect coal-fired turbines.

(5) Integrated gasification fuel cells.

(6) As determined by U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

~~Repowering~~ **The term** shall also include any oil or gas-fired unit, or both, that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the CAA.

~~(hh) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions, the department shall do the following:~~

~~(1) Consider all relevant information, including, but not limited to, the following:~~

~~(A) Historical operational data.~~

~~(B) The company's own representations.~~

~~(C) Filings with Indiana or federal regulatory authorities.~~

~~(D) Compliance plans under Title IV of the CAA.~~

~~(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.~~

~~(ii)~~ **(ww)** "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. The term includes emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifi-

able, and impact the same general area as the source or modification that causes the secondary emissions. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from:

(1) the tailpipe of a motor vehicle;

(2) a train; or

(3) a vessel.

~~(jj)~~ **(xx)** "Significant" means the following:

(1) In reference to a net emissions increase or the potential of the source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(A) Carbon monoxide: one hundred (100) tons per year.

(B) Nitrogen oxides: forty (40) tons per year.

(C) Sulfur dioxide: forty (40) tons per year.

(D) Particulate matter: twenty-five (25) tons per year.

(E) PM_{10}: fifteen (15) tons per year.

(F) Ozone: forty (40) tons per year of volatile organic compounds.

(G) Lead: six-tenths (0.6) ton per year.

(H) Asbestos: seven one-thousandths (0.007) ton per year.

(I) Beryllium: four ten-thousandths (0.0004) ton per year.

(J) Mercury: one-tenth (0.1) ton per year.

(K) Vinyl chloride: one (1) ton per year.

(L) Fluorides: three (3) tons per year.

(M) Sulfuric acid mist: seven (7) tons per year.

(N) Hydrogen sulfide (H_2S): ten (10) tons per year.

(O) Total reduced sulfur (including H_2S): ten (10) tons per year.

(P) Reduced sulfur compounds (including H_2S): ten (10) tons per year.

(Q) Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): thirty-five ten-millionths (0.0000035) or 3.5×10^{-6} ton per year.

(R) Municipal waste combustor metals (measured as particulate matter): fifteen (15) tons per year.

(S) Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): forty (40) tons per year.

(T) Municipal solid waste landfills emissions (measured as nonmethane organic compounds): fifty (50) tons per year.

(U) Ozone-depleting substances (ODS): one hundred (100) tons per year.

(V) Any **regulated NSR** pollutant ~~subject to regulation under the CAA,~~ other than the pollutants listed in this subsection: ~~or under Section 112(b) of the CAA*:~~ any emission rate.

(2) Any emissions rate or any net emissions increase associated with a major stationary source or major modification that would be constructed within ten (10) kilometers of a Class I area and has an impact on ~~such~~ **the** area equal to or greater than one (1) microgram per cubic meter (24-hour average).

(yy) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant, as defined in subsection (xx), for that pollutant.

~~(kk)~~ **(zz)** "Stationary source" means any building, structure, facility, or installation that emits or may emit ~~any air~~ **a regulated NSR** pollutant. ~~subject to regulation under the CAA.~~ A stationary source does not include emissions resulting from an internal combustion engine used for transportation purposes or from a nonroad engine or nonroad vehicle.

~~(ll)~~ **(aaa)** "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that:

(1) is operated for a period of five (5) years or less; and

(2) complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2391; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3022; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2020; filed Nov 25, 1998, 12:13 p.m.: 22 IR 997; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Oct 23, 2000, 9:47 a.m.: 24 IR 668; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2412; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1557; filed Mar 9, 2004, 3:45 p.m.: 27 IR 2216; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3889)*

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

326 IAC 2-2-2 Applicability

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

Sec. 2. **(a) The requirements of sections 3 through 5, 7, 8, 10, 14, and 15 of this rule apply to the construction of any new major stationary source or the major modification of any existing major stationary source except as this rule otherwise provides.**

~~(a)~~ **(b)** The requirements of this rule ~~shall~~ apply to **the construction of** any **new** major stationary source or **any project at an existing** major ~~modification, as defined in section 1 of this rule, that is being constructed or will be constructed~~ **stationary source** in an area designated as ~~of the submittal date of a complete application in accordance with 326 IAC 2-5.1, as~~ attainment or unclassifiable in 326 IAC 1-4.

~~(b) The owner or operator of a~~ **(c) No new** major stationary source or major modification **to which the requirements of sections 3 through 5, 7, 8(a), 10, 14, and 15 apply** shall ~~not~~ begin actual construction ~~unless~~ **without a permit that states that the major stationary source or major modification will meet** the requirements ~~in~~ **of** sections 3 through ~~8,~~ **5, 7, 8(a),** 10, ~~and~~ 14, ~~through 16~~ **and 15** of this rule. ~~have been met and a permit has been issued under this rule.~~

(d) The requirements of this rule will be applied in accordance with the following:

(1) Except as otherwise provided in subsections (e) and (f), and consistent with the definition of major modification contained in section 1(ee) of this rule, a project is a major modification for a regulated NSR pollutant if it causes both a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) Prior to beginning actual construction, the procedure for calculating if a significant emissions increase will occur depends upon the type of emissions units being modified as provided in subdivisions (3) through (6). The procedure for calculating, before beginning actual construction, if a significant net emissions increase will occur at the major stationary source is contained in section 1(jj) of this rule. Regardless of any preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) For an actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) For an actual-to-potential applicability test for projects that only involve construction of new emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is considered to occur.

(6) For projects that involve a combination of emission units using the tests in subdivisions (3) through (5), a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions (3) through (5), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(e) For any major stationary source for which a PAL has been established for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 326 IAC 2-2.4.

(f) An owner or operator undertaking a PCP shall comply with the requirements under 326 IAC 2-2.3.

~~(c)~~ **(g)** Sources that are located in or proposed to be located in an area designated as nonattainment ~~pursuant to~~ **under** 326 IAC 1-4 for a pollutant shall be exempt from the requirements of this rule for that particular pollutant **and subject to 326 IAC 2-3.**

~~(d)~~ **(h)** A source or modification of a source that **is or** would be a nonprofit health or nonprofit educational institution shall be exempt from the requirements of sections 3, 4, and 7 of this rule.

~~(e) The requirements of sections 3, 4, 5, 7, 8, 10, 14, and 15 of this rule shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as otherwise provided in this rule.~~

~~(f)~~ **(i)** The requirements of sections 3 ~~4,~~ **through** 5, 7, 8, 10, 14, and 15 of this rule do not apply to a particular major stationary source or major modification if the source or modification is a portable stationary source that has previously received a permit under 326 IAC 2-5.1-3 or 326 IAC 2-7 and the permit contains conditions from 40 CFR Part 52.21* or this rule if:

(1) the source proposes to relocate and emissions of the source at the new location would be temporary;

(2) the emissions from the source would not exceed its allowable emissions;

(3) emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(4) ten (10) days' advance notice is given to the department prior to the relocation identifying the proposed new location and probable duration of the operation at the new location.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC*

2-2-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1098; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3899)

SECTION 4. 326 IAC 2-2-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-3 Control technology review; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-11; IC 13-15; IC 13-17

Sec. 3. Any owner or operator of a major stationary source or major modification shall comply with the following requirements:

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard and standard of performance under 40 CFR Part 60* and 40 CFR Part 61*.

(2) A new, major stationary source shall apply best available control technology for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA~~ for which the source has the potential to emit in significant amounts as defined in section 1 of this rule.

(3) A major modification shall apply best available control technology for each **regulated NSR** pollutant ~~subject to regulation under the provisions of the CAA~~ for which the modification would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase of the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time, which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At ~~such~~ **this** time, the owner or operator of the applicable source may be required to demonstrate the adequacy of any previous determination of best available control technology for that source.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2395; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2419; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1564; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3901)*

SECTION 5. 326 IAC 2-2-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-4 Air quality analysis; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) Any application for a permit under the provisions of this rule **or for a clean unit designation under 326 IAC 2-2.2-2** shall contain an analysis of ambient air quality in the area that the major stationary source, ~~or~~ major modification, **or clean unit** would affect for each of the following pollutants:

(1) For a source, each **regulated NSR** pollutant ~~regulated under the provisions of the CAA~~ that the source would have the potential to emit in a significant amount.

(2) For a modification, each **regulated NSR** pollutant ~~regulated under the provision of the CAA~~ for which the modification would result in a significant net emissions increase.

(3) For a clean unit designation, each regulated NSR pollutant emitted by the unit for which the owner or operator requests the department to designate the unit as a clean unit.

(b) Exemptions are as follows:

(1) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the source or the net emissions increase of that pollutant from the modification would:

(A) impact no Class I area and no area where an applicable increment is known to be violated; and

(B) be temporary.

(2) A source, ~~or~~ modification, **or clean unit designation** shall be exempt from the requirements of this section with respect to monitoring for a particular pollutant if **either of the following apply:**

(A) The emissions increase of the pollutant from a new source, ~~or~~ the net emissions increase of the pollutant from a modification, **or the allowable emission rate on which the clean unit designation is based,** would cause, in any area, air quality impacts less than:

(i) Carbon monoxide: 575 $\mu g/m^3$, 8-hour average.
(ii) Nitrogen dioxide: 14 $\mu g/m^3$, annual average.
(iii) PM_{10}: 10 $\mu g/m^3$, 24-hour average.
(iv) Sulfur dioxide: 13 $\mu g/m^3$, 24-hour average.
(v) Ozone: No de minimis air quality level is provided for ozone; however, any net increase of one hundred (100) tons per year or more of volatile organic compounds subject to PSD would be required to provide ozone ambient air quality data.
(vi) Lead: 0.1 $\mu g/m^3$, 3-month average.
(vii) Mercury: 0.25 $\mu g/m^3$, 24-hour average.
(viii) Beryllium: 0.001 $\mu g/m^3$, 24-hour average.
(ix) Fluorides: 0.25 $\mu g/m^3$, 24-hour average.

(x) Vinyl chloride: 15 µg/m^3, 24-hour average.
(xi) Total reduced sulfur: 10 mg/m^3, 1-hour average.
(xii) Hydrogen sulfide: 0.2 µg/m^3, 1-hour average.
(xiii) Reduced sulfur compounds: 10 µg/m^3, 1-hour average. ~~or~~

(B) The concentrations of the pollutant in the area ~~that~~ **affected by** the source, ~~or~~ modification, ~~would affect~~ **or clean unit designation** are less than the concentrations listed in clause (A) or the pollutant is not listed in clause (A).

(c) All monitoring required by this section shall be done in accordance with the following provisions:

(1) With respect to any pollutant for which no ambient air quality standard designated in 326 IAC 1-3 exists, the analysis shall contain such air quality monitoring data as the commissioner determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(2) With respect to any pollutant (other than nonmethane hydrocarbons) for which an ambient air quality standard as designated in 326 IAC 1-3 does exist, the analysis shall contain continuous air quality monitoring data gathered for the purpose of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(3) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year preceding receipt of the application, except that, if the commissioner determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

(4) The owner or operator of the proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV* may provide postapproval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

(5) The owner or operator of a major stationary source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the commissioner determines is necessary to determine the effect of the emissions ~~which~~ **that** the source or modification may have, or are having, on air quality in any area.

(6) The owner or operator of a major stationary source or major modification shall comply with the requirements of 40 CFR Part 58, Appendix B* during operation of monitoring stations for purposes of complying with this section.

(7) All air quality monitoring shall be done in accordance with state and federal monitoring procedures as set forth in the following references: May 1987 U.S. EPA, "Ambient Air Monitoring Guidelines for Prevention of Significant Deterioration" (EPA 45014-87-007)* and the May 1999, "Indiana Department of Environmental Management, Office of Air Management Quality Assurance Manual*".

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2396; filed Apr 13, 1988, 3:35 p.m.: 11 IR 3026; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1099; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2420; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1565; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3901)*

SECTION 6. 326 IAC 2-2-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-5 Air quality impact; requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 5. (a) The owner or operator of the proposed major stationary source or major modification shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of **any:**

(1) ~~any~~ ambient air quality standard, as designated in 326 IAC 1-3, in any air quality control region; or

(2) ~~any~~ applicable maximum allowable increase over the baseline concentration in any area **as described in section 6 of this rule.**

(b) The owner or operator that requests a clean unit designation under 326 IAC 2-2.2-2 shall demonstrate that the allowable emissions rate on which the clean unit designation is based will not cause or contribute to air pollution in violation of any:

(1) ambient air quality standard, as designated in 326 IAC 1-3, in any air quality control region; or

(2) applicable maximum allowable increase over the baseline concentration in any area.

~~(b)~~ **(c)** The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the new source or the net emissions increase of that pollutant from the modification would:

(1) impact no Class I area and no area where an applicable increment is known to be violated; and

(2) be temporary.

~~(c)~~ **(d)** The requirements of this section do not apply to a major stationary source or major modification with respect to total suspended particulate matter.

~~(d)~~ **(e)** Air quality impact analysis required by this section shall be conducted in accordance with the following provisions:

(1) Any estimates of ambient air concentrations used in the demonstration processes required by this section shall be based upon the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W (Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Guideline on Air Quality Models)*.

(2) Where an air quality impact model specified in the guidelines cited in subdivision (1) is inappropriate, a model may be modified or another model substituted provided that all applicable guidelines are satisfied.

(3) Modifications or substitution of any model may only be done in accordance with guideline documents and with written approval from U.S. EPA and shall be subject to public comment procedures set forth in 326 IAC 2-1.1-6.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2024; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1001; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1566; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3902)*

SECTION 7. 326 IAC 2-2-6, AS AMENDED AT 27 IR 2222, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-6 Increment consumption; requirements

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

Sec. 6. (a) Any demonstration under section 5 of this rule ~~should~~ **shall** demonstrate that increased emissions caused by the proposed major stationary source or major modification will not exceed eighty percent (80%) of the available maximum allowable increases (MAI) over the baseline concentrations for sulfur dioxide, particulate matter, and nitrogen dioxide indicated in subsection (b)(1). Available maximum allowable increases are determined by adjusting the MAI to include impacts from actual emissions:

(1) from any major stationary source or major modification on which construction commenced after the major source baseline date; and

(2) increases and decreases at any source occurring after the minor source baseline date.

On a case-by-case basis, a source may petition the commissioner to use in excess of this eighty percent (80%). The commissioner may authorize such use provided the source adequately demonstrates the need for the same.

(b) Increment consumption shall be in accordance with the following:

(1) The following allowable increments reflect the PSD increments for a Class II area (as defined in the CAA). Indiana has no Class I or Class III areas; however, should some areas of the state be classified as Class I or III, the PSD increments pursuant to 40 CFR Part 52.21* **to which it** must be adhered. ~~to.~~ New permits issued after January 1, 1995, shall use PM_{10} as the indicator for particulate matter. The allowable increments are as follows:

Maximum Allowable Increments

Pollutants	Allowable Increments (Micrograms per Cubic Meter, $\mu g/m^3$ Limits)
(A) Particulate matter:	
(PM_{10}):	
Annual arithmetic mean	17
24-hour maximum	30
(B) Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
(C) Nitrogen dioxide:	
Annual arithmetic mean	25

(2) For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

(3) When an applicant proposes to construct a major stationary source or major modification in an area designated as attainment or unclassified and the increments listed in subdivision (1) have been consumed, the increased emissions from the source or modification may be permitted to be offset by reducing emissions in the affected areas by an equal amount of the pollutant for which the area was designated as attainment or unclassified.

(4) The following pollutant concentrations shall be excluded when determining compliance with a maximum allowable increase:

(A) Concentrations attributable to the increase in emissions from sources that have converted from the use of petroleum products or natural gas, or both, by reason of an order in effect under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such an order.

(B) Concentrations attributable to the increase in emissions from sources that have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan.

(C) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources.

(D) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or

nitrogen oxides from stationary sources that are affected by state implementation plan revisions approved by U.S. EPA are excluded provided the following criteria is met:

(i) Such exclusion shall not exceed two (2) years in duration unless a longer time is approved by the commissioner and the U.S. EPA.

(ii) Such exclusion is not renewable.

(iii) Such exclusion shall allow no emissions increase that would impact a Class I area or an area where an applicable increment is known to be violated, or cause or contribute to a violation of an ambient air quality standard as designated in 326 IAC 1-3.

(iv) An emission limitation shall be in effect at the end of the time period specified in accordance with item (i) that will ensure that the emissions levels will not exceed those levels occurring from such source before the exclusion was granted.

(5) No exclusion of such a concentration under subdivision (4)(A) through (4)(B) shall apply more than five (5) years after the date the exclusion is granted under this rule. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the latter of such effective dates.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-2-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2398; filed Jun 14, 1989, 5:00 p.m.: 12 IR 2025; filed Oct 3, 1995, 3:00 p.m.: 19 IR 185; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2422; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1567; filed Mar 9, 2004, 3:45 p.m.: 27 IR 2222; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3903)*

SECTION 8. 326 IAC 2-2-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-7 Additional analysis; requirements

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

Sec. 7. (a) The owner or operator shall provide an analysis of the following:

(1) Impairment to visibility, soils, and vegetation that would occur as a result of the major stationary source, ~~or~~ major modification, **or clean unit designation** and general commercial, residential, industrial, and other growth associated with the source, ~~or~~ modification, **or clean unit.** The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source, ~~or~~ modification, **or clean unit designation.**

(b) The requirements of this section shall not apply to a major stationary source or major modification as defined in section 1 of this rule, with respect to a particular pollutant, if the allowable emissions of that pollutant from the source or the net emissions increase of the pollutant from the modification would:

(1) impact no Class I area and no area where an applicable increment is known to be violated; and

(2) be temporary.

(Air Pollution Control Board; 326 IAC 2-2-7; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2399; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1568; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3904)

SECTION 9. 326 IAC 2-2-8 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-2-8 Source obligation

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

Sec. 8. **(a)** The following shall apply to any owner or operator who proposes to construct, constructs, or operates a major stationary source or major modification subject to this rule:

(1) Approval to construct, ~~pursuant to~~ **under** section 2(b) of this rule, shall become invalid if construction is not commenced within eighteen (18) months after receipt of ~~such~~ **the** approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The commissioner may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

(2) Approval for construction shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state, or federal law.

(3) At ~~such~~ **the** time ~~as~~ a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(b) The following provisions apply to projects at an existing emissions unit at a major stationary source, other

than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in section 1(rr)(2)(A) of this rule for calculating projected actual emissions:

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project.

(B) Identification of any emissions unit whose emissions of a regulated NSR pollutant could be affected by the project.

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

(i) the baseline actual emissions;

(ii) the projected actual emissions;

(iii) the amount of emissions excluded under section 1(rr)(2)(A)(iii) of this rule; and

(iv) an explanation for why the amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall:

(A) monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision (1)(B); and

(B) calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity of or the potential to emit that regulated NSR pollutant at the emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within sixty (60) days after the end of each year during which records must be generated under subdivision (3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision (1) exceed the baseline actual emissions, as documented and maintained under subdivision (1)(C), by a significant amount, as defined in section 1(xx) of this rule, for that regulated NSR pollutant and if the emissions differ from the preconstruction projection as documented and maintained under subdivision (1)(C). The report shall be submitted to the department within sixty (60) days after the end of the year. The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source.

(B) The annual emissions as calculated under subdivision (3).

(C) The emissions calculated under the actual-to-projected actual test stated in section 2(d)(3) of this rule.

(D) Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection.

(c) The owner or operator of the source shall make the information required to be documented and maintained under subsection (b) available for review upon a request for inspection by the department. The general public may request this information from the department under 326 IAC 17.1. *(Air Pollution Control Board; 326 IAC 2-2-8; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2400; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2424; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3904)*

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

326 IAC 2-2-10 Source information

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

Sec. 10. The owner or operator of a proposed major stationary source, ~~or~~ major modification, **or an owner or operator that requests a clean unit designation** shall submit all information necessary to perform any analysis or make any determination required under this rule **or under the clean unit designation requirements** as follows:

(1) With respect to a source or modification to which this rule applies, such information shall include:

(A) a description of the nature, location, design capacity, and typical operating schedule of the major stationary source or major modification, including specifications and drawings showing its design and plant layout;

(B) a detailed schedule for construction of the major stationary source or major modification; and

(C) a detailed description as to what system of continuous emission reduction is planned for the major stationary source or major modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

(2) Upon request of the commissioner, the owner or operator shall also provide information on **the following:**

(A) The air quality impact of the major stationary source or major modification, including meteorological and topographical data necessary to estimate such impact. ~~and~~

(B) The air quality impact and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline date in the area that the major stationary source or major modification would affect.

(Air Pollution Control Board; 326 IAC 2-2-10; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Mar 23, 2001, 3:03 p.m.: 24 IR 2425; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3905)

SECTION 11. 326 IAC 2-2.2 IS ADDED TO READ AS FOLLOWS:

Rule 2.2. Clean Unit Designations in Attainment Areas

326 IAC 2-2.2-1 Clean unit designation for emission units subject to BACT or LAER

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

Sec. 1. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-2-2(d)(5) in place of provisions in 326 IAC 2-2-2(d)(3) and 326 IAC 2-2-2(d)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification according to this section. The provisions of this section apply to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) The following provisions apply to a clean unit:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subsection (d), and before the expiration date, as determined in accordance with subsection (e), will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (f)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (f)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-2-2(d)(1) through 326 IAC 2-2-2(d)(4) and 326 IAC 2-2-2(d)(6).

(c) An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in subdivisions (1) and (2). After the original clean unit expires in accordance with subsection (e) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 2 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new major NSR permit and meet all the criteria in subdivision (3). The clean unit designation applies individually for each pollutant emitted by the emissions unit. The criteria to qualify or requalify to use the clean unit applicability test are as follows:

(1) The emissions unit must have received a major NSR permit within the last ten (10) years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(2) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both the following requirements:

(A) The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten (10) years. However, the emissions unit is not eligible for the clean unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT or LAER, and the emissions unit must meet the requirements in subdivisions (1) and (2).

(d) The effective date of an emissions unit's clean unit designation is determined according to the following:

(1) For original clean unit designation and emissions units that requalify as clean units by implementing new control technology to meet current-day BACT, the effective date is the date the emissions unit's air pollution control technology is placed into service or three (3) years after the issuance date of the major NSR permit, whichever is earlier.

(2) For emissions units that requalify for the clean unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

(e) An emissions unit's clean unit designation expiration date is determined according to the following:

(1) For any emissions unit that automatically qualifies as a clean unit under subsection (c)(1) and (c)(2) or requalifies by implementing new control technology to meet current-day BACT under subsection (c)(3), the clean unit designation expires:

(A) ten (10) years after the effective date or the date the equipment went into service, whichever is earlier; or

(B) at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(2) For any emissions unit that requalifies as a clean unit under subsection (c)(3) using an existing control technology, the clean unit designation expires:

(A) ten (10) years after the effective date; or

(B) any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(f) After the effective date of the clean unit designation and in accordance with the provisions of 326 IAC 2-7-12, but no later than when the Part 70 permit is renewed, the Part 70 permit for the major stationary source must include the following terms and conditions related to the clean unit:

(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(2) The effective date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded in the Part 70 permit, the permit must describe the event that will determine the effective date. When the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded into the Part 70 permit, then the permit must describe the event that will determine the expiration date. When the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with BACT or LAER, and any physical or operational characteristic that formed the basis for the BACT or LAER determination, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation in accordance with subsection (g).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (g).

(g) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must be in compliance with the emission limitation and work practice requirements adopted in conjunction with the BACT or LAER that is recorded in the major NSR permit and subsequently reflected in the Part 70 permit. The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT or LAER determination as specified in subsection (f)(4).

(2) The clean unit must be in compliance with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(3) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(h) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the effective date of the clean unit designation; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

If the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(i) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area. *(Air Pollution Control Board; 326 IAC 2-2.2-1; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3906)*

326 IAC 2-2.2-2 Clean unit designations for emission units that have not previously received a major NSR permit

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

Sec. 2. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-2-2(d)(5) in place of provisions in 326 IAC 2-2-2(d)(3) and 326 IAC 2-2-2(d)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification according to this section. This section applies to emissions units that do not qualify as clean units under section 1 of this rule, but that are achieving a level of emissions control comparable to BACT, as determined by the department in accordance with this section. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) The following provisions apply to a clean unit designated under this section:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation as determined in accordance with subsection (e) and before the expiration date as determined in accordance with subsection (f) will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subsection (h)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subsection (h)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-2-2(d)(1) through 326 IAC 2-2-2(d)(4) and 326 IAC 2-2-2(d)(6).

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (2). After the original clean unit designation expires in accordance with subsection (f) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subdivision (3). The department shall make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit. The following provisions apply to qualify or requalify to use the clean unit applicability test:

(1) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both the following requirements:

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of subsection (d). However, the emissions unit is not eligible for a clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(2) In order to qualify as a clean unit, the department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new permit under subsections (g) and (h) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit must meet the requirements in subdivisions (1)(A) and (2).

(d) The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of subsection (c)(1) in accordance with the following:

(1) The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than BACT, as defined in 326 IAC 2-2-1(i), determined at the time of submission of the clean unit designation application to the department. The department shall also compare this presumption to any additional BACT determinations of which the department is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

(2) The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under subsection (g). The department shall consider the evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

(3) To qualify for a clean unit designation, the owner or operator of an emissions unit must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

(e) The effective date of an emissions unit's clean unit designation is the date that the approval under 326 IAC 2-7-10.5 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(f) For any emissions unit, the clean unit designation expires ten (10) years from the effective date of the clean unit designation as determined according to subsection (e). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (i).

(g) The department shall designate an emissions unit a clean unit only by issuing an approval under 326 IAC 2-7-10.5 that includes requirements for public notice of the proposed clean unit designation and opportunity for public comment. The approval must also meet the requirements in subsection (h).

(h) The approval under 326 IAC 2-7-10.5 must include the terms and conditions set forth in this subsection. The following terms and conditions must be incorporated into the major stationary source's Part 70 permit in accordance with the provisions of 326 IAC 2-7-12:

(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(2) The effective date of the clean unit designation. If this date is not known when the department issues the approval, then the approval must describe the event that will determine the effective date. When the effective date is known, then the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the department issues the approval, then the approval must describe the event that will determine the expiration date. When the expiration date is known, then the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT and any physical or operational characteristic that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation in accordance with subsection (i).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (i).

(i) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must comply with all emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.

(2) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT as specified in subsection (h)(4).

(3) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(4) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(j) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

If the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(k) If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if a clean unit's designation expires or is lost under section 1(c)(3) of this rule and subsection (b)(3), it must requalify under the requirements that are currently applicable. *(Air Pollution Control Board; 326 IAC 2-2.2-2; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3908)*

SECTION 12. 326 IAC 2-2.3 IS ADDED TO READ AS FOLLOWS:

Rule 2.3. Pollution Control Project Exclusion Procedural Requirements in Attainment Areas

326 IAC 2-2.3-1 Pollution control project exclusion procedural requirements

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

Sec. 1. (a) This section applies to an owner or operator that plans to construct or install a pollution control project (PCP). A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-2-1 apply to this section.

(b) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department if the project is listed in 326 IAC 2-2-1(ll), or, if the project is not listed in 326 IAC 2-2-1(ll), the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department under 326 IAC 2-7-10.5 consistent with the requirements in subsection (f). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection (c), and the notice or permit application must contain the information required in subsection (d).

(c) Any project that relies on the PCP exclusion must meet the following requirements:

(1) The environmental benefit from the emissions reductions of any regulated NSR pollutants must outweigh the environmental detriment of emissions increases in any regulated NSR pollutants. A statement that a technology listed in 326 IAC 2-2-1(ll) is being used shall be presumed to satisfy this requirement.

(2) The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) In the notice or permit application submitted to the department, the owner or operator must include, at a minimum, the following information:

(1) A description of the project.

(2) The potential emissions increases and decreases of any regulated NSR pollutant, the projected emissions increases and decreases using the methodology in 326 IAC 2-2-2(d) that will result from the project, and a copy of the environmentally beneficial analysis required by subsection (c)(1).

(3) A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods must be sufficient to meet the requirements in 326 IAC 2-7.

(4) A certification by the responsible official, as defined in 326 IAC 2-7-1(34), that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application, and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(5) Demonstration that the PCP will not have an adverse air quality impact as required by subsection (c)(2). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project. An air quality impact analysis required for any pollutant that will experience a significant emissions increase as a result of the project shall be performed in accordance with 326 IAC 2-2-4 and 326 IAC 2-2-5.

(e) For projects listed in 326 IAC 2-2-1(ll), the owner or operator may begin actual construction of the project immediately after notice is sent to the department unless otherwise prohibited under requirements of the state implementation plan. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

(f) Before an owner or operator may begin actual construction of a PCP that is not listed in 326 IAC 2-2-1(ll), the project must be approved by the department in an approval issued under 326 IAC 2-7-10.5. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a thirty (30) day period for the public and the U.S. EPA to submit comments. The department shall address all material comments received by the end of the comment period before taking final action on the approval.

(g) Upon installation of the PCP, the owner or operator must comply with the following requirements:

(1) The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application required by subsection (d), and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(2) The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision (1).

(3) The owner or operator must comply with any provisions in the approval issued under 326 IAC 2-7 related to use and approval of the PCP exclusion.

(4) Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if the reductions are surplus, quantifiable, and permanent.

(Air Pollution Control Board; 326 IAC 2-2.3-1; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3910)

SECTION 13. 326 IAC 2-2.4 IS ADDED TO READ AS FOLLOWS:

Rule 2.4. Actuals Plantwide Applicability Limitations in Attainment Areas

326 IAC 2-2.4-1 Applicability

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

Sec. 1. (a) This rule governs actuals plantwide applicability limitations (PAL). A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6.

(b) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in this rule.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, that meets the requirements in this rule, and that complies with the

PAL permit:

(1) is not a major modification for the PAL pollutant;

(2) does not have to be approved through 326 IAC 2-2; and

(3) is not subject to 326 IAC 2-2-8(a)(3).

(d) Except as provided under subsection (c)(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL. *(Air Pollution Control Board; 326 IAC 2-2.4-1; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3911)*

326 IAC 2-2.4-2 Definitions

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

Sec. 2. (a) The definitions in this section apply throughout this rule. A term that is not defined in this section shall have the meaning set forth in 326 IAC 2-2-1 or in the CAA.

(b) "Actuals PAL", for a major stationary source, means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(c) "Allowable emissions", for the purposes of this rule, means the following:

(1) The emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both, and the most stringent of the:

(A) applicable standards as set forth in 40 CFR Part 60* and 40 CFR Part 61*;

(B) state implementation plan emissions limitation, including those with a future compliance date; or

(C) emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(3) An emissions unit's potential to emit shall be determined using the definition in 326 IAC 2-2-1.

(d) "Major emissions unit" means any emissions unit that emits or has the potential to emit one hundred (100) tons per year or more of the PAL pollutant in an attainment area.

(e) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL under section 11 of this rule is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(f) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(g) "PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase in 326 IAC 2-2-1, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(h) "PAL permit" means the permit issued by the department that contains PAL provisions for a major stationary source.

(i) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(j) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(k) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level as defined in 326 IAC 2-2-1(xx) or in the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection (d).

(l) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant as defined in 326 IAC 2-2-1(xx) or in the CAA, whichever is lower.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2.4-2; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3912)*

326 IAC 2-2.4-3 Permit application requirements

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

Sec. 3. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall

submit the following information to the department for approval:

(1) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13(a) of this rule.

(Air Pollution Control Board; 326 IAC 2-2.4-3; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3912)

326 IAC 2-2.4-4 General requirements for establishing PALs

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

Sec. 4. (a) The department may establish a PAL at a major stationary source provided that, at a minimum, the following requirements are met:

(1) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL, a twelve (12) month average, rolled monthly. For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in section 5 of this rule.

(3) The PAL permit shall contain all the requirements of section 7 of this rule.

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one (1) regulated NSR pollutant.

(6) Each PAL shall have a PAL effective period of ten (10) years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, record keeping, and reporting requirements provided in sections 12 through 14 of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 326 IAC 2-3-3 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL. *(Air Pollution Control Board; 326 IAC 2-2.4-4; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3913)*

326 IAC 2-2.4-5 Public participation requirements for PALs

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

Sec. 5. PALs for existing major stationary sources shall be:

(1) established;

(2) renewed;

(3) increased;

(4) terminated; or

(5) revoked;

through 326 IAC 2-7-17. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment. The department must address all material comments before taking final action on the permit. *(Air Pollution Control Board; 326 IAC 2-2.4-5; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3913)*

326 IAC 2-2.4-6 Establishing a 10 year actuals PAL level

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

Sec. 6. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source plus an amount equal to the applicable significant level for the PAL pollutant under 326 IAC 2-2-1(xx) or under the CAA, whichever is lower.

(b) For establishing the actuals PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions in accordance with 326 IAC 2-2-1(e) for all existing emissions units. A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(c) Emissions associated with units that were permanently

shutdown after this twenty-four (24) month period must be subtracted from the PAL level.

(d) Emissions from units, except modifications to existing units, on which actual construction began after the twenty-four (24) month period must be added to the PAL level in an amount equal to the potential to emit of the units.

(e) The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the department is aware of prior to issuance of the PAL permit. *(Air Pollution Control Board; 326 IAC 2-2.4-6; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3913)*

326 IAC 2-2.4-7 Contents of the PAL permit

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

Sec. 7. The PAL permit must contain, at a minimum, the following information:

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL.

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with section 10 of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of section 9 of this rule.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total as required by section 13(a) of this rule.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with section 12 of this rule.

(8) A requirement to retain the records required under section 13 of this rule on site. The records may be retained in an electronic format.

(9) A requirement to submit the reports required under section 14 of this rule by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(Air Pollution Control Board; 326 IAC 2-2.4-7; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3914)

326 IAC 2-2.4-8 PAL effective period and reopening of the PAL permit

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

Sec. 8. (a) The department shall specify a PAL effective period of ten (10) years.

(b) For reopening of the PAL permit, the following requirements must be met:

(1) During the PAL effective period, the department shall reopen the PAL permit to:

(A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(B) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 326 IAC 2-3-3; or

(C) revise the PAL to reflect an increase in the PAL as provided under section 11 of this rule.

(2) The department has discretion to reopen the PAL permit to reduce the PAL as follows:

(A) To reflect newly applicable federal requirements with compliance dates after the PAL effective date.

(B) Consistent with any other requirement that is enforceable as a practical matter and that the state may impose on the major stationary source under the state implementation plan.

(C) If the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Except for the permit reopening in subdivision (1)(A) for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be conducted in accordance with the public participation requirements of section 5 of this rule.

(Air Pollution Control Board; 326 IAC 2-2.4-8; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3914)

326 IAC 2-2.4-9 Expiration of a PAL

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

Sec. 9. (a) Any PAL that is not renewed in accordance with the procedures in section 10 of this rule shall expire at the end of the PAL effective period, and the requirements in this section shall apply.

(b) Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(1) Within the time frame specified for PAL renewals in section 10(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if the distribution is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, the distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(c) Each emissions unit shall comply with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(d) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (b)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if the change meets the definition of major modification in 326 IAC 2-2-1(ee).

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under 326 IAC 2-2-8(a)(3), but were eliminated by the PAL in accordance with section 1(c)(3) of this rule. *(Air Pollution Control Board; 326 IAC 2-2.4-9; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3914)*

326 IAC 2-2.4-10 Renewal of a PAL

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

Sec. 10. (a) The department shall follow the procedures specified in section 5 of this rule in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of PAL expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

(1) The information required in section 3 of this rule.
(2) A proposed PAL level.
(3) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.
(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in subdivisions (1) and (2). However, in no case may any adjustment fail to comply with subdivision (3). The following provisions apply:

(1) If the emissions level calculated in accordance with section 6 of this rule is equal to or greater than eighty percent (80%) of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subdivision (2).
(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be appropriate considering:
(A) air quality needs;
(B) advances in control technology;
(C) anticipated economic growth in the area;
(D) desire to reward or encourage the source's voluntary emissions reductions; or
(E) other factors as specifically identified by the department.
(3) Notwithstanding subdivisions (1) and (2):
(A) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and
(B) the department shall not approve a renewed PAL level higher than the current PAL unless the major stationary source has complied with section 11 of this rule.

(e) If the compliance date for a state or federal require-

ment that applies to the PAL source occurs during the PAL effective period and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or Part 70 permit renewal, whichever occurs first. *(Air Pollution Control Board; 326 IAC 2-2.4-10; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3915)*

326 IAC 2-2.4-11 Increasing a PAL during the PAL effective period

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

Sec. 11. (a) The department may increase a PAL emission limitation during the PAL effective period only if the major stationary source complies with the following provisions:

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator shall obtain a major NSR permit for all emissions units identified in subdivision (1) regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the major NSR process even though they have also become subject to the PAL or continue to be subject to the PAL.

(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit must be revised to reflect the increased PAL level under the public notice requirements of section 5 of this rule. *(Air Pollution Control Board; 326 IAC 2-2.4-11; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3916)*

326 IAC 2-2.4-12 Monitoring requirements for PALs

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

Sec. 12. (a) The following general requirements apply:

(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determine plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subsection (b) and must be approved by the department.

(3) Notwithstanding subdivision (2), an alternative monitoring approach may be employed:

(A) that meets subdivision (1); and

(B) if it is approved by the department.

(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):

(1) Mass balance calculations for activities using coatings or solvents.

(2) CEMS.

(3) CPMS or PEMS.

(4) Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit if it cannot otherwise be accounted for in the process.

(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, the owner or operator must

use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B*.

(2) CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(2) The emissions unit shall operate within the designated range of use for the emission factor if applicable.

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance unless the department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(1) establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points; or

(2) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. The testing must occur at least once every five (5) years after issuance of the PAL.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2.4-12; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3916)*

326 IAC 2-2.4-13 Record keeping requirements

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

Sec. 13. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(1) A copy of the PAL permit application and any applications for revisions to the PAL.

(2) Each annual certification of compliance pursuant to 40 CFR Part 70* and the data relied on in certifying the compliance.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2.4-13; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3917)*

326 IAC 2-2.4-14 Reporting and notification requirements

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

Sec. 14. (a) The owner or operator shall submit semiannual monitoring reports and deviation reports to the department in accordance with 326 IAC 2-7. The reports shall meet the requirements of this section.

(b) A semiannual report shall be submitted to the department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) Total annual emissions in tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded under section 13(a) of this rule.

(3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period.

(5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero (0) and span calibration checks, and any corrective action taken.

(6) Information about monitoring system shutdowns including the following:

(A) Notification to the department of the shutdown of any monitoring system.

(B) Whether the shutdown was permanent or temporary.

(C) The reason for the shutdown.

(D) The anticipated date that the monitoring system will be fully operational or replaced with another monitoring system.

(E) Whether the emissions unit monitored by the monitoring system continued to operate.

(F) If the emissions unit monitored by the monitoring system continued to operate, the calculation of the:

(i) emissions of the pollutant; or

(ii) number determined by method included in the permit, as provided by section 12(g) of this rule.

(7) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The major stationary source owner or operator shall promptly submit reports to the department of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 326 IAC 2-7-5(3)(C)(ii) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 326 IAC 2-7-5(3)(C)(ii). The reports shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) The PAL requirement that experienced the deviation or that was exceeded.

(3) Emissions resulting from the deviation or the exceedance.

(4) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(d) The owner or operator shall submit to the department the results of any revalidation test or method within three (3) months after completion of the test or method. *(Air Pollution Control Board; 326 IAC 2-2.4-14; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3917)*

326 IAC 2-2.4-15 Termination and revocation of a PAL

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

Sec. 15. (a) This section applies to any PAL that is terminated or revoked prior to the PAL expiration date.

(b) A major stationary source owner or operator may at any time submit a written request to the department to terminate or revoke a PAL prior to the expiration or renewal of the PAL.

(c) Each emissions unit or each group of emissions units that existed under the PAL shall be in compliance with an allowable emission limitation under a revised permit established according to the following procedures:

(1) The major stationary source owner or operator may submit a proposed allowable emission limitation for each emissions unit or each group of emissions units by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate. The determination of distribution of the PAL allowable emissions may be based on the emissions limitations that were eliminated by the PAL in accordance with section 1(c)(3) of this rule.

(d) Each emissions unit shall be in compliance with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(e) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (c)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(f) The department shall follow the procedures specified in section 5 of this rule in terminating or revoking a PAL for a major stationary source and shall provide the proposed distributed allowable emission limitations to the public for review and comment. During such public review, any person may propose a PAL distribution of allowable emissions for the source for consideration by the department. *(Air Pollution Control Board; 326 IAC 2-2.4-15; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3918)*

SECTION 14. 326 IAC 2-2.6 IS ADDED TO READ AS FOLLOWS:

Rule 2.6. Federal NSR Requirements for Sources Subject to P.L.231-2003, SECTION 6, Endangered Industries

326 IAC 2-2.6-1 Applicability
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to any source that meets both of the following criteria:

(1) A source that belongs to industrial categories that function under the following Standard Industrial Classification (SIC) codes:

(A) Blast furnaces and steel mills (3312).
(B) Gray and ductile iron foundries (3321).
(C) Malleable iron foundries (3322).
(D) Steel investment foundries (3324).
(E) Steel foundries (3325).
(F) Aluminum foundries (3365).
(G) Copper foundries (3366).
(H) Nonferrous foundries (3369).

(2) A source belonging to an industry listed in subdivision (1) that experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002.

(Air Pollution Control Board; 326 IAC 2-2.6-1; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3919)

326 IAC 2-2.6-2 Procedure for obtaining a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. (a) Until July 1, 2005, the owner or operator of a source under this rule that plans to request a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation shall comply with the following applicable requirements except the substitutions in subsection (b):

(1) 326 IAC 2-2.
(2) 326 IAC 2-2.2.
(3) 326 IAC 2-2.3.
(4) 326 IAC 2-2.4.
(5) 326 IAC 2-3.
(6) 326 IAC 2-3.2.
(7) 326 IAC 2-3.3.
(8) 326 IAC 2-3.4.

(b) The following substitutions shall be made for provisions in the rules in subsection (a):

(1) For the clean unit potential to emit limit:

State rule provision	Substitute with federal rule provision
326 IAC 2-2.2-1(f)(4)	40 CFR Part 52.21(x)(6)(iv)*
326 IAC 2-2.2-1(g)(1)	40 CFR Part 52.21(x)(7)(i)*
326 IAC 2-2.2-2(h)(4)	40 CFR Part 52.21(y)(8)(iv)*
326 IAC 2-2.2-2(i)(2)	40 CFR Part 52.21(y)(9)(ii)*
326 IAC 2-3.2-1(f)(4)	40 CFR Part 51.165(c)(6)(iv)*
326 IAC 2-3.2-1(g)(1)(A)	40 CFR Part 51.165(c)(7)(i)(A)*
326 IAC 2-3.2-2(h)(4)	40 CFR Part 51.165(d)(8)(iv)*
326 IAC 2-3.2-2(i)(2)	40 CFR Part 51.165(d)(9)(ii)*

(2) For the clean unit retroactive designation and comparability analysis:

State rule provision	Substitute with federal rule provision
326 IAC 2-2.2-2(d)(1)	40 CFR Part 52.21(y)(4)(i)*
326 IAC 2-2.2-2(f)	40 CFR Part 52.21(y)(6)*
326 IAC 2-3.2-2(d)(1)	40 CFR Part 51.165(d)(4)(i)*
326 IAC 2-3.2-2(f)	40 CFR Part 51.165(d)(6)*

(c) The owner or operator of a source subject to this rule shall also comply with the federal provisions in 40 CFR Part 52.21(y)(4)(iii)(A) and 40 CFR Part 51.165(d)(4)(iii)(A).

(d) In addition to subsections (a) and (b), the source shall submit to the department evidence that the industry to which the source belongs, based on the Standard Industrial Classification listed in section 1(1) of this rule, experienced at least a ten percent (10%) job loss or a ten percent (10%) decline in production during calendar years 2001 and 2002.

(e) After July 1, 2005, the owner or operator of a source under this rule that plans to request a clean unit designation, approval of a pollution control project, or establishment of a plantwide applicability limitation shall comply with the following applicable requirements:

(1) 326 IAC 2-2.
(2) 326 IAC 2-2.2.
(3) 326 IAC 2-2.3.
(4) 326 IAC 2-2.4.

(5) 326 IAC 2-3.
(6) 326 IAC 2-3.2.
(7) 326 IAC 2-3.3.
(8) 326 IAC 2-3.4.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-2.6-2; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3919)*

SECTION 15. 326 IAC 2-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-1 Definitions
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

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

(b) "Actual emissions" means the actual rate of emissions of a **regulated NSR** pollutant from an emissions unit as determined in accordance with the following:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two (2) year~~ **consecutive twenty-four (24) month** period which precedes the particular date and which is representative of normal source operation. The commissioner shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The commissioner may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit ~~other than an electric utility steam generating unit specified in subdivision (4), which~~ **that** has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~(4) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations.~~

~~(5) When applying for a pollution control project exclusion under subsection (s)(2)(H) for a pollution control project at an existing emissions unit, actual emissions of the unit following the installation of the pollution control project shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department on an annual basis for a period of five (5) years from the date the emissions unit resumes regular operation, information demonstrating that the pollution control project and the physical or operational changes to the unit necessary to accommodate the project did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the department if the department determines such a period to be more representative of normal source post-change operations. This subdivision cannot be used to determine if the pollution control project results in a significant net emissions increase. This subdivision can only be used for an application submitted under the pollution control project exclusion to determine if the project results in a significant net increase in representative actual annual emissions.~~

(4) The term shall not apply for calculating a significant emissions increase under section 2(c) of this rule or for establishing a PAL under 326 IAC 2-3.4. Instead, subsections (d) and (mm) shall apply for those purposes.

(c) "Allowable emissions" means the emissions rate of a source calculated using the maximum rated capacity of the source unless a source is subject to ~~state or federally~~ enforceable permit limits ~~which~~ **that** restrict the operating rate or hours of operation, or both, and the most stringent of the following:

(1) The applicable standards as set forth in 40 CFR **Part** 60, New Source Performance Standards (NSPS)*, and 40 CFR **Part** 61~~*~~, National Emission Standards for Hazardous Air Pollutants (NESHAPS)*.

(2) The emissions limitation imposed by any rule in this title, including those with a future compliance date.

(3) The emissions rate specified as ~~a federally~~ **an** enforceable permit condition, including those with a future compliance date.

(d) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined as follows:

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The commis-

sioner may allow the use of a different time period upon a determination that it is more representative of normal source operation. The baseline actual emissions shall be determined in accordance with the following:

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period may be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(D) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clause (B).

(2) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the department for a permit required under 326 IAC 2-3, except that the ten (10) year period shall not include any period earlier than November 15, 1990. The baseline actual emissions shall be determined in accordance with the following:

(A) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions and to the extent they are affected by the project.

(B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period.

(C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had the major stationary source been required to comply with the limitations during the consecutive twenty-four (24) month period. However, if an emission limitation is part of a maximum achievable control technology standard that the U.S. EPA proposed or promulgated under 40 CFR Part 63*, the baseline actual emissions need only be adjusted if the state has applied the emissions reduction to an attainment demonstration or maintenance plan consistent with the requirements of section 3(b)(14) of this rule.

(D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated NSR pollutant.

(E) The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information available for determining annual emissions, in tons per year, and for adjusting this amount if required by clauses (B) and (C).

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero (0) and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision (1), for other existing emissions units in accordance with the procedures contained in subdivision (2), and for a new emissions unit in accordance with the procedures contained in subdivision (3).

~~(d)~~ **(e)** "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit ~~which~~ **that** are of a permanent nature. ~~Such~~ **These** activities include, but are not limited to, the following:

(1) Installation of building supports and foundations.

(2) Laying underground pipework.

(3) Construction of permanent storage structures.

With respect to a change in method of operations, ~~"begin actual construction"~~ **the term** refers to those on-site activities, other than preparatory activities, ~~which~~ **that** mark the initiation of the change.

~~(e)~~ **(f)** "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each **regulated NSR** pollutant ~~subject to regulation under the Clean Air Act which~~ **that** would be emitted from any proposed major stationary source or major modification ~~which~~ **that** the commissioner, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for ~~such~~ **the** source or modification through application of production processes or available methods, systems, and

techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of ~~such~~ **the** pollutant. In no event shall application of best available control technology result in emissions of any pollutant ~~which~~ **that** would exceed the emissions allowed by any applicable standard under 40 CFR **Part** 60* ~~and~~ **or** 40 CFR **Part** 61*. If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. ~~Such~~ **The** standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of ~~such~~ **the** design, equipment, work practice, or operation and shall provide for compliance by means ~~which~~ **that** achieve equivalent results.

~~(f)~~ **(g)** "Building, structure, facility, or installation" means all of the pollutant-emitting activities ~~which~~ **that** belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group, that is, those ~~which~~ **that** have the same first two (2) digit code, as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement, U.S. Government Printing Office*****.

~~(g)~~ **(h)** "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~(h)~~ **(i)** "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy–Clean Coal Technology", up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty percent (20%) of the total cost of the demonstration project.

(j) "Clean unit" means an emissions unit that meets one (1) of the following criteria:

(1) An emissions unit that:

(A) has been issued a major NSR permit that requires compliance with BACT or LAER;

(B) is complying with the BACT or LAER requirements; and

(C) qualifies as a clean unit under 326 IAC 2-3.2-1.

(2) An emissions unit that has been designated by the department as a clean unit based on the criteria in 326 IAC 2-3.2-2.

(3) An emissions unit that has been designated as a clean unit by the U.S. EPA in accordance with 40 CFR Part 52.21(y)(3)(i) through 40 CFR Part 52.21(y)(3)(iv)*.

~~(i)~~ **(k)** "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~(j)~~ **(l)** "Complete", in reference to an application for a permit, means that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the commissioner from requesting or accepting additional information.

~~(k)~~ **(m)** "Construction" means any physical change or change in the method of operation, including:

(1) fabrication;

(2) erection;

(3) installation;

(4) demolition; or

(5) modification;

of an emissions unit, ~~which~~ **that** would result in a change in actual emissions.

(n) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule to complete the following:

(1) Sample emissions on a continuous basis.

(2) If applicable, condition emissions.

(3) Analyze emissions on a continuous basis.

(4) Provide a record of emissions on a continuous basis.

(o) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(p) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this rule to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) record average operational parameter values on a continuous basis.

~~(l)~~ **(q)** "de minimis", in reference to an emissions increase of volatile organic compounds from a modification in a serious or severe ozone nonattainment area, means an increase that does not exceed twenty-five (25) tons per year when the net emissions increases from the proposed modification are aggregated on a pollutant specific basis with all other net emissions increases from the source over a five (5) consecutive calendar year period prior to, and including, the year of the modification.

~~(m)~~ **(r)** "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third (a) of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~(n)~~ **(s)** "Emissions unit" means any part of a stationary source ~~which~~ **that** emits or would have the potential to emit any **regulated NSR** pollutant. ~~regulated under the provisions of the Clean Air Act.~~ **For purposes of this rule, there are the following two (2) types of emissions units:**

(1) A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in subdivision (1). A replacement unit is an existing emissions unit.

(t) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over the lands.

(u) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(1) those requirements developed pursuant to 40 CFR Part 60* and 40 CFR Part 61*;

(2) requirements within the state implementation plan; and

(3) any permit requirements established pursuant to 40 CFR Part 52.21* or under regulations approved pursuant to 40 CFR Part 51, Subpart I*, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

~~(o)~~ **(v)** "Fugitive emissions" means those emissions ~~which~~ **that** could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~(p)~~ **(w)** "Incidental emissions reductions" means the reductions in emissions of a pollutant achieved as an indirect result of complying with another rule for another pollutant.

~~(q)~~ **(x)** "Internal offset" means to use net emissions decreases from within the source to compensate for an increase in emissions.

~~(r)~~ **(y)** "Lowest achievable emission rate" or "LAER" means, for any source, the more stringent rate of emissions based on the **most stringent emissions limitation of the** following:

(1) ~~The most stringent emissions limitation which is~~ Contained in the implementation plan of any state for ~~such~~ **the** class or category of stationary source unless the owner or operator of the proposed stationary source demonstrates that ~~such~~ **the** limitations are not achievable.

(2) ~~The most stringent emissions limitation which is~~ Achieved in practice by ~~such~~ **the** class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions unit within the stationary source. In no event shall the application of the lowest achievable emission rate ~~permit~~ **allow** a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

~~(s)~~ **(z)** "Major modification" means any physical change **in,** or change in the method of operation of, a major stationary source that would result in a significant ~~net~~ emissions increase **and a significant net emissions increase of a regulated NSR pollutant from the major stationary source** or, in an area ~~which~~ **that** is classified as either a serious or severe ozone nonattainment area, an increase in VOC emissions that is not de minimis. ~~of any pollutant which is being regulated under the Clean Air Act.~~ The following provisions apply:

(1) Any **significant emissions increase from any emissions units or** net emissions increase **at a major stationary source** that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include the following:

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and 2(b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan under the Federal Power Act.

(C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act.

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a source ~~which:~~ **that the source:**

(i) ~~the source~~ was capable of accommodating before December 21, 1976, unless ~~such~~ **the** change would be prohibited under any enforceable permit condition ~~which~~ **that** was established after December 21, 1976, under 40 CFR **Part** 52.21* or regulations approved under 40 CFR **Part** 51.160 through 40 CFR **Part** 51.165* or 40 CFR **Part** 51.166*; or

(ii) ~~the source~~ is approved to use under any permit issued under this rule.

(F) An increase in the hours of operation or in the production rate unless ~~such~~ **the** change would be prohibited under any enforceable permit condition ~~which~~ **that** was established after December 21, 1976, under 40 CFR **Part** 52.21* or regulations approved under 40 CFR **Part** 51.160 through 40 CFR **Part** 51.165* or 40 CFR **Part** 51.166*.

(G) Any change in ownership at a stationary source.

(H) The addition, replacement, or use of a pollution control project at an existing emissions unit ~~if the following conditions are met:~~ **meeting the requirements of 326 IAC 2-3.3. A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.**

~~(i) Upon review, the department does not determine that:~~

~~(AA) such addition, replacement, or use renders the unit less environmentally beneficial; or~~

~~(BB) the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the CAA, if any; and~~

~~(CC) the pollution control project would result in a significant net emissions increase that will cause or contribute to a violation of any national ambient air quality standard (NAAQS), PSD increment, or visibility limitation.~~

~~During review, the department may request that a source submit an analysis of the air quality impact of the net emissions increase of the pollution control project.~~

~~(ii) If a pollution control project would result in a significant net emissions increase in representative actual annual emissions of a pollutant for which an area is classified as nonattainment, or an emissions increase in VOC that is not de minimis in an area which is classified as either serious or severe ozone nonattainment, then those emissions shall be offset on a one-to-one (1:1) ratio, except that no offsets are required for the following:~~

~~(AA) A pollution control project for an electric utility steam generating unit.~~

~~(BB) A pollution control project that results in a significant net increase in representative actual annual emissions of any criteria pollutant for which the area is classified as nonattainment and current ambient monitoring data demonstrates that the air quality standard for that pollutant in the nonattainment area is not currently being violated.~~

~~(CC) A pollution control project for a NO_x budget unit, as defined in 326 IAC 10-4-2, that is being installed to control NO_x emissions for the purpose of complying with 326 IAC 10-4-2.~~

~~(iii) A pollution control project as described under this clause shall be considered a significant source modification under 326 IAC 2-7-10.5(f)(8).~~

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project provided that the project complies with:

(i) the state implementation plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(3) The term shall not apply to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 326 IAC 2-2.4 for a PAL for that pollutant. Instead, the definition at 326 IAC 2-2.4-2(g) shall apply.

~~(t)~~ **(aa)** "Major stationary source" means the following:

(1) Any stationary source of air pollutants, except for those subject to subdivision (2), ~~which~~ **that** emits or has the potential to emit one hundred (100) tons per year or more of any ~~air~~ **regulated NSR** pollutant. ~~subject to regulation under the Clean Air Act.~~

(2) For ozone nonattainment areas, ~~"major stationary source"~~ **the term** includes any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit volatile organic compounds that would equal or exceed any of the following rates:

Ozone Classification	Rate
Marginal	100 tons per year
Moderate	100 tons per year
Serious	50 tons per year
Severe	25 tons per year

(3) Any of the following stationary sources with potential emissions of five (5) tons per year or more of lead or lead compounds measured as elemental lead:

(A) Primary lead smelter.

(B) Secondary lead smelters.

(C) Primary copper smelters.

(D) Lead gasoline additive plants.

(E) Lead-acid storage battery manufacturing plants that produce two thousand (2,000) or more batteries per day.

(4) Any other stationary source with potential emissions of twenty-five (25) or more tons per year of lead or lead compounds measured as elemental lead.

(5) Any physical change occurring at a stationary source not qualifying under subdivision (1) if the change would by itself qualify as a major stationary source under subdivision (1).

~~(u)~~ **(bb)** "Necessary preconstruction approvals or permits" means those permits or approvals required under 326 IAC 2-2, 326 IAC 2-5.1, and 326 IAC 2-7.

~~(v)~~ **(cc)** "Net emissions decrease" means the amount by which the sum of the creditable emissions increases and decreases from any source modification project is less than zero (0).

~~(w)~~ **(dd)** "Net emissions increase", with ~~reference to a significant net emissions increase,~~ **respect to any regulated NSR pollutant emitted by a major stationary source,** means the **following:**

(1) The amount by which the sum of the ~~emission increases and decreases at a source~~ **following** exceeds zero (0):

(A) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated under section 2(c) and 2(d) of this rule.

(B) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this clause shall be determined as provided in subsection (d), except that subsection (d)(1)(C) and (d)(2)(D) shall not apply.

(2) For the purpose of determining de minimis in an area classified as serious or severe for ozone, the amount by which the sum of the emission increases and decreases from any source modification project exceeds zero (0).

(3) The following emissions increases and decreases are to be considered when determining net emissions increase:

~~(1)~~ **(A)** Any increase in actual emissions from a particular physical change or change in the method of operation.

~~(2)~~ **(B)** Any of the following increases and decreases in actual emissions that are contemporaneous with the particular change and are otherwise creditable:

~~(A)~~ **(i)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs after January 16, 1979, and between the following:

~~(i)~~ **(AA)** The date five (5) years before construction of the particular change commences.

~~(ii)~~ **(BB)** The date that the increase from the particular change occurs.

~~(B)~~ **(ii)** An increase or decrease in actual emissions is creditable only if the commissioner has not relied on the increase or decrease in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the increase or decrease in emissions did not occur at a clean unit except as provided in 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j).

~~(C)~~ **(iv)** An increase in actual emissions is creditable only to the extent that a new level of actual emissions exceeds the old level.

~~(D)~~ **(v)** A decrease in actual emissions is creditable only to the extent that:

~~(i)~~ **(AA)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~(ii)~~ **(BB)** it is ~~federally~~ enforceable **as a practical matter** at and after the time that actual construction on the particular change begins;

~~(iii)~~ **(CC)** the commissioner has not relied on it in issuing any permit under regulations approved under ~~40 CFR 51.160 through 40 CFR 51.165*~~ **40 CFR Part 51, Subpart I*** or the state has not relied on it in demonstrating attainment or reasonable further progress; ~~and~~

~~(iv)~~ **(DD)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; **and**

(EE) the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2. Once an emissions unit has been designated as a clean unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit. However, any new emissions reductions that were not relied upon in a PCP excluded under 326 IAC 2-3.3-1 or for a clean unit designation are creditable to the extent they meet the requirements in 326 IAC 2-3.3-1(g)(4) for the PCP and 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j) for a clean unit.

~~(E)~~ **(vi)** An increase that results from the physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period not to exceed one hundred eighty (180) days.

(vii) Subsection (b)(1) shall not apply for determining creditable increases and decreases or after a particular change or change in method of operation.

~~(x)~~ **(ee)** "New", in reference to a major stationary source, a modified major stationary source, or a major modification, means one ~~which~~ **that** commences construction after the effective date of this rule.

(ff) "Nonattainment major new source review program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the state implementation plan to implement the federal requirements of 40 CFR Part 51.165*, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI*. Any permit issued under the program is a major NSR permit.

~~(y)~~ **(gg)** "Pollution control project" **or "PCP"** means any activity, **set of work practices,** or project, **including pollution prevention,** undertaken at an existing emissions unit ~~for purposes of reducing~~ **that reduces** emissions **of air pollutants** from ~~such~~ **the** unit. ~~Such~~ **The qualifying** activities or projects ~~do not~~ **can** include the replacement **or upgrade** of an existing emissions ~~unit~~ **control technology** with a ~~newer or different~~ **more effective** unit. ~~or the reconstruction of an existing emissions unit. Such activities or projects are limited to any of~~ **Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects not listed in this subsection may qualify for a case-specific PCP exclusion under 326 IAC 2-3.3-1(c) and 326 IAC 2-3.3-1(f).** The following **projects are presumed to be environmentally beneficial under 326 IAC 2-3.3-1(c)(1):**

(1) ~~The installation of~~ Conventional ~~and~~ **or** advanced flue gas desulfurization ~~and~~ **or** sorbent injection for **control of** sulfur dioxide.

(2) Electrostatic precipitators, baghouses, high efficiency multiclones, ~~and~~ **or** scrubbers for **control of** particulate **matter** or other pollutants.

(3) Flue gas recirculation, low-NO_x burners **or combustors,** selective noncatalytic reduction, ~~and~~ selective catalytic reduction, **low emission combustion for internal combustion engines, and oxidation/absorption catalyst** for **control of** nitrogen oxides.

(4) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, **hydrocarbon combustion** flares, **biofiltration, absorbers** and ~~carbon~~ adsorbers, **and floating roofs for storage vessels** for **control of** volatile organic compounds ~~and~~ **or** hazardous air pollutants. **For the purpose of this rule, "hydrocarbon combustion flare" means either a flare:**

(A) used to comply with an applicable NSPS or MACT standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(B) that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than two hundred thirty (230) mg/dscm hydrogen sulfide.

(5) ~~An activity or project~~ **Activities or projects undertaken** to accommodate switching, **or partially switching,** to ~~a~~ **an inherently less polluting** fuel, ~~which is less polluting than the fuel in use prior to the activity or project, including, but not~~ **to be** limited to ~~natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions and including any activity that is necessary to accommodate switching to an inherently less polluting~~ **the following** fuel **switches:**

(A) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five-hundredths percent (0.05%) sulfur diesel.

(B) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal.

(C) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood.

(D) Switching from coal to No. 2 fuel oil with a five-tenths percent (0.5%) maximum sulfur content.

(E) Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths percent (1.2%) sulfur content.

~~(6) A permanent clean coal technology demonstration project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 (Sec. 5903(d) of Title 42 of the United States Code), or subsequent appropriations, up to a total amount of two billion five hundred million dollars ($2,500,000,000) for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA.~~

~~(7) A permanent clean coal technology demonstration project that constitutes a repowering project.~~

~~(8) Pollution prevention projects which the department has determined through a significant source modification to be environmentally beneficial. Pollution prevention projects that may result in an unacceptable increased risk from the release of hazardous air pollutants or that may result in an increase in utilization are not environmentally beneficial.~~

~~(9) Installation of a technology, for the purposes of this subsection, which is not listed in subdivisions (1) through (8) but is determined to be environmentally beneficial by the department through a significant source modification.~~

(6) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting substance (ODS) to the use of a substance with a lower or zero (0) ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

(A) The productive capacity of the equipment is not increased as a result of the activity or project.

(B) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. This determination shall be made using the following procedure:

(i) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B*.

(ii) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS.

(iii) Calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP.

(iv) If the value calculated in item (ii) is more than the value calculated in item (iii), then the projected use of the new substance is lower than the baseline usage of the replaced ODS, on an ODP-weighted basis.

(hh) "Pollution prevention" means the following:

(1) Any activity that eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal through:

(A) process changes;

(B) product reformulation or redesign; or

(C) substitution of less polluting raw materials.

(2) The term does not include:

(A) recycling, except certain in-process recycling practices;

(B) energy recovery;

(C) treatment; or

(D) disposal.

~~(z)~~ **(ii)** "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is ~~federally~~ enforceable **as a practical matter.** Secondary emissions do not count in determining the potential to emit of a stationary source.

(jj) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to:

(1) monitor:

(A) process and control device operational parameters; and

(B) other information, such as gas flow rate, O_2 or CO_2 concentrations; and

(2) calculate and record the mass emissions rate on a continuous basis.

(kk) "Prevention of significant deterioration permit" or "PSD permit" means any permit that is issued under 326 IAC 2-2 or under the program in 40 CFR Part 52.21*.

(ll) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(mm) "Projected actual emissions" means the following:

(1) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any consecutive twelve (12) month period of the five (5) years following the date the unit resumes regular operation after the project, or in any consecutive twelve (12) month period of the ten (10) years following the date the unit resumes regular operation, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(A) shall:

(i) consider all relevant information, including, but not limited to:

(AA) historical operational data;

(BB) the company's own representations;

(CC) the company's expected business activity and the company's highest projections of business activity;

(DD) the company's filings with the state or federal regulatory authorities; and

(EE) compliance plans under the approved plan;

(ii) include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions to the extent they are affected by the project; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions under subsection (d) and that is also unrelated to the particular project, including any increased utilization due to product demand growth; or

(B) in lieu of using the method set out in clause (A), may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection (ii).

~~(aa)~~ **(nn)** "Reasonable further progress" or "RFP" means the annual incremental reductions in emissions of a pollutant ~~which~~ **that** are sufficient in the judgment of the board to provide reasonable progress towards attainment of the applicable ambient air quality standards established by 326 IAC 1-3 by the dates set forth in the Clean Air Act.

~~(bb) "Repowering" means replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:~~

~~(1) Atmospheric or pressurized fluidized bed combustion.~~
~~(2) Integrated gasification combined cycle.~~
~~(3) Magnetohydrodynamics.~~
~~(4) Direct and indirect coal-fired turbines.~~
~~(5) Integrated gasification fuel cells.~~
~~(6) As determined by the U.S. EPA, in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.~~
~~Repowering shall also include any oil or gas-fired unit, or both, which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy. The U.S. EPA shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under Section 409 of the Clean Air Act.~~

~~(cc) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit, (or a different consecutive two (2) year period within ten (10) years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the department shall do the following:~~
~~(1) Consider all relevant information, including, but not limited to, the following:~~
~~(A) Historical operational data.~~
~~(B) The company's own representations.~~
~~(C) Filings with Indiana or federal regulatory authorities.~~
~~(D) Compliance plans under Title IV of the CAA.~~
~~(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.~~

(oo) "Regulated NSR pollutant" means the following:
(1) Nitrogen oxides or any volatile organic compounds.
(2) Any pollutant for which a national ambient air quality standard has been promulgated.
(3) Any pollutant that is a constituent or precursor of a general pollutant listed under subdivision (1) or (2) provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

~~(dd)~~ **(pp)** "Secondary emission" means emissions ~~which~~ **that** would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification ~~which~~ **that** causes the secondary emissions. Secondary emissions may include, but are not limited to, **emissions from:**

(1) ~~emissions from the~~ ships or trains coming to or from the new or modified stationary source; and

(2) ~~emissions from~~ an off-site support facility ~~which~~ **that** would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

~~(ee)~~ **(qq)** "Significant", in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, means a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM_{10}	15 tpy
Ozone (marginal and moderate areas)	40 tpy of volatile organic compound (VOC)
Lead	0.6 tpy

(rr) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant as defined in subsection (qq) for that pollutant.

~~(ff)~~ **(ss)** "Source modification project" means all those physical changes or changes in the methods of operation at a source ~~which~~ **that** are necessary to achieve a specific operational change.

~~(gg)~~ **(tt)** "Stationary source" means any building, structure, facility, or installation, including a stationary internal combustion engine, ~~which~~ **that** emits or may emit ~~any air~~ **a regulated NSR** pollutant. ~~subject to regulation under the Clean Air Act.~~

~~(hh)~~ **(uu)** "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

*These documents are incorporated by reference. ~~and~~ Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 ~~and~~ **or** are available for **review and** copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana

Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2401; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1106; filed Nov 12, 1993, 4:00 p.m.: 17 IR 725; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1002; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; filed Aug 17, 2001, 3:45 p.m.: 25 IR 6; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1183; errata filed Dec 12, 2002, 3:30 p.m.: 26 IR 1565; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3920)*

SECTION 16. 326 IAC 2-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-2 Applicability

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

Sec. 2. (a) This rule applies to new ~~and modified~~ major stationary sources or major modifications constructed in an area designated, ~~in 326 IAC 1-4~~ **as of the date of submittal of a complete application,** as nonattainment ~~as of the date of submittal of a complete application,~~ **in 326 IAC 1-4,** for a pollutant for which the stationary source or modification is major.

(b) This rule applies to modifications of major stationary sources of volatile organic compounds (VOC) in serious and severe ozone nonattainment areas as follows:

(1) A modification of a major stationary source with a de minimis increase in emissions shall be exempt from section 3 of this rule.

(2) A modification having an increase in emissions that is not de minimis to an existing major stationary source that does not have the potential to emit one hundred (100) tons or more of volatile organic compounds (VOC) per year will not be subject to section 3(a) of this rule if the owner or operator of the source elects to internal offset the increase by a ratio of one and three-tenths (1.3) to one (1). If the owner or operator does not make ~~such an~~ **the** election or is unable to, section 3(a) of this rule applies, except that ~~best available control technology~~ BACT shall be substituted for ~~lowest achievable emission rate~~ LAER required by section 3(a)(2) of this rule.

(3) A modification having an increase in emissions that is not de minimis to an existing major stationary source emitting or having the potential to emit one hundred (100) tons of volatile organic compounds (VOC) or more per year will be subject to the requirements of section 3(a) of this rule, except that the owner or operator may elect to internal offset the increase at a ratio of one and three-tenths (1.3) to one (1) as a substitute for ~~lowest achievable emission rate~~ LAER required by section 3(a)(2) of this rule.

(c) The requirements of this rule will be applied in accordance with the following:

(1) Except as otherwise provided in subsections (k) and (l) and consistent with the definition of major modification in section 1(z) of this rule, a project is a major modification for a regulated NSR pollutant if it causes a significant emissions increase and a significant net emissions increase except for VOC emissions in a severe or serious nonattainment area for ozone. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) Prior to beginning actual construction, the procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being modified, in accordance with this subsection, except for VOC emissions in a severe or serious nonattainment area for ozone. The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source is contained in section 1(dd) of this rule. Regardless of any preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) For an actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) For an actual-to-potential applicability test for projects that only involve construction of new emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is considered to occur.

(6) For projects that involve a combination of emission units using the tests in subdivisions (3) through (5), a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions (3) through (5), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

~~(c)~~ **(d)** At ~~such~~ **the** time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any ~~federally~~ enforceable limitation ~~which~~ **that** was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a

pollutant, such as a restriction on hours of operation, then this rule applies to the source or modification as though construction had not yet commenced on the source or modification.

~~(d)~~ **(e)** In the case of an area ~~which~~ **that** has been redesignated nonattainment, any source ~~which~~ **that** would not have been required to submit a permit application under 326 IAC 2-2 concerning the prevention of significant deterioration will not be subject to this rule if construction commences within eighteen (18) months of the area's redesignation.

~~(e)~~ **(f)** Major stationary sources or major modifications ~~which~~ **that** would locate in any area designated as attainment or unclassifiable in the state ~~of Indiana~~ and would exceed the following significant impact levels at any locality, for any pollutant ~~which~~ **that** is designated as nonattainment, must meet the requirements specified in section 3(a)(1) through 3(a)(3) of this rule. All values are expressed in micrograms per cubic meter ($\mu g/m^3$):

Pollutant	Annual	24-hour	8-hour	3-hour	1-hour
Sulfur dioxide	1	5	X	25	X
Total suspended particulates	1	5	X	X	X
PM_{10}	1	5	X	X	X
Nitrous oxides	1	X	X	X	X
Carbon monoxide	X	X	500	X	2,000

~~(f)~~ **(g)** This rule does not apply to a source or modification, other than a source of volatile organic compounds in a serious or severe ozone nonattainment area or a source of PM_{10} in a serious PM_{10} area, that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants (with thermal driers).
(2) Kraft pulp mills.
(3) Portland cement plants.
(4) Primary zinc smelters.
(5) Iron and steel mill plants.
(6) Primary aluminum ore reduction plants.
(7) Primary copper smelters.
(8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day.
(9) Hydrofluoric, sulfuric, and nitric acid plants.
(10) Petroleum refineries.
(11) Lime plants.
(12) Phosphate rock processing plants.
(13) Coke oven batteries.
(14) Sulfur recovery plants.
(15) Carbon black plants (furnace process).
(16) Primary lead smelters.
(17) Fuel conversion plants.
(18) Sintering plants.
(19) Secondary metal production plants.
(20) Chemical process plants.
(21) Fossil-fuel boilers (or combinations thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(22) Petroleum storage and transfer unit with a storage capacity exceeding three hundred thousand (300,000) barrels.
(23) Taconite ore processing plants.
(24) Glass fiber processing plants.
(25) Charcoal production plants.
(26) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input.
(27) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

~~(g)~~ **(h)** For purposes of this rule, secondary emissions from a source need not be considered in determining whether the source would qualify as a major source. ~~However,~~ If a source is subject to this rule on the basis of the direct emissions from the source, the applicable conditions must also be met for secondary emissions. ~~However, such~~ **The** secondary emissions may be exempt from the requirements specified in section 3(a)(2) through 3(a)(3) of this rule.

~~(h)~~ **(i)** Hazardous air pollutants listed in and regulated by 326 IAC 14-1 are not exempt from this rule.

~~(i)~~ **(j)** The installation, operation, cessation, or removal of temporary clean coal technology demonstration projects funded under the Department of Energy–Clean Coal Technology Appropriations may be exempt from the requirements of section 3 of this rule. To qualify for this exemption, the project must be at an existing facility, operate for no more than five (5) years, and comply with all other applicable rules for the area.

(k) For any major stationary source operating under a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 326 IAC 2-3.4.

(l) An owner or operator undertaking a PCP shall comply with the requirements under 326 IAC 2-3.3.

(m) The following specific provisions apply to projects at existing emissions units at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in section 1(mm)(2)(A) of this rule for calculating projected actual emissions:

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project.

(B) Identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project.

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

(i) the baseline actual emissions;

(ii) the projected actual emissions;

(iii) the amount of emissions excluded under section 1(mm)(2)(A)(3) of this rule and an explanation for why the amount was excluded; and

(iv) any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction.

(3) The owner or operator shall:

(A) monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision (1)(B); and

(B) calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at the emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within sixty (60) days after the end of each year during which records must be generated under subdivision (3) setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision (1), exceed the baseline actual emissions, as documented and maintained under subdivision (1)(C), by a significant amount for that regulated NSR pollutant, and if the emissions differ from the preconstruction projection as documented and maintained under subdivision (1)(C). The report shall be submitted to the department within sixty (60) days after the end of the year. The report shall contain the following:

(A) The name, address, and telephone number of the major stationary source.

(B) The annual emissions as calculated under subdivision (3).

(C) The emissions calculated under the actual to projected actual test stated in subsection (c)(3).

(D) Any other information that the owner or operator wishes to include in the report.

(6) The owner or operator of the source shall make the information required to be documented and maintained under subdivisions (1) through (5) available for review upon a request for inspection by the department. The general public may request this information from the department under 326 IAC 17.1.

(Air Pollution Control Board; 326 IAC 2-3-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2404; filed Nov 12, 1993, 4:00 p.m.: 17 IR 728; filed Aug 17, 2001, 3:45 p.m.: 25 IR 11; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3929)

SECTION 17. 326 IAC 2-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-3-3 Applicable requirements

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

Sec. 3. (a) Prior to the issuance of a construction permit to a source subject to this rule, the applicant shall comply with the following requirements:

(1) The proposed major new source or major modification shall demonstrate that the source will meet all applicable requirements of this title, any applicable new source performance standard in 40 CFR **Part** 60*, or any national emission standard for hazardous air pollutants in 40 CFR **Part** 61*. If the commissioner determines that the proposed major new source cannot meet the applicable emission requirements, the permit to construct will be denied.

(2) The applicant will apply emission limitation devices or techniques to the proposed construction or modification such that the ~~lowest achievable emission rate~~ LAER for the applicable pollutant will be achieved.

(3) The applicant shall either demonstrate that all existing major sources owned or operated by the applicant in the state ~~of Indiana~~ are in compliance with all applicable emission limitations and standards contained in the Clean Air Act and in this title or demonstrate that they are in compliance with a federally enforceable compliance schedule requiring compliance as expeditiously as practicable.

(4) The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for ~~such~~ **the** proposed source ~~which~~ **that** demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) Emissions resulting from the proposed construction or modification shall be offset by a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. The emission offset shall be such that there will be reasonable further progress toward attainment of the applicable ambient air quality standards as follows:

(A) Greater than one-for-one unless otherwise specified.

(B) For ozone nonattainment areas, the following table shall determine the minimum offset ratio requirements for major stationary sources of volatile organic compounds:

Ozone Classification	Minimum Offset Requirements
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1

(6) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the CAA shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

~~(6)~~ **(7)** The applicant shall obtain the necessary preconstruction approvals and shall meet all the permit requirements specified in 326 IAC 2-5.1 or 326 IAC 2-7, **as applicable.**

(8) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with an applicable provision of the state implementation plan and any other requirements under local, state, or federal law.

(b) The following provisions shall apply to all emission offset evaluations:

(1) Emission offsets shall be determined on a tons per year and, whenever possible, a pounds per hour basis when all facilities requiring offset involved in the emission offset calculations are operating at their maximum potential or allowed production rate. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets shall be calculated using the allowed or actual annual operating hours, whichever is less.

(2) The baseline for determining credit for emission offsets will be the emission limitations or actual emissions, whichever is lower, in effect at the time the application to construct or modify a source is filed. Credit for emission offset purposes may be allowable for existing control that goes beyond that required by source-specific emission limitations contained in this title.

(3) In cases where the applicable rule under this title does not contain an emission limitation for a source or source category, the emission offset baseline involving ~~such~~ **the** sources shall be the actual emissions determined at their maximum expected or allowable production rate.

(4) In cases where emission ~~limits~~ **limitations** for existing sources allow greater emissions than the ~~uncontrolled emission rate~~ **potential to emit** of the source, emission offset credit shall only be allowed for emissions controlled below the ~~uncontrolled emission rate.~~ **potential to emit.**

(5) A source may receive offset credit from emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels ~~provided, that the work force to be affected has been notified of the proposed shutdown or curtailment. Emission offsets that involve reducing operating hours or production or source shutdowns must be federally enforceable. Emission offsets may be credited for a source shutdown or curtailment provided that the applicant can establish that such shutdown or curtailment occurred less than one (1) year prior to the date of permit application, and the proposed new source is a replacement for the shutdown or curtailment.~~ **if the reductions are permanent, quantifiable, and federally enforceable.**

(A) If the area has an attainment plan approved by U.S. EPA, the shutdown or curtailment is creditable only if it occurred on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns that occurred prior to August 7, 1977. For the purposes of this clause, the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory if the inventory explicitly includes, as current existing emissions, the emissions from such previously shutdown or curtailed sources.

(B) The reductions may be credited in the absence of an approved attainment demonstration only if:

(i) the shutdown or curtailment occurred on or after the date the new source permit application is filed; or

(ii) the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source and the cutoff date provisions in clause (A) are observed.

(6) Emission offset credit involving an existing fuel combustion source will be based on the allowable emissions under other rules of this title for the type of fuel being burned at the time the new source application is filed. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved is acceptable, provided the permit is conditioned to require the use of a specific alternative control measure ~~which~~ **that** would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The commissioner will grant emission offset credit for fuel switching only after ensuring that adequate supplies of the new fuel are available at least for the next ten (10) years.

(7) In the case of volatile organic compound emissions, no emission offset credit may be allowed for replacing one (1) hydrocarbon compound with another of lesser reactivity, except for those compounds defined as nonphotochemically reactive hydrocarbons in 326 IAC 1-2-48.

(8) No emission reduction may be approved to offset emissions ~~which~~ **that** cannot be federally enforced. Offsetting emissions shall be considered federally enforceable if the reduction is included as a condition in the applicable permit as specified in 326 IAC 2-5.1 or 326 IAC 2-7 if issued under a federally-approved air permit program.

(9) Emission reductions required under any other rule adopted by the ~~air pollution control~~ board shall not be creditable as emission reductions and therefore cannot be used for emission offsets.

(10) Incidental emission reductions that are not otherwise required by any other rule adopted by the ~~air pollution control~~ board shall be creditable as emission reductions for emission offsets if ~~such~~ **the** emission reductions meet all of the other requirements for offsets.

(11) A source may offset by alternative or innovative means emission increases from rocket engine or motor firing and cleaning related to ~~such~~ **the** firing at an existing or modified major source that tests rocket engines or motors under the following conditions:

(A) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test ~~such~~ **the** engines on November 15, 1990.

(B) The source demonstrates to the satisfaction of the department that:

(i) it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels; ~~that~~

(ii) all available offsets are being used; and ~~that~~

(iii) sufficient offsets are not available to the source.

(C) The source has obtained a written finding from:

(i) the Department of Defense;

(ii) the Department of Transportation;

(iii) the National Aeronautics and Space Administration; or

(iv) other appropriate federal agency;

that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(D) The source will comply with an alternative measure, imposed by the department, designed to offset any emission increases beyond permitted levels not directly offset by the source.

(12) Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a clean unit or a project as a PCP cannot be used as offsets.

(13) Decreases in actual emissions occurring at a clean unit cannot be used as offsets except as provided in 326 IAC 2-3.2-1(h) and 326 IAC 2-3.2-2(j). Decreases in actual emissions occurring at a PCP cannot be used as offsets except as provided in 326 IAC 2-3.3-1(g)(4).

(14) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in:

(A) issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I*; or

(B) a demonstration for attainment or reasonable further progress.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-3-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2406; filed Nov 12, 1993, 4:00 p.m.: 17 IR 730; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1005; filed Aug 17, 2001, 3:45 p.m.: 25 IR 12; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3931)*

SECTION 18. 326 IAC 2-3.2 IS ADDED TO READ AS FOLLOWS:

Rule 3.2. Clean Unit Designations in Nonattainment Areas

326 IAC 2-3.2-1 Clean unit designations for emission units subject to LAER

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

Sec. 1. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-3-2(c)(5) in place of provisions in 326 IAC 2-3-1(q), 326 IAC 2-3-2(c)(3), and 326 IAC 2-3-2(c)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification or greater than de minimis for VOC emissions in severe or serious nonattainment areas for ozone according to this section. This section applies to any emissions unit for which the department has issued a major NSR permit within the last ten (10) years. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this section.

(b) The following provisions apply to a clean unit:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with subsection (d), and before the expiration date, as determined in accordance with subsection (e), will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER

determination as specified in subsection (f)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-3-2(c)(1) through 326 IAC 2-3-2(c)(4) and 326 IAC 2-3-2(c)(6).

(5) For emissions units that meet the requirements of clauses (A) and (B), the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for clean units under subsections (c) through (h). For these emissions units, all requirements for the LAER determination under subdivisions (2) and (3) shall also apply to the BACT permit terms and conditions. In addition, the requirements of subsection (g)(1)(B) do not apply to emissions units that qualify for clean unit status under this subdivision. The emissions units must be in compliance with the following:

(A) The emissions unit must have received a PSD permit within the last ten (10) years, and the permit must require the emissions unit to comply with BACT.

(B) The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutants after issuance of the PSD permit and before the date this rule is effective in the state implementation plan.

(c) An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in subdivisions (1) and (2). After the original clean unit designation expires in accordance with subsection (e) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 2 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new major NSR permit and meet all the criteria in subdivision (3). The clean unit designation applies individually for each pollutant emitted by the emissions unit. The criteria to qualify or requalify to use the clean unit applicability test are as follows:

(1) The emissions unit must have received a major NSR permit within the last ten (10) years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(2) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, and that meets both of the following requirements:

(A) The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past ten (10) years. However, the emissions unit is not eligible for the clean unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit must meet the requirements in subdivisions (1) and (2).

(d) The effective date of an emissions unit's clean unit designation is determined according to the following:

(1) For original clean unit designation and emissions units that requalify as clean units by implementing a new control technology to meet current-day LAER, the effective date is the date the emissions unit's air pollution control technology is placed into service or three (3) years after the issuance date of the major NSR permit, whichever is earlier.

(2) For emissions units that requalify for the clean unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

(e) An emissions unit's clean unit designation expiration date is determined according to the following:

(1) For any emissions unit that automatically qualifies as a clean unit under subsection (c)(1) and (c)(2) or requalifies by implementing new control technology to meet current-day LAER under subsection (c)(3), the clean unit designation expires:

(A) ten (10) years after the effective date or the date the equipment went into service, whichever is earlier; or

(B) at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(2) For any emissions unit that requalifies as a clean unit under subsection (c)(3) using an existing control technology, the clean unit designation expires:

(A) ten (10) years after the effective date; or

(B) any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (g).

(f) After the effective date of the clean unit designation and in accordance with the provisions of 326 IAC 2-7-12, but no later than when the Part 70 permit is renewed, the Part 70 permit for the major stationary source must include the following terms and conditions related to the clean unit:

(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(2) The effective date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded in the Part 70 permit, the permit must describe the event that will determine the effective date. When the effective date is determined, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the clean unit designation is initially recorded into the Part 70 permit, then the permit must describe the event that will determine the expiration date. When the expiration date is determined, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever comes first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with the LAER determination and any physical or operational characteristic that formed the basis for the LAER determination, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation in accordance with subsection (g).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (g).

(g) To maintain the clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following provisions apply:

(1) The clean unit must be in compliance with the emission limitations and work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit and subsequently reflected in the Part 70 permit, including the following:

(A) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (f)(4).

(B) The clean unit may not emit above a level that has been offset.

(2) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(3) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(h) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase or used in a netting analysis or be used for generating offsets unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the effective date of the clean unit designation; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(i) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit is located in an attainment area and the area is redesignated to nonattainment, its clean unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the clean unit designation. However, if an existing clean unit designation expires, it must requalify under the requirements that are currently applicable in the area. *(Air Pollution Control Board; 326 IAC 2-3.2-1; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3933)*

326 IAC 2-3.2-2 Clean unit designations for emission units that have not previously received a major NSR permit

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

Sec. 2. (a) An owner or operator of a major stationary source may use the clean unit test in accordance with 326 IAC 2-3-2(c)(5) in place of provisions in 326 IAC 2-3-1(q), 326 IAC 2-3-2(c)(3), and 326 IAC 2-3-2(c)(4) to determine whether emissions increases at a clean unit are part of a project that is a major modification or greater than de minimis for VOC emissions in severe or serious nonattainment areas for ozone under this section. This section applies to emissions units that do not qualify as clean units under section 1 of this rule, but that are achieving a level of emissions control comparable to LAER as determined by the department in accordance with this section. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this section.

(b) The following apply to a clean unit designated under this section:

(1) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation as determined in accordance with subsection (e) and before the expiration date as determined in accordance with subsection (f) will be considered to have occurred while the emissions unit was a clean unit.

(2) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subsection (h)(4), the emissions unit remains a clean unit.

(3) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined under subsection (d) to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subsection (h)(4), then the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit requalifies as a clean unit under subsection (c)(3). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(4) A project that causes an emissions unit to lose its designation as a clean unit is considered an existing emission unit and is subject to the applicability requirements of 326 IAC 2-3-2(c)(1) through 326 IAC 2-3-2(c)(4) and 326 IAC 2-3-2(c)(6).

(c) An emissions unit qualifies as a clean unit when the unit meets the criteria in subdivisions (1) through (2). After the original clean unit designation expires under subsection (f) or is lost under subsection (b)(3), the emissions unit may requalify as a clean unit under either subdivision (3) or under the clean unit provisions in section 1 of this rule. To requalify as a clean unit under subdivision (3), the emissions unit must obtain a new permit issued under subsections (g) and (h) and meet all the criteria in subdivision (3). The department shall make a separate clean unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a clean unit. The following apply to qualify or requalify to use the clean unit applicability test:

(1) Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both of the following requirements:

(A) The owner or operator has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of subsection (d). However, the emissions unit is not eligible for a clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type.

(B) The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(2) In order to qualify as a clean unit, the department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or any applicable PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) To requalify for the clean unit designation, the emissions unit must obtain a new permit under subsections (g) and (h) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and the emissions unit must meet the requirements in subdivisions (1)(A) and (2).

(d) The owner or operator may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of subsection (c)(1) in accordance with the following:

(1) The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as LAER, as defined in 326 IAC 2-3-1(y), determined at the time of submission of the clean unit designation application to the department. The department shall also compare this presumption to any additional LAER determinations of which the department is aware and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

(2) The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under subsection (g). The department shall consider the evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

(3) To qualify for a clean unit designation, the owner or operator of an emissions unit must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.

(e) The effective date of an emissions unit's clean unit designation is the date that the approval under 326 IAC 2-7-10.5 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

(f) For any emissions units, the clean unit designation expires ten (10) years from the effective date of the clean unit designation as determined according to subsection (e). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (i).

(g) The department shall designate an emissions unit a clean unit only by issuing an approval under 326 IAC 2-7-10.5 that includes requirements for public notice of the proposed clean unit designation and opportunity for public comment. The approval must also meet the requirements in subsection (h).

(h) The approval under 326 IAC 2-7-10.5 must include the terms and conditions set forth in this subsection. The following terms and conditions must be incorporated into the major stationary source's Part 70 permit in accordance with 326 IAC 2-7-12:

(1) A statement that the emissions unit qualifies as a clean unit and a list of the pollutants for which the clean unit designation was issued.

(2) Effective date of the clean unit designation. If this date is not known when the department issues the approval, then the approval must describe the event that will determine the effective date. When the effective date is known, the owner or operator must notify the department of the exact date. This specific effective date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever is first, but in no case later than the next renewal.

(3) The expiration date of the clean unit designation. If this date is not known when the department issues the approval, then the approval must describe the event that will determine the expiration date. When the expiration date is known, the owner or operator must notify the department of the exact date. The expiration date must be added to the source's Part 70 permit at the first opportunity, such as a modification, reopening, or renewal of the Part 70 permit for any reason, whichever is first, but in no case later than the next renewal.

(4) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER and any physical or operational characteristic that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER, such as potential to emit, production capacity, or throughput.

(5) Monitoring, record keeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation in accordance with subsection (i).

(6) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so as described in subsection (i).

(i) To maintain clean unit designation, the owner or operator must conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one (1) pollutant affects the clean unit designation only for that pollutant. The following apply:

(1) The clean unit must comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.

(2) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the

determination that the control technology is achieving a level of emission control that is comparable to LAER as specified in subsection (h)(4).

(3) The clean unit may not emit above a level that has been offset.

(4) The clean unit must comply with any terms and conditions in the Part 70 permit related to the unit's clean unit designation.

(5) The clean unit must continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, then the clean unit designation ends.

(j) An emissions increase or decrease that occurs at a clean unit must not be used in calculating a significant net emissions increase or used in a netting analysis or be used for generating offsets unless:

(1) the use of the increase or decrease for the calculation occurs:

(A) before the date this rule is effective; or

(B) after the clean unit designation expires; or

(2) the emissions unit reduces emissions below the level that qualified the unit as a clean unit.

However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(k) The clean unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a clean unit's designation expires or is lost under section 1(b)(3) of this rule and subsection (b)(3), it must requalify under the requirements that are currently applicable. *(Air Pollution Control Board; 326 IAC 2-3.2-2; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3935)*

SECTION 19. 326 IAC 2-3.3 IS ADDED TO READ AS FOLLOWS:

Rule 3.3. Pollution Control Project Exclusion Procedural Requirements in Nonattainment Areas

326 IAC 2-3.3-1 Pollution control project exclusion procedural requirements

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

Sec. 1. (a) This section applies to an owner or operator that plans to construct or install a pollution control project (PCP). A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6. Unless otherwise noted, the definitions in 326 IAC 2-3-1 apply to this rule.

(b) Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the department, if the project is listed in 326 IAC 2-3-1(gg), or, if the project is not listed in 326 IAC 2-3-1(gg), the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the department under 326 IAC 2-7-10.5 consistent with the requirements in subsection (f). Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection (c), and the notice or permit application must contain the information required in subsection (d).

(c) Any project that relies on the PCP exclusion must meet the following requirements:

(1) The environmental benefit from the emissions reductions of any regulated NSR pollutants must outweigh the environmental detriment of emissions increases in any regulated NSR pollutants. A statement that a technology listed in 326 IAC 2-3-1(gg) is being used shall be presumed to satisfy this requirement.

(2) The emissions increases from the project must not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) In the notice or permit application submitted to the department, the owner or operator must include, at a minimum, the following information:

(1) A description of the project.

(2) The potential emissions increases and decreases of any regulated NSR pollutant, the projected emissions increases and decreases using the methodology in 326 IAC 2-3-2(c) that will result from the project, and a copy of the environmentally beneficial analysis required by subsection (c)(1).

(3) A description of monitoring and record keeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods must be sufficient to meet the requirements in 326 IAC 2-7.

(4) A certification by the responsible official, as defined in 326 IAC 2-7-1(34), that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with

information submitted in the notice or permit application, and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(5) Demonstration that the PCP will not have an adverse air quality impact as required by subsection (c)(2). An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

(e) For projects listed in 326 IAC 2-3-1(gg), the owner or operator may begin actual construction of the project immediately after notice is sent to the department unless otherwise prohibited under requirements of the state implementation plan. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion.

(f) Before an owner or operator may begin actual construction of a PCP that is not listed in 326 IAC 2-3-1(gg), the project must be approved by the department in an approval issued under 326 IAC 2-7-10.5. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a thirty (30) day period for the public and the U.S. EPA to submit comments. The department shall address all material comments received by the end of the comment period before taking final action on the permit.

(g) Upon installation of the PCP, the owner or operator must comply with the following requirements:

(1) The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection (c), with information submitted in the notice or permit application required by subsection (d), and in a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(2) The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision (1).

(3) The owner or operator must comply with any provisions in the approval issued under 326 IAC 2-7 related to use and approval of the PCP exclusion.

(4) Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase or be used for generating offsets unless the emissions unit further reduces emissions after qualifying for the PCP exclusion. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emission limitation if the reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

(h) If the PCP would result in a significant net emissions increase in any regulated NSR pollutant for which the area is classified as nonattainment, except in an area that is classified as either serious or severe nonattainment for ozone, the significant net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio. The emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. In addition, the significant net emission increase from the PCP shall be offset so that the emissions increase will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(i) If the PCP would result in an increase in VOC emissions that is not de minimis in an area that is classified as either serious or severe nonattainment for ozone, the VOC net emissions increase from the PCP shall be offset on a one-to-one (1:1) ratio. The VOC emission offset shall be a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources. In addition, the VOC net emissions increase from the PCP shall be offset so that the emissions increase will not cause or contribute to a violation of any national ambient air quality standard or PSD increment or adversely impact an air quality related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public. *(Air Pollution Control Board; 326 IAC 2-3.3-1; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3938)*

SECTION 20. 326 IAC 2-3.4 IS ADDED TO READ AS FOLLOWS:

Rule 3.4. Actuals Plantwide Applicability Limitations in Nonattainment Areas

326 IAC 2-3.4-1 Applicability

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

Sec. 1. (a) The department may approve the use of an actuals plantwide applicability limitation (PAL) for any existing major stationary source, except as provided in subsection (b), if the PAL meets the requirements in this rule. A source that is subject to P.L.231-2003, SECTION 6 shall comply with the requirements of 326 IAC 2-2.6.

(b) The department shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL, that level meets the requirements in this rule, and that complies with the PAL permit:

(1) is not a major modification for the PAL pollutant;

(2) does not have to be approved through 326 IAC 2-3; and

(3) is not subject to 326 IAC 2-3-2(d).

(d) Except as provided under subsection (c)(3), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL. *(Air Pollution Control Board; 326 IAC 2-3.4-1; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3939)*

326 IAC 2-3.4-2 Definitions

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

Sec. 2. (a) The definitions in this section apply throughout this rule. A term that is not defined in this section shall have the meaning set forth in 326 IAC 2-3-1 or in the CAA.

(b) "Actuals PAL", for a major stationary source, means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(c) "Allowable emissions" means the following:

(1) The emissions rate of a stationary source calculated using the maximum rated capacity of the source unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both, and the most stringent of the:

(A) applicable standards as set forth in 40 CFR Part 60* and 40 CFR Part 61*;

(B) state implementation plan emissions limitation, including those with a future compliance date; or

(C) emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(3) An emissions unit's potential to emit shall be determined using the definition in 326 IAC 2-3-1.

(d) "Major emissions unit" means any emissions unit that emits or has the potential to emit:

(1) one hundred (100) tons per year or more of the PAL pollutant in an attainment area; or

(2) the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas.

(e) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL under section 11 of this rule is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(f) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(g) "PAL major modification" means, notwithstanding the definitions for major modification in 326 IAC 2-3-1(z) and net emissions increase in 326 IAC 2-3-1(dd), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(h) "PAL permit" means the permit issued by the department that contains PAL provisions for a major stationary source.

(i) "PAL pollutant" means the regulated NSR pollutant for which a PAL is established at a major stationary source.

(j) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule. For the purposes of this rule, a PAL is an actuals PAL.

(k) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level, as defined in 326 IAC 2-3-1 or in the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection (d).

(l) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in 326 IAC 2-3-1(qq) or in the CAA, whichever is lower.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-3.4-2; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3940)*

326 IAC 2-3.4-3 Permit application requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 3. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(1) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by section 13(a) of this rule.

(Air Pollution Control Board; 326 IAC 2-3.4-3; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3941)

326 IAC 2-3.4-4 Establishing PALs; general requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. (a) The department may establish a PAL at a major stationary source provided that, at a minimum, the following requirements are met:

(1) The PAL shall impose an annual emission limitation in tons per year, which is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL, on a twelve (12) month average, rolled monthly. For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL shall be established in a PAL permit that meets the public participation requirements in section 5 of this rule.

(3) The PAL permit shall contain all the requirements of section 7 of this rule.

(4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(5) Each PAL shall regulate emissions of only one (1) pollutant.

(6) Each PAL shall have a PAL effective period of ten (10) years.

(7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, record keeping, and reporting requirements provided in sections 12 through 14 of this rule for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 326 IAC 2-3-3 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL. *(Air Pollution Control Board; 326 IAC 2-3.4-4; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3941)*

326 IAC 2-3.4-5 Public participation requirements for PALs
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 5. PALs for existing major stationary sources shall be:

(1) established;

(2) renewed;

(3) increased;

(4) terminated; or

(5) revoked;

through a procedure that is consistent with 326 IAC 2-7-17. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a thirty (30) day period for submittal of public comment. The department must address all material comments before taking final action on the permit. *(Air Pollution Control Board; 326 IAC 2-3.4-5; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3941)*

326 IAC 2-3.4-6 Establishing a 10 year actuals PAL level
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 6. (a) The actuals PAL level for a major stationary

source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source plus an amount equal to the least of the following levels:

(1) The applicable significant level in 326 IAC 2-3-1(qq) for the PAL pollutant.

(2) The de minimis level in 326 IAC 2-3-1(q) in case of the PAL for VOC emissions for sources located in severe or serious nonattainment areas.

(3) The level specified under CAA.

(b) For establishing the actuals PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units. A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(c) Emissions associated with units that were permanently shutdown after this twenty-four (24) month period must be subtracted from the PAL level.

(d) Emissions from units, except modifications to existing units, on which actual construction began after the twenty-four (24) month period must be added to the PAL level in an amount equal to the potential to emit of the units.

(e) The department shall specify a reduced PAL level, in tons per year, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the department is aware of prior to issuance of the PAL permit. *(Air Pollution Control Board; 326 IAC 2-3.4-6; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3941)*

326 IAC 2-3.4-7 Contents of the PAL permit

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

Sec. 7. The PAL permit must contain, at a minimum, the following information:

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL.

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with section 10 of this rule before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of section 9 of this rule.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total as required by section 13(a) of this rule.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with section 12 of this rule.

(8) A requirement to retain the records required under section 13 of this rule on site. The records may be retained in an electronic format.

(9) A requirement to submit the reports required under section 14 of this rule by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(Air Pollution Control Board; 326 IAC 2-3.4-7; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3942)

326 IAC 2-3.4-8 PAL effective period and reopening of the PAL permit

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

Sec. 8. (a) The department shall specify a PAL effective period of ten (10) years.

(b) For reopening of the PAL permit, the following requirements must be met:

(1) During the PAL effective period, the department shall reopen the PAL permit to:

(A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(B) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 326 IAC 2-3-3; or

(C) revise the PAL to reflect an increase in the PAL as provided under section 11 of this rule.

(2) The department has discretion to reopen the PAL permit to reduce the PAL as follows:

(A) To reflect newly applicable federal requirements with compliance dates after the PAL effective date.

(B) Consistent with any other requirement that is enforceable as a practical matter and that the state may impose on the major stationary source under the state implementation plan.

(C) If the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Except for the permit reopening in subdivision (1)(A) for the correction of typographical or calculation errors

that do not increase the PAL level, all other reopenings shall be conducted in accordance with the public participation requirements of section 5 of this rule.

(Air Pollution Control Board; 326 IAC 2-3.4-8; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3942)

326 IAC 2-3.4-9 Expiration of a PAL

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

Sec. 9. (a) Any PAL that is not renewed in accordance with the procedures in section 10 of this rule shall expire at the end of the PAL effective period, and the requirements in this section shall apply.

(b) Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(1) Within the time frame specified for PAL renewals in section 10(b) of this rule, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if the distribution is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under section 10(e) of this rule, the distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(c) Each emissions unit shall comply with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(d) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (b)(1), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(e) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if the change meets the definition of major modification in 326 IAC 2-3-1.

(f) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established under 326 IAC 2-3-2(d) but were eliminated by the PAL under section 1(c)(3) of this rule. *(Air Pollution Control Board; 326 IAC 2-3.4-9; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3943)*

326 IAC 2-3.4-10 Renewal of a PAL

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

Sec. 10. (a) The department shall follow the procedures specified in section 5 of this rule in approving any request to renew a PAL for a major stationary source and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of PAL expiration. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

(1) The information required in section 3 of this rule.

(2) A proposed PAL level.

(3) The sum of the potential to emit of all emissions units under the PAL with supporting documentation.

(4) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in this subsection. However, in no case may any adjustment fail to comply with subdivision (3). The following provisions apply:

(1) If the emissions level calculated in accordance with section 6 of this rule is equal to or greater than eighty percent (80%) of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subdivision (2).

(2) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions or that it determines to be appropriate considering:

(A) air quality needs;
(B) advances in control technology;
(C) anticipated economic growth in the area;
(D) desire to reward or encourage the source's voluntary emissions reductions; or
(E) other factors as specifically identified by the department.

(3) Notwithstanding subdivisions (1) and (2):
(A) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and
(B) the department shall not approve a renewed PAL level higher than the current PAL unless the major stationary source has complied with section 11 of this rule.

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or Part 70 permit renewal, whichever occurs first. *(Air Pollution Control Board; 326 IAC 2-3.4-10; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3943)*

326 IAC 2-3.4-11 Increasing a PAL during the PAL effective period

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

Sec. 11. (a) The department may increase a PAL emission limitation during the PAL effective period only if the major stationary source complies with the following provisions:

(1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.
(2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.
(3) The owner or operator shall obtain a major NSR permit for all emissions units identified in subdivision (1) regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR process, even though they have also become subject to the PAL or continue to be subject to the PAL.
(4) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with subsection (a)(2), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL permit must be revised to reflect the increased PAL level under the public notice requirements of section 5 of this rule. *(Air Pollution Control Board; 326 IAC 2-3.4-11; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3944)*

326 IAC 2-3.4-12 Monitoring requirements for PALs

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

Sec. 12. (a) The following general requirements apply:
(1) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
(2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in subsection (b) and must be approved by the department.
(3) Notwithstanding subdivision (2), an alternative monitoring approach may be employed:
(A) that meets subdivision (1); and
(B) if it is approved by the department.
(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (c) through (i):

(1) Mass balance calculations for activities using coatings or solvents.

(2) CEMS.
(3) CPMS or PEMS.
(4) Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit if it cannot otherwise be accounted for in the process.

(3) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B*.

(2) CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(1) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable.

(3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance unless the department determines that testing is not required.

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in subsections (c) through (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(1) establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points; or

(2) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. The testing must occur at least once every five (5) years after issuance of the PAL.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-3.4-12; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3944)*

326 IAC 2-3.4-13 Record keeping requirements

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

Sec. 13. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions, for five (5) years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

(1) A copy of the PAL permit application and any appli-

cations for revisions to the PAL.

(2) Each annual certification of compliance pursuant to 40 CFR Part 70* and the data relied on in certifying the compliance.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 2-3.4-13; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3945)*

326 IAC 2-3.4-14 Reporting and notification requirements

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

Sec. 14. (a) The owner or operator shall submit semiannual monitoring reports and deviation reports to the department in accordance with 326 IAC 2-7. The reports shall meet the requirements of this section.

(b) A semiannual report shall be submitted to the department within thirty (30) days of the end of each reporting period. This report shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) Total annual emissions in tons per year based on a twelve (12) month rolling total for each month in the reporting period recorded under section 13(a) of this rule.

(3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(4) A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period.

(5) The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero (0) and span calibration checks, and any corrective action taken.

(6) Information about monitoring system shutdowns including the following:

(A) Notification to the department of the shutdown of any monitoring system.

(B) Whether the shutdown was permanent or temporary.

(C) The reason for the shutdown.

(D) The anticipated date that the monitoring system will be fully operational or replaced with another monitoring system.

(E) Whether the emissions unit monitored by the monitoring system continued to operate.

(F) If the emissions unit monitored by the monitoring system continued to operate, the calculation of the:

(i) emissions of the pollutant; or

(ii) number determined by method included in the permit, as provided by section 12(g) of this rule.

(7) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The major stationary source owner or operator shall promptly submit reports to the department of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted under 326 IAC 2-7-5(3)(C)(ii) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 326 IAC 2-7-5(3)(C)(ii). The reports shall contain the following information:

(1) The identification of owner and operator and the permit number.

(2) The PAL requirement that experienced the deviation or that was exceeded.

(3) Emissions resulting from the deviation or the exceedance.

(4) A signed statement by the responsible official, as defined in 326 IAC 2-7-1(34), certifying the truth, accuracy, and completeness of the information provided in the report.

(d) The owner or operator shall submit to the department the results of any revalidation test or method within three (3) months after completion of the test or method. *(Air Pollution Control Board; 326 IAC 2-3.4-14; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3946)*

326 IAC 2-3.4-15 Termination and revocation of a PAL

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

Sec. 15. (a) This section applies to any PAL that is terminated or revoked prior to the PAL expiration date.

(b) A major stationary source owner or operator may at any time submit a written request to the department to terminate or revoke a PAL prior to the expiration or renewal of the PAL.

(c) Each emissions unit or each group of emissions units that existed under the PAL shall be in compliance with an allowable emission limitation under a revised permit established according to the following procedures:

(1) The major stationary source owner or operator may submit a proposed allowable emission limitation for each emissions unit or each group of emissions units by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became

effective during the PAL effective period, as required under section 10(e) of this rule, such distribution shall be made as if the PAL had been adjusted.

(2) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate. The determination of distribution of the PAL allowable emissions may be based on the emissions limitations that were eliminated by the PAL in accordance with section 1(c)(3) of this rule.

(d) Each emissions unit shall be in compliance with the allowable emission limitation on a twelve (12) month rolling basis. The department may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(e) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (c)(2), the source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

(f) The department shall follow the procedures specified in section 5 of this rule in terminating or revoking a PAL for a major stationary source and shall provide the proposed distributed allowable emission limitations to the public for review and comment. During such public review, any person may propose a PAL distribution of allowable emissions for the source for consideration by the department. *(Air Pollution Control Board; 326 IAC 2-3.4-15; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3946)*

SECTION 21. 326 IAC 2-5.1-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-5.1-4 Transition procedures

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

Sec. 4. (a) The commissioner shall include an approval to operate and operating conditions in an initial construction permit. The level of approval shall be as follows:

(1) A source ~~may request~~ **must obtain** approval to operate under a state operating permit under 326 IAC 2-6.1 if ~~either of the following applies:~~

~~(A)~~ the permit does not include terms and conditions that limit the potential to emit of the source to below thresholds that would require a Part 70 permit.

~~(B) The source is subject to the Part 70 requirements under 326 IAC 2-7 and will submit a Part 70 permit application within twelve (12) months of the date the source is approved to operate.~~

(2) A source ~~will~~ **must** obtain approval to operate as a FESOP under 326 IAC 2-8 if the permit includes terms and conditions that limit the potential to emit of the source to below the thresholds that require the source to obtain a Part 70 permit and is issued in accordance with 326 IAC 2-8-13.

(3) A source ~~may~~ **must** obtain approval to operate as a Part 70 source under 326 IAC 2-7 if:

(A) the source is constructing under 326 IAC 2-2 or 326 IAC 2-3; or

(B) the potential to emit exceeds the Part 70 major source thresholds as defined in 326 IAC 2-7-1(22).

The permit **must include the permit** content **in accordance with 326 IAC 2-7-5** and compliance requirements ~~conform to 326 IAC 2-7-5 and~~ **in accordance with** 326 IAC 2-7-6, and the permit ~~is~~ **must be** issued in accordance with 326 IAC 2-7-17.

(b) If all terms and conditions of 326 IAC 2-1.1-6 were satisfied in the processing of the construction permit, then the emission limitations may be included in the subsequent operating permit without repeating the public notice requirements in 326 IAC 2-1.1-6. *(Air Pollution Control Board; 326 IAC 2-5.1-4; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1011; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3947)*

SECTION 22. 326 IAC 2-7-10.5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-10.5 Part 70 permits; source modifications

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15-5; IC 13-17

Sec. 10.5. (a) An owner or operator of a Part 70 source proposing to:

(1) construct new emission units;

(2) modify existing emission units; or

(3) otherwise modify the source as described in this section; shall submit a request for a modification approval in accordance with this section.

(b) Notwithstanding any other provision of this rule, the owner or operator of a source may repair or replace an emissions unit or air pollution control equipment or components thereof without prior approval if the repair or replacement:

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

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

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

If the repair or replacement qualifies as a reconstruction or is a complete replacement of an emissions unit or air pollution

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

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

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

(A) The company name and address.

(B) The following descriptive information:

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A schedule of compliance, if applicable.

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

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

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

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

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

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

~~(4)~~ **(3)** Modifications that would have a potential to emit within any of the following ranges:

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

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

(i) Sulfur dioxide (SO_2).

(ii) Nitrogen oxides (NO_x).

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

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

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

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

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

(i) Hydrogen sulfide (H_2S).

(ii) Total reduced sulfur (TRS).

(iii) Reduced sulfur compounds.

(iv) Fluorides.

~~(5)~~ **(4)** Modifications for which the potential to emit is limited to less than twenty-five (25) tons per year of any regulated pollutant other than hazardous air pollutants, ten (10) tons per year of any single hazardous air pollutant as defined under Section 112(b) of the CAA, or twenty-five (25) tons per year of any combination of hazardous air pollutants by complying with one (1) of the following constraints:

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

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

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

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

(ii) Complying with a no visible emission standard.

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

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

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

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

~~(6)~~ **(5)** A modification that is subject to a reasonably available control technology (RACT), a new source performance standard (NSPS), or a national emission standard for hazardous air pollutants (NESHAP) and the RACT, NSPS, or NESHAP is the most stringent applicable requirement, except for those modifications that would be subject to the provisions of 40 CFR **Part** 63, Subpart B, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources*. As part of the application required under subsection (b), the applicant shall acknowledge the requirement to comply with the RACT, NSPS, or NESHAP.

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

~~(8)~~ **(7)** A modification of an existing source that has a potential to emit greater than the thresholds under subdivision ~~(4)~~ **(3)** if the modification will replace or repair a part or piece of equipment in an existing process unless the modification:

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

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

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

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

~~(9)~~ **(8)** A modification that has a potential to emit greater than the thresholds under subdivision ~~(4)~~ **(3)** that adds an emissions unit or units of the same type that are already permitted and that will comply with the same applicable requirements and permit terms and conditions as the existing emission unit or units, except if the modification would result in a potential to emit greater than the thresholds in 326 IAC 2-2 or 326 IAC 2-3.

~~(10)~~ **(9)** For a source in Lake or Porter County with the potential to emit twenty-five (25) tons per year of either VOC or NO_x, any modification that would result in an increase of either emissions ~~as follows:~~ **greater than or equal to the following:**

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

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

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

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

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

(A) Approve the modification request.

(B) Deny the modification request.

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

(3) The source may begin construction as follows:

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

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

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

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

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

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

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

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

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

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

(B) Sulfur dioxide (SO_2).

(C) Nitrogen oxides (NO_x).

(D) Volatile organic compounds (VOC).

(E) Hydrogen sulfide (H_2S).

(F) Total reduced sulfur (TRS).

(G) Reduced sulfur compounds.

(H) Fluorides.

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

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

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

(8) The addition, replacement, or use of a pollution control project, as defined in ~~326 IAC 2-1.1-1(13)~~ **326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg),** that ~~is exempt under 326 IAC 2-2-1(o)(2)(H). The requirement to process such modifications in accordance with subsection (g) does not apply to pollution control projects that the department approved as an environmentally beneficial pollution control project through a permit issued prior to July 1, 2000.~~ **must obtain an exclusion under 326 IAC 2-2.3 or 326 IAC 2-3.3 and is not included in the presumptive list in 326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg).**

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

(10) The designation of a clean unit that is using control technology comparable to BACT or LAER as defined in 326 IAC 2-2.2-2 or 326 IAC 2-3.2-2.

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

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

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

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

(A) Within one hundred twenty (120) calendar days from receipt of an application for a modification in subsection (f) except subsection (f)(1) **and (f)(10).**

(B) Within two hundred seventy (270) calendar days from receipt of an application for a modification under subsection (f)(1) **or (f)(10).**

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

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

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

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

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

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

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

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

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

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

(A) The affidavit shall include the following:

(i) Name and title of the authorized individual.

(ii) Company name.

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

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

(v) Signature of the authorized individual.

(B) The affidavit shall be notarized.

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

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

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

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

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

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

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

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

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

(k) The commissioner shall provide for review by the U.S. EPA and affected states of each:

(1) modification application;

(2) draft modification approval;

(3) proposed modification approval; and

(4) final modification approval;

in accordance with the procedures established in section 18 of this rule for modifications that a source is requesting a combined preconstruction approval and operating permit revision.

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

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

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

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

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 2-7-10.5; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1039; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Oct 23, 2000, 9:47 a.m.: 24 IR 672; filed May 21, 2002, 10:20 a.m.: 25 IR 3065; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3947)*

SECTION 23. 326 IAC 2-7-11 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-11 Administrative permit amendments

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

Sec. 11. (a) An administrative permit amendment is a Part 70 permit revision that does any of the following:

(1) Corrects typographical errors.

(2) Identifies a change in the name, address, or telephone number of any person identified in the Part 70 permit or provides a similar minor administrative change at the source.

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

(4) Allows for a change in ownership or operational control of a source where the commissioner determines that no other change in a Part 70 permit is necessary, provided that a written agreement containing a specific date for transfer of a Part 70 permit responsibility, coverage, and liability between the current and new permittee has been submitted to the commissioner.

(5) Incorporates into a Part 70 permit the requirements from preconstruction permits issued under section 10.5 of this rule that have satisfied the requirements of sections 17 and 18 of this rule as appropriate.

(6) Incorporates into a Part 70 permit a general permit issued under section 13 of this rule.

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

(8) Incorporates:

(A) an exempt unit as described in 326 IAC 2-1.1-3;

(B) an insignificant activity as defined in 326 IAC 2-7-1(21); or

(C) a PAL small emissions unit as defined in 326 IAC 2-2.4-2(m) or 326 IAC 2-3.4-2(l);

that does not otherwise constitute a modification for purposes of section 10.5 or 12 of this rule.

(b) Administrative Part 70 permit amendments, for purposes of the acid rain portion of a Part 70 permit, shall be governed by regulations promulgated under Title IV of the CAA.

(c) An administrative Part 70 permit amendment may be made by the commissioner consistent with the following:

(1) The commissioner shall take no more than sixty (60) days from receipt of a request for an administrative Part 70 permit amendment to take final action on ~~such~~ **the** request and may incorporate ~~such~~ **the** changes without providing prior notice to the public or affected states provided that it designates ~~any such~~ **these** Part 70 permit revisions as having been made under this subsection.

(2) The commissioner shall submit a copy of a revised Part 70 permit to the U.S. EPA.

(3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(Air Pollution Control Board; 326 IAC 2-7-11; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1043; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3951)

SECTION 24. 326 IAC 2-7-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-12 Permit modification

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

Sec. 12. (a) A Part 70 permit modification is any revision to a Part 70 permit that cannot be accomplished under the program's provisions for administrative permit amendments under section 11 of this rule. A permit modification, for purposes of the acid rain portion of the permit, shall be governed by regulations promulgated under Title IV of the CAA.

(b) Minor permit modification procedures shall be as follows:

(1) Minor permit modification procedures may be used only for those permit modifications that meet the following requirements:

(A) Do not violate any applicable requirement.

(B) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the Part 70 permit.

(C) Do not require or change a:

(i) case-by-case determination of an emission ~~limit~~ **limitation** or other standard;

(ii) source specific determination for temporary sources of ambient impacts; or

(iii) visibility or increment analysis.

(D) Do not seek to establish or change a Part 70 permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. ~~Such~~ **The** terms and conditions include the following:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the CAA.

(ii) An alternative emissions limit approved under regulations promulgated under Section 112(i)(5) of the CAA.

(E) Are not modifications under any provision of Title I of the CAA.

(F) The addition of a clean unit that was automatically designated as described in 326 IAC 2-2.2-1 or 326 IAC 2-3.2-1.

(G) The addition of a listed PCP as defined in 326 IAC 2-2-1(ll) or 326 IAC 2-3-1(gg).

~~(F)~~ **(H)** Are not required by the Part 70 program to be processed as a significant modification.

(2) Notwithstanding subdivision (1) and subsection (c)(1), minor Part 70 permit modification procedures may be used for Part 70 permit modifications involving the use of economic incentives, marketable Part 70 permits, emissions trading, and other similar approaches to the extent that ~~such~~ **the** minor Part 70 permit modification procedures are explicitly provided for in the applicable implementation plan (SIP) or in applicable requirements promulgated or approved by the U.S. EPA.

(3) An application requesting the use of minor Part 70 permit modification procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit reflecting the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of minor Part 70 permit modification procedures and a request that ~~such~~ **the** procedures be used.

(D) Completed forms for the commissioner to use to notify the U.S. EPA and affected states.

(E) A copy of any previous approval issued by the commissioner under this article.

(4) The public notice provisions of section 17 of this rule shall apply to minor modifications.

(5) Within five (5) working days of receipt of a complete Part 70 permit modification application, the commissioner shall notify the U.S. EPA and affected states of the requested Part 70 permit modification. The commissioner promptly shall send any notice required to the U.S. EPA.

(6) The commissioner may not issue a final Part 70 permit modification until after the U.S. EPA's forty-five (45) day review period or until U.S. EPA has notified the commissioner that U.S. EPA will not object to issuance of the Part 70 permit modification, whichever is first, although the commissioner may approve the Part 70 permit modification prior to that time. Within ninety (90) days of the commissioner's receipt of an application under the minor Part 70 permit modification procedures or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later, the commissioner shall do any of the following:

(A) Issue the Part 70 permit modification as proposed.

(B) Deny the Part 70 permit modification application.

(C) Determine that the requested modification does not meet the minor Part 70 permit modification criteria and should be reviewed under the significant modification procedures.

(D) Revise the draft Part 70 permit modification and transmit to the U.S. EPA the new proposed Part 70 permit modification as required by section 18(b) of this rule.

(7) The source may make the change proposed in its minor Part 70 permit modification application immediately after it files ~~such~~ **the** application. After the source makes the change allowed by this subdivision, and until the commissioner takes any of the actions specified in subdivision (6)(A) through (6)(C), the source must comply with both the applicable requirements governing the change and the proposed Part 70 permit terms and conditions. During this time period, the source need not comply with the existing Part 70 permit terms and conditions it seeks to modify. If the source fails to comply with its proposed Part 70 permit terms and conditions during this time period, the existing Part 70 permit terms and conditions it seeks to modify may be enforced against it.

(8) The Part 70 permit shield under section 15 of this rule is not applicable to minor Part 70 permit modifications until after the commissioner has issued the modification.

(c) Consistent with the following, the commissioner may modify the procedure outlined in subsection (b) to process groups of a source's applications for modifications eligible for minor Part 70 permit modification processing:

(1) Group processing of modifications may be used only for those Part 70 permit modifications that meet the following requirements:

(A) The modifications meet the criteria for minor Part 70 permit modification procedures under subsection (b).

(B) The modifications are exempt from preconstruction or permit revision approval under 326 IAC 2-1.1-3.

(2) An application requesting the use of group processing procedures shall meet the requirements of section 4(c) of this rule and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft Part 70 permit ~~which~~ **that** reflects the requested change.

(C) Certification by a responsible official, consistent with section 4(f) of this rule, that the proposed modification meets the criteria for use of group processing procedures and a request that ~~such~~ **the** procedures be used.

(D) A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision (1)(B).

(E) Certification, consistent with section 4(f) of this rule, that the source has notified the U.S. EPA of the proposed modification. ~~Such~~ **The** notification need only contain a brief description of the requested modification.

(F) Completed forms for the commissioner to use to notify the U.S. EPA and affected states as required under section 18 of this rule.

(3) The notice provisions of section 17 of this rule shall apply to modifications eligible for group processing.

(4) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under subdivision (1)(B), whichever is earlier, the commissioner promptly shall notify the U.S. EPA, under section 18(a) of this rule, and affected states, under section 17(4) of this rule, of the requested Part 70 permit modifications. The commissioner shall send any notice required under section 18(b) of this rule to the U.S. EPA.

(5) The provisions of subsection (b)(5) shall apply to modifications eligible for group processing, except that the commissioner shall take one (1) of the actions specified in subsection (b)(5) within one hundred eighty (180) days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period, whichever is later.

(6) The provisions of subsection (b)(6) shall apply to modifications eligible for group processing.

(7) The Part 70 permit shield under section 15 of this rule is not applicable to modifications eligible for group processing until after the commissioner has issued the modifications.

(d) Significant modification procedures shall be as follows:

(1) Significant modification procedures shall be used for applications requesting Part 70 permit modifications that do not qualify as minor permit modifications or as administrative

amendments. Every significant change in existing monitoring Part 70 permit terms or conditions and every relaxation of reporting or record keeping permit terms or conditions shall be considered significant. **The:**

(A) addition;
(B) renewal;
(C) termination;
(D) revocation; and
(E) revision;

of PAL provisions in accordance with 326 IAC 2-2.4 or 326 IAC 2-3.4 shall be considered significant. Nothing in this subdivision shall be construed to preclude the permittee from making changes consistent with this rule that would render existing Part 70 permit compliance terms and conditions irrelevant.

(2) Significant Part 70 permit modifications shall meet all requirements of this rule, including those for application, public participation, review by affected states, and review by the U.S. EPA, and availability of the permit shield as they apply to Part 70 permit issuance and Part 70 permit renewal. The commissioner shall complete review of the majority of significant Part 70 permit modifications within nine (9) months after receipt of a complete application.

(Air Pollution Control Board; 326 IAC 2-7-12; filed May 25, 1994, 11:00 a.m.: 17 IR 2262; errata filed Jun 10, 1994, 5:00 p.m.: 17 IR 2358; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2345; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1044; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3107; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1591; filed Aug 10, 2004, 3:35 p.m.: 27 IR 3952)

SECTION 25. 326 IAC 2-2.5 IS REPEALED.

LSA Document #03-67(F)
Proposed Rule Published: March 1, 2004; 27 IR 1966
Hearing Held: June 2, 2004
Approved by Attorney General: July 22, 2004
Approved by Governor: August 6, 2004
Filed with Secretary of State: August 10, 2004, 3:35 p.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #03-332(F)

DIGEST

Readopts 326 IAC 2-10-1 concerning limiting potential to emit. Adds 326 IAC 2-10-2.1, 326 IAC 2-10-3.1, 326 IAC 2-10-4.1, 326 IAC 2-10-5.1, and 326 IAC 2-10-6.1 to allow small sources to operate under a permit by rule. Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7, Second Notice of Comment Period, and Notice of First Public Hearing: January 1, 2004, Indiana Register (27 IR 1309).

Date of First Hearing: March 3, 2004.

Proposed Rule and Notice of Second Public Hearing: April 1, 2004, Indiana Register (27 IR 2324).

Date of Second Hearing: May 5, 2004.

326 IAC 2-10-1
326 IAC 2-10-2.1
326 IAC 2-10-3.1
326 IAC 2-10-4.1
326 IAC 2-10-5.1
326 IAC 2-10-6.1

SECTION 1. 326 IAC 2-10-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-10-1 Limiting potential to emit

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

Sec. 1. (a) A source that would otherwise be required to have a permit under 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or an operating agreement as described in 326 IAC 2-9 may limit its potential to emit by complying with the conditions of this rule. A source complying with this rule is not subject to 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or 326 IAC 2-9 unless otherwise required by federal law.

(b) A source complying with this rule may at any time apply for a state operating permit under 326 IAC 2-6.1, Part 70 permit under 326 IAC 2-7, a FESOP under 326 IAC 2-8, or an operating agreement under 326 IAC 2-9, as applicable. *(Air Pollution Control Board; 326 IAC 2-10-1; filed Sep 5, 1996, 11:00 a.m.: 20 IR 10; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1063; readopted filed Aug 2, 2004, 3:10 p.m.: 27 IR 3954)*

SECTION 2. 326 IAC 2-10-2.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-2.1 Definitions

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

Sec. 2.1. The definitions in IC 13-11-2, 326 IAC 1-2, and 326 IAC 2-7 apply throughout this rule. *(Air Pollution Control Board; 326 IAC 2-10-2.1; filed Aug 2, 2004, 3:10 p.m.: 27 IR 3954)*

SECTION 3. 326 IAC 2-10-3.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-3.1 Conditions

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

Sec. 3.1. The conditions of this rule that limit potential to emit are as follows:

(1) The source limits actual emissions for every twelve (12) month period to less than twenty percent (20%) of

any threshold for a major source of the following:

(A) Regulated air pollutants.

(B) Hazardous air pollutants, as defined in Section 112 of the Clean Air Act.

(2) The source does not rely on air pollution control equipment to comply with subdivision (1).

(Air Pollution Control Board; 326 IAC 2-10-3.1; filed Aug 2, 2004, 3:10 p.m.: 27 IR 3954)

SECTION 4. 326 IAC 2-10-4.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-4.1 Demonstration of compliance

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

Sec. 4.1. Not later than thirty (30) days after receipt of a written request by the department or U.S. EPA, the owner or operator shall demonstrate that the source is in compliance with the conditions provided in section 3.1 of this rule. The demonstration of compliance shall be based on actual emissions for the previous twelve (12) months and may include, but is not limited to, fuel or material usage or production records. No other demonstration of compliance shall be required. *(Air Pollution Control Board; 326 IAC 2-10-4.1; filed Aug 2, 2004, 3:10 p.m.: 27 IR 3955)*

SECTION 5. 326 IAC 2-10-5.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-5.1 Compliance with other provisions

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

Sec. 5.1. (a) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided in section 1 of this rule.

(b) A source subject to this rule shall be subject to applicable requirements for a major source, including 326 IAC 2-7, if:

(1) at any time the source is not in compliance with the conditions provided in section 3.1 of this rule; or

(2) the source does not timely or adequately demonstrate compliance with the conditions in section 3.1 of this rule as required under section 4.1 of this rule.

(Air Pollution Control Board; 326 IAC 2-10-5.1; filed Aug 2, 2004, 3:10 p.m.: 27 IR 3955)

SECTION 6. 326 IAC 2-10-6.1 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-10-6.1 Enforcement

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17; IC 13-30

Sec. 6.1. Any violation of this rule may result in administrative or judicial enforcement proceedings under IC 13-30-3 and penalties under IC 13-30-4, IC 13-30-5, or IC 13-30-6. *(Air Pollution Control Board; 326 IAC 2-10-6.1; filed Aug 2, 2004, 3:10 p.m.: 27 IR 3955)*

LSA Document #03-332(F)
Proposed Rule Published: April 1, 2004; 27 IR 2324
Hearing Held: May 5, 2004
Approved by Attorney General: July 13, 2004
Approved by Governor: July 29, 2004
Filed with Secretary of State: August 2, 2004, 3:10 p.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #03-333(F)

DIGEST

Amends 326 IAC 2-11-2 and readopts 326 IAC 2-11-1, 326 IAC 2-11-3, and 326 IAC 2-11-4 to allow gasoline dispensing operations, grain elevators, and sources that process mill or grain to operate under a permit by rule. *NOTE: IC 4-22-2.5-5 authorizes the governor to postpone, by executive order, the expiration of rules for one year. Executive Order #03-53, issued December 30, 2003, and printed at 27 IR 1663, postpones the expiration of the rules in this document until January 1, 2005.* Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7, Second Notice of Comment Period and Notice of First Hearing: January 1, 2004, Indiana Register (27 IR 1311).

Date of First Hearing: March 3, 2004.

Proposed Rule and Notice of Second Public Hearing: April 1, 2004, Indiana Register (27 IR 2326).

Date of Second Hearing: May 5, 2004.

326 IAC 2-11-1 **326 IAC 2-11-3**
326 IAC 2-11-2 **326 IAC 2-11-4**

SECTION 1. 326 IAC 2-11-1 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-11-1 General provisions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-11-2; IC 13-15; IC 13-17; IC 13-30-3

Sec. 1. (a) This section contains general provisions applicable to all other sections in this rule.

(b) Definitions provided in IC 13-11-2, 326 IAC 1-2, and 326 IAC 2-7 shall apply to this rule.

(c) A source may limit its allowable emissions or potential to emit by complying with the conditions of the applicable section of this rule. A source complying with this rule is not subject to 326 IAC 2-6.1 unless otherwise required by law. A source complying with this rule is not subject to 326 IAC 2-5.1 or 326 IAC 2-7 provided the rule limits the source's allowable emissions or potential to emit below the applicability thresholds for 326 IAC 2-5.1 or 326 IAC 2-7.

(d) A source complying with this rule may at any time apply for a permit under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or an operating agreement under 326 IAC 2-9, as applicable.

(e) Before a source subject to this rule modifies its facility or operations in such a way that it will no longer comply with this rule, it shall obtain the appropriate approval from the commissioner under 326 IAC 2-5.1, 326 IAC 2-6.1, 326 IAC 2-2, 326 IAC 2-3, 326 IAC 2-7, or 326 IAC 2-8.

(f) Not later than thirty (30) days after receipt of a written request by the department or the U.S. EPA, the owner or operator of a source subject to this rule shall demonstrate that the source is in compliance with limits in the applicable section of this rule by providing throughput records for the previous twelve (12) months.

(g) A source electing to comply with this rule shall comply with the following:

(1) The source shall operate and properly maintain air pollution control devices at the source.

(2) The source shall follow generally accepted industry work practices to minimize emissions of regulated air pollutants.

(3) The source shall not discharge air pollutants so as to create a public nuisance.

(h) This section does not affect a requirement to comply with the provisions of any other applicable federal, state, or local requirement, except as specifically provided in this title.

(i) A source subject to this rule may be subject to applicable requirements for a major source, including 326 IAC 2-7, if:

(1) at any time the source is not in compliance with the conditions provided in an applicable section of this rule; or

(2) the source does not timely or adequately demonstrate compliance with the conditions in an applicable section of this rule.

(j) Any violation of this rule may result in administrative or judicial enforcement proceedings and penalties under IC 13-30-3. *(Air Pollution Control Board; 326 IAC 2-11-1; filed May 7, 1997, 4:00 p.m.: 20 IR 2316; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1063; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3108; readopted filed Aug 2, 2004, 3:25 p.m.: 27 IR 3955)*

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

326 IAC 2-11-2 Gasoline dispensing operations

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

Sec. 2. (a) This section applies to retail or commercial gasoline dispensing operations that: ~~meet each of the following conditions:~~

(1) meet the conditions specified in subsection (b); **and**

(2) demonstrate compliance as specified in subsection (c).

(b) To limit potential to emit as provided in section 1(c) of this rule, the following conditions are applicable to sources depending on their location:

(1) For sources located in Clark or Floyd County, the source:

(A) fills its storage tanks by vapor-balanced fill;

(B) has a Stage II vapor recovery system; and

(C) dispenses less than five million three hundred seventy-six thousand (5,376,000) gallons of gasoline during an average month based on the last twelve (12) months.

(2) For sources located in Lake or Porter County, the source:

(A) fills its storage tanks by vapor-balanced fill;

(B) has a Stage II vapor recovery system; and

(C) dispenses less than one million three hundred forty-four thousand (1,344,000) gallons of gasoline during an average month based on the last twelve (12) months.

(3) For all other sources, the source **uses:**

(A) ~~uses~~ the splash method for filling storage tanks and dispenses less than six hundred eighty-eight thousand (688,000) gallons of gasoline; ~~during an average month based on the last twelve (12) months;~~

(B) ~~uses~~ the submerged fill method for filling storage tanks and dispenses less than eight hundred thirty-three thousand (833,000) gallons of gasoline; ~~during an average month based on the last twelve (12) months;~~

(C) ~~uses~~ the vapor-balanced fill method for filling storage tanks and dispenses less than one million two hundred eighty-two thousand (1,282,000) gallons of gasoline; ~~during an average month based on the last twelve (12) months;~~ or

(D) ~~uses~~ the fill vapor-balanced fill method for filling storage tanks, has a Stage II vapor recovery system, and dispenses less than five million three hundred seventy-six thousand (5,376,000) gallons of gasoline;

during an average month based on the last twelve (12) months.

(c) Sources electing to comply with this rule must be able to demonstrate compliance no later than thirty (30) days after receipt of a written request by the department or the U.S. EPA, as follows:

(1) The owner or operator of a gasoline dispensing source shall demonstrate compliance with subsection (b)(3)(A), (b)(3)(B), or (b)(3)(C), as applicable.

(2) The owner or operator of a gasoline dispensing source subject to subsection (b)(3)(D) shall demonstrate compliance with subsection (b)(3)(D) and ~~326 IAC 8-4-6 subsections (a)~~

~~through (d),~~ ~~(f),~~ ~~and~~ ~~(j)~~ ~~through~~ ~~(m)~~ **326 IAC 8-4-6(a) through 326 IAC 8-4-6(d), 326 IAC 8-4-6(f), and 326 IAC 8-4-6(j) through 326 IAC 8-4-6(m).**

(3) The owner or operator of a gasoline dispensing source subject to subsection (b)(1) or (b)(2) shall demonstrate compliance with subsection (b)(1) or (b)(2), as applicable, and 326 IAC 8-4-6.

(Air Pollution Control Board; 326 IAC 2-11-2; filed May 7, 1997, 4:00 p.m.: 20 IR 2316; filed Aug 2, 2004, 3:25 p.m.: 27 IR 3956)

SECTION 3. 326 IAC 2-11-3 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-11-3 Grain elevators

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

Sec. 3. (a) This section applies to a grain elevator that receives and ships grain as follows:

(1) Grain receiving by truck or rail and grain shipping by truck or rail.

(2) Grain receiving by truck or rail and grain shipping by barge.

(3) Grain receiving by truck or rail and grain shipping by ship.

(b) To limit allowable emissions or potential to emit as provided in section 1(c) of this rule, annual total throughput limits shall be equal to or less than the following:

(1) For truck or rail grain receiving and truck or rail grain shipping, eleven million two hundred thousand (11,200,000) bushels.

(2) For truck or rail grain receiving and barge grain shipping, eight million (8,000,000) bushels.

(3) For truck or rail grain receiving and ship grain shipping, five million six hundred eighty thousand (5,680,000) bushels.

(Air Pollution Control Board; 326 IAC 2-11-3; filed Apr 2, 1997, 5:05 p.m.: 20 IR 2107; readopted filed Aug 2, 2004, 3:25 p.m.: 27 IR 3957)

SECTION 4. 326 IAC 2-11-4 IS READOPTED TO READ AS FOLLOWS:

326 IAC 2-11-4 Grain processing or milling

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

Sec. 4. (a) This section applies to sources that process or mill grain, including the following:

(1) Flour mills.

(2) Dry corn mills.

(3) Animal feed mills.

(b) To limit allowable emissions or potential to emit as provided in section 1(c) of this rule, the annual total throughput limits shall be equal to or less than the following:

(1) For flour mills, one hundred fifty-four thousand five hundred twenty-six (154,526) bushels.

(2) For dry corn mills, one million sixty-three thousand two hundred fifty (1,063,250) bushels.

(3) For animal feed mills, eleven million two hundred thousand (11,200,000) bushels.

(Air Pollution Control Board; 326 IAC 2-11-4; filed Apr 2, 1997, 5:05 p.m.: 20 IR 2108; readopted filed Aug 2, 2004, 3:25 p.m.: 27 IR 3957)

LSA Document #03-333(F)
Proposed Rule Published: April 1, 2004; 27 IR 2326
Hearing Held: May 5, 2004
Approved by Attorney General: July 13, 2004
Approved by Governor: July 29, 2004
Filed with Secretary of State: August 2, 2004, 3:25 p.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #01-288(F)

DIGEST

Adds 329 IAC 10-2-29.5 to be consistent with requirements for conditionally exempt small quantity generators in 329 IAC 3.1. Adds 329 IAC 10-2-135.5 to define petroleum contaminated soil. Adds 329 IAC 10-7.2 to require generators to provide information about their waste when requested by the department. Adds 329 IAC 10-8.2 to retain handling requirements for certain solid wastes. Adds 329 IAC 11-2-19.5 and 329 IAC 11-9-6 to allow solid waste transfer stations to use the insignificant facility modification mechanism. Adds 329 IAC 11-8-2.5 to clarify wastes that transfer stations may accept. Amends 329 IAC 10-2-72.1 to clarify the definition of "final closure". Amends 329 IAC 10-2-130 concerning the definition of "operator". Amends 329 IAC 10-2-32, 329 IAC 10-2-115, 329 IAC 10-2-116, 329 IAC 10-2-117, 329 IAC 10-2-174, 329 IAC 10-5-1, 329 IAC 10-9-4, 329 IAC 10-14-2, 329 IAC 10-20-14.1, 329 IAC 10-28-24, 329 IAC 10-36-19, 329 IAC 11-2-39, 329 IAC 11-8-2, 329 IAC 11-8-3, 329 IAC 11-13-4, 329 IAC 11-13-6, 329 IAC 11-15-1, 329 IAC 11-19-2, 329 IAC 11-19-3, 329 IAC 11-20-1, 329 IAC 11-21-4, 329 IAC 11-21-5, 329 IAC 11-21-6, 329 IAC 11-21-7, 329 IAC 11-21-8, 329 IAC 12-8-4, and 329 IAC 13-3-1 to remove references to special waste and comply with IC 4-22-2-20. Amends 329 IAC 10-2-197.1 to be consistent with 329 IAC 3.1. Amends 329 IAC 10-9-2 to clarify wastes that municipal solid waste landfills may accept. Amends 329 IAC 11-3-2 to be consistent with requirements for conditionally exempt small quantity generators in 329 IAC 3.1. Repeals 329 IAC 10-2-135.1, 329 IAC 10-2-179, 329 IAC 10-2-199.1, 329 IAC 10-2-201.1, 329 IAC 10-7.1, 329 IAC 10-8.1, 329 IAC 10-20-29, 329 IAC 10-28-21, 329 IAC

11-2-44, 329 IAC 11-6-1, and 329 IAC 11-7. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: September 1, 2001, Indiana Register (24 IR 4265).

Second Notice of Comment Period and Notice of First Hearing: July 1, 2002, Indiana Register (25 IR 3568).

Date of First Hearing: September 17, 2002.

Proposed Rule, Third Notice of Comment Period, and Notice of Second Hearing: February 1, 2003, Indiana Register (26 IR 1647).

Date of Second Hearing: October 21, 2003, November 17, 2003, and February 17, 2004.

329 IAC 10-2-29.5
329 IAC 10-2-32
329 IAC 10-2-72.1
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329 IAC 10-7.1
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329 IAC 10-20-14.1
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329 IAC 11-15-1
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329 IAC 11-21-5
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329 IAC 11-21-7
329 IAC 11-21-8
329 IAC 12-8-4
329 IAC 13-3-1

SECTION 1. 329 IAC 10-2-29.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-29.5 "CESQG hazardous waste" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-19-3; IC 13-30-2; IC 36-9-30

Sec. 29.5. "CESQG hazardous waste" means hazardous waste that is:

(1) generated by a conditionally exempt small quantity generator; and

(2) regulated under 40 CFR 261.5, revised as of July 1, 2002, available from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop: SSOP, Washington, D.C. 20402-9328.

(Solid Waste Management Board; 329 IAC 10-2-29.5; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3958)

SECTION 2. 329 IAC 10-2-32 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-32 "Commercial solid waste" defined
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-19-3; IC 13-30-2; IC 36-9-30

Sec. 32. **(a)** "Commercial solid waste" means all types of solid waste generated by:

(1) retail outlets;
(2) offices;
(3) restaurants;
(4) warehouses; and
(5) other nonmanufacturing activities. ~~but excludes~~

(b) The term does not include:
(1) household or residential **waste;**
(2) hazardous **waste;**
(3) infectious ~~and special~~ **waste;**
(4) industrial process wastes; **or**
(5) pollution control waste.

(Solid Waste Management Board; 329 IAC 10-2-32; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1767; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3958)

SECTION 3. 329 IAC 10-2-72.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-72.1 "Final closure" defined
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-17; IC 13-19-3; IC 36-9-30

Sec. 72.1. **(a)** "Final closure" means those activities required at the end of waste acceptance for the entire area of a facility. ~~including~~

(b) The term includes:
(1) the placement of final cover; ~~and~~
(2) the establishment of vegetation in accordance with approved closure plans; ~~but exclusive of~~ **and**
(3) activities to be completed at the end of waste acceptance at a facility, including certification required by:
(A) 329 IAC 10-22-8;
(B) 329 IAC 10-30-7; or
(C) 329 IAC 10-37-7.

(c) The term does not include:
(1) monitoring and maintenance activities required under post-closure care; **and**
(2) activities required after certification.

(Solid Waste Management Board; 329 IAC 10-2-72.1; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2746; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3958)

SECTION 4. 329 IAC 10-2-115 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-115 "Municipal solid waste" or "MSW" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-19-3-3; IC 13-30-2; IC 36-9-30

Sec. 115. **(a)** "Municipal solid waste" or "MSW" means any solid waste generated by community activities or the operation of residential or commercial establishments.

(b) The term includes the following:
(1) Household or residential waste.
(2) Commercial solid waste.

(c) The term does not include **the following:**
(1) Construction/demolition waste.
(2) ~~special~~ **Industrial process** waste. ~~as defined in section 179 of this rule;~~
(3) Infectious waste. ~~as defined in section 96 of this rule; or~~
(4) ~~waste that:~~
~~(A)~~ results ~~from the combustion of~~ Coal ~~and~~
~~(B) is referenced under IC 13-1-12-9~~ **combustion and flue gas desulfurization wastes excluded from regulation by IC 13-19-3-3.**
(5) Hazardous waste.
(6) Pollution control waste.

(Solid Waste Management Board; 329 IAC 10-2-115; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3959)

SECTION 5. 329 IAC 10-2-116 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-116 "Municipal solid waste landfill" or "MSWLF" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-19-3; IC 13-20-21; IC 13-30-2; IC 36-9-30

Sec. 116. **(a)** "Municipal solid waste landfill" or "MSWLF" means a solid waste land disposal facility that is:
(1) permitted to ~~receive~~ **accept** municipal solid waste; and ~~that is~~
(2) not:
(A) a land application unit;
(B) a surface impoundment;
(C) an injection well; or
(D) a waste pile.

(b) An MSWLF is a sanitary landfill for purposes of IC 13-20-21. ~~An MSWLF also may receive commercial solid waste, construction/demolition waste, small quantity generator waste, industrial solid waste, and special waste in accordance with 329 IAC 10-8.1.~~ Such a landfill may be publicly or privately owned. *(Solid Waste Management Board; 329 IAC 10-2-116; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1703, eff one hundred eighty (180) days after filing with the secretary of state; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2747, eff Jul 10, 1998; errata filed Apr 8, 1998, 2:20 p.m.: 21 IR 2990; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3959)*

SECTION 6. 329 IAC 10-2-117 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-117 "Municipal solid waste landfill unit" or "MSWLF unit" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-19-3; IC 13-30-2; IC 36-9-30

Sec. 117. **(a)** "Municipal solid waste landfill unit" or "MSWLF unit" means a discrete area of land or an excavation that is:
(1) permitted to ~~receive~~ **accept** municipal solid waste for disposal; and ~~that is~~
(2) not:
(A) a land application unit;
(B) a surface impoundment;
(C) an injection well; or
(D) a waste pile.
~~as those terms are defined in 40 CFR 257.2.~~

~~An MSWLF also may receive commercial solid waste, construction/demolition waste, small quantity generator waste, industrial solid waste, and special waste in accordance with 329 IAC 10-8.1.~~ **(b)** The landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. *(Solid Waste Management Board; 329 IAC 10-2-117; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1703, eff one hundred eighty (180) days after filing with the secretary of state; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2747, eff Jul 10, 1998; errata filed Apr 8, 1998, 2:20 p.m.: 21 IR 2990; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3959)*

SECTION 7. 329 IAC 10-2-130 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-130 "Operator" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-20-4-7; IC 13-20-6
Affected: IC 13-11-2-148; IC 13-19-3; IC 13-30-2; IC 36-9-30

Sec. 130. **(a)** "Operator", **except as provided in subsection (b),** means the person or persons responsible for the overall operation of a solid waste land disposal facility or part of a solid waste land disposal facility.

(b) In:
(1) 329 IAC 10-20-30;
(2) 329 IAC 10-28-22 through 329 IAC 10-28-24; and
(3) 329 IAC 10-36-17 through 329 IAC 10-36-19;
the term has the meaning as set forth in IC 13-11-2-148(c).

(Solid Waste Management Board; 329 IAC 10-2-130; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1779; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3767; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3959)

SECTION 8. 329 IAC 10-2-135.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-2-135.5 "Petroleum contaminated soil" defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-12; IC 13-19; IC 13-20-7-6; IC 36-9-30

Sec. 135.5. "Petroleum contaminated soil" means soil that is contaminated with any of the following:

(1) Asphalt or asphaltic suspension.
(2) Aviation turbine fuel.
(3) Crude oil.
(4) Diesel fuel.
(5) Fuel oil.
(6) Gas oil.
(7) Gasoline.
(8) Heating oil.
(9) Hydraulic oil.
(10) Jet fuel.
(11) Kerosene.
(12) Lubricating oil.
(13) Mineral spirits.
(14) Motor fuel.
(15) Transformer oil.
(16) Transmission fluid.

(Solid Waste Management Board; 329 IAC 10-2-135.5; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3960)

SECTION 9. 329 IAC 10-2-174 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-174 "Solid waste" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-17; IC 13-11-2-205; IC 13-19-3; IC 13-20-10; IC 36-9-30

Sec. 174. (a) "Solid waste" ~~means any:~~ **has the meaning as set forth in IC 13-11-2-205(a).**

~~(1) garbage;~~
~~(2) refuse;~~
~~(3) sludge from a wastewater treatment plant;~~
~~(4) sludge from a water supply treatment plant;~~
~~(5) sludge from an air pollution control facility; or~~
~~(6) other discarded material, including:~~

(b) The following are examples of other discarded material:

~~(A)~~ **(1)** Ash residue.
~~(B)~~ **(2)** Contaminated sediments.
~~(C)~~ **(3)** Commercial **solid** waste.
~~(D)~~ **(4)** Construction/demolition waste.
~~(E)~~ **(5)** Hazardous waste.
~~(F)~~ **(6)** Household waste.
~~(G)~~ **(7)** Infectious waste.
~~(H)~~ **(8)** Liquid waste.
~~(I) special~~ **(9) Pollution control** waste.
~~(J)~~ **(10)** Municipal solid waste.
~~(K)~~ **(11)** Regulated hazardous waste.
~~(L)~~ **(12)** Residential ~~and nonresidential~~ waste. ~~and~~
~~(M) Any solid, liquid, semisolid, or contained gaseous material.~~
(13) Industrial process waste.

~~(b) The term does not include:~~
~~(1) solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, 33 U.S.C. 1342, as amended February 4, 1987;~~
~~(2) source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, 42 U.S.C. 2014 et seq., as amended October 24, 1992;~~
~~(3) manures or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation; or~~
~~(4) vegetative matter at composting facilities registered under IC 13-20-10.~~

(Solid Waste Management Board; 329 IAC 10-2-174; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1784; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2748; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3960)

SECTION 10. 329 IAC 10-2-197.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-197.1 "U.S. Environmental Protection Agency Publication SW-846" or "SW-846" defined

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 197.1. "U.S. Environmental Protection Agency Publication SW-846" or "SW-846" means "Test Methods for Evaluating Solid Waste, Physical Chemical Methods", U.S. 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), and III (December 1996). ~~that is incorporated by reference at 329 IAC 10-7.1-2(a)(1).~~ **SW-846 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.** *(Solid Waste Management Board; 329 IAC 10-2-197.1; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1705, eff one hundred eighty (180) days after filing with the secretary of state; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3960)*

SECTION 11. 329 IAC 10-5-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-5-1 Applicability
Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3-1
Affected: IC 13-19-3; IC 13-25-4; IC 36-9-30

Sec. 1. (a) This rule applies to all industries:
(1) that dispose of solid waste ~~including special waste~~ on the site where the waste is generated or off-site at a solid waste land disposal facility that is owned and operated by the generator for its exclusive use; and
(2) that are required to have a permit under this article, but did not have a permit under:
(A) 329 IAC 1.5, which was repealed in 1989; or
(B) 329 IAC 2, which was repealed in 1996.

(b) To continue on-site disposal after September 1, 1989, industries subject to this rule and operating before September 1, 1989, must have submitted all information required by **section 2 of** this ~~section~~ **rule** on or before September 1, 1989, to the commissioner. Compliance with section 2 of this rule must constitute an interim permit and must allow the facility to continue operating until such time as the commissioner issues or denies a permit under section 3 of this rule.

(c) This rule does not preclude the commissioner from taking action under IC 13-25-4 where a particular disposal practice is demonstrated to threaten human health or the environment. *(Solid Waste Management Board; 329 IAC 10-5-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1797; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2750; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3778; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3961)*

SECTION 12. 329 IAC 10-7.2 IS ADDED TO READ AS FOLLOWS:

Rule 7.2. Generator Responsibilities for Waste Information

329 IAC 10-7.2-1 Generator responsibilities for waste information
Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-12; IC 13-14-1-4; IC 13-14-2-7; IC 13-19; IC 13-30-2-1

Sec. 1. (a) A person who generates a solid waste shall carry out the hazardous waste determination required by 40 CFR 262.11, incorporated by reference in 329 IAC 3.1-7.

(b) A person who generates a nonhazardous solid waste and disposes of it in a solid waste land disposal facility regulated under this article shall determine if any of the following are present in the waste:
(1) Fugitive dust regulated under the rules of the air pollution control board at 326 IAC 6-4, or fugitive particulate matter regulated under the rules of the air pollution control board at 326 IAC 6-5.
(2) Heat, or the capability of generating heat, regulated under 329 IAC 10-8.2-3.
(3) Regulated asbestos-containing material regulated under 329 IAC 10-8.2-4.
(4) Polychlorinated biphenyls regulated under 329 IAC 4.1 or this article.
(5) Pesticides regulated under this article or 329 IAC 3.1.
(6) Infectious waste regulated under the rules of the Indiana state department of health at 410 IAC 1-3.
(7) Liquid waste regulated under 329 IAC 10-20-27.
(8) Other materials prohibited from disposal under 329 IAC 10-9-2.

(c) Nothing in this rule limits the authority of the commissioner to require any information necessary to secure compliance with, or grant an approval under, this article. *(Solid Waste Management Board; 329 IAC 10-7.2-1; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3961)*

SECTION 13. 329 IAC 10-8.2 IS ADDED TO READ AS FOLLOWS:

Rule 8.2. Management Requirements for Certain Solid Wastes

329 IAC 10-8.2-1 General
Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-11-2-155; IC 13-12; IC 13-19; IC 13-20-7-6

Sec. 1. This rule describes certain solid waste that must be managed using the handling or disposal requirements described in this section. *(Solid Waste Management Board; 329 IAC 10-8.2-1; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3961)*

329 IAC 10-8.2-2 Wastes that generate fugitive dust
Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-11-2-155; IC 13-12; IC 13-18-1; IC 13-19; IC 13-20-7-6

Sec. 2. Waste that generates fugitive dusts or fugitive particulate matter must be managed in a way that does not violate any of the following:
(1) The rules of the air pollution control board at 326 IAC 6-4 for fugitive dust.
(2) The rules of the air pollution control board at 326 IAC 6-5 for fugitive particulate matter, including 326 IAC 6-5-4(g) for control measures for solid waste handling.
(Solid Waste Management Board; 329 IAC 10-8.2-2; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3961)

329 IAC 10-8.2-3 Waste that is hot or capable of generating heat
Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-11-2-155; IC 13-12; IC 13-19; IC 13-20-7-6

Sec. 3. (a) Waste that is hot, or capable of generating heat in combination with other wastes or water, such that the heat may adversely affect:
(1) routine solid waste disposal operations;

(2) the structure of the MSWLF unit or non-MSWLF unit; or
(3) human health;
must be managed in accordance with this section, as applicable.

(b) The waste must be cooled or allowed to cool to a temperature that will not adversely affect:
(1) routine solid waste disposal operations;
(2) the structure of the MSWLF unit or non-MSWLF unit; or
(3) human health;
prior to shipment for disposal.

(c) The waste must be treated to prevent any exothermic reaction if such contact may adversely affect:
(1) routine solid waste disposal operations;
(2) the structure of the MSWLF unit or non-MSWLF unit; or
(3) human health.

(d) The waste must be isolated to prevent contact with another waste or with water if such contact may adversely affect:
(1) routine solid waste disposal operations;
(2) the structure of the MSWLF unit or non-MSWLF unit; or
(3) human health.

(Solid Waste Management Board; 329 IAC 10-8.2-3; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3961)

329 IAC 10-8.2-4 Regulated asbestos-containing materials
Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-11-2-155; IC 13-12; IC 13-19; IC 13-20-7-6

Sec. 4. (a) Regulated asbestos-containing materials, except for Category II nonfriable asbestos-containing materials regulated under subsection (b), must be managed in accordance with the rules of the air pollution control board at 326 IAC 14-10, 40 CFR 61, Subpart M, revised as of February 12, 1999, and the following:
(1) The generator shall provide the solid waste land disposal facility with sufficient notice in advance of the disposal such that the facility may prepare to accept the regulated asbestos-containing material.
(2) All regulated asbestos-containing material must be handled in accordance with the wetting, packaging, and labeling provisions of 40 CFR 61.145(c), revised as of January 16, 1991, and 40 CFR 61.150(a), revised as of January 16, 1991.
(3) Each load of regulated asbestos-containing material must be accompanied by a waste shipment record prepared on one (1) of the following:
(A) A form provided by the department.
(B) A form produced by the generator that includes all the information included on the form provided by the department.
(4) All regulated asbestos-containing material must be disposed of in accordance with the provisions of the following:
(A) 40 CFR 61.154, revised as of January 16, 1991.
(B) The rules of the air pollution control board at 326 IAC 14-10.
(C) The following:
(i) There must not be direct physical contact between regulated asbestos-containing material and heavy equipment during disposal and covering operations.
(ii) All regulated asbestos-containing material must be covered with soil, approved alternative material, or solid waste before compaction with heavy equipment or within twenty-four (24) hours of receipt of the waste to prevent airborne release.
(iii) Any regulated asbestos-containing material that is improperly packaged or in which packaging has been damaged must be placed in the working face of the MSWLF unit or non-MSWLF unit and covered immediately after placement of the waste.
(iv) An asbestos waste disposal manager shall be present at the MSWLF unit or non-MSWLF unit during all handling and disposal of regulated asbestos-containing material to ensure compliance with this subsection. The asbestos waste disposal manager shall be licensed in accordance with the rules of the air pollution control board at 326 IAC 18-1.
(v) All personnel involved in off-loading or in covering shall use appropriate personal protective equipment as necessary to prevent exposure to any airborne release of asbestos fibers during disposal operations.
(vi) The solid waste land disposal facility must have a written contingency plan to safely control torn and broken containers. Dedicated equipment and supplies must be maintained at the facility to properly handle spilled or improperly packaged or wetted regulated asbestos-containing material. If release of asbestos-containing waste materials occurs, the solid waste land disposal facility must take immediate corrective action directed by the asbestos waste disposal manager.

(b) Category II nonfriable asbestos-containing material, as defined in 40 CFR 61.141, revised as of June 19, 1995, that has not been made friable by forces reasonably expected to act on the material before disposal must be managed in accordance with the following:
(1) Subsection (a)(1).
(2) Subsection (a)(3).
(3) Subsection (a)(4).
(4) Label the containers or wrapped materials using warning labels that meet the requirements of 29 CFR 1910.1001(j)(4), revised as of January 8, 1998, and include the information in the following figure:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

(5) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(c) 29 CFR 1910 and 40 CFR 61 are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. *(Solid Waste Management Board; 329 IAC 10-8.2-4; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3962)*

329 IAC 10-8.2-5 Wastes that contain PCBs

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-11-2-155; IC 13-12; IC 13-19; IC 13-20-7-6; IC 15-3-3.5-34

Sec. 5. Wastes that contain PCBs must be managed and disposed of in accordance with 329 IAC 4.1. *(Solid Waste Management Board; 329 IAC 10-8.2-5; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3963)*

329 IAC 10-8.2-6 Waste pesticides or wastes contaminated with pesticides

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3-1
Affected: IC 13-11-2-155; IC 13-12; IC 13-19; IC 13-20-7-6; IC 15-3-3.5-34

Sec. 6. Waste pesticides or wastes contaminated with pesticides must be disposed of in accordance with:

(1) the label required by 40 CFR 156.10(a), revised as of February 23, 1998, available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238; and

(2) IC 15-3-3.5-34.

(Solid Waste Management Board; 329 IAC 10-8.2-6; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3963)

SECTION 14. 329 IAC 10-9-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-9-2 Municipal solid waste landfill waste criteria

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 13-20-9; IC 13-20-16; IC 36-9-30

Sec. 2. **(a) Except as provided in subsection (b),** a municipal solid waste landfill may accept ~~all solid waste regulated under this article except~~ **any solid waste including** the following:

(1) Municipal solid waste.
(2) Construction/demolition waste.
(3) CESQG hazardous waste.
(4) Industrial process waste.
(5) Nonhazardous sludge.
(6) Pollution control waste.
(7) Any solid waste authorized by the facility permit.

(b) A municipal solid waste landfill may not accept for disposal any of the following solid wastes:

(1) ~~Special~~ **Solid** waste ~~must be accepted at a municipal solid waste landfill only in accordance with 329 IAC 10-8.1.~~ **that is prohibited by the facility permit.**

(2) **Liquid** waste, ~~that is or that contains free liquids must not be accepted for disposal by any municipal solid waste landfill effective September 1, 1989. Free liquid shall be determined utilizing Method 9095 (Paint Filter Liquids Test), as described in U.S. Environmental Protection Agency Publication SW-846. This prohibition must not apply to~~ **except** those liquids allowed in 329 IAC 10-20-27.

(3) Hazardous waste, except CESQG hazardous waste.

(4) Infectious waste, except as provided in the rules of the Indiana state department of health at 410 IAC 1-3-26.

(5) Whole waste tires, except as provided in 329 IAC 10-20-32.

(6) Lead-acid batteries prohibited by IC 13-20-16.

(7) Vegetative matter prohibited by IC 13-20-9.

(8) Waste or material containing PCB prohibited by 329 IAC 4.1.

(9) Regulated asbestos-containing material that is not managed in accordance with the rules of the air pollution control board at 326 IAC 14-10 and 329 IAC 10-8.2-4.

(10) Any appliance or motor vehicle air conditioner containing a refrigerant or other class I or class II substance that has not been removed as required by 40 CFR 82.156, revised as of July 1, 2002. 40 CFR 82.156 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.

(11) Biosolid, defined in the rules of the water pollution control board at 327 IAC 6.1-2-7, that is not managed in accordance with the rules of the water pollution control board at 327 IAC 6.1-1-7.

(12) Wastewater, defined in the rules of the water pollution control board at 327 IAC 7.1-2-41, that is not managed in accordance with the rules of the water pollution control board at 327 IAC 7.1-7-1.

(Solid Waste Management Board; 329 IAC 10-9-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1805; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1725, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3963)

SECTION 15. 329 IAC 10-9-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-9-4 Restricted waste sites waste criteria

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 4. (a) A restricted waste site must accept only the restricted waste types specified in the facility permit, determined according to the classification criteria in this section.

(b) Restricted wastes accepted at a restricted waste site must be limited to one (1) waste type or related waste types that are as follows:

(1) Expected to have similar chemical and physical composition.

(2) Demonstrated to be within the concentration limits for the appropriate site type for each constituent for which testing is required. The concentration limits for each constituent for each **restricted waste** site type are as follows:

(A) **Table 1 lists the maximum levels** for constituents using **Method 1311,** the toxicity characteristic leaching procedure test ~~as defined in 329 IAC 10-7.1:~~ **described in U.S. Environmental Protection Agency Publication SW-846:**

Table 1. Constituents Using ~~the~~ **Method 1311,** Toxicity Characteristic Leaching Procedure ~~Test~~

Constituent	Concentration (milligrams per liter)			
	Type IV	Type III	Type II	Type I
Arsenic	~~≤*.05~~ **≤.05**	≤.50	≤1.3	~~<**5.0~~ **<5.0**
Barium	≤1.0	≤10.	≤25.	<100.
Cadmium	≤.01	≤.10	≤.25	<1.0
Chromium	≤.05	≤.50	≤1.3	<5.0
Lead	≤.05	≤.50	≤1.3	<5.0
Mercury	≤.002	≤.02	≤.05	<.20
Selenium	≤.01	≤.10	≤.25	<1.0
Silver	≤.05	≤.50	≤1.3	<5.0

"<" means less than

"≤" means less than or equal to

(B) **Table 2 lists the maximum levels** for constituents using the **neutral** leaching method test:

Table 2. Constituents Using the **Neutral** Leaching Method Test[1]

Constituent	Concentration (milligrams per liter)			
	Type IV	Type III	Type II	Type I
Barium	≤1.0	≤10.0	≤25.	~~***~~ **(2)**
Chlorides	≤250.	≤2,500.	≤6,300.	~~***~~ **(2)**
Copper	≤.25	≤2.5	≤6.3	~~***~~ **(2)**
Cyanide, total	≤.20	≤2.0	≤5.0	~~***~~ **(2)**
Fluoride	≤1.4	≤14.0	≤35.	~~***~~ **(2)**
Iron	≤1.5	≤15.0	~~***~~ **(2)**	~~***~~ **(2)**
Manganese	≤.05	≤.50	~~***~~ **(2)**	~~***~~ **(2)**
Nickel	≤.20	≤2.0	≤5.0	~~***~~ **(2)**
Phenols	≤.30	≤3.0	≤7.5	~~***~~ **(2)**
Sodium	≤250.	≤2,500.	≤6,300.	~~***~~ **(2)**
Sulfate	≤250.	≤2,500.	≤6,300.	~~***~~ **(2)**
Sulfide, total	~~≤1.0***~~ *** ≤1.0[3]**	≤5.0	≤13.	~~***~~ **(2)**
Total dissolved solids	≤500.	≤5,000.	≤12,500.	~~***~~ **(2)**
Zinc	≤2.5	≤25.	≤63.	~~***~~ **(2)**

"<" means less than

"≤" means less than or equal to

[1]The Neutral Leaching Method test is conducted as follows:

(1) Use Method 1311, Toxicity Characteristic Leaching Procedure, described in U.S. Environmental Protection Agency publication SW-846.

(2) Substitute deionized water for extraction fluids 1 and 2 described in Method 1311.

(3) Analyze for pH at the end of the eighteen (18) hour extraction period.

[2]Testing is not required.

[3]If detection limit problems exist, please consult the Office of Land Quality for guidance.

(C) ~~For~~ **Table 3 lists the maximum** pH:

Table 3. pH

Constituent	Acceptable Range (Standard Units)			
	Type IV	Type III	Type II	Type I
pH	6.0-9.0	5.0-10.0	4.0-11.0	~~***~~ **(1)**

~~*~~ ~~≤ means less than or equal to.~~

~~**~~ ~~< means less than.~~

~~***~~ [1]Testing is not required.

~~****~~ ~~If detection limit problems exist, please consult the Office of Solid and Hazardous Waste for guidance.~~

~~(3)~~ **(c)** The following apply to those wastes that have previously been classified using the **Method 1310,** extraction procedure toxicity test, **described in U.S. Environmental Protection Agency Publication SW-846,** under 329 IAC 2, which was repealed in 1996, and now must be classified using ~~the toxicity characteristic leaching procedure~~ **Method 1311** under this article:

~~(A)~~ **(1)** The waste must be classified ~~as~~ under ~~329 IAC 10-7.1~~ **this section** at the renewal of the current waste classification.

~~(B)~~ **(2)** If the results using ~~the toxicity characteristic leaching procedure~~ **Method 1311** demonstrate a higher concentration of contaminants leaching from the waste than demonstrated using ~~the extraction procedure toxicity test~~ **Method 1310** for the previous waste classification such that the waste now requires a restricted waste site type with more environmentally protective design and operating standards, the facility accepting the waste is subject to the following:

~~(i)~~ **(A)** For units undergoing closure, the facility must comply with the ground water monitoring and post-closure requirements of the more environmentally protective restricted waste site type.

~~(ii)~~ **(B)** Within one (1) year from the date that the new waste classification type is determined, the owner or operator shall:

~~(AA)~~ **(i)** submit an application to reclassify the facility to the restricted waste site type with the more environmentally protective standards; or

~~(BB)~~ **(ii)** close the facility as required under item (i).

~~(iii)~~ **(C)** If the facility is comprised of previously closed units that are contiguous with existing or new units, the new and existing units must comply with item (ii) and the entire facility must comply with the ground water monitoring requirements of the more environmentally protective restricted waste site type.

~~(c)~~ **(d)** Coal combustion fly or bottom ash and flue gas desulfurization byproducts may be disposed of at a restricted waste site Type I without characterization testing, or at a restricted waste site Type II, III, or IV, if the following are completed:

(1) The waste is characterized as specified in ~~329 IAC 10-7.1.~~ **this section.**

(2) The waste is classified as specified in ~~329 IAC 10-7.1~~ **this section** for disposal and meets the criteria under subsection (b) for a restricted waste site Type II, III, or IV.

(3) Resampling is conducted:

(A) at five (5) year intervals;

(B) whenever the characteristics of the coal changes;

(C) whenever the process generating the waste changes; or

(D) according to a schedule for resampling specified by the commissioner based on variability noted in previous sampling and other factors affecting the predictability of waste characteristics.

~~(d)~~ **(e)** Foundry waste may be disposed of at a restricted waste site Type I, II, III, or IV if the following are completed:

~~(1) The waste is characterized as specified in 329 IAC 10-7.1.~~

~~(2)~~ **(1)** The waste is characterized as specified in ~~329 IAC 10-7.1~~ **this section** for disposal and meets the criteria under subsection (b) for a restricted waste site Type I, II, III, or IV.

~~(3)~~ **(2)** Resampling is conducted:

(A) at two (2) year intervals;

(B) whenever the process changes; or

(C) according to a schedule for resampling by the commissioner based on variability noted in previous sampling and other factors affecting the predictability of waste characteristics.

~~(e)~~ **(f)** For waste other than those in subsections (c) through (d), the generator may request that the commissioner define test constituents and concentration limits needed to ~~make a determination of~~ **determine** which restricted waste site type ~~adequately~~ controls the expected hazards of the waste based on the chemical and physical characteristics of the waste. The commissioner may deny such a request for wastes that are heterogeneous, such as municipal garbage and trash and demolition debris, or wastes that are subject to organic decomposition, and other wastes for which test methods are inadequate to determine the hazards posed by the waste or its decomposition products.

~~(f) Notwithstanding~~ **(g) Except as provided in subsections (a) through (f), even if** sampling results that indicate that waste constituents exceed the criteria for a proposed restricted waste site type, the commissioner may approve the site if the permittee ~~adequately~~ demonstrates that:

(1) the pH range encountered under leaching conditions likely to be encountered at the site will produce lower concentrations of waste constituents in any leachate generated;

(2) due to precipitation, sorption, ion exchange, neutralization, reaction, or decomposition, the waste constituents will be removed from solution; or

(3) dispersion and dilution likely to occur within the monitoring boundary, as defined in 329 IAC 10-2-113, will reduce the concentration of waste constituents in leachate as determined by the toxicity characteristic leaching procedure and leaching method tests.

~~(g)~~ **(h)** The generator shall submit a comprehensive list, comparable to material safety data sheets, of all organic additives used in the process unit operations generating the waste. If trade names are given to additives, it is the generator's responsibility to contact the manufacturer about supplying the commissioner with the chemical ingredient listing that makes up the trade name chemical and to have the manufacturer contact the commissioner with the proper information. The commissioner may require organic testing of the additive.

~~(h)~~ **(i)** Waste analyses submitted to the commissioner for review under subsections (a) through (g) must be accompanied by sufficient documentation of representative sampling and quality assurance and quality control measures to establish that the applicable procedures were conducted under adequate controls as stipulated in ~~329 IAC 10-7.1-4.~~ **subsections (l) through (o) of this section.**

~~(i)~~ **(j)** The person seeking the restricted waste site waste classification shall include a signed statement attesting that the information provided is true and accurate that states, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I further certify that I am authorized to submit this information.".

~~(j)~~ **(k)** The results of the waste classification indicating the restricted waste type determined by the commissioner must be provided in writing to the generator of the waste. A waste classification is not considered valid unless provided in writing by the commissioner.

(l) Testing used to identify the contents and properties of a solid waste must follow appropriate methods described in U.S. Environmental Protection Agency Publication SW-846 or equivalent methods acceptable to the commissioner. All sampling, sample preparation, analytical, quality control, and reporting procedures for the methods used must be followed.

(m) Wastes must not be combined for testing.

(n) Nothing in this section limits the ability of the commis-

sioner to require additional testing for activities other than disposal in a municipal solid waste landfill that meets the requirements of 329 IAC 10-17.

(o) The methods listed in Table 4 must be used to determine if a waste is suitable for disposal in a restricted waste site:

Table 4. Testing Requirements for Waste to be Disposed of in a Restricted Waste Site

Waste	Use These Extraction Methods[1]	Analyze for These Constituents[2]
Coal Ash or Flue Gas Desulfurization Byproducts	Method 1311 (Toxicity Characteristic Leaching Procedure)	Arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver
	Neutral Leaching Method[3] or Method 1312 (Synthetic Precipitation Leaching Procedure)	Barium, chlorides, total cyanide, fluoride, sodium, sulfate, total sulfide, total dissolved solids
Foundry Waste	Method 1311 (Toxicity Characteristic Leaching Procedure)	Arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver
	Neutral Leaching Method[3] or Method 1312 (Synthetic Precipitation Leaching Procedure)	Chlorides, copper, total cyanide, fluoride, iron, manganese, nickel, pH, phenols, sodium, sulfate, total sulfide, total dissolved solids, zinc
All Other Waste	Test methods from SW-846 specific to the waste	Constituents will be determined based on the specific waste

[1]Extraction methods and procedures are found in U.S. Environmental Protection Agency Publication SW-846 unless otherwise noted.

[2]Use appropriate analytical methods from SW-846, "Methods for Chemical Analysis of Water and Waste", EPA-600/4-79-020, revised March 1983, or use other equivalent analytical methods approved by the commissioner. EPA-600/4-79-020 is available from the National Technical Information Service, Springfield, Virginia 22161, order number PB84-128677.

[3]The Neutral Leaching Method is conducted as follows:

(1) Use Method 1311, Toxicity Characteristic Leaching Procedure, described in U.S. Environmental Protection Agency Publication SW-846.

(2) Substitute deionized water for extraction fluids 1 and 2 described in Method 1311.

(3) Analyze for pH at the end of the eighteen (18) hour extraction period.

(Solid Waste Management Board; 329 IAC 10-9-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1805; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1725, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3963)

SECTION 16. 329 IAC 10-14-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-14-2 Weighing scales

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-19-3; IC 13-20-2; IC 24-6-3-5; IC 36-9-30

Sec. 2. (a) This section applies to either of the following:

(1) Solid waste land disposal facilities receiving a permit from the department after January 1, 1994, that are required to install weighing scales.

(2) Existing solid waste land disposal facilities required to install weighing scales under the following conditions:

(A) The solid waste land disposal facility is open to accept solid waste for disposal.

(B) Based on reporting results required by section 1(a) of this rule, the solid waste land disposal facility accepts in any calendar year an annual average of more than fifty (50) tons of solid waste per operating day.

(b) This section does not apply to any solid waste land disposal facility that receives solid waste from a person that:

(1) generates the solid waste; and

(2) disposes of the solid waste at a solid waste land disposal facility that is:

(A) owned by that person; and

(B) limited to use for the disposal of solid waste generated by that person.

(c) Solid waste land disposal facilities required to install weighing scales by subsection (a) must:

(1) install the weighing scales within twelve (12) months of determining the installation is required;

(2) notify the department in writing of the date the weighing scales became operable after installation;

(3) effectively maintain and operate these weighing scales in accordance with IC 24-6;

(4) submit to inspection of the weighing scales under IC 24-6-3-5; and

(5) weigh all vehicles bringing solid waste to the **working face of the** solid waste land disposal facility and report the total weighed quantity of solid waste in tons as required by section 1 of this rule.

(d) In the event that the weighing scales required in subsection (a) break down or are operating improperly:

(1) the solid waste land disposal facility owner, operator, or permittee may use the waste quantification methods in subsection (e) for the duration of the scale breakdown;

(2) the solid waste land disposal facility owner, operator, or permittee shall submit a written notification of the breakdown with each quarterly tonnage report required under section 1 of this rule for each affected quarter;

(3) the solid waste land disposal facility owner, operator, or permittee shall submit with the notification required by subdivision (2), the time frames for actions to be taken to repair the breakdown or inoperable weighing scales; and

(4) the solid waste land disposal facility owner, operator, or permittee shall notify the department in writing that the weighing scales are operable after any repair.

(e) A solid waste land disposal facility required to report under section 1(a) of this rule but not required to install and operate weighing scales or a solid waste land disposal facility

at which the scales are operating improperly or are temporarily inoperable shall use the most applicable of the following conversion factors to determine the weight of municipal solid waste from the volume of municipal solid waste:

(1) Three and three-tenths (3.3) cubic yards of compacted solid waste equals one (1) ton of solid waste.

(2) Six (6) cubic yards of uncompacted solid waste equals one (1) ton of solid waste.

(3) One (1) cubic yard of baled solid waste equals one (1) ton of solid waste.

(f) Any solid waste land disposal facility accepting construction/demolition waste or ~~special~~ **pollution control** waste, required to report under section 1(a) of this rule that is not required by subsection (a) to install weighing scales to weigh solid waste, shall use accepted engineering practices, production information, or other methods approved by the department to estimate the weight of ~~these solid~~ **construction/demolition** waste ~~types~~ **and pollution control waste** received at the solid waste land disposal facility.

(g) Failure to install and operate weighing scales and to notify the department as required by this section constitutes an operational violation under 329 IAC 10-1-2. *(Solid Waste Management Board; 329 IAC 10-14-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1817; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3796; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3966)*

SECTION 17. 329 IAC 10-20-14.1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-20-14.1 Alternative daily cover

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3
Affected: IC 13-11-2-215.1; IC 13-19-3; IC 13-20; IC 36-9-30

Sec. 14.1. (a) ~~An~~ **The** owner, operator, or permittee of an MSWLF unit **that is constructed** with a leachate collection system and composite liner **in accordance with 329 IAC 10-17** may apply ~~an~~ **a material as** alternative daily cover ~~(ADC) material under~~ **only in accordance with** this section **and any requirements in the facility permit.** The following **materials** must not be applied as ~~ADC.~~ **alternative daily cover:**

(1) ~~Category A special waste.~~ **A solid waste that contains a toxicity characteristic contaminant listed in 40 CFR 261.24, Table 1, revised as of July 1, 2002, at a level equal to or greater than seventy-five percent (75%) of the regulatory level for that contaminant, determined in accordance with 329 IAC 3.1.**

~~(2) Material that contains polychlorinated biphenyl (PCB) concentrations greater than twenty-five (25) parts per million; however, this material cannot be PCB containing as defined by 329 IAC 4-1-1(b).~~

~~(3) Material excluded from special waste requirements that is greater than or equal to seventy-five percent (75%) of the hazardous waste limit under the:~~

~~(A) toxicity characteristic leaching procedure (TCLP) test; or~~

~~(B) extraction procedure toxicity (EP Tox) test; as applicable.~~

(2) Putrescible waste.

(3) Infectious waste.

(4) Baghouse dust.

(5) Biosolid that does not meet Class A criteria described in the rules of the water pollution control board at 327 IAC 6.1-4-13(c).

(6) Material containing PCB that is not listed in subsection (c) or subsection (e).

(b) ~~The~~ **Unless permitted otherwise under subsection (e), all material used as alternative daily cover must meet the** following ~~are ADC~~ performance standards:

(1) The material must meet ~~the disposal~~ **all** requirements ~~for MSWLFs under~~ **of** this article **for disposal in a municipal solid waste landfill.**

~~(2) Category B special waste must meet the verification process for disposal under 329 IAC 10-8.1.~~

~~(3)~~ **(2) Use of** the material must ~~control:~~ **not result in:**

(A) blowing litter; ~~and~~

(B) blowing dust; or

~~(B)~~ **(C)** disease vectors.

~~(4)~~ **(3)** The material must not contribute to:

(A) fire;

(B) odor; or

(C) scavenging.

~~(5)~~ **(4)** The material must not:

(A) be composed of ~~particle sizes that contribute to fugitive dust~~ **more than twenty percent (20%) particles smaller than six hundred (600) microns; or**

(B) have a bulk density less than one (1) gram per cubic centimeter.

(5) The material must not be soluble in water.

(6) ~~The material must not pose an exposure threat to workers.~~ **A dry material must not exhibit a pH of:**

(A) less than or equal to five (5); or

(B) greater than or equal to ten (10);

when tested in accordance with Method 9045C, "Soil and Waste pH", described in U.S. Environmental Protection Agency Publication SW-846.

(7) ~~The maximum dimension of the material, with the exception of geotextile or plastic (tarp), must be fourteen (14) inches or less.~~ **When applied as alternative daily cover in accordance with this section, the material must not present a threat to human health or the environment as follows:**

(A) The material must not exceed an exposure limit listed in any of the following:

(i) 29 CFR 1910, Subpart Z, revised as of July 1, 2003.

(ii) 29 CFR 1926.55, revised as of July 1, 2003.

(iii) 29 CFR 1926.62, revised as of July 1, 2003.

29 CFR 1910 and 29 CFR 1926 are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsyl-

vania 15250-7954, (202) 783-3238.

(B) The material must not be ignitable under conditions that exist at the working face of the landfill.

(8) Waste must not be visible after application of the material as alternative daily cover.

(c) ~~If the ADC is one (1) of the following and meets the performance standards under subsection (b),~~ The owner, operator, or permittee **of the municipal solid waste landfill** shall apply for an insignificant facility modification ~~under~~ **in accordance with** 329 IAC 10-3-3(b) to apply **any of** the ~~ADC:~~ **following materials as alternative daily cover:**

(1) Altered tires.

(2) Wood chips.

(3) Compost.

(4) ~~Category B~~ Foundry sand. ~~or foundry sand that is excluded from special waste under IC 13-11-2-215.1(b)(8).~~

(5) Geotextile.

(6) Plastic ~~(tarp).~~ **tarpaulin.**

(7) ~~Excluded~~ Material ~~under~~ **excluded from regulation by** 329 IAC 10-3-1(1).

(8) Dewatered publicly owned treatment works ~~(POTW)~~ sludge.

(9) Dewatered paper sludge.

(10) Petroleum contaminated soil.

(11) Soil contaminated with vegetable oil.

(12) Material containing PCB allowed under 40 CFR 761.62(d), revised as of July 1, 1999*.

(13) Material containing less than fifty (50) parts per million PCB that:

(A) results from a source that contained less than fifty (50) parts per million PCB;

(B) would otherwise meet the definition of PCB bulk product waste in 40 CFR 761.3, revised as of July 1, 1999*; and

(C) is listed in 40 CFR 761.62(b)(1), revised as of July 1, 1999*.

(14) Other material containing less than or equal to ten (10) parts per million PCB not as a result of dilution.

***40 CFR 761 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.**

(d) ~~If~~ The owner, operator, or permittee ~~intends to apply:~~ **of the municipal solid waste landfill shall apply for an insignificant facility modification in accordance with 329 IAC 10-3-3(c) to apply a material that:**

~~(1) an ADC that:~~

~~(A)~~ **(1)** is not listed ~~under~~ **in** subsection (c); and

~~(B)~~ **(2)** meets the performance standards ~~under~~ **in** subsection (b) ~~or~~ **when delivered to the working face of the landfill.**

~~(2) shredder fluff as an ADC;~~

~~the owner, operator, or permittee shall apply for an insignificant facility modification under 329 IAC 10-3-3(c).~~

(e) ~~If~~ The owner, operator, or permittee ~~intends to~~ **of the municipal solid waste landfill shall** apply ~~an ADC that does not meet the requirements of subsection (d) and that~~ **for a minor modification in accordance with 329 IAC 10-11-6 to apply any of the following materials as alternative daily cover:**

(1) **A material that:**

(A) is not listed ~~under~~ **in** subsection (c); and

~~(2)~~**(B)** does not meet the performance standards ~~under~~ **in** subsection (b) ~~the owner, operator, or permittee shall apply for a minor modification under 329 IAC 10-11-6.~~ **when delivered to the working face of the landfill but can be made to meet the performance standards using additional management practices at the landfill.**

The application for a minor modification must describe the management practices that will be used to make the material meet the performance standards in subsection (b).

(2) Material that:

(A) contains less than fifty (50) parts per million PCB;

(B) results from a source that contains less than fifty (50) parts per million PCB; and

(C) is not listed in subsection (c).

(f) ~~An~~ **The** owner, operator, or permittee **of a municipal solid waste cell or unit** that applies ~~ADC~~ **alternative daily cover** shall comply with **all of** the following requirements:

(1) Prior to the initial use of any ~~one (1) ADC under this section,~~ **material as alternative daily cover,** the owner, operator, or permittee shall notify the ~~commissioner~~ **seven (7) Agriculture and Solid Waste Compliance Section, Office of Land Quality, at least five (5) working** days ~~prior to~~ **before** the initial use of ~~the~~ **any** material **as alternative daily cover.**

(2) ~~The ADC~~ **Alternative daily cover** must **only** be ~~used~~ **applied** on:

(A) areas that will have additional solid waste deposited within the next seven (7) working days; or

(B) as approved by the commissioner.

~~Areas that have ADC~~ **(3) Alternative daily cover that is** exposed for longer than seven (7) working days must be covered with soil: ~~under~~

(A) as required by section 13(a) of this rule; or

(B) as approved by the commissioner.

~~(3) The ADC~~ **(4) Alternative daily cover** must be placed on the working face by the end of each day of operation. ~~ADC, with the exception of~~

(5) Alternative daily cover, except geotextile or plastic ~~(tarp),~~ **tarpaulin,** must be applied:

(A) at a minimum thickness of six (6) inches; or

(B) as approved by the commissioner.

(6) Any solid waste that is not covered by ~~ADC~~ **alternative daily cover** must be covered ~~under~~ **in accordance with** section 13(a) of this rule.

~~(4) The ADC, with the exception of~~ **(7) Alternative daily cover, except** geotextile or plastic ~~(tarp),~~ **tarpaulin,** must:

(A) not be reapplied as daily cover; or

(B) be applied as approved by the commissioner.

~~(5)~~ **(8)** The owner, operator, or permittee shall retain the following information in the operating record for a period of one (1) year:

(A) The ~~ADC~~ source **of the alternative daily cover material.**

(B) Documentation used to determine compliance with subsection (a)(1).

~~(B)~~ **(C)** Documentation that the ~~ADC~~ **alternative daily cover material** complies with the performance standards under subsection (b), if applicable.

~~(6) The ADC~~ **(9) Material used as alternative daily cover** must be stockpiled ~~under applicable federal, state, and local regulations.~~ **in accordance with:**

(A) the provisions of this article regarding storm water pollution prevention; and

(B) section 15 of this rule.

~~(7) An alternative~~ **(10) A** supply of ~~acceptable~~ daily cover ~~under~~ **material that meets the requirements of** section 13 of this rule must be readily available if the ~~ADC~~ **material used as alternative daily cover** does not meet the requirements of this section.

(g) The commissioner may

~~(1)~~ modify ~~the procedures under subsection (f) for using;~~ or

~~(2) prohibit the use of;~~

revoke an approval under subsections (c) through (e) for application of any material that does not meet the requirements of this section. *(Solid Waste Management Board; 329 IAC 10-20-14.1; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3829; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3967)*

SECTION 18. 329 IAC 10-28-24 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-28-24 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2-133; IC 13-11-2-148; IC 13-11-2-254; IC 13-19-3-3; IC 13-22; IC 13-30-2; IC 16-41-16-4; IC 36-1-2-23; IC 36-9-30

Sec. 24. As used in sections 22 and 23 of this rule, the following definitions apply:

(1) "Manifest" means the form used for identifying the quantity, origin, operators involved in a shipment, and the destination of municipal ~~solid~~ waste during its transportation.

(2) "Municipal waste", ~~refers to~~ **as defined in IC 13-11-2-133, means** any garbage, refuse, industrial lunchroom or office waste, and other **similar** material resulting from the operation of residential, municipal, commercial, or institutional establishments, and ~~from~~ community activities. The term does not include the following:

~~(A) Special waste as defined in 329 IAC 10-2-179.~~

~~(B)~~ **(A)** Hazardous waste regulated under: ~~IC 13-22~~

(i) IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14; or ~~under~~

(ii) the federal Solid Waste Disposal Act, ~~as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended,~~ 42 U.S.C. 6901 et seq., **as** in effect on January 1, 1990.

~~(C)~~ **(B)** Infectious waste as defined in ~~329 IAC 10-2-96.~~ **IC 16-41-16-4.**

~~(D) Waste~~ **(C) Wastes** that ~~results~~ **result** from the combustion of coal and ~~is~~ **that are** referred to in IC 13-19-3-3.

~~(E)~~ **(D)** Materials that are being transported to a facility for reprocessing or reuse.

(E) As used in this subdivision, "reprocessing or reuse" does not include **either of the following:**

(i) Incineration. ~~or~~

(ii) Placement in a landfill.

(3) "Operator", ~~refers to~~ **as defined in IC 13-11-2-148(c), means** a corporation, **a limited liability company,** a partnership, a business association, a unit, ~~(as defined in IC 36-1-2-23),~~ or an individual who is a sole proprietor that is one (1) of the following:

(A) A broker.

(B) A person who manages the activities of a transfer station that receives municipal waste.

(C) A transporter.

(4) "Waste transfer activities", ~~refers to~~ **as defined in IC 13-11-2-254, means** the participation by a:

(A) broker or transporter who is:

(i) a resident of Indiana; or

(ii) not a resident of Indiana; or

(B) transfer station that receives municipal waste located:

(i) inside Indiana; or

(ii) outside Indiana;

in the collection or transportation of municipal waste for disposal or incineration in Indiana.

(Solid Waste Management Board; 329 IAC 10-28-24; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1899; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3969)

SECTION 19. 329 IAC 10-36-19 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-36-19 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2-148; IC 13-11-2-254; IC 13-19-3-3; IC 13-22; IC 13-30-2; IC 16-41-16-4; IC 36-1-2-23; IC 36-9-30

Sec. 19. As used in sections 17 and 18 of this rule, the following definitions apply:

(1) "Manifest" means the form used for identifying the quantity, origin, and operators involved in a shipment, and the

destination of municipal solid waste during its transportation.

(2) "Municipal waste", ~~refers to~~ **as defined in IC 13-11-2-133, means** any garbage, refuse, industrial lunchroom or office waste, and other material resulting from the operation of residential, municipal, commercial, or institutional establishments, and ~~from~~ community activities. The term does not include the following:

~~(A) Special waste, as defined in 329 IAC 10-2-179.~~

~~(B)~~ **(A)** Hazardous waste regulated under: ~~IC 13-22~~

(i) IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14; or ~~under~~

(ii) the federal Solid Waste Disposal Act, ~~as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended,~~ 42 U.S.C. 6901 et seq., in effect on January 1, 1990.

~~(C)~~ **(B)** Infectious waste as defined in ~~329 IAC 10-2-96.~~ **IC 16-41-16-4.**

~~(D) Waste~~ **(C) Wastes** that ~~results~~ **result** from the combustion of coal and that ~~is~~ **that** *[sic.]* **are** referred to in IC 13-19-3-3.

~~(E)~~ **(D)** Materials that are being transported to a facility for reprocessing or reuse.

(E) As used in this subdivision, "reprocessing or reuse" does not include **either of the following:**

(i) Incineration. ~~or~~

(ii) Placement in a landfill.

(3) "Operator", ~~refers to~~ **as defined in IC 13-11-2-148(c), means** a corporation, **a limited liability company,** a partnership, a business association, a unit, ~~(as defined in IC 36-1-2-23),~~ or an individual who is a sole proprietor that is one (1) of the following:

(A) A broker.

(B) A person who manages the activities of a transfer station that receives municipal waste.

(C) A transporter.

(4) "Waste transfer activities", ~~refers to~~ **as defined in IC 13-11-2-254, means** the participation by a:

(A) broker or transporter who is:

(i) a resident of Indiana; or

(ii) not a resident of Indiana; or

(B) transfer station **that receives municipal waste** located:

(i) inside Indiana; or

(ii) outside Indiana;

~~that receives municipal waste for~~ **in** the collection or transportation of municipal waste for disposal or incineration in Indiana.

(Solid Waste Management Board; 329 IAC 10-36-19; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1915; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3969)

SECTION 20. 329 IAC 11-2-19.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 11-2-19.5 "Insignificant facility modification" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-19-3; IC 13-30-2; IC 36-9-30

Sec. 19.5. (a) "Insignificant facility modification", as used in 329 IAC 11-9-6(b), means any of the following:

(1) Add recycling activities and associated storage areas.

(2) Add or modify outside storage of:

(A) white goods; or

(B) other scrap metal.

(3) Modify facility traffic patterns.

(4) Modify the size of a compactor.

(5) Add or modify tipping floor entrance doors.

(6) Add or modify the collection of household hazardous waste.

(7) Add or modify a collection container.

(b) The term, as used in 329 IAC 11-9-6(c), means any of the following:

(1) Accept more than two hundred twenty (220) pounds of uncontainerized pollution control wastes in a shipment.

(2) Modify the waste water handling or disposition procedures.

(3) Modify the drainage around the facility, except for normal maintenance.

(4) Modify the latest approved facility layout.

(5) Any modification to the permitted facility that the commissioner determines will improve the operation of the facility without altering the approved solid waste processing facility permit.

(Solid Waste Management Board; 329 IAC 11-2-19.5; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3970)

SECTION 21. 329 IAC 11-2-39 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-2-39 "Solid waste" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-11-2-205; IC 13-19-3; IC 13-30-2; IC 36-9-30

Sec. 39. ~~(a)~~ "Solid waste" ~~means any:~~ **has the meaning as set forth at 329 IAC 10-2-174.**

~~(1) garbage;~~

~~(2) refuse;~~

~~(3) sludge from a wastewater treatment plant;~~

~~(4) sludge from a water supply treatment plant;~~

~~(5) sludge from an air pollution control facility; or~~

~~(6) other discarded material;~~

~~including ash residue, commercial waste, construction/demolition waste, hazardous waste, household waste, infectious waste, liquid waste, special waste, municipal solid waste, regulated hazardous waste, residential and nonresidential waste, and any solid, liquid, semisolid, or contained gaseous material.~~

~~(b) The term does not include:~~

~~(1) solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, 33 U.S.C. 1342 as amended February 4, 1987;~~
~~(2) source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, 42 U.S.C. 2014 et seq. as amended October 24, 1992;~~
~~(3) manures or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation; or~~
~~(4) vegetative matter at composting facilities registered under IC 13-20-10.~~

(Solid Waste Management Board; 329 IAC 11-2-39; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1931; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3970)

SECTION 22. 329 IAC 11-3-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-3-2 Exclusion; hazardous waste
Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-19-3; IC 13-30-2; IC 36-9-30

Sec. 2. (a) Hazardous wastes are regulated by and shall be treated, stored, and disposed of in accordance with 329 IAC 3.1. Hazardous waste that is regulated by 329 IAC 3.1 is not subject to the provisions of this article.

(b) No hazardous waste which is regulated by 329 IAC 3.1 shall be ~~disposed~~ **processed** at any solid waste facility regulated under this article.

(c) As used in this article, "hazardous waste that is regulated by 329 IAC 3.1" does not include **CESQG** hazardous waste ~~that is generated in quantities less than one hundred (100) kilograms per month and is, therefore, excluded from regulation under the hazardous waste management article, 329 IAC 3.1. Such small quantities of~~ **as defined in 329 IAC 10-2-29.5. CESQG** hazardous waste ~~shall~~ **must** be disposed of in accordance with 329 IAC 10 **and 40 CFR 261.5, revised as of July 1, 2002. 40 CFR 261.5 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.**

(d) Facilities permitted under 329 IAC 3.1 are not required to obtain permits under this article for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility. *(Solid Waste Management Board; 329 IAC 11-3-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1934; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3971)*

SECTION 23. 329 IAC 11-8-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-8-2 Processing facilities waste criteria
Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 2. Solid waste processing facilities may accept all solid waste regulated under this article ~~Special waste may be accepted at solid waste processing facilities in accordance with 329 IAC 11-7 and 329 IAC 10-8.1.~~ **except the following:**

(1) Hazardous waste that is regulated by 329 IAC 3.1.

(2) Solid waste that is prohibited by the facility permit.

(Solid Waste Management Board; 329 IAC 11-8-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3971)

SECTION 24. 329 IAC 11-8-2.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 11-8-2.5 Transfer station waste criteria
Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 13-20-9; IC 13-20-16; IC 36-9-30

Sec. 2.5. (a) Except as provided in subsection (b), a transfer station may accept all solid waste regulated by this article including the following:

(1) Municipal solid waste.
(2) Construction/demolition waste.
(3) CESQG hazardous waste.
(4) Industrial process waste.
(5) Pollution control waste in nonleaking containers.
(6) Any solid waste authorized by the facility permit.

(b) A transfer station may not accept any of the following:
(1) Solid waste that is prohibited by the facility permit.
(2) Liquid waste, defined in 329 IAC 10-2-106.
(3) Hazardous waste, except CESQG hazardous waste.
(4) Infectious waste, except as provided in the rules of the Indiana state department of health at 410 IAC 1-3-26.
(5) Whole waste tires, except as provided in 329 IAC 11-21-11.
(6) Lead-acid batteries prohibited by IC 13-20-16.
(7) Vegetative matter prohibited by IC 13-20-9.
(8) Waste or material containing PCB prohibited by 329 IAC 4.1.
(9) Regulated asbestos-containing material that is not managed in accordance with the rules of the air pollution control board at 326 IAC 14-10 and 329 IAC 10-8.2-4.
(10) Any appliance or motor vehicle air conditioner containing a refrigerant or other class I or class II substance that has not been removed as required by 40 CFR 82.156, revised as of July 1, 2002. 40 CFR 82.156 is available from the Superintendent of Documents, U.S.

Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238.

(11) Biosolid, defined in the rules of the water pollution control board at 327 IAC 6.1-2-7, that is not managed in accordance with the rules of the water pollution control board at 327 IAC 6.1-1-7.

(12) Wastewater, defined in the rules of the water pollution control board at 327 IAC 7.1-2-41, that is not managed in accordance with the rules of the water pollution control board at 327 IAC 7.1-7-1.

(13) More than two hundred twenty (220) pounds of pollution control waste in a shipment that is not enclosed in nonleaking containers.

(Solid Waste Management Board; 329 IAC 11-8-2.5; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3971)

SECTION 25. 329 IAC 11-8-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-8-3 Incinerators waste criteria

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 3. Incinerators may accept all solid waste regulated under this article except ~~special waste must be accepted at an incinerator in accordance with 329 IAC 11-7 and 329 IAC 10-8.1.~~ **the following:**

(1) Hazardous waste that is regulated by 329 IAC 3.1.

(2) Solid waste that is prohibited by the facility permit.

(Solid Waste Management Board; 329 IAC 11-8-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1936; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3972)

SECTION 26. 329 IAC 11-9-6 IS ADDED TO READ AS FOLLOWS:

329 IAC 11-9-6 Insignificant facility modifications

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-14; IC 13-19-3; IC 13-30; IC 36-9-30

Sec. 6. (a) The permittee of a solid waste processing facility may make or propose an insignificant facility modification in accordance with this section.

(b) If a permittee of a solid waste processing facility makes an insignificant facility modification described in 329 IAC 11-2-19.5(a), the permittee shall provide notice to the commissioner no later than seven (7) calendar days after the modification has been made. The notice must include a detailed description of the modification and the date the modification was completed or is expected to be completed.

(c) If the permittee of a solid waste processing facility proposes to make an insignificant facility modification described in 329 IAC 11-2-19.5(b), the permittee shall submit documentation of the proposed insignificant facility modification to the commissioner. The documentation must include a detailed description of the proposed modification.

(d) If the commissioner determines that the modification proposed under subsection (c) is a major or minor modification, the commissioner will notify the permittee in writing within thirty (30) days after receipt of the proposed modification that the permittee must submit an application for a minor or major modification to the current permit if the permittee plans to proceed with the proposed modification.

(e) If the permittee of the solid waste processing facility does not receive notification from the commissioner within thirty (30) days after submission of the proposed modification under subsection (c) to the commissioner, the permittee may initiate the insignificant facility modification in accordance with documentation provided to the commissioner.

(f) A permit modification is not required to modify the facility as necessary to:

(1) correct operational violations of this article; or

(2) protect human health or the environment.

(Solid Waste Management Board; 329 IAC 11-9-6; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3972)

SECTION 27. 329 IAC 11-13-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-13-4 Sanitation

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 4. (a) Solid waste must be confined to the designated storage, processing, loading, and unloading areas of the processing facility. The processing facility and adjacent areas must be maintained clean and litter free.

(b) Solid waste may not be stored overnight at the processing facility except in permitted storage areas or in enclosed transporting units.

(c) The solid waste processing facility must be cleaned as necessary to prevent a nuisance or public health hazard.

(d) Residues from solid waste processing facilities and incinerators ~~are special wastes and~~ must be disposed of in accordance with ~~329 IAC 10-8.1.~~ **329 IAC 10.**

(e) Salvaging, if undertaken, must not interfere with the facility operation or create unsightliness, nuisance, or health hazard.

(f) At a minimum, all salvage materials must be stored in buildings or transportable containers while awaiting removal from the facility. No alternative methods of storing salvage

materials may be used without obtaining prior approval from the commissioner. Approval may be granted at the request of the permittee, if the permittee can demonstrate that the alternative method will provide a comparable level of environmental protection. *(Solid Waste Management Board; 329 IAC 11-13-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3972)*

SECTION 28. 329 IAC 11-13-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-13-6 Records and reports

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 6. (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) All solid waste processing facility records and reports required by this section, 329 IAC 11-14, and 329 IAC 11-15.

(2) All test results of residues generated by the facility.

~~(3) All special waste certifications and disposal notifications required by 329 IAC 11-7 and 329 IAC 10-8.1 if applicable.~~

(b) Owners or operators of solid waste processing facilities shall maintain the records and reports required in subsection (a)(2) ~~and (a)(3)~~ until certification of post-closure is deemed acceptable if applicable. *(Solid Waste Management Board; 329 IAC 11-13-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1942; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1730, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3973)*

SECTION 29. 329 IAC 11-15-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-15-1 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2; IC 13-19-3-3; IC 13-22; IC 13-30-2; IC 16-41-16-4; IC 36-9-30

Sec. 1. (a) In addition to the definitions found in 329 IAC 11-2 and IC 13-11-2, the definitions in this section apply throughout this rule.

(b) "Broker", **as defined in IC 13-11-2-19,** means a person who is in the business of making arrangements for the transportation of municipal waste that was generated by another person. ~~The term does not include an owner or operator of a solid waste processing facility who makes arrangements for transportation of municipal waste from their own facility.~~

(c) "Manifest" means the form used for identifying the quantity, origin, operators involved in a shipment, and destination of municipal solid waste during its transportation.

(d) "Municipal waste", ~~refers to~~ **as defined in IC 13-11-2-133, means** any garbage, refuse, industrial lunchroom or office waste, and other **similar** material resulting from the operation of residential, municipal, commercial, or institutional establishments, and from community activities. The term does not include the following:

~~(1) Special waste as defined in 329 IAC 11-2-44.~~

~~(2)~~ **(1)** Hazardous waste regulated under: ~~IC 13-22~~

(A) IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14; or ~~under~~

(B) the federal Solid Waste Disposal Act, ~~as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, as amended,~~ 42 U.S.C. 6901 et seq. in effect on January 1, 1990.

~~(3)~~ **(2)** Infectious waste as defined in ~~329 IAC 11-2-18.~~ **IC 16-41-16-4.**

~~(4)~~ **(3)** Wastes that result from the combustion of coal and that are referred to in IC 13-19-3-3.

~~(5)~~ **(4)** Materials that are being transported to a facility for reprocessing or reuse. As used in this subdivision, "reprocessing or reuse" does not include **either of the following:**

(A) Incineration. ~~or~~

(B) Placement in a landfill.

(e) "Operator", **as defined in IC 13-11-2-148(c),** means a corporation, **a limited liability company,** a partnership, a business association, a unit, ~~(as defined in IC 36-1-2-23),~~ or an individual who is a sole proprietor that is one (1) of the following:

(1) A broker.

(2) A person who manages the activities of a transfer station that receives municipal waste.

(3) A transporter.

(f) "Solid waste processing facility", **as defined in IC 13-11-2-212,** means a facility at which at least one (1) of the following is located:

(1) **A** solid waste incinerator.

(2) **A** transfer station.

(3) **A** solid waste ~~shredder.~~ **baler.**

(4) **A** solid waste ~~baler.~~ **shredder.**

(5) **A** resource recovery system.

(6) **A** composting facility.

(7) **A** garbage grinding system.

The term does not include a facility or an operation that generates solid waste.

(g) "Transporter", **as defined in IC 13-11-2-238,** means a person who is in the business of transporting municipal ~~solid~~ waste.

(h) "Waste transfer activities", **as defined in IC 13-11-2-254,** means the participation by a:

(1) broker or a transporter who is:

(A) a resident of Indiana; or

(B) not a resident of Indiana; or

(2) transfer station that receives municipal waste located:

(A) inside Indiana; or

(B) outside Indiana;

in the collection or transportation of municipal waste for disposal or incineration in Indiana. *(Solid Waste Management Board; 329 IAC 11-15-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1944; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3973)*

SECTION 30. 329 IAC 11-19-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-19-2 Permit by rule

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 2. (a) All solid waste incinerators with a design capacity less than ten (10) tons per day, and infectious waste incinerators with a design capacity of less than seven (7) tons per day, will be deemed to have a permit under this article provided they comply with the following:

(1) File a notification as a solid waste incinerator facility as required by section 1 of this rule.

(2) Comply with 329 IAC 11-13-4 and 329 IAC 11-13-5.

(3) Infectious waste incinerators with a design capacity of less than seven (7) tons per day must also comply with the requirements of 329 IAC 11-20-1.

(4) Operate in compliance with all applicable air pollution control standards and regulations and all conditions set forth in the permit.

(5) Notify the office of solid and hazardous waste management and all appropriate local government officials within twenty-four (24) hours after the permittee learns of the release, violation, shutdown, or damage of the following:

(A) Any release of a contaminant in a quantity in excess of that allowed by permit conditions and appropriate regulations.

(B) Any violation of operating requirements established in the permit.

(C) Any unscheduled shutdown of the incinerator or associated equipment.

(D) Any damage to the incinerator or associated equipment that could, if not repaired, result in a release of a contaminant in a quantity exceeding a control level established in the permit or applicable regulations.

(6) The incinerator must dispose of residues in accordance with ~~329 IAC 11-7 and 329 IAC 10-8.1 at a solid waste facility with a valid permit under~~ 329 IAC 10.

(b) All solid waste incinerators with a design capacity greater than or equal to ten (10) tons per day, and less than or equal to thirty (30) tons per day, and infectious waste incinerators with a design capacity of greater than or equal to seven (7) tons per day, and less than or equal to thirty (30) tons per day, will be deemed to have a permit under this article provided they comply with the following:

(1) File a notification as a solid waste incinerator facility as required by section 1 of this rule.

(2) Submit an application for a solid waste processing facility permit, complying with 329 IAC 11-9, 329 IAC 11-16, and 329 IAC 11-17 within ninety (90) days of the notification required by section 1 of this rule.

(3) Solid waste incinerators must comply with the requirements of ~~329 IAC 11-7 and~~ 329 IAC 11-13 through 329 IAC 11-15.

(4) Infectious waste incinerators that burn infectious waste must comply with the requirements of ~~329 IAC 11-7,~~ 329 IAC 11-13 through 329 IAC 11-15 and 329 IAC 11-20.

(5) The incinerator must operate in compliance with all applicable air pollution control standards and regulations and all conditions set forth in the permit.

(6) The permit holder shall notify the office of solid and hazardous waste management and all appropriate local government officials within twenty-four (24) hours after the permittee learns of the release, violation, shutdown, or damage of the following:

(A) Any release of a contaminant in a quantity in excess of that allowed by permit conditions and appropriate regulations.

(B) Any violation of operating requirements established in the permit.

(C) Any unscheduled shutdown of the incinerator or associated equipment.

(D) Any damage to the incinerator or associated equipment that could, if unrepaired, result in a release of a contaminant in a quantity exceeding a control level established in the permit or applicable regulations.

(c) Permits granted under subsection (b) must remain in effect until such time as the commissioner takes action on the application submitted in compliance with 329 IAC 11-9, 329 IAC 11-16, and 329 IAC 11-17. *(Solid Waste Management Board; 329 IAC 11-19-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1947; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1731, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3974)*

SECTION 31. 329 IAC 11-19-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-19-3 Solid waste incinerators 10 tons per day or greater; infectious waste incinerators seven tons per day or greater; operational requirements

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 3. The following operational requirements apply to solid waste incinerators with a design capacity of ten (10) tons per day or greater and to infectious waste incinerators with a design capacity of seven (7) tons per day or greater:

(1) The incinerator must not operate without a valid permit under this article and a valid permit from the office of air management or its designated local air pollution control agency and comply with the operational requirements of ~~329 IAC 11-7 and~~ 329 IAC 11-13 through 329 IAC 11-15 and all permit conditions.

(2) The incinerator must dispose of residues in accordance with ~~329 IAC 11-7 and 329 IAC 10-8.1 at a solid waste facility with a valid permit under~~ 329 IAC 10.

(3) The incinerator must operate in compliance with all applicable air pollution control standards and regulations and all conditions set forth in the permit.

(4) The permittee shall notify the office of solid and hazardous waste management and all appropriate local government officials within twenty-four (24) hours after the permittee learns of the release, violation, shutdown, or damage of the following:

(A) Any release of a contaminant in a quantity in excess of that allowed by permit conditions and appropriate regulations.

(B) Any violation of operating requirements established in the permit.

(C) Any unscheduled shutdown of the incinerator or associated equipment.

(D) Any damage to the incinerator or associated equipment that could, if unrepaired, result in a release of a contaminant in a quantity exceeding a control level established in the permit or applicable regulations.

(Solid Waste Management Board; 329 IAC 11-19-3; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1948; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1731, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3974)

SECTION 32. 329 IAC 11-20-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-20-1 Operational requirements

Authority: IC 13-14-8-7; IC 13-15-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-19-3; IC 36-9-30

Sec. 1. (a) The following additional operational requirements apply to all infectious waste incinerators:

(1) A solid waste incinerator that is used to burn infectious waste, except an existing incinerator equipped with an afterburner and achieving zero (0) opacity, must be a multiple chamber incinerator. Infectious waste incinerators must maintain a temperature of one thousand eight hundred **(1,800)** degrees Fahrenheit ~~(1,800°F)~~ with a residence time of one (1) second in the secondary chamber.

(2) Any solid waste incinerator that is used to burn antineoplastic agents must maintain a temperature of one thousand eight hundred **(1,800)** degrees Fahrenheit ~~(1,800°F)~~ with a residence time of one and one-half (1½) seconds in the secondary chamber. As used in this rule, "antineoplastic agents" means chemotherapy drugs, or compounds used in the treatment of cancer, which are not subject to regulation under 329 IAC 3.1. Containers or other items containing residues of antineoplastic agents must not be considered antineoplastic agents.

(3) Infectious waste incinerators constructed after January 1, 1988, must be equipped with an automatic mechanical loading device, and an interlock system must be provided to prevent charging until the secondary chamber exit temperature of one thousand eight hundred **(1,800)** degrees Fahrenheit ~~(1,800°F)~~ is established.

(4) Batch incinerators, fully loaded while cold and never opened until the burn cycle is complete, must incorporate a lockout system that will prevent ignition of the waste until the exit temperature of the secondary chamber or the afterburner reaches one thousand eight hundred **(1,800)** degrees Fahrenheit ~~(1,800°F)~~ and prevent recharging until the combustion and burndown cycles are complete.

(5) No waste must be charged to an incinerator other than a batch incinerator until the secondary chamber or afterburner has achieved a minimum temperature of one thousand eight hundred **(1,800)** degrees Fahrenheit. ~~(1,800°F).~~ The secondary chamber or afterburner must achieve and maintain the required minimum temperature for fifteen (15) minutes before charging begins.

(6) During shutdowns, the secondary chamber or afterburner minimum temperature of one thousand eight hundred **(1,800)** degrees Fahrenheit ~~(1,800°F)~~ is to be maintained using auxiliary burners until the wastes are completely combusted and the burndown cycle is complete.

(7) Residue from an infectious waste incinerator must be disposed **of** in accordance with ~~329 IAC 11-7 and 329 IAC 10-8.1.~~ **329 IAC 10.**

(b) All infectious waste incinerators that are not in compliance or not able to comply with the requirements of this rule must submit a detailed timetable for the modification of the facility necessary to bring the unit into compliance. This timetable must be submitted within one hundred eighty (180) days of ~~the effective date of this article.~~ **April 13, 1996.**

(c) All infectious waste incinerators must be in compliance with this rule within eighteen (18) months of ~~the effective date of this article,~~ **April 13, 1996,** unless a written extension has been granted by the commissioner. *(Solid Waste Management Board; 329 IAC 11-20-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1948; filed Jan 9, 1998, 9:00 a.m.: 21 IR 1732, eff one hundred eighty (180) days after filing with the secretary of state; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3975; errata filed Aug 9, 2004, 10:45 a.m.: 27 IR 4023)*

SECTION 33. 329 IAC 11-21-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-21-4 Monitoring of incoming municipal waste

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2-254; IC 13-19-3; IC 13-30-6-7

Sec. 4. (a) Incoming municipal waste must be monitored daily by transfer station employees. The monitoring must be conducted by personnel who are able to recognize the visual indications that:

(1) ~~special~~ waste ~~as defined by 329 IAC 11-2-44;~~ **prohibited by the facility permit;**

(2) hazardous waste regulated by 329 IAC 3.1; ~~and~~

(3) infectious waste as defined by 329 IAC 11-2-18; **or**

(4) regulated asbestos-containing materials;

may be present in the municipal waste observed.

(b) The monitoring may be accomplished by either of the following methods:

(1) Conducting, on a daily basis, a minimum of two (2) random inspections that must consist of a visual observation of all off-loaded municipal waste prior to processing.

(2) An overview of the municipal waste on an ongoing basis by facility personnel.

(Solid Waste Management Board; 329 IAC 11-21-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1950; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3976)

SECTION 34. 329 IAC 11-21-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-21-5 Record keeping

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2-254; IC 13-19-3; IC 13-30-6-7

Sec. 5. (a) Random inspections conducted under section 4(b)(1) of this rule must be recorded in a format established by the department.

(b) A facility conducting overview inspections of the incoming municipal waste under section 4(b)(2) of this rule must only record events in which ~~special waste, hazardous waste, or infectious waste~~ **any of the following** is found:

(1) Waste prohibited by the facility permit.

(2) Hazardous waste.

(3) Infectious waste.

(4) Regulated asbestos-containing material.

Records of such events must be in a format established by the department.

(c) Inspection records must be maintained on site and available for review by department personnel for a period of one (1) year from the date of the inspection or event. *(Solid Waste Management Board; 329 IAC 11-21-5; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1950; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3976)*

SECTION 35. 329 IAC 11-21-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-21-6 Reporting

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2-254; IC 13-19-3; IC 13-30-6-7

Sec. 6. **(a)** Transfer stations that ~~are transporting~~ **transport** and ~~disposing~~ **dispose of** municipal waste at disposal facilities in Indiana ~~on or after the effective date of this rule,~~ must submit to the office of ~~solid waste management~~ **land quality** by January 31 of each year an annual report, in a format established by the department, which identifies:

(1) any inspection that detected any: ~~asbestos special~~

(A) regulated asbestos-containing materials;

(B) waste **prohibited by the facility permit;**

(C) hazardous waste; or

(D) infectious waste;

at the facility; and ~~its final~~

(2) the disposition **of these wastes.**

(b) The report must include **all of** the following:

(1) Name of facility.

(2) Address of facility.

(3) Permit number of facility.

(4) Inspection date.

(5) Name of person conducting each inspection.

(6) Type of waste found and how it was handled, including final disposition.

(7) Name and address of generator of waste found during an inspection if known.

(Solid Waste Management Board; 329 IAC 11-21-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1950; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3976)

SECTION 36. 329 IAC 11-21-7 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-21-7 Training

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2-254; IC 13-19-3; IC 13-30-6-7

Sec. 7. The transfer station employee responsible for conducting the random inspections or constant overview required in section 4 of this rule shall be able to recognize the visual indications that ~~special waste, hazardous waste, and infectious waste~~ **any of the following** may be present in the municipal waste observed:

(1) Waste prohibited by the facility permit.

(2) Hazardous waste.

(3) Infectious waste.

(4) Regulated asbestos-containing material.

(Solid Waste Management Board; 329 IAC 11-21-7; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1951; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3976)

SECTION 37. 329 IAC 11-21-8 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-21-8 General operating requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-11-2-254; IC 13-19-3; IC 13-30-6-7

Sec. 8. All transfer stations must be operated in a manner that minimizes the inclusion of liquids and vectors into the municipal waste shipped from the transfer station. Such management practices include, but are not limited to, the following:

(1) All facility floors must be maintained so as to prevent standing water within the facility structure. All drainage and liquids originating from:

(A) storage, handling, and processing municipal waste;

(B) cleaning floors; or

(C) wash-out water from a municipal waste vehicle;

must be properly directed to a sanitary sewer, a holding tank constructed and operated in accordance with any applicable local approvals, or the equivalent of a sanitary sewer or holding tank.

(2) The facility tipping floor must be cleaned by wash-down to prevent odors and other nuisance conditions with all residuals being removed and disposed of properly.

(3) Any municipal waste that is stored overnight at the facility, except nonputrescible waste that has been segregated for recycling, must be removed from the site the following operating day except for holidays and weekends. Any municipal waste stored overnight must be stored in a manner to promote vector control.

(4) Any ~~hazardous waste, infectious waste, or special waste~~ **of the following** found at a transfer station must be managed in accordance with the applicable laws:

(A) Waste prohibited by the facility permit.

(B) Hazardous waste.

(C) Infectious waste.

(D) Regulated asbestos-containing material.

(Solid Waste Management Board; 329 IAC 11-21-8; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1951; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3977)

SECTION 38. 329 IAC 12-8-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 12-8-4 Examination requirements for Category II 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 13-15-10; IC 13-19-3; IC 36-9-30

Sec. 4. (a) In order to qualify for accreditation as an accredited examination provider for Category II certification for operators of municipal and nonmunicipal solid waste disposal facilities, the written examination must meet the requirements of this section.

(b) The commissioner may approve an examination under the Category IV certification for a specific type of site. For operators of municipal and nonmunicipal solid waste disposal facilities, the examination for operator certification under Category IV must address any Category II topics in subsection (c) that are applicable to the type of site for which the examination has been developed.

(c) A Category II certification shall adequately address the following topics:

(1) Purpose of training course.

(2) An overview of municipal and nonmunicipal solid waste disposal facilities in integrated municipal solid waste management to address the following:

(A) Generation of municipal solid wastes.

(B) Physical and chemical composition of solid wastes.

(C) Municipal solid waste management.

(3) Basics of site selection.

(4) Complying with design requirements to the following:

(A) Specifications.

(B) Types of plans.

(C) Plan reading.

(D) Municipal and nonmunicipal solid waste facility landfill methods.

(5) Waste acceptance and screening to include the following:

(A) Wastes prohibited by state and federal law and regulations.

(B) Commonly prohibited wastes.

(C) Wastes requiring special handling.

(D) ~~Special~~ Wastes **prohibited by the facility permit.**

(E) Screening methods for prohibited wastes.

(F) Record keeping and notification requirements.

(G) Public information and education.

(6) Waste decomposition to include the following:

(A) Fate of wastes.

(B) Effects of decomposition.

(C) Subsidence and differential settlement.

(D) Landfill gas generation and migration.

(E) Leachate generation, migration, and control.

(7) Control processes for landfill gas and leachate to include the following:

(A) Landfill gas and leachate characteristics.

(B) Managing landfill gas.

(C) Protection of facilities built on landfills.

(D) Landfill gas recovery and use.

(E) Managing leachate.

(8) Operational techniques shall adequately address the following:

(A) Design and operational plans.
(B) Operational practices.
(C) Cover systems.
(D) Operation of a lined facility.
(E) Operational problems.
(F) Site operation to minimize environmental and health problems.

(9) Closure and long term care shall adequately address the following:
(A) Site closure.
(B) Closure considerations.
(C) Closure plan.
(D) Long term care and environmental monitoring.
(E) Landfill site end uses.
(F) Final cover design.
(G) Vegetation.
(H) Financing closure and postclosure care.

(Solid Waste Management Board; 329 IAC 12-8-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1485; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3977)

SECTION 39. 329 IAC 13-3-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-3-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 1. (a) The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 2 of this rule, this article applies to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in 40 CFR 261 Subpart C, **revised as of July 1, 2002.**

(b) Mixtures of used oil and hazardous waste must be handled as follows:

(1) For mixtures of used oil with a listed hazardous waste, the following shall apply:

(A) Mixtures of used oil and hazardous waste that is listed in 40 CFR 261 Subpart D, **revised as of July 1, 2002,** are subject to regulation as hazardous waste under 329 IAC 3.1 rather than as used oil under this article.

(B) Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261 Subpart D, **revised as of July 1, 2002.** Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from ~~EPA publication SW-846, Third Edition~~ **U.S. Environmental Protection Agency Publication SW-846, as defined in 329 IAC 10-2-197.1,** to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII, ~~EPA publication SW-846, Third Edition,~~ **revised as of July 1, 2002. U.S. Environmental Protection Agency Publication SW-846** is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

(i) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(c), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261 Subpart C, **revised as of July 1, 2002,** are subject to 329 IAC 3.1.

(3) Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR 261.5, **revised as of July 1, 2002,** are subject to regulation as used oil under this article.

(c) Materials containing or otherwise contaminated with used oil must be handled as follows:

(1) Except as provided in subdivision (2), materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(A) are not used oil and thus not subject to this article; **and**
(B) if applicable, are subject to the hazardous waste regulations under 329 IAC 3.1. ~~and~~
~~(C) if applicable, are subject to the solid waste regulations under 329 IAC 10 and 329 IAC 11.~~

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this article.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this article.

(d) Mixtures of used oil with products must be handled as follows:

(1) Except as provided in subdivision (2), mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this article.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 329 IAC 13-4.

(e) Materials derived from used oil must be handled as follows:

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, such as re-refined lubricants, are:

(A) not used oil and thus are not subject to this article; and

(B) not solid wastes and are thus not subject to the hazardous waste regulations under 329 IAC 3.1 as provided in 40 CFR 261.3(c)(2)(A), **revised as of July 1, 2002.**

(2) Materials produced from used oil that are burned for energy recovery, such as used oil fuels, are subject to regulation as used oil under this article.

(3) Except as provided in subdivision (4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(A) not used oil and thus are not subject to this article; and

(B) are solid wastes and thus are subject to

~~(i) if applicable,~~ the hazardous waste regulations under 329 IAC 3.1 if the materials are listed or identified as hazardous waste. ~~and~~

~~(ii) if applicable, the solid waste regulations under 329 IAC 10 and 329 IAC 11.~~

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this article.

(f) Wastewater, the discharge of which is subject to regulation under either Section 402 or 307(b) of the Clean Water Act, **33 U.S.C. 1342 or 33 U.S.C. 1317(b), respectively,** including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of this article. As used in this subsection, "de minimis quantities of used oils" means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility must be handled as follows:

(1) Used oil mixed with crude oil or natural gas liquids, such as in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of this article. The used oil is subject to the requirements of this article prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent (1%) used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this article.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this article provided that the used oil constitutes less than one percent (1%) of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(4) Except as provided in subdivision (5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this article only if the used oil meets the specification of section 2 of this rule. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as an article of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this article. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, such as by pouring collected used oil into the wastewater treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this article.

(h) Used oil produced on vessels from normal shipboard operations is not subject to this article until it is transported ashore.

(i) In addition to the requirements of this article, marketers and burners of used oil who market used oil containing any quantifiable level of polychlorinated biphenyls (PCBs) are subject to the requirements found at 40 CFR 761.20(e), **revised as of June 24, 1999.**

(j) 40 CFR 261 and 40 CFR 761 are available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. *(Solid Waste Management Board; 329 IAC 13-3-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1494; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 238; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3978)*

SECTION 40. THE FOLLOWING ARE REPEALED: 329 IAC 10-2-135.1; 329 IAC 10-2-179; 329 IAC 10-2-199.1; 329 IAC 10-2-201.1; 329 IAC 10-7.1; 329 IAC 10-8.1; 329 IAC 10-

20-29; 329 IAC 10-28-21; 329 IAC 11-2-44; 329 IAC 11-6-1; 329 IAC 11-7.

LSA Document #01-288(F)
Proposed Rule Published: February 1, 2003; 26 IR 1647
Hearing Held: October 21, 2003
Approved by Attorney General: June 25, 2004
Approved by Governor: July 9, 2004
Filed with Secretary of State: July 14, 2004, 9:15 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: 29 CFR 1910, Subpart Z, revised as of July 1, 2003; 29 CFR 1926.55, revised as of July 1, 2003; 29 CFR 1926.62, revised as of July 1, 2003; 40 CFR 61.145(c), revised as of January 16, 1991; 40 CFR 61.150(a), revised as of January 16, 1991; 40 CFR 61.154, revised as of January 16, 1991; 40 CFR 82.156, revised as of July 1, 2002; 40 CFR 761.20(e), revised as of June 24, 1999.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #02-160(F)

DIGEST

Amends 329 IAC 3.1-9-2 to be consistent with new ground water quality standards at 327 IAC 2-11. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 2002, Indiana Register (25 IR 3495).

Second Notice of Comment Period: January 1, 2003, Indiana Register (26 IR 1358).

Continuation of Second Notice of Comment Period: July 1, 2003, Indiana Register (26 IR 3428).

Notice of First Public Hearing: September 1, 2003, Indiana Register (26 IR 3903).

Date of First Public Hearing: October 21, 2003.

Proposed Rule and Notice of Second Public Hearing: December 1, 2003, Indiana Register (27 IR 912).

Date of Second Public Hearing: February 17, 2004.

329 IAC 3.1-9-2

SECTION 1. 329 IAC 3.1-9-2, AS AMENDED AT 27 IR 1875, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-9-2 Exceptions and additions; final permit standards

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-14-10; IC 13-22-2; IC 13-30-3; 40 CFR 264

Sec. 2. Exceptions and additions to federal final permit standards are as follows:

(1) Delete 40 CFR 264.1(a) dealing with scope of the permit program and substitute the following: The purpose of this rule is to establish minimum standards which define the acceptable management of hazardous waste at final state permitted facilities.

(2) In 40 CFR 264.4 dealing with imminent hazard action, delete "7003 of RCRA" and insert "IC 13-30-3 and IC 13-14-10".

(3) Reports to the state required at 40 CFR 264.56(d) shall be communicated immediately to the Office of Land Quality, Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015, (317) 233-7745, or (888) 233-7745 (toll-free in Indiana). In addition to the requirements of this rule, all requirements for spill reporting under 327 IAC 2-6.1 shall be complied with.

(4) The written spill report required by 40 CFR 264.56(j) must also include information deemed necessary by the commissioner or the commissioner's authorized agent to carry out the purpose and intent of 327 IAC 2-6.1.

(5) In 40 CFR 264.75 dealing with the biennial report, delete "EPA form 8700-13B" and insert "forms provided by the commissioner".

(6) In 40 CFR 264.76 dealing with unmanifested waste reports, delete "The unmanifested waste report must be submitted on EPA form 8700-13B".

(7) In 40 CFR 264.77 regarding additional reports, insert after the first sentence in (c), "Ground water data for laboratory analytical results and field parameters must be submitted as follows:

(A) Two (2) paper copies on the most current form prescribed by the commissioner.

(B) In addition to the paper copies required in clause (A), an electronic report in a format prescribed by the commissioner.

(d) The commissioner may request other information, as required by Subparts F, K through N, and AA through CC of this part, be submitted in an electronic format as prescribed by the commissioner.".

(8) In addition to the requirements in 40 CFR 264, Subpart E, the reports required by IC 13-22-4-3.1 must be kept on file for at least three (3) years after submission to the department.

(9) In 40 CFR 264, Subpart F, the commissioner will consider the following contaminants in addition to the hazardous constituents listed in 40 CFR 261, Appendix VIII:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	**15972-60-8**
Asbestos	**1332-21-4**
Atrazine	**1912-24-9**
Combined beta/photon emitters	**10098-97-2, 10028-17-8**
Dalapon	**75-99-0**

Di(2-ethylhexyl)adipate	**103-23-1**
cis-1,2-Dichloroethylene	**156-59-2**
Diquat	**85-00-7**
Ethylbenzene	**100-41-4**
Fluoride	**16984-48-8**
Glyphosate	**1071-83-6**
Gross alpha particle activity (including radium 226 but excluding radon and uranium)	**12587-46-1**
Nitrate (as N)	**14797-55-8**
Nitrite (as N)	**14797-65-0**
Picloram	**1918-02-1**
Radium 226 and 228 (combined)	**13982-63-3, 15262-20-1**
Simazine	**122-34-9**
Styrene	**100-42-5**

(10) In 40 CFR 264.93(b), the commissioner may consider 327 IAC 2-11 in addition to the factors listed.

(11) Delete 40 CFR 264.94(a)(2), Table 1, and substitute the following:

Table 1. Maximum Concentration of Constituents for Ground Water Protection

Constituent	Maximum Concentration (mg/L)
Arsenic	**0.05**
Barium	**1.0**
Cadmium	**0.005**
Chromium	**0.05**
Lead	**0.015**
Mercury	**0.002**
Selenium	**0.01**
Silver	**0.05**
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy 1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	**0.0002**
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	**0.0002**
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	**0.04**
Toxaphene ($C_{10}H_{10}Cl_6$, Technical chlorinated camphene, 67-69 percent chlorine)	**0.003**
2,4-D (2,4-Dichlorophenoxyacetic acid)	**0.07**
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	**0.01**

(12) In 40 CFR 264.94(b), the commissioner may consider 327 IAC 2-11 in addition to the factors listed.

(13) In 40 CFR 264.99(g), in addition to the constituents listed in 40 CFR 264, Appendix IX, the commissioner may require a facility to monitor for the following contaminants:

Contaminant	Chemical Abstracts Service Registry Number
Alachlor	**15972-60-8**
Asbestos	**1332-21-4**
Atrazine	**1912-24-9**
Combined beta/photon emitters	**10098-97-2, 10028-17-8**
Dalapon	**75-99-0**
Di(2-ethylhexyl)adipate	**103-23-1**
cis-1,2-Dichloroethylene	**156-59-2**
Diquat	**85-00-7**
Fluoride	**16984-48-8**
Glyphosate	**1071-83-6**
Gross alpha particle activity (including radium 226 but excluding radon and uranium)	**12587-46-1**
Nitrate (as N)	**14797-55-8**
Nitrite (as N)	**14797-65-0**
Picloram	**1918-02-1**
Radium 226 and 228 (combined)	**13982-63-3, 15262-20-1**
Simazine	**122-34-9**

~~(9)~~ **(14)** Delete 40 CFR 264, Subpart H dealing with financial requirements and substitute 329 IAC 3.1-15.

~~(10)~~ **(15)** Exceptions and additions to the standards for tank systems in 40 CFR 264, Subpart J are under section 3 of this rule.

~~(11)~~ **(16)** In 40 CFR 264.221(e)(2)(i)(C), delete "permits under RCRA Section 3005(c)" and insert "with final state permits".

~~(12)~~ **(17)** Delete 40 CFR 264.301(l).

~~(13)~~ **(18)** Delete 40 CFR 264, Appendix VI.

~~(14)~~ **(19)** In 40 CFR 264.316(b), delete "(49 CFR Parts 178 and 179)" and substitute "(49 CFR Part 178)".

~~(15)~~ **(20)** In 40 CFR 264.316(f), delete "fiber drums" and substitute "nonmetal containers".

~~(16)~~ **(21)** Delete 40 CFR 264.555(e)(6).

(22) The requirements in subdivisions (9) through (13) do not apply to any of the following industries to a greater extent than the standard of conduct established in the related federal regulation or regulatory policy, until July 1, 2005:

Industry ..... Standard Industry Classification Code	
Steel works, blast furnaces (including coke ovens), and rolling	**3312**
Gray and ductile iron foundries	**3321**
Malleable iron foundries	**3322**
Steel investment foundries	**3324**
Steel foundries, not elsewhere classified	**3325**
Aluminum foundries	**3365**
Copper foundries	**3366**
Nonferrous foundries, except aluminum and copper	**3369**

(Solid Waste Management Board; 329 IAC 3.1-9-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 935; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3356; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3365; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; errata filed Aug 10, 2000, 1:26 p.m.: 23 IR 3091; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jan 22, 2001, 9:46 a.m.: 24 IR 1617; errata filed Mar 19, 2001, 10:31 a.m.: 24 IR 2470; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2433; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3112; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1875; filed Jul 22, 2004, 10:15 a.m.: 27 IR 3980; errata filed Aug 9, 2004, 10:45 a.m.: 27 IR 4023)

LSA Document #02-160(F)
Proposed Rule Published: December 1, 2003; 27 IR 912
Hearing Held: February 17, 2004
Approved by Attorney General: July 7, 2004
Approved by Governor: July 19, 2004
Filed with Secretary of State: July 22, 2004, 10:15 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-15(F)

DIGEST

Amends 345 IAC 7-3.5-16 concerning nonambulatory animals at livestock markets. Amends 345 IAC 9-2.1-1 to update matters incorporated by reference including rules related to the control of bovine spongiform encephalopathy (BSE). Adds 345 IAC 9-10.5-2 detailing required procedures for handling carcasses and parts of animals tested for BSE. Makes other changes in the law of meat and poultry inspection and animal disease control. Effective 30 days after filing with the secretary of state.

345 IAC 7-3.5-16
345 IAC 9-2.1-1
345 IAC 9-10.5-2

SECTION 1. 345 IAC 7-3.5-16 IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-3.5-16 Care and handling; nonambulatory livestock

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-14; IC 15-2.1-15

Sec. 16. (a) All persons licensed to operate a market facility in Indiana shall maintain the following minimum standards of care:

(1) Livestock housed at a market facility for more than twenty-four (24) hours from the time of receipt at the facility must have access to feed and water.

(2) Any person using implements to drive animals, such as electric prods, canes, whips, paddles, or canvas straps, must use such implements only to the extent reasonably necessary to handle or move livestock.

(b) Market facilities in Indiana may not accept delivery of nonambulatory livestock. Market facilities in Indiana may unload nonambulatory livestock for the purpose of euthanizing the livestock at the market facility. Market facilities must have written policies, procedures, and equipment in place to handle animals that become nonambulatory after delivery to the market facility. Livestock that becomes nonambulatory after arriving at a market facility must be disposed of within twenty-four (24) hours of discovering or receiving notice of the animal's condition.

~~(c) The board recommends that livestock that becomes nonambulatory on the farm or en route to a market facility be treated or disposed of by the owner in the following manner:~~

~~(1) Delivery directly to a recognized slaughtering establishment by the owner or the owner's agent.~~

~~(2) Slaughter on the farm in compliance with the Meat and Poultry Inspection, Humane Slaughter Act.~~

~~(3) Euthanasia.~~

(Indiana State Board of Animal Health; 345 IAC 7-3.5-16; filed Nov 20, 1997, 2:45 p.m.: 21 IR 1292; errata filed Mar 23, 1998, 10:05 a.m.: 21 IR 2990; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Jul 14, 2004, 9:25 a.m.: 27 IR 3982)

SECTION 2. 345 IAC 9-2.1-1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 9-2.1-1 Incorporation by reference

Authority: IC 15-2.1-3-19; IC 15-2.1-24-6; IC 15-2.1-24-7
Affected: IC 4-21.5-3; IC 15-2.1-2; IC 15-2.1-19

Sec. 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 **through 9 CFR 441.**

~~(6)~~ 9 ~~CFR~~ ~~417.~~

~~(7)~~ **(6)** 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. *(Indiana State Board of Animal Health; 345 IAC 9-2.1-1; filed Dec 10, 1997, 11:30 a.m.: 21 IR 1301; filed Sep 10, 1999, 9:14 a.m.: 23 IR 14; filed Oct 30, 2000, 2:06 p.m.: 24 IR 678; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 19, 2002, 12:43 p.m.: 26 IR 1540; filed Jul 14, 2004, 9:25 a.m.: 27 IR 3982)*

SECTION 3. 345 IAC 9-10.5-2 IS ADDED TO READ AS FOLLOWS:

345 IAC 9-10.5-2 Animals tested for bovine spongiform encephalopathy

Authority: IC 15-2.1-3-19; IC 15-2.1-24-6; IC 15-2.1-24-7
Affected: IC 15-2.1-24

Sec. 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 carcass and parts shall be condemned as adulterated and held for disposition in a manner approved by the state veterinarian.

(Indiana State Board of Animal Health; 345 IAC 9-10.5-2; filed Jul 14, 2004, 9:25 a.m.: 27 IR 3983)

LSA Document #04-15(F)
Notice of Intent Published: February 1, 2004; 27 IR 1615
Proposed Rule Published: April 1, 2004; 27 IR 2328
Hearing Held: April 22, 2004
Approved by Attorney General: July 1, 2004
Approved by Governor: July 8, 2004
Filed with Secretary of State: July 14, 2004, 9:25 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-134(F)

DIGEST

Amends 405 IAC 2-8-1 to eliminate the exclusion of a life insurance policy and annuity from the definition of "estate" for Medicaid estate recovery purposes. Amends 405 IAC 2-8-1.1 to reduce the estate recovery exemption for jointly-owned real property from $125,000 to $75,000. Amends 405 IAC 2-10-3 to eliminate the prohibition on filing a lien when an individual who provided care to the Medicaid recipient resides in the home. Amends 405 IAC 2-10-7 to provide that a lien expires unless the Office of Medicaid Policy and Planning commences a foreclosure action within two years of the recipient's death. Adds 405 IAC 2-10-7.1 specifying procedures for voiding the lien. Amends 405 IAC 2-10-8 to eliminate the prohibition on enforcement when a recipient is survived by a parent. Amends 405 IAC 2-10-9 to provide that a lien is subordinate to the security interest of a financial institution that loans money to be used as operating capital for a farm, business, or income-producing property. Adds 405 IAC 2-10-11 to specify that property that is disregarded for eligibility purposes in connection with the purchase and use of a qualified long term care insurance policy is exempt from lien placement and enforcement. Repeals 405 IAC 2-10-10 to eliminate the exemption of $125,000 on property subject to a lien. Effective 30 days after

filing with the secretary of state.

405 IAC 2-8-1
405 IAC 2-8-1.1
405 IAC 2-10-3
405 IAC 2-10-7
405 IAC 2-10-7.1
405 IAC 2-10-8
405 IAC 2-10-9
405 IAC 2-10-10
405 IAC 2-10-11

SECTION 1. 405 IAC 2-8-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-8-1 Claims against estate for benefits paid
Authority: IC 12-8-6-5; IC 12-13-5-3; IC 12-15-1-10
Affected: IC 12-15-9; IC 12-15-39.6-10

Sec. 1. (a) Upon the death of a Medicaid recipient fifty-five (55) years of age or older, the office of Medicaid policy and planning (office) shall seek recovery from the recipient's estate for medical assistance paid on behalf of the recipient after the recipient became fifty-five (55) years of age or older. Recovery shall be made for benefits provided prior to October 1, 1993, only if the recipient was sixty-five (65) years of age or older at the time the benefits were provided.

(b) As used in this section, "estate", with respect to a deceased recipient, shall include all of the following:

(1) All real and personal property and other assets included within the recipient's estate as defined for purposes of state probate law.

(2) Any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002. ~~and~~

(3) Any real or personal property conveyed through a nonprobate transfer. As used in this section, "nonprobate transfer" means a valid transfer, effective at death, by a transferor who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

(A) use the property for the benefit of the transferor; or

(B) apply the property to discharge claims against the transferor's probate estate.

The term does not include a transfer of a survivorship interest in a tenancy by the entireties real estate ~~transfer of a life insurance policy or annuity,~~ or payment of the death proceeds of a life insurance policy. ~~or annuity.~~

(c) If the recipient is survived by a spouse, recovery shall be made after the death of the surviving spouse. Only those assets that are included in the recipient's estate as defined in subsection (b) are subject to recovery.

(d) If the recipient is survived by a child, no recovery shall be made while the child is either:

(1) under twenty-one (21) years of age; or

(2) blind or disabled as defined in 42 U.S.C. 1382c.

(e) A claim may not be enforced against the following assets:

(1) Personal effects, ornaments, or keepsakes of the deceased.

(2) Assets of an individual who purchases a long term care insurance policy that are disregarded pursuant to IC 12-15-39.6-10.

(3) Nonprobate assets that were determined exempt or unavailable for purposes of the decedent's Medicaid eligibility prior to May 1, 2002.

(4) Assets that the decedent transferred through a nonprobate transfer prior to May 1, 2002.

(f) The office may waive the application of this section in cases of undue hardship pursuant to section 2 of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 2-8-1; filed May 1, 1995, 10:45 a.m.: 18 IR 2226; filed Feb 15, 1996, 11:20 a.m.: 19 IR 1563; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 10, 2002, 10:55 a.m.: 26 IR 731; filed Jul 21, 2004, 5:15 p.m.: 27 IR 3984)*

SECTION 2. 405 IAC 2-8-1.1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-8-1.1 Claims against estate; exemption
Authority: IC 12-8-6-5; IC 12-13-5-3; IC 12-15-1-10
Affected: IC 12-15-3-6; IC 12-15-9

Sec. 1.1. (a) This section applies only to real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship.

(b) The office may enforce its claim against property described in subsection (a) only to the extent that the value of the recipient's combined total interest in all real property described in subsection (a) subject to the claim exceeds ~~one hundred twenty-five~~ **seventy-five** thousand dollars ~~($125,000).~~ **($75,000).**

(c) This section expires January 1, 2008. *(Office of the Secretary of Family and Social Services; 405 IAC 2-8-1.1; filed Oct 10, 2002, 10:55 a.m.: 26 IR 732; filed Jul 21, 2004, 5:15 p.m.: 27 IR 3984)*

SECTION 3. 405 IAC 2-10-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-10-3 Criteria for instituting a TEFRA lien
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5
Affected: IC 12-15-3-6; IC 12-15-9

Sec. 3. (a) When the office in accordance with 42 U.S.C. 1396p determines that a Medicaid recipient who resides in a medical institution cannot reasonably be expected to be discharged and return home, the office may attach a lien on the Medicaid recipient's real property subject to the provisions of this rule and IC 12-15-8.5.

(b) The office may not obtain a lien on the recipient's home

if any of the following people lawfully reside in the home of the institutionalized recipient:

(1) The recipient's spouse.

(2) The recipient's child who is less than twenty-one (21) years of age, blind, or disabled as defined in 42 U.S.C. 1382c.

(3) The recipient's sibling who:

(A) was residing in the recipient's home for a period of at least one (1) year immediately before the recipient's institutionalization; and

(B) has an ownership interest in the home.

(4) The recipient's parent.

~~(5) An individual, other than a paid caregiver, who:~~

~~(A) was continuously residing in the recipient's home for a period of at least two (2) years immediately prior to the date of the recipient's institutionalization; and~~

~~(B) establishes to the satisfaction of the office that the person provided care to the recipient enabling the recipient to reside in his or her home, delaying institutionalization.~~

(Office of the Secretary of Family and Social Services; 405 IAC 2-10-3; filed Dec 13, 2002, 4:00 p.m.: 26 IR 1547; filed Jul 21, 2004, 5:15 p.m.: 27 IR 3984)

SECTION 4. 405 IAC 2-10-7 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-10-7 Effect of filing; duration

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5
Affected: IC 12-15-3-6; IC 12-15-9

Sec. 7. (a) From the date on which the notice of lien is recorded in the office of the county recorder, the notice of lien:

(1) constitutes due notice of a lien against the recipient or recipient's estate for any amount then recoverable and any amounts that become recoverable under this article; and

(2) gives a specific lien in favor of the office on the Medicaid recipient's interest in the real property.

(b) The lien continues from the date of filing until the lien:

(1) is satisfied;

(2) is released; or

(3) expires.

The lien automatically expires unless the office commences a foreclosure action not later than ~~nine (9) months~~ **two (2) years** after the Medicaid recipient's death. *(Office of the Secretary of Family and Social Services; 405 IAC 2-10-7; filed Dec 13, 2002, 4:00 p.m.: 26 IR 1548; filed Jul 21, 2004, 5:15 p.m.: 27 IR 3985)*

SECTION 5. 405 IAC 2-10-7.1 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-10-7.1 Notice to office to file an action to foreclose the lien

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5
Affected: IC 12-15-3-6; IC 12-15-9

Sec. 7.1. (a) This section applies after the death of the Medicaid recipient whose property is subject to a lien under this rule or after the sale or other transfer of property that is subject to the lien.

(b) A lien under this rule is void if both of the following occur:

(1) The owner of property subject to a lien under this rule or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the office to file an action to foreclose the lien.

(2) The office fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice. However, this section does not prevent the claim from being collected as other claims are collected by law.

(c) A person who gives notice under subsection (a)(1) by registered or certified mail to the office at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

(1) The facts of the notice.

(2) That more than thirty (30) days have passed since the notice was received by the office.

(3) That no action for foreclosure of the lien is pending.

(4) That no unsatisfied judgment has been rendered on the lien.

(d) The recorder shall:

(1) record the affidavit of service in the miscellaneous record book of the recorder's office; and

(2) certify on the face of the record any lien that is fully released.

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien. *(Office of the Secretary of Family and Social Services; 405 IAC 2-10-7.1; filed Jul 21, 2004, 5:15 p.m.: 27 IR 3985)*

SECTION 6. 405 IAC 2-10-8 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-10-8 Enforcement; foreclosure

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5
Affected: IC 12-15-3-6; IC 12-15-9

Sec. 8. (a) The office may not enforce a lien on the recipient's home under this rule if the following individuals are lawfully residing in the recipient's home and have resided there on a continuous basis since the recipient's date of admission to the medical institution:

(1) The recipient's child of any age who:

(A) resided in the recipient's home for at least twenty-four (24) months before the recipient was institutionalized; and

(B) establishes to the satisfaction of the office that he or she provided care to the recipient that enabled the recipient to reside in his or her home delaying institutionalization.

(2) The recipient's sibling who has resided in the recipient's home for a period of at least one (1) year immediately before the date of the recipient's admission to the medical institution.

(b) The office may not enforce a lien on the real property of the recipient under this rule as long as the recipient is survived by any of the following:

(1) **The** recipient's spouse.

(2) **The** recipient's child who is less than twenty-one (21) years of age, blind, or disabled as defined in this rule.

~~(3) The recipient's parent.~~

(c) If there is no condition present in subsection (a) or (b), the office, or its designee, may bring a proceeding in foreclosure on the lien or to make arbitration of the amount due on the lien as follows:

(1) If the real property or recipient's interest is sold **or otherwise transferred** during the lifetime of the recipient.

(2) Upon the death of the recipient.

(Office of the Secretary of Family and Social Services; 405 IAC 2-10-8; filed Dec 13, 2002, 4:00 p.m.: 26 IR 1548; filed Jul 21, 2004, 5:15 p.m.: 27 IR 3985)

SECTION 7. 405 IAC 2-10-9 IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-10-9 Release; subordination

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5
Affected: IC 12-15-3-6; IC 12-15-9

Sec. 9. (a) The office shall release a lien obtained under this rule within ten (10) business days after the county office of family and children receives notice that the recipient is no longer institutionalized and is living in his or her home.

(b) A lien obtained under this rule is subordinate to the ~~subsequent~~ security interest of a financial institution as defined in IC 12-15-8.5 that loans money to the recipient provided that the recipient is able to establish to the satisfaction of the office that the funds were used for ~~any of the following purposes:~~

~~(1) The payment of taxes, insurance, maintenance, and repairs in order to preserve and maintain the recipient's real property.~~

~~(2)~~ operating capital for the operation of the recipient's farm, the recipient's business, or the recipient's real property that is income-producing.

~~(3) The payment of medical, dental, or optical expenses incurred by:~~

~~(A) the recipient;~~

~~(B) the recipient's spouse;~~

~~(C) the recipient's dependent parent; or~~

~~(D) a child less than twenty-one (21) years of age or who is blind or disabled.~~

~~(4) The reasonable costs and expenses for the support, maintenance, comfort, and education of the recipient's spouse, a dependent parent, or a child who is less than twenty-one (21) years of age or who is blind or disabled.~~

(c) If the real property subject to the lien is sold, the office shall release its lien at the closing, and the lien shall attach to the net proceeds of the sale. *(Office of the Secretary of Family and Social Services; 405 IAC 2-10-9; filed Dec 13, 2002, 4:00 p.m.: 26 IR 1549; filed Jul 21, 2004, 5:15 p.m.: 27 IR 3986)*

SECTION 8. 405 IAC 2-10-11 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-10-11 Exemption

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-8.5
Affected: IC 12-15-3-6; IC 12-15-39.6-10

Sec. 11. Real property that is disregarded for eligibility purposes in connection with the purchase and use of a qualified long term care insurance policy pursuant to IC 12-15-39.6-10 is exempt from lien placement and enforcement. *(Office of the Secretary of Family and Social Services; 405 IAC 2-10-11; filed Jul 21, 2004, 5:15 p.m.: 27 IR 3986)*

SECTION 9. 405 IAC 2-10-10 IS REPEALED.

LSA Document #03-134(F)
Notice of Intent Published: June 1, 2003; 26 IR 3075
Proposed Rule Published: August 1, 2003; 26 IR 3706
Hearing Held: August 27, 2003
Approved by Attorney General: July 1, 2004
Approved by Governor: July 14, 2004
Filed with Secretary of State: July 21, 2004, 5:15 p.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

LSA Document #04-35(F)

DIGEST

Amends 407 IAC 3-7-1 to exclude coverage of psychiatric residential treatment facility (PRTF) services for individuals enrolled in the children's health insurance program phase II (Hoosier Healthwise package C). Amends 407 IAC 3-13-1 concerning noncovered services. Effective 30 days after filing with the secretary of state.

407 IAC 3-7-1
407 IAC 3-13-1

SECTION 1. 407 IAC 3-7-1 IS AMENDED TO READ AS FOLLOWS:

407 IAC 3-7-1 Reimbursement limitations
Authority: IC 12-17.6-2-11
Affected: IC 12-17.6

Sec. 1. (a) Reimbursement is available for mental health services subject to the limitations set out in the Medicaid program as well as additional limitations set forth in this rule.

(b) Inpatient mental health and substance abuse services are not covered when provided in an institution for mental diseases with more than sixteen (16) beds.

(c) Psychiatric residential treatment facility (PRTF) services are not covered by the children's health insurance program.

~~(c)~~ **(d)** Outpatient mental health and substance abuse services are limited to a maximum of thirty (30) office visits per rolling twelve (12) month period without prior approval. Up to twenty (20) additional visits up to a maximum of fifty (50) visits per rolling twelve (12) month period may be prior authorized subject to Medicaid prior authorization criteria.

~~(d)~~ **(e)** Reimbursement is not available for reservation of beds in psychiatric hospitals.

~~(e)~~ **(f)** Community mental health rehabilitation services (Medicaid rehabilitation option) are not covered by the children's health insurance program. *(Office of the Children's Health Insurance Program; 407 IAC 3-7-1; filed May 3, 2000, 2:02 p.m.: 23 IR 2236; filed Jul 21, 2004, 5:01 p.m.: 27 IR 3987)*

SECTION 2. 407 IAC 3-13-1 IS AMENDED TO READ AS FOLLOWS:

407 IAC 3-13-1 Noncovered services
Authority: IC 12-17.6-2-11
Affected: IC 12-17.6

Sec. 1. The following services are not covered by CHIP:
(1) Services that are not covered by the Medicaid program.
(2) Services provided in a nursing facility.
(3) Services provided in an intermediate care facility for the mentally retarded (ICF/MR).
(4) Private duty nursing.
(5) Case management services for the following:
(A) Persons with HIV/AIDS.
(B) Pregnant women.
(C) Mentally ill or emotionally disturbed individuals.
(6) Nonambulance transportation.
(7) Services provided by Christian Science nurses.
(8) Services provided in Christian Science sanatoriums.
(9) Organ transplants.
(10) Over-the-counter drugs (except insulin).
(11) Reserved beds in psychiatric hospitals.
(12) Services provided in inpatient mental health facilities (other than acute care hospitals) with more than sixteen (16) beds.
(13) Psychiatric residential treatment facility (PRTF) services.
~~(13)~~ **(14)** Any other service or supply listed in this article as noncovered.

(Office of the Children's Health Insurance Program; 407 IAC 3-13-1; filed May 3, 2000, 2:02 p.m.: 23 IR 2237; filed Jul 21, 2004, 5:01 p.m.: 27 IR 3987)

LSA Document #04-35(F)
Notice of Intent Published: March 1, 2004; 27 IR 1938
Proposed Rule Published: May 1, 2004; 27 IR 2535
Hearing Held: May 25, 2004
Approved by Attorney General: July 1, 2004
Approved by Governor: July 14, 2004
Filed with Secretary of State: July 21, 2004, 5:01 p.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #03-275(F)

DIGEST

Amends 410 IAC 16.2-3.1 and 410 IAC 16.2-5, regulating comprehensive and residential care health facilities, by adding a definition of cognitive and to require additional inservice educational requirements of facility personnel, designation of and qualifications for a director of an Alzheimer's and dementia special care unit, facilities to provide a resident a copy of the Alzheimer's and dementia care unit disclosure form, and to clarify rules under resident behavior and facility practices, health services, and resident's rights. Effective 30 days after filing with the secretary of state.

410 IAC 16.2-1.1-11.5	**410 IAC 16.2-3.1-29**
410 IAC 16.2-3.1-3	**410 IAC 16.2-5-1.2**
410 IAC 16.2-3.1-4	**410 IAC 16.2-5-1.3**
410 IAC 16.2-3.1-13	**410 IAC 16.2-5-1.4**
410 IAC 16.2-3.1-14	**410 IAC 16.2-5-2**
410 IAC 16.2-3.1-26	**410 IAC 16.2-5-4**

SECTION 1. 410 IAC 16.2-1.1-11.5 IS ADDED TO READ AS FOLLOWS:

410 IAC 16.2-1.1-11.5 "Cognitive" defined
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 11.5. "Cognitive" means a person's ability:
(1) for short and long term memory or recall;
(2) to make decisions regarding the tasks of daily living; and
(3) to make self understood.

(Indiana State Department of Health; 410 IAC 16.2-1.1-11.5; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3987)

SECTION 2. 410 IAC 16.2-3.1-3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-3 Residents' rights
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 3. (a) The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(1) ~~The resident has the right~~ To exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) ~~The resident has the right~~ To be free of the following:

(A) Interference.

(B) Coercion.

(C) Discrimination.

(D) Reprisal from or threat of reprisal from the facility in exercising his or her rights.

(b) The resident has the right to the following:

(1) Examination of the results of the most recent annual survey of the facility conducted by federal or state surveyors, ~~and~~ any plan of correction in effect with respect to the facility, and any subsequent surveys. The results must be available for examination in the facility in a place readily accessible to residents and a notice posted of their availability.

(2) Receipt of information from agencies acting as client advocates and the opportunity to contact these agencies.

(c) In the case of a resident adjudged incompetent under the laws of the state by a court of competent jurisdiction, the rights of the residents are exercised by the person appointed under state law to act on the resident's behalf.

(d) In the case of an incompetent resident who has not been adjudicated incompetent by a state court, any legal representative may exercise the resident's rights to the extent provided by state law.

(e) The resident has the right to:

(1) refuse to perform services for the facility;

(2) perform services for the facility, if he or she chooses, when:

(A) the facility has documented the need or desire for work in the care plan;

(B) the plan specifies the nature of the services performed and whether the services are voluntary or paid;

(C) compensation for paid services is at or above the prevailing rates; and

(D) the resident agrees to the work arrangement described in the care plan.

(f) The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(g) A resident has the right to organize and participate in resident groups in the facility.

(h) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(i) The facility must provide a resident or family group, if one exists, with private space.

(j) Staff or visitors may attend meetings only at the group's invitation.

(k) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings.

(l) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families and report back at a later time in accordance with facility policy.

(m) A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(n) The resident has the right to the following:

(1) Choose a personal attending physician ~~or~~ **and** other ~~provider~~ **providers** of services. If a physician or other provider of services, **or both,** of the resident's choosing fails to fulfill a given federal or state requirement to assure the provisions of appropriate and adequate care and treatment, the facility will have the right, after consulting with the resident, the physician, ~~or~~ **and the** other provider of services, to seek alternate physician participation or services from another provider.

(2) Be fully informed in advance about care and treatment, and of any changes in that care and treatment, that may affect the resident's well-being.

(3) Participate in planning care and treatment or changes in care and treatment unless adjudged incompetent or otherwise found to be incapacitated under state law.

(o) The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(p) Personal privacy includes the following:
(1) Accommodations.
(2) Medical treatment.
(3) Written and telephone communications.
(4) Personal care.
(5) Visits.
(6) Meetings of family and resident groups.
This does not require the facility to provide a private room for each resident.

(q) Except as provided in subsection (r), the resident may approve or refuse the release of personal and clinical records to any individual outside the facility.

(r) The resident's rights to refuse release of personal and clinical records does not apply when:
(1) the resident is transferred to another health care institution; or
(2) record release is required by law.

(s) The resident has the right to privacy in written communications, including the right to:
(1) send and promptly receive mail that is unopened unless the administrator has been instructed otherwise in writing by the resident;
(2) have access to stationery, postage, and writing implements at the resident's own expense; and
(3) receive any literature or statements of services that accompany mailings from Medicaid that the facility receives on behalf of the resident.

(t) The resident has the right to be cared for in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(u) The resident has the right to the following:
(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care.
(2) Interact with members of the community both inside and outside the facility.
(3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(v) A resident has the right to the following:
(1) Reside and receive services in the facility with reasonable accommodations of the individual's needs and preferences, except when the health or safety of the individual or other residents would be endangered.
(2) Receive notice before the resident's room or roommate in the facility is changed.

(w) The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

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

(Indiana State Department of Health; 410 IAC 16.2-3.1-3; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1528, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3988)

SECTION 3. 410 IAC 16.2-3.1-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-4 Notice of rights and services

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 12-10-5.5; IC 16-28-5-1; IC 16-36-1-3; IC 16-36-1-7; IC 16-36-4-7; IC 16-36-4-13; IC 30-5-7-4

Sec. 4. (a) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing. A copy of the resident's rights must be available in a publicly accessible area. The copy must be at least 12-point type.

(b) The resident has the right to the following:
(1) Immediate access to the current active clinical record.
(2) Upon an oral or written request, to access all other records pertaining to himself or herself within twenty-four (24) hours.
(3) After receipt of his or her records for inspection, to purchase at a cost, not to exceed the community standard, photocopies of the records or any portions of them upon request and two (2) working days' advance notice to the facility.

(c) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition.

(d) The resident has the right to refuse treatment. Any refusals of treatment must be accompanied by counseling on the medical consequences of such refusal.

(e) The resident has the right to refuse participation in experimental research. All experimental research must be conducted in compliance with state, federal, and local laws and professional standards.

(f) The facility must do the following:
(1) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or when the resident becomes eligible for Medicaid of the following:

(A) The items and services that are included in nursing facility services under the state plan and for which the resident may not be charged.

(B) Those other items and services that the facility offers and for which the resident may be charged and the amount of the charges.

(2) Inform each resident when changes are made to the items and services specified in this section.

(3) Inform each resident before, or at the time of admission, in writing and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(4) Provide written information to each resident concerning the following:

(A) The resident's rights under IC 16-36-1-3 and IC 16-36-1-7 to make decisions concerning their care, including the right to:

(i) accept or refuse medical or surgical treatment; and ~~the right to~~

(ii) formulate advance directives.

(B) The facility's written policies regarding the implementation of such rights, including a clear and precise statement of limitation if the facility or its agent cannot implement an advance directive on the basis of conscience ~~pursuant to~~ **under** IC 16-36-4-13.

(5) Document in the resident's clinical record whether the resident has executed an advance directive and ~~to~~ include a copy of such advance directive in the clinical record.

(6) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.

(7) Ensure compliance with the requirements of state law regarding advance directives.

(8) Provide for education for staff on issues concerning advance directives.

(9) Provide for community education regarding advance directives either directly or in concert with other facilities or health care providers or other organizations.

(10) Distribute to each resident upon admission the state developed written description of the law concerning advance directives.

(11) If the facility is required to submit an Alzheimer's and dementia special care unit disclosure form under IC 12-10-5.5, provide the resident at the time of admission to the facility with a copy of the completed Alzheimer's and dementia special care unit disclosure form.

(g) A facility is not required to provide care that conflicts with an advance directive ~~pursuant to~~ **under** IC 16-36-4-7.

(h) If a facility objects to implementation of an advance directive on the basis of conscience, they must comply with IC 30-5-7-4.

(i) Residents have the right to be informed by the facility, in writing, at least thirty (30) days in advance of the effective date, of any changes in the rates or services that these rates cover.

(j) The facility must furnish on admission a written description of legal rights, including the following:

(1) A description of the manner of protecting personal funds under this section.

(2) A statement that the resident may file a complaint with the director concerning resident abuse, neglect, misappropriation of resident property, and other practices of the facility.

(3) The most recently known addresses and telephone numbers, including, but not limited to, the following:

(A) The department.

(B) The office of the secretary of family and social services.

(C) The ombudsman designated by the division of disability, aging, and rehabilitative services.

(D) The area agency on aging.

(E) The local mental health center.

(F) The protection and advocacy services commission.

(G) Adult protective services.

These shall be displayed in a prominent place in the facility.

(k) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(l) The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information, about how to:

(1) apply for and use Medicare and Medicaid benefits; and ~~how to~~

(2) receive refunds for previous payments covered by such benefits.

(m) For purposes of IC 16-28-5-1, a breach of:

(1) subsection (h) is an offense;

(2) subsection (d), (e), or (g) is a deficiency;

(3) subsection (a), (b), (c), (f)(1), (f)(2), (f)(3), (f)(4), (f)(5), (f)(8), (f)(10), (i), (j)(1), (k), or (l) is a noncompliance; and

(4) subsection (f)(6), (f)(7), (f)(9), (j)(2), or (j)(3) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-4; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1529, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; errata filed Jun 4, 1997, 1:47 p.m.: 20 IR 2789; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3989)

SECTION 4. 410 IAC 16.2-3.1-13 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-13 Administration and management

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 12-10-5.5; IC 16-28-5-1; IC 25-19-1

Sec. 13. (a) The licensee is responsible for compliance with all applicable laws and rules. The licensee has full authority and responsibility for the organization, management, operation, and control of the licensed facility. The delegation of any authority by the licensee does not diminish the responsibilities of the licensee.

(b) The licensee shall provide the number of staff as required to carry out all the functions of the facility, including:

(1) initial orientation of all employees;

(2) a continuing inservice education and training program for all employees; and

(3) provision of supervision for all employees.

(c) If a facility offers services in addition to those provided to its long term care residents, the administrator is responsible for assuring that such additional services do not adversely affect the care provided to its residents.

(d) The licensee shall notify the department within three (3) working days of a vacancy in the administrator's position. The licensee shall also notify the director of the name and license number of the replacement administrator.

(e) An administrator shall be employed to work in each licensed health facility. For purposes of this subsection, an individual can only be employed as an administrator in one (1) health facility or one (1) hospital-based long term care unit at a time.

(f) In the administrator's absence, an individual shall be authorized, in writing, to act on the administrator's behalf.

(g) The administrator is responsible for the overall management of the facility but shall not function as a departmental supervisor, for example, director of nursing or food service supervisor, during the same hours. The responsibilities of the administrator shall include, but are not limited to, the following:

(1) Immediately informing the division by telephone, followed by written notice within twenty-four (24) hours, of unusual occurrences that directly threaten the welfare, safety, or health of the resident or residents, including, but not limited to, any:

(A) epidemic outbreaks;

(B) poisonings;

(C) fires; or

(D) major accidents.

If the department cannot be reached, such as on holidays or weekends, a call shall be made to the emergency telephone number ((317) 383-6144) of the division.

(2) Promptly arranging for medical, dental, podiatry, or nursing care or other health care services as prescribed by the attending physician.

(3) Obtaining director approval prior to the admission of an individual under eighteen (18) years of age to an adult facility.

(4) Ensuring that the facility maintains, on the premises, time schedules and an accurate record of actual time worked that indicates the employees' full names and the dates and hours worked during the past twelve (12) months. This information shall be furnished to the division staff upon request.

(5) Maintaining a copy of this article and making it available to all personnel and the residents.

(6) Maintaining reports of surveys conducted by the division in each facility for a period of two (2) years and making the reports available for inspection to any member of the public upon request.

(h) Each facility, except a facility that cares for children or an intermediate care facility for the mentally retarded, shall encourage all employees serving residents or the public to wear name and title identification.

(i) Each facility shall establish and implement a written policy manual to ensure that resident care and facility objectives are attained, to include:

(1) the range of services offered; ~~resident~~

(2) residents' rights;

(3) personnel administration; and

(4) facility operations.

(j) The licensee shall approve the policy manual, and subsequent revisions, in writing. The policy manual shall be reviewed and dated at least annually. The resident care policies shall be developed by a group of professional personnel and approved by the medical director.

(k) The policies shall be maintained in a **manual or** manuals accessible to employees and made available upon request to:

(1) residents;

(2) the department;

(3) the sponsor or surrogate of a resident; and

(4) the public.

Management/ownership confidential directives are not required to be included in the policy manual; however, the policy manual must include all of the facility's operational policies.

(l) To assure continuity of care of residents in cases of emergency, the facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, missing residents, and including situations that may require emergency relocation of residents. Facilities caring for children shall have a written plan outlining the staff procedures, including isolation and evacuation, in case of an outbreak of childhood diseases.

(m) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under a written agreement. Such agreements pertaining to services furnished by

outside resources must specify, in writing, that the facility assumes responsibility for the following:

(1) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility.

(2) The timeliness of the services.

(3) Orientation to pertinent facility policies and residents to whom they are responsible.

(n) Each facility shall conspicuously post the license or a true copy thereof within the facility in a location accessible to public view.

(o) Each facility shall submit an annual statistical report to the department.

(p) The facility must have in effect a written transfer agreement with one (1) or more hospitals that reasonably assures the following:

(1) Residents will be transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician.

(2) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(3) Specification of the responsibilities assumed by both the discharging and receiving institutions for prompt notification of the impending transfer of the resident for:

(A) agreement by the receiving institution to admit the resident;

(B) arranging appropriate transportation and care of the resident during transfer; and

(C) the transfer of personal effects, particularly money and valuables, and of information related to such items.

(4) Specification of the restrictions with respect to the types of services available ~~and/or~~ **or** the types of residents or health conditions that will not be accepted by the hospital or the facility, **or both,** including any other criteria relating to the transfer of residents.

The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(q) A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(r) The facility must operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(s) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility.

(t) The governing body shall appoint the administrator who is:

(1) licensed under IC 25-19-1; and

(2) responsible for the management of the facility.

(u) The facility must designate a physician to serve as medical director.

(v) The medical director shall be responsible for the following:

(1) Acting as a liaison between the administrator and the attending physicians to encourage physicians to write orders promptly and to make resident visits in a timely manner.

(2) Reviewing, evaluating, and implementing resident care policies and procedures and to guide the director of nursing services in matters related to resident care policies and services.

(3) Reviewing incidents and accidents that occur on the premises to identify hazards to health and safety.

(4) Reviewing employees preemployment physicals and health reports and monitoring employees health status.

(5) The coordination of medical care in the facility.

(w) In facilities that are required under IC 12-10-5.5 to submit an Alzheimer's and dementia special care unit disclosure form, the facility must designate a director for the Alzheimer's and dementia special care unit. The director shall have an earned degree from an educational institution in a health care, mental health, or social service profession or be a licensed health facility administrator. The director shall have a minimum of one (1) year work experience with dementia or Alzheimer's residents, or both, within the past five (5) years. Persons serving as a director for an existing Alzheimer's and dementia special care unit at the time of adoption of this rule are exempt from the degree and experience requirements. The director shall have a minimum of twelve (12) hours of dementia-specific training within three (3) months of initial employment as the director of the Alzheimer's and dementia special care unit and six (6) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

(x) The director of the Alzheimer's and dementia special care unit shall do the following:

(1) Oversee the operation of the unit.

(2) Ensure that personnel assigned to the unit receive required inservice training.

(3) Ensure that care provided to Alzheimer's and dementia care unit residents is consistent with inservice training, current Alzheimer's and dementia care practices, and regulatory standards.

~~(w)~~ **(y)** For purposes of IC 16-28-5-1, a breach of:

(1) subsection (a), (c), (g), (r), (t), (u), ~~or~~ (v), **or (x)** is a deficiency;

(2) subsection (b), (d), (e), (f), (i), (l), (p), (q), ~~or~~ (s), **or (w)** is a noncompliance; and

(3) subsection (h), (j), (k), (m), (n), or (o) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-3.1-13; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1535, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3990)

SECTION 5. 410 IAC 16.2-3.1-14 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-14 Personnel

Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1; IC 16-28-13-3

Sec. 14. (a) Each facility shall have specific procedures written and implemented for the screening of prospective employees. Specific inquiries shall be made for prospective employees. The facility shall have a personnel policy that considers references and any convictions in accordance with IC 16-28-13-3.

(b) A facility must not use any individual working in the facility as a nurse aide for more than four (4) months on a full-time, part-time, temporary, per diem, or other basis unless that individual:

(1) is competent to provide nursing and nursing-related services; and

(2) has completed a training and competency evaluation program approved by the division or a competency evaluation program approved by the division.

(c) Each nurse aide who is hired to work in a facility shall have successfully completed a nurse aide training program approved by the division or shall enroll in the first available approved training program scheduled to commence within sixty (60) days of the date of the nurse aide's employment. The program may be established by the facility or by an organization or institution. The training program shall consist of at least the following:

(1) Thirty (30) hours of classroom instruction within one hundred twenty (120) days of employment. At least sixteen (16) of those hours shall be in the following areas prior to any direct contact with a resident:

(A) Communication and interpersonal skills.

(B) Infection control.

(C) Safety/emergency procedures, including the Heimlich maneuver.

(D) Promoting resident's independence.

(E) Respecting residents' rights.

(2) The remainder of the thirty (30) hours of instruction shall include the following:

(A) Basic nursing skills as follows:

(i) Taking and recording vital signs.

(ii) Measuring and recording height and weight.

(iii) Caring for residents' environment.

(iv) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor.

(v) Caring for residents when death is imminent.

(B) Personal care skills, including, but not limited to, the following:

(i) Bathing.

(ii) Grooming, including mouth care.

(iii) Dressing.

(iv) Toileting.

(v) Assisting with eating and hydration.

(vi) Proper feeding techniques.

(vii) Skin care.

(viii) Transfers, positioning, and turning.

(C) Mental health and social service needs as follows:

(i) Modifying aides' behavior in response to residents' behavior.

(ii) Awareness of developmental tasks associated with the aging process.

(iii) How to respond to residents' behavior.

(iv) Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity.

(v) Using the resident's family as a source of emotional support.

(D) Care of cognitively impaired residents as follows:

(i) Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

(ii) Communicating with cognitively impaired residents.

(iii) Understanding the behavior of cognitively impaired residents.

(iv) Appropriate responses to the behavior of cognitively impaired residents.

(v) Methods of reducing the effects of cognitive impairments.

(E) Basic restorative services as follows:

(i) Training the resident in self-care according to the resident's abilities.

(ii) Use of assistive devices in transferring, ambulation, eating, and dressing.

(iii) Maintenance of range of motion.

(iv) Proper turning and positioning in bed and chair.

(v) Bowel and bladder training.

(vi) Care and use of prosthetic and orthotic devices.

(F) Residents' rights as follows:
(i) Providing privacy and maintenance of confidentiality.
(ii) Promoting residents' right to make personal choices to accommodate their needs.
(iii) Giving assistance in resolving grievances and disputes.
(iv) Providing needed assistance in getting to and participating in resident and family groups and other activities.
(v) Maintaining care and security of residents' personal possessions.
(vi) Promoting residents' right to be free from abuse, mistreatment, and neglect, and the need to report any instances of such treatment to appropriate facility staff.
(vii) Avoiding the need for restraints in accordance with current professional standards.

(3) Seventy-five (75) hours of supervised clinical experience, at least sixteen (16) hours of which must be in directly supervised practical training. As used in this subdivision, "directly supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under direct supervision of a registered nurse or a licensed practical nurse. These hours shall consist of normal employment as a nurse aide under the supervision of a licensed nurse.

(4) Training that ensures the following:
(A) Students do not perform any services for which they have not trained and been found proficient by the instructor.
(B) Students who are providing services to residents are under the general supervision of a licensed nurse.

(d) A facility must arrange for individuals used as nurse aides, as of the effective date of this rule to participate in a competency evaluation program approved by the division, and preparation necessary for the individual to complete the program.

(e) Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless **the individual:**
(1) ~~the individual~~ is a full-time employee in a training and competency evaluation program approved by the division; or
(2) ~~the individual~~ can prove that he or she has recently successfully completed a training and competency evaluation program approved by the division and has not yet been included in the registry.
Facilities must follow up to ensure that such individual actually becomes registered.

(f) A facility must check with all state nurse aide registries it has reason to believe contain information on an individual before using that individual as a nurse aide.

(g) If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of twenty-four (24) consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(h) The facility must complete a performance review of every nurse aide at least once every twelve (12) months and must provide regular inservice education based on the outcome of these reviews. The inservice training must be as follows:
(1) Sufficient to ensure the continuing competence of nurse aides but must be no less than twelve (12) hours per year.
(2) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff.
(3) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(i) The facility must ensure that nurse aides and qualified medication aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments and described in the care plan.

(j) Medication shall be administered by licensed nursing personnel or qualified medication aides. If medication aides handle or administer drugs or perform treatments requiring medications, the facility shall ensure that the persons have been properly qualified in medication administration by a state-approved course. Injectable medications shall be given only by licensed personnel.

(k) There shall be an organized ongoing inservice education and training program planned in advance for all personnel. This training shall include, but not be limited to, the following:
(1) ~~Resident~~ **Residents'** rights.
(2) Prevention and control of infection.
(3) Fire prevention.
(4) Safety and accident prevention.
(5) Needs of specialized populations served.
(6) Care of cognitively impaired residents.

(l) The frequency and content of inservice education and training programs shall be in accordance with the skills and knowledge of the facility personnel as follows. For nursing personnel, this shall include at least twelve (12) hours of ~~in-services~~ **inservice** per calendar year and six (6) hours of inservice per calendar year for nonnursing personnel.

(m) Inservice programs for items required under subsection (k) shall contain a means to assess learning by participants.

(n) The administrator may approve attendance at outside workshops and continuing education programs related to that individual's responsibilities in the facility. Documented

attendance at these workshops and programs meets the requirements for inservice training.

(o) Inservice records shall be maintained and shall indicate the following:
(1) The time, date, and location.
(2) Name of the instructor.
(3) The title of the instructor.
(4) The name of the participants.
(5) The program content of inservice.
The employee will acknowledge attendance by written signature.

(p) Initial orientation of all staff must be conducted and documented and shall include the following:
(1) Instructions on the needs of the specialized **population or** populations served in the facility, for example:
(A) aged;
(B) developmentally disabled;
(C) mentally ill; ~~or~~
(D) children; **or**
(E) care of cognitively impaired;
residents.
(2) A review of residents' rights and other pertinent portions of the facility's policy manual.
(3) Instruction in first aid, emergency procedures, and fire and disaster preparedness, including evacuation procedures and universal precautions.
(4) A detailed review of the appropriate job description, including a demonstration of equipment and procedures required of the specific position to which the employee will be assigned.
(5) Review of ethical considerations and confidentiality in resident care and records.
(6) For direct care staff, instruction in the particular needs of each resident to whom the employee will be providing care.

(q) Each facility shall maintain current and accurate personnel records for all employees. The personnel records for all employees shall include the following:
(1) Name and address of employee.
(2) Social Security number.
(3) Date of beginning employment.
(4) Past employment, experience, and education if applicable.
(5) Professional licensure, certification, or registration number if applicable.
(6) Position in the facility and job description.
(7) Documentation of orientation to the facility and to the specific job skills.
(8) Signed ~~acknowledgment~~ **acknowledgement** of orientation to ~~resident~~ **residents'** rights.
(9) Performance evaluations in accordance with the facility's policy.
(10) Date and reason for separation.

(r) The employee's personnel record shall be retained for at least three (3) years following termination or separation of the employee from employment.

(s) Professional staff must be licensed, certified, or registered in accordance with applicable state laws or rules.

(t) A physical examination shall be required for each employee of a facility within one (1) month prior to employment. The examination shall include a tuberculin skin test, using the Mantoux method (5 TU PPD), administered by persons having documentation of training from a department-approved course of instruction in intradermal tuberculin skin testing, reading, and recording unless a previously positive reaction can be documented. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered. The tuberculin skin test must be read prior to the employee starting work. The facility must assure the following:
(1) At the time of employment, or within one (1) month prior to employment, and at least annually thereafter, employees and nonpaid personnel of facilities shall be screened for tuberculosis. For health care workers who have not had a documented negative tuberculin skin test result during the preceding twelve (12) months, the baseline tuberculin skin testing should employ the two-step method. If the first step is negative, a second test should be performed one (1) to three (3) weeks after the first step. The frequency of repeat testing will depend on the risk of infection with tuberculosis.
(2) All employees who have a positive reaction to the skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis.
(3) The facility shall maintain a health record of each employee that includes:
(A) a report of the preemployment physical examination; and
(B) reports of all employment-related health examinations.
(4) An employee with symptoms or signs of active disease, (symptoms suggestive of active tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss) shall not be permitted to work until tuberculosis is ruled out.

(u) In addition to the required inservice hours in subsection (l), staff who have regular contact with residents shall have a minimum of six (6) hours of dementia-specific training within six (6) months of initial employment, or within thirty (30) days for personnel assigned to the Alzheimer's and dementia special care unit, and three (3) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

~~(u)~~ **(v)** For purposes of IC 16-28-5-1, a breach of:
(1) subsection (c), (e), (f), (g), (i), (j), or (s) is a deficiency;
(2) subsection (a), (b), (d), (h), (k), (l), (m), (n), (o), (p), ~~or~~ (t), **or (u)** is a noncompliance; and

(3) subsection (q) or (r) is a nonconformance.
(Indiana State Department of Health; 410 IAC 16.2-3.1-14; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1537, eff Apr 1, 1997; errata, 20 IR 1738; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; filed May 16, 2001, 2:09 p.m.: 24 IR 3024; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3993)

SECTION 6. 410 IAC 16.2-3.1-26 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-26 Resident behavior and facility practices

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

Sec. 26. (a) Less restrictive measures must have been tried by the interdisciplinary team and shown to be ineffective before restraints are applied.

(b) Restraint or seclusion shall be employed only by order of a physician, and the type of restraint or seclusion shall be specified in the order.

(c) Per required need (PRN) restraint or seclusion shall only be employed upon the authorization of a licensed nurse. All contacts with a nurse or physician not on the premises for authorization to administer PRN restraints shall be documented in the nursing notes indicating the time and date of the contact.

(d) The facility policy manual shall designate who is authorized to apply restraints. The facility shall have written procedures in which the persons authorized to apply restraints have been properly trained.

(e) In emergencies when immediate physical restraint or seclusion is needed for the protection of the resident or others, restraint or seclusion may be authorized by a licensed nurse for a period not to exceed twelve (12) hours. A physician's order to continue restraint or seclusion must be obtained in order to continue the restraint beyond the twelve (12) hour period.

(f) A record of physical restraint and seclusion of a resident shall be kept in accordance with this rule.

(g) Each resident under restraint and seclusion shall be visited by a member of the nursing staff at least once every hour and more frequently if the resident's condition requires.

(h) Each physically restrained or secluded individual shall be temporarily released from restraint or seclusion at least every two (2) hours or more often if necessary except when the resident is asleep. When the resident in restraint is temporarily released, the resident shall be assisted to ambulate, toileted, or changed in position as the resident's physical condition permits.

(i) A resident shall not be placed alone in a room with a full, solid locked door.

(j) Key lock restraints shall not be used or available in the facility. ~~The acceptable forms of physical restraint include, but are not limited to, the following:~~
~~(1) Cloth vests.~~
~~(2) Soft cloth ties.~~
~~(3) Soft cloth mittens.~~
~~(4) Seat belts.~~
~~(5) Trays with spring release devices.~~

(k) Chemical restraint shall be authorized in writing by a physician.

(l) An order for chemical restraints shall specify the dosage and the interval of and reasons for the use of chemical restraint.

(m) Administration of chemical restraints shall be documented in accordance with this rule.

(n) Restraints and seclusion shall be used in such a way as not to cause physical injury to the resident.

(o) Restraints of any type or seclusion shall only be used for the protection and safety of residents or others as required by medical symptoms that warrant the restraint, or safety issues that warrant the seclusion, and shall not be used as a punishment. Restraints and seclusion shall be used in such a way as to minimize discomfort to the resident.

(p) Restraints or seclusion shall be applied in a manner that permits rapid removal in case of fire or other emergency.

(q) The resident's legal representative shall be notified of the need for restraint or seclusion at the time of the physician's initial order or within twenty-four (24) hours after emergency restraint or seclusion is applied. Such notification shall be documented in the nursing notes. After the physician's order for restraint or seclusion is initially written, the legal representative may request in writing not to be notified.

(r) The least restrictive restraint must be used. The continued use of the restraint or seclusion must be reviewed at each care plan conference. Least or lesser restrictive measures must be considered at each meeting.

(s) The use of restraints must be reviewed by the interdisciplinary team within one (1) month after the application of the restraint, and every thirty (30) days for the first ninety (90) days of the restraints, and at least quarterly thereafter.

(t) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (j) or (n) is an offense;
(2) subsection (a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (o), (p), or (r) is a deficiency; and
(3) subsection (f), (m), (q), or (s) is a noncompliance.
(Indiana State Department of Health; 410 IAC 16.2-3.1-26; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1550, eff Apr 1, 1997;

errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3996)

SECTION 7. 410 IAC 16.2-3.1-29 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-3.1-29 Preadmission evaluation
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 29. (a) The facility is responsible for the evaluation of prospective residents to ensure that only those residents whose medical, **cognitive,** and psychosocial needs can be met by the facility or through community resources are admitted to the facility.

(b) An evaluation of the prospective residents shall be made prior to admission. The evaluation shall include personal or telephone interviews with:
(1) the resident;
(2) the resident's physician; or
(3) the representative of the facility from which the resident is being transferred if applicable.
A brief record of the evaluation shall be retained by the facility for those residents who are admitted to the facility and shall be used, as applicable, in planning for the care of the resident.

(c) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a) is an offense; and
(2) subsection (b) is a deficiency.
(Indiana State Department of Health; 410 IAC 16.2-3.1-29; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1551, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3997)

SECTION 8. 410 IAC 16.2-5-1.2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.2 Residents' rights
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 4-21.5; IC 12-10-5.5; IC 12-10-15-9; IC 16-28-5-1

Sec. 1.2. (a) Residents have the right to have their rights recognized by the licensee. The licensee shall establish written policies regarding residents' rights and responsibilities in accordance with this article and shall be responsible, through the administrator, for their implementation. These policies and any adopted additions or changes thereto shall be made available to the resident, staff, legal representative, and general public. Each resident shall be advised of residents' rights prior to admission and shall signify, in writing, upon admission and thereafter if the residents' rights are updated or changed. There shall be documentation that each resident is in receipt of the described residents' rights and responsibilities. A copy of the residents' rights must be available in a publicly accessible area. The copy must be in at least 12-point type and a language the resident understands.

(b) Residents have the right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. Residents have the right to exercise their rights as a resident of the facility and as a citizen or resident of the United States.

(c) Residents have the right to exercise any or all of the enumerated rights without:
(1) restraint;
(2) interference;
(3) coercion;
(4) discrimination; or
(5) threat of reprisal;
by the facility. These rights shall not be abrogated or changed in any instance, except that, when the resident has been adjudicated incompetent, the rights devolve to the resident's legal representative. When a resident is found by his or her physician to be medically incapable of understanding or exercising his or her rights, the rights may be exercised by the resident's legal representative.

(d) Residents have the right to be treated with consideration, respect, and recognition of their dignity and individuality.

(e) Residents have the right to be provided, at the time of admission to the facility, the following:
(1) A copy of his or her admission agreement.
(2) A written notice of the facility's basic daily or monthly rates.
(3) A written statement of all facility services (including those offered on an as needed basis).
(4) Information on related charges, admission, readmission, and discharge policies of the facility.
(5) The facility's policy on voluntary termination of the admission agreement by the resident, including the disposition of any entrance fees or deposits paid on admission. The admission agreement shall include at least those items provided for in IC 12-10-15-9.
(6) If the facility is required to submit an Alzheimer's and dementia special care unit disclosure form under IC 12-10-5.5, a copy of the completed Alzheimer's and dementia special care unit disclosure form.

(f) Residents have the right to be informed of any facility policy regarding overnight guests. This policy shall be clearly stated in the admission agreement.

(g) Residents have the right to be informed by the facility, in writing at least thirty (30) days in advance of the effective date, of any changes in the rates or services that these rates cover.

(h) The facility must furnish on admission the following:
(1) A statement that the resident may file a complaint with the director concerning resident abuse, neglect, misappropriation of resident property, and other practices of the facility.
(2) The most recently known addresses and telephone numbers of the following:

(A) The department.
(B) The office of the secretary of family and social services.
(C) The ombudsman designated by the division of disability, aging, and rehabilitation services.
(D) The area agency on aging.
(E) The local mental health center.
(F) Adult protective services.
The addresses and telephone numbers in this subdivision shall be posted in an area accessible to residents and updated as appropriate.

(i) The facility will distribute to each resident upon admission the state developed written description of law concerning advance directives.

(j) Residents have the right to the following:
(1) Participate in the development of his or her service plan and in any updates of that service plan.
(2) Choose the attending physician and other providers of services, including arranging for on-site health care services unless contrary to facility policy. Any limitation on the resident's right to choose the attending physician ~~and/or~~ **or** service provider, **or both,** shall be clearly stated in the admission agreement. Other providers of services, within the content of this subsection, may include home health care agencies, hospice care services, or hired individuals.
(3) Have a pet of his or her choice, so long as the pet does not pose a health or safety risk to residents, staff, or visitors or a risk to property unless prohibited by facility policy. Any limitation on the resident's right to have a pet of his or her choice shall be clearly stated in the admission agreement.
(4) Refuse any treatment or service, including medication.
(5) Be informed of the medical consequences of a refusal under subdivision (4) and have such data recorded in his or her clinical record if treatment or medication is administered by the facility.
(6) Be afforded confidentiality of treatment.
(7) Participate or refuse to participate in experimental research. There must be written ~~acknowledgment~~ **acknowledgement** of informed consent prior to participation in research activities.

(k) The facility must immediately consult the resident's physician and the resident's legal representative when the facility has noticed:
(1) a significant decline in the resident's physical, mental, or psychosocial status; or
(2) a need to alter treatment significantly, that is, a need to discontinue an existing form of treatment due to adverse consequences or to commence a new form of treatment.

(l) If the facility participates in the Medicaid waiver ~~and/or~~ **or** residential care assistance programs, **or both,** the facility must provide to residents written information about how to apply for Medicaid benefits and room and board assistance.

(m) The facility must promptly notify the resident and, if known, the resident's legal representative when there is a change in roommate assignment.

(n) Residents may, throughout the period of their stay, voice grievances to the facility staff or to an outside representative of their choice, recommend changes in policy and procedure, and receive reasonable responses to their requests without fear of reprisal or interference.

(o) Residents have the right to form and participate in a resident council, and families of residents have the right to form a family council, to discuss alleged grievances, facility operation, ~~resident~~ **residents'** rights, or other problems and to participate in the resolution of these matters as follows:
(1) Participation is voluntary.
(2) During resident or family council meetings, privacy shall be afforded to the extent practicable unless a member of the staff is invited by the resident council to be present.
(3) The licensee shall provide space within the facility for meetings and assistance to residents or families who desire to attend meetings.
(4) The facility shall develop and implement policies for investigating and responding to complaints when made known and grievances made by:
(A) an individual resident;
(B) a resident council ~~and/or~~ **or** family council, **or both;**
(C) a family member;
(D) family groups; or
(E) other individuals.

(p) Residents have the right to the examination of the results of the most recent annual survey of the facility conducted by the state surveyors, ~~and~~ any plan of correction in effect with respect to the facility, and any subsequent surveys.

(q) Residents have the right to appropriate housing assignments as follows:
(1) When both husband and wife are residents in the facility, they have the right to live as a family in a suitable room or quarters and may occupy a double bed unless contraindicated for medical reasons by the attending physician.
(2) Written facility policy and procedures shall address the circumstances in which persons of the opposite sex, other than husband and wife, will be allowed to occupy a bedroom, if such an arrangement is agreeable to the residents or the residents' legal representatives.

(r) The transfer and discharge rights of residents of a facility are as follows:
(1) As used in this section, "interfacility transfer and discharge" means the movement of a resident to a bed outside of the licensed facility.
(2) As used in this section, "intrafacility transfer" means the

movement of a resident to a bed within the same licensed facility.

(3) When a transfer or discharge of a resident is proposed, whether intrafacility or interfacility, provision for continuity of care shall be provided by the facility.

(4) Health facilities must permit each resident to remain in the facility and not transfer or discharge the resident from the facility unless:

(A) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(B) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;

(C) the safety of individuals in the facility is endangered;

(D) the health of individuals in the facility would otherwise be endangered;

(E) the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(F) the facility ceases to operate.

(5) When the facility proposes to transfer or discharge a resident under any of the circumstances specified in subdivision (4)(A), (4)(B), (4)(C), (4)(D), or (4)(E), the resident's clinical records must be documented. The documentation must be made by the following:

(A) The resident's physician when transfer or discharge is necessary under subdivision (4)(A) or (4)(B).

(B) Any physician when transfer or discharge is necessary under subdivision (4)(D).

(6) Before an interfacility transfer or discharge occurs, the facility must, on a form prescribed by the department, do the following:

(A) Notify the resident of the transfer or discharge and the reasons for the move, in writing, and in a language and manner that the resident understands. The health facility must place a copy of the notice in the resident's clinical record and transmit a copy to the following:

(i) The resident.

(ii) A family member of the resident if known.

(iii) The resident's legal representative if known.

(iv) The local long term care ombudsman program (for involuntary relocations or discharges only).

(v) The person or agency responsible for the resident's placement, maintenance, and care in the facility.

(vi) In situations where the resident is developmentally disabled, the regional office of the division of disability, aging, and rehabilitative services, who may assist with placement decisions.

(vii) The resident's physician when the transfer or discharge is necessary under subdivision (4)(C), (4)(D), (4)(E), or (4)(F).

(B) Record the reasons in the resident's clinical record.

(C) Include in the notice the items described in subdivision (9).

(7) Except when specified in subdivision (8), the notice of transfer or discharge required under subdivision (6) must be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(8) Notice may be made as soon as practicable before transfer or discharge when:

(A) the safety of individuals in the facility would be endangered;

(B) the health of individuals in the facility would be endangered;

(C) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(D) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(E) a resident has not resided in the facility for thirty (30) days.

(9) For health facilities, the written notice specified in subdivision (7) must include the following:

(A) The reason for transfer or discharge.

(B) The effective date of transfer or discharge.

(C) The location to which the resident is transferred or discharged.

(D) A statement in not smaller than 12-point bold type that reads, "You have the right to appeal the health facility's decision to transfer you. If you think you should not have to leave this facility, you may file a written request for a hearing with the Indiana state department of health postmarked within ten (10) days after you receive this notice. If you request a hearing, it will be held within twenty-three (23) days after you receive this notice, and you will not be transferred from the facility earlier than thirty-four (34) days after you receive this notice of transfer or discharge unless the facility is authorized to transfer you under subdivision (8). If you wish to appeal this transfer or discharge, a form to appeal the health facility's decision and to request a hearing is attached. If you have any questions, call the Indiana state department of health at the number listed below.".

(E) The name of the director and the address, telephone number, and hours of operation of the division.

(F) A hearing request form prescribed by the department.

(G) The name, address, and telephone number of the state and local long term care ombudsman.

(H) For health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy services commission.

(10) If the resident appeals the transfer or discharge, the health facility may not transfer or discharge the resident within thirty-four (34) days after the resident receives the initial transfer or discharge notice unless an emergency exists as provided under subdivision (8).

(11) If nonpayment is the basis of a transfer or discharge, the resident shall have the right to pay the balance owed to the facility up to the date of the transfer or discharge and then is entitled to remain in the facility.

(12) The department shall provide a resident who wishes to appeal the transfer or discharge from a facility the opportunity to file a request for a hearing postmarked within ten (10) days following the resident's receipt of the written notice of the transfer or discharge from the facility.

(13) If a health facility resident requests a hearing, the department shall hold an informal hearing at the health facility within twenty-three (23) days from the date the resident receives the notice of transfer or discharge. The department shall attempt to give at least five (5) days' written notice to all parties prior to the informal hearing. The department shall issue a decision within thirty (30) days from the date the resident receives the notice. The health facility must convince the department by a preponderance of the evidence that the transfer or discharge is authorized under subdivision (4). If the department determines that the transfer is appropriate, the resident must not be required to leave the health facility within the thirty-four (34) days after the resident's receipt of the initial transfer or discharge notice unless an emergency exists under subdivision (8). Both the resident and the health facility have the right to administrative or judicial review under IC 4-21.5 of any decision or action by the department arising under this section. All hearings held de novo shall be held in the facility where the resident resides.

(14) An intrafacility transfer can be made only if **the transfer is necessary for:**

(A) ~~the transfer is necessary for~~ medical reasons as judged by the attending physician; or

(B) ~~the transfer is necessary for~~ the welfare of the resident or other persons.

(15) If an intrafacility transfer is required, the resident must be given notice at least two (2) days before relocation, except when:

(A) the safety of individuals in the facility would be endangered;

(B) the health of individuals in the facility would be endangered;

(C) the resident's health improves sufficiently to allow a more immediate transfer; or

(D) an immediate transfer is required by the resident's urgent medical needs.

(16) The written notice of an intrafacility transfer must include the following:

(A) Reasons for transfer.

(B) Effective date of transfer.

(C) Location to which the resident is to be transferred.

(D) Name, address, and telephone number of the local and state long term care ombudsman.

(E) For health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy services commission.

(17) The resident has the right to relocate prior to the expiration of the two (2) ~~day~~ **days'** notice.

(18) Prior to any interfacility or involuntary intrafacility relocation, the facility shall prepare a relocation plan to prepare the resident for relocation and to provide continuity of care. In nonemergency relocations, the planning process shall include a relocation planning conference to which the resident, his or her legal representative, family members, and physician shall be invited. The planning conference may be waived by the resident.

(19) At the planning conference the resident's medical, psychosocial, and social needs with respect to the relocation shall be considered and a plan devised to meet these needs.

(20) The facility shall provide reasonable assistance to the resident to carry out the relocation plan.

(21) The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(22) If the relocation plan is disputed, a meeting shall be held prior to the relocation with the administrator or his or her designee, the resident, and the resident's legal representative. An interested family member, if known, shall be invited. The purpose of the meeting shall be to discuss possible alternatives to the proposed relocation plan.

(23) A written report of the content of the discussion at the meeting and the results of the meeting shall be reviewed by:

(A) the administrator or his or her designee;

(B) the resident;

(C) the resident's legal representative; and

(D) an interested family member, if known;

each of whom may make written comments on the report.

(24) The written report of the meeting shall be included in the resident's permanent record.

(s) Residents have the right to have reasonable access to the use of the telephone for local or toll free calls for emergency and personal use where calls can be made without being overheard.

(t) Residents have the right to manage their personal affairs and funds. When the facility manages these services, a resident may, by written request, allow the facility to execute all or part of their financial affairs. Management does not include the safekeeping of personal items. If the facility agrees to manage the resident's funds, the facility must:

(1) provide the resident with a quarterly accounting of all financial affairs handled by the facility;

(2) provide the resident, upon the resident's request, with reasonable access, during normal business hours, to the written records of all financial transactions involving the individual resident's funds;

(3) provide for a separation of resident and facility funds;

(4) return to the resident, upon written request and within no later than fifteen (15) calendar days, all or any part of the resident's funds given the facility for safekeeping;

(5) deposit, unless otherwise required by federal law, any resident's personal funds in excess of one hundred dollars ($100) in an interest-bearing account (or accounts) that is

separate from any of the facility's operating accounts and that credits all interest earned on the resident's funds to his or her account (in pooled accounts, there must be a separate accounting for each resident's share);
(6) maintain resident's personal funds that do not exceed one hundred dollars ($100) in a noninterest-bearing account, interest-bearing account, or petty cash fund;
(7) establish and maintain a system that assures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf;
(8) provide the resident or the resident's legal representative with reasonable access during normal business hours to the funds in the resident's account;
(9) provide the resident or the resident's legal representative upon request with reasonable access during normal business hours to the written records of all financial transactions involving the individual resident's funds;
(10) provide to the resident or his or her legal representative a quarterly statement of the individual financial record and provide to the resident or his or her legal representative a statement of the individual financial record upon the request of the resident or the resident's legal representative; and
(11) convey, within thirty (30) days of the death of a resident who has personal funds deposited with the facility, the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

(u) Residents have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(v) Residents have the right to be free from:
(1) sexual **abuse;**
(2) physical **abuse;**
(3) mental abuse;
(4) corporal punishment;
(5) neglect; and
(6) involuntary seclusion.

(w) Residents have the right to be free from verbal abuse.

(x) Residents have the right to confidentiality of all personal and clinical records. Information from these sources shall not be released without the resident's consent, except when the resident is transferred to another health facility, when required by law, or under a third party payment contract. The resident's records shall be made immediately available to the resident for inspection, and the resident may receive a copy within five (5) working days, at the resident's expense.

(y) Residents have the right to be treated as individuals with consideration and respect for their privacy. Privacy shall be afforded for at least the following:
(1) Bathing.
(2) Personal care.
(3) Physical examinations and treatments.
(4) Visitations.

(z) Residents have the right to:
(1) refuse to perform services for the facility;
(2) perform services for the facility, if he or she chooses, when:
(A) the facility has documented the need or desire for work in the service plan;
(B) the service plan specifies the nature of the duties performed and whether the duties are voluntary or paid;
(C) compensation for paid duties is at or above the prevailing rates; and
(D) the resident agrees to the work arrangement described in the service plan.

(aa) Residents have the right to privacy in written communications, including the right to:
(1) send and promptly receive mail that is unopened unless the administrator has been instructed otherwise in writing by the resident; and
(2) have access to stationery, postage, and writing implements at the resident's own expense.

(bb) Residents have the right and the facility must provide immediate access to any resident by:
(1) individuals representing state or federal agencies;
(2) any authorized representative of the state;
(3) the resident's individual physician;
(4) the state and area long term care ombudsman;
(5) the agency responsible for the protection and advocacy system for developmentally disabled individuals;
(6) the agency responsible for the protection and advocacy system for mentally ill individuals;
(7) immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;
(8) the resident's legal representative or spiritual advisor subject to the resident's right to deny or withdraw consent at any time; and
(9) others who are visiting with the consent of the resident subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

(cc) Residents have the right to choose with whom they associate. The facility shall provide reasonable visiting hours, which should include at least twelve (12) hours a day, and the hours shall be made available to each resident. Policies shall also provide for emergency visitation at other hours. The facility shall not restrict visits from the resident's legal representative or spiritual advisor, except at the request of the resident.

(dd) The facility shall provide reasonable access to any resident, consistent with facility policy, by any entity or individual that provides health, social, legal, and other services to any resident, subject to the resident's right to deny or withdraw consent at any time.

(ee) The facility shall allow representatives of the state ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(ff) Residents have the right to participate in social, religious, community services, and other activities of their choice that do not interfere with the rights of other residents at the facility.

(gg) Residents have the right to individual expression through retention of personal clothing and belongings as space permits unless to do so would infringe upon the rights of others or would create a health or safety hazard.

(hh) The facility shall exercise reasonable care for the protection of residents' property from loss and theft. The administrator or his or her designee is responsible for investigating reports of lost or stolen resident property and that the results of the investigation are reported to the resident.

(ii) If the resident's personal laundry is laundered by the facility, the facility shall identify these items in a suitable manner at the resident's request.

(jj) Residents may use facility equipment, such as washing machines, if permitted by **the** facility.

(kk) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (u) or (v) is an offense;
(2) subsection (b), (c), (d), (j), (k), (n), (o)(4), (r), (w), (x), (y), (z), (aa), (bb), or (dd) is a deficiency;
(3) subsection (a), (e), (f), (g), (h), (i), (l), (o)(1), (o)(2), (o)(3), (p), (q), (s), (t), (cc), (ee), (ff), (gg), (hh), or (ii) is a noncompliance; and
(4) subsection (m) or (jj) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.2; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1562, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1914, eff Mar 1, 2003; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3997)

SECTION 9. 410 IAC 16.2-5-1.3 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.3 Administration and management
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 12-10-5.5; IC 16-28-5-1; IC 25-19-1

Sec. 1.3. (a) The licensee is responsible for compliance with all applicable laws. The licensee has full authority and responsibility for the organization, management, operation, and control of the licensed facility. The delegation of any authority by the licensee does not diminish the responsibilities of the licensee.

(b) The licensee shall provide the number of staff as required to carry out all the functions of the facility, including the following:
(1) Initial orientation of all employees.
(2) A continuing inservice education and training program for all employees.
(3) Provision of supervision for all employees.

(c) The licensee shall appoint an administrator licensed ~~pursuant to~~ **under** IC 25-19-1 and delegate to that administrator the authority to organize and implement the day-to-day operations of the facility. The licensee, if a licensed administrator, may act as the administrator of the facility.

(d) The licensee shall notify the director within three (3) working days of a vacancy in the administrator's position. The licensee shall also notify the director of the name and license number of the replacement administrator.

(e) An administrator shall be employed to work in each licensed health facility. For purposes of this subsection, an individual can only be employed as an administrator in one (1) health facility or one (1) hospital-based long term care unit at a time.

(f) In the administrator's absence, an individual shall be authorized, in writing, to act on the administrator's behalf.

(g) The administrator is responsible for the overall management of the facility. The responsibilities of the administrator shall include, but are not limited to, the following:
(1) Informing the division within twenty-four (24) hours of becoming aware of an unusual occurrence that directly threatens the welfare, safety, or health of a resident. Notice of unusual occurrence may be made by telephone, followed by a written report, or by a written report only that is faxed or sent by electronic mail to the division within the twenty-four (24) hour time period. Unusual occurrences include, but are not limited to:
(A) epidemic outbreaks;
(B) poisonings;
(C) fires; or
(D) major accidents.
If the division cannot be reached, a call shall be made to the emergency telephone number published by the division.
(2) Promptly arranging for or assisting with the provision of medical, dental, podiatry, or nursing care or other health care services as requested by the resident or resident's legal representative.
(3) Obtaining director approval prior to the admission of an individual under eighteen (18) years of age to an adult facility.

(4) Ensuring the facility maintains, on the premises, an accurate record of actual time worked that indicates the employee's full name and the dates and hours worked during the past twelve (12) months.
(5) Posting the results of the most recent annual survey of the facility conducted by state surveyors, ~~and~~ any plan of correction in effect with respect to the facility, and any subsequent surveys. The results must be available for examination in the facility in a place readily accessible to residents and a notice posted of their availability.
(6) Maintaining reports of surveys conducted by the division in each facility for a period of two (2) years and making the reports available for inspection to any member of the public upon request.

(h) The facility shall establish and implement a written policy manual to ensure that resident care and facility objectives are attained, to include:
(1) the range of services offered; ~~resident~~
(2) residents' rights;
(3) personnel administration; and
(4) facility operations.
Such policies shall be made available to residents upon request.

(i) The facility must maintain a written fire and disaster preparedness plan to assure continuity of care of residents in cases of emergency as follows:
(1) Fire exit drills in facilities shall include the transmission of a fire alarm signal and simulation of emergency fire conditions, except that the movement of nonambulatory residents to safe areas or to the exterior of the building is not required. Drills shall be conducted quarterly on each shift to familiarize all facility personnel with signals and emergency action required under varied conditions. At least twelve (12) drills shall be held every year. When drills are conducted between 9 p.m. and 6 a.m., a coded announcement may be used instead of audible alarms.
(2) At least every six (6) months, a facility shall attempt to hold the fire and disaster drill in conjunction with the local fire department. A record of all training and drills shall be documented with the names and signatures of the personnel present.

(j) If professional or diagnostic services are to be provided to the facility by an outside resource, either individual or institutional, an arrangement shall be developed between the licensee and the outside resource for the provision of the services. If a written agreement is used, it shall specify:
(1) the responsibilities of both the facility and the outside resource;
(2) the qualifications of the outside resource staff;
(3) a description of the type of services to be provided, including action taken and reports of findings; and
(4) the duration of the agreement.

(k) The facility shall conspicuously post the license or a true copy thereof within the facility in a location accessible to public view.

(l) In facilities that are required under IC 12-10-5.5 to submit an Alzheimer's and dementia special care unit disclosure form, the facility must designate a director for the Alzheimer's and dementia special care unit. The director shall have an earned degree from an educational institution in a health care, mental health, or social service profession or be a licensed health facility administrator. The director shall have a minimum of one (1) year work experience with dementia or Alzheimer's residents, or both, within the past five (5) years. Persons serving as a director for an existing Alzheimer's and dementia special care unit at the time of adoption of this rule are exempt from the degree and experience requirements. The director shall have a minimum of twelve (12) hours of dementia-specific training within three (3) months of initial employment as the director of the Alzheimer's and dementia special care unit and six (6) hours annually thereafter to meet the needs or preferences, or both, of cognitively impaired residents and to gain understanding of the current standards of care for residents with dementia.

(m) The director of the Alzheimer's and dementia special care unit shall do the following:
(1) Oversee the operation of the unit.
(2) Ensure that personnel assigned to the unit receive required inservice training.
(3) Ensure that care provided to Alzheimer's and dementia care unit residents is consistent with inservice training, current Alzheimer's and dementia care practices, and regulatory standards.

~~(l)~~ **(n)** For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a), ~~or~~ (g), **or (m)** is a deficiency;
(2) subsection (b), (c), (d), (e), (f), (h), (i), ~~or~~ (j), **or (l)** is a noncompliance; and
(3) subsection (k) is a nonconformance.
(Indiana State Department of Health; 410 IAC 16.2-5-1.3; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1565, eff Apr 1, 1997; errata filed Jan 10, 1997, 4:00 p.m.: 20 IR 1593; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1919, eff Mar 1, 2003; filed Jul 22, 2004, 10:05 a.m.: 27 IR 4002)

SECTION 10. 410 IAC 16.2-5-1.4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-1.4 Personnel
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1; IC 16-28-13-3

Sec. 1.4. (a) Each facility shall have specific procedures

written and implemented for the screening of prospective employees. Appropriate inquiries shall be made for prospective employees. The facility shall have a personnel policy that considers references and any convictions in accordance with IC 16-28-13-3.

(b) Staff shall be sufficient in number, qualifications, and training in accordance with applicable state laws and rules to meet the twenty-four (24) hour scheduled and unscheduled needs of the residents and services provided. The number, qualifications, and training of staff shall depend on skills required to provide for the specific needs of the residents. A minimum of one (1) awake staff person, with current CPR and first aid certificates, shall be on site at all times. If fifty (50) or more residents of the facility regularly receive residential nursing services ~~and/or~~ **or** administration of medication, **or both,** at least one (1) nursing staff person shall be on site at all times. Residential facilities with over one hundred (100) residents regularly receiving residential nursing services ~~and/or~~ **or** administration of medication, **or both,** shall have at least one (1) additional nursing staff person awake and on duty at all times for every additional fifty (50) residents. Personnel shall be assigned only those duties for which they are trained to perform. Employee duties shall conform with written job descriptions.

(c) Any unlicensed employee providing more than limited assistance with the activities of daily living must be either a certified nurse aide or a home health aide. Existing facilities that are not licensed on the date of adoption of this rule and that seek licensure within one (1) year of adoption of this rule have two (2) months in which to ensure that all employees in this category are either a certified nurse aide or a home health aide.

(d) Prior to working independently, each employee shall be given an orientation to the facility by the supervisor (or his or her designee) of the department in which the employee will work. Orientation of all employees shall include the following:

(1) Instructions on the needs of the specialized populations: ~~served in the facility~~

(A) aged;

(B) developmentally disabled;

(C) mentally ill;

(D) dementia; or

(E) children;

served in the facility.

(2) A review of the facility's policy manual and applicable procedures, including:

(A) organization chart;

(B) personnel policies;

(C) appearance and grooming policies for employees; and

(D) residents' rights.

(3) Instruction in first aid, emergency procedures, and fire and disaster preparedness, including evacuation procedures.

(4) Review of ethical considerations and confidentiality in resident care and records.

(5) For direct care staff, personal introduction to, and instruction in, the particular needs of each resident to whom the employee will be providing care.

(6) Documentation of the orientation in the employee's personnel record by the person supervising the orientation.

(e) There shall be an organized inservice education and training program planned in advance for all personnel in all departments at least annually. Training shall include, but is not limited to, residents' rights, prevention and control of infection, fire prevention, safety, ~~and~~ accident prevention, the needs of specialized populations served, medication administration, and nursing care, when appropriate, as follows:

(1) The frequency and content of inservice education and training programs shall be in accordance with the skills and knowledge of the facility personnel. For nursing personnel, this shall include at least eight (8) hours of inservice per calendar year and four (4) hours of inservice per calendar year for nonnursing personnel.

(2) In addition to the above required inservice hours, ~~in facilities with distinct dementia units,~~ staff who have contact with ~~such~~ residents shall have a minimum of six (6) hours of dementia-specific training within six (6) months and three (3) hours annually thereafter to meet the needs **or** preferences, **or both,** of cognitively impaired residents effectively and to gain understanding of the current standards of care for residents with dementia.

(3) Inservice records shall be maintained and shall indicate the following:

(A) Time, date, and location.

(B) Name of instructor.

(C) Title of instructor.

(D) Name of participants.

(E) Program content of inservice.

The employee will acknowledge attendance by written signature.

(f) A health screen shall be required for each employee of a facility prior to resident contact. The screen shall include a tuberculin skin test, using the Mantoux method (5 TU, PPD), unless a previously positive reaction can be documented. The result shall be recorded in millimeters of induration with the date given, date read, and by whom administered. The facility must assure the following:

(1) At the time of employment, or within one (1) month prior to employment, and at least annually thereafter, employees and nonpaid personnel of facilities shall be screened for tuberculosis. The first tuberculin skin test must be read prior to the employee starting work. For health care workers who have not had a documented negative tuberculin skin test result during the preceding twelve (12) months, the baseline tuberculin skin testing should employ the two-step method. If the first step is negative, a second test should be performed one (1) to three (3) weeks after the first step. The frequency

of repeat testing will depend on the risk of infection with tuberculosis.
(2) All employees who have a positive reaction to the skin test shall be required to have a chest x-ray and other physical and laboratory examinations in order to complete a diagnosis.
(3) The facility shall maintain a health record of each employee that includes reports of all employment-related health screenings.
(4) An employee with symptoms or signs of active disease, (symptoms suggestive of active tuberculosis, including, but not limited to, cough, fever, night sweats, and weight loss) shall not be permitted to work until tuberculosis is ruled out.

(g) The facility must prohibit employees with communicable disease or infected skin lesions from direct contact with residents or their food if direct contact will transmit the disease. An employee with signs and symptoms of communicable disease, including, but not limited to, an infected or draining skin lesion, shall be handled according to a facility's policy regarding direct contact with residents, their food, or resident care items until the condition is resolved. Persons with suspected or proven active tuberculosis will not be permitted to work until determined to be noninfectious and documentation is provided for the employee record.

(h) The facility shall maintain current and accurate personnel records for all employees. The personnel records for all employees shall include the following:
(1) Name and address of employee.
(2) Social Security number.
(3) Date of beginning employment.
(4) Past employment, experience, and education, if applicable.
(5) Professional licensure or registration number, if applicable.
(6) Position in the facility and job description.
(7) Documentation of orientation to the facility, including residents' rights, and to the specific job skills.
(8) Signed acknowledgment of orientation to residents' rights.
(9) Performance evaluations in accordance with facility policy.
(10) Date and reason for separation.

(i) The employee personnel record shall be retained for at least three (3) years following termination or separation of the employee from employment.

(j) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (b), (c), or (g) is a deficiency;
(2) subsection (a), (d), (e), or (f) is a noncompliance; and
(3) subsection (h) or (i) is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-1.4; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1567, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1921, eff Mar 1, 2003; filed Jul 22, 2004, 10:05 a.m.: 27 IR 4003)

SECTION 11. 410 IAC 16.2-5-2 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-2 Evaluation
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 2. (a) An evaluation of the individual needs of each resident shall be initiated prior to admission and shall be updated at least semiannually and upon a known substantial change in the resident's condition, or more often at the resident's or facility's request. A licensed nurse shall evaluate the nursing needs of the resident.

(b) The preadmission evaluation (interview) shall provide the baseline information for the initial evaluation. Subsequent evaluations shall compare the resident's current status to his or her status on admission and shall be used to assure that the care the resident requires is within the range of personal care and supervision provided by a residential care facility.

(c) The scope and content of the evaluation shall be delineated in the facility policy manual, but at a minimum the needs assessment shall include an evaluation of the following:
(1) The resident's physical, **cognitive,** and mental status.
(2) The resident's independence in the activities of daily living.
(3) The resident's weight taken on admission and semiannually thereafter.
(4) If applicable, the resident's ability to self-administer medications.

(d) The evaluation shall be documented in writing and kept in the facility.

(e) Following completion of an evaluation, the facility, using appropriately trained staff members, shall identify and document the services to be provided by the facility, as follows:
(1) The services offered to the individual resident shall be appropriate to the:
(A) scope;
(B) frequency;
(C) need; and
(D) preference;
of the resident.
(2) The services offered shall be reviewed and revised as appropriate and discussed by the resident and facility as needs or desires change. Either the facility or the resident may request a service plan review.
(3) The agreed upon service plan shall be signed and dated by the resident, and a copy of the service plan shall be given to the resident upon request.

(4) No identification and documentation of services provided is needed if evaluations subsequent to the initial evaluation indicate no need for a change in services.
(5) If administration of medications ~~and/or~~ **or** the provision of residential nursing services, **or both,** is needed, a licensed nurse shall be involved in identification and documentation of the services to be provided.

(f) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a), (b), or (e) is a deficiency; and
(2) subsection (c) or (d) is a noncompliance.

(Indiana State Department of Health; 410 IAC 16.2-5-2; filed May 2, 1984, 2:50 p.m.: 7 IR 1497; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1575, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1929, eff Mar 1, 2003; filed Jul 22, 2004, 10:05 a.m.: 27 IR 4005)

SECTION 12. 410 IAC 16.2-5-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 16.2-5-4 Health services
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 4. (a) Each resident shall have a primary care physician selected by the resident. ~~If desired, the~~

(b) Each resident may ~~designate~~ **have** a dentist **selected by the resident.**

~~(b)~~ **(c)** Each facility shall choose whether or not it administers medication ~~and/or~~ **or** provides residential nursing care, **or both.** These policies shall be delineated in the facility policy manual and clearly stated in the admission agreement.

~~(c)~~ **(d)** Personal care, and assistance with activities of daily living, shall be provided based upon individual needs and preferences.

~~(d)~~ **(e)** The administration of medications and the provision of residential nursing care shall be as ordered by the resident's physician and shall be supervised by a licensed nurse on the premises or on call as follows:
(1) Medication shall be administered by licensed nursing personnel or qualified medication aides.
(2) The resident shall be observed for effects of medications. Documentation of any undesirable effects shall be contained in the clinical record. The physician shall be notified immediately if undesirable effects occur, and such notification shall be documented in the clinical record.
(3) The individual administering the medication shall document the administration in the individual's medication and treatment records that indicate the:
(A) time;
(B) name of medication or treatment;
(C) dosage (if applicable); and
(D) name or initials of the person administering the drug or treatment.
(4) Preparation of doses for more than one (1) scheduled administration is not permitted.
(5) Injectable medications shall be given only by licensed personnel.
(6) PRN medications may be administered by a qualified medication aide (QMA) only upon authorization by a licensed nurse or physician. The QMA must receive appropriate authorization for each administration of a PRN medication. All contacts with a nurse or physician not on the premises for authorization to administer PRNs shall be documented in the nursing notes indicating the time and date of the contact.
(7) Any error in medication administration shall be noted in the resident's record. The physician shall be notified of any error in medication administration when there are any actual or potential detrimental effects to the resident.

~~(e)~~ **(f)** The facility shall have available on the premises or on call the services of a licensed nurse at all times.

~~(f)~~ **(g)** For purposes of IC 16-28-5-1, a breach of:
(1) subsection ~~(d)(1),~~ ~~(d)(2),~~ **(e)(1), (e)(2),** or ~~(d)(5)~~ **(e)(5)** is an offense;
(2) subsection (a), ~~(c),~~ ~~(d)(3),~~ ~~(d)(6),~~ ~~(d)(7),~~ **(d), (e)(3), (e)(6), (e)(7),** or ~~(e)~~ **(f)** is a deficiency;
(3) subsection ~~(d)(4)~~ **(e)(4)** is a noncompliance; and
(4) subsection ~~(b)~~ **(c)** is a nonconformance.

(Indiana State Department of Health; 410 IAC 16.2-5-4; filed May 2, 1984, 2:50 p.m.: 7 IR 1497; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1576, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2415; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jan 21, 2003, 8:34 a.m.: 26 IR 1929, eff Mar 1, 2003; filed Jul 22, 2004, 10:05 a.m.: 27 IR 4006)

LSA Document #03-275(F)
Notice of Intent Published: November 1, 2003; 27 IR 552
Proposed Rule Published: March 1, 2004; 27 IR 2051
Hearing Held: March 22, 2004
Approved by Attorney General: July 14, 2004
Approved by Governor: July 16, 2004
Filed with Secretary of State: July 22, 2004, 10:05 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #03-219(F)

DIGEST

Amends the definition of "graduation rate" in 511 IAC 6.1-1-2. Adds 511 IAC 6.2-2.5 and amends 511 IAC 6.2-7-8 to bring

the school accountability system into alignment with the federal No Child Left Behind Act of 2001 and, effective for the class of students expected to graduate in the 2005-2006 school year, add a definition of "graduation rate". Effective 30 days after filing with the secretary of state.

511 IAC 6.1-1-2
511 IAC 6.2-2.5
511 IAC 6.2-7-8

SECTION 1. 511 IAC 6.1-1-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-2 Definitions

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2; IC 20-6.1-8; IC 20-6.1-9; IC 20-10.1-16; IC 20-10.1-17

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

(b) "Academic standards" means the skills and knowledge base expected of students for a particular subject area at a particular grade level.

(c) "Accreditation year" means the year from July 1 to June 30.

(d) "Attendance center" means one (1) or more buildings where the school's program serves pupils who reside in an attendance area.

(e) "Credit" means a minimum of two hundred fifty (250) minutes of instruction per week for one (1) semester, except in the case of basic physical education courses where one (1) school year of instruction is required for one (1) credit.

(f) "Curriculum" means the planned interaction of pupils with instructional content, materials, resources, and processes for evaluating the attainment of educational objectives.

(g) "Department" means the Indiana department of education.

(h) "Dropout" means a student who:
(1) was enrolled in school during the current school year or the previous summer recess; ~~who~~
(2) left the educational system during the current school year or the previous summer recess; ~~who~~
(3) has not graduated from high school; and ~~who~~
(4) does not meet any of the following exclusionary conditions:
~~(1)~~ **(A)** Death.
~~(2)~~ **(B)** Temporary absence due to suspension or a school excused absence.
~~(3)~~ **(C)** Transfer to a public or nonpublic school.

(i) "Dropout rate" means the number determined under STEP THREE of the following formula:
STEP ONE: Determine the number of students enrolled on October 1 or the date closest to October 1 that school is in session.
STEP TWO: Determine the number of students who drop out of school during the current school year and the previous summer recess.
STEP THREE: Determine the quotient of:
(A) the amount determined under STEP TWO; divided by
(B) the amount determined under STEP ONE.

(j) "Fine arts education" means instruction in art, music, and other arts areas that encompass visual, aural, performing, and creative modes of student learning.

(k) "Graduation rate", **for classes of students who graduate prior to the 2005-2006 school year,** means the number determined under STEP THREE of the following formula:
STEP ONE: Determine the dropout rates for grades 9, 10, 11, and 12.
STEP TWO: Determine the remainder of:
(A) 1.0; minus
(B) the amount determined under STEP ONE for each of the above four (4) grades.
STEP THREE: Determine the product of the four (4) amounts determined under STEP TWO.

(l) "ISTEP" means Indiana statewide testing for educational progress as established under IC 20-10.1-16, IC 20-10.1-17, and 511 IAC 5-2.

(m) "Laboratory course" means a course in which a minimum of twenty-five percent (25%) of the total instructional time is devoted to laboratory activities. Laboratory activities are those activities in which the pupil personally utilizes appropriate procedures and equipment in accomplishing that learning task.

(n) "Legal standards" means those Indiana statutes and state board rules that apply to school accreditation.

(o) "Level", when used in course titles, means a course that lasts one (1) full school year in grades 9 through 12, except that in the highest level of a sequence a course of shorter duration may be offered.

(p) "Practical arts education" means instruction in the curriculum areas of:
(1) agricultural science and business;
(2) business technology education;
(3) family and consumer sciences; and
(4) technology education;
of a nonvocational or prevocational nature, which provides learning experiences in consumer knowledge, family living, creative expression, manual skills, technical skills, leisure time interests, and similar areas of practical application to everyday life.

(q) "Principal" means a properly certified person who is assigned as the chief administrative officer of a school.

(r) "School classification" refers to the following school types:
(1) An elementary school, which includes:
(A) grade 1, 2, or 3;
(B) grade 1, 2, or 3 in combination with other grades; or
(C) any school that has grade 6 as its highest grade.
(2) A high school, which includes:
(A) grade 10, 11, or 12; or
(B) grade 10, 11, or 12 in combination with other grades.
(3) A middle school or junior high school, which includes any grade or combination of grades that is not defined as an elementary school or a high school.
If a school includes grades kindergarten through 12, the school superintendent shall designate the division of the grades within the school into at least two (2) school classifications.

(s) "School corporation" means any public school corporation established by, and under the laws of, the state of Indiana. The term includes, but is not necessarily limited to, any:
(1) school city;
(2) school town;
(3) school township;
(4) consolidated school corporation;
(5) county school corporation;
(6) metropolitan school district;
(7) township school corporation;
(8) united school corporation; or
(9) community school corporation.

(t) "Semester" means half of a regular school year.

(u) "State board" means the Indiana state board of education.

(v) "Student attendance rate" means the aggregate number of days of attendance for the regular school year divided by the number of aggregate days of enrollment, as determined under 511 IAC 1-3-1(l).

(w) "Superintendent" means the chief administrative officer of a school corporation (generally referred to as the superintendent of schools, except, in the case of township schools, the term refers to the county superintendent of schools).

(x) "Teacher" means a properly certified, licensed person who is assigned to instruction. *(Indiana State Board of Education; 511 IAC 6.1-1-2; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1184; filed Jul 18, 1989, 5:00 p.m.: 12 IR 2259; filed Nov 8, 1990, 3:05 p.m.: 14 IR 652; filed Oct 6, 1997, 5:20 p.m.: 21 IR 389; filed May 28, 1998, 4:57 p.m.: 21 IR 3824; filed Feb 20, 2002, 9:43 a.m.: 25 IR 2231; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4007)*

SECTION 2. 511 IAC 6.2-2.5 IS ADDED TO READ AS FOLLOWS:

Rule 2.5. Graduation Rate Determination

511 IAC 6.2-2.5-1 "Cohort" defined
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-15; IC 20-10.2

Sec. 1. As used in this rule, "cohort" refers to a class of students within a high school who have the same expected graduation year. *(Indiana State Board of Education; 511 IAC 6.2-2.5-1; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4008)*

511 IAC 6.2-2.5-2 "Enrollment" defined
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-15; IC 20-10.2

Sec. 2. As used in this rule, "enrollment" means the total number of students within a grade that is reported to the department annually on:
(1) October 1; or
(2) a date specified by the department.
(Indiana State Board of Education; 511 IAC 6.2-2.5-2; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4008)

511 IAC 6.2-2.5-3 "Expected graduation year" defined
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-15; IC 20-10.2

Sec. 3. As used in this rule, "expected graduation year" means the reporting year beginning three (3) years after the reporting year in which a student is first considered by a school corporation to have entered grade 9. *(Indiana State Board of Education; 511 IAC 6.2-2.5-3; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4008)*

511 IAC 6.2-2.5-4 "Graduation" defined
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-15; IC 20-10.1-12.1; IC 20-10.1-16; IC 20-10.2

Sec. 4. As used in this rule, "graduation" means the successful completion by a student of:
(1) a sufficient number of academic credits, or the equivalent of academic credits; and
(2) the graduation examination or waiver process required under IC 20-10.1-16;
resulting in the awarding of a high school diploma or an academic honors diploma. The term does not include the granting of a general educational development diploma under IC 20-10.1-12.1. *(Indiana State Board of Education; 511 IAC 6.2-2.5-4; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4008)*

511 IAC 6.2-2.5-5 "Graduation rate" defined
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-15; IC 20-10.2

Sec. 5. As used in this rule, "graduation rate" means the percentage of students within a cohort who graduate during their expected graduation year. *(Indiana State Board of*

Education; 511 IAC 6.2-2.5-5; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4008)

511 IAC 6.2-2.5-6 "Reporting year" defined
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-15; IC 20-10.2

Sec. 6. As used in this rule, "reporting year" refers to the period beginning October 1 of a year and ending September 30 of the following year. *(Indiana State Board of Education; 511 IAC 6.2-2.5-6; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4009)*

511 IAC 6.2-2.5-7 "Retention" defined
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-15; IC 20-10.2

Sec. 7. As used in this rule, "retention" refers to the reclassification by a school corporation of a student that places the student into a cohort that has an expected graduation year after the expected graduation year of the student's initial cohort. *(Indiana State Board of Education; 511 IAC 6.2-2.5-7; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4009)*

511 IAC 6.2-2.5-8 Determination of graduation rate
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-15; IC 20-10.2

Sec. 8. Beginning with the class of students who expect to graduate in the 2005-2006 school year, the department shall determine the graduation rate of high school students under this rule. *(Indiana State Board of Education; 511 IAC 6.2-2.5-8; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4009)*

511 IAC 6.2-2.5-9 Calculation of graduation rate
Authority: IC 20-10.2-7-1
Affected: IC 20-8.1-3-34; IC 20-8.1-15; IC 20-10.2

Sec. 9. The graduation rate for a cohort in a high school is the percentage determined under STEP SEVEN of the following formula:

STEP ONE: Determine the grade 9 enrollment at the beginning of the reporting year three (3) years before the reporting year for which the graduation rate is being determined.

STEP TWO: Add:

(A) the number determined under STEP ONE; and

(B) the number of students who:

(i) have enrolled in the high school after the date on which the number determined under STEP ONE was determined; and

(ii) have the same expected graduation year as the cohort.

STEP THREE: Add:

(A) the sum determined under STEP TWO; and

(B) the number of retained students from earlier cohorts who became members of the cohort for whom the graduation rate is being determined.

STEP FOUR: Add:

(A) the sum determined under STEP THREE; and

(B) the number of students who:

(i) began the reporting year in a cohort that expects to graduate during a future reporting year; and

(ii) graduate during the current reporting year.

STEP FIVE: Subtract from the sum determined under STEP FOUR the number of students who have left the cohort for any of the following reasons:

(A) Transfer to another public or nonpublic school.

(B) Removal by the student's parents under IC 20-8.1-3-34 to provide instruction equivalent to that given in the public schools.

(C) Withdrawal because of a long term medical condition or death.

(D) Detention by a law enforcement agency or the department of correction.

(E) Placement by a court order or the division of family and children.

(F) Enrollment in a virtual school.

(G) Graduation before the beginning of the reporting year.

(H) Students who have attended school in Indiana for less than one (1) year and whose location cannot be determined.

(I) Students who cannot be located within the boundaries of the school corporation and have been reported to the Indiana clearinghouse for missing and exploited children.

STEP SIX: Determine the total number of students who have graduated during the current reporting year.

STEP SEVEN: Divide:

(A) the number determined under STEP SIX; by

(B) the remainder determined under STEP FIVE.

(Indiana State Board of Education; 511 IAC 6.2-2.5-9; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4009)

SECTION 3. 511 IAC 6.2-7-8, AS ADDED AT 27 IR 165, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.2-7-8 Other indicators
Authority: IC 20-1-1-6; IC 20-1-1.2-18; IC 20-10.2-7-1
Affected: IC 20-10.2

Sec. 8. The following other academic indicators are established for the purposes described in section 5 of this rule:

(1) For high schools, graduation rate, as determined under:

(A) 511 IAC 6.1-1-2, **for classes of students who graduate prior to the 2005-2006 school year; and**

(B) 511 IAC 6.2-2.5-9, for classes of students who expect to graduate in the 2005-2006 school year and subsequent school years;

that increases toward a rate of ninety-five percent (95%).

(2) For elementary and middle schools, attendance rate as determined under 511 IAC 1-3-3, that increases toward a rate of ninety-five percent (95%).

(Indiana State Board of Education; 511 IAC 6.2-7-8; filed Aug 26, 2003, 4:15 p.m.: 27 IR 165; filed Jul 14, 2004, 9:30 a.m.: 27 IR 4009)

LSA Document #03-219(F)
Notice of Intent Published: September 1, 2003; 26 IR 3907
Proposed Rule Published: November 1, 2003; 27 IR 561
Hearing Held: December 4, 2003
Approved by Attorney General: July 1, 2004
Approved by Governor: July 8, 2004
Filed with Secretary of State: July 14, 2004, 9:30 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

LSA Document #03-186(F)

DIGEST

Amends 655 IAC 1-2.1, 655 IAC 1-3, and 655 IAC 1-4 to amend certification programs and certifications, update certain National Fire Protection Association Standards, amend the mandatory training program and the mandatory training requirements, and make conforming section changes. Effective 30 days after filing with the secretary of state.

655 IAC 1-1-5.1
655 IAC 1-2.1-2
655 IAC 1-2.1-3
655 IAC 1-2.1-6.1
655 IAC 1-2.1-6.2
655 IAC 1-2.1-6.3
655 IAC 1-2.1-6.4
655 IAC 1-2.1-12
655 IAC 1-2.1-14
655 IAC 1-2.1-15
655 IAC 1-2.1-19
655 IAC 1-2.1-19.1
655 IAC 1-2.1-20
655 IAC 1-2.1-23
655 IAC 1-2.1-23.1
655 IAC 1-2.1-24
655 IAC 1-2.1-24.1
655 IAC 1-2.1-24.2
655 IAC 1-2.1-24.3
655 IAC 1-2.1-88
655 IAC 1-3-1
655 IAC 1-3-2
655 IAC 1-3-4
655 IAC 1-3-5
655 IAC 1-3-7
655 IAC 1-4-1
655 IAC 1-4-2

SECTION 1. 655 IAC 1-1-5.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-1-5.1 Certifications under this rule; requirements

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 5.1. (a) Any Indiana fire service person may enter the voluntary certification program by submitting an application and verification by competency based testing for the certification sought. Applications shall be legibly signed by the authorized instructor who has taken responsibility for the verified competencies. Applications shall be legibly completed in full. Applications shall be provided by the board upon request.

(b) Any Indiana nonfire service person may enter the voluntary certification program by submitting an application and verification by competency based testing for the certification sought. Applications shall be legibly signed by the authorized instructor who has taken responsibility for the verified competencies. Applications shall be legibly completed in full. Applications shall be provided by the board upon request.

(c) Certifications are available for the following:

(1) Fire service person as follows:

Certification	Requirements
Basic Firefighter	655 IAC 1-2.1-2 and 655 IAC 1-2.1-3
Firefighter I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-4
Firefighter II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-5
Driver/Operator-Pumper	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6
Driver/Operator-Aerial	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.1
Driver/Operator-Wildland Fire Apparatus	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.2
Driver/Operator-Aircraft Crash and Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.3
Driver/Operator-Mobile Water Supply	655 IAC 1-2.1-2 and 655 IAC 1-2.1-6.4
Airport Firefighter-Aircraft Crash and Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-7
Fire Officer I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-8
Fire Officer II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-9
Fire Officer III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-10
Fire Officer IV	655 IAC 1-2.1-2 and 655 IAC 1-2.1-11
~~Fire Inspector I~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-12~~
~~Fire Inspector II~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-13~~
~~Fire Inspector III~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-14~~

~~Fire Investigator I~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-15~~
Public Fire and Life Safety Educator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-16
Public Fire and Life Safety Educator II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-17
Public Fire and Life Safety Educator III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-18
Safety Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-22
Firefighter-Wildland Fire Suppression I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-23
Firefighter-Wildland Fire Suppression II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-23.1
~~Hazardous Materials First Responder-Awareness~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-24~~
~~Hazardous Materials First Responder-Operations~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-24.1~~
~~Hazardous Materials Technician~~	~~655 IAC 1-2.1-2 and 655 IAC 1-2.1-24.2~~
Emergency Vehicle Technician I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-25 through 655 IAC 1-2.1-35
Emergency Vehicle Technician II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-36 through 655 IAC 1-2.1-60
Fire Service Engineering Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-61 through 655 IAC 1-2.1-64
Motor Sports Emergency Responder	655 IAC 1-2.1-2 and 655 IAC 1-2.1-65 through 655 IAC 1-2.1-74
Rescue Technician-Rope Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75
Rescue Technician-Surface Water Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.1
Rescue Technician-Vehicle and Machinery Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.2
Rescue Technician-Confined Space Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.3
Rescue Technician-Structural Collapse Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.4
Rescue Technician-Trench Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.5
Swift Water Rescue Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-76.1 through 655 IAC 1-2.1-76.3
Land-Based Firefighter-Marine Vessel Fires	655 IAC 1-2.1-2 and 655 IAC 1-2.1-88(a)
Fire Medic I	655 IAC 1-2.1-2 and ~~655 IAC~~ 655 IAC 1-2.1-89
Fire Medic II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-90
Fire Medic III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-91
Fire Medic IV	655 IAC 1-2.1-2 and 655 IAC 1-2.1-92
Public Information Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-95

(2) Fire department instructors as follows:

Certification	Requirements
Instructor I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-19
Instructor II/III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-20
Instructor-Swift Water Rescue	655 IAC 1-2.1-2 and 655 IAC 1-2.1-19.1

(3) Firefighting training and education programs as follows:

Certification	Requirements
Basic Firefighter	655 IAC 1-2.1-3
Firefighter I	655 IAC 1-2.1-4(a)
Firefighter II	655 IAC 1-2.1-5(a)
Driver/Operator-Pumper	655 IAC 1-2.1-6(a)
Driver/Operator-Aerial	655 IAC 1-2.1-6.1(a)
Driver/Operator-Wildland Fire Apparatus	655 IAC 1-2.1-6.2(a)
Driver/Operator-Aircraft Crash and Rescue	655 IAC 1-2.1-6.3(a)
Driver/Operator-Mobile Water Supply	655 IAC 1-2.1-6.4(a)
Airport Firefighter-Aircraft Crash and Rescue	655 IAC 1-2.1-7(a)
Fire Officer I	655 IAC 1-2.1-8(a)
Fire Officer II	655 IAC 1-2.1-9(a)
Fire Officer III	655 IAC 1-2.1-10(a)
Fire Officer IV	655 IAC 1-2.1-11(a)

Fire Inspector I	655 IAC 1-2.1-12(a)
Fire Inspector II	655 IAC 1-2.1-13(a)
Fire Inspector III	655 IAC 1-2.1-14(a)
Fire Investigator I	655 IAC 1-2.1-15(a)
Public Fire and Life Safety Educator I	655 IAC 1-2.1-16(a)
Public Fire and Life Safety Educator II	655 IAC 1-2.1-17(a)
Public Fire and Life Safety Educator III	655 IAC 1-2.1-18(a)
Safety Officer	655 IAC 1-2.1-22(a)
Firefighter-Wildland Fire Suppression I	655 IAC 1-2.1-23(a)
Firefighter-Wildland Fire Suppression II	655 IAC 1-2.1-23.1(a)
Hazardous Materials First Responder-Awareness	655 IAC 1-2.1-24
Hazardous Materials First Responder-Operations	655 IAC 1-2.1-24.1
Hazardous Materials Technician	655 IAC 1-2.1-24.2
Hazardous Materials - Incident Command	**655 IAC 1-2.1-24.3**
Emergency Vehicle Technician I	655 IAC 1-2.1-25 through 655 IAC 1-2.1-35
Emergency Vehicle Technician II	655 IAC 1-2.1-36 through 655 IAC 1-2.1-60
Fire Service Engineering Technician	655 IAC 1-2.1-61 through 655 IAC 1-2.1-64
Motor Sports Emergency Responder	655 IAC 1-2.1-65 through 655 IAC 1-2.1-74
Rescue Technician-Rope Rescue	655 IAC 1-2.1-75
Rescue Technician-Surface Water Rescue	655 IAC 1-2.1-75.1
Rescue Technician-Vehicle and Machinery Rescue	655 IAC 1-2.1-75.2
Rescue Technician-Confined Space Rescue	655 IAC 1-2.1-75.3
Rescue Technician-Structural Collapse Rescue	655 IAC 1-2.1-75.4
Rescue Technician-Trench Rescue	655 IAC 1-2.1-75.5
Swift Water Rescue Technician	655 IAC 1-2.1-76.1 through 655 IAC 1-2.1-76.3
Land-Based Firefighter-Marine Vessel Fires	655 IAC 1-2.1-88(a)
Fire Medic I	655 IAC 1-2.1-89
Fire Medic II	655 IAC 1-2.1-90
Fire Medic III	655 IAC 1-2.1-91
Fire Medic IV	655 IAC 1-2.1-92
Public Information Officer	655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-95
Instructor I	655 IAC 1-2.1-19(a)
Instructor II/III	655 IAC 1-2.1-20(a)
Instructor-Swift Water Rescue	655 IAC 1-2.1-19.1

(4) Nonfire service person as follows:

Certification	Requirements
Fire Inspector I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-12
Fire Inspector II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-13
Fire Inspector III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-14
Fire Investigator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-15
Hazardous Materials First Responder - Awareness	**655 IAC 1-2.1-24 and 655 IAC 1-2.1-2**
Hazardous Materials First Responder - Operations	**655 IAC 1-2.1-24.1 and 655 IAC 1-2.1-2**
Hazardous Materials - Technician	**655 IAC 1-2.1-24.2 and 655 IAC 1-2.1-2**
Hazardous Materials - Incident Command	**655 IAC 1-2.1-24.3 and 655 IAC 1-2.1-2**
Public Fire and Life Safety Educator I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-16
Public Fire and Life Safety Educator II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-17
Public Fire and Life Safety Educator III	655 IAC 1-2.1-2 and 655 IAC 1-2.1-18

Swift Water Rescue Technician	655 IAC 1-2.1-2 and 655 IAC 1-2.1-76.1 through 655 IAC 1-2.1-76.3
Public Information Officer	655 IAC 1-2.1-2 and 655 IAC 1-2.1-93
Juvenile Firesetter Intervention Specialist I	655 IAC 1-2.1-2 and 655 IAC 1-2.1-94
Juvenile Firesetter Intervention Specialist II	655 IAC 1-2.1-2 and 655 IAC 1-2.1-95

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-1-5.1; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3384; filed Sep 24, 1999, 10:02 a.m.: 23 IR 326; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1157; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4010)

SECTION 2. 655 IAC 1-2.1-2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-2 Firefighter certification; general

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 2. (a) Each of the performance objectives for any level of fire service person or nonfire service person certification shall meet the following criteria:

(1) Each shall be performed in a timely manner, safely, and with competent technique as outlined in the appropriate standard.

(2) Each objective shall be met in its entirety.

(b) It is not required for the objectives to be mastered in the order that they appear. The local program shall establish the instructional priority to prepare individuals to meet the performance objectives of this rule.

(c) Performance of practical skills objectives covered by this rule shall be evaluated by a certified instructor who shall be an authorized evaluator. An evaluator shall not evaluate sections taught by him or her. An evaluator shall be at least an Instructor I and selected by a Lead Evaluator.

(d) When the word "demonstrate" is used in this rule, performance of practical skills objectives shall require that actual performance and operation be accomplished unless otherwise indicated within the specific objective. Simulation, explanation, and illustration may be substituted when actual operation is not feasible.

(e) Wherever in this rule the terms "rules", "regulations", "procedures", "supplies", "apparatus", or "equipment" are used, they shall mean those of the authority having jurisdiction.

(f) "Authority having jurisdiction" means the organization, office, or individual responsible for approving equipment, an installation, or a procedure. The term includes, without limitation, the board, the state fire marshal, a federal, state, regional, or local department or individual having legal ~~l~~ authority. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-2; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3390; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1160; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4013)*

SECTION 3. 655 IAC 1-2.1-3 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-3 Basic Firefighter requirements

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 3. (a) This section comprises the minimum requirements for certification as a Basic Firefighter.

(b) The candidate shall have successfully completed the requirements of 655 IAC 1-4-2 and the following:

(1) NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents, Chapter ~~2~~ **4-** Competencies for the First Responder at the Awareness Level and Chapter ~~3~~ **5-**Competencies for the First Responder at the Operational Level, ~~1997~~ **2002** Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) NFPA 1001, Standard for Firefighter Professional Qualifications, Section 2-3, 1997 Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(3) Training in records needed in the following:

(A) In the fire service, including the following:

(i) Hose tests.

(ii) Ladder tests.

(iii) Equipment maintenance.

(iv) Such others as are used in the authority having jurisdiction.

(B) In Indiana, laws affecting the following:

(i) Fire service inspections.

(ii) Investigations.

(iii) Fire suppression.

(iv) Driving.

(v) Such others as are in effect in the authority having jurisdiction.

(4) Training course mandated in IC 36-8-10.5-7(b).

(5) NFPA 1001, Standard for Firefighter Professional Qualifications, Sections 4-1.1.1 and 4-1.1.2, 1997 Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(c) To the extent that Sections 3-1.1 and 4-1.1 of NFPA 1001 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~5.~~ **2.** *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-3;*

filed Jul 18, 1996, 3:00 p.m.: 19 IR 3390; filed Sep 24, 1999, 10:02 a.m.: 23 IR 330; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4013)

SECTION 4. 655 IAC 1-2.1-6.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6.1 Driver/Operator-Aerial

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6.1. (a) The minimum training standards for Driver/Operator-Aerial certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, **Section 1-3.4,** Chapters 2 and 4, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, which is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 and 4 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 9.

(b) The candidate shall have been certified as at least a Firefighter I or Second Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) The candidate shall hold an appropriate valid driver's license.

(d) The candidate shall have been certified as a Driver/Operator-Pumper, if the applicant is a member of a fire department that has a pumper on its aerial apparatus. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6.1; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1161; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4014)*

SECTION 5. 655 IAC 1-2.1-6.2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6.2 Driver/Operator-Wildland Fire Apparatus

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6.2. (a) The minimum training standards for Driver/Operator-Wildland Fire Apparatus certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, **Section 1-3.4,** Chapters 2 and 6, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, which is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 and 6 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 9.

(b) The candidate shall have been certified as at least a Firefighter I or Second Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) The candidate shall hold an appropriate valid driver's license.

(d) The candidate shall have been certified as a Driver/Operator-Pumper. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6.2; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1161; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4014)*

SECTION 6. 655 IAC 1-2.1-6.3 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6.3 Driver/Operator-Aircraft Crash and Rescue

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6.3. (a) The minimum training standards for Driver/Operator-Aircraft Crash and Rescue certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, **Section 1-3.4,** Chapters 2 and 7, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, which is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 and 7 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 9.

(b) The candidate shall have been certified as at least a Firefighter I or Second Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) The candidate shall hold an appropriate valid driver's license. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6.3; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1161; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4014)*

SECTION 7. 655 IAC 1-2.1-6.4 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6.4 Driver/Operator-Mobile Water Supply

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6.4. (a) The minimum training standards for Driver/Operator-Mobile Water Supply certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, **Section 1-3.4,** Chapters 2 and 8, 1998 Edition,

published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, which is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 and 8 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 9.

(b) The candidate shall have been certified as at least a Firefighter I or Second Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) The candidate shall hold an appropriate valid driver's license.

(d) The candidate shall have been certified as a Driver/Operator-Pumper, if the applicant is a member of a fire department that has a pumper on its mobile water supply apparatus. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6.4; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1162; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4014)*

SECTION 8. 655 IAC 1-2.1-12 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-12 Fire Inspector I
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 12. ~~(a)~~ The minimum training standards for Fire Inspector I certification shall be as set out in that certain document, being titled as NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, Chapter 3, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter 3 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 8.

~~(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-12; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3392; filed Sep 24, 1999, 10:02 a.m.: 23 IR 331; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4015)*

SECTION 9. 655 IAC 1-2.1-14 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-14 Fire Inspector III
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 14. ~~(a)~~ The minimum training standards for Fire Inspector III certification shall be as set out in that certain document, being titled as NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, Chapter 5, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter 5 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 8.

~~(b) The candidate shall be certified as a Fire Inspector II.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-14; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3393; filed Sep 24, 1999, 10:02 a.m.: 23 IR 332; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4015)*

SECTION 10. 655 IAC 1-2.1-15 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-15 Fire Investigator I
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 15. ~~(a)~~ The minimum training standards for Fire Investigator I certification shall be as set out in that certain document, being titled as NFPA 1033, Standard for Professional Qualifications for Fire Investigator, Chapter 3, 1998 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter 3 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 4.

~~(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-15; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3393; filed Sep 24, 1999, 10:02 a.m.: 23 IR 332; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4015)*

SECTION 11. 655 IAC 1-2.1-19 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-19 Instructor I
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 19. (a) The minimum training standards for Instructor I certification shall be as set out in that certain document, being titled as NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, Chapter ~~2, 1996~~ **4, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule.

(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application.

(c) To maintain certification, the candidate shall accrue a minimum of thirty (30) hours of teaching or attendance at classes in training in adult education, for example:
(1) learning objectives;
(2) test construction; or
(3) classroom teaching;
that shall be reported every three (3) years. Such report shall be received by the board not later than thirty (30) days after the expiration of the three (3) year period that commenced on the date of initial certification or the applicable three (3) year anniversary of such date.

(d) The training in adult education referred to in subsection (c) shall be acquired through classes that teach instructors techniques on teaching adult students. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-19; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3394; filed Sep 24, 1999, 10:02 a.m.: 23 IR 332; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4015)*

SECTION 12. 655 IAC 1-2.1-19.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-19.1 Instructor-Swift Water Rescue
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 19.1. (a) The minimum training standards for Instructor-Swift Water Rescue certification shall be as set out in this section.

(b) The candidate shall be certified as follows:
(1) An Instructor I or ~~a currently certified~~ **an** Indiana Law Enforcement Academy instructor.
(2) A Swift Water Rescue Technician.
(3) By the Indiana emergency medical services commission as at least a First Responder. ~~and such certification shall be current and valid.~~
(4) A currently certified Red Cross Life Guard.

(c) The candidate shall have served as an assistant instructor for at least one (1) training course for Swift Water Rescue Technician.

(d) The candidate shall have completed passing evaluations on a minimum of two (2) training modules in such training course. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-19.1; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1163; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4016)*

SECTION 13. 655 IAC 1-2.1-20 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-20 Instructor II/III
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 20. (a) The minimum training standards for Instructor II/III certification shall be as set out in that certain document, being titled as NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, Chapters ~~3~~ **5** and ~~4, 1996~~ **6, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule.

(b) The candidate shall:
(1) either be certified as:
(A) an Instructor I; or
(B) a First Class Instructor; ~~and have successfully completed a board-approved six (6) hour up-date class of instruction;~~ and
(2) have taught, documented, and reported to the board thirty (30) hours of instruction.

(c) To maintain certification, the candidate shall accrue a minimum of thirty (30) hours of teaching or attendance at classes in training in adult education, for example:
(1) learning objectives;
(2) test construction; or
(3) classroom teaching;
that shall be reported every three (3) years. Such report shall be received by the board not later than thirty (30) days after the expiration of the three (3) year period that commenced on the date of initial certification, or the applicable three (3) year anniversary of such date.

(d) The training in adult education referred in subsection (c) shall be acquired through classes that teach instructors techniques on teaching adult students. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-20; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3394; filed Sep 24, 1999, 10:02 a.m.: 23 IR 332; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4016)*

SECTION 14. 655 IAC 1-2.1-23 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-23 Firefighter-Wildland Fire Suppression I
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 23. (a) The minimum training standards for Firefighter-Wildland Fire Suppression I certification shall be as set out in that certain document, being titled as NFPA 1051, Standard for Wildland Firefighter Professional Qualifications, ~~Chapter 3, 1995~~ **Chapters 4 and 5, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that ~~Chapter 3 requires~~ **Chapters**

4 and 5 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~7.~~ **2.**

(b) The candidate shall be certified as a Basic Firefighter. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-23; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3395; errata filed Oct 3, 1996, 3:00 p.m.: 20 IR 332; filed Sep 24, 1999, 10:02 a.m.: 23 IR 333; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4016)*

SECTION 15. 655 IAC 1-2.1-23.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-23.1 Firefighter-Wildland Fire Suppression II

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 23.1. (a) The minimum training standards for Firefighter-Wildland Fire Suppression II certification shall be as set out in that certain document, being titled as NFPA 1051, Standard for Wildland Firefighter Professional Qualifications, Chapter ~~4,~~ ~~1995~~ **6, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter ~~4~~ **6** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~7.~~ **2.**

(b) The candidate shall be certified as a ~~Fire Officer I or Instructor II/III.~~ **Firefighter-Wildland Fire Suppression I.** *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-23.1; filed Sep 24, 1999, 10:02 a.m.: 23 IR 333; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4017)*

SECTION 16. 655 IAC 1-2.1-24 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-24 Hazardous Materials First Responder-Awareness

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 24. ~~(a)~~ The minimum training standards for Hazardous Materials First Responder-Awareness certification shall be as set out in that certain document, being titled as NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents Chapter ~~2, 1997~~ **4, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter ~~2~~ **4** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~12.~~ **2.**

~~(b) The candidate shall have successfully completed the requirements of 655 IAC 1-4-2.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-24; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3395; filed Sep 24, 1999, 10:02 a.m.: 23 IR 333; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4017)*

SECTION 17. 655 IAC 1-2.1-24.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-24.1 Hazardous Materials First Responder-Operations

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 24.1. ~~(a)~~ The minimum training standards for Hazardous Materials First Responder-Operations certification shall be as set out in that certain document, being titled as NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents, Chapter ~~3, 1997~~ **5, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter ~~3~~ **5** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~12.~~ **2.**

~~(b) The candidate shall have successfully completed the requirements of 655 IAC 1-4-2.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-24.1; filed Sep 24, 1999, 10:02 a.m.: 23 IR 334; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4017)*

SECTION 18. 655 IAC 1-2.1-24.2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-24.2 Hazardous Materials-Technician

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 24.2. ~~(a)~~ The minimum training standards for Hazardous Materials-Technician certification shall be as set out in that certain document, being titled as NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents, Chapter ~~4, 1997~~ **6, 2002** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter ~~4~~ **6** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~12.~~ **2.**

~~(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-24.2; filed Sep 24, 1999, 10:02 a.m.: 23 IR 334; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4017)*

SECTION 19. 655 IAC 1-2.1-24.3 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-24.3 Hazardous Materials-Incident Command

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 24.3. (a) The minimum training standards for Hazardous Materials-Incident Command certification shall be as set out in that certain document, being titled as NFPA 472, Standard on Professional Competence of Responders to Hazardous Materials Incidents, Chapter 7, 2002 Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapter 7 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 2.

(b) The candidate shall have been certified as a Hazardous Materials First Responder-Awareness and Hazardous Materials First Responder-Operations. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-24.3; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4018)*

SECTION 20. 655 IAC 1-2.1-88 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-88 Land-Based Firefighter-Marine Vessel Fires

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 88. (a) The minimum training standards for Land-Based Firefighter-Marine Vessel Fires certification shall be as set out in that certain document, being titled as NFPA 1405, Guide for Land-Based Firefighters Who Respond to Marine Vessel Fires, Chapters 2 through 15, ~~1990~~ **2001** Edition, published by NFPA, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and made a part of this rule as if fully set out in this rule. To the extent that Chapters 2 through 15 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 16.

(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-88; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3412; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4018)*

SECTION 21. 655 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

Rule 3. Mandatory Training Program

655 IAC 1-3-1 Title; purpose; availability

Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 1. (a) ~~Title.~~ This rule ~~(655 IAC 1-3)~~ shall be known as the administrative rule for the board of firefighting personnel standards and education and shall be published by the board ~~of Firefighting Personnel Standards and Education~~ for general use and distribution under that title. Whenever the term "this rule" is used throughout this rule, ~~(655 IAC 1-3)~~ it shall mean the administrative rule for the board of firefighting personnel standards and education. ~~hereafter called the board.~~

(b) ~~Purpose.~~ The purpose of this rule is to provide for administration by the board ~~of firefighting personnel standards and education~~ of a mandatory training program for fire service personnel as required by IC 36-8-10.5.

(c) ~~Availability.~~ This rule ~~(655 IAC 1-3)~~ is available for purchase from the Board of Firefighting Personnel Standards and Education, ~~1099 North Meridian Street, Suite 900,~~ **302 West Washington Street, Room E239,** Indianapolis, Indiana 46204. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-1; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4018)*

SECTION 22. 655 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-3-2 Administrative adjudication

Authority: IC 36-8-10.5-7
Affected: IC 4-21.5; IC 36-8-10.5

Sec. 2. The administrative adjudication and court review procedures of the board shall be governed by ~~the Administrative Adjudication~~ IC 4-21.5, **Administrative Orders and Procedures.** *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-2; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4018)*

SECTION 23. 655 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-3-4 Fire chief responsibility

Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 4. The fire chief of each individual fire department ~~(both full-time and volunteer)~~ shall have the responsibility for the administration of this rule in the hiring, rehiring, appointing, or electing of firefighters. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-4; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55*

a.m.: 25 IR 203; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4018)

SECTION 24. 655 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-3-5 Mandatory training program
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 5. The mandatory training program ~~will~~ **shall** include firefighting personnel in fire departments in the following areas:

(1) Full-time (paid/career) firefighters employed by ~~a~~ political subdivisions.

(2) Volunteer firefighters in volunteer fire companies.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-5; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4019)

SECTION 25. 655 IAC 1-3-7 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-3-7 Certification by the board
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 7. The board shall certify applications from fire service ~~personal~~ **personnel** as having successfully completed ~~the 24-hour~~ mandatory training specified in IC 36-8-10.5, which are attested to by the signature of the fire chief of the fire department and by an instructor certified by the board. ~~of fire fighting personnel standards and education. The board shall attempt to consider applications at its first meeting after their receipt in the board's office.~~ *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-3-7; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2628; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4019)*

SECTION 26. 655 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-4-1 Title; purpose; availability
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 1. (a) ~~Title.~~ This rule ~~(655 IAC 1-4)~~ shall be known as the Fire Fighter Mandatory Training Program ~~1988 edition,~~ and shall be published by the board ~~of Firefighting Personnel Standards and Education~~ for general distribution and use under that title.

(b) ~~Purpose.~~ The purpose of this rule ~~(655 IAC 1-4)~~ is to establish a mandatory training program for firefighters by the board. ~~of firefighting personnel standards and education.~~

(c) ~~Availability.~~ This rule ~~(655 IAC 1-4)~~ is available for purchase from the Board of Firefighting Personnel Standards and Education, ~~1099 North Meridian Street, Suite 900,~~ **302 West Washington Street, Room E239,** Indianapolis, Indiana 46204. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-4-1; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2629; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4019)*

SECTION 27. 655 IAC 1-4-2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-4-2 General requirements for firefighter mandatory training
Authority: IC 36-8-10.5-7
Affected: IC 36-8-10.5

Sec. 2. (a) ~~Intent.~~ These requirements are intended only to familiarize the recruit firefighter with introductory personal safety and safe evolutions prior to engaging in emergency firefighter activities. These requirements are not intended to replace the ~~state of Indiana board of firefighting personnel standards and education~~ **board's** requirements for firefighter voluntary certification program.

(1) The intent of this document is to provide rules for the minimum mandatory personal safety training of those individuals entering or reentering the fire service.

(2) It is not required for the objectives to be mastered in the order that they appear.

(3) The local fire department, instructor, or fire chief shall establish the instructional priority of the mandatory training.

(4) This is intended to be a minimum training program. Expanded scope and creativity of local training programs is encouraged.

(b) Minimum components are as follows:

(1) Orientation. ~~1 Hour.~~ Includes communication procedures, how alarms are received; who, what, when, **and** where of local fire department.

(2) Personal safety. ~~2 Hours.~~ Includes reason for protective clothing usage, ~~i.e.~~ **for example,** helmet, coat, boots, and gloves; safe handling of tools.

(3) Forcible entry. ~~2 Hours.~~ Includes safely finding hidden fires; safely entering structure or building when it is locked; nomenclature of tools.

(4) Ventilation. ~~2 Hours.~~ Includes safe letting of hot gases and smoke escape; safe procedures; where to properly ventilate.

(5) Apparatus. ~~2 Hours.~~ Includes safely mounting and dismounting from apparatus; riding on apparatus; safe driving of apparatus; basic traffic and firefighting liability laws.

(6) Ladders. ~~4 Hours.~~ Includes safe setting positions for ground ladders; safe climbing and getting off of ladders; feeling for weakened floors on ~~2nd~~ **second** floor or higher before getting off ladder; different types of ladders used in fire service.

(7) Self-contained breathing apparatus. ~~6 Hours.~~ Includes critical needs for wearing self-contained breathing apparatus; safe practices in its use; nomenclatures of self-contained

breathing apparatus; safely donning and doffing of self-contained breathing apparatus.
(8) Hose loads. ~~1.5~~ ~~Hours.~~ Includes how to properly load hose; different types of hose loads; safely removing different hose loads; accessing water sources by drafting or hydrants.
(9) Streams. ~~1.5~~ ~~Hours.~~ Includes safe fire stream velocity and gallons per minute; properly opening and closing of nozzles.
(10) Basic recognition of special hazards. ~~2~~ ~~Hours.~~ Includes recognition of special hazards; DOT hazardous materials placarding recognition; structural hazards indicating imminent collapse or cave-in; recognition of suspicious fires; dangers of backdraft and flashover; overhead electrical wires; special safety procedures.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-4-2; filed Mar 7, 1988, 12:55 p.m.: 11 IR 2629; readopted filed Aug 27, 2001, 10:55 a.m.: 25 IR 203; errata, 26 IR 383; filed Jul 14, 2004, 10:00 a.m.: 27 IR 4019)

LSA Document #03-186(F)
Notice of Intent Published: August 1, 2003; 26 IR 3676
Proposed Rule Published: December 1, 2003; 27 IR 931
Hearing Held: February 23, 2004
Approved by Attorney General: July 1, 2004
Approved by Governor: July 9, 2004
Filed with Secretary of State: July 14, 2004, 10:00 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 2002 Edition; NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, 2002 Edition; NFPA 1051, Standard for Wildland Fire Fighter Professional Qualifications, 2002 Edition; NFPA 1405, Guide for Land-Based Fire Fighters Who Respond to Marine Vessel Fires, 2001 Edition.

TITLE 862 PRIVATE DETECTIVES LICENSING BOARD

LSA Document #03-313(F)

DIGEST

Amends 862 IAC 1-1-3 to modify the experience requirements under IC 25-30-1-8 for a private detective license to address the areas of employment to meet the experience requirement. Effective 30 days after filing with the secretary of state.

862 IAC 1-1-3

SECTION 1. 862 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

862 IAC 1-1-3 Experience requirement
Authority: IC 25-30-1-5.5
Affected: IC 25-30-1-8

Sec. 3. (a) This section establishes the experience requirements under IC 25-30-1-8(a)(3) for a private detective license. All individual applicants, at least one (1) individual of a partnership applicant, and at least one (1) officer of a corporate applicant must meet the requirements in this section.

(b) The experience requirements shall be two (2) years of experience as verified by four thousand (4,000) hours of employment in any of the following areas or combination of areas:
(1) In private detective work having been issued an identification card as an employee under a licensee.
(2) As an investigator for the United States Department of Justice or for the United States Department of the Treasury.
(3) As a criminal investigator with the Armed Forces of the United States.
(4) As a sheriff's investigator.
(5) As a railroad detective.
(6) As a claims investigator for an insurance company.
(7) As a licensed and practicing attorney at law or as an investigator for a practicing attorney.
(8) As a police officer for any federal, state, or local unit of government.
(9) As a full-time manager or administrator for a licensed private security contractor agency or as a manager or administrator of a proprietary security force of twenty (20) or a lesser number with equivalent experience as determined by the board.

(Private Detectives Licensing Board; Private Detective License Law Rule III; filed Feb 5, 1979, 2:45 p.m.: 2 IR 299; filed Nov 15, 1994, 10:40 a.m.: 18 IR 880; readopted filed May 22, 2001, 9:54 a.m.: 24 IR 3237; filed Jul 22, 2004, 10:00 a.m.: 27 IR 4020) NOTE: Transferred from State Police Department (240 IAC 4.1-1-3) to Private Detectives Licensing Board (862 IAC 1-1-3) by P.L.234-1989, SECTION 25, effective July 1, 1989.

LSA Document #03-313(F)
Notice of Intent Published: January 1, 2004; 27 IR 1200
Proposed Rule Published: March 1, 2004; 27 IR 2074
Hearing Held: May 20, 2004
Approved by Attorney General: July 6, 2004
Approved by Governor: July 16, 2004
Filed with Secretary of State: July 22, 2004, 10:00 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #03-280(F)

DIGEST

Adds 905 IAC 1-47 to establish rules defining a municipal

riverfront development project under IC 7.1-3-20-16.1. Effective 30 days after filing with the secretary of state.

905 IAC 1-47

SECTION 1. 905 IAC 1-47 IS ADDED TO READ AS FOLLOWS:

Rule 47. Municipal Riverfront Development Projects

905 IAC 1-47-1 Application
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-20-16

Sec. 1. Application. This rule applies to an application for a permit located in a municipal riverfront development project pursuant to IC 7.1-3-20-16 where the proposed premises is located more than one thousand five hundred (1,500) feet but not more than three thousand (3,000) feet or more than three (3) blocks but not more than six (6) blocks from the river, whichever is greater. *(Alcohol and Tobacco Commission; 905 IAC 1-47-1; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)*

905 IAC 1-47-2 Eligibility for permit
Authority: IC 7.1-2-3-7
Affected: IC 4-23-2; IC 7.1-3-20-16; IC 36-7

Sec. 2. The commission may issue a permit pursuant to IC 7.1-3-20-16 for a premises, which is located within the area described in section 1 of this rule, if the following conditions are met:

(1) The proposed permit premises must be located within the original boundaries of the municipal riverfront development project as set forth in IC 7.1-3-20-16.1(c)(1)(A).

(2) The area within the original boundaries of the municipal riverfront development project is:

(A) blighted under IC 36-7-14 or IC 36-7-15.1;

(B) a redevelopment area under IC 36-7-14.5;

(C) an economic development area under IC 36-7-15.2 or IC 36-7-26; or

(D) a historic district established under IC 36-7-11, IC 36-7-11.1, IC 36-7-11.3, or IC 14-3-3.2 (before its repeal); and

(3) The proposed permit premises is located in a building or structure which is designated historical pursuant to subdivision 2(D) of this rule and used primarily in connection with a community-based activity or event that is artistic or cultural in nature, including, but not limited to, music, including folk, contemporary, classical, or jazz; theatre, including media arts; dance, including contemporary or ballet; painting; sculpture; and architecture; and which may be eligible for funding from the Indiana arts commission pursuant to IC 4-23-2.

(Alcohol and Tobacco Commission; 905 IAC 1-47-2; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)

905 IAC 1-47-3 Proof of compliance criteria
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-20-16

Sec. 3. Proof of compliance with this rule must consist of the following documentation, which is required at the time the permit application is filed with the commission:

(1) A detailed map showing:

(A) definite boundaries of the entire municipal riverfront development project; and

(B) the location of the proposed permit within the project.

(2) A copy of the local ordinance or resolution of the local governing body authorizing the municipal riverfront development project.

(3) Detailed information concerning the expenditures of state and city funds on the municipal riverfront development project.

(4) A listing of the types of events being held at the proposed permit premises pursuant to section 2(3) of this rule; and

(5) Information concerning historical characteristics of the permit premises, including, but not limited to, the age and significance within the municipality.

(Alcohol and Tobacco Commission; 905 IAC 1-47-3; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)

905 IAC 1-47-4 Nude dancing excluded
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-20-16

Sec. 4. For purposes of this rule, subsection (2)(c) *[sic.]* **does not include activities described in 905 IAC 1-16.1-3.** *(Alcohol and Tobacco Commission; 905 IAC 1-47-4; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)*

905 IAC 1-47-5 Area incapable of development; alternative measurements
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-20-16

Sec. 5. If the area adjacent to the river is incapable of being developed because the area is in a floodplain, or for any other reason that prevents the area from being developed, the distances described in section 1 of this rule are measured from the city blocks located nearest to the river that are capable of being developed. *(Alcohol and Tobacco Commission; 905 IAC 1-47-5; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)*

905 IAC 1-47-6 "Original boundaries" defined
Authority: IC 7.1-2-3-7
Affected: IC 7.1-3-20-16

Sec. 6. For purposes of this rule, the term "original boundaries" means the initial geographic parameters or boundaries of the municipal riverfront development project

as determined by the governing body. *(Alcohol and Tobacco Commission; 905 IAC 1-47-6; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021)*

905 IAC 1-47-7 For-profit status; not disqualifying

Authority: IC 7.1-2-3-7
Affected: IC 4-23-2; IC 7.1-3-20-16

Sec. 7. For purposes of this rule, the for-profit status of an entity applying for a permit shall not disqualify it for further consideration by the commission if it otherwise meets the criteria for eligibility of funding by the Indiana arts commission pursuant to IC 4-23-2. *(Alcohol and Tobacco Commission; 905 IAC 1-47-7; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4022)*

LSA Document #03-280(F)
Notice of Intent Published: November 1, 2003; 27 IR 554
Proposed Rule Published: January 1, 2004; 27 IR 1291
Hearing Held: January 26, 2004
Approved by Attorney General: August 2, 2004
Approved by Governor: August 9, 2004
Filed with Secretary of State: August 10, 2004, 3:30 p.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #01-288(AC)

Under IC 4-22-2-38, corrects the following typographical and clerical errors in LSA Document #01-288(F), printed at 27 IR 3957:

(1) In 329 IAC 11-20-1(b), on page 35 of the original document (27 IR 3975), delete "April 14, 1996" and insert "April 13, 1996".

(2) In 329 IAC 11-20-1(c), on page 35 of the original document (27 IR 3975), delete "April 14, 1996" and insert "April 13, 1996".

Filed with Secretary of State: August 9, 2004, 10:45 a.m.

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

NOTE: This change was incorporated into the printed version of LSA Document #01-288(F) and may be found at 27 IR 3957, as corrected.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #02-160(AC)

Under IC 4-22-2-38, corrects the following clerical error in LSA Document #02-160(F), printed at 27 IR 3980:

In 329 IAC 3.1-9-2(22), on page 4 of the original document (27 IR 3980), delete "subsections" and insert "subdivisions".

Filed with Secretary of State: August 9, 2004, 10:45 a.m.

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

NOTE: This change was incorporated into the printed version of LSA Document #02-160(F) and may be found at 27 IR 3980, as corrected.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-263

Under IC 4-22-2-40, LSA Document #03-263, printed at 27 IR 1209, is recalled.

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #03-279

Under IC 4-22-2-40, LSA Document #03-279, printed at 27 IR 1291, is recalled.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-55

Under IC 4-22-2-41, LSA Document #04-55, printed at 27 IR 2302, is withdrawn.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-57

Under IC 4-22-2-41, LSA Document #04-57, printed at 27 IR 2303, is withdrawn.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-58

Under IC 4-22-2-41, LSA Document #04-58, printed at 27 IR 2303, is withdrawn.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-201(E)

DIGEST

Adds 65 IAC 4-344 concerning scratch-off game number 662. Effective July 16, 2004.

65 IAC 4-344

SECTION 1. 65 IAC 4-344 IS ADDED TO READ AS FOLLOWS:

Rule 344. Scratch-Off Game 662

65 IAC 4-344-1 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 662, Monte Carlo". *(State Lottery Commission; 65 IAC 4-344-1; emergency rule filed Jul 14, 2004, 12:36 p.m.: 27 IR 4026, eff Jul 16, 2004)*

65 IAC 4-344-2 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 662 shall sell for seven dollars ($7) per ticket. *(State Lottery Commission; 65 IAC 4-344-2; emergency rule filed Jul 14, 2004, 12:36 p.m.: 27 IR 4026, eff Jul 16, 2004)*

65 IAC 4-344-3 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 662 shall contain forty-seven (47) play symbols and play symbol captions arranged among four (4) separate and independent game play data areas each concealed under a spot of latex material.

(b) The game play data area on the upper portion of each scratch-off ticket shall be labeled "GAME 1" and contain sixteen (16) play symbols and play symbol captions arranged among five (5) separate hands labeled "HAND 1", "HAND 2", "HAND 3", "HAND 4", and "HAND 5", respectively. One (1) play symbol and play symbol caption shall appear in the "DEALER'S TOTAL" area.

(c) The game play data area in the middle portion of each scratch-off ticket shall be labeled "GAME 2" and shall contain sixteen (16) play symbols and play symbol captions arranged among four (4) separate rows labeled "PULL 1", "PULL 2", "PULL 3", and "PULL 4", respectively. Each row shall contain three (3) play symbols and play symbol captions representing pictures and one (1) play symbol and play symbol caption representing a prize amount.

(d) The game play data area at the bottom right portion of each scratch-off ticket shall be labeled "GAME 3" and shall contain fourteen (14) play symbols and play symbol captions. Two (2) play symbols and play symbol captions representing numbers shall appear in the area labeled "LUCKY COINS". Twelve (12) play symbols and play symbol captions shall appear in the large are *[sic., area]* **labeled "YOUR COINS" and be arranged in pairs of numbers, or pictures and prize amounts.**

(e) The game play data area at the bottom left portion of each scratch-off ticket shall be labeled "GAME 4" and shall contain one (1) play symbol and play caption in the "WIN A TRIP TO MONTE CARLO IN LAS VEGAS" area. *(State Lottery Commission; 65 IAC 4-344-3; emergency rule filed Jul 14, 2004, 12:36 p.m.: 27 IR 4026, eff Jul 16, 2004)*

65 IAC 4-344-4 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 representing prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $2.00
TWO
(2) $4.00
FOUR
(3) $5.00
FIVE
(4) $7.00
SEVEN
(5) $8.00
EIGHT
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $40.00
FORTY
(9) $50.00
FIFTY
(10) $70.00
SEVENTY
(11) $100
ONE HUN
(12) $500
FIVE HUN
(13) $1,000
ONE THOU
(14) $7,000
SVN THOU
(15) $15,000
FTN THOU

(16) $150,000
HUNFTY THOU

(b) The play symbols and play symbol captions appearing in "GAME 1", other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1)	**2 TWO**
(2)	**3 THR**
(3)	**4 FOR**
(4)	**5 FIV**
(5)	**6 SIX**
(6)	**7 SVN**
(7)	**8 EGT**
(8)	**9 NIN**
(9)	**10 TEN**
(10)	**J JCK**
(11)	**Q QUN**
(12)	**K KNG**
(13)	**A ACE**

(14) 16
SXTN
(15) 17
SVTN
(16) 18
EGHTN
(17) 19
NTNTN
(18) 20
TWTY

(c) The play symbols and play symbol captions appearing in the "GAME 2", other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) A picture of cherries
CHRY
(2) A picture of an orange
ORG
(3) A picture of a dollar sign
MONY
(4) A picture of a star
STAR
(5) A picture of a bell
BELL
(6) A picture of a 7
SVN
(7) A picture of a bar
BAR
(8) A picture of a pot of gold
GOLD

(d) The play symbols and play symbol captions appearing in the "GAME 3", 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) $$
WIN

(e) The play symbols and play symbol captions appearing in the "GAME 4" shall consist of the following possible play symbols and play symbol captions:

(1) TRY
AGAIN
(2) TRIP
WIN

(State Lottery Commission; 65 IAC 4-344-4; emergency rule filed Jul 14, 2004, 12:36 p.m.: 27 IR 4026, eff Jul 16, 2004)

65 IAC 4-344-5 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 662 shall remove the latex material covering the forty-eight (48) play symbols and play symbol captions.

(b) In the "GAME 1" play data area, if the play symbol and play symbol caption exposed in "HAND 1", "HAND 2", "HAND 3", "HAND 4", or "HAND 5" has a higher value than the play symbol and play symbol caption exposed in the "DEALER'S TOTAL" area, the holder is entitled to the corresponding prize amount for that hand. If the play symbol and play symbol caption exposed in "HAND 1", "HAND 2", "HAND 3", "HAND 4", or "HAND 5" totals twenty-one (21), the holder is entitled to double the prize amount for that hand. If the play symbols and play symbol captions exposed in the "DEALER'S TOTAL" has a higher value than twenty-one (21) (referred to in this rule as "dealer busts"), the holder is entitled to all five (5) paired prizes. Play symbols and play symbol captions representing playing cards are valued in descending order with aces as the high cards and face cards valued at ten (10).

(c) In the "GAME 2" play data area, if three (3) matching play symbols and play symbol captions are exposed in "PULL 1", "PULL 2", "PULL 3", or "PULL 4", the holder is entitled to the corresponding prize for that row. If three (3) matching play symbols and play symbol captions of a "pot of gold" are exposed, the holder is entitled to a prize double the corresponding prize amount.

(d) In the "GAME 3" play data area, if the play symbols and play symbol captions in the "YOUR COINS" area match any of the play symbols and play symbol captions in the "LUCKY COINS" area, the holder is entitled to the paired prize amount. If the play symbol "$$" is exposed in the "YOUR COINS" area, the holder is automatically entitled to the paired prize amount.

(e) In the "GAME 4" play data area, if the play symbol and play symbol caption "TRIP" is exposed, the holder is entitled to a Las Vegas trip which includes four (4) days and three (3) nights for two (2) at the Monte Carlo Hotel. Included in the prize package is round trip coach airfare for two (2) and transfer to and from the hotel. *(State Lottery Commission; 65 IAC 4-344-5; emergency rule filed Jul 14, 2004, 12:36 p.m.: 27 IR 4027, eff Jul 16, 2004)*

65 IAC 4-344-6 Prizes

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

Sec. 6. The prize amounts and number of winners in scratch-off game number 662 are as follows:

Number of Winning Plays and Prize Amount Play Symbols	Prize Amount	Approximate Number of Winners
1 – $7.00	$7	216,000
5 – $2.00 (dealer busts)	$10	86,400
5 – $2.00	$10	43,200
1 – $10.00	$10	43,200
1 – $5.00 double + 1 – $5.00	$15	64,800
3 – $5.00	$15	21,600
5 – $4.00 (dealer busts)	$20	10,800
1 – $10.00 double	$20	10,800
1 – $10.00 + 1 – $10.00 with $$	$20	10,800
1 – $20.00	$20	10,800
4 – $10.00	$40	6,012
6 – $5.00 + 1 – $10.00	$40	5,994
1 – $40.00	$40	5,994
5 – $7.00 (dealer busts) + 1 – $7.00 + 1 – $8.00	$50	2,034
3 – $5.00 double + 1 – $20.00	$50	2,034
3 – $10.00 – 1 – $20.00 with $$	$50	2,016
1 – $50.00	$50	2,016
6 – $5.00 + 10 – $7.00	$100	2,412
5 – $10.00 (dealer busts) + 4 – $20.00 + 3 – $10.00	$100	2,394
1 – $50.00 double	$100	2,394
5 – $10.00 (dealer busts) + 4 – $5.00 + 6 – $50.00 + 1 – $70.00	$500	450
1 – $500	$500	450
5 – $100 (dealer busts) + 3 – $100 + 1 – $50.00 double + 2 – $50.00	$1,000	90
1 – $100 double + 2 – $50.00 double + 6 – $100.00	$1,000	72
1 – $1,000	$1,000	72
1 – TRIP	$4,543.34	260
1 – $15,000	$15,000	8
2 – $7,000 + 1– $1,000	$15,000	8
1 – $150,000	$150,000	8

(State Lottery Commission; 65 IAC 4-344-6; emergency rule filed Jul 14, 2004, 12:36 p.m.: 27 IR 4028, eff Jul 16, 2004)

65 IAC 4-344-7 Number of tickets; odds; reorders

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

Sec. 7. (a) There shall be approximately two million (2,000,000) scratch-off tickets initially available in scratch-off game number 662.

(b) The odds of winning a prize in scratch-off game number 662 are approximately 1 in 3.91.

(c) All reorders of tickets for scratch-off game number 662 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 4-344-7; emergency rule filed Jul 14, 2004, 12:36*

p.m.: 27 IR 4028, eff Jul 16, 2004)

65 IAC 4-344-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. Players will have up to sixty (60) days from the end of scratch-off game 662 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 4-344-8; emergency rule filed Jul 14, 2004, 12:36 p.m.: 27 IR 4029, eff Jul 16, 2004)*

SECTION 2. **SECTION 1 of this document takes effect July 16, 2004.**

LSA Document #04-201(E)
Filed with Secretary of State: July 14, 2004, 12:36 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-202(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 720. Effective July 16, 2004.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 720, Hot Money".**

SECTION 2. **Scratch-off tickets in scratch-off game number 720 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 720 shall contain twelve (12) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Ten (10) play symbols and play symbol captions shall be in the area labeled "YOUR NUMBERS" and shall be arranged in pairs representing numbers or words and prize amounts.**

(b) The play symbols and play symbol captions appearing in the scratch-off game number 720, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

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

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 720 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) $5,000
FIVE THOU

SECTION 4. **The holder of a ticket in scratch-off game number 720 shall remove the latex material covering the twelve (12) play symbols and play symbol captions. If one (1) or more of "YOUR NUMBERS" match either of the**

"WINNING NUMBERS", the holder is entitled to the prize amount paired with the matched number. If the play symbol "HOT" is revealed, the holder is automatically entitled to the paired prize. A player may win up to five (5) times on a ticket. The number of matched play symbols, associated prize play symbols, total prize amounts, and approximate number of winners are as follows:

Number of Matched Play Symbols and Associated Prize Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $1.00	$1	600,000
1 – $2.00	$2	400,000
1 – $4.00	$4	60,000
2 – $2.00	$4	60,000
5 – $1.00	$5	20,000
1 – $5.00	$5	20,000
1 – $10.00	$10	20,000
5 – $2.00	$10	40,000
1 – $20.00	$20	20,000
1 – $40.00	$40	6,000
1 – $100	$100	2,000
1 – $1,000	$1,000	75
1 – $5,000	$5,000	8

SECTION 5. **(a) There shall be approximately six million (6,000,000) scratch-off tickets initially available in scratch-off game number 720.**

(b) The odds of winning a prize in scratch-off game number 720 are approximately 1 in 4.81.

(c) All reorders of tickets for scratch-off game number 720 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 720 is August 31, 2005.**

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

LSA Document #04-202(E)
Filed with Secretary of State: July 14, 2004, 12:36 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-203(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 721. Effective July 16, 2004.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 721, 7 Times Lucky".**

SECTION 2. **Scratch-off tickets in scratch-off game number 721 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 721 shall contain thirty-six (36) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. There shall be seven (7) separate and independent games labeled "GAME 1", "GAME 2", "GAME 3", "GAME 4", "GAME 5", "GAME 6", and "GAME 7", respectively. One (1) play symbol and play symbol caption shall appear in the area labeled "YOUR LUCKY NUMBER". Each game shall contain one (1) play symbol and play symbol caption representing a prize.**

(b) The play symbols and play symbol captions, other that *[sic., than]* **those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:**

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

(18) 18
ETN
(19) 19
NTN
(20) 20
TWY
(21) 21
TWN
(22) 22
TWT
(23) 23
TWR
(24) 24
TWF
(25) 25
TWV
(26) 26
TWS
(27) 27
TSN
(28) 28
TWE
(29) 29
TNI
(30) 30
TTY
(31) 31
THO
(32) 32
THT
(33) 33
TTH
(34) 34
TTF
(35) 35
THF
(36) 36
THS
(37) 37
TTS
(38) 38
THE
(39) 39
THN
(40) 40
FRY

(c) The play symbols and play symbol captions of prize amounts 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) $6.00
SIX
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $100
ONE HUN
(9) $500
FIVE HUN
(10) $1,000
ONE THOU
(11) $3,000
THR THOU
(12) $10,000
TEN THOU
(13) $21,000
TWON THOU

SECTION 4. **(a) The holder of an** *[sic.]* **scratch-off ticket in scratch-off game number 721 shall remove the latex material covering the thirty-six (36) play symbols and play symbol captions. If the play symbol and play symbol caption exposed in "YOUR LUCKY NUMBER" area matches any play symbol and play symbol caption in "GAME 1", "GAME 2", "GAME 3", "GAME 4", "GAME 5", "GAME 6", and "GAME 7", the holder is entitled to the corresponding prize amount multiplied by the corresponding game number.**

(b) The number of winning plays and the associated prize amount play symbols, total prize amounts, and approximate number of winners in scratch-off game number 721 are as follows:

Number of Winning Games and Play Symbols	Total Prize Amount	Approximate Number of Winners
$1.00 × 2	$2	300,000
$1.00 × 4	$4	120,000
$4.00	$4	120,000
$1.00 × 3 + $2.00	$5	30,000
$5.00	$5	30,000
$1.00 + $1.00 × 2 + $1.00 × 3 + $1.00 × 4	$10	15,000
$1.00 × 5 + $5.00	$10	15,000
$1.00 + $1.00 × 2 + $1.00 × 7	$10	7,500
$2.00 × 5	$10	7,500
$1.00 + $1.00 × 2 + $1.00 × 3 + $1.00 × 4 + $2.00 × 5	$20	7,500
$2.00 + $2.00 × 2 + $2.00 × 7	$20	3,750
$5.00 × 4	$20	3,750

$2.00 + $1.00 × 2 + $1.00 × 3 + $1.00 × 4 + $2.00 × 5 + $2.00 × 6 + $1.00 × 7	**$40**	**3,125**
$1.00 × 2 + $1.00 × 3 + $5.00 × 7	**$40**	**3,125**
$2.00 × 5 + $5.00 × 6	**$40**	**1,875**
$5.00 + $5.00 × 2 + $5.00 × 3 + $5.00 × 4 + $6.00 × 5 + $1.00 × 6 + $2.00 × 7	**$100**	**1,500**
$20.00 × 5	**$100**	**1,000**
$5.00 × 6 + $10.00 × 7	**$100**	**1,000**
$10.00 + $10.00 × 2 + $10.00 × 3 + $10.00 × 4	**$100**	**1,000**
$100 × 4	**$400**	**250**
$20.00 + $10.00 × 2 + $10.00 × 3 + $20.00 × 4 + $10.00 × 5 + $10.00 × 6 + $20.00 × 7	**$400**	**500**
$100 × 3 + $100 × 7	**$1,000**	**50**
$500 × 2	**$1,000**	**50**
$1,000 + $1,000 × 2 + $1,000 × 3 + $1,000 × 4	**$10,000**	**2**
$10,000	**$10,000**	**2**
$3,000 × 7	**$21,000**	**2**
$21,000	**$21,000**	**2**

SECTION 5. **(a) There shall be approximately three million (3,000,000) scratch-off tickets initially available in scratch-off game number 721.**

(b) The odds of winning a prize in scratch-off game number 721 are approximately 1 in 4.45.

(c) All reorders of tickets for scratch-off game number 721 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 721 is August 31, 2005.**

SECTION 7. **This document expires on September 30, 2005.**

LSA Document #04-203(E)
Filed with Secretary of State: July 14, 2004, 12:36 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-204(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 722. Effective July 16, 2004.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 722, Lucky Gold".**

SECTION 2. **Scratch-off tickets in scratch-off game number 722 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 722 shall contain twenty-two (22) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Twenty (20) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" arranged in pairs representing numbers or pictures and prize amounts.**

(b) The play symbols and play symbol captions in scratch-off game number 722, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELVN
(12) 12
TWLV
(13) 13
THRTN
(14) 14
FORTN
(15) 15
FIFTN
(16) 16
SIXTN
(17) 17
SVNTN
(18) 18
EGHTN

(19) 19
NINTN
(20) 20
TWTY
(21) A picture of the word lucky
WIN
(22) A picture of a gold bar
WIN ALL

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 722 shall consist of the following possible play symbols and play symbol captions:
(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $25.00
TWY FIVE
(9) $40.00
FORTY
(10) $50.00
FIFTY
(11) $100
ONE HUN
(12) $400
FOR HUN
(13) $1,000
ONE THOU
(14) $10,000
TEN THOU

SECTION 4. **The holder of a ticket in scratch-off game number 722 shall remove the latex material covering the twenty-two (22) play symbols and play symbol captions. If one (1) or more of "YOUR NUMBERS" match either of the "WINNING NUMBERS", the holder is entitled to the prize amount paired with the matched number. If the play symbol "LUCKY" with the play symbol caption "WIN" is exposed in the "YOUR NUMBERS" area, the player is automatically entitled to the paired prize amount. If the play symbol of a picture of a bar of gold with the play symbol caption "WIN ALL" is exposed in the "YOUR NUMBERS" area, the player is automatically entitled to all ten (10) prize amounts. The number of matches, paired prize amount play symbols, total prize amounts, and number of winners in scratch-off game number 722 are as follows:**

Number of Matches and Paired Prize Amount Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	300,000
2 – $1.00 with lucky	$4	180,000
1 – $4.00	$4	60,000
1 – $2.00 with lucky + 1 – $3.00	$5	45,000
1 – $5.00	$5	15,000
10 – $1.00 with gold bar	$10	22,500
10 – $1.00	$10	7,500
5 – $1.00 + 1 – $5.00	$10	7,500
1 – $10.00	$10	7,500
10 – $2.00 with gold bar	$20	7,500
5 – $1.00 + 1 – $5.00 with lucky – 1 – $10.00	$20	3,750
1 – $20	$20	3,750
10 – $4.00 with gold	$40	4,875
6 – $5.00 + 1 – $10.00 with lucky	$40	2,500
1 – $40	$40	2,500
10 – $10.00 with gold bar	$100	1,500
5 – $20.00	$100	1,000
2 – $25.00 + 1 $50 with lucky	$100	1,000
1 – $100	$100	1,000
9 – $40.00 + 1 – $40.00 with lucky	$400	250
1 – $400	$400	250
4 – $25.00 + 6 – $50 with gold bar	$400	250
10 – $100	$1,000	50
1 – $1,000	$1,000	50
1 – $10,000	$10,000	6

SECTION 5. **(a) There shall be approximately three million (3,000,000) scratch-off tickets initially available in scratch-off game number 722.**

(b) The odds of winning a prize in scratch-off game number 722 are approximately 1 in 4.44.

(c) All reorders of tickets for scratch-off game number 722 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 722 is August 31, 2005.**

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

LSA Document #04-204(E)
Filed with Secretary of State: July 14, 2004, 12:36 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-206(E)

DIGEST

Amends 65 IAC 1-4-1 concerning ethics definitions. Amends 65 IAC 1-4-5 concerning ethics, gifts, and gratuities. Adds 65 IAC 1-4-5.5 concerning contractor ethics restrictions. Effective July 22, 2004.

65 IAC 1-4-1
65 IAC 1-4-5
65 IAC 1-4-5.5

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

65 IAC 1-4-1 Definitions
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30-3-1

Sec. 1. (a) The definitions in this section apply to this rule.

(b) "Business relationship" means dealings between the commission and a person seeking, obtaining, establishing, maintaining, or implementing:
(1) a pecuniary interest in a contract or procurement; or
(2) a retailer contract.

~~(b)~~ **(c)** "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered, or to be rendered, whether by that person or another.

~~(c)~~ **(d)** "Conflict of interest" means a situation in which a person's private interest, usually of a financial or economic nature, may influence the person's judgment in the performance of the person's public duty.

~~(d)~~ **(e)** "Economic interest" means a person's substantial financial interest in investments, employment, awarding of contracts, grants, loans, purchases, leases, sales, or similar matters under consideration or consummated by the commission. A person will not be deemed to have an economic interest in a matter under consideration or consummated by the commission solely by reason of owning one percent (1%) or less of any class of outstanding securities which are issued by a party to the matter under consideration or consummated and are listed on a national securities exchange or actively traded in an over-the-counter market.

~~(e)~~ **(f)** "Employee" means an employee of the commission who is not an officer.

~~(f)~~ **(g)** "Honorarium" means a fee received for speeches, written articles, participation in discussion groups, and similar activities but does not include reimbursement for expenses.

~~(g)~~ **(h)** "Member" means a member of the commission, as described in IC 4-30-3-1.

~~(h)~~ **(i)** "Officer" means the director, any assistant director, and the director of the division of security for or of the commission.

(j) "Public meeting" means an event that:
(1) is a gathering of public officials not arranged to solicit the procurement of goods or services;
(2) involves a speech or participation in a presentation by a member, officer, or employee in the member's, officer's, or employee's official capacity; or
(3) includes a formal educational program that the member, officer, or employee is attending to assist in the performance of official responsibilities.

(State Lottery Commission; 65 IAC 1-4-1; emergency rule filed Oct 24, 1989, 2:15 p.m.: 13 IR 404; emergency rule filed Dec 17, 1990, 3:20 p.m.: 14 IR 1073; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jul 22, 2004, 11:05 a.m.: 27 IR 4034)

SECTION 2. 65 IAC 1-4-5 IS AMENDED TO READ AS FOLLOWS:

65 IAC 1-4-5 Gifts and gratuities
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. (a) Members, officers, and employees shall not directly or indirectly request or accept any gift, favor, service, loan, or entertainment for themselves or others under circumstances that might reasonably be construed to influence the performance of their official duties for the commission.

~~(b) Members, officers, and employees may accept nominal courtesies, such as meals, token honorariums, certificates, plaques, cups, or similar items if extended in a spirit of hospitality, offered for speaking at a civic or club meeting or awarded for contributions to government, civic, athletic, recreational, social, fraternal, professional, religious, or comparable activities, so long as no payment of money is made and the value of any individual item is not in excess of fifty dollars ($50) and the value of all such items accepted in a single year is not in excess of one hundred dollars ($100). If the value of an individual item which is received from a person the recipient knows to be seeking to establish a business relationship with the commission exceeds twenty-five dollars ($25), the receipt of the item shall be reported to the security division, which shall keep a record~~

~~of all such reports. Notwithstanding anything in this section to the contrary, it shall not be a violation of this section for a member, officer, or employee to attend a social function or gathering, including a meal or party, provided by a vendor, including a vendor in a major procurement, if either:~~

~~(1) the social function or gathering occurs at a convention, seminar, or gathering of lottery personnel from more than one (1) state and the invitation to the social function or gathering is generally made to all attendees at the convention, seminar, or gathering; or~~

~~(2) the social function or gathering is approved by the director or the members, in advance.~~

(b) A member, officer, employee shall not accept gifts, favors, services, entertainment, food, or drink in any amount from a person who has a business relationship with the commission. Notwithstanding the foregoing, it shall not be a violation of this section for a member, officer, or employee to:

(1) accept gifts, favors, services, entertainment, food, or drink from public agencies or public institutions;

(2) consume food or drink at a public meeting to which twenty-five (25) or more individuals are invited;

(3) accept mementos or souvenirs of nominal value received at public events, public ceremonies, or events commemorating official business;

(4) give or accept gifts, favors, services, entertainment, food, or drink from relatives and social relationships provided that:

(A) any items of value are not deducted as a business expense; and

(B) the member, officer, or employee does not exercise decision making authority over a policy making or procurement decision affecting the business interests of the person;

(5) accept discount and promotional programs approved and made available through the state of Indiana; or

(6) attend a social function or other gathering, including a party or a meal, provided by a vendor if the event takes place at a convention, seminar, or gathering of lottery personnel from more than one (1) state and the invitation to the social function or gathering is generally made to all attendees at the convention, seminar, or gathering.

(c) Honoraria may only be accepted when:

(1) the underlying activities are not connected with the member's, officer's, or employee's employment or appointment responsibilities;

(2) preparations for the underlying activities are on the member's, officer's, or employee's noncommission time and without use of commission resources; and

(3) the honoraria are not from a vendor doing business with the commission.

~~(c)~~ **(d)** Any gift, favor, or consideration which can be construed (as determined by the director or the members) to be provided in connection with commission duties and which a member, officer, or employee is not permitted by this section to accept shall be returned to the donor immediately using such procedures as the director establishes for such purpose.

(e) The director may, in the director's sole discretion, make exceptions to this section provided the rationale for such exceptions is in writing and consistent with the public interest. *(State Lottery Commission; 65 IAC 1-4-5; emergency rule filed Oct 24, 1989, 2:15 p.m.: 13 IR 405; emergency rule filed Dec 17, 1990, 3:20 p.m.: 14 IR 1074; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jul 22, 2004, 11:05 a.m.: 27 IR 4034)*

SECTION 3. 65 IAC 1-4-5.5 IS ADDED TO READ AS FOLLOWS:

65 IAC 1-4-5.5 Contractor ethics restrictions

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

Sec. 5.5. Contractors shall not offer or provide gifts, favors, services, entertainment, food, or drink to commission members, officers, or employees while seeking, obtaining, establishing, maintaining, or implementing a procurement or contract with the commission. In the event of a violation of this section, the commission may, in its sole discretion, terminate the contract. *(State Lottery Commission; 65 IAC 1-4-5.5; emergency rule filed Jul 22, 2004, 11:05 a.m.: 27 IR 4035)*

LSA Document #04-206(E)
Filed with Secretary of State: July 22, 2004, 11:05 a.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-220(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 018. Effective August 5, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 018, Wild Thing".**

SECTION 2. **Pull-tab tickets for pull-tab game number 018 shall sell for fifty cents ($.50) per ticket.**

SECTION 3. **Pull-tab game number 018 is a criss-cross game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 018 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 018 shall consist of the following possible play symbols:

(1) A picture of a seven with the word super
SEVEN
(2) A picture of three (3) bars
BAR-BAR-BAR
(3) A picture of cherries
CHERRIES
(4) A picture of a diamond
DIAMOND
(5) A pictured of a five with the word bar
FIVE
(6) A picture of the words wild thing
WILD THING
(7) A picture of an orange
ORANGE
(8) A picture of a bell
BELL
(9) A picture of a lemon
LEMON

SECTION 5. **A row, column, or diagonal on a pull-tab ticket in pull-tab game number 018 which contains three (3) play symbol captions either of "SEVEN", "BAR-BAR-BAR", "DIAMOND", "FIVE", or any other two (2) of a kind play symbols with the play symbol caption "WILD THING" is not a criss-cross winning combination unless all of the following are true:**

(1) The play symbols and play symbol captions in a row, column, or diagonal are consistent with those specified in SECTION 4 of this rule *[document]***.**

(2) The three (3) play symbols and play symbol captions in a row, column, or diagonal are bisected by a pink arrow.

(3) The prize amount appears on the left side of the line in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this rule** *[document]***, the holder of a valid pull-tab ticket for pull-tab game number 018 containing a criss-cross winning row, column, or diagonal is entitled to a prize the amount and the approximate number** *[sic., numbers]* **of which are as follows:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
2 matching play symbols with wild thing	$0.50	116,100
3 fives	$1.00	44,505
3 diamond	$2.00	13,545
3 cherries	$5.00	5,805
3 bar-bar-bar	$10.00	1,935
3 seven	$125.00	1,935

SECTION 7. **A total of approximately one million (1,000,000) pull-tab tickets will be initially available for pull-tab game number 018. The odds of winning a prize in pull-tab game 018 are approximately 1 in 7.07. 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 018 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab retailer.**

LSA Document #04-220(E)
Filed with Secretary of State: August 4, 2004, 11:05 a.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #04-221(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 019. Effective August 5, 2004.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 019, Green Stuff".**

SECTION 2. **Pull-tab tickets for pull-tab game number 019 shall sell for twenty-five cents ($0.25) per ticket.**

SECTION 3. **Pull-tab game number 019 is a match 3 game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 019 shall contain nine (9) play symbols and play symbol captions arranged in a matrix of three (3) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 019 shall consist of the following possible play symbols:**

(1) A picture of a stack of paper money
CASH
(2) A picture of a money bag
MONEY BAG
(3) A picture of a dollar sign
DOLLAR SIGN
(4) A picture of a piece of paper
STOCK
(5) A picture of coins
COINS
(6) A picture of a credit card
CREDIT CARD

(7) A picture of a check
CHECK

SECTION 5. **A row on a pull-tab ticket in pull-tab game number 019 which contains three (3) identical play symbols is not a match 3 winning row unless all of the following are true:**
(1) The play symbols and play symbol captions in the row are consistent with those specified in SECTION 4 of this rule *[document]***.**
(2) The three (3) play symbols and play symbol captions in the row are bisected by a pink arrow.
(3) The prize amount appears on the left side of the row in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this rule** *[document]***, the holder of a valid pull-tab ticket for pull-tab game number 019 containing a match 3 winning row is entitled to a prize amount the approximate number** *[sic., numbers]* **of which are as follows:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
3 stock	$ 0.25	492,360
3 dollar sign	$ 1.00	93,996
3 money bag	$ 5.00	8,952
3 cash	$50.00	4,476

SECTION 7. **A total of approximately three million (3,000,000) pull-tab tickets will be initially available for pull-tab game number 019. The odds of winning a prize in pull-tab game 019 are approximately 1 in 5.01. 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 019 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 #04-221(E)
Filed with Secretary of State: August 4, 2004, 11:05 a.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #04-222(E)

DIGEST

Amends 71 IAC 7.5-1-2 concerning procedures. Effective August 4, 2004.

71 IAC 7.5-1-2

SECTION 1. 71 IAC 7.5-1-2, AS AMENDED AT 27 IR 1919, SECTION 19, IS AMENDED TO READ AS FOLLOWS:

71 IAC 7.5-1-2 Procedures
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. (a) Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one (1) year.

(b) An entry shall be in the name of the horse's licensed owner and made by the owner, trainer, or a licensed designee of the owner or trainer.

(c) Races printed in the condition book shall have preference over substitute and extra races except for brought back Indiana extra races.

(d) An entry must be in writing, by telephone, or facsimile machine to the racing secretary. The entry must be confirmed in writing should the stewards or the racing secretary so request.

(e) The person making an entry shall clearly designate the horse so entered.

(f) No horse may be entered in more than one (1) race (with the exception of stakes races) to be run on the same day on which pari-mutuel wagering is conducted.

(g) Any permitted medication or approved change of equipment must be declared at time of entry.

(h) At the draw, a jockey is limited to being named on one (1) horse in the body of a race, except in an entry defined in 71 IAC 1.5-1-34(2), and one (1) horse on the "also eligible list", if applicable. A jockey may not ride any horse that he or she was taken off of at the draw by themselves or their agent. *(Indiana Horse Racing Commission; 71 IAC 7.5-1-2; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2865, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1919; emergency rule filed Aug 4, 2004, 11:10 a.m.: 27 IR 4037)*

LSA Document #04-222(E)
Filed with Secretary of State: August 4, 2004, 11:10 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-205(E)

DIGEST

Temporarily amends 312 IAC 9-3-7 to govern hunting white-

tailed deer in a designated county under an extra deer license. Effective November 13, 2004.

SECTION 1. **(a) As anticipated by 312 IAC 9-3-7, this SECTION governs hunting deer under an extra deer license.**

(b) This SECTION is supplemental to 312 IAC 2-2 and governs the activities of an individual who is either:

(1) issued a license to take an extra deer under IC 14-22-12-1(18) or IC 14-22-12-1(19) *[sic., IC 14-22-12-1(a)(18) or IC 14-22-12-1(a)(19)]***; or**

(2) hunting under IC 14-22-11-1 with the use of an extra deer license under IC 14-22-12-1(18) or IC 14-22-12-1(19) *[sic., IC 14-22-12-1(a)(18) or IC 14-22-12-1(a)(19)]***.**

(c) No person may take an antlerless deer under this SECTION unless in possession of an antlerless deer license issued by the department of natural resources, division of fish and wildlife, under this SECTION.

(d) The season for hunting deer under this SECTION is as follows:

(1) From November 13, 2004, through November 28, 2004, with bow and arrows or firearms.

(2) From December 4, 2004, through January 2, 2005, with bow and arrows or crossbows.

(3) From December 4, 2004, through December 19, 2004, with muzzle loading guns.

(e) The seasonal limit for hunting under this SECTION is one (1) antlerless deer for each license issued under this SECTION.

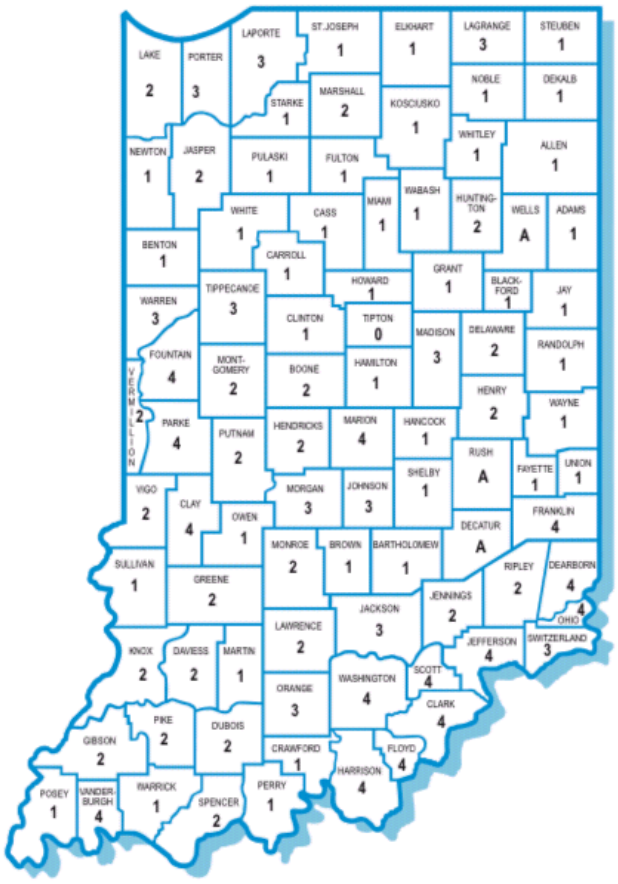
(f) A person who hunts under this SECTION must obtain an extra deer license for each deer. 312 IAC 9-3-2, that governs the use of tags, applies to extra tags.

(g) A person who hunts under this SECTION may use bow and arrows, crossbow, or any firearms that may otherwise be lawfully used to take deer under 312 IAC 9-3.

(h) 312 IAC 9-3-3(d) through 312 IAC 9-3-3(g) and 312 IAC 9-3-4(d) through 312 IAC 9-3-4(g) apply to a license issued under this SECTION.

(i) The seasonal bag limit for taking antlerless deer under this SECTION is four (4) from Indiana.

(j) Except as provided in subsection (k), the county bag limit must not be exceeded from each county as set forth in the following map:



(k) For a county marked on the map in subsection (j) with the letter "A", the county bag limit is one (1) antlerless deer. The deer must be taken from November 25 through November 28, 2004, or December 4, 2004, through January 2, 2005.

(l) The extra deer license authorized by this SECTION does not apply to the department properties listed in this subsection. The license is invalid on these properties:

(1) Atterbury Fish and Wildlife Area.
(2) Blue Grass Fish and Wildlife Area.
(3) Brush Creek Fish and Wildlife Area.
(4) Chinook Fish and Wildlife Area.
(5) Crosley Fish and Wildlife Area.
(6) Francis Slocum State Forest.
(7) Glendale Fish and Wildlife Area.
(8) Green-Sullivan State Forest.
(9) Hardy Lake (including adjacent lands administered by the department of natural resources).
(10) Hillenbrand Fish and Wildlife Area.
(11) Hovey Lake Fish and Wildlife Area.
(12) Huntington Lake (including adjacent lands administered by the department of natural resources).
(13) Jasper Pulaski Fish and Wildlife Area.
(14) Kankakee Fish and Wildlife Area.
(15) Kingsbury Fish and Wildlife Area.

(16) LaSalle Fish and Wildlife Area.
(17) Minnehaha Fish and Wildlife Area.
(18) Mississinewa Lake (including adjacent lands administered by the department of natural resources).
(19) Patoka Lake, except east of State Road 145 (in Orange County and Crawford County) and south of State Road 164 (in Dubois County and Crawford County).
(20) Pigeon River Fish and Wildlife Area.
(21) Salamonie Lake (including adjacent lands administered by the department of natural resources).
(22) Salamonie State Forest.
(23) Splinter Ridge Fish and Wildlife Area.
(24) Stucker Fork Fish and Wildlife Area.
(25) Sugar Ridge Fish and Wildlife Area.
(26) Tri-County Fish and Wildlife Area.
(27) Wilbur Wright Fish and Wildlife Area.
(28) Willow Slough Fish and Wildlife Area.
(29) Winamac Fish and Wildlife Area.

SECTION 2. **SECTION 1 of this document expires February 1, 2005.**

LSA Document #04-205(E)
Filed with Secretary of State: July 21, 2004, 9:45 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-207(E)

DIGEST

Temporarily modifies the rules governing entomology and plant pathology by establishing a quarantine against Phytophthora ramorum (commonly known as "sudden oak death disease"). Effective July 29, 2004.

SECTION 1. **(a) Phytophthora ramorum (commonly known as "sudden oak death disease") is a pest or pathogen not known to occur in Indiana. This document establishes standards to assist with preventing introductions of Phytophthora ramorum into Indiana.**

(b) As used in this document, the following definitions apply:
(1) "CDFA" means the California Department of Food and Agriculture.
(2) "Department" means the Indiana department of natural resources.
(3) "Pest or pathogen" has the meaning set forth in IC 14-8-2-203.
(4) "Plant" includes its bulbs, roots, grafts, scions, buds, logs, bark, mulch, firewood, lumber, sawdust, unprocessed wood or wood products, associated soils, or another related material capable of carrying Phytophthora ramorum.
(5) "PPQ" means the United States Department of Agriculture, Animal Plant Health Inspection Service, Plant Protection Quarantine.
(6) "State entomologist" means the director of the department's division of entomology and plant pathology.

(c) The following areas are infested with Phytophthora ramorum and are regulated under this document:
(1) California.
(2) Any other state or any province determined by the state entomologist to present a threat of introduction of Phytophthora ramorum into Indiana.

(d) Any plant of the following genera that originates from California (or another state or a province determined by the state entomologist) is a regulated article under this document:
(1) Abies (fir).
(2) Acer (maple).
(3) Aesculus (buckeye, horsechestnut).
(4) Arbutus (madrone or strawberry tree).
(5) Arctostaphylos (kinnikinnick or manzanita).
(6) Camellia (camellias, sasanquas).
(7) Castanea (chestnut).
(8) Corylus (hazelnut, filbert).
(9) Fagus (beech).
(10) Hamamelis (witch hazel).
(11) Heteromeles (Christmas berry, toyon, California holly).
(12) Kalmia (mountain laurel).
(13) Leucothoe sp.
(14) Lithocarpus (tanbark oak).
(15) Lonicera (honeysuckle).
(16) Pieris (pieris, andromeda).
(17) Pittosporum (pittosporums, Victorian box).
(18) Pseudotsuga (Douglas-fir).
(19) Quercus (oak).
(20) Rhamnus (buckthorn).
(21) Rhododendron (rhododendron and azalea).
(22) Rhus (sumac).
(23) Rosa (rose).
(24) Rubus (for example, salmonberry, raspberry, or blackberry).
(25) Syringa (lilac).
(26) Taxus (yew).
(27) Trientalis (western starflower).
(28) Umbellulara (California bay or Oregon myrtle).
(29) Vaccinium (for example, blueberry or huckleberry).
(30) Viburnum (arrowwood or nannyberry).
(31) Another plant species identified by the state entomologist as a possible vector of Phytophthora ramorum.

(e) A person must not bring into Indiana a regulated

article, described in subsection (d), without a certificate or its equivalent from PPQ or a phytosanitary certificate from the CDFA. The certificate must state the article has been produced and shipped from an area known to be free of Phytophthora ramorum and must be based on certification surveys conducted by agents of CDFA or PPQ that use approved published PPQ protocols regulating the pathogen.

(f) A nursery or dealer within Indiana that has received a shipment of regulated articles identified in subsection (d), or a person who controls a regulated article listed in subsection (d) received before the effective date of this document, must not sell, move, barter, trade, transport, give, or tender a regulated article until the article is released or destroyed by the state entomologist.

(g) A person must notify the state entomologist or a representative regarding receipt or possession of any regulated article. The notification shall include the name, contact information (telephone, cell phone, street address, city, zip code, of the persons controlling regulated article and the specific location (including directions) of the regulated article and number and kinds of regulated article). Any regulated article and any intermingled plant materials shall be removed from sale and held until inspected and cleared by an authorized inspector.

(h) This document does not prevent the state entomologist from issuing a permit to a qualified scientist to study Phytophthora ramorum or a regulated article infested by the pest or pathogen.

(i) When conducting an official duty, exempted from this document is any cooperator identified by the state entomologist, employee of the department, or employee of the PPQ.

(j) The state entomologist shall hold any regulated article that is received or moved in violation of this document until the state entomologist determines to destroy or to return the regulated article to the originator.

(k) A violation of this document is a violation of IC 14-24 and 312 IAC 18.

LSA Document #04-207(E)
Filed with Secretary of State: July 29, 2004, 11:15 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-223(E)

DIGEST

Temporarily amends 312 IAC 9 to govern noncommercial hunts at Chain O'Lakes State Park, Charlestown State Park, Clifty Falls State Park, Fort Harrison State Park, Harmonie State Park, Indiana Dunes State Park, Lincoln State Park, Ouabache State Park, Pokagon State Park, Potato Creek State Park, Shades State Park, Summit Lake State Park, Tippecanoe River State Park, Turkey Run State Park, Whitewater Memorial State Park, and Twin Swamps Nature Preserve. Under IC 4-22-2-37.1, IC 14-22-2-6, IC 14-10-2-5, and IC 14-22-6-13 (applicable to state parks), the director of the department of natural resources adopts the emergency rule set forth in this document. The emergency rule is adopted with the awareness the regulation of wild animals in Indiana is the responsibility of the department of natural resources, and with a heightened awareness of that responsibility (as well as a responsibility for the welfare of flora and other fauna), within Indiana state parks and dedicated nature preserves. More particularly, based upon the opinion of professional biologists, the director has determined: (A) white-tailed deer have caused, and will continue to cause, obvious and measurable damage to the ecological balance within these properties; and (B) the ecological balance within these properties will not be maintained unless action is taken to control their populations. Examples of damages caused by excessive deer populations include reduction of rare plant species and sampling data that show, more generally, vegetation species disturbance in areas accessible to deer browsing. Effective August 5, 2004.

SECTION 1. **(a) Notwithstanding 312 IAC 9-2-11, 312 IAC 8-2, and any other provision governing hunting a wild animal within a state park, individuals qualified under this SECTION may hunt white-tailed deer on November 15 through November 16, 2004, and November 29 through November 30, 2004, at the following sites and within the following schedules:**

(1) Chain O'Lakes State Park from 7:30 a.m. until 4 p.m., EST.
(2) Charlestown State Park from 7:30 a.m. until 4 p.m., EST.
(3) Clifty Falls State Park from 7:30 a.m. until 4 p.m., EST.
(4) Fort Harrison State Park from 7:30 a.m. until 4 p.m., EST.
(5) Harmonie State Park from 6:30 a.m. until 3 p.m., CST.
(6) Indiana Dunes State Park from 6:30 a.m. until 3 p.m., CST.
(7) Lincoln State Park from 7:30 a.m. until 4 p.m., EST.
(8) Ouabache State Park from 7:30 a.m. until 4 p.m., EST.
(9) Pokagon State Park from 7:30 a.m. until 4 p.m., EST.
(10) Potato Creek State Park from 7:30 a.m. until 4 p.m., EST.
(11) Shades State Park from 7:30 a.m. until 4 p.m., EST.
(12) Summit Lake State Park from 7:30 a.m. until 4 p.m., EST.

(13) Tippecanoe River State Park from 7:30 a.m. until 4 p.m., EST.
(14) Turkey Run State Park from 7:30 a.m. until 4 p.m., EST.
(15) Whitewater Memorial State Park from 7:30 a.m. until 4 p.m., EST.

(b) Except as provided in subsection (q) for Clifty Falls State Park and Fort Harrison State Park, a deer may be lawfully taken under this SECTION only by the use of a firearm that may be lawfully used to hunt deer in Indiana.

(c) In order to apply for a license under this SECTION, an individual must satisfy both of the following requirements:
(1) Possess at least one (1) valid resident license issued under 312 IAC 9-3-3, 312 IAC 9-3-4, or IC 14-22-12-7 to take deer.
(2) Be at least eighteen (18) years old by October 1, 2004.

(d) For each state park other than Clifty Falls State Park and Fort Harrison State Park, the department will determine the participants for the hunt by first selecting individuals who have completed a course of instruction in hunter safety under IC 14-22-35. If more than the maximum number of individuals who have completed this course apply for a license under this SECTION, the department will select the participants for that state park by a drawing from those individuals who have completed the course. If fewer than the maximum number of individuals who have completed this course apply for a license, the department shall supplement the participation list with applicants who have not completed a course of instruction in hunter safety. If supplementing the participation list with applicants who have not completed a course of instruction results in more applications than the maximum number of individuals who may be issued a license, the department will select the supplemental participants by a drawing from those individuals who have not completed the course.

(e) An application for a license under this SECTION must be completed on a department form as described in this subsection:
(1) The forms are available at all state parks and reservoirs, at the Customer Service Center in the Indiana Government Center-South, 402 West Washington Street, Room W160, Indianapolis, Indiana 46204, and on the Internet through the department's homepage.
(2) In order to qualify an applicant for participation, a completed form (including a photocopy of a license issued to the applicant as identified in subsection (c)(1)) must be actually received by 4 p.m., EST (4 p.m., CDT), on October 1, 2004, at the Department of Natural Resources, Division of State Parks and Reservoirs, 402 West Washington Street, Room W298, Indianapolis, Indiana 46204.

(f) An individual may file no more than three (3) separate applications for three (3) individual applicants, as long as each application is accompanied by a deer license described in subsection (c)(1). Up to three (3) applications may be submitted as a unit so that all or none of the applicants will be selected to participate in the hunt. The submission by an individual of more than one (1) application per period disqualifies the individual (and any other individual submitting as a unit with the individual) from participating in the drawing. For the purposes of this subsection, one (1) "period" is November 15 through November 16, 2004, and the other "period" is November 29 through November 30, 2004.

(g) Any drawing required by this SECTION will be conducted on a random basis. Written notice will be mailed by the department to successful applicants.

(h) Each individual issued a license under this SECTION will be randomly assigned to specific management units with designated parking assignments. Each license holder must comply with the requirements set forth in the assignment.

(i) The form of the license under this SECTION shall be as determined by the department. Each participant in the hunt must possess and display evidence of the license as specified by the department.

(j) Notwithstanding 312 IAC 9-1-15, a participant (except for a participant at Clifty Falls State Park and Fort Harrison State Park) must expose outer garments with hunter orange, which include both of the following:
(1) A hat or cap.
(2) A vest, coat, jacket, or coveralls.

(k) During the hunt, an individual must not take more than:
(1) Three (3) total deer.
(2) Included among the total deer taken, there must not be more than one (1) antlered deer.

(l) A deer taken under this SECTION does not apply to any bag limit for taking deer established by 312 IAC 9.

(m) All deer must be delivered to a designated check station within the state park.

(n) An individual must not enter a state park described in this SECTION during the following periods:
(1) from 8 p.m., EST (7 p.m., CST) on Sunday, November 14 through 8 a.m., EST (7 a.m., CST) on Wednesday, November 17, 2004; or
(2) from 8 p.m., EST (7 p.m., CST) on Sunday, November 28 through 8 a.m., EST (7 a.m., CST) on Wednesday, December 1, 2004;

unless the individual satisfies both subsection *[sic., subsections]* **(o) and (p).**

(o) An individual shall enter a state park only at a site designated by the department.

(p) In order to enter a state park, an individual must be one (1) of the following:

(1) An individual granted a license under this SECTION.

(2) A representative of the media.

(3) An employee of the department.

(4) Another individual with credentials supplied by the department.

(q) This subsection provides additional requirements that must be satisfied by a participant in the hunts at Clifty Falls State Park and Fort Harrison State Park:

(1) Except as otherwise provided in subdivision (2), an applicant must have successfully completed the International Bowhunter Education Program before participating in a hunt at Clifty Falls State Park and Fort Harrison State Park. A copy of documents showing completion shall be included with the application.

(2) If the maximum number is not filled with applicants who have successfully completed the International Bowhunter Education Program, a supplemental drawing shall be held among applicants who hold a valid Hunter Education Card to fill the remaining positions.

(3) An individual who participates in the hunt must not discharge bow and arrows except from a tree stand.

SECTION 2. **(a) Notwithstanding any other provision governing hunting a wild animal within a nature preserve dedicated under IC 14-31-1, individuals qualified under this SECTION may by firearms only hunt white-tailed deer at Twin Swamps Nature Preserve in Posey County from 6:30 a.m. until 3 p.m., CST on November 15 through November 16, 2004, and November 29 through November 30, 2004.**

(b) In order to apply for a license under this SECTION, an individual must satisfy both of the following requirements:

(1) Possess at least one (1) valid resident license issued under 312 IAC 9-3-3, 312 IAC 9-3-4, or IC 14-22-12-7 to take deer.

(2) Be at least eighteen (18) years old by October 1, 2004.

(c) The department will determine the participants for the hunt by first selecting individuals who have completed a course of instruction in hunter safety under IC 14-22-35. If more than the maximum number of individuals who have completed this course apply for a license under this SECTION, the department will select the participants for that nature preserve by a drawing from those individuals who have completed the course. If fewer than the maximum number of individuals who have completed this course apply for a license, the department shall supplement the participation list with applicants who have not completed a course of instruction in hunter safety. If supplementing the participation list with applicants who have not completed a course of instruction results in more applications than the maximum number of individuals who may be issued a license, the department will select the supplemental participants by a drawing from those individuals who have not completed the course.

(d) An application for a license under this SECTION must be completed on a department form as described in this subsection:

(1) The forms are available at all state parks and reservoirs, at Hovey Lake Fish and Wildlife Area, at the Customer Service Center in the Indiana Government Center-South, 402 West Washington Street, Room W160, Indianapolis, Indiana 46204, and on the Internet through the department's homepage. Forms may also be available at other staffed DNR property offices.

(2) In order to qualify an applicant for participation, a completed form (including a photocopy of a license issued to the applicant as identified in subsection (b)(1)) must be actually received by 4:00 p.m., EST (3:00 p.m., CST), on October 1, 2004, at the Department of Natural Resources, Division of State Parks and Reservoirs, 402 West Washington Street, Room W298, Indianapolis, Indiana 46204.

(e) An individual may file no more than three (3) separate applications for three (3) individual applicants, as long as each application is accompanied by a deer license described in subsection (b)(1). Up to three (3) applications may be submitted as a unit so all or none of the applicants will be selected to participate in the hunt. The submission by an individual of more than one (1) application per period disqualifies the individual (and any other individual submitting as a unit with the individual) from participating in the drawing. For the purposes of this subsection, one (1) "period" is November 15 through November 16, and the other "period" is November 29 through November 30, 2004.

(f) Any drawing required by this SECTION will be conducted on a random basis. Written notice will be mailed by the department to successful applicants.

(g) The form of the license under this SECTION shall be as determined by the department. Each participant in the hunt must possess and display evidence of the license as specified by the department.

(h) Notwithstanding 312 IAC 9-1-15, a participant must expose outer garments with hunter orange that include both of the following:

(1) A hat or cap.

(2) A vest, coat, jacket, or coveralls.

(i) During the hunt, an individual must not take more than:

(1) Three (3) total deer.

(2) Included among the total deer taken, there must not be more than one (1) antlered deer.

(j) A deer taken under this SECTION does not apply to any bag limit for taking deer established by 312 IAC 9.

(k) All deer must be delivered to a designated check station within the nature preserve.

(l) An individual must not enter Twin Swamps Nature Preserve during the following periods:

(1) from 8 p.m., EST (7 p.m., CST) on Sunday, November 14 through 8 a.m., EST (7 a.m., CST) on Wednesday, November 17, 2004; or

(2) from 8 p.m., EST (7 p.m., CST) on Sunday, November 28 through 8 a.m., EST (7 a.m., CST) on Wednesday, December 1, 2004;

unless the individual satisfies both subsection (n) and subsection (o).

(m) An individual shall enter Twin Swamps Nature Preserve only at a site designated by the department.

(n) In order to enter Twin Swamps Nature Preserve, an individual must be one (1) of the following:

(1) An individual granted a license under this SECTION.

(2) A representative of the media.

(3) An employee of the department.

(4) Another individual with credentials supplied by the department.

SECTION 3. **SECTIONS 1 and 2 of this document expire on December 13, 2004.**

LSA Document #04-223(E)
Filed with Secretary of State: August 5, 2004, 11:35 a.m.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-263

Under IC 12-8-3-4.4, LSA Document #03-263, printed at 27 IR 1209, was adopted by the Secretary of Family and Social Services Administration on July 13, 2004, recalled, and readopted on July 30, 2004. This rule amends 405 IAC 2-3-10 to specify that expenses that are subject to payment by a third party may not be used to establish spend-down eligibility for months prior to the month in which the expense is submitted and to provide that, if a recipient does not meet his or her spend-down for four consecutive months, medical assistance shall be discontinued. The rule that was adopted is a different version than the proposed rule that was published in the Indiana Register on January 1, 2004.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-95

Under IC 12-8-3-4.4, LSA Document #04-95, printed at 27 IR 3209, was adopted by the Secretary of Family and Social Services Administration on August 10, 2004. This rule amends 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 concerning eligibility and benefits under the Indiana Prescription Drug Program, and the definition and duration of eligibility, and the benefits for enrollees. The rule that was adopted is the same version as the proposed rule that was published in the Indiana Register on July 1, 2004.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #03-232

Under IC 12-8-3-4.4, LSA Document #03-232, printed at 27 IR 1626, adding 470 IAC 3-4.8 concerning the emergency or temporary closure of licensed child care centers and licensed child care homes was adopted by the director of the division of family and children on July 1, 2004. The rule adopted is a version different from the proposed rule that was published in the Indiana Register on February 1, 2004.

TITLE 55 DEPARTMENT OF COMMERCE

LSA Document #04-209

Under IC 4-22-2-23, the Department of Commerce intends to adopt a rule concerning the following:

OVERVIEW: Adds 55 IAC 9 relating to certification procedures and counseling requirements for nonprofit home ownership counselors. Questions or comments may be directed by mail to the Department of Commerce, attn: Deanna Oware, One North Capitol, Suite 600, Indianapolis, IN 46204 or by electronic mail to doware@commerce.state.in.us. Statutory authority: IC 4-4-3-8; P.L.73-2004.

TITLE 207 CORONERS TRAINING BOARD

LSA Document #04-231

Under IC 4-22-2-23, the Coroners Training Board intends to adopt a rule concerning the following:

OVERVIEW: Adds 207 IAC 2 to establish continuing education requirements. Questions or comments may be directed to Micah J. Cox, Staff Attorney, Coroners Training Board, Indiana Criminal Justice Institute, mcox@cji.state.in.us, (317) 232-7609. Statutory authority: IC 4-23-6.5-7.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-208

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amendments to 312 IAC 4-6-6 would reflect the official title of the law enforcement insurance board. Also, would modify the election of insurance board chair as according to the board's bylaws. Questions concerning the proposed rule amendments may be directed to the following telephone number: (317) 232-4699 or e-mail jkane@nrc.IN.gov. Statutory authority: IC 14-9-8-3; IC 14-10-2-4.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-210

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 5-6 that provides special watercraft restrictions on public freshwater lakes to add a new section 5.5 pertaining to Lake Manitou in Marshall County. A zone is established within a shallow area of the lake containing emergent vegetation and commonly known as "the Prairie". Within the zone, boats are limited to idle speed, their motors must be turned off, and anchoring is prohibited. Questions concerning the proposed new rule section may be directed to the following telephone number: (317) 233-3322 or e-mail: slucas@nrc.in.us. Statutory authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-215

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 2-4 that governs fishing tournaments and other organized boating activities, to reduce from 90 to 60 days, the minimum period an application must be filed with the department of natural resources before the activity is to occur. Establishes a licensure requirement for fishing tournaments on Sylvan Lake, Noble County. Questions concerning the proposed rule amendments may be directed to the following telephone number: (317) 233-3322 or e-mail: slucas@nrc.IN.gov. Statutory authority: IC 14-10-2-4; IC 14-15-7-3.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-232

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 9 concerning the sale and possession of endangered species of wildlife in Indiana, hunting deer with bow and arrows, hunting deer with bow and arrows under an extra deer license, and the taking of wild turkeys. Questions concerning the proposed rule amendments may be directed to the following telephone number: (317) 232-4699 or e-mail at jkane@nrc.IN.us. Statutory authority: IC 14-10-2-4; IC 14-22-2-6; IC 14-22-34-7; IC 14-22-34-13.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #04-211

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 requirements for identification of animals in the state. The rule may address premises and individual animal identification, official identification methods and procedures, assignment and distribution of official identification, identification required to move animals, timing of application of identification, responsibility for identifying animals, records, reports, and other related issues. Effective 30 days after filing with the secretary of state. Submit questions or comments 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 #04-212

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 update and amend rules relating to the control of diseases in sheep and goats including the disease scrapie. The proposal may address identification of animals and premises, testing, record keeping, monitoring and surveillance, positive and suspect animals, epidemiology, restrictions on sales and other transfers, and other disease control measures. The proposal may include scrapie certification of animals and flocks. Submit questions or comments 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 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-219

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 1-5-1 to increase the required time providers must retain medical records. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-230

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 1-8 to change the reimbursement methodology for covered outpatient hospital services. The amendments replace the existing outpatient hospital reimbursement methodology with a methodology that groups services that are clinically related and use similar resources into Ambulatory Payment Classifications (APCs). Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3.

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

LSA Document #04-229

Under IC 4-22-2-23, the Division of Mental Health and Addiction intends to adopt a rule concerning the following:

OVERVIEW: Amends 440 IAC 7.5 to make clearer the intent of the residential rule 440 IAC 7.5 and to make consistent throughout. The amendment also repeals the $520 limit on the Residential Living Allowance and updates reference to the latest edition of the Life Safety Code used by the State Fire Marshal. Statutory authority: IC 12-8-8-4; IC 12-21-2-8; IC 12-21-5-1.5.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #04-214

Under IC 4-22-2-23, the Indiana State Board of Education intends to adopt a rule concerning the following:

OVERVIEW: Adds 511 IAC 5-2-4.5 to provide for the use of an alternate assessment based on alternate achievement standards in lieu of ISTEP to determine the proficiency of students with the most significant cognitive disabilities. Statutory authority: IC 20-1-1-6; IC 20-10.1-16-10.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-216

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: To make numerous substantive and clarifying changes to the 2003 Indiana Building Code, 675 IAC 13-2.4. Public comments are invited and may be directed 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 e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-217

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: To make numerous substantive and clarifying changes to the 2003 Indiana Mechanical Code, 675 IAC 18-1.4. Public comments are invited and may be directed 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 e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-218

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: To make numerous substantive and clarifying changes to the 2003 Indiana Fuel Gas Code, 675 IAC 25-1. Public comments are invited and may be directed 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 e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-227

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: To adopt revised Special Administrative Rules for Industrialized Building Systems and Mobile Structure Systems to replace the current rules in 675 IAC 15-1. Public comments are invited and may be directed 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 e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-12-6-6; IC 22-13-2-2; IC 22-13-2-13; IC 22-13-4-2.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #04-213

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: The Department intends to promulgate a rule to amend 760 IAC 1-60 regarding physician specialty classes, discounts, and rates for part-time and retired physicians. 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 34-18-5-2.

TITLE 812 INDIANA AUCTIONEER COMMISSION

LSA Document #04-226

Under IC 4-22-2-23, the Indiana Auctioneer Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 812 IAC 1-1-5 concerning license fees; 812 IAC 1-1-35 concerning fees charged by the commission; 812 IAC 1-1-42 concerning compliance with IC 26-1-6-107; 812 IAC 1-1-43 concerning violations for professional incompetence; 812 IAC 3-1-1 concerning continuing education requirements; 812 IAC 3-1-6 concerning maintenance of continuing education certificates; 812 IAC 3-1-10 concerning renewal applications; 812 IAC 3-1-11 concerning failure to meet continuing education requirements; 812 IAC 3-1-13 concerning requirements for reinstating an inactive license. Repeals 812 IAC 1-1-36 concerning reconsideration of license after revocation. Questions or comments may be directed by mail to the Indiana Auctioneer Commission, Indiana Government Center-South, 302 West Washington Street, Room E012, Indianapolis, Indiana 46204, or by electronic mail at wlowhorn@pla.in.gov. Statutory authority: IC 25-1-8-2; IC 25-6.1-2-5; IC 25-6.1-3-5.

TITLE 828 STATE BOARD OF DENTISTRY

LSA Document #04-233

Under IC 4-22-2-23, the State Board of Dentistry intends to

adopt a rule concerning the following:

OVERVIEW: Amends 828 IAC 0.5-2-3 concerning fees. Adds 828 IAC 5 concerning requirements for instructor's licenses. Effective 30 days after filing with the secretary of state. Public comments are invited and may be directed to the Indiana State Board of Dentistry, Attention: Director, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204 or by e-mail to smazo@hpb.IN.gov. Statutory authority: IC 25-14-1-13; IC 25-14-1-27.5.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #04-224

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: Establish distance learning continuing education requirements and procedures for real estate salespersons and brokers. Establish the requirements and procedures for distance learning continuing education course sponsors. Allow an approved distance learning education course to be conducted in a facility, which is also used as a broker or salesperson office. Allow instruction for an approved distance learning education course to be more than eight hours of instruction in one day. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Commission Director, 302 West Washington Street, Room E012, Indianapolis, IN 46204-2700 or via e-mail at wlowhorn@pla.state.in.us. Statutory authority: IC 25-34.1-2-5; IC 25-34.1-9-21.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #04-225

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 876 IAC 3-6-2 to incorporate by reference the 2005 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 2005 edition. Questions or comments concerning the proposed rules may be directed to: Indiana Real Estate Commission, 302 West Washington Street, Room E012, Indianapolis, Indiana 46204-2700 or by electronic mail at wlowhorn@pla.IN.gov. Statutory authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1; IC 25-34.1-3-8.

TITLE 31 STATE PERSONNEL DEPARTMENT

Proposed Rule
LSA Document #04-170

DIGEST

Amends 31 IAC 1-9-4 and 31 IAC 2-11-4 to permit the use of sick leave to care for a parent or resident of the employee's household. Effective 30 days after filing with the secretary of state.

31 IAC 1-9-4
31 IAC 2-11-4

SECTION 1. 31 IAC 1-9-4 IS AMENDED TO READ AS FOLLOWS:

31 IAC 1-9-4 Sick leave; definition; accrual
Authority: IC 4-15-1.8-6; IC 4-15-1.8-7
Affected: IC 4-15-1.8-7

Sec. 4. (a) "Sick leave" ~~is defined as~~ **means the** absence from duty of any employee because of personal illness, injury, or legal quarantine. Sick leave may also be used for an illness or injury in the employee's immediate family that necessitates the employee's absence from work. For this purpose, "immediate family" means spouse, child, or parent. **For this purpose, "immediate family" also includes any person** who resides with and is dependent upon the employee for care and support. The director or appointing authority may at any time require of an employee a medical certificate from the attending physician or a designated physician, documenting the nature and extent of the disability or fitness to return to duty. The cost of such certification from a designated physician shall be the responsibility of the appointing authority. Sick leave may be granted if accrued and shall be charged in the same manner as vacation in accordance with section 3(g) of this rule.

(b) Sick leave with pay shall accrue to full-time employees in the non-merit service at the rate of seven and one-half (7.5) hours for every two (2) full months of employment; plus seven and one-half (7.5) additional hours for every four (4) months of full-time employment. Employees working on a part-time basis shall earn sick leave at the rate of three and three-fourths (3.75) hours for every two (2) months of employment; plus three and three-fourths (3.75) additional hours for every four (4) months of employment. Sick leave will not accrue to hourly, per diem, temporary, intermittent, or contractual employees or employees working less than half time.

(c) On separation, compensation for unused sick leave is only permitted under the retiree flexible spending program described in 31 IAC 4.

(d) An employee who resigns in good standing after June 30, 1982, and is subsequently rehired shall have reinstated any sick leave ~~which~~ **that** was unused and uncompensated at the time of their resignation.

(e) In recognition of the fact that conservation officers and excise police have a standard work day of eight and one-half (8.5) hours instead of seven and one-half (7.5) hours, the references to the numbers of hours in this section shall be converted for conservation officers and excise police as follows:

Hours Stated in this Section	Hours Converted for Conservation and Excise
3.75	4.25
7.5	8.5

If an employee transfers into or out of the conservation officer or excise police job families, the employee's leave balances will be adjusted proportionately to reflect the change in the number of hours of the standard work day. *(State Personnel Department; Non-Merit Agency Personnel Rule 9, Sec 4; filed Feb 15, 1978, 3:25 p.m.: Rules and Regs. 1979, p. 35; filed Aug 23, 1978, 3:35 p.m.: 1 IR 634; filed Jan 26, 1979, 2:50 p.m.: 2 IR 296; filed Apr 28, 1982, 12:55 p.m.: 5 IR 1170; filed Aug 17, 1982, 3:41 p.m.: 5 IR 2104; filed Nov 1, 1983, 4:00 p.m.: 7 IR 11, eff Jan 1, 1984; filed Sep 8, 1992, 5:00 p.m.: 16 IR 6; filed Dec 1, 1997, 4:30 p.m.: 21 IR 1252, eff Jan 1, 1998; filed May 10, 2000, 3:24 p.m.: 23 IR 2403, eff Jul 1, 2000; readopted filed May 4, 2001, 4:29 p.m.: 24 IR 2895) NOTE: Transferred from the Indiana department of administration (25 IAC 3) to the state personnel department (31 IAC 1) by Acts 1981, P.L.30, SECTION 3 (IC 4-15-1.8-8). Effective July 1, 1981.*

SECTION 2. 31 IAC 2-11-4 IS AMENDED TO READ AS FOLLOWS:

31 IAC 2-11-4 Sick leave
Authority: IC 4-15-2-6
Affected: IC 4-15-2-29; IC 4-15-2-30

Sec. 4. (a) "Sick leave" ~~is defined as~~ **means the** absence from duty of an employee because of personal illness, injury, or legal quarantine. Sick leave may also be used for an illness or injury in the employee's immediate family that necessitates the employee's absence from work. For this purpose, "immediate family" means spouse, child, or parent. **For this purpose, "immediate family" also includes any person** who resides with and is dependent upon the employee for care and support. The director or appointing authority may at any time require of an employee a medical certificate from the attending physician or a designated physician, documenting the nature and extent of the disability or fitness to return to duty. The cost of such certification from a designated physician shall be the responsibility of the appointing authority. Sick leave may be granted if accrued and shall be charged in the same manner as vacation leave in accordance with section 3(g) of this rule.

(b) Sick leave with pay shall accrue to full-time employees in the classified service at the rate of seven and one-half (7.5) hours for every two (2) full months of employment; plus seven

and one-half (7.5) additional hours for every four (4) months of full-time employment. Employees working on a part-time basis shall earn sick leave at the rate of three and three-fourths (3.75) hours for every two (2) months of employment; plus three and three-fourths (3.75) additional hours for every four (4) months of employment. Sick leave will not accrue to hourly, per diem, temporary, intermittent, or contractual employees or employees working less than half time.

(c) On separation, compensation for unused sick leave is only permitted under the retiree flexible spending program described in 31 IAC 4.

(d) An employee who resigns in good standing after June 30, 1982, and is subsequently rehired shall have reinstated any accrued sick leave that was unused and uncompensated at the time of their resignation. *(State Personnel Department; Rule 11, Sec 11-4; filed Aug 17, 1967, 8:40 a.m.: Rules and Regs. 1968, p. 127; filed Apr 19, 1972, 9:10 a.m.: Rules and Regs. 1973, p. 517; filed Jan 10, 1979, 3:40 p.m.: 2 IR 136; filed Apr 28, 1982, 12:50 p.m.: 5 IR 1166; filed Aug 17, 1982, 3:45 p.m.: 5 IR 2093; filed Nov 1, 1983, 4:00 p.m.: 7 IR 19, eff Jan 1, 1984; filed Sep 8, 1992, 5:00 p.m.: 16 IR 6; filed Dec 1, 1997, 4:30 p.m.: 21 IR 1255, eff Jan 1, 1998; filed May 10, 2000, 3:24 p.m.: 23 IR 2405, eff Jul 1, 2000; readopted filed May 4, 2001, 4:29 p.m.: 24 IR 2895) NOTE: Transferred from the state personnel board (30 IAC 1) to the state personnel department (31 IAC 2) by Acts 1982, P.L.23, SECTION 41. Effective July 1, 1982.*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 23, 2004 at 2:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Room W161, Indianapolis, Indiana the State Personnel Department will hold a public hearing on proposed amendments to the merit and non-merit personnel rules concerning the use of sick leave. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W161 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

D. Sue Roberson
State Personnel Director
State Personnel Department

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Proposed Rule
LSA Document #02-297

DIGEST

Adds 50 IAC 21 to establish standards for annually adjusting the assessed value of real property between reassessments. Effective 30 days after filing with the secretary of state.

50 IAC 21

SECTION 1. 50 IAC 21 IS ADDED TO READ AS FOLLOWS:

ARTICLE 21. ANNUAL ADJUSTMENTS

Rule 1. Purpose and Applicability

50 IAC 21-1-1 Purpose
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. The purpose of this article is to establish procedures to govern local assessing officials and the department of local government finance in the annual adjustment of assessed valuations of real property under IC 6-1.1-4-4.5. The procedures, procedural requirements, and standards established by this article will ensure that the annual assessed valuations are reflective of current market value in use conditions. *(Department of Local Government Finance; 50 IAC 21-1-1)*

50 IAC 21-1-2 Applicability
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 2. This rule applies to local assessing officials and the department of local government finance exercising authority under IC 6-1.1-4-4.5 in making annual adjustments in assessed valuations of real property within and across classifications. *(Department of Local Government Finance; 50 IAC 21-1-2)*

Rule 2. Definitions

50 IAC 21-2-1 Applicability
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. The definitions in this rule and 50 IAC 2.3-1-2(c), referring to the 2002 Real Property Assessment Manual and Guidelines 'Version A', apply throughout this article. *(Department of Local Government Finance; 50 IAC 21-2-1)*

50 IAC 21-2-2 "IAAO standard" defined
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 2. "IAAO standard" refers to the 1999 International Association of Assessing Officers (IAAO) Standards on Ratio Studies, which is hereby incorporated by reference in this article. Copies of the 1999 IAAO Standard on Ratio Studies are available for purchase from the International Association of Assessing Officers, 130 East Randolph, Suite 850, Chicago, Illinois 60601-6217. Unless otherwise indi-

cated, the definitions in the glossary section of the IAAO standard apply to all terms defined in the IAAO standard that are used in this article. *(Department of Local Government Finance; 50 IAC 21-2-2)*

50 IAC 21-2-3 "Local assessing official" defined
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 3. "Local assessing official" means the:
(1) county assessor;
(2) township assessor; or
(3) township trustee assessor;
who is responsible for performing the task identified in this rule. *(Department of Local Government Finance; 50 IAC 21-2-3)*

50 IAC 21-2-4 "Property tax assessment board of appeals" or "PTABOA" defined
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5; IC 6-1.1-28-1

Sec. 4. The "property tax assessment board of appeals" or "PTABOA" means the board authorized by IC 6-1.1-28-1. *(Department of Local Government Finance; 50 IAC 21-2-4)*

50 IAC 21-2-5 "Stratification" defined
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 5. "Stratification" means the process by which properties are broken down into uniform groups by criterion such as location, age, or class. For purposes of this article, stratification shall occur by property class, by neighborhood. *(Department of Local Government Finance; 50 IAC 21-2-5)*

50 IAC 21-2-6 "Work plan" defined
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 6. "Work plan" includes information such as:
(1) staffing requirements;
(2) proposed budget; and
(3) duration of project.
(Department of Local Government Finance; 50 IAC 21-2-6)

Rule 3. Ratio Studies and Sales Verification

50 IAC 21-3-1 Ratio studies
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. Local assessing officials shall perform all ratio studies using the methods or combination of methods acceptable under the Standard on Ratio Studies published by the International Association of Assessing Officers (IAAO standard), or other acceptable appraisal methods approved by the department. Unless otherwise indicated, the definitions in the glossary section of the IAAO standard are inferred throughout this article. *(Department of Local Government Finance; 50 IAC 21-3-1)*

50 IAC 21-3-2 Verification requirements
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5; IC 6-1.1-5.5-3

Sec. 2. (a) The township assessor shall retain and properly verify all sales disclosure forms forwarded to the assessing official under IC 6-1.1-5.5-3. In conjunction with IAAO standards, the township assessor shall utilize the sales verified to determine whether an adjustment factor shall be applied. If the township assessor does not perform the verification of sales under this section and the county assessor determines that the process is essential for purposes of this article, the county assessor shall verify the sales to be used in the determination of adjustment factors.

(b) Each township assessor shall complete sales verification by the January 15 preceding the assessment date or submit a work plan to the county assessor by January 15 providing for completion of verification by the March 1 assessment date. By January 31, the county assessor must determine whether the sales verification process can be performed in a timely manner under the work plan submitted by the township. If the county assessor determines that the sales verification will not be completed in a timely manner, the county assessor shall convene a meeting with the township assessing official or officials to remedy the work plan in an attempt to meet the time requirements of this article. If the parties are unable to remedy the work plan, the county assessor shall verify the remaining sales. The county assessor shall notify the department, the county PTABOA, and the county council should a township official fail to timely complete the sales verification function. *(Department of Local Government Finance; 50 IAC 21-3-2)*

50 IAC 21-3-3 Valuation date and time adjustment
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 3. (a) The local assessing official shall use sales of properties occurring between January 1, 2003, and December 31, 2004, in performing sales ratio studies for the March 1, 2005, assessment date. For assessment years occurring March 1, 2006, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.

(b) The valuation date is January 1 of the year preceding the year of the assessment date. Sales occurring before or after that date shall be trended if appropriate, in accordance with the IAAO standard. The time adjusted sale price shall become the basis for all ensuing analysis undertaken under this article.

(c) If the sales data available is insufficient to satisfy the IAAO standard, the local assessing official may use sales from earlier or more recent time periods, or both, by adjusting and time trending the sales data as described in the IAAO standard. If the local assessing official wishes to use a method for adjusting sales data that is not permitted by the IAAO standard, the county assessor shall obtain prior written approval from the director of the assessment division of the department of local government finance for that alternative method for adjusting more recent sales data.

(d) If, after expanding the sales window, the local assessing official determines that insufficient data is available to perform a statistically valid study of sales data, the county assessor shall explain in writing to the director of the assessment division of the department of local government finance the reasons for using other data. County assessors shall not use performance audits in determining trending factors. *(Department of Local Government Finance; 50 IAC 21-3-3)*

Rule 4. Review of Neighborhood Delineations and Land Values

50 IAC 21-4-1 Review of neighborhood delineations

Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. (a) The township assessor shall review the residential neighborhood delineations established for the 2002 general reassessment to determine if the delineations used adequately placed like property into homogeneous geographic groups. For purposes of this rule, the local assessing official shall modify neighborhood boundaries if their neighborhood review identifies inadequacies in the original delineations; this may include the development of new neighborhood delineations. The township assessors shall base new delineations on geographical areas exhibiting a high degree of similarity in:

(1) amenities;
(2) use;
(3) economic trends; and
(4) building characteristics, such as:
(A) improvement quality;
(B) age; and
(C) physical characteristics.

(b) If the local assessing official determines through review, ratio studies, or appeals from previous assessments years that the neighborhood delineations need to be modified, the local assessing official shall notify the PTABOA in the county the neighborhood is located and ask to be placed on the next agenda for PTABOA approval.

(c) In areas where values are erratic and geographic neighborhood delineations are not sufficiently homogeneous, it is appropriate either to reassess the properties in that area or to further stratify properties by property characteristics, developing separate factors for various property strata. For example, if older homes in a specific neighborhood are appreciating or depreciating at a more rapid rate than new homes, the two (2) groups should be stratified and analyzed separately with a factor determined for each property type within the specific neighborhood.

(d) It may not be sufficient to merely stratify properties and sales according to their classification, that is, residential and commercial, and develop one (1) neighborhood and one (1) trending factor for the entire class of property. Properties throughout any given municipality or area, even though they have the same classification, may vary considerably in quality, style, age, location, and amenities and, therefore, may change in value at differing rates. Sales used to develop trending factors must be comparable to the properties for which the factors are being developed. In other words, the assessor should endeavor to ensure that the factors are developed from a sample of sales that is representative to the population of parcels.

(e) The assessing official may also determine that it is inappropriate to apply a trending factor on all parts of a property. For example, the assessing official may determine to apply the trending factor only to the land, or the assessing official may determine to apply the trending factor to the dwelling and one (1) outbuilding or garage, and not on other outbuildings, recent additions, or other improvements. In that case, the assessing official shall document the reasons for application of the trending factor to some, but not all, of the improvements and submit the evidence to the PTABOA. The assessing official must be able to demonstrate that the factor was calculated based upon a sales analysis including the same subset of parcel data; that is, if the trend factor was developed based upon an analysis of the values of all improvements, then the factor must be applied to all improvements and not merely a subset of the improvements. Before a separate adjustment factor is applied, the local assessing official must confirm that separate factors can be accommodated in the computer-assisted mass appraisal system in the county.

(f) The assessing official shall also delineate commercial, utility, and industrial properties into market areas or otherwise stratify for purposes of applying trending factors. Assessors shall base market areas on geographic delineations of areas exhibiting a high degree of similarity in:

(1) amenities;
(2) general use groupings;
(3) economic trends;
(4) desirability; and
(5) property characteristics, such as:

(A) improvement quality;
(B) age; and
(C) physical characteristics.
(Department of Local Government Finance; 50 IAC 21-4-1)

50 IAC 21-4-2 Review of land values
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 2. (a) The township assessor shall review land values established for the 2002 general reassessment to determine if the evidence used to calculate the base rates adequately reflect current market data value adjustments. If upon review it is determined that modifications need to be made in order to promote uniform and equal assessments, the local assessing official shall update the data to achieve the most accurate factor to adjust valuations.

(b) The township assessor's proposal of modification of land values must be uniform and consistent with regard to the valuation date of the base unit land values. That is, if the local assessing official is not revising all base unit land values to reflect the valuation date, then the township assessor must make time value adjustments consistent with the other market areas.

(c) If the township assessor determines through review, ratio studies, or appeals from previous assessments years that the land base rate units in fact need to be modified, the local assessing official shall notify the PTABOA in the county in which the property is located and ask to be placed on the next agenda for PTABOA approval.

(d) The local assessing official shall provide all supporting documentation to the PTABOA, upon request, including sales ratio studies and electronic data concerning all sales in the affected neighborhood. *(Department of Local Government Finance; 50 IAC 21-4-2)*

50 IAC 21-4-3 Review of property tax assessment board of appeals
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 3. After hearing and consideration, the PTABOA shall enter an order that adopts final trending factors and approves, modifies, or denies changes to neighborhood delineations, market areas, and land values. *(Department of Local Government Finance; 50 IAC 21-4-3)*

Rule 5. Analysis; Application of Factor; Stratification

50 IAC 21-5-1 Preliminary analysis
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. (a) Ratio studies shall be generated annually for each township and property class group. The local assessing official will review the statistics for the sales occurring during the two (2) years preceding the assessment date.

(b) The coefficient of dispersion (COD) should be examined for equity of current assessments. If the ratio study conducted reflects a coefficient of dispersion outside what the IAAO Standards require, further stratification or a reassessment of that particular property group may be the only reasonable alternatives for restoring uniformity to the assessments.
(1) When the COD is less than 10.0, the local assessing official shall proceed under the premise that trending the classification will be sufficient to meet the requirements of this article.
(2) When the COD is greater than 10.0, the assessor must review neighborhood delineations and stratifications.

(c) Price related differential (PRD) measures assessment progressivity or regressivity. Stratifications with PRDs greater than 1.03 or less than.98 requires the same remedy as 50 IAC 21-11-1. *(Department of Local Government Finance; 50 IAC 21-5-1)*

50 IAC 21-5-2 Application of factor
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 5-14-1.5; IC 6-1.1-4-4.5

Sec. 2. (a) If, upon review of the ratio studies, the local assessing official determines that a factor must be applied to the specified property group, the local assessing official shall contact the PTABOA in the county the property is located and request to be placed on the next agenda for PTABOA approval.
(1) The PTABOA shall review the proposed changes and trending factors in a public hearing, with notice to the public in accordance with IC 5-14-1.5.
(2) The PTABOA may subpoena additional information or perform additional studies, including an independent ratio study, to determine whether to approve or reject modifications to the neighborhood delineations, land values, and trending factors.
(3) Any taxpayer may appear at the public hearing and submit additional evidence supporting or countering the proposed modifications and trending factors.

(b) If assessing officials determine that there are insufficient sales of commercial or industrial improved property in a township or county to determine a trending factor, the county shall use one (1) or more of the following to derive trending factors or modify the values of commercial and industrial property:
(1) Marshall and Swift cost and depreciation tables from the first quarter of the calendar year preceding the assessment date.
(2) Income data, rental data, market value appraisals, and other relevant evidence derived from appeals of the

2002 reassessment and trended, as applicable, to the January 1 of the year preceding the assessment date.
(3) Commercial real estate reports.
(4) Governmental studies.
(5) Census data.
(6) Multiple listing service (MLS) data.
(7) The independent study performed by the Indiana Fiscal Policy Institute.
(Department of Local Government Finance; 50 IAC 21-5-2)

50 IAC 21-5-3 Stratification
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5; IC 6-1.1-4-39

Sec. 3. (a) If, upon review of ratio studies, neighborhood delineations, and land values, the local assessing official determines that further categorization of property types is necessary to promote uniform and equal assessments, the local assessing official shall attempt stratification before commencing a reassessment to adjust real property market valuations.

(b) The local assessing official will first need to identify similar groups of property, by property class within a neighborhood, based on criteria such as location and age. This breaking down of property or layering of property classifications is stratification. The ratio studies are generated for various strata until the assessor determines the properties that are causing CODs or PRDs, or both, that are outside the requirements of this rule. Refinements are then made to the valuation of all similarly situated properties so that the assessment statistics will fall within the requirements. For example, an examination of the outlier sales indicates that properties on large acreage tracks are undervalued causing the COD to be out of line. Grouping by land size shows an acceptable COD within the group but the median ratio for the larger tracks is lower than the smaller tracks. The assessor might then adjust the excess acreage rate so that the median of the large acreage comes to the same level as the remaining parcels. After this is accomplished in accordance with 50 IAC 21-4-2, the application of an overall adjustment factor shall be applied based on the revised sales ratio.

(c) In accordance with IC 6-1.1-4-39, stratification, if appropriate, and trending of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units shall take into account that the valuation of such property is to be determined by applying the least of the following appraisal approaches:
(1) The cost approach.
(2) The sales comparison approach.
(3) The income capitalization approach.

(d) In accordance with IC 6-1.1-4-39(b), stratification, if appropriate, and trending of real property that has at least one (1) and not more than four (4) rental units shall take into account that the gross rent multiplier method is the preferred method of valuing such property. *(Department of Local Government Finance; 50 IAC 21-5-3)*

Rule 6. Agricultural Property

50 IAC 21-6-1 Agricultural property
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. (a) Land used for agricultural purposes shall be trended consistent with the guideline methodology developed for the 2002 general reassessment agricultural land value. The department will issue annually, before January 1, the base rate to be applied for the following March 1 assessment date.

(b) Those portions of agricultural parcels that include land and buildings not used agriculturally, such as homes, homesites, and excess land and commercial or industrial land and buildings, shall be trended by the factor or factors developed for other similar property within the geographic stratification. The residence portion of agricultural properties will be trended by the factors applied to similar residential properties. *(Department of Local Government Finance; 50 IAC 21-6-1)*

Rule 7. Time

50 IAC 21-7-1 Time
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5; IC 6-1.1-13-7

Sec. 1. (a) Assessing officials shall perform trending compliant with this article and provide the results specified in 50 IAC 21-8-1 and the data specified in 50 IAC 21-9-1 to the department before tax bills are sent based on values generated by any form of annual adjustment performed under this rule.

(b) If any trending factor is not reflected in the notice of valuation sent to the taxpayer (Form 11), the trending factor must be advertised by the county assessor in the same manner as specified in IC 6-1.1-13-7. *(Department of Local Government Finance; 50 IAC 21-7-1)*

Rule 8. Mandatory Analysis

50 IAC 21-8-1 Mandatory Analysis
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. (a) After the application of trending factors, the county assessor shall calculate an assessment ratio for each of the following classes of property in each township:
(1) Improved residential.

(2) Unimproved residential.
(3) Improved commercial.
(4) Unimproved commercial.
(5) Improved industrial.
(6) Unimproved industrial.
(7) Agricultural land.

(b) If any of the classes of property listed in subsection (a) consists of fewer than twenty-five (25) parcels in a township, the assessing official shall combine or otherwise stratify similar classes or subclasses of property in order to determine assessment ratio statistics.

(c) In calculating assessment ratios, each county assessor shall disregard distributable utility property. The county assessor shall classify locally assessed utility real property according to its use, for example, commercial or industrial, for purposes of calculating assessment ratios. *(Department of Local Government Finance; 50 IAC 21-8-1)*

Rule 9. Transfer of Data to Department of Local Government Finance

50 IAC 21-9-1 Transfer of data
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. (a) County assessors must submit to the department all sales disclosure data with all parcel data in formats specified by the department in electronic form. Such sales disclosure data must include, but not be limited to, sales disclosure data and parcel data on all sales in the county.

(b) Upon request, the county assessor or any person that the county or township assessor has contracted to perform any studies associated with this trending rule shall provide any further information, at no cost to the department, that the department determines is necessary or proper to the department's determination of compliance with the requirements of IC 6-1.1-4-4.5, this rule, or the IAAO standard.

(c) County assessors shall forward to the department of local government finance electronic spreadsheets that contain all sales data whether it was used in the study or not. The data the county assessor provides must, at a minimum, include the following information for each property that sold in the county in 2003 and 2004, and for each other parcel used to calculate the coefficient of dispersion, price related differential, and median ratio:
(1) Parcel number.
(2) Assessed value of land.
(3) Parcel acreage.
(4) Assessed value of improvements.
(5) Assessed value of land prior to trending.
(6) Assessed value of improvements prior to trending.
(7) Date of sale.
(8) Sale price.
(9) Time adjusted sale price.
(10) Township.
(11) School corporation.
(12) County taxing district number.
(13) Department of local government finance taxing district number.
(14) Condition rating.
(15) Effective year built of main structure.
(16) Grade.
(17) Neighborhood code.
(18) Property class code.
(19) Flag denoting the sales inclusion in the statistical calculations (y/n).
(Department of Local Government Finance; 50 IAC 21-9-1)

50 IAC 21-9-2 Computer assisted mass appraisal systems
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 2. (a) The local assessing official shall be responsible for ensuring the sales data is included in the database used in the property valuation software employed by the assessors. The local assessor shall also capture this data in other analytical or data capture software systems, but all transfers with a stated consideration must be included in the primary valuation software.

(b) This article is not intended to require assessors to utilize particular computer assisted mass appraisal (CAMA) system fields to trend the values. The intent of annual adjustments is to reach current market value in use and if that is more easily accommodated within the county's system by application of modifying the neighborhood factor or some other field than by applying a separate trend factor, that is acceptable. *(Department of Local Government Finance; 50 IAC 21-9-2)*

Rule 10. Mandatory Application of Factor

50 IAC 21-10-1 Provision of information to department of local government finance
Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. (a) If the median ratio calculated for any class in a township, as verified by the department, falls outside the range specified in the IAAO standard, the county assessor shall apply the factor required to bring the median ratio to one (1.0).

(b) If the county assessor believes that reasons exist why no factor, or a factor other than that required to bring the median ratio to one (1.0), should be applied in a particular township, the county assessor shall immediately notify the commissioner of the department of local government finance in writing of those reasons and request permission

to take action other than that mandated in the preceding subsection or to take no action.

(c) The commissioner shall act on the request within thirty (30) days of receiving the request. In response to a county assessor's request for permission to take action other than that mandated in subsection (a), the commissioner may:

(1) require the county assessor to take the action mandated in subsection (a);

(2) permit the action requested by the county assessor; or

(3) require the county assessor to take other action short of that required in subsection (a).

(Department of Local Government Finance; 50 IAC 21-10-1)

Rule 11. Reassessment

50 IAC 21-11-1 Reassessment

Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5

Sec. 1. (a) If the coefficient of dispersion for any class in a township, as verified by the department, falls outside the range specified in the IAAO standard (fifteen (15.0) for residential improved property; twenty (20.0) for all other classes), the county assessor shall direct the township assessor to reassess the class in that township.

(b) If the county assessor believes that reasons exist not to reassess a class in a particular township under subsection (a), the county assessor shall immediately notify the commissioner of the department of local government finance in writing of those reasons and request permission to take action other than that mandated in the preceding subsection or to take no action.

(c) The commissioner shall act on the request within thirty (30) days of receiving the request. In response to a county assessor's request for permission to take action other than mandated in subsection (a), the commissioner may:

(1) require the county assessor to take the action mandated in subsection (a);

(2) permit the action requested by the county assessor; or

(3) require the county assessor to take other action short of that required in subsection (a).

(Department of Local Government Finance; 50 IAC 21-11-1)

Rule 12. Action by Department of Local Government Finance

50 IAC 21-12-1 Action

Authority: IC 6-1.1-31-1; IC 6-1.1-31-12
Affected: IC 6-1.1-4-4.5; IC 6-1.1-14-4; IC 6-1.1-14-9

Sec. 1. (a) In the event that a county fails to perform the actions required by this rule, by the deadlines set in this article, the department of local government finance shall perform those actions. In doing so, the department of local government finance shall use data in its possession, obtained from:

(1) the county assessor; or

(2) any of the sources listed in this rule.

(b) Using the data described in subsection (a), the department of local government finance shall propose to apply different trending factors in any county, within a county, between counties, or in the state as a whole, in any one (1) or more of the classes of property listed in 50 IAC 21-8-1. The department of local government finance shall issue notice and provide opportunity for hearing in accordance with IC 6-1.1-14-4 and IC 6-1.1-14-9, as applicable, before issuing final trending factors. *(Department of Local Government Finance; 50 IAC 21-12-1)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 30, 2004 at 11:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, 1058 Conference Room, Indianapolis, Indiana the Department of Local Government Finance will hold a public hearing on proposed new rules to govern the annual adjustments of real property between reassessments. Parties interested in participating in the public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation that may serve to support, clarify, or supplement their concerns, suggestions, or proposed revisions. The Department of Local Government Finance also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Heather Scheel, General Counsel, Department of Local Government Finance, at (317) 232-5895 or by e-mail hscheel@dlgf.IN.gov. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Beth Henkel
Commissioner
Department of Local Government Finance

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule
LSA Document #04-144

DIGEST

Adds 170 IAC 4-1.2, 170 IAC 5-1.2, and 170 IAC 6-1.2 to establish new customer service rights and responsibility 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, 170 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.

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 4-1.2
170 IAC 5-1-15
170 IAC 5-1-16
170 IAC 5-1-16.5
170 IAC 5-1-16.6
170 IAC 5-1-17
170 IAC 5-1.2
170 IAC 6-1-15
170 IAC 6-1-16
170 IAC 6-1-17
170 IAC 6-1.2
170 IAC 7-1.3-2
170 IAC 7-1.3-3
170 IAC 7-1.3-8
170 IAC 7-1.3-9
170 IAC 7-1.3-10
170 IAC 8.5-2-1
170 IAC 8.5-2-3
170 IAC 8.5-2-4
170 IAC 8.5-2-5

SECTION 1. 170 IAC 4-1.2 IS ADDED TO READ AS FOLLOWS:

Rule 1.2. Electric Customer Service Rights and Responsibilities

170 IAC 4-1.2-1 Applicability and scope
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 1. (a) This rule applies to any:
(1) electric public utility; and
(2) rural electric membership corporation;
that is now, or may hereafter be, engaged in the business of rendering service to the public under the jurisdiction of the commission.

(b) This rule creates the minimum level of service that a utility is expected to meet when providing reasonable quality electric utility services to the public and to establish the obligations of both the utility and the customer.

(c) No utility shall discriminate against or penalize a customer for exercising any right granted by this rule. If a utility's tariff on file with the commission contains provisions that conflict with this rule, this rule shall supersede any conflicting tariff provisions.

(d) Any utility subject to this rule that fails to meet the standards herein shall be subject to all legal remedies provided by law. Upon complaint or its own motion and after notice and hearing, the commission may order lawful enforcement mechanisms against a public utility that fails to meet the requirements or standards established in this rule. Nothing in this rule shall prevent the commission from exercising any authority it may have under applicable law to enforce this rule in the event any public utility fails to comply.

(e) The adoption of this rule shall in no way preclude the commission, upon complaint by a customer, upon its own motion or upon the petition of any utility or the office of the utility consumer counselor, after notice and hearing, from taking any of the following actions:
(1) Altering or amending this rule in whole or in part.
(2) Requiring any other or additional service, equipment, facility, or standard.
(3) Making such modifications with respect to the application of this rule as may be found necessary to meet exceptional conditions.
(4) Requiring a utility to comply with any other service standards.
(5) At its sole discretion, granting, in whole or in part, permanent or temporary waivers from this rule on an expedited basis.
The adoption of this rule shall not in any way relieve any utility from any of its duties under the law of this state or rules and orders of the commission.

(f) If any provision of this rule is determined by competent authority to be prohibited or unenforceable, the provision shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. *(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-1)*

170 IAC 4-1.2-2 Definitions
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-1; IC 8-1-13

Sec. 2. The following definitions apply throughout this rule:
(1) "Applicant" means any person or designated agent who seeks to become a customer for residential electric utility service.
(2) "Commission" means the Indiana utility regulatory commission.
(3) "Customer" means any person who requests and obtains residential utility service and is responsible for the payment of charges, compliance with filed tariffs, and rules of the utility.
(4) "Disconnection" means the termination or discontinuance of utility service.
(5) "Late payment charge" means the one-time penalty assessed by a utility on a customer's account when the account becomes delinquent.
(6) "Residential service" means electric utility service for household purposes that is billed under a residential rate.

(7) "Utility" or "public utility" means any public utility (as defined in IC 8-1-2-1) or any rural electric membership corporation (as established by IC 8-1-13) that furnishes electric service to the public under the jurisdiction of the commission.

(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-2)

170 IAC 4-1.2-3 Creditworthiness guidelines

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 3. (a) A utility shall determine the creditworthiness of an applicant or customer in an equitable and nondiscriminatory manner:

(1) without regard to:

(A) race;
(B) color;
(C) creed;
(D) religion;
(E) national origin;
(F) sex;
(G) marital status;
(H) receipt of public assistance; or
(I) the economic character of the area wherein the applicant or customer resides; and

(2) solely upon the credit risk of the individual applicant or customer without regard to the:

(A) collective credit reputation of the area in which he or she lives; and
(B) credit history of any other individual residing in the household or the applicant or customer's spouse.

(b) A utility may require a residential service applicant or customer to satisfactorily establish his or her financial responsibility (creditworthiness). The utility may require a deposit or other reasonable guarantor to secure payment of bills before providing utility service if the applicant or customer is not deemed creditworthy due to any of the following circumstances:

(1) The applicant or customer does not meet or exceed the predetermined minimum credit score selected by the utility using a credit scoring system as provided in the utility's tariff.

(2) The applicant or customer has failed to pay for past due electric service furnished to him or her at the same or at another address within the past four (4) years.

(c) A bill for one (1) class of service (such as commercial) shall not be transferred to a bill for another class of service (such as residential), nor shall a bill for one (1) form of utility service (such as water) be transferred to a bill for another form of utility service (such as electric). Utility service shall not be denied for nonpayment of bills for merchandise or other nonutility or unregulated services.

(d) Utilities shall treat customers who have filed bankruptcy under federal law in accordance with the protective provisions of 11 U.S.C. 366, effective October 22, 1994.

(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-3)

170 IAC 4-1.2-4 Deposits

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2; IC 32-34-1

Sec. 4. (a) If the applicant or customer fails to establish that he or she is creditworthy under section 3 of this rule, the applicant or customer may be required to make a reasonable deposit. The deposit shall not exceed one-sixth ($^1/_6$) of the estimated annual billings for regulated utility service at the address at which service is rendered to the applicant or customer and shall be paid in full before establishment of service, subject to the provisions of section 6 of this rule; provided, however, that a deposit shall be based upon estimated regulated electric service charges only. If a deposit is greater than one hundred fifty dollars ($150), the utility shall advise the applicant or customer simultaneously with making a demand for a deposit that the applicant or customer may pay the deposit in equal installment payments over a period of no fewer than three (3) months, and service shall be connected upon receipt by the utility of the first payment. For example, if the total deposit required by a utility under this section is one hundred eighty dollars ($180), the applicant or customer could make three (3) payments of sixty dollars ($60) over a three (3) month period, and service would be connected after the first sixty dollar ($60) payment. The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule in order to receive service. An initial deposit made by a customer shall be subject to reevaluation upon the request of either the utility or the customer, based upon actual charges for services rendered, at any time after service has been provided.

(b) The utility may elect to accept a written guarantee, signed by a third party guarantor acceptable to the utility within its discretion, of payment for all utility service rendered or requested to be rendered to the applicant or customer. The guarantor may terminate the guarantee upon thirty (30) days prior written notice. The guarantee shall be in full force and effect up to and including the date the guarantee shall terminate, and the guarantor shall be obligated, as provided in the written guarantee, respecting the payment of the amount of the applicant or customer's bill on the date of termination. A guarantee shall terminate when the customer submits satisfactory payment for a period of ten (10) out of any twelve (12) consecutive months.

(c) If the utility requires a deposit or a written guarantee as a condition of providing service, the utility shall advise the applicant or customer of the reason upon which the utility bases its decision and provide the applicant or

customer with an opportunity to rebut the facts and show other facts demonstrating creditworthiness.

(d) A utility may require an existing customer to make a reasonable deposit, or an additional deposit in cases where a deposit has been made and exhausted under this rule, under any of the following circumstances:

(1) The customer has been mailed disconnect notices for two (2) consecutive months.

(2) The customer has been mailed disconnect notices for any three (3) months within the preceding twelve (12) month period.

(3) The service to the customer has been disconnected within the past forty-five (45) days for nonpayment.

In such cases, notice of the need for a deposit shall be in writing, and the customer shall be given ten (10) business days from the mailing date of the notice within which to make the deposit. When the service has been disconnected within the past four (4) years under section 5 of this rule, the deposit shall be provided before the service will be reconnected. The total amount of all deposits required for service under this section may not exceed an amount equal to one-sixth ($^1/_6$) of the annualized estimated billings for regulated utility service to the customer at the address at which service is rendered. The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule.

(e) Requirements for interest upon a deposit shall be as follows:

(1) A deposit held more than thirty (30) days shall earn interest from the date of deposit. Beginning on the effective date of this rule, the rate of interest shall be set by the commission based upon the then existing rate for one (1) year United States Treasury Constant Maturity securities. The interest rate shall be rounded to the nearest one-half ($^1/_2$) of one percent (1%). In December of each year, the commission shall issue a general administrative order establishing the interest rate for the next calendar year that shall be paid on all deposits held during all or part of the subsequent year.

(2) The deposit shall not earn interest after the date it is mailed or personally delivered to the customer or otherwise lawfully disposed of as provided in subsection (f)(6).

(f) Requirements for refunds shall be as follows:

(1) Any deposit and accrued interest shall be promptly refunded to the customer without the customer's request when the customer submits satisfactory payment ten (10) out of any twelve (12) consecutive months without late payment.

(2) A statement of accounting for each transaction affecting the deposit and interest shall accompany refunds of deposits or accrued interest issued under this section.

(3) Following a customer requested termination of service, the utility shall do the following:

(A) Apply the deposit, plus accrued interest, to the final bill.

(B) Refund any remaining deposit and accrued interest within fifteen (15) business days after payment of the final bill.

(4) A utility shall maintain a record of each applicant or customer making a deposit that shows the following:

(A) The name of the customer.

(B) The current mailing address of the customer.

(C) The amount of the deposit.

(D) The date the deposit was made.

(E) A record of each transaction affecting the deposit.

(5) Each customer shall be provided a written receipt from the utility at the time the customer's deposit is paid in full or any time the customer makes a partial payment. The utility shall provide a reasonable method by which a customer, who is unable to locate his or her receipt, may establish that he or she is entitled to a refund of the deposit and payment of interest thereon.

(6) Any deposit made by the applicant or customer to the utility (less any lawful deductions to be refunded), or any sum the utility is ordered to refund for electric service that has remained unclaimed for one (1) year after the utility has made a diligent effort to locate the customer who made the deposit or the heirs of the customer, shall be presumed abandoned and treated in accordance with IC 32-34-1 et seq.

(g) A deposit may be used by the utility to cover any unpaid balances owed the utility following disconnection of utility service, provided, however, that any surplus be returned to the customer as provided in this section.

(h) A deposit shall not be applied to satisfy an applicant or customer's bill, prior arrearage, or outstanding indebtedness that is greater than four (4) years old; however, a utility may pursue the unpaid balances via collections or other means provided by applicable law.

(i) At the end of every year of service, if the deposit plus interest is not refunded to the customer, the utility shall automatically refund the accrued interest on the deposit to the customer by crediting the customer's account and stating this credit clearly on the customer's next regular bill.

(j) A customer who fails to pay a bill by the time specified by the regulations of the utility and commission regarding the prompt payment of bills, and who further fails to pay the bill within a reasonable period after presentation of a disconnection of service notice for nonpayment, may be required to pay the bill and to reestablish credit by making a deposit under this rule.

(k) Establishment of credit by deposit shall not relieve a customer from complying with the commission's rules for prompt payment of bills. *(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-4)*

170 IAC 4-1.2-5 Disconnection and prohibited disconnections

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-122
Affected: IC 8-1-2-4

Sec. 5. (a) Requirements for disconnection upon a customer's request are as follows:

(1) The customer shall notify the utility at least three (3) business days in advance of the day disconnection is desired. The customer shall remain responsible for all service used and the billing therefor until the date the customer has requested disconnection pursuant to the notice.

(2) Upon request by a customer to a utility to disconnect service in fewer than three (3) business days, the utility shall disconnect the service within three (3) business days of the request. The customer shall not be liable for any service rendered to the address after the expiration of the three (3) days.

(3) The customer shall not charge service or authorize the charging of service to any account that has been disconnected at the customer's request or otherwise. A customer shall be responsible for any services he or she charges or authorizes charged to the disconnected account in violation of the prohibition in this subdivision.

(b) Requirements for disconnection without a customer's request are as follows:

(1) A utility may disconnect service without request by the customer of the service and without prior notice only:

(A) if a condition dangerous or hazardous to life, physical safety, or property exists;

(B) upon order by any court, the commission or other duly authorized public authority;

(C) if fraudulent or unauthorized use of service is detected and the utility has reasonable grounds to believe the affected customer is responsible for the use;

(D) if the utility's equipment has been tampered with and the utility has reasonable grounds to believe that the affected customer is responsible for the tampering; or

(E) if the utility's equipment is used in a manner disruptive to the service of other customers.

(2) A utility may disconnect service to a customer based on a delinquent account with the same class of service (such as residential service) for that customer.

(c) Requirements for prohibited disconnections are as follows:

(1) Except as otherwise provided in subsections (a) and (b), a utility shall postpone the disconnection of electric service for thirty (30) days if, before the disconnect date specified in the disconnect notice, the customer provides the utility with a medical statement from a licensed physician or public health official that states that disconnection would be a serious and immediate threat to the health and safety of a designated person in the household of the customer. The postponement of disconnection shall be continued for one (1) additional ten (10) day period upon the provision of an additional medical statement to the utility. The utility shall be required to provide the customer a total of forty (40) days postponement of disconnection for medical reasons under this subsection only once in any twelve (12) month period. Further postponement of disconnection may be made at the utility's discretion.

(2) A utility may not disconnect electric service to the customer for any of the following reasons:

(A) Nonpayment of any nonutility or unregulated utility services.

(B) Upon the customer's failure to pay for services to a previous occupant of the premises being served unless the utility has reasonable grounds to believe that the customer is attempting to defraud the utility.

(C) On the basis of the delinquent character of an account of any other person, except if the customer is the guarantor of that other person's account for electricity service.

(D) If the customer makes payment arrangements under section 6 of this rule.

(E) If a customer is unable to pay a bill that is unusually large due to prior incorrect billing, incorrect application of the rate schedule, prior estimates where no actual reading was taken for over two (2) months, or any human or mechanical error of the utility, and the customer:

(i) makes a payment arrangement in accordance with the guidelines set forth in section 6 of this rule; and

(ii) agrees to pay all undisputed future bills for electric service as they become due, provided, however, that the utility may not add to the outstanding bill any late fee and, provided further, that the payment arrangement agreement in item (i) and this item shall be put in writing by the utility and sent by mail to the customer.

(d) No utility may disconnect service unless the disconnecting is done between the hours of 8 a.m. and 3 p.m., prevailing local time. Disconnections under subsections (a) and (b) are not subject to this limitation. The utility may not disconnect service for nonpayment:

(1) on any:

(A) Friday after noon;

(B) Saturday;

(C) Sunday; or

(D) other day the utility's offices are not open for business; or

(2) after noon on any day immediately before a day the utility's office are not open for business.

(e) Requirements for notice required before involuntary disconnection are as follows:

(1) Except as otherwise provided in this section, service to any customer shall not be disconnected for a violation of any rule of the utility or for nonpayment of a bill, except after fourteen (14) days from the postmark date of a written notice sent to the customer at the address shown on the records of the utility or the notice is personally served upon the customer or a responsible member of the customer's household. No disconnect notice for nonpayment may be rendered before the date on which the account becomes delinquent.

(2) The disconnection notice shall be in language that is clear, concise, and easily understandable to a layperson and shall state, in separately numbered large print paragraphs, the following information:

(A) The date of the proposed disconnection.

(B) The specific reason and factual basis for the proposed disconnection.

(C) The telephone number of the utility office at which the customer may call during regular business hours to question the proposed disconnection or seek information concerning the customer's rights.

(D) The local and toll-free telephone numbers and office hours of the commission.

(E) That the customer may refer to the pamphlet furnished under 170 IAC 4-1-18 for information as to the customer's rights.

(F) Information as to the customer's rights, under this rule, including, but not limited to, the following:

(i) That the customer may obtain a temporary waiver of disconnection for a serious illness or medical emergency under subsection (c).

(ii) That the customer may file a complaint with the utility.

(iii) That if the complaint is not resolved by the utility to the customer's satisfaction, the customer may file a complaint with the commission.

(iv) That the customer may make payment arrangements under section 6 of this rule.

(f) Utility employees conducting disconnections of service shall follow the following procedures:

(1) Immediately preceding the actual disconnection of service, the employee of the utility designated to perform the function shall make a reasonable attempt to identify himself or herself to the customer or any other responsible person then upon the premises and shall announce the purpose of his or her presence and shall make a record thereof to be maintained for at least thirty (30) days.

(2) The employee shall have in his or her possession information sufficient to enable the employee to inform the customer or other responsible person the reason for the disconnection, including the amount of any delinquent bill of the customer, and shall request from the customer any available verification that the outstanding bill has been satisfied or is currently in dispute and under review by the utility or the commission. Upon the presentation of such credible evidence, service shall not be disconnected.

(3) The employee shall not be required to accept payment from the customer, user, or other responsible person in order to prevent the service from being disconnected. The utility shall notify the customers under 170 IAC 4-1-18 of its policy with regard to the acceptance or nonacceptance of payment from the employee and shall uniformly follow the policy without discrimination.

(4) When the employee has disconnected the service, the employee shall give to a responsible person at the customer's premises, or if no one is at home, shall leave at a conspicuous place on the premises, a notice stating that service has been disconnected and stating the address and telephone number of the utility where the user may arrange to have service reconnected.

(g) If a utility disconnects service in violation of this rule, the service shall immediately be restored at no charge to the customer. *(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-5)*

170 IAC 4-1.2-6 Payment arrangements and reconnection of service

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-121; IC 8-1-2-122
Affected: IC 8-1-2; IC 32-34-1-20

Sec. 6. (a) Except in cases where fraudulent or unauthorized use of utility service is detected and the utility has reasonable grounds to believe the customer is responsible for the use, when a residential customer cannot pay an undisputed bill or the undisputed portion of a disputed bill in full, the utility shall continue to serve the customer or reconnect the customer if the customer and the utility agree on a reasonable portion of the outstanding bill to be paid immediately. The manner in which the balance of the outstanding bill will be paid (the "payment arrangement") shall be made in accordance with the following guidelines:

(1) The customer shows just cause for his or her inability to pay (financial hardship shall constitute just cause), and the customer pays a reasonable portion of the amount, not to exceed one-third (a) of all amounts due (unless the customer agrees to a greater portion) and the customer:

(A) agrees to pay:

(i) the balance of all amounts due in equal monthly installments; and

(ii) all undisputed future bills for utility service as they become due; and

(B) has not breached any similar agreement with the utility made under this section in the last twelve (12) months.

(2) In deciding on the reasonableness of a particular payment arrangement, the utility shall consider the following:

(A) The customer's ability to pay.

(B) The size of the unpaid balance.

(C) The customer's payment history and length of service.

(D) The amount of time the debt has been and the reasons why the debt is outstanding.

(3) The payment arrangement shall provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program.

(4) The payment arrangement is subject to amendment upon the customer's request if there is a change in the customer's financial circumstances.

(5) The utility may add to the outstanding bill a late payment charge not to exceed the amount set under 170 IAC 4-1-13(c); however, only one (1) late payment charge may be assessed against the charges applicable to any given month.

(b) The terms of any payment arrangement made under this section shall be put in writing by the utility and sent by mail to the customer.

(c) If the customer does not meet any of the conditions in subsection (a), the utility may, but is not obligated to, enter into subsequent payment arrangements with the customer.

(d) The utility shall reconnect service to a customer as soon as reasonably possible but at least within one (1) working day after the utility is requested to do so if the customer has satisfied the requirements of this rule.

(e) A utility may charge a reasonable reconnection charge not to exceed the charge approved by the commission in the utility's filed tariffs. A utility shall inform its customers of the reconnection fee under 170 IAC 4-1-18.

(f) Notwithstanding any other provision of this rule, from December 1 to March 15 of any year, any customer of any electric utility shall be reconnected as soon as possible upon:

(1) paying twenty percent (20%) of the amount past due;

(2) paying twenty percent (20%) of any deposit required by the utility; and

(3) entering into a payment arrangement for the balance of past due amounts.

The utility shall allow the customer a minimum of three (3) months or until March 15, whichever is later, to retire the past due balance and the remainder of the deposit. The customer shall also be informed that payment on the amounts past due and the deposit, if any, plus the current bills must be paid by the due date or the customer may face termination of service, subject to the winter moratorium described in section 7(b) of this rule.

(g) No later than September 15 of each year, every public utility shall conduct a survey of all customers whose electric service was used to provide or control the primary source of space heating in the dwelling and whose electric service was terminated for nonpayment of a bill or deposit from December 1 of the previous year to September 1 of the current year and where service at that premises has not been restored. Not later than October 15 of each year, the utility shall notify each of these customers that the electric service will be restored by the company for the coming heating season if the former customer contacts the utility and makes arrangements to pay the past due balance and any deposit required by the utility under the conditions set forth in this rule. A utility shall notify the former customer or an adult member of the household by personal visit, telephone contact, or mailing of a letter by first class mail to the last known address of that customer. The utility shall keep records that indicate the date, form, and results of the contact. The commission may request the utility to report the results of customer contacts made under this subsection. *(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-6)*

170 IAC 4-1.2-7 Home energy assistance; disconnection of service to recipients; notice period

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-121; IC 8-1-2-122
Affected: IC 12-14-11

Sec. 7. (a) Without a customer's request, a utility may not, during the period from December 1 through March 15, disconnect electric residential service to any customer who either is:

(1) receiving; or

(2) eligible for and has applied for;

assistance under IC 12-14-11.

(b) During the period from December 1 through March 15, a utility may not disconnect service to such customers if:

(1) the customer's eligibility to receive benefits under IC 12-14-11 is being determined by the division of family and children or its designee after the submission of a complete application for benefits by the customer; or

(2) the customer has furnished to the utility proof of his or her application to receive such benefits or the utility has been so notified in writing by the division of family and children or its authorized representative.

(c) This section does not prohibit a utility from terminating residential electric service upon the request of a customer or under any of the following circumstances:

(1) If a condition dangerous or hazardous to life, physical safety, or property exists.

(2) Upon order by any court, the commission, or other duly authorized public authority.

(3) If fraudulent or unauthorized use of service is detected and the utility has reasonable grounds to believe the affected customer is responsible for the use.

(4) If the utility's equipment has been tampered with and the utility has reasonable grounds to believe that the affected customer is responsible for the tampering.

(5) If the utility's equipment is used in a manner disruptive to the service of other customers.

(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-7)

170 IAC 4-1.2-8 Customer complaints to the utility

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 8. (a) An applicant or customer may complain at any time to a utility about any bill, security deposit, disconnection notice, or any other matter relating to installation or service and may request a conference with the utility thereon. The complaints may be made in person, by telephone, in writing, or by completing a written or electronic form available from the utility. A complaint shall be considered filed upon receipt by the utility, except mailed complaints shall be considered filed two (2) calendar days after the postmark date. In making a complaint or request for conference, the applicant or customer shall state, at a minimum, his or her name, service address, telephone number, and the general nature of his or her complaint.

(b) Upon receiving each such complaint or request for conference, the utility shall take the following actions:

(1) Immediately notify an applicant or customer that any undisputed portion of a bill shall be paid by the date due in order to avoid disconnection of service in accordance with section 5 of this rule.

(2) Promptly, thoroughly, and completely investigate the complaint in good faith, attempt to confer with the applicant or customer when requested, and notify the applicant or customer of the utility's proposed disposition of the complaint. During the investigation, no collection action shall be taken for items that are being disputed, and there shall be no negative impact on the applicant or customer's credit rating.

(3) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while investigating the complaint or making a good faith attempt to resolve the complaint.

(4) Charges that are disputed by the applicant or customer shall not be treated as delinquent while an investigation is pending.

(5) After investigation, the utility may rebill the disputed charges in the next billing cycle if the investigation determined that the charges were appropriate; however, the utility shall not assess any late payment charge that may have accrued while the investigation was pending.

(6) If the utility's proposed disposition is not in the applicant or customer's favor, the utility shall notify the applicant or customer of the disposition in writing if the complaint was made in writing. If the utility's proposed disposition is not in the applicant or customer's favor, the utility shall notify the applicant or customer in writing or orally, if the complaint was made orally. The notification shall include contact information for the commission, including the commission's mailing address, toll-free complaint number, and local telephone number. A utility shall direct its personnel engaged in contact with an applicant or customer to inform the applicant or customer, if he or she expresses dissatisfaction with the decision of the personnel, of the right to have the problem considered and acted upon by supervisory personnel of the utility. A utility shall further direct the supervisory personnel to notify the applicant or customer who expresses dissatisfaction with the decision of the supervisory personnel of the right to have the problem reviewed by the commission's consumer affairs division and shall furnish him or her the business address and telephone number of the commission. The notification shall advise the applicant or customer that if he or she is dissatisfied with the utility's disposition, the applicant or customer may, within twenty-one (21) days, file a complaint with the commission's consumer affairs division (under section 9 of this rule). The payment of a deposit as requested by the utility shall not foreclose or in any manner affect the applicant or customer's right to appeal under IC 8-1-2-34.5 or other applicable law.

(c) If at any time the applicant or customer files a complaint with the commission regarding a dispute with a utility, the procedures set forth in section 9 of this rule shall apply. Any disconnection of the applicant or customer's service shall be governed by section 5 of this rule.

(d) A utility shall retain a written record of complaints and requests for conferences for at least eighteen (18) months after the complaint or request for conference is made. The records shall be maintained at the office or branch office of the utility or in the respective department office thereof where the complaints were received or any conferences were subsequently held. The written records are to be readily available upon request by the:

(1) concerned applicant or customer;

(2) applicant or customer's agent possessing written authorization; or

(3) commission.

(e) A utility shall, at the request of the commission, submit a report covering the previous twelve (12) month period to the commission that shall state and classify the following:

(1) The number of complaints made to the utility under this rule.

(2) The general nature of the subject matter thereof.

(3) How the complaint was received.

(4) Whether a commission review was conducted thereon.

(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-8)

170 IAC 4-1.2-9 Customer complaints to the commission
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-88

Sec. 9. (a) An individual or entity may informally complain to the commission's consumer affairs division with respect to any matter within the jurisdiction of the commission. The complaints may be made in person, by telephone, in writing, or by completing a written or electronic form available from the consumer affairs division. A complaint shall be considered filed upon receipt by the commission, except mailed complaints shall be considered filed as of the postmark date. In making a complaint, the applicant or customer shall state, at a minimum, the following:

(1) His or her name.

(2) The service address.

(3) His or her telephone number.

(4) The name of the utility involved.

(5) The general nature of his or her complaint.

(b) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while any commission review or investigation of the complaint is pending. The applicant or customer shall continue to pay all undisputed charges. In those instances when the applicant or customer and the utility cannot agree as to what portion of a bill is undisputed, the applicant or customer shall pay on the disputed bill an amount equal to the applicant or customer's average bill for the twelve (12) months immediately preceding the disputed bill. In those cases where the applicant or customer has received fewer than twelve (12) bills, the applicant or customer shall pay an amount equal to one-twelfth ($^1/_{12}$) of the estimated annual billing for service to be rendered to the applicant or customer.

(c) If the applicant or customer is dissatisfied with a utility's notice of the utility's proposed disposition of the complaint as provided in section 8 of this rule, the applicant or customer may, within twenty-one (21) days after the postmark date of the notice, file an informal complaint with the commission's consumer affairs division.

(d) Upon receiving an informal complaint, the following actions shall be taken:

(1) The utility shall be notified that a complaint has been made.

(2) The complaint shall be investigated.

(3) The applicant or customer and the utility shall be notified of the decision made on the complaint in accordance with applicable law.

(e) Requirements for an informal review are as follows:

(1) The applicant or customer or the utility may make a written request that a decision made under subsection (d) be reviewed informally by the consumer affairs director or designee. The written request shall be made within fourteen (14) days of the decision. The records of the commission relating to the reviews shall be kept in a systematic order.

(2) Upon receiving a request for an informal review, the consumer affairs director or designee shall provide an informal review in a timely manner. The review shall consist of not less than a prompt and thorough investigation of the dispute and shall result in a written decision to be mailed to the applicant or customer and the utility. Upon request by either party or the consumer affairs director or designee, the parties shall be required to meet and confer to the extent and at a place the consumer affairs director or designee considers appropriate.

(f) The applicant or customer may make a written request that the commission investigate the disposition of the informal review. The written request shall be made within twenty (20) days of the consumer affairs division's notice of disposition. Before entering an order upon a commission investigation, the commission shall afford the applicant or customer and the utility notice and an opportunity to be heard.

(g) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any disputed service until at least twenty (20) days have elapsed from the postmark date of the consumer affairs division's disposition or the commission's order upon investigation, if any.

(h) The time frames provided in this section may be extended at the discretion of the consumer affairs division.
(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-9)

170 IAC 4-1.2-10 Estimated bills
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-4

Sec. 10. (a) Each estimated bill shall be clearly and conspicuously identified as such. Unless otherwise requested by a customer, estimated bills shall not be issued for more than three (3) consecutive months. After three (3) consecutive months of estimating the customer's bill, the utility shall secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance of service.

(b) A utility or billing entity may not render a bill based on estimated usage if:

(1) the billing would be the customer's first or final bill for service;

(2) the customer has supplied meter readings to the utility; or

(3) the customer has requested an actual meter read.

(c) When a utility or billing entity renders an estimated bill in accordance with this article, the utility or billing entity shall maintain accurate records of the reasons therefor and efforts made to secure an actual reading.

(d) When a utility underestimates a customer's usage, the customer shall be given the opportunity to make payment arrangements as provided in this rule.

(e) A utility may estimate a bill because a meter malfunctioned or failed. If the time when the meter malfunction or error began cannot be reasonably determined to have occurred within a specific billing period, the corrected billings shall not exceed the most recent six (6) months before the discovery of the malfunction or error. If the time when the malfunction or error began can be reasonably determined, the corrected billings shall go back to that time but shall not exceed twelve (12) months.

(f) This section shall not apply to rural electric membership corporations. *(Indiana Utility Regulatory Commission; 170 IAC 4-1.2-10)*

SECTION 2. 170 IAC 5-1.2 IS ADDED TO READ AS FOLLOWS:

Rule 1.2. Gas Customer Service Rights and Responsibilities

170 IAC 5-1.2-1 Applicability and scope
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 1. (a) This rule applies to any gas public utility that is now, or may hereafter be, engaged in the business of rendering service to the public under the jurisdiction of the commission.

(b) This rule creates the minimum level of service that a utility is expected to meet when providing reasonable quality gas utility services to the public and to establish the obligations of both the utility and the customer.

(c) No utility shall discriminate against or penalize a customer for exercising any right granted by this rule. If a utility's tariff on file with the commission contains provisions that conflict with this rule, this rule shall supersede any conflicting tariff provisions.

(d) Any utility subject to this rule that fails to meet the standards herein shall be subject to all legal remedies provided by law. Upon complaint or its own motion and after notice and hearing, the commission may order lawful enforcement mechanisms against a public utility that fails to meet the requirements or standards established in this rule. Nothing in this rule shall prevent the commission from exercising any authority it may have under applicable law to enforce this rule in the event any public utility fails to comply.

(e) The adoption of this rule shall in no way preclude the commission, upon complaint by a customer, upon its own motion or upon the petition of any utility or the office of the utility consumer counselor, after notice and hearing, from taking any of the following actions:
(1) Altering or amending this rule in whole or in part.
(2) Requiring any other or additional service, equipment, facility, or standard.
(3) Making such modifications with respect to the application of this rule as may be found necessary to meet exceptional conditions.
(4) Requiring a utility to comply with any other service standards.
(5) At its sole discretion, granting, in whole or in part, permanent or temporary waivers from this rule on an expedited basis.
The adoption of this rule shall not in any way relieve any utility from any of its duties under the law of this state or rules and orders of the commission.

(f) If any provision of this rule is determined by competent authority to be prohibited or unenforceable, the provision shall be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions hereof. *(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-1)*

170 IAC 5-1.2-2 Definitions
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-1

Sec. 2. The following definitions apply throughout this rule:
(1) "Applicant" means any person or designated agent who seeks to become a customer for residential gas utility service.
(2) "Commission" means the Indiana utility regulatory commission.
(3) "Customer" means any person who requests and obtains residential utility service and is responsible for the payment of charges, compliance with filed tariffs, and rules of the utility.
(4) "Disconnection" means the termination or discontinuance of utility service.
(5) "Late payment charge" means the one-time penalty assessed by a utility on a customer's account when the account becomes delinquent.
(6) "Residential service" means gas utility service for household purposes that is billed under a residential rate.
(7) "Utility" or "public utility" means any public utility (as defined in IC 8-1-2-1) that furnishes gas service to the public under the jurisdiction of the commission.
(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-2)

170 IAC 5-1.2-3 Creditworthiness guidelines
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 3. (a) A utility shall determine the creditworthiness of an applicant or customer in an equitable and nondiscriminatory manner:

(1) without regard to:

(A) race;

(B) color;

(C) creed;

(D) religion;

(E) national origin;

(F) sex;

(G) marital status;

(H) receipt of public assistance; or

(I) the economic character of the area wherein the applicant or customer resides; and

(2) solely upon the credit risk of the individual applicant or customer without regard to the:

(A) collective credit reputation of the area in which he or she lives; and

(B) credit history of any other individual residing in the household or the applicant or customer's spouse.

(b) A utility may require a residential service applicant or customer to satisfactorily establish his or her financial responsibility (creditworthiness). The utility may require a deposit or other reasonable guarantor to secure payment of bills before providing utility service if the applicant or customer is not deemed creditworthy due to any of the following circumstances:

(1) The applicant or customer does not meet or exceed the predetermined minimum credit score selected by the utility using a credit scoring system as provided in the utility's tariff.

(2) The applicant or customer has failed to pay for past due gas service furnished to him or her at the same or at another address within the past four (4) years.

(c) A bill for one (1) class of service (such as commercial) shall not be transferred to a bill for another class of service (such as residential), nor shall a bill for one (1) form of utility service (such as gas) be transferred to a bill for another form of utility service (such as electric). Utility service shall not be denied for nonpayment of bills for merchandise or other nonutility or unregulated services.

(d) Utilities shall treat customers who have filed bankruptcy under federal law in accordance with the protective provisions of 11 U.S.C. 366, effective October 22, 1994. *(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-3)*

170 IAC 5-1.2-4 Deposits
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2; IC 32-34-1

Sec. 4. (a) If the applicant or customer fails to establish that he or she is creditworthy under section 3 of this rule, the applicant or customer may be required to make a reasonable deposit. The deposit shall not exceed one-sixth ($^1/_6$) of the estimated annual billings for regulated utility service at the address at which service is rendered to the applicant or customer and shall be paid in full before establishment of service, subject to the provisions of section 6 of this rule; provided, however, that a deposit shall be based upon estimated regulated gas service charges only. If a deposit is greater than one hundred fifty dollars ($150), the utility shall advise the applicant or customer simultaneously with making a demand for a deposit that the applicant or customer may pay the deposit in equal installment payments over a period of no fewer than three (3) months, and service shall be connected upon receipt by the utility of the first payment. For example, if the total deposit required by a utility under this section is one hundred eighty dollars ($180), the applicant or customer could make three (3) payments of sixty dollars ($60) over a three (3) month period, and service would be connected after the first sixty dollar ($60) payment. The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule in order to receive service. An initial deposit made by a customer shall be subject to reevaluation upon the request of either the utility or the customer, based upon actual charges for services rendered, at any time after service has been provided.

(b) The utility may elect to accept a written guarantee, signed by a third party guarantor acceptable to the utility within its discretion, of payment for all utility service rendered or requested to be rendered to the applicant or customer. The guarantor may terminate the guarantee upon thirty (30) days prior written notice. The guarantee shall be in full force and effect up to and including the date the guarantee shall terminate, and the guarantor shall be obligated, as provided in the written guarantee, respecting the payment of the amount of the applicant or customer's bill on the date of termination. A guarantee shall terminate when the customer submits satisfactory payment for a period of ten (10) out of any twelve (12) consecutive months.

(c) If the utility requires a deposit or a written guarantee as a condition of providing service, the utility shall advise the applicant or customer of the reason upon which the utility bases its decision and provide the applicant or customer with an opportunity to rebut the facts and show other facts demonstrating creditworthiness.

(d) A utility may require an existing customer to make a reasonable deposit, or an additional deposit in cases where a deposit has been made and exhausted under this rule, under any of the following circumstances:

(1) The customer has been mailed disconnect notices for two (2) consecutive months.
(2) The customer has been mailed disconnect notices for any three (3) months within the preceding twelve (12) month period.
(3) The service to the customer has been disconnected within the past forty-five (45) days for nonpayment.

In such cases, notice of the need for a deposit shall be in writing, and the customer shall be given ten (10) business days from the mailing date of the notice within which to make the deposit. When the service has been disconnected within the past four (4) years under section 5 of this rule, the deposit shall be provided before the service will be reconnected. The total amount of all deposits required for service under this section may not exceed an amount equal to one-sixth ($^1/_6$) of the annualized estimated regulated utility charges to the customer at the address at which service is rendered.

(e) Requirements for interest upon a deposit shall be as follows:
(1) A deposit held more than thirty (30) days shall earn interest from the date of deposit. Beginning on the effective date of this rule, the rate of interest shall be set by the commission based upon the then existing rate for one (1) year United States Treasury Constant Maturity securities. The interest rate shall be rounded to the nearest one-half ($^1/_6$) of one percent (1%). In December of each year, the commission shall issue a general administrative order establishing the interest rate for the next calendar year that shall be paid on all deposits held during all or part of the subsequent year.
(2) The deposit shall not earn interest after the date it is mailed or personally delivered to the customer, or otherwise lawfully disposed of as provided in subsection (f)(6).

(f) Requirements for refunds shall be as follows:
(1) Any deposit and accrued interest shall be promptly refunded to the customer without the customer's request when the customer submits satisfactory payment ten (10) out of any twelve (12) consecutive months without late payment.
(2) A statement of accounting for each transaction affecting the deposit and interest shall accompany refunds of deposits or accrued interest issued under this section.
(3) Following a customer requested termination of service, the utility shall do the following:
(A) Apply the deposit, plus accrued interest, to the final bill.
(B) Refund any remaining deposit and accrued interest within fifteen (15) business days after payment of the final bill.
(4) A utility shall maintain a record of each applicant or customer making a deposit that shows the following:
(A) The name of the customer.
(B) The current mailing address of the customer.
(C) The amount of the deposit.
(D) The date the deposit was made.
(E) A record of each transaction affecting the deposit.
(5) Each customer shall be provided a written receipt from the utility at the time the customer's deposit is paid in full or any time the customer makes a partial payment. The utility shall provide a reasonable method by which a customer, who is unable to locate his or her receipt, may establish that he or she is entitled to a refund of the deposit and payment of interest thereon.
(6) Any deposit made by the applicant or customer to the utility (less any lawful deductions to be refunded), or any sum the utility is ordered to refund for gas service that has remained unclaimed for one (1) year after the utility has made a diligent effort to locate the customer who made the deposit or the heirs of the customer, shall be presumed abandoned and treated in accordance with IC 32-34-1 et seq.

(g) A deposit may be used by the utility to cover any unpaid balances owed the utility following disconnection of utility service, provided, however, that any surplus be returned to the customer as provided in this section.

(h) A deposit shall not be applied to satisfy an applicant or customer's bill, prior arrearage, or outstanding indebtedness that is greater than four (4) years old; however, a utility may pursue the unpaid balances via collections or other means provided by applicable law.

(i) At the end of every year of service, if the deposit plus interest is not refunded to the customer, the utility shall automatically refund the accrued interest on the deposit to the customer by crediting the customer's account and stating this credit clearly on the customer's next regular bill.

(j) A customer who fails to pay a bill by the time specified by the regulations of the utility and commission regarding the prompt payment of bills, and who further fails to pay the bill within a reasonable period after presentation of a disconnection of service notice for nonpayment, may be required to pay the bill and to reestablish credit by making a deposit under this rule.

(k) Establishment of credit by deposit shall not relieve a customer from complying with the commission's rules for prompt payment of bills. *(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-4)*

170 IAC 5-1.2-5 Disconnection and prohibited disconnections

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-122
Affected: IC 8-1-2-4

Sec. 5. (a) Requirements for disconnection upon a customer's request are as follows:

(1) The customer shall notify the utility at least three (3) business days in advance of the day disconnection is desired. The customer shall remain responsible for all service used and the billing therefor until the date the customer has requested disconnection pursuant to the notice.

(2) Upon request by a customer to a utility to disconnect service in fewer than three (3) business days, the utility shall disconnect the service within three (3) business days of the request. The customer shall not be liable for any service rendered to the address after the expiration of the three (3) days.

(3) The customer shall not charge service or authorize the charging of service to any account that has been disconnected at the customer's request or otherwise. A customer shall be responsible for any services he or she charges or authorizes charged to the disconnected account in violation of the prohibition in this subdivision.

(b) Requirements for disconnection without a customer's request are as follows:

(1) A utility may disconnect service without request by the customer of the service and without prior notice only:

(A) if a condition dangerous or hazardous to life, physical safety, or property exists;

(B) upon order by any court, the commission or other duly authorized public authority;

(C) if fraudulent or unauthorized use of service is detected and the utility has reasonable grounds to believe the affected customer is responsible for the use;

(D) if the utility's equipment has been tampered with and the utility has reasonable grounds to believe that the affected customer is responsible for the tampering; or

(E) if the utility's equipment is used in a manner disruptive to the service of other customers.

(2) A utility may disconnect service to a customer based on a delinquent account with the same class of service (such as residential service) for that customer.

(c) Requirements for prohibited disconnections are as follows:

(1) Except as otherwise provided in subsections (a) and (b), a utility shall postpone the disconnection of gas service for thirty (30) days if, before the disconnect date specified in the disconnect notice, the customer provides the utility with a medical statement from a licensed physician or public health official that states that disconnection would be a serious and immediate threat to the health and safety of a designated person in the household of the customer. The postponement of disconnection shall be continued for one (1) additional ten (10) day period upon the provision of an additional medical statement to the utility. The utility shall be required to provide the customer a total of forty (40) days postponement of disconnection for medical reasons under this subsection only once in any twelve (12) month period. Further postponement of disconnection may be made at the utility's discretion.

(2) A utility may not disconnect gas service to the customer for any of the following reasons:

(A) Nonpayment of any nonutility or unregulated utility services.

(B) Upon the customer's failure to pay for services to a previous occupant of the premises being served unless the utility has reasonable grounds to believe that the customer is attempting to defraud the utility.

(C) On the basis of the delinquent character of an account of any other person, except if the customer is the guarantor of that other person's account for gas service.

(D) If the customer makes payment arrangements under section 6 of this rule.

(E) If a customer is unable to pay a bill that is unusually large due to prior incorrect billing, incorrect application of the rate schedule, prior estimates where no actual reading was taken for over two (2) months, or any human or mechanical error of the utility, and the customer:

(i) makes a payment arrangement in accordance with the guidelines set forth in section 6 of this rule; and

(ii) agrees to pay all undisputed future bills for gas service as they become due, provided, however, that the utility may not add to the outstanding bill any late fee and, provided further, that the payment arrangement agreement in item (i) and this item shall be put in writing by the utility and sent by mail to the customer.

(d) No utility may disconnect service unless the disconnecting is done between the hours of 8 a.m. and 3 p.m., prevailing local time. Disconnections under subsections (a) and (b) are not subject to this limitation. The utility may not disconnect service for nonpayment:

(1) on any:

(A) Friday after noon;

(B) Saturday;

(C) Sunday; or

(D) other day the utility's offices are not open for business; or

(2) after noon on any day immediately before a day the utility's office are not open for business.

(e) Requirements for notice required before involuntary disconnection are as follows:

(1) Except as otherwise provided in this section, service to any customer shall not be disconnected for a violation of any rule of the utility or for nonpayment of a bill, except

after fourteen (14) days from the postmark date of a written notice sent to the customer at the address shown on the records of the utility or the notice is personally served upon the customer or a responsible member of the customer's household. No disconnect notice for nonpayment may be rendered before the date on which the account becomes delinquent.

(2) The disconnection notice shall be in language that is clear, concise, and easily understandable to a layperson and shall state, in separately numbered large print paragraphs, the following information:

(A) The date of the proposed disconnection.

(B) The specific reason and factual basis for the proposed disconnection.

(C) The telephone number of the utility office at which the customer may call during regular business hours to question the proposed disconnection or seek information concerning the customer's rights.

(D) The local and toll-free telephone numbers and office hours of the commission.

(E) That the customer may refer to the pamphlet furnished under 170 IAC 5-1-18 for information as to the customer's rights.

(F) Information as to the customer's rights, under this rule, including, but not limited to, the following:

(i) That the customer may obtain a temporary waiver of disconnection for a serious illness or medical emergency under subsection (c).

(ii) That the customer may file a complaint with the utility.

(iii) That if the complaint is not resolved by the utility to the customer's satisfaction, the customer may file a complaint with the commission.

(iv) That the customer may make payment arrangements under section 6 of this rule.

(f) Utility employees conducting disconnections of service shall follow the following procedures:

(1) Immediately preceding the actual disconnection of service, the employee of the utility designated to perform the function shall make a reasonable attempt to identify himself or herself to the customer or any other responsible person then upon the premises and shall announce the purpose of his or her presence and shall make a record thereof to be maintained for at least thirty (30) days.

(2) The employee shall have in his or her possession information sufficient to enable the employee to inform the customer or other responsible person the reason for the disconnection, including the amount of any delinquent bill of the customer, and shall request from the customer any available verification that the outstanding bill has been satisfied or is currently in dispute and under review by the utility or the commission. Upon the presentation of such credible evidence, service shall not be disconnected.

(3) The employee shall not be required to accept payment from the customer, user, or other responsible person in order to prevent the service from being disconnected. The utility shall notify the customers under 170 IAC 5-1-18 of its policy with regard to the acceptance or nonacceptance of payment from the employee and shall uniformly follow the policy without discrimination.

(4) When the employee has disconnected the service, the employee shall give to a responsible person at the customer's premises, or if no one is at home, shall leave at a conspicuous place on the premises, a notice stating that service has been disconnected and stating the address and telephone number of the utility where the user may arrange to have service reconnected.

(g) If a utility disconnects service in violation of this rule, the service shall immediately be restored at no charge to the customer. *(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-5)*

170 IAC 5-1.2-6 Payment arrangements and reconnection of service

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-121; IC 8-1-2-122
Affected: IC 8-1-2; IC 32-34-1-20

Sec. 6. (a) Except in cases where fraudulent or unauthorized use of utility service is detected and the utility has reasonable grounds to believe the customer is responsible for the use, when a residential customer cannot pay an undisputed bill or the undisputed portion of a disputed bill in full, the utility shall continue to serve the customer or reconnect the customer if the customer and the utility agree on a reasonable portion of the outstanding bill to be paid immediately. The manner in which the balance of the outstanding bill will be paid (the "payment arrangement") shall be made in accordance with the following guidelines:

(1) The customer shows just cause for his or her inability to pay (financial hardship shall constitute just cause), and the customer pays a reasonable portion of the amount, not to exceed one-third ($^1/_3$) of all amounts due (unless the customer agrees to a greater portion) and the customer:

(A) agrees to pay:

(i) the balance of all amounts due in equal monthly installments; and

(ii) all undisputed future bills for utility service as they become due; and

(B) has not breached any similar agreement with the utility made under this section in the last twelve (12) months.

(2) In deciding on the reasonableness of a particular payment arrangement, the utility shall consider the following:

(A) The customer's ability to pay.

(B) The size of the unpaid balance.

(C) The customer's payment history and length of service.

(D) The amount of time the debt has been and the reasons why the debt is outstanding.

(3) The payment arrangement shall provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program.

(4) The payment arrangement is subject to amendment upon the customer's request if there is a change in the customer's financial circumstances.

(5) The utility may add to the outstanding bill a late payment charge not to exceed the amount set under 170 IAC 5-1-13(B); however, only one (1) late payment charge may be assessed against the charges applicable to any given month.

(b) The terms of any payment arrangement made under this section shall be put in writing by the utility and sent by mail to the customer.

(c) If the customer does not meet any of the conditions in subsection (a), the utility may, but is not obligated to, enter into subsequent payment arrangements with the customer.

(d) The utility shall reconnect service to a customer as soon as reasonably possible but at least within one (1) working day after the utility is requested to do so if the customer has satisfied the requirements of this rule.

(e) A utility may charge a reasonable reconnection charge not to exceed the charge approved by the commission in the utility's filed tariffs. A utility shall inform its customers of the reconnection fee under 170 IAC 5-1-18.

(f) Notwithstanding any other provision of this rule, from December 1 to March 15 of any year, any customer of any gas utility shall be reconnected as soon as possible upon:

(1) paying twenty percent (20%) of the amount past due;

(2) paying twenty percent (20%) of any deposit required by the utility; and

(3) entering into a payment arrangement for the balance of past due amounts.

The utility shall allow the customer a minimum of three (3) months or until March 15, whichever is later, to retire the past due balance and the remainder of the deposit. The customer shall also be informed that payment on the amounts past due and the deposit, if any, plus the current bills must be paid by the due date or the customer may face termination of service, subject to the winter moratorium described in section 7(b) of this rule.

(g) No later than September 15 of each year, every public utility shall conduct a survey of all customers whose gas service was used to provide or control the primary source of space heating in the dwelling and whose gas service was terminated for nonpayment of a bill or deposit from December 1 of the previous year to September 1 of the current year and where service at that premises has not been restored. Not later than October 15 of each year, the utility shall notify each of these customers that the gas service will be restored by the company for the coming heating season if the former customer contacts the utility and makes arrangements to pay the past due balance and any deposit required by the utility under the conditions set forth in this rule. A utility shall notify the former customer or an adult member of the household by personal visit, telephone contact, or mailing of a letter by first class mail to the last known address of that customer. The utility shall keep records that indicate the date, form, and results of the contact. The commission may request the utility to report the results of customer contacts made under this subsection. *(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-6)*

170 IAC 5-1.2-7 Home energy assistance; disconnection of service to recipients; notice period

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-121; IC 8-1-2-122
Affected: IC 12-14-11

Sec. 7. (a) Without a customer's request, a utility may not, during the period from December 1 through March 15, disconnect gas residential service to any customer who either is:

(1) receiving; or

(2) eligible for and has applied for;

assistance under IC 12-14-11.

(b) During the period from December 1 through March 15, a utility may not disconnect service to such customers if:

(1) the customer's eligibility to receive benefits under IC 12-14-11 is being determined by the division of family and children or its designee after the submission of a complete application for benefits by the customer; or

(2) the customer has furnished to the utility proof of his or her application to receive such benefits or the utility has been so notified in writing by the division of family and children or its authorized representative.

(c) This section does not prohibit a utility from terminating residential gas service upon the request of a customer or under any of the following circumstances:

(1) If a condition dangerous or hazardous to life, physical safety, or property exists.

(2) Upon order by any court, the commission or other duly authorized public authority.

(3) If fraudulent or unauthorized use of service is detected and the utility has reasonable grounds to believe the affected customer is responsible for the use.

(4) If the utility's equipment has been tampered with and the utility has reasonable grounds to believe that the affected customer is responsible for the tampering.

(5) If the utility's equipment is used in a manner disruptive to the service of other customers.

(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-7)

170 IAC 5-1.2-8 Customer complaints to the utility
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 8. (a) An applicant or customer may complain at any time to a utility about any bill, security deposit, disconnection notice, or any other matter relating to installation or service and may request a conference with the utility thereon. The complaints may be made in person, by telephone, in writing, or by completing a written or electronic form available from the utility. A complaint shall be considered filed upon receipt by the utility, except mailed complaints shall be considered filed two (2) calendar days after the postmark date. In making a complaint or request for conference, the applicant or customer shall state, at a minimum, his or her name, service address, telephone number, and the general nature of his or her complaint.

(b) Upon receiving each such complaint or request for conference, the utility shall take the following actions:

(1) Immediately notify a customer that any undisputed portion of a bill shall be paid by the date due in order to avoid disconnection of service in accordance with section 5 of this rule.

(2) Promptly, thoroughly, and completely investigate the complaint in good faith, attempt to confer with the applicant or customer when requested, and notify the applicant or customer of the utility's proposed disposition of the complaint. During the investigation, no collection action shall be taken for items that are being disputed, and there shall be no negative impact on the applicant or customer's credit rating.

(3) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while investigating the complaint or making a good faith attempt to resolve the complaint.

(4) Charges that are disputed by the customer shall not be treated as delinquent while an investigation is pending.

(5) After investigation, the utility may rebill the disputed charges in the next billing cycle if the investigation determined that the charges were appropriate; however, the utility shall not assess any late payment charge that may have accrued while the investigation was pending.

(6) If the utility's proposed disposition is not in the applicant or customer's favor, the utility shall notify the applicant or customer of the disposition in writing if the complaint was made in writing. If the utility's proposed disposition is not in the applicant or customer's favor, the utility shall notify the applicant or customer in writing or orally, if the complaint was made orally. The notification shall include contact information for the commission, including the commission's mailing address, toll-free complaint number, and local telephone number. A utility shall direct its personnel engaged in contact with an applicant or customer to inform the applicant or customer, if he or she expresses dissatisfaction with the decision of the personnel, of the right to have the problem considered and acted upon by supervisory personnel of the utility. A utility shall further direct the supervisory personnel to notify the applicant or customer who expresses dissatisfaction with the decision of the supervisory personnel of the right to have the problem reviewed by the commission's consumer affairs division and shall furnish him or her the business address and telephone number of the commission. The notification shall advise the applicant or customer that if he or she is dissatisfied with the utility's disposition, the applicant or customer may, within twenty-one (21) days, file a complaint with the commission's consumer affairs division (under section 9 of this rule). The payment of a deposit as requested by the utility shall not foreclose or in any manner affect the applicant or customer's right to appeal under IC 8-1-2-34.5 or other applicable law.

(c) If at any time the applicant or customer files a complaint with the commission regarding a dispute with a utility, the procedures set forth in section 9 of this rule shall apply. Any disconnection of the applicant or customer's service shall be governed by section 5 of this rule.

(d) A utility shall retain a written record of complaints and requests for conferences for at least eighteen (18) months after the complaint or request for conference is made. The records shall be maintained at the office or branch office of the utility or in the respective department office thereof where the complaints were received or any conferences were subsequently held. The written records are to be readily available upon request by the:

(1) concerned applicant or customer;

(2) applicant or customer's agent possessing written authorization; or

(3) commission.

(e) A utility shall, at the request of the commission, submit a report covering the previous twelve (12) month period to the commission that shall state and classify the following:

(1) The number of complaints made to the utility under this rule.

(2) The general nature of the subject matter thereof.

(3) How the complaint was received.

(4) Whether a commission review was conducted thereon.

(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-8)

170 IAC 5-1.2-9 Customer complaints to the commission
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-88

Sec. 9. (a) An individual or entity may informally complain to the commission's consumer affairs division with respect to any matter within the jurisdiction of the commission. The complaints may be made in person, by telephone, in writing, or by completing a written or electronic form available from the consumer affairs division. A complaint shall be considered filed upon receipt by the commission, except mailed complaints shall be considered filed as of the postmark date. In making a complaint, the applicant or customer shall state, at a minimum, the following:

(1) His or her name.

(2) The service address.

(3) His or her telephone number.

(4) The name of the utility involved.

(5) The general nature of his or her complaint.

(b) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while any commission review or investigation of the complaint is pending. The applicant or customer shall continue to pay all undisputed charges. In those instances when the applicant or customer and the utility cannot agree as to what portion of a bill is undisputed, the applicant or customer shall pay on the disputed bill an amount equal to the applicant or customer's average bill for the twelve (12) months immediately preceding the disputed bill. In those cases where the applicant or customer has received fewer than twelve (12) bills, the applicant or customer shall pay an amount equal to one-twelfth ($^{1}/_{12}$) of the estimated annual billing for service to be rendered to the applicant or customer.

(c) If the applicant or customer is dissatisfied with a utility's notice of the utility's proposed disposition of the complaint as provided in section 8 of this rule, the applicant or customer may, within twenty-one (21) days after the postmark date of the notice, file an informal complaint with the commission's consumer affairs division.

(d) Upon receiving an informal complaint, the following actions shall be taken:

(1) The utility shall be notified that a complaint has been made.

(2) The complaint shall be investigated.

(3) The applicant or customer and the utility shall be notified of the decision made on the complaint in accordance with applicable law.

(e) Requirements for an informal review are as follows:

(1) The applicant or customer or the utility may make a written request that a decision made under subsection (d) be reviewed informally by the consumer affairs director or designee. The written request shall be made within fourteen (14) days of the decision. The records of the commission relating to the reviews shall be kept in a systematic order.

(2) Upon receiving a request for an informal review, the consumer affairs director or designee shall provide an informal review in a timely manner. The review shall consist of not less than a prompt and thorough investigation of the dispute and shall result in a written decision to be mailed to the applicant or customer and the utility. Upon request by either party or the consumer affairs director or designee, the parties shall be required to meet and confer to the extent and at a place the consumer affairs director or designee considers appropriate.

(f) The applicant or customer may make a written request that the commission investigate the disposition of the informal review. The written request shall be made within twenty (20) days of the consumer affairs division's notice of disposition. Before entering an order upon a commission investigation, the commission shall afford the applicant or customer and the utility notice and an opportunity to be heard.

(g) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any disputed service until at least twenty (20) days have elapsed from the postmark date of the consumer affairs division's disposition or the commission's order upon investigation, if any.

(h) The time frames provided in this section may be extended at the discretion of the consumer affairs division. *(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-9)*

170 IAC 5-1.2-10 Estimated bills

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-4

Sec. 10. (a) Each estimated bill shall be clearly and conspicuously identified as such. Unless otherwise requested by a customer, estimated bills shall not be issued for more than three (3) consecutive months. After three (3) consecutive months of estimating the customer's bill, the utility shall secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance of service.

(b) A utility or billing entity may not render a bill based on estimated usage if:

(1) the billing would be the customer's first or final bill for service;

(2) the customer has supplied meter readings to the utility; or

(3) the customer has requested an actual meter read.

(c) When a utility or billing entity renders an estimated bill in accordance with this article, the utility or billing entity shall maintain accurate records of the reasons

therefor and efforts made to secure an actual reading.

(d) When a utility underestimates a customer's usage, the customer shall be given the opportunity to make payment arrangements as provided in this rule.

(e) A utility may estimate a bill because a meter malfunctioned or failed. If the time when the meter malfunction or error began cannot be reasonably determined to have occurred within a specific billing period, the corrected billings shall not exceed the most recent six (6) months before the discovery of the malfunction or error. If the time when the malfunction or error began can be reasonably determined, the corrected billings shall go back to that time but shall not exceed twelve (12) months. *(Indiana Utility Regulatory Commission; 170 IAC 5-1.2-10)*

SECTION 3. 170 IAC 6-1.2 IS ADDED TO READ AS FOLLOWS:

Rule 1.2. Water Customer Service Rights and Responsibilities

170 IAC 6-1.2-1 Applicability and scope
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 1. (a) This rule applies to any water public utility that is now, or may hereafter be, engaged in the business of rendering service to the public under the jurisdiction of the commission.

(b) This rule creates the minimum level of service that a utility is expected to meet when providing reasonable quality water utility services to the public and to establish the obligations of both the utility and the customer.

(c) No utility shall discriminate against or penalize a customer for exercising any right granted by this rule. If a utility's tariff on file with the commission contains provisions that conflict with this rule, this rule shall supersede any conflicting tariff provisions.

(d) Any utility subject to this rule that fails to meet the standards herein shall be subject to all legal remedies provided by law. Upon complaint or its own motion and after notice and hearing, the commission may order lawful enforcement mechanisms against a public utility that fails to meet the requirements or standards established in this rule. Nothing in this rule shall prevent the commission from exercising any authority it may have under applicable law to enforce this rule in the event any public utility fails to comply.

(e) The adoption of this rule shall in no way preclude the commission, upon complaint by a customer, upon its own motion or upon the petition of any utility or the office of the utility consumer counselor, after notice and hearing, from taking any of the following actions:

(1) Altering or amending this rule in whole or in part.

(2) Requiring any other or additional service, equipment, facility, or standard.

(3) Making such modifications with respect to the application of this rule as may be found necessary to meet exceptional conditions.

(4) Requiring a utility to comply with any other service standards.

(5) At its sole discretion, granting, in whole or in part, permanent or temporary waivers from this rule on an expedited basis.

The adoption of this rule shall not in any way relieve any utility from any of its duties under the law of this state or rules and orders of the commission.

(f) If any provision of this rule is determined by competent authority to be prohibited or unenforceable, the provision shall be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions hereof. *(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-1)*

170 IAC 6-1.2-2 Definitions
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-1

Sec. 2. The following definitions apply throughout this rule:

(1) "Applicant" means any person or designated agent who seeks to become a customer for residential water utility service.

(2) "Commission" means the Indiana utility regulatory commission.

(3) "Customer" means any person who requests and obtains residential utility service and is responsible for the payment of charges, compliance with filed tariffs, and rules of the utility.

(4) "Disconnection" means the termination or discontinuance of utility service.

(5) "Late payment charge" means the one-time penalty assessed by a utility on a customer's account when the account becomes delinquent.

(6) "Residential service" means water utility service for household purposes that is billed under a residential rate.

(7) "Utility" or "public utility" means any public utility (as defined in IC 8-1-2-1) that furnishes water service to the public under the jurisdiction of the commission.

(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-2)

170 IAC 6-1.2-3 Creditworthiness guidelines
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 3. (a) A utility shall determine the creditworthiness

of an applicant or customer in an equitable and nondiscriminatory manner:

(1) without regard to:

(A) race;

(B) color;

(C) creed;

(D) religion;

(E) national origin;

(F) sex;

(G) marital status;

(H) receipt of public assistance; or

(I) the economic character of the area wherein the applicant or customer resides; and

(2) solely upon the credit risk of the individual applicant or customer without regard to the:

(A) collective credit reputation of the area in which he or she lives; and

(B) credit history of any other individual residing in the household or the applicant or customer's spouse.

(b) A utility may require a residential service applicant or customer to satisfactorily establish his or her financial responsibility (creditworthiness). The utility may require a deposit or other reasonable guarantor to secure payment of bills before providing utility service if the applicant or customer is not deemed creditworthy due to any of the following circumstances:

(1) The applicant or customer does not meet or exceed the predetermined minimum credit score selected by the utility using a credit scoring system as provided in the utility's tariff.

(2) The applicant or customer has failed to pay for past due water service furnished to him or her at the same or at another address within the past four (4) years.

(c) A bill for one (1) class of service (such as commercial) shall not be transferred to a bill for another class of service (such as residential), nor shall a bill for one (1) form of utility service (such as water) be transferred to a bill for another form of utility service (such as gas). Utility service shall not be denied for nonpayment of bills for merchandise or other nonutility or unregulated services.

(d) Utilities shall treat customers who have filed bankruptcy under federal law in accordance with the protective provisions of 11 U.S.C. 366, effective October 22, 1994. *(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-3)*

170 IAC 6-1.2-4 Deposits

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2; IC 32-34-1

Sec. 4. (a) If the applicant or customer fails to establish that he or she is creditworthy under section 3 of this rule, the applicant or customer may be required to make a reasonable deposit. The deposit shall not exceed one-sixth ($^1/_6$) of the estimated annual billings for regulated utility service at the address at which service is rendered to the applicant or customer and shall be paid in full before establishment of service, subject to the provisions of section 6 of this rule; provided, however, that a deposit shall be based upon estimated regulated water service charges only. If a deposit is greater than one hundred fifty dollars ($150), the utility shall advise the applicant or customer simultaneously with making a demand for a deposit that the applicant or customer may pay the deposit in equal installment payments over a period of no fewer than three (3) months, and service shall be connected upon receipt by the utility of the first payment. For example, if the total deposit required by a utility under this section is one hundred eighty dollars ($180), the applicant or customer could make three (3) payments of sixty dollars ($60) over a three (3) month period, and service would be connected after the first sixty dollar ($60) payment. The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule in order to receive service. An initial deposit made by a customer shall be subject to reevaluation upon the request of either the utility or the customer, based upon actual charges for services rendered, at any time after service has been provided.

(b) The utility may elect to accept a written guarantee, signed by a third party guarantor acceptable to the utility within its discretion, of payment for all utility service rendered or requested to be rendered to the applicant or customer. The guarantor may terminate the guarantee upon thirty (30) days prior written notice. The guarantee shall be in full force and effect up to and including the date the guarantee shall terminate, and the guarantor shall be obligated, as provided in the written guarantee, respecting the payment of the amount of the applicant or customer's bill on the date of termination. A guarantee shall terminate when the customer submits satisfactory payment for a period of ten (10) out of any twelve (12) consecutive months.

(c) If the utility requires a deposit or a written guarantee as a condition of providing service, the utility shall advise the applicant or customer of the reason upon which the utility bases its decision and provide the applicant or customer with an opportunity to rebut the facts and show other facts demonstrating creditworthiness.

(d) A utility may require an existing customer to make a reasonable deposit, or an additional deposit in cases where a deposit has been made and exhausted under this rule, under any of the following circumstances:

(1) The customer has been mailed disconnect notices for two (2) consecutive months.

(2) The customer has been mailed disconnect notices for any three (3) months within the preceding twelve (12) month period.

(3) The service to the customer has been disconnected within the past forty-five (45) days for nonpayment.

In such cases, notice of the need for a deposit shall be in writing, and the customer shall be given ten (10) business days from the mailing date of the notice within which to make the deposit. When the service has been disconnected within the past four (4) years under section 5 of this rule, the deposit shall be provided before the service will be reconnected. The total amount of all deposits required for service under this section may not exceed an amount equal to one-sixth ($^1/_6$) of the annualized estimated billings for regulated utility service to the customer at the address at which service is rendered.

(e) Requirements for interest upon a deposit shall be as follows:

(1) A deposit held more than thirty (30) days shall earn interest from the date of deposit. Beginning on the effective date of this rule, the rate of interest shall be set by the commission based upon the then existing rate for one (1) year United States Treasury Constant Maturity securities. The interest rate shall be rounded to the nearest one-half ($^1/_2$) of one percent (1%). In December of each year, the commission shall issue a general administrative order establishing the interest rate for the next calendar year that shall be paid on all deposits held during all or part of the subsequent year.

(2) The deposit shall not earn interest after the date it is mailed or personally delivered to the customer or otherwise lawfully disposed of as provided in subsection (f)(6).

(f) Requirements for refunds shall be as follows:

(1) Any deposit and accrued interest shall be promptly refunded to the customer without the customer's request when the customer submits satisfactory payment ten (10) out of any twelve (12) consecutive months without late payment.

(2) A statement of accounting for each transaction affecting the deposit and interest shall accompany refunds of deposits or accrued interest issued under this section.

(3) Following a customer requested termination of service, the utility shall do the following:

(A) Apply the deposit, plus accrued interest, to the final bill.

(B) Refund any remaining deposit and accrued interest within fifteen (15) business days after payment of the final bill.

(4) A utility shall maintain a record of each applicant or customer making a deposit that shows the following:

(A) The name of the customer.

(B) The current mailing address of the customer.

(C) The amount of the deposit.

(D) The date the deposit was made.

(E) A record of each transaction affecting the deposit.

(5) Each customer shall be provided a written receipt from the utility at the time the customer's deposit is paid in full or any time the customer makes a partial payment. The utility shall provide a reasonable method by which a customer, who is unable to locate his or her receipt, may establish that he or she is entitled to a refund of the deposit and payment of interest thereon.

(6) Any deposit made by the applicant or customer to the utility (less any lawful deductions to be refunded), or any sum the utility is ordered to refund for water service that has remained unclaimed for one (1) year after the utility has made a diligent effort to locate the customer who made the deposit or the heirs of the customer, shall be presumed abandoned and treated in accordance with IC 32-34-1 et seq.

(g) A deposit may be used by the utility to cover any unpaid balances owed the utility following disconnection of utility service, provided, however, that any surplus be returned to the customer as provided in this section.

(h) A deposit shall not be applied to satisfy an applicant or customer's bill, prior arrearage, or outstanding indebtedness that is greater than four (4) years old; however, a utility may pursue the unpaid balances via collections or other means provided by applicable law.

(i) At the end of every year of service, if the deposit plus interest is not refunded to the customer, the utility shall automatically refund the accrued interest on the deposit to the customer by crediting the customer's account and stating this credit clearly on the customer's next regular bill.

(j) A customer who fails to pay a bill by the time specified by the regulations of the utility and commission regarding the prompt payment of bills, and who further fails to pay the bill within a reasonable period after presentation of a disconnection of service notice for nonpayment, may be required to pay the bill and to reestablish credit by making a deposit under this rule.

(k) Establishment of credit by deposit shall not relieve a customer from complying with the commission's rules for prompt payment of bills. *(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-4)*

170 IAC 6-1.2-5 Disconnection and prohibited disconnections

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-122
Affected: IC 8-1-2-4

Sec. 5. (a) Requirements for disconnection upon a customer's request are as follows:

(1) The customer shall notify the utility at least three (3) business days in advance of the day disconnection is

desired. The customer shall remain responsible for all service used and the billing therefor until the date the customer has requested disconnection pursuant to the notice.

(2) Upon request by a customer to a utility to disconnect service in fewer than three (3) business days, the utility shall disconnect the service within three (3) business days of the request. The customer shall not be liable for any service rendered to the address after the expiration of the three (3) days.

(3) The customer shall not charge service or authorize the charging of service to any account that has been disconnected at the customer's request or otherwise. A customer shall be responsible for any services he or she charges or authorizes charged to the disconnected account in violation of the prohibition in this subdivision.

(b) Requirements for disconnection without a customer's request are as follows:

(1) A utility may disconnect service without request by the customer of the service and without prior notice only:

(A) if a condition dangerous or hazardous to life, physical safety, or property exists;

(B) upon order by any court, the commission or other duly authorized public authority;

(C) if fraudulent or unauthorized use of service is detected and the utility has reasonable grounds to believe the affected customer is responsible for the use;

(D) if the utility's equipment has been tampered with and the utility has reasonable grounds to believe that the affected customer is responsible for the tampering; or

(E) if the utility's equipment is used in a manner disruptive to the service of other customers.

(2) A utility may disconnect service to a customer based on a delinquent account with the same class of service (such as residential service) for that customer.

(c) Requirements for prohibited disconnections are as follows:

(1) Except as otherwise provided in subsections (a) and (b), a utility shall postpone the disconnection of water service for thirty (30) days if, before the disconnect date specified in the disconnect notice, the customer provides the utility with a medical statement from a licensed physician or public health official that states that disconnection would be a serious and immediate threat to the health and safety of a designated person in the household of the customer. The postponement of disconnection shall be continued for one (1) additional ten (10) day period upon the provision of an additional medical statement to the utility. The utility shall be required to provide the customer a total of forty (40) days postponement of disconnection for medical reasons under this subsection only once in any twelve (12) month period. Further postponement of disconnection may be made at the utility's discretion.

(2) A utility may not disconnect water service to the customer for any of the following reasons:

(A) Nonpayment of any nonutility or unregulated utility services.

(B) Upon the customer's failure to pay for services to a previous occupant of the premises being served unless the utility has reasonable grounds to believe that the customer is attempting to defraud the utility.

(C) On the basis of the delinquent character of an account of any other person, except if the customer is the guarantor of that other person's account for water service.

(D) If the customer makes payment arrangements under section 6 of this rule.

(E) If a customer is unable to pay a bill that is unusually large due to prior incorrect billing, incorrect application of the rate schedule, prior estimates where no actual reading was taken for over two (2) months, or any human or mechanical error of the utility, and the customer:

(i) makes a payment arrangement in accordance with the guidelines set forth in section 6 of this rule; and

(ii) agrees to pay all undisputed future bills for water service as they become due, provided, however, that the utility may not add to the outstanding bill any late fee and, provided further, that the payment arrangement agreement in item (i) and this item shall be put in writing by the utility and sent by mail to the customer.

(d) No utility may disconnect service unless the disconnecting is done between the hours of 8 a.m. and 3 p.m., prevailing local time. Disconnections under subsections (a) and (b) are not subject to this limitation. The utility may not disconnect service for nonpayment:

(1) on any:

(A) Friday after noon;

(B) Saturday;

(C) Sunday; or

(D) other day the utility's offices are not open for business; or

(2) after noon on any day immediately before a day the utility's office are not open for business.

(e) Requirements for notice required before involuntary disconnection are as follows:

(1) Except as otherwise provided in this section, service to any customer shall not be disconnected for a violation of any rule of the utility or for nonpayment of a bill, except after fourteen (14) days from the postmark date of a written notice sent to the customer at the address shown on the records of the utility or the notice is personally served upon the customer or a responsible member of the

customer's household. No disconnect notice for nonpayment may be rendered before the date on which the account becomes delinquent.

(2) The disconnection notice shall be in language that is clear, concise, and easily understandable to a layperson and shall state, in separately numbered large print paragraphs, the following information:

(A) The date of the proposed disconnection.

(B) The specific reason and factual basis for the proposed disconnection.

(C) The telephone number of the utility office at which the customer may call during regular business hours to question the proposed disconnection or seek information concerning the customer's rights.

(D) The local and toll-free telephone numbers and office hours of the commission.

(E) That the customer may refer to the pamphlet furnished under 170 IAC 6-1-18 for information as to the customer's rights.

(F) Information as to the customer's rights, under this rule, including, but not limited to, the following:

(i) That the customer may obtain a temporary waiver of disconnection for a serious illness or medical emergency under subsection (c).

(ii) That the customer may file a complaint with the utility.

(iii) That if the complaint is not resolved by the utility to the customer's satisfaction, the customer may file a complaint with the commission.

(iv) That the customer may make payment arrangements under section 6 of this rule.

(f) Utility employees conducting disconnections of service shall follow the following procedures:

(1) Immediately preceding the actual disconnection of service, the employee of the utility designated to perform the function shall make a reasonable attempt to identify himself or herself to the customer or any other responsible person then upon the premises and shall announce the purpose of his or her presence and shall make a record thereof to be maintained for at least thirty (30) days.

(2) The employee shall have in his or her possession information sufficient to enable the employee to inform the customer or other responsible person the reason for the disconnection, including the amount of any delinquent bill of the customer, and shall request from the customer any available verification that the outstanding bill has been satisfied or is currently in dispute and under review by the utility or the commission. Upon the presentation of such credible evidence, service shall not be disconnected.

(3) The employee shall not be required to accept payment from the customer, user, or other responsible person in order to prevent the service from being disconnected. The utility shall notify the customers under 170 IAC 6-1-18 of its policy with regard to the acceptance or nonacceptance of payment from the employee and shall uniformly follow the policy without discrimination.

(4) When the employee has disconnected the service, the employee shall give to a responsible person at the customer's premises, or if no one is at home, shall leave at a conspicuous place on the premises, a notice stating that service has been disconnected and stating the address and telephone number of the utility where the user may arrange to have service reconnected.

(g) If a utility disconnects service in violation of this rule, the service shall immediately be restored at no charge to the customer. *(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-5)*

170 IAC 6-1.2-6 Payment arrangements and reconnection of service

Authority: IC 8-1-1-3; IC 8-1-2-34.5; IC 8-1-2-121; IC 8-1-2-122
Affected: IC 8-1-2; IC 32-34-1-20

Sec. 6. (a) Except in cases where fraudulent or unauthorized use of utility service is detected and the utility has reasonable grounds to believe the customer is responsible for the use, when a residential customer cannot pay an undisputed bill or the undisputed portion of a disputed bill in full, the utility shall continue to serve the customer or reconnect the customer if the customer and the utility agree on a reasonable portion of the outstanding bill to be paid immediately. The manner in which the balance of the outstanding bill will be paid (the "payment arrangement") shall be made in accordance with the following guidelines:

(1) The customer shows just cause for his or her inability to pay (financial hardship shall constitute just cause), and the customer pays a reasonable portion of the amount, not to exceed one-third ($^1/_3$) of all amounts due (unless the customer agrees to a greater portion) and the customer:

(A) agrees to pay:

(i) the balance of all amounts due in equal monthly installments; and

(ii) all undisputed future bills for utility service as they become due; and

(B) has not breached any similar agreement with the utility made under this section in the last twelve (12) months.

(2) In deciding on the reasonableness of a particular payment arrangement, the utility shall consider the following:

(A) The customer's ability to pay.

(B) The size of the unpaid balance.

(C) The customer's payment history and length of service.

(D) The amount of time the debt has been and the reasons why the debt is outstanding.

(3) The payment arrangement shall provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program.

(4) The payment arrangement is subject to amendment upon the customer's request if there is a change in the customer's financial circumstances.

(5) The utility may add to the outstanding bill a late payment charge not to exceed the amount set under 170 IAC 6-1-13(B); however, only one (1) late payment charge may be assessed against the charges applicable to any given month.

(b) The terms of any payment arrangement made under this section shall be put in writing by the utility and sent by mail to the customer.

(c) If the customer does not meet any of the conditions in subsection (a), the utility may, but is not obligated to, enter into subsequent payment arrangements with the customer.

(d) The utility shall reconnect service to a customer as soon as reasonably possible but at least within one (1) working day after the utility is requested to do so if the customer has satisfied the requirements of this rule.

(e) A utility may charge a reasonable reconnection charge not to exceed the charge approved by the commission in the utility's filed tariffs. A utility shall inform its customers of the reconnection fee under 170 IAC 6-1-18. *(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-6)*

170 IAC 6-1.2-7 Customer complaints to the utility

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 7. (a) An applicant or customer may complain at any time to a utility about any bill, security deposit, disconnection notice, or any other matter relating to installation or service and may request a conference with the utility thereon. The complaints may be made in person, by telephone, in writing, or by completing a written or electronic form available from the utility. A complaint shall be considered filed upon receipt by the utility, except mailed complaints shall be considered filed two (2) calendar days after the postmark date. In making a complaint or request for conference, the applicant or customer shall state, at a minimum, his or her name, service address, telephone number, and the general nature of his or her complaint.

(b) Upon receiving each such complaint or request for conference, the utility shall take the following actions:

(1) Immediately notify an applicant or customer that any undisputed portion of a bill shall be paid by the date due in order to avoid disconnection of service in accordance with section 5 of this rule.

(2) Promptly, thoroughly, and completely investigate the complaint in good faith, attempt to confer with the applicant or customer when requested, and notify the applicant or customer of the utility's proposed disposition of the complaint. During the investigation, no collection action shall be taken for items that are being disputed, and there shall be no negative impact on applicant or customer's credit rating.

(3) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while investigating the complaint or making a good faith attempt to resolve the complaint.

(4) Charges that are disputed by the applicant or customer shall not be treated as delinquent while an investigation is pending.

(5) After investigation, the utility may rebill the disputed charges in the next billing cycle if the investigation determined that the charges were appropriate; however, the utility shall not assess any late payment charge that may have accrued while the investigation was pending.

(6) If the utility's proposed disposition is not in the applicant or customer's favor, the utility shall notify the applicant or customer of the disposition in writing if the complaint was made in writing. If the utility's proposed disposition is not in the applicant or customer's favor, the utility shall notify the applicant or customer in writing or orally, if the complaint was made orally. The notification shall include contact information for the commission, including the commission's mailing address, toll-free complaint number, and local telephone number. A utility shall direct its personnel engaged in contact with an applicant or customer to inform the applicant or customer, if he or she expresses dissatisfaction with the decision of the personnel, of the right to have the problem considered and acted upon by supervisory personnel of the utility. A utility shall further direct the supervisory personnel to notify the applicant or customer who expresses dissatisfaction with the decision of the supervisory personnel of the right to have the problem reviewed by the commission's consumer affairs division and shall furnish him or her the business address and telephone number of the commission. The notification shall advise the applicant or customer that if he or she is dissatisfied with the utility's disposition, the applicant or customer may, within twenty-one (21) days, file a complaint with the commission's consumer affairs division (under section 8 of this rule). The payment of a deposit as requested by the utility shall not foreclose or in any manner affect the applicant or customer's right to appeal under IC 8-1-2-34.5 or other applicable law.

(c) If at any time the applicant or customer files a complaint with the commission regarding a dispute with a utility, the procedures set forth in section 8 of this rule shall apply. Any disconnection of the applicant or customer's service shall be governed by section 5 of this rule.

(d) A utility shall retain a written record of complaints

and requests for conferences for at least eighteen (18) months after the complaint or request for conference is made. The records shall be maintained at the office or branch office of the utility or in the respective department office thereof where the complaints were received or any conferences were subsequently held. The written records are to be readily available upon request by the:

(1) concerned applicant or customer;

(2) applicant or customer's agent possessing written authorization; or

(3) commission.

(e) A utility shall, at the request of the commission, submit a report covering the previous twelve (12) month period to the commission that shall state and classify the following:

(1) The number of complaints made to the utility under this rule.

(2) The general nature of the subject matter thereof.

(3) How the complaint was received.

(4) Whether a commission review was conducted thereon.

(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-7)

170 IAC 6-1.2-8 Customer complaints to the commission

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-88

Sec. 8. (a) An individual or entity may informally complain to the commission's consumer affairs division with respect to any matter within the jurisdiction of the commission. The complaints may be made in person, by telephone, in writing, or by completing a written or electronic form available from the consumer affairs division. A complaint shall be considered filed upon receipt by the commission, except mailed complaints shall be considered filed as of the postmark date. In making a complaint, the applicant or customer shall state, at a minimum, the following:

(1) His or her name.

(2) The service address.

(3) His or her telephone number.

(4) The name of the utility involved.

(5) The general nature of his or her complaint.

(b) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while any commission review or investigation of the complaint is pending. The applicant or customer shall continue to pay all undisputed charges. In those instances when the applicant or customer and the utility cannot agree as to what portion of a bill is undisputed, the applicant or customer shall pay on the disputed bill an amount equal to the applicant or customer's average bill for the twelve (12) months immediately preceding the disputed bill. In those cases where the applicant or customer has received fewer than twelve (12) bills, the applicant or customer shall pay an amount equal to one-twelfth ($^1/_{12}$) of the estimated annual billing for service to be rendered to the applicant or customer.

(c) If the applicant or customer is dissatisfied with a utility's notice of the utility's proposed disposition of the complaint as provided in section 7 of this rule, the applicant or applicant or customer may, within twenty-one (21) days after the postmark date of the notice, file an informal complaint with the commission's consumer affairs division.

(d) Upon receiving an informal complaint, the following actions shall be taken:

(1) The utility shall be notified that a complaint has been made.

(2) The complaint shall be investigated.

(3) The applicant or customer and the utility shall be notified of the decision made on the complaint in accordance with applicable law.

(e) Requirements for an informal review are as follows:

(1) The applicant or customer or the utility may make a written request that a decision made under subsection (d) be reviewed informally by the consumer affairs director or designee. The written request shall be made within fourteen (14) days of the decision. The records of the commission relating to the reviews shall be kept in a systematic order.

(2) Upon receiving a request for an informal review, the consumer affairs director or designee shall provide an informal review in a timely manner. The review shall consist of not less than a prompt and thorough investigation of the dispute and shall result in a written decision to be mailed to the applicant or customer. Upon request by either party or the consumer affairs director or designee, the parties shall be required to meet and confer to the extent and at a place the consumer affairs director or designee considers appropriate.

(f) The applicant or customer may make a written request that the commission investigate the disposition of the informal review. The written request shall be made within twenty (20) days of the consumer affairs division's notice of disposition. Before entering an order upon a commission investigation, the commission shall afford the applicant or customer and the utility notice and an opportunity to be heard.

(g) Without the applicant or customer's permission, the utility shall not disconnect, remove, or restrict any disputed service until at least twenty (20) days have elapsed from the postmark date of the consumer affairs division's disposition or the commission's order upon investigation, if any.

(h) The time frames provided in this section may be extended at the discretion of the consumer affairs division.

(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-8)

170 IAC 6-1.2-9 Estimated bills
Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-4

Sec. 9. (a) Each estimated bill shall be clearly and conspicuously identified as such. Unless otherwise requested by a customer, estimated bills shall not be issued for more than three (3) consecutive months. After three (3) consecutive months of estimating the customer's bill, the utility shall secure an accurate reading of the meter. Failure on the part of the customer to comply with a reasonable request for meter access may lead to discontinuance of service.

(b) A utility or billing entity may not render a bill based on estimated usage if:
(1) the billing would be the customer's first or final bill for service;
(2) the customer has supplied meter readings to the utility; or
(3) the customer has requested an actual meter read.

(c) When a utility or billing entity renders an estimated bill in accordance with this article, the utility or billing entity shall maintain accurate records of the reasons therefor and efforts made to secure an actual reading.

(d) When a utility underestimates a customer's usage, the customer shall be given the opportunity to make payment arrangements as provided in this rule.

(e) A utility may estimate a bill because a meter malfunctioned or failed. If the time when the meter malfunction or error began cannot be reasonably determined to have occurred within a specific billing period, the corrected billings shall not exceed the most recent six (6) months before the discovery of the malfunction or error. If the time when the malfunction or error began can be reasonably determined, the corrected billings shall go back to that time but shall not exceed twelve (12) months. *(Indiana Utility Regulatory Commission; 170 IAC 6-1.2-9)*

SECTION 4. 170 IAC 7-1.3-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.3-2 Definitions
Authority: IC 8-1-1-3
Affected: IC 8-1-2-1

Sec. 2. The following definitions apply throughout this rule:
(1) "Applicant" means any person, company, or designated agent who seeks to become a customer for basic residential or small business telephone services.
(2) "Basic local service" means the provision to a customer of an access line that transmits two-way interactive switched voice or communication within a local calling area.
(3) "Business days" means all days other than a:
(A) Saturday;
(B) Sunday;
(C) legal holiday as defined by statute; or
(D) day that the utility (or service provider) office is closed during regular business hours.
(4) "Clear and conspicuous notification" means notice that would be apparent to a reasonable consumer.
(5) "Commission" means the Indiana utility regulatory commission.
(6) "Competitive local exchange carrier" or "CLEC" means a local service telephone utility that provides telephone service to customers in the geographic territory served by the local exchange and does not qualify as an ~~incumbent local exchange carrier~~ **ILEC** under subdivision ~~(9).~~ **(10).**
(7) "Customer" means the following:
(A) Any person that requests and obtains telephone service and is responsible for the **following:**
(i) The payment of charges.
(ii) Compliance with filed tariffs. ~~and~~
(iii) Rules of the utility.
(B) Any business or institutional entity, whether an individual, partnership, corporation, association, or other business or institutional form that:
(i) does or will operate with four (4) or fewer single access lines;
(ii) requests and obtains telephone service for occupational, professional, or institutional purposes; and
(iii) is responsible for the payment of charges, compliance with filed tariffs, and rules of the utility.
(C) Any customer whose service has been temporarily disconnected shall continue to be a customer for purposes of this rule until such time as service is permanently disconnected and the customer must reapply for new service.
(8) "Deniable charges" means charges for basic local service. Delinquency in payment of deniable charges may result in disconnection of basic local service.
(9) "Disconnection" means the termination or discontinuance of utility service.
~~(9)~~ **(10)** "Incumbent local exchange carrier" or "ILEC" means a local service telephone utility that provides telephone service to customers in the geographic territory served by the local exchange and that:
(A) on February 8, 1996, provided telephone exchange service in such area and was deemed to be a member of the exchange carrier association under 47 CFR 69.601(b); or
(B) is a person or entity that on or after February 8, 1996, became a successor or assignee of a member described in clause (A).
(11) "Late payment charge" means the one-time penalty assessed by a utility on a customer's account when the account becomes delinquent.
~~(10)~~ **(12)** "Local exchange carrier" or "LEC" means a local serving telephone utility that provides telephone service to customers in the geographic territory served by the local exchange, and excluding those services provided pursuant to

a CTA issued for a radio common carrier or commercial mobile radio service.

~~(11)~~ **(13)** "Long distance service" or "toll service" means the transmission of two-way interactive switched voice communication between local exchange areas for which charges are made on a per-unit basis.

~~(12)~~ **(14)** "New service provider" means a service provider that did not bill the customer for service during the service provider's last billing cycle. The term includes only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill unless the service is subsequently canceled.

~~(13)~~ **(15)** "Nondeniable charges" means charges for toll service and unregulated telecommunications services. Delinquency in payment of nondeniable charges shall not result in disconnection of basic local service.

~~(14)~~ **(16)** "Temporary disconnection" means a disconnection that has not yet resulted in the customer's account being permanently removed from the telephone provider's network.

~~(15)~~ **(17)** "Utility" means any public utility (as defined in IC 8-1-2-1) ~~or municipal utility (as defined in IC 8-1.5-1-10)~~ that furnishes telephone service to the public under the jurisdiction of the commission.

(Indiana Utility Regulatory Commission; 170 IAC 7-1.3-2; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4066, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later; errata, 26 IR 1565; errata, 26 IR 2375)

SECTION 5. 170 IAC 7-1.3-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.3-3 Creditworthiness of residential customer; deposit; refund

Authority: IC 8-1-1-3
Affected: IC 8-1-2-4; IC 8-1-2-88; IC 32-34-1

Sec. 3. (a) ~~Each~~ **A** LEC shall determine the creditworthiness of applicants or customers in an equitable and nondiscriminatory manner:

(1) without regard to: ~~the~~

(A) race;

(B) color;

(C) creed;

(D) religion;

(E) sex;

(F) national origin; ~~or~~

(G) marital status; ~~of the applicant or customer, or the economic character of the area wherein the applicant or customer resides or operates; and~~

(H) receipt of public assistance; or

(I) the economic character of the area wherein the applicant or customer resides or operates; and

(2) solely upon the credit risk of the **individual** applicant or customer without regard to the:

(A) collective credit reputation of the area in which the applicant or customer resides or operates; **and**

(B) credit history of any other individual residing in the household or the applicant or customer's spouse.

~~(b) Each new applicant for residential telephone service shall be deemed creditworthy and shall not be required to make a cash deposit as a condition of receiving basic local service if the applicant satisfies either of the following criteria:~~

~~(1) The applicant has been a customer of a public or municipal utility in the United States within the last two (2) years, and the applicant:~~

~~(A) owes no outstanding bills for service rendered within the past four (4) years by such utility;~~

~~(B) during the last twelve (12) consecutive months that the service was provided, did not have more than two (2) bills that were delinquent to such utility or, if service was rendered for a period for less than twelve (12) months, did not have more than one (1) delinquent bill in such period; and~~

~~(C) within the last two (2) years did not have a service disconnected by such utility for nonpayment of a bill for services rendered by that utility.~~

~~(2) The applicant has not been a customer of a utility during the previous two (2) years and any of the following criteria are met:~~

~~(A) The applicant either has been employed by:~~

~~(i) his or her present employer for two (2) years;~~

~~(ii) his or her present employer for less than two (2) years, but has been employed by only one (1) other employer during the past two (2) years; or~~

~~(iii) the present employer for less than two (2) years and has no previous employment due to recently:~~

~~(AA) graduating from a school, university, or vocational program; or~~

~~(BB) being discharged from military service.~~

~~(B) The applicant either:~~

~~(i) owns or is buying his or her home; or~~

~~(ii) is renting a home or an apartment and has occupied the premises for more than two (2) years.~~

(b) A LEC may require a residential service applicant or customer to satisfactorily establish his or her financial responsibility (creditworthiness). The LEC may require a deposit or other reasonable guarantor to secure payment of bills before providing local exchange service if the applicant or customer is not deemed creditworthy because the applicant or customer:

(1) does not meet or exceed the predetermined minimum credit score selected by the LEC using a credit scoring system as provided in the LEC's tariff; or

(2) has failed to pay for past due telephone service furnished to him or her at the same or at another address within the past four (4) years.

(c) A bill for one (1) class of service (such as commercial) shall not be transferred to a bill for another class of service (such as residential), nor shall a bill for one (1) form of utility service (such as telephone) be transferred to a bill for another form of utility service (such as electric). Local exchange service shall not be denied for nonpayment of bills for merchandise or other nonutility or unregulated services.

~~(c)~~ **(d)** If the applicant **or customer** fails to establish that he or she is creditworthy under subsection (b), the applicant **or customer** may be required to make a reasonable ~~initial~~ ~~cash~~ deposit. ~~Such initial~~ **The** deposit shall not exceed one-sixth ($^1/_6$) of the estimated annual billings for local service **at the address at which service is rendered** to the applicant **or customer** and shall be paid in full before installation of service, ~~Such~~ **subject to the provisions of section 11 of this rule; provided, however, that a deposit shall be based upon estimated local regulated telecommunications service charges only. If a deposit is greater than one hundred fifty dollars ($150), the LEC shall advise the applicant or customer simultaneously with making a demand for a deposit that the applicant or customer may pay the deposit in equal installment payments over a period of no fewer than three (3) months, and service shall be connected upon receipt by the LEC of the first payment. For example, if the total deposit required by a LEC under this section is one hundred eighty dollars ($180), the applicant or customer could make three (3) payments of sixty dollars ($60) over a three (3) month period, and service would be connected after the first sixty dollar ($60) payment. The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule in order to receive service. An** initial deposit **made by a customer** shall be subject to reevaluation upon the request of either the LEC or the customer, based upon actual charges for services rendered, at any time after service has been provided.

~~(d)~~ **(e)** The ~~utility~~ **LEC** may elect to accept a written guarantee, signed by a third party guarantor acceptable to the ~~utility~~ **LEC within its discretion,** of payment for all telephone service rendered or **requested** to be rendered to the applicant **or customer.** The guarantor may terminate the guarantee upon thirty (30) days prior written notice. ~~Said~~ **The** guarantee shall be in full force and effect up to and including the date the guarantee shall terminate, and the guarantor shall be obligated, as provided in the written guarantee, respecting the payment of the amount of the ~~applicant's~~ **applicant or customer's** bill on the date of termination. A guarantee shall terminate when the customer submits satisfactory payment for a period of ~~either:~~

~~(1) nine (9) consecutive months; or~~

~~(2)~~ ten (10) out of any twelve (12) consecutive months.

~~(e)~~ **(f)** If the ~~utility~~ **LEC** requires a ~~cash~~ deposit or a written guarantee as a condition of providing service, the ~~utility~~ **LEC** shall advise the applicant **or customer** of the reason upon which ~~it~~ **the LEC** bases its decision and provide the applicant **or customer** with an opportunity to rebut ~~such~~ **the** facts and show other facts demonstrating creditworthiness.

~~(f)~~ **(g)** The LEC may require ~~a present~~ **an existing** customer to make a reasonable ~~cash~~ deposit, or an additional deposit in cases where a deposit has been made ~~when~~ **and exhausted under this rule, under any of the following circumstances:**

(1) The customer has been mailed disconnect notices for:

(A) two (2) consecutive months; or

(B) any three (3) months within the preceding twelve (12) month period.

(2) The service to the customer has been disconnected within the past forty-five (45) days for nonpayment.

In such cases, notice of the need for a deposit shall be in writing, and the customer shall be given ten (10) business days from the mailing date of the notice within which to make ~~said~~ **the** deposit. When the service has been disconnected within the past four (4) years ~~pursuant to~~ **under** section 11 of this rule, the deposit shall be provided before the service will be reconnected. The total amount of all deposits required for local service ~~pursuant to~~ **under** this section may not exceed an amount equal to one-sixth ($^1/_6$) of the annualized estimated billings for **local service to** the customer at the address at which service is rendered. **The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule.**

~~(g)~~ **(h)** The LEC shall treat customers who have filed bankruptcy under federal law in accordance with the protective provisions of 11 U.S.C. 366, **effective October 22, 1994.**

~~(h)~~ **(i)** Requirements for interest upon a deposit shall be as follows:

(1) A deposit held more than thirty (30) days shall earn interest from the date of deposit. Beginning on the effective date of this rule, the rate of interest shall be set by the commission based upon the then existing rate for one **(1)** year United States treasury bills. The interest rate will be rounded to the nearest one-half (½) of one percent (1%). In December of each year, the commission shall issue a general administrative order establishing the interest rate for the next calendar year that shall be paid on all deposits held during all or part of the subsequent year.

(2) The deposit shall not earn interest after the date ~~it~~ **the deposit** is mailed or personally delivered to the customer, or otherwise lawfully disposed of as provided in subsection ~~(i)(6).~~ **(j)(6).**

~~(i)~~ **(j)** Requirements for refunds shall be as follows:

(1) Any deposit and accrued interest shall be promptly refunded to the customer without the customer's request when the customer submits satisfactory payment ten (10) out of any twelve (12) consecutive months without late payment.

(2) A statement of accounting for each transaction affecting

the deposit and interest shall accompany refunds of deposits or accrued interest issued under this section.

(3) Following a customer requested termination of service, the LEC shall **do the following:**

(A) Apply the deposit, plus accrued interest, to the final bill. ~~or~~

(B) ~~upon specific request from the customer,~~ Refund ~~the~~ **any remaining** deposit, plus accrued interest, within fifteen (15) business days after payment of the final bill.

(4) ~~Each~~ **A** LEC shall maintain a record of each applicant or customer making a deposit that shows the following:

(A) The name of the customer.

(B) The current mailing address of the customer.

(C) The amount of the deposit.

(D) The date the deposit was made.

(E) A record of each transaction affecting ~~such~~ **the** deposit.

(5) ~~Each~~ **A** customer shall be provided a written receipt from the LEC at the time the customer's deposit is paid in full or ~~when~~ **any time** the customer makes a ~~cash~~ partial payment. The LEC shall provide a reasonable method by which a customer, who is unable to locate his or her receipt, may establish that he or she is entitled to a refund of the deposit and payment of interest thereon.

(6) Any deposit made by the applicant or customer to the LEC (less any lawful deductions to be refunded), or any sum the LEC is ordered to refund for telephone services that has remained unclaimed for one (1) year after the LEC has made a diligent effort to locate the customer who made ~~such~~ **the** deposit or the heirs of ~~such~~ **the** customer, shall be presumed abandoned and treated in accordance with ~~IC 32-34-1-20(c).~~ **IC 32-34-1 et seq.**

(7) A deposit may be used by the LEC to cover any unpaid balances owed the LEC following disconnection of any service under section 11 of this rule, provided, however, that any surplus be returned to the customer as provided in this ~~subsection.~~ **section.**

(8) Establishment of credit by ~~cash~~ deposit shall not relieve a customer from complying with the commission's rules for prompt payment of bills.

(k) A deposit shall not be applied to satisfy an applicant or customer's bill, prior arrearage, or outstanding indebtedness that is greater than four (4) years old; however, a LEC may pursue the unpaid balances via collections or other means provided by applicable law.

(l) At the end of every year of service, if the deposit plus interest is not refunded to the customer, the LEC shall automatically refund the accrued interest on the deposit to the customer by crediting the customer's account and stating this credit clearly on the customer's next regular bill.

(m) A customer who fails to pay a bill by the time specified by the regulations of the LEC and commission regarding the prompt payment of bills, and who further fails to pay the bill within a reasonable period after presentation of a disconnection of service notice for nonpayment, may be required to pay the bill and to reestablish credit by making a deposit under this rule. *(Indiana Utility Regulatory Commission; 170 IAC 7-1.3-3; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4067, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later; errata filed Oct 8, 2002, 12:54 p.m.: 26 IR 382)*

SECTION 6. 170 IAC 7-1.3-8 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.3-8 Customer complaints to the utility

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2

Sec. 8. (a) ~~A~~ **An applicant or** customer may complain at any time to a utility about any bill, security deposit, disconnection notice, or any other matter relating to installation or service and may request a conference with the utility thereon. ~~Such~~ **The** complaints may be made in person, by telephone, in writing, or by completing a **written or electronic** form available from the utility. ~~at its business offices.~~ A complaint shall be considered filed upon receipt by the utility, except mailed complaints shall be considered filed two (2) calendar days after the postmark date. In making a complaint or request for conference, the **applicant or** customer shall state, at a minimum, **the following:**

(1) His or her name.

(2) The service address.

(3) His or her telephone number. ~~and~~

(4) The general nature of his or her complaint.

(b) Upon receiving each such complaint or request for conference, the utility shall take the following actions:

(1) Immediately notify ~~a~~ **an applicant or** customer that any undisputed portion of a bill shall be paid by the date due in order to avoid disconnection of service in accordance **with** section 11 of this rule.

(2) Promptly, thoroughly, and completely investigate ~~such~~ **the** complaint in good faith, attempt to confer with the **applicant or** customer when requested, and notify the **applicant or** customer of ~~its~~ **the utility's** proposed disposition of the complaint. During the investigation, no collection action shall be taken for items that are being disputed, and there shall be no negative impact on **the applicant or** customer's credit rating.

(3) Without the **applicant or** customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while investigating the complaint or making a good faith attempt to resolve the complaint.

(4) Charges that are disputed by the **applicant or** customer shall not be treated as delinquent while an investigation is pending.

(5) After investigation, the utility may rebill the disputed charges in the next billing cycle if the investigation determined that the charges were appropriate; **however, the utility shall not assess any late payment charge that may have accrued while the investigation was pending.**

(6) If the utility's proposed disposition is not in the **applicant or** customer's favor, the utility shall notify the **applicant or** customer of ~~such~~ **the** disposition in writing if the complaint was made in writing. If the utility's proposed disposition is not in the **applicant or** customer's favor, the utility shall notify the **applicant or** customer in writing or orally, if the complaint was made orally. **A utility shall direct its personnel engaged in contact with an applicant or customer to inform the applicant or customer, if he or she expresses dissatisfaction with the decision of the personnel, of the right to have the problem considered and acted upon by supervisory personnel of the utility. A utility shall further direct the supervisory personnel to notify the applicant or customer who expresses dissatisfaction with the decision of the supervisory personnel of the right to have the problem reviewed by the commission's consumer affairs division and shall furnish him or her the business address and telephone number of the commission.** The notification shall advise the customer or applicant that if he or she is dissatisfied with the telephone company's disposition, the customer or applicant may, within twenty-one (21) days, file a complaint with the commission's consumer affairs division ~~(pursuant to~~ **(under** section 9 of this rule). ~~Such~~ **The** notification shall include contact information for the commission, including the commission's mailing address, toll-free complaint number, and local telephone number. **The payment of a deposit as requested by the utility shall not foreclose or in any manner affect the applicant or customer's right to appeal under IC 8-1-2-34.5 or other applicable law.**

(c) If at any time the **applicant or** customer files a complaint with the commission regarding a dispute with a utility, the procedures set forth in section 9 of this rule shall apply. Any disconnection of the **applicant or** customer's service shall be governed by section 11 of this rule.

(d) ~~Each~~ **A** utility shall retain a written record of complaints and requests for conferences for at least eighteen (18) months after the complaint or request for conference is made. ~~Such~~ **The** records shall be maintained at the office or branch office of the utility or in the respective department office thereof where ~~such~~ **the** complaints were received or any conferences were subsequently held. ~~Such~~ **The** written records are to be readily available upon request by the:

(1) concerned **applicant or** customer; ~~the~~

(2) applicant or customer's agent possessing written authorization; or ~~the~~

(3) commission.

(e) ~~Each~~ **A** utility shall, at the request of the commission, submit a report covering the previous twelve (12) month period to the commission that shall state and classify **the following:**

(1) The number of complaints made to the utility ~~pursuant to~~ **under** this rule.

(2) The general nature of the subject matter thereof.

(3) How the complaint was received. ~~and~~

(4) Whether a commission review was conducted thereon.

(Indiana Utility Regulatory Commission; 170 IAC 7-1.3-8; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4070, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later)

SECTION 7. 170 IAC 7-1.3-9 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.3-9 Customer complaints to the commission

Authority: IC 8-1-1-3; IC 8-1-2-34.5
Affected: IC 8-1-2-34.5; IC 8-1-2-88

Sec. 9. (a) An individual or entity may informally complain to the commission's consumer affairs division with respect to any matter within the jurisdiction of the commission. ~~Such~~ **The** complaints may be made in person, by telephone, in writing, or by completing a **written or electronic** form available from the consumer affairs division. A complaint shall be considered filed upon receipt by the commission, except mailed complaints shall be considered filed as of the postmark date. In making a complaint, the **applicant or** customer shall state, at a minimum, **the following:**

(1) His or her name.

(2) The service address.

(3) His or her telephone number. ~~and~~

(4) The name of the utility involved.

(5) The general nature of his or her complaint.

(b) Without the **applicant or** customer's permission, the utility shall not disconnect, remove, or restrict any service that is the subject matter of the complaint while any commission review or investigation of ~~such~~ **the** complaint is pending. The **applicant or** customer shall continue to pay all undisputed charges. In those instances when the **applicant or** customer and **the** utility cannot agree as to what portion of a bill is undisputed, the **applicant or** customer shall pay on the disputed bill an amount equal to the **applicant or** customer's average bill for the twelve (12) months immediately preceding the disputed bill. In those cases where the **applicant or** customer has received fewer than twelve (12) bills, the **applicant or** customer shall pay an amount equal to one-twelfth ($^1/_{12}$) of the estimated annual billing for service to be rendered to the **applicant or** customer.

(c) If the **applicant or** customer is dissatisfied with a utility's notice of ~~its~~ **the utility's** proposed disposition of the complaint as provided in section 8 of this rule, the customer or applicant may, within twenty-one (21) days after the postmark date of the notice, file ~~a consumer~~ **an informal** complaint with the commission's consumer affairs division.

(d) Upon receiving ~~a consumer~~ **an informal** complaint, the following actions shall be taken:

(1) The utility shall be notified that a complaint has been made.

(2) The complaint shall be investigated.

(3) The **applicant or** customer and the utility shall be notified of the decision made on the complaint in accordance with applicable law.

(e) Requirements for an informal review are as follows:

(1) The **applicant or** customer or the utility may make a written request that a decision made ~~pursuant to~~ **under** subsection (d) be reviewed informally by the consumer affairs director or designee. ~~Such~~ **The** written request shall be made within fourteen (14) days of the decision. The records of the commission relating to ~~such~~ **the** reviews shall be kept in a systematic order.

(2) Upon receiving a request for an informal review, the consumer affairs director or designee shall provide an informal review ~~within thirty (30) days.~~ **in a timely manner.** The review shall consist of not less than a prompt and thorough investigation of the dispute and shall result in a written decision to be mailed to the **applicant or** customer and the utility. ~~within thirty (30) days after its receipt of the customer's request.~~ Upon request by either party or the consumer affairs director or designee, the parties shall be required to meet and confer to the extent and at ~~such~~ **a** place ~~as~~ the consumer affairs director or designee ~~may consider~~ **considers** appropriate.

(f) The **applicant or** customer may make a written request that the commission investigate the disposition of the informal review. ~~Such~~ **The** written request shall be made within ~~fourteen (14)~~ **twenty (20)** days of the consumer affairs division's notice of disposition. ~~Prior to~~ **Before** entering an order upon a commission investigation, the commission shall afford the **applicant or** customer and the utility notice and an opportunity to be heard.

(g) Without the **applicant or** customer's permission, the utility shall not disconnect, remove, or restrict any disputed service until at least ~~fourteen (14)~~ **twenty (20)** days have elapsed from the postmark date of the consumer affairs ~~division~~ **division's** disposition or the commission's order upon investigation, if any.

(h) The time frames provided in this section may be extended at the discretion of the consumer affairs division.

(Indiana Utility Regulatory Commission; 170 IAC 7-1.3-9; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4071, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later)

SECTION 8. 170 IAC 7-1.3-10 IS AMENDED TO READ AS FOLLOWS:

170 IAC 7-1.3-10 Customer payments

Authority: IC 8-1-1-3
Affected: IC 8-1-2-4; IC 8-1-2-88

Sec. 10. (a) **Except in cases where fraudulent or unauthorized use of utility service is detected and the LEC has reasonable grounds to believe the customer is responsible for the use,** when a residential customer cannot pay an undisputed bill or the undisputed portions of a disputed bill in full, the LEC shall continue to serve the customer **or shall reconnect the customer** if the customer and the LEC agree on a reasonable portion of the outstanding bill to be paid immediately. The manner in which the balance of the outstanding bill will be paid **(the "payment arrangement") shall be made** in accordance with the following guidelines:

(1) ~~If~~ The customer shows just cause for his or her inability to pay deniable charges (financial hardship shall constitute just cause), and the customer pays a reasonable portion of ~~such~~ **the** amount, not to exceed ~~the greater of either twenty dollars ($20) or twenty-five percent (25%)~~ **one-third ($^1/_3$)** of all amounts due for deniable charges **(unless the customer agrees to a greater portion).**

(2) In deciding on the reasonableness of a particular agreement, the LEC shall consider the following:

(A) The customer's ability to pay.

(B) The size of the unpaid balance.

(C) The customer's payment history and length of service.

(D) The amount of time **the debt has been** and **the** reasons why the debt is outstanding.

(E) The customer:

(i) agrees to pay:

(AA) the balance of all amounts due in equal monthly installments; **and**

~~(ii) agrees to pay~~ **(BB)** all undisputed future bills for local service as they become due; and

~~(iii)~~ **(ii)** has not breached any similar agreement with the LEC made ~~pursuant to~~ **under** this section in the last twelve (12) months.

(3) The payment arrangement shall provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program.

(4) The payment arrangement is subject to amendment upon the customer's request if there is a change in the customer's financial circumstances.

(5) The LEC may add to the outstanding bill a late payment charge not to exceed the amount set ~~pursuant to section 6(d)~~ **under section 6(c)** of this rule.

(b) The terms of any payment arrangement made ~~pursuant to~~ **under** this section shall be put in writing by the LEC and sent by mail to the customer.

(c) Only one (1) late payment charge may be assessed against the charges applicable to any given month.

(d) If the customer does not meet any of the conditions in

subsection (a), the LEC may, but is not obligated to, enter into subsequent payment arrangements with the customer.

~~(e) If a customer makes a partial payment on a bill, the LEC shall first apply that payment to any deniable charges. A partial payment may only be applied to nondeniable charges when all deniable charges have been paid in full.~~

(e) The LEC shall reconnect service to a customer as soon as reasonably possible but at least within one (1) working day after the LEC is requested to do so if the customer has satisfied the requirements of this rule.

(f) A LEC may charge a reasonable reconnection charge not to exceed the charge approved by the commission in the LEC's filed tariffs. A LEC shall inform its customers of the reconnection fee under section 5 of this rule.

(g) Partial payments applied toward any past due amount on a bill or on the balance due on a disconnection notice shall be apportioned to past due regulated local service charges, then to any current local charges, before being applied by the LEC to any toll or nonregulated charges, unless the customer pays the entire amount past due or more for regulated services. In that case, any amount paid over the amount past due shall be applied first to current local charges. *(Indiana Utility Regulatory Commission; 170 IAC 7-1.3-10; filed Aug 7, 2002, 10:05 a.m.: 25 IR 4072, eff one hundred eighty (180) days after filing with the secretary of state or January 1, 2003, whichever is later)*

SECTION 9. 170 IAC 8.5-2-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 8.5-2-1 Applicability and scope; billing for service

Authority: IC 8-1-1-3; IC 8-1-2-47; IC 8-1-2-69; IC 8-1-2-89
Affected: IC 8-1-1-3

Sec. 1. ~~Bills for~~ **(a) This rule applies to any** sewage disposal **company that is now, or may hereafter be, engaged in the business of rendering** service ~~(a)~~ **to the public under the jurisdiction of the commission.**

(b) This rule creates the minimum level of service that a sewage disposal company is expected to meet when providing reasonable quality sewage disposal services to the public and to establish the obligations of both the sewage disposal company and the customer.

(c) No sewage disposal company shall discriminate against or penalize a customer for exercising any right granted by this rule. If a sewage disposal company's tariff on file with the commission contains provisions that conflict with this rule, this rule shall supersede any conflicting tariff provisions.

(d) Any sewage disposal company subject to this rule that fails to meet the standards established in this rule shall be subject to all legal remedies provided by law. Upon complaint or its own motion and after notice and hearing, the commission may order lawful enforcement mechanisms against a public sewage disposal company that fails to meet the requirements or standards established in this rule. Nothing in this rule shall prevent the commission from exercising any authority it may have under applicable law to enforce this rule in the event any public sewage disposal company fails to comply.

(e) The adoption of this rule shall in no way preclude the commission, upon complaint by a customer, upon its own motion or upon the petition of any sewage disposal company or the office of the utility consumer counselor, after notice and hearing, from taking any of the following actions:

(1) Altering or amending this rule in whole or in part.

(2) Requiring any other or additional service, equipment, facility, or standard.

(3) Making such modifications with respect to the application of this rule as may be found necessary to meet exceptional conditions.

(4) Requiring a sewage disposal company to comply with any other service standards.

(5) At its sole discretion, granting, in whole or in part, permanent or temporary waivers from this rule on an expedited basis.

The adoption of this rule shall not in any way relieve any sewage disposal company from any of its duties under the law of this state or rules and orders of the commission.

(f) If any provision of this rule is determined by competent authority to be prohibited or unenforceable, the provision shall be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions hereof.

(g) Bills rendered periodically to customers for sewage disposal service shall show at least the following information:

(1) The date of the bill, the time period for which the bill is rendered, or the dates and readings of the water meter, if used as the basis for the sewage bill, at the beginning and end of the billing period.

(2) The number and kind of units of service supplied, if based upon metered water consumption.

(3) The billing rate code, if any.

(4) The previous balance, if any.

(5) The amount of the bill.

(6) The sum of the amount of the bill and the late payment charge, if any.

(7) The date on which the bill becomes delinquent and on which a late payment charge will be added to the bill.

(8) If an estimated bill of a customer whose sewage bill is

based on metered water service, a clear and conspicuous coding or other indication identifying the bill as an estimated bill.

(9) Printed statements ~~and/or~~ **or** actual figures, **or both,** on either side of the bill shall inform the customer of the seventeen (17) day nonpenalty period.

(10) An explanation, which can be readily understood, of all codes ~~and/or~~ **or** symbols, **or both,** used on the bill.

~~(b)~~ **(h) Requirements concerning** delinquencies **shall be as follows:**

(1) A sewage disposal service bill ~~which~~ **that** has remained unpaid for a period of more than seventeen (17) days following the mailing of the bill shall be a delinquent bill.

(2) A sewage disposal bill shall be rendered as a net bill. If the net bill is not paid within seventeen (17) days after the bill is mailed, ~~it~~ **the bill** shall become a delinquent bill and a late payment charge may be added in the amount of ten ~~(10)~~ percent **(10%)** of the first three ~~(3)~~ dollars **($3)** and three ~~(3)~~ percent **(3%)** of the excess of three ~~(3)~~ dollars **($3).**

~~(c) Estimated Billing.~~ **(i)** A sewage disposal company may estimate the bill of any customer whose sewage bill is based on metered water service ~~pursuant to~~ **under** a billing procedure approved by the commission or for other good cause, including, but not limited to, **the following:**

(1) Request of **the** customer.

(2) Inclement weather.

(3) Labor or union disputes.

(4) Inaccessibility of a customer's meter if the company has made a reasonable attempt to read ~~it; and~~ **the meter.**

(5) Other circumstances beyond the control of the sewage disposal company, its agents, and employees.

(Indiana Utility Regulatory Commission; Service for Utilities Rendering Sewage Disposal Service in Ind; Rule 13; filed Dec 9, 1981, 10:20 a.m.: 5 IR 15; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233)

SECTION 10. 170 IAC 8.5-2-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 8.5-2-3 Creditworthiness guidelines; deposit to ensure payment of bill

Authority: IC 8-1-1-3
Affected: IC 32-34-1-20

Sec. 3. (a) ~~Each~~ **A** sewage disposal company shall determine the creditworthiness of residential applicants or customers in an equitable and nondiscriminatory method:

(1) without regard to:

(A) race;
(B) color;
(C) creed;
(D) religion;
(E) national origin;
(F) sex;
(G) marital status;
(H) receipt of public assistance; or
(I) the economic character of the area wherein the applicant or customer resides; and

(2) solely upon the credit risk of the individual **applicant or customer** without regard to the:

(A) collective credit reputation of the area in which he or she lives; **and**

(B) credit history of any other individual residing in the household or the applicant or customer's spouse.

~~(b) Each new applicant for residential sewage disposal service shall be deemed creditworthy and shall not be required to make a cash deposit as a condition of receiving service if the applicant satisfies the following criteria:~~

~~(1) If the applicant has been a customer of any utility within the last two (2) years, the applicant:~~

~~(A) owes no outstanding bills for service rendered within the past four (4) years by any such utility;~~

~~(B) during the last twelve (12) consecutive months that the service was provided, did not have more than two (2) bills that were delinquent to any utility or, if service was rendered for a period for less than twelve (12) months, did not have more than one (1) delinquent bill in such period; and~~

~~(C) within the last two (2) years did not have a service disconnected by a utility for nonpayment of a bill for services rendered by that utility.~~

~~(2) If the applicant has not been a customer of a utility during the previous two (2) years, the applicant shall be deemed creditworthy if any two (2) of the following criteria are met:~~

~~(A) The applicant either:~~

~~(i) has been employed by his or her present employer for two (2) years;~~

~~(ii) has been employed by his or her present employer for less than two (2) years, but has been employed by only one (1) other employer during the past two (2) years; or~~

~~(iii) has been employed by the present employer for less than two (2) years and has no previous employer due to recently:~~

~~(AA) graduating from a school, university, or vocational program; or~~

~~(BB) being discharged from military service.~~

~~(B) The applicant either:~~

~~(i) owns or is buying his or her home; or~~

~~(ii) is renting a home or an apartment and has occupied the premises for more than two (2) years.~~

~~(C) The applicant has credit cards, charge accounts, or has been extended credit by a bank or commercial concern unless a credit check shows that the applicant has been in default on any such account more than twice within the last twelve (12) months.~~

(b) A sewage disposal company may require a residential service applicant or customer to satisfactorily establish his or her financial responsibility (creditworthiness). The

sewage disposal company may require a deposit or other reasonable guarantor to secure payment of bills before providing sewage disposal service if the applicant or customer is not deemed creditworthy due to any of the following circumstances:

(1) The applicant or customer does not meet or exceed the predetermined minimum credit score selected by the sewage disposal company using a credit scoring system as provided in the sewage disposal company's tariff.

(2) The applicant or customer has failed to pay for past due sewage disposal service furnished to him or her at the same or at another address within the past four (4) years.

(c) A bill for one (1) class of service (such as commercial) shall not be transferred to a bill for another class of service (such as residential), nor shall a bill for one (1) form of sewage disposal service (such as sewer) be transferred to a bill for another form of sewage disposal service (such as water). Sewage disposal service shall not be denied for nonpayment of bills for merchandise or other nonutility or unregulated services.

(d) Sewage disposal companies shall treat customers who have filed bankruptcy under federal law in accordance with the protective provisions of 11 U.S.C. 366, effective October 22, 1994.

~~(c)~~ **(e)** If the applicant **or customer** fails to establish that he or she is creditworthy under subsection (b), the applicant **or customer** may be required to make a reasonable ~~cash~~ deposit. ~~Such~~ **The** deposit shall not exceed one-sixth ($^1/_6$) of the estimated annual ~~cost of~~ **billings for regulated sewage disposal service at the address at which** service ~~to be~~ **is** rendered to the applicant **or customer and shall be paid in full before establishment of service, subject to the provisions of section 4 of this rule; provided, however, that a deposit shall be based upon estimated regulated sewage disposal service charges only.** If a deposit is greater than ~~seventy~~ **one hundred fifty** dollars ~~($70),~~ **($150),** the **sewage disposal** company shall advise the applicant or customer **simultaneously with making a demand for a deposit** that ~~he or she~~ **the applicant or customer** may pay ~~such~~ **the** deposit in equal installment payments over a period of no ~~less~~ **fewer** than ~~eight (8) weeks;~~ **three (3) months, and** service shall be connected upon receipt by the **sewage disposal** company of the first ~~such~~ payment. **For example, if the total deposit required by a sewage disposal company under this section is one hundred eighty dollars ($180), the applicant or customer could make three (3) payments of sixty dollars ($60) over a three (3) month period, and service would be connected after the first sixty dollar ($60) payment. The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule in order to receive service. An initial deposit made by a customer shall be subject to reevaluation upon the request of either the sewage disposal company or the customer, based upon actual charges for services rendered, at any time after service has been provided.**

~~(d)~~ **(f)** If the **sewage disposal** company requires a ~~cash~~ deposit **or a written guarantee** as a condition of providing service, then ~~it~~ **the sewage disposal company** must immediately notify the applicant **or customer** in writing stating the precise facts upon which ~~it~~ **the sewage disposal company** based its decision and provide the applicant **or customer** with an opportunity to rebut ~~such~~ **the** facts and show other facts demonstrating his or her creditworthiness. ~~as provided under subsection (b).~~

~~(e)~~ **(g)** A sewage disposal company may require ~~a present~~ **an existing** customer to make a reasonable ~~cash~~ deposit, ~~when~~ **or an additional deposit in cases where a deposit has been made and exhausted under this rule under any of the following circumstances:**

(1) The customer has been mailed disconnect notices for two (2) consecutive months.

(2) The customer has been mailed disconnect notices for any three (3) months within the preceding twelve (12) month period. ~~or~~

(3) The service to the customer has been disconnected within the past ~~four (4) years pursuant to~~ **forty-five (45) days under** section 4 of this rule.

In such cases, notice of the need for a deposit shall be in writing, and the customer shall be given ten (10) business days from the mailing date of the notice within which to make the deposit. The amount of ~~such~~ **the** deposit may not exceed an amount equal to one-sixth ($^1/_6$) of the expected annual billings for **regulated sewage disposal service to** the customer at the address at which **sewage disposal** service is rendered. ~~In the event the required deposit is in excess of seventy dollars ($70), the sewage disposal company shall advise the customer that he or she may pay such deposit in equal installment payments over a period of up to eight (8) weeks, except where such deposit is required as a result of a disconnection for nonpayment, in which case full payment of the deposit may be required prior to reconnection.~~ **When the service has been disconnected within the past four (4) years under section 4 of this rule, the deposit shall be provided before the service will be reconnected. The applicant or customer shall not be required to make any advanced payments in addition to or in lieu of a deposit required by this rule.**

~~(f)~~ **(h)** Requirements for interest upon deposits shall be as follows:

(1) ~~Deposits~~ **A deposit** held more than ~~twelve (12) months~~ **thirty (30) days** shall earn interest from the date of deposit. ~~at a rate of six percent (6%) per annum or at such other rate of interest as the commission may prescribe following a public hearing.~~ **Beginning on the effective date of this rule,**

the rate of interest shall be set by the commission based upon the then existing rate for one (1) year United States Treasury Constant Maturity securities. The interest rate shall be rounded to the nearest one-half (½) of one percent (1%). In December of each year, the commission shall issue a general administrative order establishing the interest rate for the next calendar year that shall be paid on all deposits held during all or part of the subsequent year.

(2) The deposit shall not earn interest after the date it is mailed or personally delivered to the customer, or otherwise lawfully disposed **of under subsection (i).**

~~(g)~~ **(i)** Requirements for refunds shall be as follows:

(1) Any deposit or accrued interest shall be promptly refunded to the customer without the customer's request when the customer

~~(A)~~ submits satisfactory payment for ~~a period of either:~~

~~(i)~~ ~~nine (9) successive months; or~~

~~(ii)~~ ten (10) out of any twelve (12) consecutive months without late payment. ~~in two (2) consecutive months; or~~

~~(B) demonstrates his or her creditworthiness as provided by subsection (b).~~

(2) Refunds of deposits or accrued interest issued under this section must be accompanied by a statement of accounting for each transaction affecting the deposit and interest.

(3) Following customer requested termination of service, the ~~utility~~ **sewage disposal company** shall **do the following:**

(A) Apply the deposit, plus accrued interest, to the final bill. ~~or~~

(B) ~~upon specific request from the customer,~~ Refund the **remaining** deposit ~~plus~~ **and** accrued interest within fifteen (15) days after the payment of the final bill.

(4) Each sewage disposal company shall maintain a record of each applicant or customer making a deposit that shows the following:

(A) The name of the customer.

(B) The current **mailing** address of the customer. ~~so long as he or she maintains an active account with the sewage disposal company in his or her name.~~

(C) The amount of the deposit.

(D) The date the deposit was made.

(E) A record of each transaction affecting ~~such~~ **the** deposit.

(5) Each customer shall be provided a written receipt from the **sewage disposal** company at the time his or her deposit is paid in full or when he or she makes a ~~cash~~ partial payment. The **sewage disposal** company shall provide a reasonable method by which a customer who is unable to locate his or her receipt may establish that he or she is entitled to a refund of the deposit and payment of interest thereon.

(6) Any deposit made by the applicant, **the** customer, or any other person to the **sewage disposal** company (less any lawful deductions **to be refunded),** or any sum the **sewage disposal** company is ordered to refund for sewage disposal service, that has remained unclaimed for one (1) year after the company has made diligent efforts to locate the person who made ~~such~~ **the** deposit or the heirs of ~~such~~ **the** person, shall be presumed abandoned and treated in accordance with ~~IC 32-9-1.5-20(c)(10).~~ **IC 32-34-1 et seq.**

(7) A deposit may be used by the sewage disposal company to cover any unpaid balance following disconnection of service ~~under section 16 of this rule~~ provided, however, that any surplus be returned to the customer as provided in ~~subsection (f) and~~ this ~~subsection.~~ **section.**

(j) A deposit shall not be applied to satisfy an applicant or customer's bill, prior arrearage, or outstanding indebtedness that is greater than four (4) years old; however, a sewage disposal company may pursue the unpaid balances via collections or other means provided by applicable law.

(k) At the end of every year of service, if the deposit plus interest is not refunded to the customer, the sewage disposal company shall automatically refund the accrued interest on the deposit to the customer by crediting the customer's account and stating this credit clearly on the customer's next regular bill.

(l) A customer who fails to pay a bill by the time specified by the regulations of the sewage disposal company and commission regarding the prompt payment of bills, and who further fails to pay the bill within a reasonable period after presentation of a disconnection of service notice for nonpayment, may be required to pay the bill and to reestablish credit by making a deposit under this rule.

(m) Establishment of credit by deposit shall not relieve a customer from complying with the commission's rules for prompt payment of bills. *(Indiana Utility Regulatory Commission; Service for Utilities Rendering Sewage Disposal Service in Ind; Rule 15; filed Dec 9, 1981, 10:20 a.m.: 5 IR 16; filed Oct 19, 1998, 10:14 a.m.: 22 IR 736; errata filed Sep 10, 1999, 10:39 a.m.: 23 IR 25; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233)*

SECTION 11. 170 IAC 8.5-2-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 8.5-2-4 Disconnection and prohibited disconnections

Authority: IC 8-1-1-3; IC 8-1-2-47; IC 8-1-2-69; IC 8-1-2-89
Affected: IC 8-1-1-3

Sec. 4. (a) ~~Without~~ **Requirements for disconnection upon a** customer's request **are as follows:**

(1) The customer shall notify the sewage disposal company at least three (3) business days in advance of the day disconnection is desired. The customer shall remain responsible for all sewage disposal service used and the billing therefor until the date the customer has requested disconnection pursuant to the notice.

(2) Upon request by a customer to a sewage disposal company to disconnect sewage disposal service in fewer than three (3) business days, the sewage disposal company shall disconnect the sewage disposal service within three (3) business days of the request. The customer shall not be liable for any sewage disposal service rendered to the address after the expiration of the three (3) days.

(3) The customer shall not charge sewage disposal service or authorize the charging of sewage disposal service to any account that has been disconnected at the customer's request or otherwise. A customer shall be responsible for any services he or she charges or authorizes charged to the disconnected account in violation of the prohibition in this subdivision.

(b) Requirements for disconnection without the customer's request are as follows:

(1) A **sewage disposal** company may disconnect **sewage disposal** service without request by the customer and without prior notice only:

(A) if a condition dangerous or hazardous to life, physical safety, or property exists; ~~or~~

(B) upon order by any court, the commission, or other duly authorized public authority; ~~or~~

(C) if fraudulent or unauthorized use of sewage disposal service is detected and the **sewage disposal** company has reasonable grounds to believe the affected customer is responsible for ~~such~~ **the** use; ~~or~~

(D) if the **sewage disposal** company's ~~regulating or measuring~~ equipment has been tampered with and the **sewage disposal** company has reasonable grounds to believe that the affected customer is responsible for ~~such~~ **the** tampering; **or**

(E) if the sewage disposal company's equipment is used in a manner disruptive to the sewage disposal service of other customers.

(2) ~~In all other instances,~~ A sewage ~~utility upon providing the customer with proper notice (as defined in Rule 16(E).~~ **disposal company** may disconnect **sewage disposal** service ~~subject to the other provisions of these rules.~~ **to a customer based on a delinquent account with the same class of service (such as residential service) for that customer.**

~~(b)~~ **(c) Requirements for** prohibited disconnection **are as follows:**

(1) Except as otherwise provided in ~~Rule 16(B)~~ **subsections (a) and (b),** a sewage disposal company shall postpone the disconnection of **sewage disposal** service for ~~ten (10)~~ **thirty (30)** days if, ~~prior to~~ **before** the disconnect date specified in the disconnect notice, the customer provides the **sewage disposal** company with a medical statement from a licensed physician or public health official ~~which~~ **that** states that a disconnection would be a serious and immediate threat to the health or safety of a designated person in the household of the customer. The postponement of disconnection shall be continued for one **(1)** additional ten (10) day period upon the provision of an additional ~~such~~ medical statement **to the sewage disposal company. The sewage disposal company shall be required to provide the customer a total of forty (40) days postponement of disconnection for medical reasons under this subsection only once in any twelve (12) month period. Further postponement of disconnection may be made at the sewage disposal company's discretion.**

(2) A **sewage disposal** company may not disconnect **sewage disposal** service to the customer **for any of the following reasons:**

~~(A) Upon his failure to pay for the service rendered at a different metering point, residence, or location if such bill has remained unpaid for less than forty-five (45) days;~~

(A) Nonpayment of any nonutility or unregulated utility services.

(B) Upon ~~his~~ **the customer's** failure to pay for services to a previous occupant of **the** premises ~~to be~~ **being** served, unless the **sewage disposal** company has ~~good reason~~ **reasonable grounds** to believe ~~the~~ **that** customer is attempting to defraud the **sewage disposal** company. ~~by using another name;~~

(C) ~~Upon his failure to pay for a different form or class~~ **On the basis of the delinquent character of an account of any other person, except if the customer is the guarantor** of **that other person's account for** sewage disposal service. ~~or~~

(D) If the customer makes payment arrangements under clause (F).

(E) If a customer is unable to pay a bill that is unusually large due to prior incorrect billing, incorrect application of the rate schedule, prior estimates where no actual reading was taken for over two (2) months, or any human or mechanical error of the sewage disposal company, and the customer:

(i) makes a payment arrangement in accordance with the guidelines set forth in clause (F); and

(ii) agrees to pay all undisputed future bills for sewage disposal service as they become due, provided, however, that the sewage disposal company may not add to the outstanding bill any late fee and, provided further, that the payment arrangement agreement in item (i) and this item shall be put in writing by the sewage disposal company and sent by mail to the customer.

~~(D)~~ **(F) Except in cases where fraudulent or unauthorized use of sewage disposal service is detected and the sewage disposal company has reasonable grounds to believe the customer is responsible for the use, when a residential customer cannot pay an undisputed bill or the undisputed portion of a disputed bill in full, the sewage disposal company shall continue to serve the customer or reconnect the customer if the customer and**

the sewage disposal company agree on a reasonable portion of the outstanding bill to be paid immediately. The manner in which the balance of the outstanding bill will be paid (the "payment arrangement") shall be made in accordance with the following guidelines:

(i) ~~If~~ The customer shows **just** cause for his **or her** inability to pay the full amount due (financial hardship shall constitute **just** cause), and ~~said~~ **the** customer

~~(i)~~ pays a reasonable portion (not to exceed ~~$10 or one tenth (1/10) of the bill, whichever is less~~ **one third (a) of all amounts due,** unless the customer agrees to a greater portion) of the bill and **the customer:**

~~(ii)~~ **(AA)** agrees to pay the remainder of the outstanding bill ~~within three (3) months, and~~ **in equal monthly installments;**

~~(iii)~~ **(BB)** agrees to pay all undisputed future bills for **sewage disposal** service as they become due; and

~~(iv)~~ **(CC)** has not breached any similar agreement with the ~~utility~~ **sewage disposal company** made ~~pursuant to~~ **under** this rule within the past twelve **(12)** months. ~~Provided, however that~~

(ii) In deciding on the reasonableness of a particular payment arrangement, the sewage disposal company shall consider the following:

(AA) The customer's ability to pay.

(BB) The size of the unpaid balance.

(CC) The customer's payment history and length of service.

(DD) The amount of time the debt has been and the reasons why the debt is outstanding.

(iii) The payment arrangement shall provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program.

(iv) The payment arrangement is subject to amendment upon the customer's request if there is a change in the customer's financial circumstances.

(v) The **sewage disposal** company may add to the outstanding bill a late payment charge not to exceed the amount set ~~pursuant to Rule 13(B).~~ **under section 1(h) of this rule.** Provided further, that the above terms of the agreement shall be put in writing by the **sewage disposal** company and ~~signed by~~ **sent by mail to** the customer. ~~and by a representative of the company.~~ Only one **(1)** late payment charge may be made to the customer under this section.

(G) If the customer does not meet any of the conditions in clause (F), the sewage disposal company may, but is not obligated to, enter into subsequent payment arrangements with the customer.

(H) The sewage disposal company shall reconnect sewage disposal service to a customer as soon as reasonably possible but at least within one (1) working day after the sewage disposal company is requested to do so if the customer has satisfied the requirements of this rule.

~~(E)~~ **(I)** If a customer is unable to pay a bill, which is unusually large due to prior incorrect ~~reading of the water meter,~~ **billing,** incorrect application of the rate schedule, incorrect connection or functioning of the water meter, prior estimates where no actual reading was taken for over two **(2)** months, stopped or slow water meter, or any human or mechanical error of the sewage disposal company, and the customer:

~~(i) Pays a reasonable portion of the bill, not to exceed an amount equal to the customer's average bill for the twelve (12) bills immediately preceding the bill in question; and~~

~~(ii) Agrees to pay the remainder at a reasonable rate; and~~

(i) makes a payment arrangement in accordance with the guidelines set forth in clause (F); and

~~(iii)~~ **(ii)** agrees to pay all undisputed future bills for **sewage disposal** service as they become due;

provided, however, that the **sewage disposal** company may not add to the outstanding bill any late fee. Provided, further, that the above terms of the agreement shall be put in writing by the **sewage disposal** company and ~~signed by~~ **sent by mail to** the customer. ~~and a representative of the company.~~

~~(3) If a customer proceeds with a review pursuant to Rule 16.1(B), the sewage disposal company may disconnect only as provided in Rule 16.1(C).~~

~~(c)~~ **(d) The** time **requirements for disconnections are as follows:**

(1) No sewage ~~utility~~ **disposal company** may disconnect **sewage disposal** service unless ~~it~~ **the disconnecting** is done between the hours of 8:00 a.m. and 3:00 p.m., prevailing local time. Disconnections ~~pursuant to Rule 16(B)~~ **under subsections (a) and (b)** are not subject to this limitation.

(2) ~~A~~ **The sewage disposal** company may not disconnect service for nonpayment:

(A) on any:

(i) Friday after noon;

(ii) Saturday;

(iii) Sunday; or

(iv) other day ~~on which~~ the ~~company office is closed to the public~~ **sewage disposal company's offices are not open for business;** or

(B) after ~~twelve~~ noon ~~(12:00 noon) of the~~ **on any** day immediately ~~preceding any~~ **before a** day ~~on which~~ the ~~company office is~~ **sewage disposal company's offices are** not open ~~to the public~~ **for business.**

~~(d)~~ **(e) Requirements for** notice required ~~prior to~~ **before** involuntary disconnection **are as follows:**

(1) Except as otherwise provided herein, **sewage disposal** service to any residential customer shall not be disconnected for a violation of any rule or regulation of a sewage disposal company or for the nonpayment of a bill, except after seven (7) days prior written notice to ~~such~~ **the** customer by either:

(A) mailing the notice to ~~such~~ **the** residential customer at the address shown on the records of the ~~utility;~~ **sewage disposal company;** or

(B) personal delivery of the notice to the residential customer or a responsible member of his **or her** household at the address shown on the records of the sewage ~~utility.~~ **disposal company.**

~~(C)~~ No disconnect notice for nonpayment may be rendered ~~prior to~~ **before** the date on which the account becomes delinquent.

(2) The notice must be in language ~~which~~ **that** is clear, concise, and easily understandable to a ~~layman~~ **layperson** and shall state **the following** in separately numbered large type or printed paragraphs:

(A) The date of **the** proposed disconnection.

(B) The specific actual basis and reason for the proposed disconnection.

(C) The telephone number of the sewage disposal company office at which the customer may call during ~~the~~ regular business hours in order to question the proposed disconnection or seek information concerning his **or her** rights.

(D) The local and toll-free telephone numbers and office hours of the commission.

~~(D)~~ **(E)** A reference to the pamphlet or the copy of the rules furnished to the customer ~~pursuant to Rule 16.2~~ **under section 6 of this rule** for information as to the customer's rights.

(F) Information as to the customer's rights, under this rule, including, but not limited to, the following:

(i) That the customer may obtain a temporary waiver of disconnection for a serious illness or medical emergency under subsection (c).

(ii) That the customer may file a complaint with the sewage disposal company or the commission.

(iii) That if the complaint is not resolved by the sewage disposal company to the customer's satisfaction, the customer may file a complaint with the commission.

(iv) That the customer may make payment arrangements under subsection (c)(2)(F).

~~(e)~~ **(f) The** procedure for involuntary disconnection **shall be as follows:**

(1) Immediately preceding the actual disconnection of **sewage disposal** service, the employee of the sewage disposal company designated to perform ~~such~~ **the** function shall make a reasonable attempt to identify himself **or herself** to the customer or any other responsible person then upon the premises and shall make a record thereof to be maintained for at least thirty (30) days.

(2) The employee shall have in his **or her** possession information sufficient to enable him **or her** to inform the customer or other responsible person of the reason for disconnection, including the amount of any delinquent bill of the customer, and shall request from the customer any available verification that the outstanding bill has been satisfied or is currently in dispute pursuant to review under ~~Rule 16.1(B).~~ **section 5 of this rule.** Upon the presentation of such credible evidence, **sewage disposal** service shall not be disconnected.

(3) The employee shall not be required to accept payment from the customer or other responsible person in order to prevent the **sewage disposal** service from being disconnected. The sewage disposal company shall notify its customers ~~pursuant to Rule 16.2~~ **under section 6 of this rule** of its policy with regard to the acceptance or nonacceptance of payment by ~~such~~ **the** employee, and shall uniformly follow ~~such~~ **the** policy without discrimination.

(4) When the employee has disconnected the **sewage disposal** service, he **or she** shall give to a responsible person at the customer's premises, or if no one is at home, shall leave at a conspicuous place on the premises, a notice stating that **sewage disposal** service has been disconnected and stating the address and telephone number of the **sewage disposal** company where the customer may arrange to have **sewage disposal** service reconnected.

~~(f)~~ **(g) Requirements for** reconnection **are as follows:**

(1) A sewage disposal company may charge a reasonable reconnection charge, not to exceed the charge approved by the commission in the **sewage disposal** company's filed tariffs, to compensate the **sewage disposal** company for the costs of disconnecting and reconnecting the **sewage disposal** service. The **sewage disposal** company shall inform its customers of ~~such~~ **the** reconnection charge ~~pursuant to Rule 16.2.~~ **under section 6 of this rule.**

(2) If the **sewage disposal** company disconnects **sewage disposal** service in violation of the rules, the **sewage disposal** service shall immediately be restored at no charge to the customer.

(3) The **sewage disposal** company must reconnect the **sewage disposal** service to the customer as soon as reasonably possible but at least within five (5) working days after requested if conditions permit; provided, however, that the **sewage disposal** company shall not be required to reconnect the **sewage disposal** service until:

(A) the conditions, circumstances, or practices ~~which~~ **that** caused the disconnection have been corrected; and

(B) payment of all delinquent and reconnection charges owed the ~~utility~~ **sewage disposal company** by the customer and any deposit authorized by ~~these rules~~ **this article** has been made.

(Indiana Utility Regulatory Commission; Service for Utilities Rendering Sewage Disposal Service in Ind; Rule 16; filed Dec 9, 1981, 10:20 a.m.: 5 IR 17; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233)

SECTION 12. 170 IAC 8.5-2-5 IS AMENDED TO READ AS FOLLOWS:

170 IAC 8.5-2-5 Complaints and review

Authority: IC 8-1-1-3; IC 8-1-2-47; IC 8-1-2-69; IC 8-1-2-89
Affected: IC 8-1-2-34.5

Sec. 5. ~~Complaints and Review.~~ (a) ~~Complaint~~ **The** procedure **for customer complaints to the sewage disposal company is as follows:**

(1) ~~A~~ **An applicant or** customer may complain at any time to a sewage disposal company about any bill, ~~which is not delinquent at that time,~~ security deposit, disconnection notice, or any other matter relating to its **sewage disposal** service and may request a conference thereon. ~~Such~~ **The** complaints may be made in person, **by telephone,** in writing, or by completing a **written or electronic** form available ~~from either the Commission or~~ from the **sewage disposal** company. ~~at its business offices.~~ A complaint shall be considered filed upon receipt by the sewage disposal company, except mailed complaints shall be considered filed ~~as of~~ **two (2) calendar days after** the postmark date. In making a complaint ~~and/or~~ **or** request for conference, the **applicant or** customer shall state at a minimum, **the following:**

(A) His **or her** name.

(B) The service address. ~~and~~

(C) His or her telephone number.

(D) The general nature of ~~this~~ **his or her** complaint.

(2) Upon receiving ~~each such~~ **the** complaint or request for conference, the **sewage disposal** company **shall take the following actions:**

(A) Immediately notify the applicant or customer that any undisputed portion of a bill shall be paid by the date due in order to avoid disconnection of sewage disposal service in accordance with section 4 of this rule.

~~(A) Shall~~ **(B)** Promptly, thoroughly, and completely investigate ~~such~~ **the** complaint, **attempt to** confer with the **applicant or** customer when requested and notify ~~in writing,~~ the **applicant or** customer of the results of ~~its~~ **the sewage disposal company's** proposed disposition of the complaint after having made a good faith attempt to resolve the complaint. **During the investigation, no collection action shall be taken for items that are being disputed, and there shall be no negative impact on the applicant or customer's credit rating.**

(C) Without the applicant or customer's permission, the sewage disposal company shall not disconnect, remove, or restrict any sewage disposal service that is the subject matter of the complaint while investigating the complaint or making a good faith attempt to resolve the complaint.

(D) Charges that are disputed by the applicant or customer shall not be treated as delinquent while an investigation is pending.

(E) After investigation, the sewage disposal company may rebill the disputed charges in the next billing cycle if the investigation determined that the charges were appropriate.

~~(B) Such written~~ **(F) If the sewage disposal company's proposed disposition is not in the applicant or customer's favor, the sewage disposal company shall notify the applicant or customer of the disposition in writing if the complaint was made in writing. If the sewage disposal company's proposed disposition is not in the applicant or customer's favor, the sewage disposal company shall notify the applicant or customer in writing or orally, if the complaint was made orally. The notification shall include contact information for the commission, including the commission's mailing address, toll-free complaint number, and local telephone number. A sewage disposal company shall direct its personnel engaged in contact with an applicant or customer to inform the applicant or customer, if he or she expresses dissatisfaction with the decision of the personnel, of the right to have the problem considered and acted upon by supervisory personnel of the sewage disposal company. A sewage disposal company shall further direct the supervisory personnel to notify the applicant or customer who expresses dissatisfaction with the decision of the supervisory personnel of the right to have the problem reviewed by the commission's consumer affairs division and shall furnish him or her the business address and telephone number of the commission. The** notification shall advise the **applicant or** customer that **if** he **or she is dissatisfied with the sewage disposal company's disposition, the applicant or customer** may, within ~~seven (7)~~ **twenty-one (21)** days, ~~following the date in which such notification is mailed, request a review of such proposed disposition by the Commission.~~ **file a complaint with the commission's consumer affairs division (under section 9 of this rule). The payment of a deposit as requested by the sewage disposal company shall not foreclose or in any manner affect the applicant or customer's right to appeal under IC 8-1-2-34.5 or other applicable law.**

(G) If at any time the applicant or customer files a complaint with the commission regarding a dispute with a sewage disposal company, the procedures set forth in subsection (b) shall apply. Any disconnection of the applicant or customer's sewage disposal service shall be governed by section 4 of this rule.

(H) A sewage disposal company shall retain a written record of complaints and requests for conferences for at least eighteen (18) months after the complaint or request for conference is made. The records shall be maintained at the office or branch office of the sewage disposal company or in the respective department office thereof where the complaints were received or any conferences were subsequently held. The written records are to be readily available upon request by the:

(i) concerned applicant or customer;

(ii) applicant or customer's agent possessing written authorization; or

(iii) commission.

(I) A sewage disposal company shall, at the request of

the commission, submit a report covering the previous twelve (12) month period to the commission that shall state and classify the following:

(i) The number of complaints made to the sewage disposal company under this rule.

(ii) The general nature of the subject matter thereof.

(iii) How the complaint was received.

(iv) Whether a commission review was conducted thereon.

(b) ~~Review.~~ **The procedure for customer complaints to the commission is as follows:**

(1) An individual or entity may informally complain to the commission's consumer affairs division with respect to any matter within the jurisdiction of the commission. The complaints may be made in person, by telephone, in writing, or by completing a written or electronic form available from the consumer affairs division. A complaint shall be considered filed upon receipt by the commission, except mailed complaints shall be considered filed as of the postmark date. In making a complaint, the applicant or customer shall state, at a minimum, the following:

(A) His or her name.

(B) The service address.

(C) His or her telephone number.

(D) The name of the sewage disposal company involved.

(E) The general nature of his or her complaint.

(2) Without the applicant or customer's permission, the sewage disposal company shall not disconnect, remove, or restrict any sewage disposal service that is the subject matter of the complaint while any commission review or investigation of the complaint is pending. The applicant or customer shall continue to pay all undisputed charges. In those instances when the applicant or customer and the sewage disposal company cannot agree as to what portion of a bill is undisputed, the applicant or customer shall pay on the disputed bill an amount equal to the applicant or customer's average bill for the twelve (12) months immediately preceding the disputed bill. In those cases where the applicant or customer has received fewer than twelve (12) bills, the applicant or customer shall pay an amount equal to one-twelfth ($^1/_{12}$) of the estimated annual billing for sewage disposal service to be rendered to the applicant or customer.

~~(1)~~ **(3)** If the **applicant or** customer is dissatisfied with the **sewage disposal** company's **notice of the sewage disposal company's** proposed disposition of the complaint as provided in ~~Rule 16.1(A)(2), he~~ **subsection (a), the applicant or customer** may, ~~request the Commission in writing~~ within ~~seven (7)~~ **twenty-one (21)** days ~~following the date on which such notification is mailed, to informally review the disputed issue and the company's proposed disposition thereof. Such request shall certify that the customer has also sent a copy of his request for review to the sewage disposal company involved.~~ **after the postmark date of the notice, file an informal complaint with the commission's consumer affairs division.**

(4) Upon receiving an informal complaint, the following actions shall be taken:

(A) The sewage disposal company shall be notified that a complaint has been made.

(B) The complaint shall be investigated.

(C) The applicant or customer and the sewage disposal company shall be notified of the decision made on the complaint in accordance with applicable law.

(5) Requirements for an informal review are as follows:

(A) The applicant or customer or the sewage disposal company may make a written request that a decision made under subdivision (4) be reviewed informally by the consumer affairs director or designee. Such written request shall be made within fourteen (14) days of the decision. The records of the commission relating to the reviews shall be kept in a systematic order.

(B) Upon receiving ~~such~~ **a** request **for an informal review,** the ~~Commission~~ **consumer affairs director or designee** shall provide an informal review ~~within twenty-one (21) days.~~ **in a timely manner.** The review shall consist of not less than a prompt and thorough investigation of the dispute and shall result in a written decision to be mailed to the **applicant or** customer and the **sewage disposal** company. ~~within thirty (30) days after its receipt of the customer's request.~~ Upon request by either party or the ~~Commission,~~ **consumer affairs director or designee,** the parties shall be required to meet and confer to the extent and at ~~such~~ **a** place ~~as~~ the ~~Commission may consider to be~~ **consumer affairs director or designee considers** appropriate.

~~(2) The records of the Commission relating to such review shall be kept in a systematic order.~~

(6) The applicant or customer may make a written request that the commission investigate the disposition of the informal review. The written request shall be made within twenty (20) days of the consumer affairs division's notice of disposition. Before entering an order upon a commission investigation, the commission shall afford the applicant or customer and the sewage disposal company notice and an opportunity to be heard.

(7) Without the applicant or customer's permission, the sewage disposal company shall not disconnect, remove, or restrict any disputed sewage disposal service until at least twenty (20) days have elapsed from the postmark date of the consumer affairs division's disposition or the commission's order upon investigation, if any.

(8) The time frames provided in this section may be extended at the discretion of the consumer affairs division.

~~(c) Continuation of Service Pending Disposition of Complaint.~~

~~(1) If the customer is receiving service at the time the complaint and/or request for conference provided for in Rule 16.1(A)(1) above is received by the sewage disposal com-~~

~~pany; his service shall not be disconnected until ten (10) days have elapsed from the date of mailing of the notification of the company's proposed disposition of his complaint. Provided, however, that if a review by the Commission of the company's proposed disposition of the complaint is requested by the customer as provided by Rule 16.1(B)(1) within seven (7) days after the mailing of such proposed disposition of the complaint, the company shall not disconnect the customer's service until at least three (3) days have elapsed from the date of mailing of the Commission's decision upon and pursuant to such review if the customer who has requested such review has paid and continues to pay all future undisputed bills prior to their becoming delinquent.~~

~~(2) In those instances when the customer and the company cannot agree as to what portion of a bill is undisputed, it shall be sufficient that the customer pay on the disputed bill an amount equal to his average bill for the twelve (12) months immediately preceding the disputed bill except in those cases where the customer has received fewer than twelve (12) bills, in which event the customer shall pay an amount equal to 1/12 of the estimated annual cost of service to be rendered to the customer.~~

~~(d) Record of Complaints.~~

~~(1) Each sewage disposal company shall keep a written record of complaints and requests for conference pursuant to Rule 16.1. Such records shall be retained at the office or branch office of the company or in the respective department office thereof where such complaints were received and/or any conferences were subsequently held. Such written records are to be readily available upon request by the concerned customer, his agent possessing written authorization or the Commission.~~

~~(2) Each sewage disposal company shall annually submit a report to the Commission which shall state and classify the number of complaints made to the company pursuant to Rule 16.1, the general nature of the subject matter thereof, how received (in person, by letter, etc.) and whether a Commission review was conducted thereon.~~

(Indiana Utility Regulatory Commission; Service for Utilities Rendering Sewage Disposal Service in Ind; Rule 16.1; filed Dec 9, 1981, 10:20 a.m.: 5 IR 19; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233)

SECTION 13. THE FOLLOWING ARE REPEALED: 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; 170 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; 170 IAC 6-1-17.

SECTION 14. **SECTIONS 1 through 13 of this document take effect one hundred eighty (180) days after filing with the secretary of state.**

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 22, 2004 at 10:30 a.m., at the Indiana Government Center-South, 302 West Washington Street, Training Center Room 10, Indianapolis, Indiana the Indiana Utility Regulatory Commission will hold a public hearing on proposed amendments to the customer service rights and responsibilities rules for utilities. 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 #04-94

DIGEST

Adds 312 IAC 11-2-11.5 concerning a new definition for a "group pier" on a public freshwater lake. Amends 312 IAC 11-3-1 to disqualify a group pier from treatment as a general license and to require a person seeking to place a group pier to complete the license application procedures of IC 14-26-2 (sometimes referred to as the "Lakes Preservation Act"). Effective 30 days after filing with the secretary of state.

312 IAC 11-2-11.5
312 IAC 11-3-1

SECTION 1. 312 IAC 11-2-11.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-11.5 "Group pier" defined
Authority: IC 14-10-2-4; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 11.5. "Group pier" means a pier that provides docking space for any of the following:
(1) At least five (5) separate property owners.
(2) At least five (5) rental units.
(3) An association.
(4) A condominium, cooperative, or other form of horizontal property.
(5) A subdivision or an addition.
(6) A conservancy district.
(7) A campground.
(8) A mobile home park.
(9) A yacht club.
(Natural Resources Commission; 312 IAC 11-2-11.5)

SECTION 2. 312 IAC 11-3-1, AS AMENDED AT 27 IR 3062, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-1 General licenses for qualified temporary structures; dry hydrants; glacial stone refaces

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 1. (a) The placement and maintenance of a:

(1) temporary structure; ~~a~~

(2) dry hydrant; or ~~a~~

(3) glacial stone reface;

is authorized without a written license issued by the department under IC 14-26-2 and this rule if the temporary structure, dry hydrant, or glacial stone reface qualifies under this section.

(b) In order for a temporary structure to qualify, the structure must satisfy each of the following:

(1) Be easily removable.

(2) Not infringe on the access of an adjacent landowner to the public freshwater lake.

(3) Not unduly restrict navigation.

(4) Not be unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.

(5) Not extend more than one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.

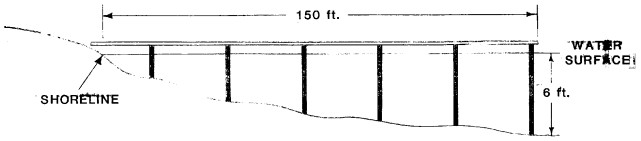
(6) If a pier, not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.

(7) Not be a marina.

(8) Not be a group pier.

~~(8)~~ **(9)** Be placed by or with the acquiescence of a riparian owner.

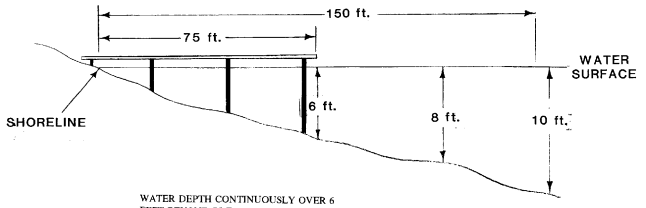
(c) Illustrations of maximum lengths for a pier or similar structure that may qualify under subsection (b) are as follows:



WATER DEPTH 6 FEET OR LESS FROM SHORELINE TO 150 FEET

MAXIMUM PIER LENGTH = 150 FEET

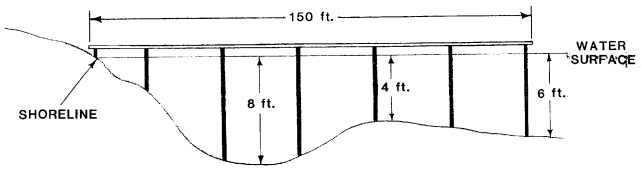
Where the water depth is six (6) feet or less from the shoreline to one hundred fifty (150) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.



WATER DEPTH CONTINUOUSLY OVER 6 FEET BEYOND 75 FEET

MAXIMUM PIER LENGTH = 75 FEET

Where the maximum water depth is continuously more than six (6) feet beyond seventy-five (75) feet from the shoreline, the maximum pier length is seventy-five (75) feet.



WATER DEPTH NOT CONTINUOUSLY OVER 6 FEET FROM SHORELINE TO 150 FEET

MAXIMUM PIER LENGTH = 150 FEET

Where the maximum water depth is not continuously over six (6) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.

(d) In order for the placement, maintenance, and operation of a dry hydrant to qualify, the hydrant must satisfy each of the following:

(1) Be sponsored or owned by a volunteer or full-time fire department recognized by the public safety training institute.

(2) Be readily accessible from an all-weather road, public access site, or similar area.

(3) Have a diameter of at least six (6) inches.

(4) Be constructed of PVC pipe or a similar nontoxic material.

(5) Extend no more than one hundred fifty (150) feet from the waterline or shoreline.

(6) Have all portions of the hydrant and its in-lake accessories be at least five (5) feet below the legally established or average normal water level.

(7) Be marked with a danger buoy, which conforms to 312 IAC 5-4-6(a)(1), at the lakeward end of the hydrant.

(8) Be equipped with a screen or straining device on the lakeward end.

(9) Glacial stone or riprap only may be placed in or on the lakebed for either of the following:

(A) Bedding the intake pipe.

(B) Straining the intake water.

(10) Be approved by the riparian landowner.

(e) In order for the placement of glacial stone on the lakeward side of a seawall that is located within or along the waterline or shoreline of a public freshwater lake to qualify, the glacial stone reface must satisfy each of the following:

(1) The seawall reface must be comprised exclusively of glacial stone.

(2) The reface must not extend more than four (4) feet lakeward of the waterline or shoreline at the base of a lawful seawall.

(3) A walk or structural tie must not be constructed on the existing seawall in combination with the glacial stone reface.

(4) An impermeable material must not be placed behind or beneath the glacial stone reface.

(5) Filter cloth placed behind or beneath the glacial stone reface must be properly anchored to prevent displacement or flotation.

(6) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake.

(Natural Resources Commission; 312 IAC 11-3-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614; filed May 25, 2004, 8:45 a.m.: 27 IR 3062)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 4, 2004 at 10:00 a.m., at the Multipurpose Room, Basement, County Justice Building, 121 North Lake Street, Warsaw, Indiana the Natural Resources Commission will hold a public hearing on proposed rules concerning a new definition for a "group pier" on a public freshwater lake and to disqualify a group pier from treatment as a general license and require a person seeking to place a group pier to complete the license application procedures of IC 14-26-2 (sometimes referred to as the "Lakes Preservation Act"). 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 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #04-121

DIGEST

Amends 312 IAC 16-3-2 and 312 IAC 16-3-8 to bring rules into compliance with IC 14-37-4-6 regarding the fees associated with the permitting of wells and transfer of permits and to include a requirement that the UTM coordinate location of a proposed well be provided in the application for a well permit. Effective 30 days after filing with the secretary of state.

312 IAC 16-3-2
312 IAC 16-3-8

SECTION 1. 312 IAC 16-3-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 16-3-2 Permit applications

Authority: IC 14-37-3
Affected: IC 4-21.5; IC 14-34; IC 14-37; IC 25-39-1.5

Sec. 2. (a) This section establishes general application requirements for a permit to:

(1) drill;
(2) deepen;
(3) operate; or
(4) convert;

a well for oil and gas purposes **or conduct a geophysical survey.**

(b) An application for a permit to:

(1) drill;
(2) deepen;
(3) operate; or
(4) convert;

a well for oil and gas purposes **or conduct a geophysical survey** shall be made on a division form.

(c) A permit application must be signed by:

(1) the person designated as the owner or operator on the application; or

(2) an authorized agent.

Upon a request by the division, a person who signs as an agent for an owner or operator must furnish satisfactory evidence of authority.

(d) An applicant shall remit with the application a permit fee of ~~one~~ **two** hundred **fifty** dollars ~~($100)~~ **($250)** in cash, by check, or by draft, payable to the department of natural resources. **However, a person may apply for an expedited review of the application for a permit except for a Class II or noncommercial gas well by submitting a permit fee of seven hundred fifty dollars ($750).**

(e) This subsection describes the surveying requirements for a permit application as follows:

(1) Except as otherwise provided in this subsection, an application must be accompanied by a survey showing the location of the proposed well for oil and gas purposes, giving the:

(A) quarter, quarter, quarter section, township, range, county, lot number;

(B) block of the recorded plat if the land is platted;

(C) three (3) nearest boundary lines of the tract; ~~and~~

(D) distance in two (2) directions from a corner of the tract of land upon which the well is to be drilled and from the nearest quarter post or lot corner; **and**

(E) UTM coordinates accurate to within four (4) meters of the actual location on the ground.

A registered Indiana land surveyor must certify the survey with respect to the information required under this subdivision.

(2) With respect to a Class II well, or a noncommercial gas well, in addition to the requirements set forth in subdivision (1), the survey must include the permit number, location, and state the depth of the following:

(A) Each well for oil and gas purposes located within one-

fourth (¼) mile of the proposed well (including abandoned and nonoperational wells) that intersect the injection or production zone.

(B) Each water well recorded with the department under IC 25-39-1.5 located within one-fourth (¼) mile of the proposed Class II well location.

(3) Information of public record and information that should have been known to the applicant must be included under this subsection. This subsection does not apply to an existing injection well unless otherwise ordered by the department.

(f) In addition to the general requirements for a permit application provided in this section, an application for a permit for a Class II well must be accompanied by the following:

(1) A schematic diagram of the well showing the following:

(A) The total depth of the plugback of the well.

(B) The depth of the injection or disposal interval.

(C) The geological name of the injection or disposal zone.

(D) The geological name, thickness, and description of the confining zone.

(E) The vertical distance separating the uppermost extremity of the injection zone from the base of the lowest underground source of drinking water.

(F) The depths of the tops and the bottoms of the casing and the cement to be used in a well.

(G) The size of the casing and tubing and the depth of the packer.

(H) The depth to the base of the lowermost underground source of drinking water.

(2) If the well has been drilled, a copy of the completion report and any available geophysical log of the well.

(3) Proposed operating data as follows:

(A) The geological name, depth, and location of the injection fluid source.

(B) A standard laboratory analysis of a representative sample of water to be injected under the proposed Class II permit.

(C) The location and description of each underground source of drinking water through which the well would pass.

(D) A description of the current or proposed casing program, including the following:

(i) Casing size, weight, and type.

(ii) Cement volume and type.

(iii) Packer type.

(iv) Type of completion for the well and the proposed method for testing casing.

(E) The proposed maximum injection rate and pressure. The owner or operator shall limit injection pressure to either **a value:**

(i) ~~a value~~ that does not exceed a maximum injection pressure at the wellhead calculated to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to an underground source of drinking water and will not cause the movement or injection of fluids into an underground source of drinking water; or

(ii) ~~a value~~ for wellhead pressure calculated by using the following formula:

$$P_{max} = (0.8 \text{ psi/ft} - (.433 \text{ psi/ft } (Sg)))d$$

Where: P_{max} = Maximum injection pressure (psia).

Sg = Specific gravity of the injected fluid.

d = Depth to the top of the injection zone in feet.

(g) A bond ~~as set forth~~ **required** in ~~312 IAC 16-4-2~~ **312 IAC 16-4-1** must accompany a permit application.

(h) If a drilling unit, lease, or tract of land is communitized for exploration or development, the original or a certified copy of the communitization agreement or declaration of pooling must accompany the initial permit application made under that agreement or declaration. An application for a subsequent permit must identify the:

(1) agreement or declaration; and ~~the~~

(2) permit number of the initial permit.

(i) With respect to an application for a Class II well, or a noncommercial gas well, an applicant must serve a written notification describing the proposed well personally or by certified mail on each of the following persons, if the described property is located within one-fourth (¼) mile of the proposed well:

(1) The owner or operator of each well for oil and gas purposes, including a well having temporary abandonment status under 312 IAC 16-5-20 or not yet in production.

(2) The permittee of an underground mine permitted under IC 14-34.

(3) The person who files a mine plan under 312 IAC 16-5-4(b) through 312 IAC 16-5-4(g) showing the workable limits for a proposed underground mine.

(4) Each owner of rights to surface or subsurface property that the well penetrates.

(j) The notification required under subsection (i) shall specify that a person who wishes to object to issuance of the permit may, within fifteen (15) days of receipt of the notification, submit written comments or request an informal hearing before the commission under 312 IAC 16-2-3. The notification shall include the address to which written comments or the hearing request must be forwarded and where additional information may be obtained.

(k) In addition to the notification required under subsection (i), the division shall cause a notice of a permit application to be placed in a newspaper of general circulation in the county where the proposed well is located. The notice must include the following:

(1) The name and address of the applicant.

(2) The location of the proposed well.

(3) The geological name and depth of the injection zone.
(4) The maximum injection pressure.
(5) The maximum rate of barrels each day.
The notice shall specify that a person who wishes to object to issuance of the permit may, within fifteen (15) days of publication of the notification, submit written comments or request an informal hearing before the department. The notification shall include the address to which the written comments or hearing requests must be forwarded, how a person may receive written notice of the proceedings, and where additional information concerning the proposed permit can be obtained.

(l) Proof of service of the notification required in subsection (i) must be delivered to the division before a permit for a Class II well can be issued.

(m) A person may file a written request for an informal hearing under 312 IAC 16-2-3 within fifteen (15) days after the notification required under subsections (i) through (k) to consider an objection to a permit.

(n) No permit shall be issued for a Class II well or a noncommercial gas well:
(1) until eighteen (18) days after service of any notification required under subsections (i) through (k); or
(2) if a hearing is requested under subsection (m), until the division director makes a determination with respect to the objection.
Upon issuance of the permit, IC 4-21.5 and 312 IAC 3-1 apply.

(o) Upon notification by the division that the requirements of this section are satisfied, an owner or operator may act upon a permit. *(Natural Resources Commission; 312 IAC 16-3-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2332; filed Jan 16, 2003, 10:52 a.m.: 26 IR 1896)*

SECTION 2. 312 IAC 16-3-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 16-3-8 Permit transfer
Authority: IC 14-37-3-1
Affected: IC 4-21.5; IC 14-37

Sec. 8. (a) This section establishes the requirements for the transfer of a permit issued by the department for a well for oil and gas purposes.

(b) An owner or operator must provide notice, in advance, to the division of the intention to transfer a permit to another person. The notification shall be completed on a division form.

(c) A person must submit the following with an application for a permit transfer:
(1) A bond required in 312 IAC 16-4-1.
(2) A fee of fifteen dollars ($15) payable to the department for each well. However, if an applicant submits more than fifty (50) applications simultaneously, the transfer for each application in excess of fifty (50) is ten dollars ($10).

~~(c)~~ **(d)** The department shall grant approval of a permit transfer except upon a written finding that sets forth at least one (1) of the following factors with respect to the person who seeks to receive transfer of the permit (or an officer, partner, or director of the person, if other than an individual):
(1) The fee required by this section was not submitted.
~~(1)~~ **(2)** A bond has not been submitted by the person as required in 312 IAC 16-4-1.
~~(2)~~ **(3)** The person is the owner or operator of a well for oil and gas purposes at which the person has demonstrated a pattern of willful violations of IC 14-37 or this article that has resulted in substantial damage to the environment indicating an intention not to comply with IC 14-37 or this article.
~~(3)~~ **(4)** The person is the owner or operator of a well for oil and gas purposes against which there is a pending notice of violation under 312 IAC 16-5-21. If this finding is made, however, the person is not disqualified from receiving the transfer if the person establishes either of the following:
(A) The violation has been or is in the process of being corrected to the satisfaction of the deputy director.
(B) The person has filed and is presently pursuing, in good faith, a direct administrative review or judicial review to contest the validity of the violation. A request for review under this clause must conform with IC 4-21.5 and 312 IAC 3-1.

~~(d)~~ **(e)** If an application is filed to transfer a well on which there is a pending notice of violation, the owner or operator against which the violation was issued, and its surety, continue to be liable for performing the abatement and for satisfying any resulting penalty. A person who receives transfer of a permit is also liable for abatement and for any penalty attributable to the period following transfer. However, the division director may, in writing, waive any penalty that would otherwise apply during a period of not more than ninety (90) days following the transfer if the division director determines that the new permit holder is acting in good faith to correct the violation.

~~(e)~~ **(f)** No transfer of a permit issued for oil and gas purposes is effective until the transfer is approved in writing by the division director. *(Natural Resources Commission; 312 IAC 16-3-8; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2335)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 29, 2004 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments concerning compliance with IC 14-37-4-6 regarding the fees associated with the permitting

of wells and transfer of permits and requirements that the UTM coordinate location of a proposed well be provided in the application for a well permit. 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 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #04-155

DIGEST

Amends 312 IAC 5-14 governing the inspection, maintenance, and operation of watercraft carrying passengers for hire. Makes numerous substantive and technical changes. Repeals 312 IAC 5-14-5, 312 IAC 5-14-6, and 312 IAC 5-14-26. Effective 30 days after filing with the secretary of state.

312 IAC 5-14-1
312 IAC 5-14-2
312 IAC 5-14-4
312 IAC 5-14-5
312 IAC 5-14-5.1
312 IAC 5-14-6
312 IAC 5-14-6.1
312 IAC 5-14-7
312 IAC 5-14-8
312 IAC 5-14-9
312 IAC 5-14-11
312 IAC 5-14-15
312 IAC 5-14-16
312 IAC 5-14-17
312 IAC 5-14-18
312 IAC 5-14-19
312 IAC 5-14-20
312 IAC 5-14-21
312 IAC 5-14-22
312 IAC 5-14-24
312 IAC 5-14-25
312 IAC 5-14-26
312 IAC 5-14-27

SECTION 1. 312 IAC 5-14-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-1 Watercraft carrying passengers for hire; application; delegation; exemptions; maintenance of equipment in a good and serviceable condition

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14-15

Sec. 1. (a) This rule governs the inspection, maintenance, and operation of watercraft carrying passengers for hire **upon public water.**

(b) Except as provided in subsection (c), a person must not operate a watercraft carrying passengers for hire unless the person complies with IC 14-15 and this rule. These requirements apply to the operator and the owner, regardless of whether an operator or owner is onboard.

(c) A person who presents valid and current documentation to evidence a watercraft is regulated and inspected by the United States Coast Guard, and who is in conformance with the regulation and inspection, is exempted from this rule.

~~(b)~~ **(d)** The division director may authorize a qualified person, other than an employee of the department, to conduct an inspection or other function of the department under this rule.

~~(c)~~ **(e)** An owner must maintain all equipment associated with a watercraft carrying passengers for hire in a good and serviceable condition as determined by a marine inspector.

~~(d) All~~ **(f)** Operations relating to a watercraft carrying passengers for hire must be performed by or on behalf of the owner according to good marine practice and standards. *(Natural Resources Commission; 312 IAC 5-14-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2389, eff Jan 1, 2002)*

SECTION 2. 312 IAC 5-14-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-2 Inspections of watercraft carrying passengers for hire

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14-15-6-3

Sec. 2. (a) ~~Every~~ **An owner must annually apply to the department for an inspection of any** watercraft carrying passengers for hire. ~~and its equipment shall be inspected by~~ **The application must be accompanied by a nonrefundable fee according to the schedule established by IC 14-15-6-3.**

(b) Upon receipt of the application, the department **shall inspect the watercraft (and its equipment)** to determine **whether** the watercraft conforms to good marine practice and standards, **IC 14-15-6,** and ~~to determine the watercraft otherwise conforms with~~ this rule. An inspection shall be conducted at least as frequently as follows:

(1) One (1) dockside inspection every year.
(2) One (1) drydock inspection every sixty (60) months.

(c) A watercraft must not be operated until an owner receives approval of the application.

~~(b)~~ **(d)** The department may inspect a watercraft carrying passengers for hire at any other reasonable time. *(Natural Resources Commission; 312 IAC 5-14-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2389, eff Jan 1, 2002)*

SECTION 3. 312 IAC 5-14-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-4 Main and auxiliary engines
Authority: IC 14-11-2-1; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 4. (a) A watercraft designed for inboard or inboard/outboard (stern drive) main engines ~~shall~~ **must** be fitted with the appropriate number of engines.

(b) The main ~~engine shall~~ **engines must** be an appropriate type and ~~design~~ **designed** for the propulsion requirements of the hull in which the ~~engine is~~ **engines are** installed and ~~shall~~ **must** be capable of operating at a constant marine load without exceeding design limitations.

~~(c) The head, block, and exhaust manifold of the main engine shall be water-jacketed and cooled by water from a pump. This subsection does not apply to a drystack exhaust system.~~ **(c) If a pump is used to supply raw water for cooling an engine and its systems, a self-priming pump that operates whenever the engine is running shall be used.**

(d) If a main engine is fitted with an updraft or sidedraft carburetor, the carburetor ~~shall~~ **must** have integral or properly connected drip collectors of adequate capacity for the return of all drip and overflow to the engine intake manifold.

(e) The exhaust pipe system of a main engine ~~shall~~ **must** be **as follows:**
(1) Gastight to the hull interior.
(2) Designed and installed to prevent water from returning to an engine.
(3) Accessible for complete inspection and repair. ~~and~~
(4) Supported to prevent undue stress.
A hanger, bracket, or other support ~~shall~~ **must** be made of fireproof material and installed to prevent heat from being transmitted to a combustible material. A water jacket, lag, shield, or another suitable guard ~~shall~~ **must** be provided to protect an individual or a combustible material from contact with any hot surface.

(f) After consulting with the state boating law administrator, a boating inspector may establish special requirements ~~which~~ **that** conform to good marine practice and standards to inspect and evaluate a main engine that uses **any of the following:**
(1) Steam.
(2) Electricity.
(3) A gas turbine.
(4) An air screw.
(5) A hydraulic jet. ~~or~~
(6) Another unusual mechanism.

(g) Any auxiliary engine must be installed on a watercraft according to good marine practice and standards. *(Natural Resources Commission; 312 IAC 5-14-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2390, eff Jan 1, 2002)*

SECTION 4. 312 IAC 5-14-5.1 IS ADDED TO READ AS FOLLOWS:

312 IAC 5-14-5.1 Gasoline engines; ventilation
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 5.1. (a) A watercraft that uses gasoline for electrical generation, mechanical power, or propulsion must be equipped with a ventilation system. Each system must meet the standards of 33 CFR Part 183, Subpart K (Ventilation), and as follows:
(1) A natural ventilation system must provide for a supply opening (duct or cowl) that is located:
(A) on the exterior surface of the watercraft;
(B) in a ventilated compartment; or
(C) in a compartment that is open to the atmosphere.
(2) A natural ventilation system must be provided for each compartment in a watercraft that:
(A) contains a permanently installed gasoline engine;
(B) has openings between it and a compartment that requires ventilation;
(C) contains a permanently installed fuel tank and an electrical component that is not ignition-protected;
(D) contains a fuel tank that vents into that compartment (including a portable tank); or
(E) contains a nonmetallic fuel tank.
(3) An exhaust opening or exhaust duct must originate in the lower one-third (a) of the compartment. Each supply opening or supply duct and each exhaust opening or duct in a compartment must be above the normal accumulation of bilge water.
(4) A powered ventilation system, as follows, must be provided for each compartment in a watercraft that has a permanently installed gasoline engine with a cranking motor for remote starting:
(A) A powered ventilation system consists of one (1) or more exhaust blowers.
(B) Each intake duct for an exhaust blower must be in the lower one-third (a) of the compartment and above the normal accumulation of bilge water.

(b) A watercraft that is required to have an exhaust blower must have a label that is located as close as practicable to each ignition switch, is in plain view of the operator, and has at least the following information: WARNING—GASOLINE VAPORS CAN EXPLODE. BEFORE STARTING ENGINE, OPERATE BLOWER FOR 4 MINUTES AND CHECK ENGINE COMPARTMENT BILGE FOR GASOLINE VAPORS.

(c) The ventilation system must be kept in good operating condition. Openings must be free of obstructions. Ducts must not be blocked or torn. Blowers must operate properly. Worn components must be replaced with equivalent marine-type equipment. *(Natural Resources Commission; 312 IAC 5-14-5.1)*

SECTION 5. 312 IAC 5-14-6.1 IS ADDED TO READ AS FOLLOWS:

312 IAC 5-14-6.1 Diesel engines; ventilation
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 6.1. Power or natural ventilation is not required for a watercraft equipped with diesel engines but may be used to control compartment temperature. Power ventilation may be used in the machinery space for odor control or for personnel comfort while servicing equipment. *(Natural Resources Commission; 312 IAC 5-14-6.1)*

SECTION 6. 312 IAC 5-14-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-7 Fixed fuel tanks
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 7. (a) A fixed fuel tank on a watercraft must be installed as follows:

(1) To permit examination with a minimum disturbance to the hull structure.

(2) With adequate support and bracing to prevent movement. The support and braces shall be insulated from contact with the tank surfaces with a nonabrasive and nonabsorbent material.

(3) With openings for fill and vent pipes and for fuel level gauges, where used, on the topmost surfaces of the tank. ~~The tank shall not have openings in the bottom, sides, or ends, except that an opening fitted with a threaded plug or cap may be used for cleaning the tank.~~

~~(b) Fixed fuel tank piping must be installed as follows:~~

~~(1) Fuel supply lines to the engine shall be tubing of copper, nickel-copper, steel, or United States Coast Guard approved Type A flexible fuel line and shall run as directly as practicable from the tank to the engine.~~

Fuel supply lines shall have suitable support, ~~and~~ a readily accessible manually operated, in-line shutoff valve installed as close to the fuel tank as practicable, ~~Fuel supply lines shall have~~ **and** suitable protection from mechanical injury at supports and where passing through bulkheads and structural members.

~~(2) Metal fuel supply lines shall be fitted with flexible vibration hose placed as closely as practicable to the engine.~~

(b) Each metallic fuel line connecting the fuel tank with the fuel inlet connection on the engine must be as follows:

(1) Be made of seamless annealed copper, nickel copper, or copper-nickel.

(2) Except for corrugated flexible fuel line, have a wall thickness of at least twenty-nine thousandths (0.029) inch.

~~(3)~~ **(c)** A filling pipe ~~shall~~ **must** be fitted to the highest point of the fuel tank. ~~and shall have an inside diameter of at least one and one-fourth (1¼) inches.~~

~~(4)~~ **(d)** A fuel tank ~~shall~~ **must** be fitted with a marine-type fuel gauge or a sounding pipe if sounding cannot be accomplished through the filling pipe.

~~(5)~~ A filling or sounding pipe ~~shall~~ **must** not permit overflow of liquid or vapor to escape to the inside of a watercraft.

~~(6)~~ **(e)** A vent pipe ~~shall~~ **must** be connected to the top of the fuel tank ~~and shall be~~ as follows:

~~(A)~~ **(1)** Installed to prevent accidental water contamination of the fuel

~~(B) Fitted~~ with a ~~removable~~ flame ~~screen at the point of termination.~~ **arrester that can be cleaned unless the vent is itself a flame arrester.**

~~(C) Having~~ **(2) Have** an inside diameter of at least seven-sixteenths ($^{7}/_{16}$) ~~of an~~ inch.

~~(D) Terminating~~ **(3) Terminate** on the hull exterior as far as practicable from hull openings and below the deck spaces.

~~(7) No~~ **(f) A** device ~~shall~~ **must not** allow fuel to be drawn below the decks.

~~(8)~~ **(g)** Accessories in a fuel line ~~shall~~ **must** be properly supported.

~~(c) The owner or operator of~~ **(h)** A watercraft **equipped** with a fixed fuel system ~~shall~~ **must** not **be used to** transport fuel onboard the watercraft outside the fixed fuel system unless the fuel is transported in conjunction with an auxiliary outboard engine. Fuel may be transported only in portable fuel tanks provided by a manufacturer of outboard engines and shall be safely secured outside the engine or living compartment.

~~(d)~~ **(i)** During a fueling operation, a person must not smoke onboard ~~a watercraft.~~

~~(e) During a fueling operation, the operator of a watercraft must not allow passengers~~ **and no passenger may be allowed** onboard.

~~(f)~~ **(j)** A fixed fuel system ~~shall~~ **must** be grounded by an electrical connection to a common ground, by welding or bolting to a metal bulkhead of a metal hull vessel or by electrical connection to the rudder, struts, or metal grounding plate. If flexible vibration hose is installed, metal grounding straps or wires ~~shall~~ **must** maintain ground continuity. *(Natural Resources Commission; 312 IAC 5-14-7; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2391, eff Jan 1, 2002)*

SECTION 7. 312 IAC 5-14-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-8 Portable fuel tanks
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 8. (a) ~~The operator of~~ A watercraft with a portable fuel

tank system must **not** carry fuel onboard **unless the fuel is carried** in an approved fuel tank.

(b) A portable fuel tank must be secured to prevent shifting while under way.

~~(c) A portable fuel tank must be connected to an approved flexible fuel line that is long enough to fill the tank without removal from its secured location.~~ *(Natural Resources Commission; 312 IAC 5-14-8; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2392, eff Jan 1, 2002)*

SECTION 8. 312 IAC 5-14-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-9 Electrical systems
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 9. (a) An electrical system must:
(1) be properly grounded and safe for any anticipated usage; **and**
(2) satisfy 33 CFR 183, Subpart I.

(b) Electrical wiring ~~shall~~ **must** be placed as follows:
(1) As high as practicable above the ~~bilges.~~ **bilge water level and other areas where water may accumulate. If wiring must be routed in the bilge or other areas where water may accumulate, the connections shall be watertight.**
(2) Supported with fasteners that will not damage the wiring or structural members of the watercraft. **Supported by wiring throughout its length or secured at least every eighteen (18) inches.**
(3) Protected against chafing where passing through bulkheads or other structural members.
(4) Have wiring routed as far away as practicable from exhaust pipes and other heat sources.
(5) Connected with crimp-type or another appropriate set-screw pressure type. Twist-on (wire nut) type connectors must not be used.
(6) Have the proper size of stranded copper with insulation having an appropriate size and color.

(c) An electrical storage battery must be as follows:
(1) Compatible with the electrical system.
(2) Located so gas generated in charging the battery is properly ventilated.
(3) Easily accessible.
(4) Suitably supported and secured against shifting with the motion of the watercraft.
(5) Located in a tray or box ~~which~~ **that** is liquid tight and large enough to retain normal spillage or boilover of the electrolyte. The tray or box shall be protected by noncorrosive material.
(6) Covered or otherwise suitably protected against an accidental short-circuiting of battery terminals.
(Natural Resources Commission; 312 IAC 5-14-9; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2392, eff Jan 1, 2002)

SECTION 9. 312 IAC 5-14-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-11 Bilge pumps and bailout devices
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 11. (a) A watercraft constructed with bilges or enclosed spaces below the decks must be fitted with ~~at least two (2) electrical~~ **an adequate number and proper size of** bilge pumps ~~All~~ **so that excess bilge water can be removed from the bilges at static floating position, and at maximum conditions created by the boat's motion, heel, and trim.** Bilge areas must be accessible by a bilge pump.

(b) A bilge pump **with automatic controls** must be ~~equipped with an indicator light or an alarm system. At least one (1) of the bilge pumps must~~ **provided with a readily accessible manual switch to** activate ~~automatically if excessive water accumulates in~~ the ~~bilges.~~ **pump.**

(c) A ~~bilge~~ pump ~~indicator light~~ **with automatic controls** must be ~~located at the helm position used most often and as close~~ **provided with a visual indication that power is being supplied** to the ~~bilge~~ pump. ~~switch as practicable.~~

(d) A watercraft must be equipped with a bailing device that is manually operated. **A bucket is not a manually operated bailing device for purposes of this section.** *(Natural Resources Commission; 312 IAC 5-14-11; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2393, eff Jan 1, 2002)*

SECTION 10. 312 IAC 5-14-15 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-15 Main engine gauges
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 15. **(a)** On a watercraft designed for inboard or inboard/outboard (stern drive) main engines, the following gauges ~~shall~~ **must** be readable from each helm position:
(1) A gauge to indicate the main engine cooling water temperature for each main engine.
(2) A gauge to indicate **the** main engine lubrication oil pressure for each main engine.

(b) An engine and transmission for inboard propulsion manufactured after August 1, 1997, must be equipped with an indicator at any helm position to show the following:
(1) Engine rpm as indicated by a tachometer.
(2) Temperature, indicating the approach of unsatisfactorily high temperature of the liquid cooling system.
(3) For an air-cooled engine, the approach of unsatisfactorily high engine or exhaust duct temperature.
(4) Oil pressure, indicating insufficient lubricating oil pressure for an engine having a pressure lubricating system.

(5) Battery charging system, indicating failure of the charging system to operate properly.

(Natural Resources Commission; 312 IAC 5-14-15; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2394, eff Jan 1, 2002)

SECTION 11. 312 IAC 5-14-16 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-16 Personal flotation devices (life preservers or life jackets)

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 16. (a) If a marine inspector determines a personal flotation device **(life preserver or life jacket)** carried onboard a watercraft is not in good and serviceable condition, the marine inspector shall write on the personal flotation device that the device is no longer serviceable. The owner of a watercraft must immediately replace any nonserviceable personal flotation device or must reduce the number of passengers ~~carried onboard the watercraft~~ so as not to exceed the number of serviceable personal flotation devices. ~~carried.~~

(b) Each personal flotation device must be carried in a suitable location that is readily accessible to passengers.

(c) A container for personal flotation devices must be clearly marked "Life Preservers" **or "Life Jackets"** and must set forth the number of serviceable devices. Letters and numbers must be at least one (1) inch high and must be a color contrasting with the color of the container. The container shall indicate the size of the devices. Differing sizes must be separately stored.

(d) A personal flotation device on a documented watercraft must be marked with the name or documentation number of the watercraft in characters at least one (1) inch high ~~which~~ **that** contrast with the color of the device.

(e) A personal flotation device on an undocumented watercraft must be marked with the name or registration number of the watercraft in characters at least one (1) inch high ~~which~~ **that** contrast with the color of the device. *(Natural Resources Commission; 312 IAC 5-14-16; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2394, eff Jan 1, 2002)*

SECTION 12. 312 IAC 5-14-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-17 Fire extinguishers

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 17. (a) A watercraft must be equipped with at least the minimum number of portable fire extinguishers located as follows:

~~Compartmented~~ Watercraft **Length**	~~Class~~	~~Minimum Number of Extinguishers~~ **No fixed systems**	~~Locations~~ **With approved fixed system**
Less than 26 feet	~~B1~~	~~2~~ **1 B-I**	~~Helmsman's position and cabin~~ **0**
26 feet to less than 40 feet	~~B1~~	~~3~~ **2 B-I or 1 B-II**	~~Accessible to the engine compartment, helmsman's position, and galley~~ **1 B-I**
40 feet ~~or over~~ **to less than 65 feet**	~~B1~~	~~4~~ **3 B-I or 1 B-II and 1 B-I**	~~Accessible to the engine compartment, helmsman's position, crew quarters, and galley~~ **2 B-I or 1 B-II**
65 feet to less than 90 feet		**4 B-I or 2 B-II**	**3 B-I or 2 B-II**
90 feet to less than 125 feet		**5 B-I or 3 B-II and 1 B-I**	**4 B-1 or 3 B-II**
Over 125 feet		**6 B-I or 4 B-II and 1 B-I**	**5 B-I or 4 B-II**

~~(b) Where at least three (3) B1 units are required, the extinguishing capacity may consist of a small number of B2 units if each location is protected with a readily accessible extinguisher.~~

~~(c) The owner of a watercraft shall regularly examine all fire extinguishers for tampering, corrosion, and other damage.~~

~~(d) A foam extinguisher must be annually discharged, cleaned, inspected for mechanical defects or corrosion, and recharged.~~

~~(e) A dry chemical extinguisher must maintain the specified chemical weight. The cartridge must be reweighed annually. A cartridge that weighs less than specified must be replaced with a full cartridge or recharged. An extinguisher with a gauge must be recharged if the pressure falls below the prescribed operating limits.~~

~~(f) A carbon dioxide extinguisher must be reweighed annually. A cylinder must be recharged which weighs less than the weight indicated on the name-plate.~~

(b) A fire extinguisher must have the U.S. Coast Guard approval 162.028 or have an Underwriters Laboratory Marine listing.

(c) A portable fire extinguisher without a gauge must be inspected at least every six (6) months and must have an inspection card attached.

(d) A pressure-filled fire extinguisher must be hydrostatically pressure tested at least every five (5) years.

~~(g)~~ **(e)** The maintenance required under subsections (c) ~~through~~ ~~(e)~~ ~~shall~~ **and (d) must** be performed by a qualified firefighting equipment repair service. *(Natural Resources Commission; 312 IAC 5-14-17; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2394, eff Jan 1, 2002)*

SECTION 13. 312 IAC 5-14-18 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-18 First aid equipment; emergency procedures

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 18. (a) ~~The owner shall maintain on-board a watercraft~~ At least one (1) standard sixteen (16) unit first aid kit **must be maintained onboard. Included in the kit are the following:**

(1) Adhesive bandages.
(2) Fingertip and knuckle bandages.
(3) Nonstick pads.
(4) 36″ × 36″ bandage that can also be used as a sling.
(5) Antibiotic ointment.
(6) Cold compress.
(7) Examination gloves.
(8) Ibuprofen tablets.
(9) Cleansing wipes.
(10) First aid tape.
(11) Finger splints.
(12) Scissors.
(13) Tweezers.
(14) Conforming gauze.
(15) Sterile eye pads.
(16) American Medical Association first aid guidebook.

(b) ~~The owner must post, in a conspicuous location on-board the watercraft,~~ An emergency procedures list ~~to include~~ **must be maintained in a conspicuous location onboard that includes** the following:

(1) The following for **marine VHF** radio ~~telephone~~ distress:
(A) Switch to channel 16 (United States Coast Guard).
(B) Signal "MAYDAY" three (3) times.
(C) Give the boat name, type, and color.
(D) Give the position.
(E) Describe the emergency.

(2) The following for a person overboard:
(A) Post a lookout.
(B) Throw over a flotation device or the water light.
(C) Do not jump into the water unless the person is a small child, elderly, or handicapped.
(D) Maneuver to return for pickup.
(E) Use additional markers.
(F) Get victim onboard.
(G) Call for help if necessary.

(3) The following for an explosion:
(A) Be ready to go overboard with personal flotation device (life ~~preserver).~~ **jacket).**
(B) When clear of danger, account for all passengers and assist.
(C) Stay together.

(4) The following for a fire:
(A) If possible, use **a** fire extinguisher.
(B) If practicable, jettison burning materials.
(C) Reduce air supply.
(D) Assemble at opposite end of boat.
(E) Prepare to abandon ship. Put on life ~~preserver~~ **jacket** and signal for help by radio or any means available.

(5) The following for leaks or damage control:
(A) Put on life ~~preserver.~~ **jacket.**
(B) Check bilge pump operation.
(C) Pull up all decks and floorboards to search for leaks.
(D) Slow or stop boat as needed. You may need to stay on plane to keep hole above water if appropriate.
(E) Stop engine, close sea cock for engine cooling, disconnect hose, and place end in bilge. Start engine to act as bilge pump.
(F) Cover large hole from outside of boat with mattress or similar device.
(G) Use radio to call for help: channel 16 (United States Coast Guard).

(Natural Resources Commission; 312 IAC 5-14-18; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2395, eff Jan 1, 2002)

SECTION 14. 312 IAC 5-14-19 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-19 Cooking, heating, and lighting

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14-15-2-9

Sec. 19. (a) ~~While carrying passengers, galley stoves shall be operated only by the owner, the operator, or a crew member.~~ **None of the following may be carried onboard a watercraft by a person:**

(1) Gas.
(2) Liquefied gas.
(3) Another flammable liquid capable of being used for cooking, heating, or lighting.

(b) Notwithstanding IC 14-15-2-9, a galley stove that is designed for gas or liquified gas may be retained onboard. However, electricity must be used as the exclusive source to power any appliance or equipment used for heating, cooking, or lighting. The owner, the operator, or a crew member ~~shall~~ **must** be present in the galley ~~if the galley~~ **when an electric** stove is ~~being operated.~~ **in operation.**

~~(b)~~ **(c)** Heating and cooking appliances must be each of the following:

~~(1) Electrically powered.~~

~~(2)~~ **(1)** Commonly manufactured for use onboard a watercraft.
~~(3)~~ **(2)** Installed in adequately ventilated areas.
~~(4)~~ **(3)** Securely fastened to the watercraft.

~~(c)~~ **(d)** Woodwork and other combustible materials immediately surrounding heating appliances must be effectively insulated with noncombustible material. *(Natural Resources Commission; 312 IAC 5-14-19; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2395, eff Jan 1, 2002)*

SECTION 15. 312 IAC 5-14-20 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-20 Portable battery operated light (flashlight)

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 20. ~~(a) The owner of a watercraft which operates on navigable waters shall have on-board the watercraft at least one (1) option from the following Coast Guard-approved visual distress signals:~~

~~Option~~	~~Number Required~~	~~Type~~	~~Accepted~~
~~(1)~~	~~3~~	~~Hand-held red flare with manufactured date of October 1, 1980, or later~~	~~Day and night~~
~~(2)~~	~~3~~	~~Hand-held, rocket-propelled parachute red flare~~	~~Day and night~~
~~(3)~~	~~1~~ ~~1~~	~~Orange flag distress signal for boats and electric distress light for boats~~	~~Day only~~ ~~Night only~~
~~(4)~~	~~3~~ ~~1~~	~~Floating or hand-held orange smoke and electric distress light for boats~~	~~Day only~~ ~~Night only~~
~~(5)~~	~~3~~	~~Floating or hand-held orange smoke and option (1) or option (2)~~	~~Day only~~ ~~Day and night~~
~~(6)~~	~~1~~	~~Orange distress flag for boats and option (1) or option (2)~~	~~Day only~~ ~~Day and night~~

~~(b) A person must not display a visual distress signal on the waters of the state except in an emergency.~~

~~(c) A Coast Guard-approved electric distress light for boats that activates automatically upon contact with the water and flashes a high intensity light (CG 161.010) meets the nighttime requirements of this section.~~

~~(d) The owner must have on-board the~~ **A** watercraft **must have onboard** at least one (1) portable battery operated light (flashlight) that is powered by D cells or larger size batteries. *(Natural Resources Commission; 312 IAC 5-14-20; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2395, eff Jan 1, 2002)*

SECTION 16. 312 IAC 5-14-21 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-21 Certificate of inspection; issuance; posting; revocation

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 14-15

Sec. 21. (a) Upon satisfactory completion of the required drydock and annual dockside inspections, the department shall issue a certificate of inspection to expire ~~on May 31 of the following~~ **one (1)** year **after the date on which the watercraft was inspected.** The department may extend the expiration date for a period not to exceed thirty (30) days if ~~an~~ **conditions exist that would prevent the** inspection ~~is incomplete on May 31.~~ **of the watercraft before the first anniversary of the previous inspection.**

(b) ~~The owner shall frame~~ **Except as provided in this subsection,** the certificate of inspection **must be placed** under transparent material and ~~post the certificate~~ **posted** conspicuously on the watercraft. ~~However,~~ If posting is impracticable, the certificate ~~shall~~ **must** be kept onboard and shown on demand.

(c) **The department shall issue** stickers ~~shall be issued~~ with each certificate. ~~and~~ **The stickers must be** affixed conspicuously to the port and starboard sides of the watercraft.

(d) The department may, under IC 4-21.5-3-8 or IC 4-21.5-4, revoke a certificate issued under this section for any of the following reasons:

(1) Changes occur to a watercraft after the issuance of the certificate so that the watercraft no longer meets the minimum standards for certification.

(2) The owner, the captain, or a crew member violates IC 14-15 or this rule.

(3) Information significant to the issuance of the certificate has been falsified or concealed.

(Natural Resources Commission; 312 IAC 5-14-21; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2396, eff Jan 1, 2002)

SECTION 17. 312 IAC 5-14-22 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-22 Pilot's license on waters of concurrent jurisdiction

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14

Sec. 22. **(a) A pilot's license is required to operate a watercraft on waters of concurrent jurisdiction.**

(b) Except as provided in this subsection, the **pilot's** license ~~of a pilot operating a watercraft carrying passengers for hire shall~~ **must** be framed under transparent material and posted conspicuously on the watercraft. If display is impracticable, the

~~pilot's~~ license ~~shall~~ **must** be carried onboard and shown on demand. ~~A pilot's license is not required for a watercraft operating solely on inland waters.~~ *(Natural Resources Commission; 312 IAC 5-14-22; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2396, eff Jan 1, 2002)*

SECTION 18. 312 IAC 5-14-24 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-24 Watercraft carrying six or fewer passengers for hire on waters of concurrent jurisdiction

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14-15-2-7; IC 14-15-2-8

Sec. 24. (a) This section establishes requirements for watercraft carrying six (6) or fewer passengers for hire ~~other than sailboats, which~~ **on waters of concurrent jurisdiction that** are supplemental to the other requirements of this rule.

(b) The requirements for **a** deck ~~rails~~ **rail** are as follows:

(1) A watercraft must have **a** deck ~~rails~~ **rail** or an equivalent protection at the periphery of **a** weather ~~decks,~~ **deck,** including the cockpit, that ~~are~~ **is** accessible to the passengers and crew. The top rail course of ~~the~~ **a** deck ~~rails shall~~ **rail must** be at least ~~twenty-six (26)~~ **twenty-four (24)** inches above the deck. However, this subdivision does not apply to an open boat. ~~operating exclusively on rivers.~~

(2) **A** deck ~~rails~~ **rail** must ~~consist of~~ **have** evenly spaced horizontal courses. ~~The spacing between courses must not be greater than thirteen (13) inches. Rail courses are not required if the space between the top rail course and the deck is fitted with a bulwark, chain link fencing, wire mesh, or an equivalent protection.~~

(3) A watercraft with a flying bridge must have suitable deck rails or an equivalent protection at the periphery of the flying bridge deck.

(4) An open boat ~~that operates exclusively on rivers~~ must have suitable deck rails or an equivalent protection.

(5) A deck rail may be removed or modified while a watercraft is anchored and passengers are engaged in a diving operation.

(c) ~~The requirements for personal flotation devices and water lights are as follows:~~ **A watercraft must have the following onboard:**

(1) ~~The owner of a watercraft, except an open boat operating exclusively on inland waters, must carry onboard~~ One (1) Type I personal flotation device of proper size for each passenger and crew member. ~~Each device shall be inspected during the dockside inspection.~~

(2) ~~The owner of a watercraft shall affix in a suitable manner,~~ **Suitably affixed,** to ~~both~~ the outside and the inside of each Type I personal flotation device, two hundred (200) square centimeters (approximately thirty-one and one-half (31.5) square inches) of Coast Guard-approved retroreflective material.

(3) ~~The owner of a watercraft operating on navigable waters or inland lakes must have onboard the watercraft~~ A ring life buoy at least twenty (20) inches in diameter. The ring life buoy must be properly marked, readily accessible, and suitably attached to at least ~~fifty (50)~~ **sixty (60)** feet of floating line **that is resistant to deterioration from ultraviolet light.**

(4) ~~The owner of a watercraft, except an open boat operating exclusively on inland waters, must provide~~ A Coast Guard-approved water light that is self-activating upon contact with the water. The light ~~shall~~ **must** be stored in a readily accessible location near the ring life buoy. If the light is attached to a ring life buoy, the attachment line must be at least ~~one (1) foot~~ **three (3) feet** long, **but not more than six (6) feet long.**

~~(5) The owner of an open boat operating exclusively on inland waters must provide one (1) Type I personal flotation device, Type II personal flotation device, or Type III personal flotation device of proper size for each passenger or crew member. One (1) unicellular plastic foam Type IV throwable device must also be carried. Each device shall be inspected at the dockside inspection.~~

(d) ~~The owner of~~ A watercraft ~~that operates on Lake Michigan~~ must have onboard, in good working condition, a marine **VHF** radio ~~telephone~~ and a **properly compensated** marine compass. ~~The owner must maintain a current Federal Communication Commission operator's license for the marine radiotelephone.~~

(e) A watercraft, except ~~an open boat or other watercraft~~ where suitable privacy enclosures are not practicable, must be equipped with at least one (1) toilet ~~which~~ **that** complies with IC 14-15-2-7 and IC 14-15-2-8. ~~No bypass shall be attached to a system line or hose which will allow wastewater to be discharged into the waters of this state.~~

(f) The requirements for anchors and anchor lines are as follows:

(1) A watercraft must be equipped with an anchor of a suitable size and type.

(2) A line must be attached to the anchor by eye splice, thimble, and shackle.

(3) The anchor **and** line must be readily available onboard the watercraft **for quick deployment** and must have a minimum length as follows:

~~(A) At least thirty (30) feet for a watercraft that operates exclusively on rivers.~~

~~(B)~~ **(A)** At least ~~seventy-five (75)~~ **one hundred (100)** feet for a watercraft that operates ~~exclusively on rivers and lakes~~ other than **on** Lake Michigan.

~~(C)~~ **(B)** At least ~~seventy-five (75) feet attached to a sea anchor and at least one hundred fifty (150)~~ **two hundred (200)** feet attached to ground tackle for a watercraft that operates on Lake Michigan.

(g) A watercraft must have onboard at least one (1) of the following Coast Guard-approved visual distress signals:

Option	Number Required	Type	Accepted
(1)	**3**	**Hand-held red flare**	**Day and night**
(2)	**3**	**Hand-held, rocket-propelled parachute red flare**	**Day and night**
(3)	**1** **1**	**Orange flag distress signal for boats and electric distress light for boats**	**Day only** **Night only**
(4)	**3** **1**	**Floating or hand-held orange smoke and electric distress light for boats**	**Day only** **Night only**
(5)	**3**	**Floating or hand-held orange smoke and option (1) or option (2)**	**Day only** **Day and night**
(6)	**1**	**Orange distress flag for boats and option (1) or option (2)**	**Day only** **Day and night**

(1) A person must not display a visual distress signal except in an emergency.

(2) A Coast Guard-approved electric distress light meeting the standards of 46 CFR 161.013, that automatically flashes the international SOS signal (…---…), meets the nighttime requirements of this subsection.

(3) An orange flag that conforms to 46 CFR 160.072 meets the daytime requirements of this subsection.

(4) Pyrotechnics required by this section must be:

(A) readily accessible; and

(B) in serviceable condition.

If indicated by a date marked on the signal, the service life of the signal must not be expired.

(h) The following additional requirements apply to a sailboat:

(1) The standing rigging and spars shall be inspected during the drydock inspection. Any mast must be unstepped to allow for close inspection of the components, fittings, and systems.

(2) The running rigging shall be inspected during the dockside inspection, but a mast is not required to be unstepped.

(3) A sailboat with wheel steering must have an emergency tiller that can be deployed if the wheel steering fails.

(Natural Resources Commission; 312 IAC 5-14-24; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2396, eff Jan 1, 2002)

SECTION 19. 312 IAC 5-14-25 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-14-25 Watercraft carrying more than six passengers for hire

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5
Affected: IC 14-15-2-7; IC 14-15-2-8

Sec. 25. (a) This section establishes requirements for watercraft carrying more than six (6) passengers for hire ~~other than sailboats,~~ that are supplemental to the other requirements of this rule.

(b) **Except on an open boat,** a deck rail **or a life line** on a passenger deck must be at least ~~thirty-six (36)~~ **twenty-four (24)** inches high. ~~The space between the top rail course and the deck must be fitted with a bulwark, chain link fencing, wire mesh, or an equivalent protection.~~ **A** deck ~~rails~~ **rail** may be removed or modified while a boat is anchored and passengers are engaged in a diving operation.

(c) Fixed or portable seats must be placed so that aisles not more than fifteen (15) feet long are at least twenty-four (24) inches wide and aisles more than fifteen (15) feet long are at least thirty (30) inches wide. If seats are in rows, the distance from seat front to seat front must be at least thirty (30) inches. Seat spacing must provide for ready escape during a fire or another emergency.

(d) A watercraft that carries vehicles must have suitable chains, cable, or other barriers at the end of a vehicle runway. Suitable gates, rails, or other devices must also be installed as a continuation of the regularly required rails.

(e) ~~The requirements for personal flotation devices and water lights are as follows~~ **A watercraft must have the following onboard:**

(1) ~~The owner of a watercraft must carry onboard~~ One (1) Type I personal flotation device, Type II personal flotation device, or Type III personal flotation device of proper size for each passenger and crew member. ~~Each device shall be inspected at the dockside inspection.~~

~~(2) The owner of a watercraft shall affix in a suitable manner, to both the outside and the inside of each personal flotation device, two hundred (200) square centimeters (approximately thirty-one and one-half (31.5) square inches) of Coast Guard-approved retroreflective material.~~

~~(3) The owner of a watercraft must have onboard the watercraft~~ **(2) Except as provided in this subdivision for an open boat,** a ring life buoy at least twenty (20) inches in diameter. The ring life buoy must be properly marked, readily accessible, and suitably attached to at least ~~fifty (50)~~ **sixty (60)** feet of floating line **that is resistant to deterioration from ultraviolet light. An open boat must have a Type IV personal flotation device.**

~~(4) The owner of a watercraft, except a watercraft operating exclusively on rivers, must provide a Coast Guard-approved water light that is self-activating upon contact with the water. The light shall be stored in a readily accessible location near the ring life buoy. If the light is attached to a ring life buoy, the attachment line must be at least one (1) foot long.~~

(f) **Unless impracticable,** a watercraft must be equipped with at least one (1) toilet that complies with IC 14-15-2-7 and IC

14-15-2-8. No bypass shall be attached to a system line or hose ~~which~~ **that** will allow wastewater to be discharged into the waters of this state.

~~(g) Firefighting equipment must be provided as follows:~~
~~(1) In addition to the fire extinguishers required by section 17 of this rule, a power driven fire pump system shall be carried on-board a watercraft which is authorized to carry more than forty-nine (49) passengers. The power driven fire pump system shall be self-priming and large enough to discharge an effective stream from a hose connected to the highest outlet of the pump. The power driven fire pump may be driven by a propulsion engine or another source of power. The pump may also be connected by the bilge system to serve either as a fire pump or a bilge pump.~~
~~(2) The power driven fire pump system shall be adequate to allow any part of the watercraft to be reached with an effective stream of water from one (1) length of hose.~~
~~(3) At least one (1) length of fire hose shall be attached to each power driven fire pump or hydrant. Fire hose may be commercial hose or an equivalent which is not more than one and one-half (1½) inches in diameter or garden hose not less than five-eighths (e) inch nominal inside diameter. A fire hose shall be in one (1) piece and between twenty-five (25) and fifty (50) feet long. Garden hose must be a good commercial grade that includes each of the following:~~
~~(A) An inner tube.~~
~~(B) Plies made with braided cotton reinforcement.~~
~~(C) An outer cover made with rubber or an equivalent material.~~
~~(D) A commercial garden hose nozzle made with brass or an equivalent material.~~

(g) A watercraft that has a fixed fire extinguishing system must satisfy 46 CFR 76.05-20.

(h) The requirements for anchors and anchor lines are as follows:
(1) A watercraft must be equipped with an anchor of a suitable size and type.
(2) A line must be attached to the anchor by eye splice, thimble, and shackle. The anchor line must be readily available onboard the watercraft **for quick deployment** and must have a minimum length as follows:
(A) At least ~~thirty (30)~~ **fifty (50)** feet for a watercraft that operates exclusively on rivers.
(B) At least ~~seventy-five (75)~~ **one hundred (100)** feet for ~~a~~ **any other** watercraft. ~~that operates exclusively on rivers and lakes other than Lake Michigan.~~

(i) The following additional requirements apply to a sailboat:
(1) The standing rigging and spars shall be inspected during the drydock inspection. Any mast must be unstepped to allow for close inspection of the components, fittings, and systems.
(2) The running rigging shall be inspected during the dockside inspection, but a mast is not required to be unstepped.
(3) A sailboat with wheel steering must have an emergency tiller that can be deployed if the wheel steering fails.
(Natural Resources Commission; 312 IAC 5-14-25; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2397, eff Jan 1, 2002)

SECTION 20. 312 IAC 5-14-27 IS ADDED TO READ AS FOLLOWS:

312 IAC 5-14-27 Reciprocity for a Michigan certification
Authority: IC 14-10-2-4; IC 14-15-7
Affected: IC 14-15-2-7; IC 14-15-2-8

Sec. 27. **As an alternative to certification under this rule, the department grants reciprocity to a certification, issued under Michigan Administrative Code 281.3101 through 281.3506, for a watercraft carrying passengers for hire.** *(Natural Resources Commission; 312 IAC 5-14-27)*

SECTION 21. THE FOLLOWING ARE REPEALED: 312 IAC 5-14-5; 312 IAC 5-14-6; 312 IAC 5-14-26.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 27, 2004 at 10:30 a.m., at the Department of Natural Resources Field Office, 100 West Water Street, Michigan City, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments concerning the inspection, maintenance, and operation of watercraft carrying passengers for hire. 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 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #03-312

DIGEST

Amends 329 IAC 3.1-1-7 to incorporate by reference the July 1, 2003, edition of 40 CFR 60, Appendices A-1 through A-8, 40 CFR 146, and 40 CFR 260 through 40 CFR 270 and 40 CFR 273. Amends 329 IAC 3.1-6-2 to add a federal amendment to the used oil management standards published by the U.S. Environmental Protection Agency on July 30, 2003. Amends 329 IAC 3.1-6-3 to

clarify that chemical munitions are acute hazardous wastes. Adds 329 IAC 3.1-7.5 to retain procedures for managing rejected hazardous waste loads currently found in IC 13-22-5-12. Amends 329 IAC 3.1-12-2 to correct the definition of "PCB" and to correct references. Amends 329 IAC 3.1-13-2 to clarify a reference to hazardous waste permits. Amends 329 IAC 13-3-1, adds 329 IAC 13-3-4, and amends 329 IAC 13-9-5 to adopt federal changes to the recycled used oil management standards. Incorporates by reference the July 1, 2003, edition of 40 CFR 60, Appendices A-1 through A-8, 40 CFR 146, and 40 CFR 260 through 40 CFR 270 and 40 CFR 273. Partially effective 30 days after filing with the secretary of state and partially effective July 1, 2005.

HISTORY

First Notice of Comment Period: January 1, 2004, Indiana Register (27 IR 1387).

Continuation of First Notice of Comment Period: March 1, 2004, Indiana Register (27 IR 2104).

Second Notice of Comment Period and Notice of First Public hearing: May 1, 2004, Indiana Register (27 IR 2592).

Change in Notice of First Public Hearing: June 1, 2004, Indiana Register, 27 IR 2760.

Change in Notice of First Public Hearing: July 1, 2004, Indiana Register, 27 IR 3095.

Date of First Hearing: July 20, 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, 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 May 1, 2004, at 27 IR 2592, 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

IDEM requested public comment from May 1, 2004, through May 31, 2004, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST PUBLIC HEARING

On July 20, 2004, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of new rules and amendments to rules at 329 IAC 3.1. No comments were made at the first public hearing.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

IDEM has estimated that the economic impact of this rule will be less than five hundred thousand dollars ($500,000) on the regulated entities. The proposed rule was not submitted to the Legislative Services Agency for analysis under IC 4-22-2-28.

329 IAC 3.1-1-7
329 IAC 3.1-6-2
329 IAC 3.1-6-3
329 IAC 3.1-7.5
329 IAC 3.1-12-2
329 IAC 3.1-13-2
329 IAC 13-3-1
329 IAC 13-3-4
329 IAC 13-9-5

SECTION 1. 329 IAC 3.1-1-7, AS AMENDED AT 27 IR 1874, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-1-7 Incorporation by reference

Authority: IC 13-19-3-1; IC 13-22-4
Affected: IC 13-14-8; 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, ~~2002.~~ **2003.**

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:

(1) 40 CFR 146, ~~(1995).~~ **revised as of July 1, 2003.**

(2) 40 CFR 60, ~~Appendix A (1995).~~ **Appendix A-1, revised as of July 1, 2003.**

(3) 40 CFR 60, Appendix A-2, revised as of July 1, 2003.
(4) 40 CFR 60, Appendix A-3, revised as of July 1, 2003.
(5) 40 CFR 60, Appendix A-4, revised as of July 1, 2003.
(6) 40 CFR 60, Appendix A-5, revised as of July 1, 2003.
(7) 40 CFR 60, Appendix A-6, revised as of July 1, 2003.
(8) 40 CFR 60, Appendix A-7, revised as of July 1, 2003.
(9) 40 CFR 60, Appendix A-8, revised as of July 1, 2003.

~~(b)~~ **(d)** Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsection (a). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

~~(c)~~ **(e)** Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

~~(d)~~ **(f)** Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

~~(e)~~ **(g)** The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions which may be effective in Indiana which are not incorporated in this article or are retained as federal authority. *(Solid Waste Management Board; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16*

IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874)

SECTION 2. 329 IAC 3.1-6-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-2 Exceptions and additions; identification and listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as follows:

(1) This rule identifies only some of the materials which are solid waste as defined by IC 13-11-2-205(a) and hazardous waste as defined by IC 13-11-2-99(a), including IC 13-22-2-3(b). A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if:

(A) in the case of IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or

(B) in the case of IC 13-14-10-1, the statutory elements are established.

(2) Delete 40 CFR 261.2(f) and substitute the following: Respondents in actions to enforce regulations implementing IC 13 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11 means the SWMB.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2), owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77.

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.

(6) In 40 CFR 261.4(e)(3)(iii), delete the words "in the Region where the sample is collected".

(7) Delete 40 CFR 261, Appendix IX.

(8) In 40 CFR 261.21(a)(3), delete "an ignitable compressed gas as defined in 49 CFR 173.300" and substitute "a flammable gas as defined in 49 CFR 173.115(a)".

(9) In 40 CFR 261.21(a)(4), delete "an oxidizer as defined in 49 CFR 173.151" and substitute "an oxidizer as defined in 49 CFR 173.127".

(10) Delete 40 CFR 261.23(a)(8) and substitute "It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A explosive as defined in 49 CFR 173.54 prior to HM-181, or a Class B explosive as defined in 49 CFR 173.88 prior to HM-181.".

(11) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).

(12) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.

(13) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.

(14) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.

(15) Delete 40 CFR 261.2(e)(1)(i) dealing with use or reuse of secondary materials to make products and substitute section 5 of this rule.

(16) In 40 CFR 261.5(j), delete "if it is destined to be burned for energy recovery" in two (2) places.

(17) The conditional exclusions from the definition of solid waste for some zinc fertilizers made from recycled hazardous secondary materials in 40 CFR 261.4(a)(20) and 40 CFR 261.4(a)(21) do not apply to any of the following industries until July 1, 2005:

Industry	Standard Industry Classification Code
Blast furnaces and steel mills	3312
Gray and ductile iron foundries	3321
Malleable iron foundries	3322
Steel investment foundries	3324
Steel foundries	3325
Aluminum foundries	3365
Copper foundries	3366
Nonferrous foundries	3369

(Solid Waste Management Board; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432)

SECTION 3. 329 IAC 3.1-6-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-3 Indiana additions; listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 3. **(a)** In addition to the ~~list~~ **lists** of hazardous waste incorporated by reference in section 1 of this rule, the following chemical munitions are ~~added to the list of~~ **acute** hazardous ~~waste:~~ **wastes:**

(1) GA (Ethyl-N, N-dimethyl phosphoramidocyanidate).

(2) GB (Isopropyl methyl phosphonoflouridate).

(3) H, HD (Bis(2-chloroethyl) sulfide).

(4) HT (sixty percent (60%) HD and forty percent (40%) T (Bis[2(2-chloroethyl-thio)ethyl]ester)).

(5) L (Dichloro(2-chlorovinyl)arsine).

(6) VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate).

The above listed chemical munitions have the Indiana hazardous waste number I001 **and are subject to all requirements for acute hazardous wastes in this article except as provided in subsection (b).**

(b) The commissioner may establish alternative requirements for wastes listed in this section and for wastes derived from those listed wastes. *(Solid Waste Management Board; 329 IAC 3.1-6-3; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 4. 329 IAC 3.1-7.5 IS ADDED TO READ AS FOLLOWS:

Rule 7.5. Rejection of Hazardous Waste

329 IAC 3.1-7.5-1 Rejection prior to signing manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-1; 40 CFR 262

Sec. 1. A hazardous waste facility owner or operator may reject all of a hazardous waste shipment for any reason before signing the manifest. *(Solid Waste Management Board; 329 IAC 3.1-7.5-1)*

329 IAC 3.1-7.5-2 Rejection after signing manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-2; 40 CFR 262

Sec. 2. After the manifest is signed, a hazardous waste facility owner or operator may reject all or part of a hazardous waste shipment that:

(1) does not conform to the terms of the agreement under which the hazardous waste facility agrees to manage the hazardous waste;

(2) does not conform to the requirements of the hazardous waste facility's permit;

(3) would require a deviation from the hazardous waste facility's standard operating procedures; or

(4) cannot, with reasonable efforts, be removed from the vehicle or the container in which the hazardous waste was transported.

(Solid Waste Management Board; 329 IAC 3.1-7.5-2)

329 IAC 3.1-7.5-3 Rejection after signing manifest; compliance by facility

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-3; 40 CFR 262

Sec. 3. If a hazardous waste facility owner or operator rejects under section 2 of this rule all or part of a hazardous waste shipment, the hazardous waste facility shall comply with the requirements of this rule. *(Solid Waste Management Board; 329 IAC 3.1-7.5-3)*

329 IAC 3.1-7.5-4 Rejection after signing manifest; facility not generator; facility not liable

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-4; IC 13-25-4; 40 CFR 262

Sec. 4. A hazardous waste facility that rejects all or part of a hazardous waste shipment under section 2 of this rule is not:

(1) considered a generator of the rejected hazardous waste; and

(2) liable for any rejected part of the hazardous waste shipment under IC 13-25-4.

(Solid Waste Management Board; 329 IAC 3.1-7.5-4)

329 IAC 3.1-7.5-5 Rejection after signing manifest; facility owner or operator duty to contact generator and secure waste

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-5; 40 CFR 262

Sec. 5. If a hazardous waste facility owner or operator rejects all or part of a shipment of hazardous waste after the owner or operator has signed the manifest, the hazardous waste facility owner or operator shall contact the generator, who shall direct the owner or operator to:

(1) return the rejected shipment to the generator; or

(2) transport the rejected shipment to an alternate hazardous waste facility selected by the generator.

(Solid Waste Management Board; 329 IAC 3.1-7.5-5)

329 IAC 3.1-7.5-6 Rejected waste; manifest

Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-6; 40 CFR 262

Sec. 6. (a) If the rejected load is to be returned to a generator, the generator shall complete a new manifest form in accordance with 40 CFR 262, incorporated by reference in 329 IAC 3.1-7-1, except the following:

(1) Line out the word "generator" in Box 3 of the manifest and insert the words "rejecting facility".

(2) Line out the words "designated facility" in Box 9 of the manifest and insert the word "generator".
(3) In Box 15 of the manifest, write:
(A) the words "REJECTED LOAD" in large block print; and
(B) the manifest document number of the original manifest for the rejected load.

(b) The rejected load manifest must accompany the shipment back to the generator. The generator retains all responsibility for transportation of the rejected waste. *(Solid Waste Management Board; 329 IAC 3.1-7.5-6)*

329 IAC 3.1-7.5-7 Rejected waste; duties of generator and rejecting facility
Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-7; 40 CFR 262

Sec. 7. (a) When the rejected waste and the new manifest created in accordance with section 6 of this rule are received by the generator, the generator shall do the following:
(1) Note any discrepancies in Box 19 of the new manifest.
(2) Line out the words "Facility Owner or Operator" in Box 20 of the new manifest and insert the words "Receiving generator".
(3) Sign Box 20 of the new manifest.
(4) Give a copy of the new manifest to the transporter.
(5) Mail a copy of the new manifest to the rejecting facility not more than five (5) days after receipt of the shipment and the new manifest.

(b) The receiving generator and rejecting facility shall retain copies of the new manifest from the rejected load for not less than three (3) years after the date of receipt. *(Solid Waste Management Board; 329 IAC 3.1-7.5-7)*

329 IAC 3.1-7.5-8 Rejecting facility; nonreceipt of manifest within time limit
Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-8; 40 CFR 262

Sec. 8. If the rejecting facility does not receive a copy of the new manifest with the handwritten signature of the generator in Box 20 in not more than thirty-five (35) days from the date the rejected waste was accepted for transport back to the generator, the rejecting facility shall comply with the exception reporting requirements in 40 CFR 264.72, incorporated by reference in 329 IAC 3.1-9-1 or 40 CFR 265.72, incorporated by reference in 329 IAC 3.1-10-1. *(Solid Waste Management Board; 329 IAC 3.1-7.5-8)*

329 IAC 3.1-7.5-9 Generator; temporary retention of rejected waste
Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-9; 40 CFR 262

Sec. 9. The generator may retain the hazardous waste at the location of receipt for not more than ninety (90) days following receipt of the rejected load before shipment to a permitted facility. The generator shall manage the waste during the retention period in accordance with 40 CFR 262.34, incorporated by reference in 329 IAC 3.1-9-1. *(Solid Waste Management Board; 329 IAC 3.1-7.5-9)*

329 IAC 3.1-7.5-10 Rejected waste; transfer to alternate facility; generator to forward manifest to rejecting facility
Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-10; 40 CFR 262

Sec. 10. If the rejected load is to be shipped to an alternate hazardous waste management facility, the generator shall complete the manifest form identifying the generator as the generator and specifying the alternate designated facility. The generator shall forward the manifest to the rejecting facility to accompany the shipment to the alternate facility. *(Solid Waste Management Board; 329 IAC 3.1-7.5-10)*

329 IAC 3.1-7.5-11 Mixture of waste from multiple generators by transporter; responsibilities
Authority: IC 13-14-8; IC 13-22-2-4; IC 13-22-5-12
Affected: IC 13-11-2-125; IC 13-22-2; IC 13-22-5-11; 40 CFR 262

Sec. 11. If hazardous waste from more than one (1) generator is mixed together by the transporter before delivery to the hazardous waste facility, the transporter shall assume all responsibility for proper disposition of the rejected waste, including the responsibility to:
(1) designate an alternate hazardous waste facility; and
(2) assure delivery to the designated alternate hazardous waste facility.
(Solid Waste Management Board; 329 IAC 3.1-7.5-11)

SECTION 5. 329 IAC 3.1-12-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-12-2 Exceptions and additions; land disposal restrictions
Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-155; IC 13-22-2; 40 CFR 268

Sec. 2. Exceptions and additions to land disposal restrictions are as follows:

(1) Primacy for granting exemptions from land disposal restrictions incorporated in this rule are retained as federal authorities and must be granted by the administrator of the EPA. Exemptions for which federal primacy is retained are described as follows:

(A) Case-by-case extensions to federal effective dates pursuant to 40 CFR 268.5.

(B) Petitions to allow land disposal of a waste prohibited under 40 CFR 268, Subpart C, pursuant to 40 CFR 268.6.

(C) Approval of alternate treatment methods pursuant to 40 CFR 268.42(b).

(D) Exemption from a treatment standard pursuant to 40 CFR 268.44.

(2) For the reason described in subdivision (1), delete the following:

(A) 40 CFR 268.5.

(B) 40 CFR 268.6.

(C) 40 CFR 268.42(b).

(D) 40 CFR 268.44.

(3) Any person requesting an exemption described in subdivision (1) must comply with 329 IAC 3.1-5-6.

(4) Delete 40 CFR 268.1(e)(3) and substitute the following: Hazardous wastes which are not identified or listed in 40 CFR 268, Subpart C **or Subpart D,** as incorporated in this rule.

(5) ~~In~~ **Delete** 40 CFR 268.2(e) ~~delete "40 CFR 761.3" and insert "329 IAC 4.1".~~ **and substitute the following: Polychlorinated biphenyls or PCBs have the meaning set forth in IC 13-11-2-155.**

~~(6) Delete 40 CFR 268.8.~~

~~(7)~~ **(6)** Delete 40 CFR 268.9(d) and substitute the following: Wastes that exhibit a characteristic are also subject to the requirements of 40 CFR 268.7, except that once the waste is no longer hazardous, a one (1) time notification and certification must be placed in the generator's or treater's files and sent to the commissioner. The notification must include the following information:

(A) The name and address of the solid waste facility receiving the waste shipment.

(B) A description of the waste as initially generated, including the applicable EPA hazardous waste number.

(C) The treatment standards applicable to the waste at the initial point of generation.

(D) The certification must be signed by an authorized representative and must state the language found in ~~40 CFR 268.7(b)(5)(i).~~ **40 CFR 268.7(b)(4).**

The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes or if the facility receiving the waste changes.

~~(8)~~ **(7)** Delete 40 CFR 268, Subpart B.

~~(9)~~ **(8)** In 40 CFR 268, Subpart C, all references to effective dates which precede the effective date of this rule shall be replaced with the effective date of this rule.

~~(10)~~ **(9)** Delete 40 CFR 268.33.

(Solid Waste Management Board; 329 IAC 3.1-12-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 939; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3366; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1639; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2435; errata filed May 8, 2003, 9:40 a.m.: 26 IR 3046)

SECTION 6. 329 IAC 3.1-13-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-13-2 Exceptions and additions; permit program

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 4-21.5; IC 13-15; IC 13-22-2; IC 13-22-3; IC 13-30; 40 CFR 270

Sec. 2. Exceptions and additions to federal procedures for the state administered permit program are as follows:

(1) Delete 40 CFR 270.1(a) dealing with scope of the permit program and substitute the following: This rule establishes provisions for the state hazardous waste program pursuant to IC 13-15 and IC 13-22-3.

(2) In addition to the procedures of 40 CFR 270 as incorporated in this rule, sections 3 through 17 of this rule set forth additional state procedures for denying, issuing, modifying, revoking and reissuing, and terminating all final state permits other than "emergency permits" and "permits by rule".

(3) Delete 40 CFR 270.1(b).

(4) Delete 40 CFR 270.3.

(5) Delete 40 CFR 270.10 dealing with general permit application requirements and substitute section 3 of this rule.

(6) Delete 40 CFR 270.12 dealing with confidentiality of information and substitute section 4 of this rule.

(7) Delete 40 CFR 270.14(b)(18).

(8) Delete 40 CFR 270.14(b)(20).

(9) In 40 CFR 270.32(a), delete references to "alternate schedules of compliance" and "considerations under federal law". These references in the federal permit requirements are only applicable to federally issued permits.

(10) In 40 CFR 270.32(b)(2), delete "under section 3005 of this act" and substitute "this article".

~~(10)~~ **(11)** Delete 40 CFR 270.32(c) dealing with the establishment of permit conditions and substitute the following: If new requirements become effective, including any interim final regulations, during the permitting process which are:

(A) prior to modification, or revocation and reissuance, of a permit to the extent allowed in this rule; and

(B) of sufficient magnitude to make additional proceeding desirable, the commissioner shall at her discretion, reopen the comment period.

~~(11)~~ **(12)** Delete 40 CFR 270.50 dealing with duration of permits and substitute section 15 of this rule.

~~(12)~~ **(13)** Delete 40 CFR 270.51 dealing with continuation of expiring permits and substitute section 16 of this rule.

~~(13)~~ **(14)** Delete 40 CFR 270.64.

~~(14)~~ **(15)** In addition to the criteria described in 40 CFR 270.73, interim status may also be terminated pursuant to a judicial decree under IC 13-30 or final administrative order under IC 4-21.5.

(Solid Waste Management Board; 329 IAC 3.1-13-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 940; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3358; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3367; errata filed Aug 7, 1996, 5:01 p.m.: 19 IR 3471; errata filed Jan 10, 2000, 3:01 p.m.: 23 IR 1109; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2436)

SECTION 7. 329 IAC 13-3-1, AS AMENDED AT 27 IR 3978, SECTION 39, IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-3-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 1. (a) The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 2 of this rule, this article applies to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in 40 CFR 261 Subpart C, revised as of July 1, 2002.

(b) Mixtures of used oil and hazardous waste must be handled as follows:

(1) For mixtures of used oil with a listed hazardous waste, the following shall apply:

(A) Mixtures of used oil and hazardous waste that is listed in 40 CFR 261 Subpart D, revised as of July 1, 2002, are subject to regulation as hazardous waste under 329 IAC 3.1 rather than as used oil under this article.

(B) Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261 Subpart D, revised as of July 1, 2002. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from U.S. Environmental Protection Agency Publication SW-846, as defined in 329 IAC 10-2-197.1, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII, revised as of July 1, 2002. U.S. Environmental Protection Agency SW-846 is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

(i) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(c), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261 Subpart C, revised as of July 1, 2002, are subject to 329 IAC 3.1.

(3) Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR 261.5, revised as of July 1, 2002, are subject to regulation as used oil under this article.

(c) Materials containing or otherwise contaminated with used oil must be handled as follows:

(1) Except as provided in subdivision (2), materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(A) are not used oil and thus not subject to this article; and

(B) if applicable, are subject to the hazardous waste regulations under 329 IAC 3.1.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this article.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this article.

(d) Mixtures of used oil with products must be handled as follows:

(1) Except as provided in subdivision (2), mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this article.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 329 IAC 13-4.

(e) Materials derived from used oil must be handled as follows:

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, such as re-refined lubricants, are:

(A) not used oil and thus are not subject to this article; and

(B) not solid wastes and are thus not subject to the hazardous waste regulations under 329 IAC 3.1 as provided in 40 CFR 261.3(c)(2)(A), revised as of July 1, 2002.

(2) Materials produced from used oil that are burned for energy recovery, such as used oil fuels, are subject to regulation as used oil under this article.

(3) Except as provided in subdivision (4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(A) not used oil and thus are not subject to this article; and

(B) are solid wastes and thus are subject to the hazardous waste regulations under 329 IAC 3.1 if the materials are listed or identified as hazardous waste.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this article.

(f) Wastewater, the discharge of which is subject to regulation under either Section 402 or 307(b) of the Clean Water Act, 33 U.S.C. 1342 or 33 U.S.C. 1317(b), respectively, including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of this article. As used in this subsection, "de minimis quantities of used oils" means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility must be handled as follows:

(1) Used oil mixed with crude oil or natural gas liquids, such as in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of this article. The used oil is subject to the requirements of this article prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent (1%) used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this article.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this article provided that the used oil constitutes less than one percent (1%) of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(4) Except as provided in subdivision (5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this article only if the used oil meets the specification of section 2 of this rule. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as an article of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this article. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, such as by pouring collected used oil into the wastewater treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this article.

(h) Used oil produced on vessels from normal shipboard operations is not subject to this article until it is transported ashore.

(i) ~~In addition to the requirements of this article, marketers and burners of used oil who market~~ Used oil containing ~~any quantifiable level of polychlorinated biphenyls (PCBs) are~~ **less than fifty (50) parts per million PCB is** subject to the requirements ~~found at 40 CFR 761.20(e), revised as of June 24, 1999.~~ **of this article unless, because of dilution, it is regulated under 329 IAC 4.1 as a used oil containing PCB at fifty (50) parts per million or greater. Used oil containing PCB subject to the requirements of this article may also be subject to the prohibitions and requirements found in 329 IAC 4.1.**

(j) Used oil containing PCB at concentrations of fifty (50) parts per million or greater is not subject to the requirements of this article, but is subject to regulation under 329 IAC 4.1. No person may avoid these provisions by diluting used oil containing PCB, unless otherwise specifically provided for in this article or in 329 IAC 4.1.

(k) The use of waste oil that contains equal to or greater than two (2) parts per million PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to, road oiling, general dust control, use as a pesticide or herbicide carrier, and use as a rust preventative on pipes.

(l) In addition to any applicable requirements under 329 IAC 13-8 and 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing equal to or greater than two (2) parts per million PCB must comply with section 4 of this rule.

~~(j)~~ **(m)** 40 CFR 261 and 40 CFR 761 are available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. *(Solid Waste Management Board; 329 IAC 13-3-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1494; readopted filed Sep 7, 2001, 1:35 p.m.: 25 IR 238; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3978)*

SECTION 8. 329 IAC 13-3-4 IS ADDED TO READ AS FOLLOWS:

329 IAC 13-3-4 Marketing used oil containing any quantifiable level of PCB

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 4. (a) In addition to any applicable requirements in 329 IAC 13-8 through 329 IAC 13-9, marketers and burners of used oil who market, process, or distribute in commerce for energy recovery, used oil containing greater than or equal to two (2) parts per million PCB are subject to the requirements of this section.

(b) Used oil containing greater than or equal to two (2) parts per million PCB may be marketed only to:

(1) Qualified incinerators as defined in 40 CFR 761.3, incorporated by reference in 329 IAC 4.1-2-1.

(2) Marketers who market off-specification used oil for energy recovery only to other marketers who have complied with 329 IAC 13-9-4.

(3) Burners identified in 329 IAC 13-8-2(a)(1) through 329 IAC 13-8-2(a)(2). Only burners in the automotive industry may burn used oil generated from automotive sources in used oil-fired space heaters provided the provisions of 329 IAC 13-4-4 are met. The commissioner may grant a variance for a boiler that does not meet the criteria in 329 IAC 13-8-2(a)(1) through 329 IAC 13-8-2(a)(2) after considering the criteria listed in 40 CFR 260.32(a) through 40 CFR 260.32(f), incorporated by reference in 329 IAC 3.1-5-4. The applicant must address the relevant criteria contained in 40 CFR 260.32(a) through 40 CFR 260.32(f) in an application to the commissioner.

(c) Used oil to be burned for energy recovery is presumed to contain greater than or equal to two (2) parts per million PCB unless the marketer obtains test analyses or other information that the used oil fuel does not contain greater than or equal to two (2) parts per million PCB.

(1) The person who first claims that a used oil fuel does not contain greater than or equal to two (2) parts per million PCB must obtain analyses or other information to support that claim.

(2) Testing to determine the PCB concentration in used oil may be conducted on individual samples, or in accordance with the testing procedures described in § 761.60(g)(2), incorporated by reference in 329 IAC 4.1-4-1. However, for purposes of this part, if any PCBs at a concentration of fifty (50) parts per million or greater have been added to the container or equipment, then the total container contents must be considered as having a PCB concentration of fifty (50) parts per million or greater for purposes of complying with the disposal requirements of this part.

(3) Other information documenting that the used oil fuel does not contain greater than or equal to two (2) parts per million PCB may consist of either personal, special knowledge of the source and composition of the used oil, or a certification from the person generating the used oil claiming that the oil does not contain greater than or equal to two (2) parts per million PCB.

(d) Persons subject to this section shall comply with the following restrictions on burning:

(1) Used oil containing greater than or equal to two (2) parts per million PCB may be burned for energy recovery only in the combustion facilities identified in subsection (b) when such facilities are operating at normal operating temperatures. Used oil containing greater than or equal to two (2) parts per million PCB must not be burned during either startup or shutdown operations. Owners and operators of such facilities are burners of used oil fuels.

(2) Before a burner accepts from a marketer the first shipment of used oil fuel containing greater than or equal to two (2) parts per million PCB, the burner must provide the marketer a one-time written and signed notice certifying that:

(A) The burner has complied with any notification requirements applicable to qualified incinerators as defined in 40 CFR 761.3, incorporated in 329 IAC 4.1-2-1, or to burners regulated under 329 IAC 13-8.

(B) The burner will burn the used oil only in a combustion facility identified in subsection (b) and identify the class of burner he qualifies.

(e) The following record keeping requirements are in addition to the record keeping requirements for marketers found in 329 IAC 13-9-3(b), 329 IAC 13-9-5, and 329 IAC 13-9-6, and for burners found in 329 IAC 13-8-6 and 329 IAC 13-8-7:

(1) Marketers who first claim that the used oil fuel contains greater than or equal to two (2) parts per million PCB must:

(A) include among the records required by 329 IAC 13-9-3(b) and 329 IAC 13-9-5(b) through 329 IAC 13-9-5(c), copies of the analysis or other information documenting his claim; and

(B) include among the records required by 329 IAC 13-9-5(a), 329 IAC 13-9-5(c), and 329 IAC 13-9-6, a copy of each certification notice received or prepared relating to transactions involving used oil containing PCB.

(2) Burners must include among the records required by 329 IAC 13-8-6 and 329 IAC 13-8-7, a copy of each certification notice required by subsection (d)(2) that the burner sends to a marketer.

(Solid Waste Management Board; 329 IAC 13-3-4)

SECTION 9. 329 IAC 13-9-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 13-9-5 Tracking

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3
Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 5. (a) Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each

shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner.

(2) The name and address of the burner who will receive the used oil.

(3) The EPA identification number of the transporter who delivers the used oil to the burner.

(4) The EPA identification number of the burner.

(5) The quantity of used oil shipped.

(6) The date of shipment.

(b) A generator, transporter, processor or re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under 329 IAC 13-3-2 must keep a record of each shipment of used oil to ~~an on-specification~~ **the facility to which it delivers the** used oil. ~~burner.~~ Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment.

(2) The quantity of used oil fuel delivered.

(3) The date of shipment or delivery.

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under section 3(a) of this rule.

(c) The records described in this section must be maintained for at least three (3) years. *(Solid Waste Management Board; 329 IAC 13-9-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1513; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 10. **SECTION 4 of this document takes effect July 1, 2005.**

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on October 19, 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.

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 new rules and amendments to rules. 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 call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

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

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

or call (317) 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 Land Quality, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #04-135

DIGEST

Amends 345 IAC 4-4-1 to update the National Poultry Improvement Plan incorporated by reference. Adds 345 IAC 10-2-5 to require that establishments slaughter poultry within 48 hours after delivery and that certain cages be cleaned and disinfected after each use. Amends 345 IAC 10-2.1-1 to update poultry slaughter and processing requirements incorporated by reference and to prohibit the slaughter of poultry under the retail exemption. Makes other changes in the law of poultry slaughter and processing. Effective 30 days after filing with the secretary of state.

345 IAC 4-4-1
345 IAC 10-2-5
345 IAC 10-2.1-1

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

345 IAC 4-4-1 National Poultry Improvement Plan; adoption by reference

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

Sec. 1. The board adopts and incorporates by reference as rules of the board the United States Department of Agriculture National Poultry Improvement Plan in 9 CFR Part 145 and the auxiliary provisions in 9 CFR Part 147, that are in effect on January 1, ~~2000,~~ **2004,** and the amendments thereto in ~~65 FR 8014~~ **69 FR 7679** through ~~65 FR 8023.~~ **69 FR 7680.** But, 9 CFR Part 147, Subpart E and any amendments thereto are not incorporated by reference. *(Indiana State Board of Animal Health; 345 IAC 4-4-1; filed Oct 11, 1996, 2:00 p.m.: 20 IR 750; filed Dec 10, 1997, 11:00 a.m.: 21 IR 1327; filed Dec 18, 2000, 9:57 a.m.: 24 IR 1341; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

SECTION 2. 345 IAC 10-2-5 IS ADDED TO READ AS FOLLOWS:

345 IAC 10-2-5 Delivery and acceptance of poultry for slaughter

Authority: IC 15-2.1-3-13; IC 15-2.1-3-19; IC 15-2.1-24-6; IC 15-2.1-24-7
Affected: IC 15-2.1-24

Sec. 5. (a) A person accepting poultry for slaughter, including inspected establishments and establishments slaughtering under an exemption in 9 CFR 381.10, must slaughter delivered poultry within twenty-four (24) hours of the poultry's arrival at the establishment.

(b) An establishment that provides cages for use by its customers to transport poultry to the establishment for slaughter shall clean and disinfect the cages after each use before providing the cages to another customer. The state veterinarian may designate minimum standards for cleaning and disinfecting that will facilitate public health and animal health by reducing the risk of disease transmission. *(Indiana State Board of Animal Health; 345 IAC 10-2-5)*

SECTION 3. 345 IAC 10-2.1-1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 10-2.1-1 Incorporation by reference; poultry products inspection

Authority: IC 15-2.1-3-19; IC 15-2.1-24-6; IC 15-2.1-24-7
Affected: IC 4-21.5-3; IC 15-2.1-2; IC 15-2.1-19; IC 15-2.1-24-14

Sec. 1. (a) The board adopts as its rule and incorporates by reference the following federal regulations in effect on January 1, ~~2002,~~ **2004,** relating to poultry products inspection:

(1) **9 CFR Part 362 with the following amendments and additions:**

(A) 9 CFR 362.4(a)(2), 9 CFR 362.4(b)(2), 9 CFR 362.4(c), 9 CFR 362.4(d), and 9 CFR 362.5 are not incorporated.

(B) Fees for voluntary inspection service shall be charged in accordance with IC 15-2.1-24-14(c).

(C) The state veterinarian may refuse to provide or withdraw voluntary inspection service for administrative reasons, including nonavailability of personnel and failure to pay for service.

(2) 9 CFR 381.1, except the definitions in IC 15-2.1 and 345 IAC 10-1-1 shall control over conflicting definitions in 9 CFR.

~~(2)~~ **(3)** 9 CFR 381.10 **with the following amendments and additions:**

(A) 9 CFR 381.10(d)(2)(i) shall be amended by deleting the word "unless" and the remaining part of the sentence that follows that word.

(B) A person operating a facility engaged in exempt operations described in 9 CFR 381.10(a)(4) through 9 CFR 381.10(a)(7) and 9 CFR 381.10(b) through 9 CFR 381.10(c) shall comply with the registration and record keeping requirements in 9 CFR 381.175 through 9 CFR 381.182.

(4) 9 CFR 381.11 through 9 CFR 381.95, except the following are not incorporated:

(A) 9 CFR 381.36.
(B) 9 CFR 381.37.
(C) 9 CFR 381.38.
(D) 9 CFR 381.39.
(E) 9 CFR 381.45 through 9 CFR 381.61.

~~(3)~~ **(5)** 9 CFR 381.115 through 9 CFR 381.182, except the following are not incorporated:

(A) 9 CFR 381.132.
(B) 9 CFR 381.133.

~~(4)~~ **(6)** 9 CFR 381.189 through 9 CFR 381.194.

~~(5)~~ **(7)** 9 CFR 381.300 through 9 CFR 381.500.

~~(6)~~ **(8)** 9 CFR 416 **through 9 CFR 441.**

~~(7) 9 CFR 417.~~

~~(8)~~ **(9)** 9 CFR 500, except the following:

(A) References to 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) References to 9 CFR 381.3 through 9 CFR 381.7 refer to the corresponding section in 345 IAC 10-2.

(2) References to:

(A) 9 CFR 381.36 refer to 345 IAC 10-7-1;

(B) 9 CFR 381.37 refer to 345 IAC 10-7-2 and 345 IAC 10-7-3; and

(C) 9 CFR 381.38 and 9 CFR 381.39 refer to 345 IAC 10-7-4.

(3) References to:

(A) 9 CFR 381.96 refer to 345 IAC 10-13-1;
(B) 9 CFR 381.98 refer to 345 IAC 10-13-2;
(C) 9 CFR 381.99 refer to 345 IAC 10-13-3;
(D) 9 CFR 381.100 refer to 345 IAC 10-13-4;
(E) 9 CFR 381.101 refer to 345 IAC 10-13-5;
(F) 9 CFR 381.103 refer to 345 IAC 10-13-6;

(G) 9 CFR 381.110 refer to 345 IAC 10-13-7; and
(H) 9 CFR 381.111 refer to 345 IAC 10-13-8.
(4) References to 9 CFR 381.131, 9 CFR 381.132, and 9 CFR 381.133 refer to 345 IAC 10-14-18 and 345 IAC 10-14-20.
(5) References to:
(A) 9 CFR 381.185 refer to 345 IAC 10-18-1; and
(B) 9 CFR 381.186 refer to 345 IAC 10-18-2.
(6) References to 9 CFR 381.210 through 9 CFR 381.218 refer to the corresponding section of 345 IAC 10-20.

(c) Where the provisions of this article conflict with matters incorporated by reference, the express provisions of this article shall control. *(Indiana State Board of Animal Health; 345 IAC 10-2.1-1; filed Dec 10, 1997, 11:30 a.m.: 21 IR 1319; errata filed Mar 9, 1998, 9:30 a.m.: 21 IR 2393; filed Sep 10, 1999, 9:14 a.m.: 23 IR 16; filed Oct 30, 2000, 2:06 p.m.: 24 IR 685; errata filed Apr 9, 2001, 12:52 p.m.: 24 IR 2470; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895; filed Dec 19, 2002, 12:43 p.m.: 26 IR 1541)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 7, 2004 at 9:45 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 rules concerning the National Poultry Improvement Plan, requirements that establishments slaughter poultry within 48 hours after delivery and that certain cages be cleaned and disinfected after each use, and to update poultry slaughter and processing requirements incorporated by reference and prohibit the slaughter of poultry under the retail exemption. Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

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

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #04-147

DIGEST

Amends 345 IAC 1-3-7 and 345 IAC 1-3-10 concerning tuberculosis control in animals moved into Indiana. Adds 345 IAC 2.5 to replace 345 IAC 2-4.1 concerning tuberculosis control in cattle, bison, and goats. Amends 345 IAC 7-5-12 concerning exhibition of animals. Makes other changes in the law of tuberculosis control. Repeals 345 IAC 1-3-6.5, 345 IAC 1-3-9, and 345 IAC 2-4.1. Effective 30 days after filing with the secretary of state.

345 IAC 1-3-6.5
345 IAC 1-3-7
345 IAC 1-3-9
345 IAC 1-3-10
345 IAC 2-4.1
345 IAC 2.5
345 IAC 7-5-12

SECTION 1. 345 IAC 1-3-7 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-3-7 Cattle and bison
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-15-4; IC 15-2.1-21-6

Sec. 7. (a) ~~All~~ **Before a person may move** cattle ~~entering~~ **or bison into** Indiana, ~~for dairy or breeding purposes shall test negative for Tuberculosis within sixty (60) days prior to~~ the ~~date of entry with the following exceptions:~~
~~(1) Dairy or breeding cattle from accredited Tuberculosis-free herds.~~
~~(2) Dairy or breeding cattle under one hundred eighty (180) days of age.~~
~~(3) Dairy or breeding cattle from an accredited Tuberculosis-free state.~~ **requirements for tuberculosis control in 345 IAC 2.5 must be met.**

(b) All test eligible cattle entering Indiana for dairy or breeding purposes shall test negative for brucellosis prior to entry, utilizing a test conducted at a state-federal laboratory. The following provisions apply to the entry brucellosis test required in this subsection:
(1) Calves under four hundred (400) pounds and obviously under one hundred eighty (180) days of age are exempt.
(2) Officially vaccinated cattle of:
(A) beef breeds under twenty-four (24) months of age; and
~~officially vaccinated cattle of~~
(B) dairy breeds under twenty (20) months of age;
which are accompanied by proof of vaccination with an approved brucella vaccine and are identified with a legible official vaccination tattoo, are exempt.
(3) Feeder cattle must comply with this section. ~~and section 8 of this rule.~~
(4) Cattle that originate from a state that the United States Department of Agriculture certifies as being brucellosis-free are exempt.
(5) Dairy or breeding cattle from Class A and Class B states must meet the following requirements:
(A) Dairy or breeding cattle originating from certified brucellosis-free herds are exempt from the brucellosis entry test provided the health certificate indicates the certified herd number and the date of the last herd test. The last herd test must have been within the twelve (12) months prior to entry into Indiana.

(B) All test eligible dairy or breeding cattle originating from herds that are not certified brucellosis-free must have a negative brucellosis test conducted within thirty (30) days prior to entry.

(C) All test eligible dairy and breeding cattle shall be quarantined at the point of destination and retested for brucellosis at the owner's expense in forty-five (45) to ninety (90) days after entry into Indiana. The retest must be conducted at a state-federal approved laboratory.

(6) A licensed livestock dealer may sell dairy and breeding cattle that have been imported into Indiana from Class A and Class B states before the forty-five (45) to ninety (90) day quarantine and retest period is over if the following requirements are met:

(A) The cattle were imported into Indiana after meeting the import requirements in this rule.

(B) The purchaser signs a form prescribed by the board stating that they are aware of and will comply with the following requirements:

(i) The cattle are quarantined on the premises of the purchaser until the cattle are retested.

(ii) He or she will have the cattle retested for brucellosis in not less than forty-five (45) days and not more than ninety (90) days from date of importation.

(iii) The retest will be conducted at a state-federal approved laboratory.

(iv) Any other provisions agreed to and prescribed on the form.

(C) A copy of the form must be signed by the purchaser and forwarded to the office of the state veterinarian by the seller within seven (7) days of the date of sale.

A person purchasing cattle described in this subdivision may not reconsign or sell the cattle until the required testing for brucellosis is completed.

(7) A licensed Indiana auction market may accept farm of origin dairy ~~and/or~~ **or** breeding cattle, **or both,** for consignment from any state that is brucellosis ~~and Tuberculosis~~ free without the brucellosis ~~and Tuberculosis~~ tests normally required for importation into the state.

(8) Cattle from an adult herd vaccinated for brucellosis, regardless of a particular animal's vaccination status, may not be imported into Indiana except under provisions stipulated on a written permit issued by the Indiana state veterinarian according to established guidelines.

(Indiana State Board of Animal Health; Reg 76-1, Title III, Sec 1; filed Aug 10, 1976, 10:29 a.m.: Rules and Regs. 1977, p. 130; filed May 2, 1983, 10:02 a.m.: 6 IR 1041; filed May 10, 1984, 8:36 a.m.: 7 IR 1449; filed Jan 8, 1986, 2:52 p.m.: 9 IR 992; filed Dec 2, 1994, 3:52 p.m.: 18 IR 857; filed Jan 6, 1999, 4:22 p.m.: 22 IR 1479; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

SECTION 2. 345 IAC 1-3-10 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-3-10 Animals for immediate slaughter

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-21-6

Sec. 10. ~~Cattle~~ **The following apply to animals** consigned for sale ~~in Indiana~~ for immediate slaughter **in the state or in another state and animals moved into the state for slaughter:**

(1) The animals shall be: ~~consigned~~

(A) moved directly to ~~a recognized~~ **an approved** slaughtering establishment; or

(B) consigned to a licensed public livestock market for resale ~~directly to a recognized slaughtering establishment. Cattle~~ for immediate slaughter. ~~entering Indiana~~

(2) Slaughter animals shall be accompanied by a:

(A) waybill;

(B) bill of lading;

(C) cargo manifest; or

(D) similar document;

describing the ~~cattle~~ **animals** and listing the point of destination.

(Indiana State Board of Animal Health; Reg 76-1,Title III, Sec 4; filed Aug 10, 1976, 10:29 a.m.: Rules and Regs. 1977, p. 132; filed Jan 6, 1999, 4:22 p.m.: 22 IR 1481; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)

SECTION 3. 345 IAC 2.5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 2.5. TUBERCULOSIS CONTROL

Rule 1. Definitions

345 IAC 2.5-1-1 Applicability

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 1. The definitions in IC 15-2.1-2 and this rule apply throughout this article. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-1)*

345 IAC 2.5-1-2 "Accredited herd" defined

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 2. "Accredited herd" means a herd that qualifies for accredited herd status under 345 IAC 2.5-3-4. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-2)*

345 IAC 2.5-1-3 "Accredited veterinarian" defined

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 3. "Accredited veterinarian" means a veterinarian that is approved by the United States Department of Agriculture under 9 CFR Part 161 to perform official work. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-3)*

345 IAC 2.5-1-4 "Affected herd" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 4. "Affected herd" means a herd of livestock in which there is strong and substantial evidence that Mycobacterium bovis exists that may include, without limitation, the following:
(1) Epidemiologic evidence.
(2) Histopathology.
(3) Polymerase chain reaction (PCR) assay.
(4) Bacterial isolation or detection.
(5) Testing data.
(6) Association with known sources of infection.
(Indiana Board of Animal Health; 345 IAC 2.5-1-4)

345 IAC 2.5-1-5 "Approved laboratory" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-5; IC 15-2.1-7

Sec. 5. "Approved laboratory" means:
(1) a state, federal, or National Animal Health Laboratory Network (NAHL) veterinary laboratory specifically recognized by USDA, APHIS to conduct official tuberculosis program diagnostic testing;
(2) the animal disease diagnostic laboratory created under IC 15-2.1-5; or
(3) other laboratory approved by the state veterinarian. A United States Food Safety and Inspection Service (FSIS) field service laboratory may be utilized for histopathology.
(Indiana State Board of Animal Health; 345 IAC 2.5-1-5)

345 IAC 2.5-1-6 "Approved slaughtering establishment" or "slaughtering establishment" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7; IC 15-2.1-24

Sec. 6. "Approved slaughtering establishment" or "slaughtering establishment" means a slaughtering establishment that is operating under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or the Indiana Meat and Poultry Inspection Act (IC 15-2.1-24). *(Indiana State Board of Animal Health; 345 IAC 2.5-1-6)*

345 IAC 2.5-1-7 "Bison" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 7. "Bison" means any animal of the genus bison species, including animals commonly referred to as American buffalo or buffalo. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-7)*

345 IAC 2.5-1-8 "Board" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 8. "Board" means the Indiana state board of animal health appointed under IC 15-2.1-3 or its authorized representative. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-8)*

345 IAC 2.5-1-9 "Bovine interferon gamma assay" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 9. "Bovine interferon gamma assay" means an official supplemental diagnostic test approved by the state veterinarian. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-9)*

345 IAC 2.5-1-10 "Bovine TB UM&R" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 10. "Bovine TB UM&R" means the Uniform Methods and Rules for Bovine Tuberculosis Eradication incorporated by reference in 345 IAC 2.5-2. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-10)*

345 IAC 2.5-1-11 "Bovine tuberculosis" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 11. "Bovine tuberculosis" means a disease caused by Mycobacterium bovis. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-11)*

345 IAC 2.5-1-12 "Cattle" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 12. "Cattle" means any animal of the Bos taurus species, including all beef and dairy breeds. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-12)*

345 IAC 2.5-1-13 "Caudal fold test" or "CFT" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 13. "Caudal fold test" or "CFT" means the intradermal injection of one-tenth (0.1) milliliter of United States Department of Agriculture bovine purified derivative (PPD) tuberculin into either side of the caudal fold with reading by visual observation and palpation between sixty-six (66) and seventy-eight (78) hours following injection. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-13)*

345 IAC 2.5-1-14 "Cervical tuberculin test" or "CT test" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 14. "Cervical tuberculin test" or "CT test" means the intradermal injection of one-tenth (0.1) milliliter of United

States Department of Agriculture bovine purified derivative (PPD) tuberculin in the cervical region with reading by visual observation and palpation between sixty-six (66) and seventy-eight (78) hours following injection. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-14)*

345 IAC 2.5-1-15 "Cervid TB UM&R" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 15. "Cervid TB UM&R" means the uniform methods and rules for eradicating tuberculosis in cervids incorporated by reference in this article. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-15)*

345 IAC 2.5-1-16 "Comparative cervical tuberculin test" or "CCT test" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 16. "Comparative cervical tuberculin test" or "CCT test" means the intradermal injection of biologically balanced United States Department of Agriculture bovine PPD tuberculin and avian PPD tuberculin at separate sites in the mid-cervical area to determine the probable presence of bovine tuberculosis by comparing the response of the two (2) tuberculins between sixty-six (66) and seventy-eight (78) hours following injection. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-16)*

345 IAC 2.5-1-17 "Depopulate" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 17. "Depopulate" means to destroy all livestock in a herd by slaughter, euthanasia, or death otherwise. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-17)*

345 IAC 2.5-1-18 "Designated accredited veterinarian" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 18. "Designated accredited veterinarian" means a veterinarian approved by the state veterinarian and trained to conduct specific tuberculosis tests or other tuberculosis activities. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-18)*

345 IAC 2.5-1-19 "Designated tuberculosis epidemiologist" or "DTE" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 19. "Designated tuberculosis epidemiologist" or "DTE" means a state or federal epidemiologist designated by the state veterinarian after consultation with the United States Department of Agriculture. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-19)*

345 IAC 2.5-1-20 "Exposed animal" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 20. "Exposed animal" means any livestock that have been exposed to bovine tuberculosis by reason of associating with other livestock in which bovine tuberculosis has been diagnosed. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-20)*

345 IAC 2.5-1-21 "Geographic separation" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 21. "Geographic separation" means:
(1) a minimum of thirty (30) feet of separation;
(2) no common or shared handling facilities or equipment;
(3) no common watering or feeding equipment; and
(4) no common feed vehicles that enter the premises of herds of different status.
(Indiana State Board of Animal Health; 345 IAC 2.5-1-21)

345 IAC 2.5-1-22 "Herd" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 22. "Herd" means livestock that meet one (1) of the following requirements:
(1) The animals are under common ownership or supervision and are grouped on one (1) or more parts of any single premises feedlot, farm, or ranch.
(2) The animals are under common ownership or supervision on two (2) or more premises that are geographically separated but in which the animals have been interchanged or had contact with animals from different premises.
(3) All livestock on common premises, such as community pastures or grazing association units, but owned by different persons.
(Indiana State Board of Animal Health; 345 IAC 2.5-1-22)

345 IAC 2.5-1-23 "Herd of origin" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 23. "Herd of origin" means a herd of one (1) or more sires and dams and their offspring from which an animal originates and may be the herd of birth or the herd where the animal has resided for a minimum of four (4) months immediately prior to movement. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-23)*

345 IAC 2.5-1-24 "Herd test" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 24. "Herd test" means an official tuberculosis test of

all test eligible cattle and bison in a herd. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-24)*

345 IAC 2.5-1-25 "Individual herd plan" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 25. "Individual herd plan" means a written disease management plan that is approved by the herd owner and the state veterinarian, in consultation with federal officials, and that contains disease management and herd management practices designed to eradicate tuberculosis from an affected herd while reducing human exposure to the disease. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-25)*

345 IAC 2.5-1-26 "Livestock" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2-27; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 26. "Livestock" has the meaning set forth in IC 15-2.1-2-27(a). *(Indiana State Board of Animal Health; 345 IAC 2.5-1-26)*

345 IAC 2.5-1-27 "Moved" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 27. "Moved" means shipped, transported, or otherwise moved, delivered, or received for movement. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-27)*

345 IAC 2.5-1-28 "Moved directly" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 28. "Moved directly" means moved without stopping or unloading at livestock assembly points of any type. Animals moved directly may be unloaded from the means of conveyance while en route only with permission of the state veterinarian and only if the animals are isolated from all other animals other than those in the same shipment. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-28)*

345 IAC 2.5-1-29 "Natural addition" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 29. "Natural addition" means animals born and raised in a herd. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-29)*

345 IAC 2.5-1-30 "No gross lesion" or "NGL" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 30. "No gross lesion" or "NGL" means an animal that does not reveal a lesion of bovine tuberculosis upon slaughter or necropsy inspection. An animal with skin lesions alone will be considered in the same category as a no gross lesion animal. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-30)*

345 IAC 2.5-1-31 "Official eartag" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 31. "Official eartag" means a tag approved by the state veterinarian that when applied to an animal provides unique identification for that animal. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-31)*

345 IAC 2.5-1-32 "Official identification" or "officially identified" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 32. "Official identification" or "officially identified" means an animal is identified by means of an official eartag, registration tattoo or brand, or other method approved by the state veterinarian that provides unique identification for each animal. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-32)*

345 IAC 2.5-1-33 "Official test" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 33. "Official test" means any test for tuberculosis conducted by an accredited veterinarian in compliance with the testing procedure, reporting, and other requirements of this article. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-33)*

345 IAC 2.5-1-34 "Permit" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 34. "Permit" means an official document issued by the USDA, the state veterinarian, or a designated accredited veterinarian for the movement of animals. A permit must be issued at the point of origin and contain the following information:

(1) The destination to which the animals are to be moved.
(2) The tuberculosis status of each animal.
(3) The identification of each animal.
(4) The name of the animal's owner.
(5) The purpose of the movement.

(Indiana State Board of Animal Health; 345 IAC 2.5-1-34)

345 IAC 2.5-1-35 "Premises identification" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 35. "Premises identification" means a method of identification approved by the state veterinarian that uniquely identifies the premises of origin. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-35)*

345 IAC 2.5-1-36 "Quarantine" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 36. "Quarantine" means an order of the state veterinarian or a federal official that prohibits the movement of animals onto or off of a premises without a permit issued by the state veterinarian or a federal official. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-36)*

345 IAC 2.5-1-37 "Reactor" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 37. "Reactor" means livestock that shows a response to an official tuberculosis test and is classified a reactor by the state veterinarian or a federal official. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-37)*

345 IAC 2.5-1-38 "Responder" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 38. "Responder" means any livestock that is officially skin tested for tuberculosis that demonstrate a visible or palpable response at the site of tuberculin injection. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-38)*

345 IAC 2.5-1-39 "Single cervical test" or "SCT" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 39. "Single cervical test" or "SCT" means the intradermal injection of one-tenth (0.1) milliliter of United States Department of Agriculture bovine PPD tuberculin in the mid-cervical region with the reading by visual observation and palpation between sixty-six (66) and seventy-eight (78) hours following injection. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-39)*

345 IAC 2.5-1-40 "State veterinarian" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-4

Sec. 40. "State veterinarian" means the state veterinarian appointed under IC 15-2.1-4 or an authorized agent. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-40)*

345 IAC 2.5-1-41 "Tuberculin" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 41. "Tuberculin" means a product that is approved by and produced under USDA license for injection into livestock for the purpose of detecting bovine tuberculosis. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-41)*

345 IAC 2.5-1-42 "Tuberculosis" or "bovine tuberculosis" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 42. "Tuberculosis" or "bovine tuberculosis" means the contagious, infectious, and communicable disease caused by Mycobacterium bovis. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-42)*

345 IAC 2.5-1-43 "Zone" defined
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13; IC 15-2.1-7

Sec. 43. "Zone" means a geographical area designated by the United States Department of Agriculture or the state veterinarian as a distinct land area for the purposes of disease control. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-43)*

Rule 2. General Provisions

345 IAC 2.5-2-1 Purpose
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-3-18; IC 15-2.1-7; IC 15-2.1-18-12

Sec. 1. The purpose of this article is to prevent, detect, and eradicate tuberculosis (Mycobacterium bovis) in animals by using current knowledge and procedures for the control of the disease. This article is to be administered in cooperation with the United States Department of Agriculture. The provisions of this rule apply throughout this article. *(Indiana State Board of Animal Health; 345 IAC 2.5-2-1)*

345 IAC 2.5-2-2 Incorporation by reference
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-3-18; IC 15-2.1-7

Sec. 2. (a) The board incorporates by reference the "Bovine Tuberculosis Eradication-Uniform Methods and Rules", United States Department of Agriculture, Animal and Plant Health Inspection Service, 2004, as the operating procedures for tuberculosis control in bovine, bison, and goats. Where the Bovine TB UM&R conflicts with this rule, the express provisions of this rule control.

(b) The board incorporates IC 15-2.1-7 into this rule. *(Indiana State Board of Animal Health; 345 IAC 2.5-2-2)*

345 IAC 2.5-2-3 Identification
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-7; IC 15-2.1-15-17

Sec. 3. A person testing an animal for tuberculosis must identify the animal at that time using official identification. *(Indiana State Board of Animal Health; 345 IAC 2.5-2-3)*

345 IAC 2.5-2-4 Official tests
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-7

Sec. 4. (a) The state veterinarian shall have the authority to test any animal or herd that may be necessary to find,

confirm, diagnose, treat, or eliminate tuberculosis. The state veterinarian shall make a reasonable effort to notify the owner of an animal that must be tested. The state veterinarian shall have the right to supervise any test conducted by an accredited veterinarian. It shall be the duty of all persons owning or having custody of an animal to render all reasonable assistance to board representatives in performing their duties under this rule, including, but not limited to, the submission and restraint of animals for the following:

(1) Testing and retesting.

(2) Identification.

(3) Branding.

(4) Tagging.

(b) The official tuberculin test shall be applied only by the following persons:

(1) A veterinarian employed by the board.

(2) A veterinarian employed by the United States Department of Agriculture.

(3) An accredited veterinarian.

(4) A designated accredited veterinarian.

(c) The following tests shall be used to evaluate the tuberculosis status of an animal:

(1) The caudal fold tuberculin (CFT) test is for routine use in individual cattle, bison, and goats and herds where the tuberculosis status of the animal is unknown and is the official presumptive diagnostic test for tuberculosis.

(2) The following are the official supplemental diagnostic tests for tuberculosis:

(A) The comparative cervical tuberculin (CCT) test is an official test for retesting suspect cattle, bison, and goats. The CCT shall be applied only by a state or federal regulatory veterinarian. The CCT may not be used in an infected herd without prior consent of the state veterinarian.

(B) The bovine interferon gamma assay may be used in cattle herds with approval of the state veterinarian. The state veterinarian shall consult with the United States Department of Agriculture Veterinary Services (USDA VS) prior to approving this test.

(C) Histopathology, diagnostic bacteriology, and polymerase chain reaction (PCR) analysis of formalin-fixed tissue are all approved supplemental diagnostic procedures. These procedures should be used in conjunction with tuberculosis test results and necropsy or slaughter data to determine herd status.

(3) The following are the official primary diagnostic tests for tuberculosis in herds affected with bovine tuberculosis:

(A) The cervical tuberculin (CT). The CT test must be used when testing exposed cattle or bison from affected herds. The CT test shall be applied only by a state or federal regulatory veterinarian. Results of a CT test may only be classified as reactor or negative.

(B) The caudal fold tuberculin (CFT) test may be used in lieu of the CT tests. A response to the test will classify the animal as a reactor. The CFT test may be used as a primary diagnostic test only with approval of the state veterinarian in consultation with the USDA VS.

(d) When a test for tuberculosis is conducted, the injection site will be observed and palpated seventy-two (72) hours after the time of injection of tuberculin plus or minus six (6) hours.

(e) Only approved laboratories may be used for tuberculosis diagnostic purposes.

(f) The state veterinarian shall classify cattle and bison tested for tuberculosis as specified in 345 IAC 2.5-3. The state veterinarian shall classify goats tested for tuberculosis as specified in 345 IAC 2.5-4. The state veterinarian shall classify other animals tested for tuberculosis based on generally accepted scientific principles that indicate the presence or absence of tuberculosis.

(g) A person conducting a tuberculin test in the state shall report each tuberculin test conducted to the state veterinarian on an approved form within fourteen (14) days of completing the test. The report of the tuberculin test shall contain the following information:

(1) Individual identification of each animal tested.

(2) The sex, age, and breed of each animal tested.

(3) The size of the response to the tuberculosis test.

Animals classified as suspects by the caudal fold test must be reported via telephone to the state veterinarian or a board employee within forty-eight (48) hours of the time the site of injection is observed. *(Indiana State Board of Animal Health; 345 IAC 2.5-2-4)*

345 IAC 2.5-2-5 Zone designations

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

Sec. 5. The state veterinarian may apply to the United States Department of Agriculture for a tuberculosis classification for all of the state or a zone within the state as is necessary or helpful to eradicate tuberculosis and maintain trade in animals and animal products from the state. The state veterinarian may recognize zones outside the state for purposes of controlling movement of animals into the state. *(Indiana State Board of Animal Health; 345 IAC 2.5-2-5)*

345 IAC 2.5-2-6 State free status; herd depopulation

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-7; IC 15-2.1-18

Sec. 6. (a) The United States Department of Agriculture declared Indiana tuberculosis-free under the bovine TB UM&R on November 1, 1984. It is the board's objective to take all action necessary to maintain the state's

tuberculosis-free status. Therefore, whenever tuberculosis is identified in a herd of animals, the state veterinarian may order all or part of the herd depopulated to control the spread of tuberculosis. The state veterinarian may order any object destroyed to control the spread of tuberculosis.

(b) Animals to be destroyed because of tuberculosis must be shipped under permit directly to an approved slaughtering establishment or be disposed of by rendering or burial in a manner approved by and under the supervision of the state veterinarian. Objects to be destroyed because of tuberculosis shall be disposed of in a manner approved by the state veterinarian. The state veterinarian shall approve methods of destroying and disposing of animals and objects that pose the least risk for transmission of tuberculosis considering the practical, logistical, and financial constraints incumbent in the situation.

(c) Animals that are to be destroyed because of tuberculosis must be destroyed and the disposal of carcasses completed within fifteen (15) days after the appraisal is completed. The state veterinarian may extend the time allowed under this subsection if an extension will aid in accomplishing the goal of tuberculosis eradication. *(Indiana State Board of Animal Health; 345 IAC 2.5-2-6)*

345 IAC 2.5-2-7 Indemnity
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-18

Sec. 7. The state veterinarian may indemnify owners of animals condemned under this article subject to the following:
(1) Any limitations in this article and IC 15-2.1.
(2) The procedures and limits in 345 IAC 1-7.
(3) Any limits or procedures necessary to secure payment of the indemnity by the United States government.
(Indiana State Board of Animal Health; 345 IAC 2.5-2-7)

345 IAC 2.5-2-8 Cleaning and disinfecting
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3; IC 15-2.1-7

Sec. 8. The state veterinarian may order a premises, including:
(1) all structures thereon;
(2) holding facilities;
(3) conveyances;
(4) equipment; and
(5) materials;
that have been or may have been exposed to tuberculosis so as to constitute a health hazard to humans or animals, cleaned and disinfected according to procedures prescribed by the state veterinarian. The procedures for cleaning and disinfecting ordered by the state veterinarian must be reasonably likely to reduce the hazard of potential tuberculosis exposure to humans and animals. *(Indiana State Board of Animal Health; 345 IAC 2.5-2-8)*

345 IAC 2.5-2-9 Records
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3; IC 15-2.1-7

Sec. 9. A person required to keep records under this article shall keep the records for at least five (5) years. *(Indiana State Board of Animal Health; 345 IAC 2.5-2-9)*

Rule 3. Tuberculosis Control in Bovine and Bison

345 IAC 2.5-3-1 Definitions and general provisions
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3; IC 15-2.1-7

Sec. 1. (a) The definitions in 345 IAC 2.5-1 and the following definitions apply throughout this rule:
(1) "Accredited-free state or zone" means a state or zone that is classified by the United States Department of Agriculture as an accredited-free state or zone under 9 CFR Part 77, Subpart B.
(2) "Accredited herd" means a herd that has met the requirements in section 4 of this rule.
(3) "Accredited preparatory state or zone" means a state or zone that is classified by the United States Department of Agriculture as accredited preparatory state or zone under 9 CFR Part 77, Subpart B.
(4) "Cattle and bison not known to be affected" means all cattle and bison except those originating from tuberculosis affected herds or from herds containing tuberculosis suspect cattle or bison.
(5) "Modified accredited advanced state or zone" means a state or zone that is classified by the United States Department of Agriculture as a modified accredited advanced state or zone under 9 CFR Part 77, Subpart B.
(6) "Modified accredited state or zone" means a state or zone that is classified by the United States Department of Agriculture as a modified accredited state or zone under 9 CFR Part 77, Subpart B.
(7) "Negative animal" means cattle and bison that are classified as negative for tuberculosis in accordance with this article and the bovine TB UM&R.
(8) "Nonaccredited state or zone" means a state or zone that is classified by the United States Department of Agriculture as a nonaccredited state or zone under 9 CFR Part 77, Subpart B.
(9) "Suspect cattle and bison" means cattle or bison that meet one (1) of the following descriptions:
(A) Show a response to the caudal fold tuberculin test and are not classified as reactor.
(B) Have been classified as suspect by comparative cervical tuberculin tests, the bovine interferon gamma assay, or any other official test for tuberculosis.

(b) Whenever a tuberculosis test is required under this rule, the test requirement shall be for animals that are test eligible animals as defined in subsections (c) and (d), unless indicated otherwise in the rule.

(c) For purposes of herd accreditation and reaccreditation testing, test eligible cattle or bison means the following:

(1) Cattle and bison of all ages in accreditation preparatory states or zones.

(2) Cattle and bison twelve (12) months of age and older in a modified accredited state or zone.

(3) Cattle and bison eighteen (18) months of age and older, as evidenced by the loss of the central deciduous incisors, in modified accredited advanced states or zones.

(4) Cattle and bison twenty-four (24) months of age and older, as evidenced by the central incisors being fully erupted and in wear, in an accredited free state or zone.

(d) For purposes of moving animals, test eligible cattle or bison means the following:

(1) Sexually intact female cattle of dairy breeds of all ages from any state or zone.

(2) Cattle and bison of all ages from accreditation preparatory states or zones.

(3) Cattle and bison of all ages except those under two (2) months of age originating from a herd that had a negative tuberculosis herd test of all animals twelve (12) months of age and older within the past year from modified accredited states or zones.

(4) Cattle and bison eighteen (18) months of age and older from modified accredited advanced states or zones.

(5) Cattle and bison from accredited free states and zones need not be tested except that cattle and bison moving from a herd that is not accredited to an accredited herd must be tested within sixty (60) days of the movement.

(e) The general provisions in 345 IAC 2.5-2 apply throughout this rule. *(Indiana State Board of Animal Health; 345 IAC 2.5-3-1)*

345 IAC 2.5-3-2 Moving cattle and bison into the state

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

Sec. 2. (a) A person may move cattle and bison into the state only if the requirements of this rule and 345 IAC 1-3 are met. The following apply to all cattle and bison entering the state:

(1) Before cattle or bison are moved into the state, the owner must obtain a permit from the board under 345 IAC 1-3-4. Permits may be obtained by calling the board at (317) 227-0316.

(2) Cattle and bison entering the state must be accompanied by a certificate as required in 345 IAC 1-3-4. Certificates accompanying cattle and bison must indicate the following:

(A) The name and address of the owner of the herd of origin.

(B) The name and address of the destination.

(C) The permit number issued by the state veterinarian.

(D) A description of the animals.

(E) The official identification of each animal.

(F) The date conducted and results of any tests for diseases, including tuberculosis, conducted on the animals.

(G) The herd status, if any, of the herd of origin including the date or dates of any herd tests.

(H) Any other health information relevant to the shipment of the animals or otherwise required by law.

(3) Cattle and bison must be individually identified prior to movement into the state as specified in 345 IAC 1-3-3.

(b) Reactor cattle and bison may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for reactors in 9 CFR 77.17. Exposed cattle and bison may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for exposed animals in 9 CFR 77.17. Suspect cattle and bison may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for suspect cattle and bison in 9 CFR 77.17.

(c) A person may move into the state sexually intact female cattle of dairy breeds originating from any state or zone only under one (1) of the following conditions:

(1) The animals are moved directly to an approved slaughtering establishment for slaughter or are moved through one (1) approved livestock facility and then direct to slaughter.

(2) The animals originate from an accredited herd and the accredited herd has completed the tuberculosis testing necessary for accredited status with negative results within one (1) year prior to the date of movement into the state.

(3) If the animals are moved into the state to an exhibition and are moved back out of the state within ten (10) days of arrival, the requirements in subsections (d) through (h) apply.

(4) The animals are moved in accordance with a commuter herd agreement under subsection (i).

(5) Each animal, without regard to its age, has tested negative for tuberculosis on an official test conducted within the sixty (60) days immediately prior to the animal entering the state. But, animals to be moved need not be retested if they were tested negative for tuberculosis as a part of a herd tuberculosis test at their herd of origin within the six (6) months prior to the movement into the state.

(d) A person may move into the state cattle and bison

other than animals described in subsection (c) that originate from accredited-free states or zones.

(e) A person may move into the state cattle and bison other than animals described in subsection (c) that originate from modified accredited advanced states or zones if the animals are not infected with and have not been exposed to tuberculosis, and one (1) of the following conditions is met:

(1) The animals are moved directly to an approved slaughtering establishment for slaughter or are moved through one (1) approved livestock facility and then direct to slaughter only.

(2) The cattle or bison are steers or spayed heifers and are officially identified or officially identified by premises of origin identification.

(3) The cattle or bison originate from an accredited herd and the accredited herd has completed the tuberculosis testing necessary for accredited status with negative results within two (2) years prior to the date of movement into the state.

(4) The cattle and bison are sexually intact animals that are not from an accredited herd, and each animal has tested negative for tuberculosis on an official test conducted within the sixty (60) days immediately prior to the animal entering the state. But, animals to be moved need not be retested if they were tested negative for tuberculosis as a part of a herd tuberculosis test at their herd of origin within the six (6) months prior to the movement into the state.

(f) A person may move into the state cattle and bison other than animals described in subsection (c) that originate from modified accredited states or zones if the animals are not infected with and have not been exposed to tuberculosis and one (1) of the following conditions is met:

(1) The animals are moved directly to an approved slaughtering establishment for slaughter or are moved through one (1) approved livestock facility and then direct to slaughter only.

(2) The cattle or bison are steers or spayed heifers that are officially identified or identified by official premises of origin identification and each animal has tested negative for tuberculosis on an official test within the sixty (60) days immediately prior to the animal entering the state.

(3) The cattle and bison originate from an accredited herd and the accredited herd has completed the tuberculosis testing necessary for accredited status with negative results within one (1) year prior to the date of movement into the state.

(4) The cattle and bison are sexually intact animals that are not from an accredited herd and meet each of the following requirements:

(A) The animal originated from a herd that tested negative for tuberculosis to a herd test of animals twelve (12) months of age and older conducted within one (1) year prior to the date of movement into the state.

(B) Each animal that is two (2) months of age or older has tested negative for tuberculosis on an official test conducted within the sixty (60) days immediately prior to the animal entering the state. But, animals to be moved need not be retested if they were tested negative for tuberculosis as a part of a herd tuberculosis test at their herd of origin within the six (6) months prior to the movement into the state.

(g) A person may move into the state cattle and bison other than animals described in subsection (c) that originate from accreditation preparatory states or zones if the animals are not infected with and have not been exposed to tuberculosis, and one (1) of the following conditions is met:

(1) The animals are moved directly to an approved slaughter establishment for slaughter or are moved through one (1) approved livestock facility and then direct to slaughter only.

(2) The cattle or bison are steers or spayed heifers that are officially identified or identified by official premises of origin identification, that originate from a herd that tested negative for tuberculosis to a herd test conducted within one (1) year prior to the date of movement into the state, and each animal has tested negative for tuberculosis on an official test within the sixty (60) days immediately prior to the animal entering the state. But, animals to be moved need not be retested if they were tested negative for tuberculosis as a part of a herd tuberculosis test at their herd of origin within the six (6) months prior to the movement into the state.

(3) The cattle and bison originate from an accredited herd, the accredited herd has completed the tuberculosis testing necessary for accredited status within one (1) year prior to the date of movement, and each animal in the shipment has tested negative for tuberculosis on an official test within the sixty (60) days immediately prior to the animal entering the state.

(4) The cattle and bison are sexually intact animals that are not from an accredited herd and meet each of the following requirements:

(A) The herd from which the animals originated tested negative for tuberculosis to a herd test conducted within one (1) year prior to the date of movement into the state.

(B) Each animal has tested negative for tuberculosis twice on official tests conducted between sixty (60) and one hundred eighty (180) days apart, with the second test conducted not more than sixty (60) days immediately prior to the animal entering the state. But, the second test is not required if the animals are moved interstate within six (6) months following the herd of origin test and one (1) additional negative test of the animal is conducted after the herd test and within sixty (60) days of the movement.

(h) A person may move into the state cattle and bison that originate from a nonaccredited state or zone if the animals are:

(1) not infected with and have not been exposed to tuberculosis;

(2) moved directly to an approved slaughter establishment for slaughter; and

(3) accompanied by a permit and moved in a conveyance that has been sealed with an official seal.

(i) Cattle or bison that are members of a recognized and approved commuter herd may be moved interstate in accordance with the applicable commuter herd agreement. Animals must move directly from property owned or leased by the herd owner to property owned or leased by the same owner under the terms of an approved herd commuter agreement. The state veterinarian may accept applications for commuter herd recognition and issue approvals for commuter herd movements under an approved commuter herd agreement as follows:

(1) Movements must be without change of ownership.

(2) Movements must be a part of and within the normal operations of a production system.

(3) The commuter herd agreement must address and may waive or alter the requirements in 345 IAC 1-3 for permits to enter the state, animal identification, and certificates of veterinary inspection and the requirements in this article for tuberculosis testing.

(4) The owner must keep records of all movements for at least five (5) years, present the records to state or federal officials for inspection upon request, and submit reports as required by the commuter herd agreement.

Commuter herd agreements shall be for a period of one (1) year and must be reviewed and renewed annually to remain in effect.

(j) The state veterinarian may permit the movement of any animal, including reactor, exposed, or quarantined cattle and bison, into the state for the purpose of research or disposal or to further the purposes of this article. *(Indiana State Board of Animal Health; 345 IAC 2.5-3-2)*

345 IAC 2.5-3-3 Intrastate movement of cattle and bison

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

Sec. 3. Except as provided in sections 4 and 6 through 9 of this rule, a tuberculosis test is not required to move cattle and bison intrastate. *(Indiana State Board of Animal Health; 345 IAC 2.5-3-3)*

345 IAC 2.5-3-4 Accredited herd status for cattle and bison herds

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

Sec. 4. (a) Owners of cattle and bison herds in the state may obtain and maintain an accredited herd status for tuberculosis by complying with the requirements in this section. The state veterinarian may suspend or revoke an accredited herd status if:

(1) tuberculosis is indicated in a herd; or

(2) the requirements of this rule are not met.

(b) To qualify for accredited herd status the owner of a cattle or bison herd must do each of the following:

(1) Complete, sign, and abide by the terms of an accredited herd status agreement provided by the state veterinarian.

(2) Procure the services of an accredited veterinarian to test each animal in the herd for tuberculosis twice, the second tuberculosis test to be conducted between three hundred sixty-five (365) and four hundred twenty-five (425) days after the first test is conducted. All animals in the herd must test negative for tuberculosis.

(3) All animals added to the herd meet the requirements in subsection (e).

The state veterinarian shall issue the owner of an accredited herd an accreditation certificate or notice indicating the accredited herd status. Herd accreditation status is valid for three hundred sixty-five (365) days from the date it is earned and then it expires.

(c) The owner of a herd that is accredited may maintain the herd's accredited status by procuring the services of an accredited veterinarian to test each animal in the herd for tuberculosis. The reaccreditation herd test must be completed between ninety (90) days prior to and ninety (90) days after the date that the herd's accredited herd status expires under subsection (b).

(d) A herd that is being tested for accreditation or reaccreditation must tuberculosis test the following animals:

(1) All cattle and bison twenty-four (24) months of age and older as evidenced by the central incisors being fully erupted and in wear.

(2) Any cattle and bison other than natural additions that are under twenty-four (24) months of age.

(3) In a herd that has completed the two (2) annual tuberculosis tests required of high risk herds, the two (2) annual negative tests will requalify a herd for accreditation.

All natural additions shall be identified and recorded on the test report as members of the herd at the time of the annual test.

(e) Animals that are added to an accredited herd must be from an accredited herd located in an accredited-free state, zone, or region that has been recognized as accredited free by the United States Department of Agriculture more than five (5) years ago or originate directly from a state, zone, or region and meet the tuberculosis testing requirements as

indicated in the bovine TB UM&R, Part IV, B – Accredited Herd Plan for Cattle or Bison – Additions.

(f) Animals added shall not receive accredited herd status for sale purposes until they meet the requirements in the bovine TB UM&R, Part IV, B – Accredited Herd Plan for Cattle or Bison – Additions.

(g) Semen for artificial insemination in accredited herds must be from sires:

(1) in accredited herds; or

(2) with a negative result on an official test for tuberculosis performed within twelve (12) months prior to the date of the semen collection.

(Indiana State Board of Animal Health; 345 IAC 2.5-3-4)

345 IAC 2.5-3-5 Classification of cattle and bison tested

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-7

Sec. 5. Cattle and bison tested for tuberculosis shall be classified according to the bovine TB UM&R, Part III – Bovine: Standard Procedures (Minimum Requirements). The state veterinarian shall determine final tuberculosis classification of any animal or herd. *(Indiana State Board of Animal Health; 345 IAC 2.5-3-5)*

345 IAC 2.5-3-6 Reactor and exposed cattle and bison

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-7

Sec. 6. (a) Reactor cattle and bison shall remain quarantined until the state veterinarian authorizes one (1) of the following dispositions:

(1) The reactor cattle and bison are moved directly to:

(A) an approved slaughter plant;

(B) a research laboratory; or

(C) an approved disposal site.

No other animals may be moved with reactor cattle and bison unless they also are delivered to the same destination as the reactor animals.

(2) Reactor animals may be destroyed on the premises or in a postmortem examination facility under the direct supervision of a state or federal official.

(b) Reactor cattle and bison must be identified by attaching to the left ear a tag approved by the state veterinarian that identifies the animal as a reactor and must be further identified using one (1) of the following methods:

(1) Each animal is identified by branding high on the left hip near the tailhead the letter "T", not less than two (2) inches high and not more than three (3) inches high.

(2) The animal is moved in a vehicle closed by an official seal applied by a state or federal official and is removed from the vehicle only after the seal is removed by a state or federal official or their officially designated agent, each animal is identified with the letters "TB" sprayed on the left hip with yellow paint, and the animal is moved in:

(A) an officially sealed vehicle that is accompanied to its destination by a state or federal official, or their agent; or

(B) a vehicle without a state or federal agent accompanying the vehicle and the letters "TB" are tattooed legibly in the left ear of the animal.

(c) Exposed cattle and bison shall remain on the premises where tuberculosis is disclosed until the state veterinarian authorizes their movement. The state veterinarian may authorize the movement of exposed cattle and bison directly to an approved slaughter establishment, a rendering plant, a research laboratory, or an approved disposal site. The state veterinarian may authorize feeder calves that have tested negative for tuberculosis within the past sixty (60) days to move to a quarantined feedlot. No other animals may be moved with exposed cattle and bison unless they also are delivered to the same destination as the exposed animals.

(d) Exposed cattle and bison must be identified by attaching to an ear a tag approved by the state veterinarian that identifies the animal as exposed and must be further identified using one (1) of the following methods:

(1) Each animal is identified by branding high on the left hip near the tailhead the letter "S", not less than two (2) inches and not more than (3) inches high.

(2) When the animal is moved, the animal is moved in a vehicle:

(A) that is accompanied to its destination by a state or federal official; or

(B) closed by an official seal issued by the state veterinarian or a federal official and is removed from the vehicle only after the seal is removed by a state or federal official, or their officially designated agent.

(e) Animals other than cattle and bison that are exposed animals must be identified by attaching to an ear a tag approved by the state veterinarian that identifies the animal as exposed. All such animals shall be transported to the place of destruction in a vehicle that is either officially sealed or that is accompanied by a state or federal official. Animals that are destroyed and disposed of under direct supervision of a state or federal official on the premises where the animals were exposed do not require individual identification.

(f) After any animal is moved under the terms of this section, the means of conveyance must be cleaned and disinfected with a disinfectant approved by the state veterinarian and under the supervision of the state veterinarian. If at the animal's destination such proper cleaning and disinfecting facilities are not available, the state veterinarian may approve the transportation of the empty means of conveyance to a location where proper cleaning and disinfecting is possible. The state veterinarian may

allow such movement only if it does not significantly increase the risk of spreading tuberculosis. *(Indiana State Board of Animal Health; 345 IAC 2.5-3-6)*

345 IAC 2.5-3-7 Tuberculosis affected herds

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-7

Sec. 7. (a) The state veterinarian shall quarantine all herds in which reactor cattle and bison are found. The state veterinarian shall conduct an epidemiological investigation whenever facts suggest tuberculosis may be present in animals in the state or from the state. Affected herds shall remain under quarantine until such time as the state veterinarian releases the quarantine.

(b) Feeder calves under twelve (12) months of age from quarantined herds may be moved intrastate to an approved feedlot if each animal to be moved has tested negative for tuberculosis using the caudal fold tuberculin (CF) test within the sixty (60) days prior to movement.

(c) The state veterinarian may release a tuberculosis quarantine of a herd in which tuberculosis infection has been confirmed when the following conditions are met:

(1) All reactors have been condemned and removed from the herd.

(2) The remaining animals in the herd test negative for tuberculosis as follows:

(A) A herd tuberculosis test followed by a second tuberculosis test conducted between sixty (60) and one hundred twenty (120) days after the first, and a third tuberculosis test is conducted between one hundred eighty (180) and two hundred forty (240) days after the first herd test.

(B) An annual herd tuberculosis test is conducted in each of the three (3) years following the year in which the tests in clause (A) are conducted.

(3) If the herd is in an area where tuberculosis is known to affect one (1) or more species of wildlife, the herd owner shall develop a herd plan that will mitigate the exposure of the herd to tuberculosis and submit the plan to the state veterinarian for approval. The state veterinarian shall evaluate the herd plan and approve plans that will likely mitigate exposure to tuberculosis.

(4) The premises is cleaned and disinfected under subsection (g).

All animals moved from the premises prior to quarantine release shall be moved directly to slaughter under a permit issued by the state veterinarian.

(d) The state veterinarian may release a tuberculosis quarantine of a herd in which:

(1) no gross lesion (NGL) reactor or reactors occur;

(2) selected tissues are found negative on histopathology; and

(3) no evidence of Mycobacterium bovis infection has been disclosed;

after a negative retest of the entire herd is completed at least sixty (60) days after the slaughter of the NGL reactors. The state veterinarian may waive the retest requirement if advised to do so by the United States Department of Agriculture.

(e) The state veterinarian may release a tuberculosis quarantine of any herd if:

(1) the entire herd is depopulated and the premises is cleaned and disinfected under subsection (g); and

(2) any waiting period established under subsection (h) is satisfied.

(f) Herds in which at least one (1) suspect and no reactor animals are disclosed may be released after:

(1) all suspects are retested and classified negative or shipped directly to slaughter under supervision of the state veterinarian; and

(2) no evidence of tuberculosis infection is found in antemortem testing and examination and the epidemiological investigation.

(g) Premises where reactor cattle or bison have been maintained shall be thoroughly cleaned and disinfected with a disinfectant approved by the state veterinarian and in a manner approved by the state veterinarian. Cleaning and disinfection must be completed within fifteen (15) days after the last reactor is removed from the premises unless the state veterinarian grants an extension of time. The state veterinarian may grant an extension of time for cleaning and disinfecting if an extension will not impair effective disease control.

(h) The state veterinarian may order a premises or a portion of the premises remain vacant for up to sixty (60) days after cleaning and disinfecting is completed before any animals are moved to the premises or portion of a premises if necessary to ensure tuberculosis control and eradication.

(i) Herds containing suspect cattle and bison shall be quarantined until all suspect animals are tested and classified negative for tuberculosis or are shipped directly to a slaughtering establishment under permit issued by the state veterinarian. Suspect animals shall be evaluated as follows:

(1) Suspects in herds containing only animals that are suspects on the caudal fold tuberculin (CFT) test may be released from quarantine when the suspect animals:

(A) test negative for tuberculosis using the comparative cervical test (CCT) within ten (10) days of the caudal fold injection;

(B) are retested and found to be negative for tuberculosis using the comparative cervical test sixty (60) or more days after the caudal fold test injection;

(C) are retested negative for tuberculosis on the bovine interferon gamma assay tuberculin test within thirty (30) days of the caudal fold injection if the state veterinarian has approved the use of the bovine interferon gamma assay test; or

(D) are shipped to a slaughtering establishment under permit issued by the state veterinarian and examined for tuberculosis postmortem.

(2) An animal that is suspect for tuberculosis using the comparative cervical test meets one (1) of the following sets of criteria:

(A) The animal is retested using the comparative cervical test more than sixty (60) days after the prior comparative cervical injection.

(B) The animal is shipped directly to a slaughtering establishment under permit issued by the state veterinarian.

(3) The state veterinarian may classify an animal a reactor if the animal tests in the suspect zone on two (2) successive comparative cervical tests or positive on two (2) successive bovine interferon gamma assay tests.

(4) Animals positive on the bovine interferon gamma assay tuberculin test and classified as suspects must meet one (1) of the following sets of criteria:

(A) The animal is retested negative on the bovine interferon gamma assay test within thirty (30) days of the caudal fold test injection with approval of the state veterinarian.

(B) The animal is shipped directly to a slaughtering establishment under permit issued by the state veterinarian.

(j) Postmortem examinations of animals under this article shall be witnessed by a state or federal official and selected tissue specimens, including any tissue with granulomatous appearing lesions and representative head and thoracic lymph nodes, will be submitted for laboratory examination.

(k) The state veterinarian may order the following animals tested for tuberculosis:

(1) All cattle and bison in a herd from which a reactor originated and all animals that are known to have associated with reactor cattle or bison.

(2) Livestock herds within a ten (10) mile radius of the location of livestock or free ranging wildlife that is diagnosed with bovine tuberculosis.

(3) Animals in herds that are adjacent to the location of suspect or exposed animals.

(4) Animals in herds that received or otherwise had contact with reactor, suspect, or exposed animals.

Nothing in this subsection is intended to limit the authority of the state veterinarian to order tuberculosis tests under any other section of this article or any other law. *(Indiana State Board of Animal Health; 345 IAC 2.5-3-7)*

345 IAC 2.5-3-8 Source herds and exposed animals

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-7

Sec. 8. (a) The state veterinarian shall quarantine a herd that is the source of an animal that tests positive for tuberculosis at slaughter. The source herd shall be tested for tuberculosis as directed by the state veterinarian.

(b) Testing of herds that are the source of animals found to have lesions of tuberculosis at slaughter shall be by state or federal veterinarians. The caudal fold tuberculin (CFT) test shall be used and, if the herd is identified as the herd of origin, animals responding to the CFT test shall be classified as reactors. If the herd is not positively identified as the herd of origin, animals responding to the CFT test may be retested using the CCT test or the bovine interferon gamma assay.

(c) Testing of herds that are the source of animals found to be reactors in affected herds shall be by state or federal veterinarians using the caudal fold tuberculin (CFT) test. Responding animals may be classified as reactors. Animals classified as suspects may be retested by the CCT test or the bovine interferon gamma assay.

(d) The state veterinarian shall quarantine herds containing known tuberculosis exposed animals until the tuberculosis status of the exposed animals has been determined by at least one (1) negative cervical tuberculin test or by postmortem examination. *(Indiana State Board of Animal Health; 345 IAC 2.5-3-8)*

345 IAC 2.5-3-9 Special retest of high risk herds

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-7

Sec. 9. (a) The owner of a herd where tuberculosis infection has been confirmed but the herd is not depopulated must complete the requirements in this subsection after the quarantine is released. The herd owner must procure the services of an accredited veterinarian to test each animal in the herd for tuberculosis annually for the next two (2) consecutive years. The first test must be conducted not less than three hundred sixty (360) days and not more than one hundred ninety (190) days after the quarantine release and the second test one (1) year thereafter.

(b) In herds with a history of lesions suspicious of bovine tuberculosis (not confirmed), two (2) complete annual herd tests shall be applied after release of quarantine. The first test must be applied approximately one (1) year after release of quarantine.

(c) After a herd is completely depopulated because of tuberculosis, a new herd may be assembled on the same

premises, but the owner of the new herd shall procure the services of an accredited veterinarian to test each animal in the new herd as follows:

(1) Each animal in the herd must be tested between one hundred fifty (150) and one hundred eighty (180) days after the date the first animal in the new herd entered the premises.

(2) One (1) year after the testing required in subdivision (1) is completed, each animal in the herd must be tested.

If the premises that contained the former affected herd is left empty of all animals for not less than one (1) year prior to assembly of the new herd, the state veterinarian may waive some or all of the requirements in this subsection if such waiver is consistent with the purpose of this article.

(d) Exposed animals previously sold from a known infected herd shall be depopulated with indemnity if possible. But, if the exposed animals are not depopulated, only the single cervical test (SCT) shall be used as the initial test. All responding animals shall be classified as reactors. If negative to the single cervical test, the exposed animals shall be treated as if they are part of the infected herd of origin for the purpose of testing, quarantine release, and the two (2) annual high-risk tests under this rule. The remainder of the herd shall be retested in one (1) year as described in subdivision (2). The remainder of the receiving herd shall be tested for tuberculosis as follows:

(1) If lesions of tuberculosis (based on histopathologic examination) are found in the exposed animals, the remainder of the herd shall be depopulated or tested with the single cervical test.

(2) In all other cases, the remainder of the herd shall be tested using the caudal fold test. The responding animals may be classified as suspects and retested with the comparative cervical test.

(Indiana State Board of Animal Health; 345 IAC 2.5-3-9)

Rule 4. Tuberculosis Control in Goats

345 IAC 2.5-4-1 Definitions

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-2; IC 15-2.1-3-13

Sec. 1. (a) The definitions in 345 IAC 2.5-1 and the following definitions apply throughout this rule:

(1) "Accredited-free state or zone" means a state or zone that is classified by the United States Department of Agriculture as an accredited-free state or zone under 9 CFR Part 77, Subpart B.

(2) "Accredited herd" means a herd that has met the requirements in section 4 of this rule.

(3) "Accredited preparatory state or zone" means a state or zone that is classified by the United States Department of Agriculture as accredited preparatory state or zone under 9 CFR Part 77, Subpart B.

(4) "Goats not known to be affected" means all goats except those originating from tuberculosis affected herds or from herds containing tuberculosis suspect goats.

(5) "Modified accredited advanced state or zone" means a state or zone that is classified by the United States Department of Agriculture as a modified accredited advanced state or zone under 9 CFR Part 77, Subpart B.

(6) "Modified accredited state or zone" means a state or zone that is classified by the United States Department of Agriculture as a modified accredited state or zone under 9 CFR Part 77, Subpart B.

(7) "Negative goat" means goats that are classified as negative for tuberculosis in accordance with the bovine TB UM&R.

(8) "Nonaccredited state or zone" means a state or zone that is classified by the United States Department of Agriculture as a nonaccredited state or zone under 9 CFR Part 77, Subpart B.

(9) "Suspect goats" means goats that are classified as a tuberculosis suspect animal in accordance with the bovine TB UM&R.

(b) The general provisions in 345 IAC 2.5-2 apply throughout this rule.

(c) Tuberculosis control and eradication in goats is a goal of the board. *(Indiana State Board of Animal Health; 345 IAC 2.5-4-1)*

345 IAC 2.5-4-2 Moving goats into Indiana

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

Sec. 2. (a) A person moving goats into the state shall follow the requirements for moving goats in 345 IAC 1-3.

(b) Reactor goats may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for reactor cattle in 9 CFR 77.17.

(c) Exposed goats may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for exposed cattle in 9 CFR 77.17.

(d) Suspect goats may not be moved into the state unless they are moved directly to an approved slaughtering establishment in a manner that meets the requirements for suspect cattle in 9 CFR 77.17.

(e) The state veterinarian may permit the movement of any animal, including reactor, exposed, or quarantined goats, into the state for the purpose of research or disposal or to further the purposes of this article. *(Indiana State Board of Animal Health; 345 IAC 2.5-4-2)*

345 IAC 2.5-4-3 Intrastate movement of goats
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13

Sec. 3. Except as provided in sections 4 and 6 of this rule, a tuberculosis test is not required to move goats intrastate. *(Indiana State Board of Animal Health; 345 IAC 2.5-4-3)*

345 IAC 2.5-4-4 Accredited herd status for goat herds
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13

Sec. 4. (a) Owners of goat herds in the state may obtain and maintain an accredited herd status for tuberculosis by complying with the requirements in this section.

(b) To qualify for accredited herd status the owner of a goat herd must do each of the following:

(1) Complete, sign, and abide by the terms of an accredited herd status agreement provided by the state veterinarian.

(2) Procure the services of an accredited veterinarian to test each animal in the herd for tuberculosis twice, the second tuberculosis test to be conducted between three hundred sixty-five (365) and four hundred twenty-five (425) days after the first test is conducted. All animals in the herd must test negative for tuberculosis.

(3) All animals added to the herd meet the requirements in subsection (e).

The state veterinarian shall issue the owner of an accredited herd an accreditation certificate or notice indicating the accredited herd status. Herd accreditation status is valid for three hundred sixty-five (365) days from the date it is earned and then it expires.

(c) The owner of a herd that is accredited may maintain the herd's accredited status by procuring the services of an accredited veterinarian to test each animal in the herd for tuberculosis. The reaccreditation herd test must be completed between sixty (60) days prior to and sixty (60) days after the date that the herd's accredited herd status expires under subsection (b).

(d) A herd that is being tested for accreditation or reaccreditation must tuberculosis test the following animals:

(1) All goats twelve (12) months of age and older.

(2) All natural additions shall be identified and recorded on the test report as members of the herd at the time of the annual test even if they are less than twelve (12) months of age and not tested.

(e) Animals that are added to a herd must meet one (1) of the following sets of criteria:

(1) Originate from an accredited herd.

(2) Originate from a herd that is located in a modified accredited area that has passed a herd tuberculosis test of all animals twelve (12) months of age and older conducted within twelve (12) months immediately prior to the animal entering the herd. Each individual animal that is to be added to the accredited herd must test negative for tuberculosis within the sixty (60) days immediately prior to the animal entering the herd.

(3) Originate from a herd that is located in a modified accredited state or zone that does not meet the requirements of subdivision (1) or (2), each individual animal that is to be added to the accredited herd tests negative for tuberculosis within the sixty (60) days immediately prior to the animal entering the premises and must be kept in isolation from all members of the accredited herd until the animal tests negative for tuberculosis more than sixty (60) days after the date of entry onto the premises.

Animals added under subdivision (2) or (3) shall not receive accredited herd status for sale purposes until they have been members of the herd at least sixty (60) days and have been retested negative for tuberculosis at least sixty (60) days after entry into the herd. *(Indiana State Board of Animal Health; 345 IAC 2.5-4-4)*

345 IAC 2.5-4-5 Classification of goats tested
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13

Sec. 5. Goats tested for tuberculosis shall be classified according to the bovine TB UM&R, Part III – Standard Procedures (Minimum Requirements). The state veterinarian shall determine final tuberculosis classification of any animal or herd. *(Indiana State Board of Animal Health; 345 IAC 2.5-4-5)*

345 IAC 2.5-4-6 Reactor, exposed, and high-risk animals
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13

Sec. 6. The procedures in 345 IAC 2.5-3-6 through 345 IAC 2.5-3-9 for cattle apply to goats. *(Indiana State Board of Animal Health; 345 IAC 2.5-4-6)*

SECTION 4. 345 IAC 7-5-12 IS AMENDED TO READ AS FOLLOWS:

345 IAC 7-5-12 Tuberculosis control in cattle and bison
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-15-14

Sec. 12. All ~~out of state~~ cattle **and bison originating from outside the state and entering the state for exhibition** shall ~~have passed a negative test for~~ **meet the** tuberculosis ~~within sixty (60) days prior to the opening date of the exhibition, except:~~

~~(1) Cattle from accredited herds (accrediting date must be listed on health certificate).~~

~~(2) Cattle under 180 days of age.~~

~~(3) Cattle from accredited-free states.~~

~~Note: Animals offered for sale at exhibition must meet import~~

control requirements ~~of state of destination.~~ **in 345 IAC 2.5-3-2 prior to exhibition.** *(Indiana State Board of Animal Health; Reg 77-2,Title III,Sec 1; filed Jul 21, 1978, 2:30 p.m.: 1 IR 567; filed May 2, 1983, 10:03 a.m.: 6 IR 1036; filed May 21, 1984, 3:20 p.m.: 7 IR 1714; filed Feb 15, 1985, 9:05 a.m.: 8 IR 791; readopted filed May 2, 2001, 1:45 p.m.: 24 IR 2895)*

SECTION 5. THE FOLLOWING ARE REPEALED: 345 IAC 1-3-6.5; 345 IAC 1-3-9; 345 IAC 2-4.1.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 7, 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 rules concerning tuberculosis control in animals moved into Indiana, tuberculosis control in cattle, bison, and goats, and the exhibition of 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 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #04-139

DIGEST

Amends 760 IAC 1-50-3, 760 IAC 1-50-4, and 760 IAC 1-50-5 regarding insurance producer continuing education examinations, credit hours, fees, and documentation. Effective 30 days after filing with the secretary of state.

760 IAC 1-50-3
760 IAC 1-50-4
760 IAC 1-50-5

SECTION 1. 760 IAC 1-50-3, AS AMENDED AT 27 IR 1569, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-50-3 Continuing education credit hour defined
Authority: IC 27-1-15.7-4; IC 27-1-15.7-7
Affected: IC 27-1-15.7-2

Sec. 3. (a) A continuing education credit hour is based on a one (1) hour block of time. Fifty (50) minutes of instruction in a sixty (60) minute period will constitute one (1) continuing education credit hour. Time designated by the provider as break time may not be considered when computing course credit hours.

(b) Continuing education credit hours will be approved in no less than one-half (½) hour increments.

(c) ~~Except as provided in section 4(h) of this rule, two (2)~~ **One (1)** continuing education credit ~~hours are~~ **hour is** the minimum number of hours that will be approved for a continuing education course.

(d) Eight (8) hours of classroom instruction per day are the maximum number of hours that will be approved for a continuing education course. *(Department of Insurance; 760 IAC 1-50-3; filed Feb 23, 1993, 5:00 p.m.: 16 IR 1825; filed Nov 4, 1999, 10:12 a.m.: 23 IR 573; filed Dec 12, 2003, 10:30 a.m.: 27 IR 1569)*

SECTION 2. 760 IAC 1-50-4, AS AMENDED AT 27 IR 1569, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-50-4 Application requirements
Authority: IC 27-1-15.7-4; IC 27-1-15.7-7
Affected: IC 27-1-15.7-2

Sec. 4. (a) Any:
(1) individual;
(2) insurance company;
(3) insurance trade association;
(4) insurance producer association;
(5) accredited college; or
(6) insurance education institution;
may submit continuing education courses for approval by the commissioner.

(b) Course information must be submitted on an application form that may be obtained from the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204-2787. The application form is adopted by reference.

(c) A completed application form shall be submitted to the Continuing Education Program, c/o Indiana Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204-2787.

(d) The application form shall be submitted at least sixty (60) days ~~prior to~~ **before** the date of the continuing education course.

(e) A provider may advertise a continuing education course after submission to the department but before its approval; however, the provider must clearly indicate in any advertisement of the course that course approval is pending.

(f) A nonrefundable processing fee in the amount of forty dollars ($40) per course, or a yearly fee in the amount of five hundred dollars ($500) for all courses, shall be submitted to the department along with a completed application form.

(g) Videotaped, Internet, and satellite broadcast programs may be approved for continuing education credit.

(h) Each educational segment within a convention program or an association annual meeting shall be submitted individually for continuing education credit. ~~Notwithstanding section 3(b) of this rule, the educational segment may be approved for one (1) hour of credit.~~

(i) Applications for continuing education course approval shall be presented to the advisory council. The advisory council shall review each application and make a recommendation to the commissioner on whether the course should be approved and the number of credit hours to be awarded. The department shall notify the provider in writing when the commissioner approves or disapproves a continuing education course.

(j) Course approval is valid for two (2) years from the date of the commissioner's approval. Thereafter, the course must be resubmitted for approval under this section. *(Department of Insurance; 760 IAC 1-50-4; filed Feb 23, 1993, 5:00 p.m.: 16 IR 1825; filed Nov 4, 1999, 10:12 a.m.: 23 IR 573; filed Dec 12, 2003, 10:30 a.m.: 27 IR 1569)*

SECTION 3. 760 IAC 1-50-5, AS AMENDED AT 27 IR 1569, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-50-5 Requirements for self-study continuing education courses

Authority: IC 27-1-15.7-4; IC 27-1-15.7-7
Affected: IC 27-1-15.6-12

Sec. 5. (a) In addition to the requirements in section 4 of this rule, self-study courses are subject to the following requirements:

(1) A producer enrolled in a self-study course, including a computer-based course, shall take a written or computer-based examination at the conclusion of the self-study course. The written or computer-based examination must comply with the following requirements:

(A) Examination questions shall be multiple choice.

(B) Questions shall be selected at random from a bank of questions.

(C) At least three (3) different versions of the examination shall be used on a random basis.

(D) The examination for a course approved for eight (8) hours of credit or less shall consist of at least twenty-five (25) questions.

(E) The examination for a course approved for greater than eight (8) hours of credit shall consist of at least fifty (50) questions.

(F) The examination for a course approved for greater than twelve (12) hours of credit shall consist of at least seventy-five (75) questions.

~~(F)~~ **(G)** The written examination shall be sealed in an opaque envelope. The testing protocol and affidavit requirements of subdivision (4) shall be written on the outside of the envelope.

~~(G)~~ **(H)** The examination shall be graded by the provider.

~~(H)~~ **(I)** A computer-based examination may not include prompts designed to aid the student in answering examination questions.

(2) A producer must correctly answer seventy percent (70%) of the examination questions in order to pass the self-study course.

(3) A producer must pass a self-study examination to receive any continuing education credit hours for the self-study course.

(4) When taking the self-study examination, the producer shall **do all of the following:**

(A) Sign an affidavit, supplied by the provider, that states the producer did not use outside help, such as an open textbook or another individual, in taking the examination.

(B) A second producer must sign the affidavit verifying that the second producer witnessed the first producer's examination and no outside help was used. **A producer who takes the examination at a testing center that administers tests for professional designations may have a representative of the testing center sign the affidavit rather than a licensed producer.**

(C) The signed affidavit must be returned to the provider. The provider shall retain the original affidavit for four (4) years.

(5) The provider shall grade the examination and mail the results to the producer no later than thirteen (13) days after the date upon which the producer mailed the completed examination to the provider.

(6) A computer-based course that includes a computer-based examination must be designed to prevent the student from skipping the education materials before taking the examination.

(b) Failure to comply with the requirements of this section may result in disciplinary action by the department under IC 27-1-15.6-12. *(Department of Insurance; 760 IAC 1-50-5; filed Feb 23, 1993, 5:00 p.m.: 16 IR 1826; filed Nov 4, 1999, 10:12 a.m.: 23 IR 574; filed Dec 12, 2003, 10:30 a.m.: 27 IR 1569)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 28, 2004 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on proposed amendments to 760 IAC 1-50 regarding insurance producer continuing education. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

Proposed Rule
LSA Document #04-171

DIGEST

Amends 872 IAC 1-1-6.1 to revise the educational requirements for first time CPA examination candidates to address the semester hours in accounting, business administration, and economics courses at the undergraduate and graduate level. Effective 30 days after filing with the secretary of state.

872 IAC 1-1-6.1

SECTION 1. 872 IAC 1-1-6.1, PROPOSED TO BE AMENDED AT 27 IR 2574, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

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

Sec. 6.1. (a) Compliance with IC 25-2.1-3-2 regarding educational requirements for first time **CPA** examination ~~applicants,~~ **candidates** will be met by obtaining at least one hundred fifty (150) semester hours of college education, including a baccalaureate or higher degree from an accredited college or university. As part of the one hundred fifty (150) semester hours, ~~an applicant~~ **a candidate** must meet any one (1) of the following conditions:

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

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

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

The business administration courses may include up to six (6) hours of business and tax law courses and up to six (6) hours of computer science courses. The accounting hours must include courses covering the subjects of financial accounting, auditing, taxation, and managerial accounting. If the accounting hours are a mixture of graduate and undergraduate hours, the higher number of required hours applies. **An equivalent combination of undergraduate and graduate semester hours under clause (A) would be a total of twenty-four (24) semester hours calculated at the rate of one and six-tenths (1.6) semester hours for each actual one (1) semester hour in accounting at the graduate level and one (1) semester hour for each actual one (1) semester hour in accounting at the undergraduate level.**

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

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

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

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

(b) College courses with substantial duplication of content may be counted only one (1) time toward the requirements in IC 25-2.1-3-2 and this section. This subsection shall not apply to internships. *(Indiana Board of Accountancy; 872 IAC 1-1-6.1; filed Jun 5, 1998, 3:58 p.m.: 21 IR 3933; readopted filed Jun 22, 2001, 8:57 a.m.: 24 IR 3824; filed Aug 3, 2001, 4:34 p.m.: 24 IR 3989; filed Jul 30, 2003, 5:15 p.m.: 26 IR 3881)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 15, 2004 at 10:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 5, Indianapolis, Indiana the Indiana Board of Accountancy will hold a public hearing on proposed amendments to revise the educational requirements for first time CPA examination candidates to address the semester hours in accounting, business administration, and economics courses at the undergraduate and graduate level. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E034 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Professional Licensing Agency

Readopted Rules

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule
LSA Document #04-163

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.

170 IAC 1-4
170 IAC 1-5

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

170 IAC 1-4 Mediation
170 IAC 1-5 Minimum Standard Filing Requirements

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on October 4, 2004 at 9:00 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 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 Utility Regulatory Commission
Office of the General Counsel
Indiana Government Center-South
302 W. Washington Street, Room E306
Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana Utility Regulatory Commission, 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 240 STATE POLICE DEPARTMENT

Proposed Rule
LSA Document #04-164

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.

240 IAC 8

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

240 IAC 8 INDIANA DNA DATA BASE

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on October 5, 2004 at 9:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room N335, Indianapolis, Indiana the State Police Department 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:

Anthony Sommer, Staff Attorney
Indiana State Police
100 North Senate Avenue, IGCN N340
Indianapolis, IN 46204.

Copies of these rules are now on file at the Indiana State Police Department, Indiana Government Center-North, 100 North Senate Avenue, Room N340 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Anthony Sommer
Staff Attorney
State Police Department

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Final Rule
LSA Document #04-42(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

410 IAC 1-5

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING IS READOPTED:

410 IAC 1-5 Sanitary Operation of Tattoo Parlors

LSA Document #04-42(F)
Intent to Readopt Rules Published: March 1, 2004; 27 IR 2078
Proposed Readopted Rules Published: May 1, 2004; 27 IR 2579
Hearing Held: June 16, 2004
Filed with Secretary of State: July 21, 2004, 5:00 p.m.

60 Day Requirement (IC 4-22-2-19)

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #03-270

To: The Honorable Michael Young, Chairperson
Administrative Rules Oversight Committee

From: Medana C. Davis
Staff Counsel

Date: July 29, 2004

Re: LSA Document #03-270 - Quality Review for Accounting Firms

Cc: Sarah Burkman, Staff Attorney, LSA
Gerald Quigley, Executive Directory, PLA
Deborah Widemon, Board Director

On behalf of the Indiana Professional Licensing Agency and Indiana Board of Accountancy ("Board"), I am submitting this memorandum to the Administrative Rules Oversight Committee ("AROC") pursuant to IC § 4-22-2-19(c)(2) because the agency did not institute the rulemaking process within sixty (60) days after the effective date of the statute that authorizes the rule.

Pursuant to IC § 25-2.1-2-15(7) and IC § 25-2.1-5-8, effective July 1, 1993, the Indiana Board of Accountancy may adopt rules under Ind. Code § 4-22-2 governing the practice of accountancy and the conduct of licensees, including requiring quality reviews as a condition for renewal of a firm permit. Given the bad publicity of the past years for accountants, the Board wants to require quality reviews of firms to protect the public, advance the profession, and assist firms by educating and improving firms' quality of work. The Board reviewed other states' requirements for quality reviews, the Uniform Accountancy Act and Rules, and the standards for quality review of the national accounting organizations. The Board is now prepared to proceed with administrative rules to establish the requirements for quality review under IC 25-2.1-5-8.

If you have any further concerns or require additional information, please do not hesitate to contact me at 317-234-2912 or email me at mdavis@hpb.state.in.us.

Sincerely,

Medana C. Davis

TITLE 876 INDIANA REAL ESTATE COMMISSION

July 26, 2004

Senator Luke Kenley
Representative Jerry Denbo
Administrative Rules Oversight Committee
C/o Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, IN 46204-2789
Attn: Sarah Burkman

Re: Notice of Delay in Adoption of Rule

Dear Senator Kenley and Representative Denbo:

On behalf of the Indiana Professional Licensing Agency and Indiana Real Estate Commission ("Commission"), I am submitting this memorandum to the Administrative Rules Oversight Committee pursuant to Indiana Code § 4-22-2-19(c).

Pursuant to Indiana Code § 25-34.1-2-5(14) and Indiana Code § 25-34.1-2-6, the Commission may adopt rules necessary for the administration of the investigative fund established under IC 25-34.1-8-7.5, which includes establishing a fee to provide for the investigation and enforcement against real estate fraud. In accordance with Indiana Code § 4-22-2-19(c)(2), this memorandum is to notify you that the Commission did not institute the rulemaking process within sixty (60) days of the effective date of this statute. Prior to establishing the fee, the Commission wanted to know how the fund would be administered between the Office of the Attorney General and Professional Licensing Agency to ensure the efficient administration and enforcement of the investigative fund.

If you have any further concerns or require additional information, please do not hesitate to contact me at 317-234-2912 or email me at mdavis@hpb.state.in.us.

Sincerely,

Medana C. Davis
Staff Counsel

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #03-279

July 27, 2004

Chairman
c/o Sarah Burkman
Administrative Rules Oversight Committee
302 State House
Indianapolis, Indiana 46204

RE: 905 IAC 1-46, LSA Document #03-279(F)

Dear Mr. Chairman:

This letter is to notify the Administrative Rules Oversight Committee of changes in progress to the above rule, which establishes rules regulating the placement of tobacco sales certificates (TSC) issued pursuant to IC 7.1-3-18.5, et seq., and also provides penalties for noncompliance. Under Ind. Code 4-22-2-19, an agency that adopts a rule must begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule.

IC 7.1-3-18.5, which created the TSC, was effective on July 1, 2003. Thus, under IC 4-22-2-19, the notice of intent should have been filed on or before August 29, 2003. Due to efforts required in complying with the keg registration statute, IC 7.1-3-6.5, and the promulgation of its accompanying Rule 45, the Commission was unable to start the process at that time.

Many discussions regarding this rule were held prior to the filing of the notice of intent on November 1, 2003. The rule was heard on January 26, 2004 and was formally adopted by the Commission on May 11, 2004. The initial delay notwithstanding, the Commission looks forward to the final approval of this rule.

Please let me know if further information on this rule is needed. I can be reached directly at (317) 232-2472 or via email at mwebb@atc.state.in.us. Thank you very much for your kind attention in this regard.

Very truly yours,

Mark C. Webb
Executive Secretary

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

LSA Document #03-280

July 27, 2004

Chairman
c/o Sarah Burkman
Administrative Rules Oversight Committee
302 State House
Indianapolis, Indiana 46204

RE: 905 IAC 1-47, LSA Document #03-280(F)

Dear Mr. Chairman:

This letter is to notify the Administrative Rules Oversight Committee of changes in progress to the above rule, which establishes rules defining a municipal riverfront development project in accordance with IC 7.1-3-20-16.1. Under Ind. Code 4-22-2-19, an agency that adopts a rule must begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule.

IC 7.1-3-20-16 was amended in 1985 to allow for a one, two or three-way off-quota permit on a historic vessel located within a municipal riverfront development district. In 1989, it was amended to include land-based restaurants as well. No rules were required to be promulgated in order to issue such a permit. Throughout the 1990s, very few of these permits were issued. However, since the turn of the century, the Commission has reviewed several applications for these permits on an individual basis and has approved them if it felt that the individual permit qualified under the statute. Despite the best efforts of the Commission, it was difficult, in the absence of clear guidelines, to determine many common factors in the various permits which had been awarded over the years. Moreover, because these permits are not subject to the quota provisions of IC 7.1-3-22, people who purchased them could gain an unfair competitive advantage against those who had to purchase their permits on the open market to operate a similar establishment. Therefore, the Commission felt the need to outline a basic criteria for qualifying for these permits, which would include some limits on the boundaries of riverfront development projects, and yet at the same time, give local communities some flexibility to fit the needs to their own individual circumstances. It was determined that the most expedient way to accomplish this was to enact a rule which would clearly state the criteria for qualifying for a permit under this section.

The Commission promulgated its notice of intent on November 1, 2003. The rule was heard on January 26, 2004. Things changed during the 2004 session of the General Assembly when it incorporated most of the rule into HEA 1207, adding IC 7.1-3-20-16.1, and specifically left to the Commission the duty to promulgate rules affecting a small aspect of the overall procedure, specifically, how to treat permit applications which are located more than 1500 feet and less than 3000 feet from a river within a municipal riverfront development district.

IC 7.1-3-20-16.1 is the first time that the General Assembly has specifically instructed the Commission to promulgate rules regarding municipal riverfront development projects. This statute was effective on July 1, 2004. Because we began the rulemaking process before that date, we question the application of IC 4-22-2-19 to these unusual facts. However, in the interest of clarification, and in the spirit of the statute, we are submitting this letter as part of the rulemaking process.

Please let me know if further information on this rule is needed. I can be reached directly at (317) 232-2472 or via email at

mwebb@atc.state.in.us. Thank you very much for your kind attention in this regard.

Very truly yours,

Mark C. Webb
Executive Secretary

365 Day Notice (IC 4-22-2-25)

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #03-302

To: Honorable Jerry Denbo, Chairperson
C/o Ms. Susan Burkman
The Administrative Rules Oversight Committee

From: Donna Stolz Sembroski, Staff Attorney

Re: LSA #03-302

Date: August 3, 2004

Cc: Chuck Mayfield, Legislative Services Agency
Rachel McGeever, General Counsel, FSSA
Melanie Bella, Assistant Secretary, OMPP

On behalf of the Family and Social Services Administration, Office of Medicaid Policy and Planning, 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 will 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 December 1, 2003 (27 IR 906). The proposed rule has not yet been published. The rule implements a nursing home quality assessment fee for the purpose of funding enhanced nursing home facility reimbursement. It also adds provisions for additional reimbursement for closing or converting nursing facilities. The state cannot implement these changes until approval is received from the federal Centers for Medicare and Medicaid Services (CMS), and the substance of the proposed rule may depend on CMS's action. The state submitted a state plan amendment and waiver request to CMS on September 30, 2003, but CMS has not yet acted on the state plan amendment and waiver. After CMS approves the state plan amendment and waiver, we will publish the proposed rule. The agency expects that the rule can be approved by the governor by August 31, 2005.

This notice setting forth the expected date of approval of LSA #03-302 as August 31, 2005 is being submitted in a timely manner. August 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

FIRST NOTICE OF COMMENT PERIOD
#04-234(APCB)

DEVELOPMENT OF AMENDMENTS CONCERNING SAINT MARY'S COLLEGE/HOLY CROSS 326 IAC 6-1-18

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 326 IAC 6-1-18 concerning particulate matter emission limitations in St. Joseph County. 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 6-1-18.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Holy Cross Services Corporation, on behalf of St. Mary's College, has submitted a request that IDEM clarify particulate matter emission limitations at 326 IAC 6-1-18 to reflect current operating conditions. Currently, 326 IAC 6-1-18 states that St. Mary's Boiler No. 1 is 100% natural gas fired and Boilers No. 2 and No. 3 are coal fired. However, Boilers No. 1 and No. 2 are actually natural gas fired but also set up to burn No. 2 fuel oil as a backup. Boiler No. 3 exclusively burns natural gas. This outdated information is reflected in St. Mary's Federal Enforceable State Operating Permit (FESOP) which impacts the College's ability to use their facility as it is designed. The purpose of this rulemaking is to update 326 IAC 6-1-18 to clarify that Boilers No. 1 and No. 2 at St. Mary's burn natural gas as their primary fuel with No. 2 fuel oil as a backup fuel, and Boiler No. 3 burns 100% natural gas. This rulemaking will not alter the usage limit of 704, 225 gallons of No. 2 fuel oil per 12 consecutive month period for each of the Boilers No. 1 and No. 2 currently allowed by the permit and will not increase or decrease actual emissions.

Alternatives To Be Considered Within the Rulemaking

The only alternative is to leave 326 IAC 6-1-18 as it is currently written, which is incorrect.

Applicable Federal Law

This rule is approved by the U.S. Environmental Protection Agency (U.S. EPA) as part of Indiana's State Implementation Plan (SIP) for particulate matter. Indiana will send these rules to U.S. EPA to be approved as part of Indiana's SIP so federal law coincides with state law. There should be no concern with applicability because the proposed changes will not allow any increase in emissions.

Potential Fiscal Impact

No potential fiscal impact exists.

Public Participation and Workgroup Information

Currently no workgroup has been formed in relation to this rulemaking. However, if you feel that one is appropriate, or wish to provide other comments on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Sky Schelle, Rules Section, Office of Air Quality at (317) 234-3533 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as the case may be.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:
#04-234(APCB) Holy Cross Amendments
Sky Schelle
c/o Rules Section Administrative Assistant
Rules Section
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the 10th floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 1, 2004.

Additional information regarding this action may be obtained from Sky Schelle, Rules Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE
#04-235(APCB)

DEVELOPMENT OF RULES CONCERNING INCORPORATION BY REFERENCE OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR

STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule to incorporate by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE), and has scheduled a public hearing before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 20-82.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

Basic Purpose and Background

The 1990 Amendments to the Clean Air Act require the United States Environmental Protection Agency (U.S. EPA) to regulate major sources of hazardous air pollutants (HAPs). A major source is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that has the potential to emit, considering controls, ten (10) tons per year or more of any single hazardous air pollutant or twenty-five (25) tons per year or more of any combination of HAPs. HAPs are listed in the Clean Air Act because they are either known or suspected to cause cancer or other serious health effects. There are currently one hundred eighty-eight (188) HAPs listed in the Clean Air Act. On July 16, 1992 (57 FR 311576), U.S. EPA published a list of industrial groups or source categories that emit one (1) or more of the one hundred eighty-eight (188) listed HAPs. The Clean Air Act requires U.S. EPA to develop emission standards, referred to as national emission standards for hazardous air pollutants (NESHAPs), that require the application of air pollution reduction measures based on maximum achievable control technology (MACT) for the listed source categories. The "MACT floor" is the minimum control level allowed for NESHAPs and ensures that the standard is set at a level that assures that all existing major sources achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source.

This rulemaking will incorporate by reference the Stationary Reciprocating Internal Combustion Engines (RICE) NESHAP. The majority of RICE units are used at pipeline compression stations, chemical and manufacturing plants, and power plants. Toxic emissions of formaldehyde, acrolein, methanol, and acetaldehyde are produced by RICE units, but EPA believes that this NESHAP can reduce those emissions by 5,600 tons nationwide in the fifth year after promulgation. Overall, nationwide emissions of formaldehyde, acrolein, acetaldehyde, and methanol from RICE units will be reduced by 40% to 90% depending on the type of unit. U.S. EPA estimates there are at least fifty-four (54) potential Indiana sources.

The final compliance deadline for existing sources is June 15, 2007. The compliance deadline for all new or reconstructed units started before August 16, 2004, and all operators who start a new or reconstructed unit after August 16, 2004, is August 16, 2004. IDEM must incorporate the federal requirements into state rules or establish state requirements that are no less stringent than the federal requirements.

IDENTIFICATION OF RESTRICTIONS AND REQUIREMENTS NOT IMPOSED UNDER FEDERAL LAW

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. Affected entities must comply with the federal rule, and IDEM does not propose to add more stringent requirements.

POTENTIAL FISCAL IMPACT

The RICE NESHAP is a federal rule and will likely require affected businesses to incur compliance costs. Adoption of the RICE NESHAP into Indiana's state rules will not create an additional fiscal impact.

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation by reference of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a

substantive effect on the scope or intended application of the federal rule.

(2) Indiana is required by federal law to adopt the NESHAP for RICE as established by the United States Environmental Protection Agency.

(3) The public will benefit from prompt adoption of this rule, because the state will have the legal authority to enforce this NESHAP.

(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 Kaplan
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Sky Schelle, Rule Development Section, Office of Air Quality (317) 234-3533 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 20-82 IS ADDED TO READ AS FOLLOWS:

Rule 82. Stationary Reciprocating Internal Combustion Engines

326 IAC 20-82-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.6585* (69 FR 33506, June 15, 2004).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart ZZZZ* (69 FR 33506, June 15, 2004, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environment Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-82-1)*

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 November 3, 2004, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on new rule 326 IAC 20-82.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Sky Schelle, Rule Development Section, Office of Air Quality, (317) 234-3533 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 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE
#04-236 (APCB)

DEVELOPMENT OF NEW RULES CONCERNING ORGANIC LIQUID DISTRIBUTION (NON-GASOLINE), MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING, SURFACE COATING OF AUTOMOBILES AND LIGHT DUTY TRUCKS, SURFACE COATING OF METAL CANS, SITE REMEDIATION, AND MISCELLANEOUS COATING MANUFACTURING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules to incorporate by reference the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for hazardous air pollutants for organic liquid distribution (non-gasoline); miscellaneous organic chemical manufacturing; surface coating of automobiles and light duty trucks; surface coating of metal cans; site remediation; and miscellaneous coating manufacturing and has scheduled a public hearing/meeting before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 20-83; 326 IAC 20-84; 326 IAC 20-85; 326 IAC 20-86; 326 IAC 20-87; 326 IAC 20-88.

AUTHORITY: IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule)

remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13- 14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The 1990 Amendments to the Clean Air Act require the United States Environmental Protection Agency (U.S. EPA) to regulate major sources of hazardous air pollutants (HAPs). A major source is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that has the potential to emit, considering controls, ten (10) tons per year or more of any single hazardous air pollutant or twenty-five (25) tons per year or more of any combination of HAPs. HAPs are listed by U.S. EPA because they are either known or suspected to cause cancer or other serious health effects. There are currently one hundred eighty-eight (188) HAPs listed in the Clean Air Act. On July 16, 1992, (57 FR 311576), U.S. EPA published a list of industrial groups or source categories that emit one (1) or more of the one hundred eighty-eight (188) listed HAPs. The Clean Air Act requires U.S. EPA to develop emission standards, referred to as national emission standards for hazardous air pollutants (NESHAPs), that require the application of air pollution reduction measures based on maximum achievable control technology (MACT) for the listed source categories. The "MACT floor" is the minimum control level allowed for NESHAPs and ensures that the standard is set at a level that assures that all existing major sources achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source.

For most NESHAPs, the final compliance deadline is three (3) years after the rule promulgation date. Most NESHAPs have intermediate compliance dates and require a compliance plan prior to the final compliance deadline. For NESHAPs where only minor changes are required in order to comply with the promulgated NESHAP, the compliance date is less than three (3) years.

IDEM must incorporate the federal requirements into state rules or establish state requirements that are no less stringent than the federal requirements. This rulemaking will incorporate by reference the following NESHAPs:

Organic liquid distribution (non-gasoline) (40 CFR 63, Subpart EEEE)

Organic liquid distribution takes place at liquid terminal sources, organic chemical manufacturing sources, petroleum sources, crude oil pipeline pumping and breakout stations, and other industrial sources. Nationwide, U.S. EPA estimates that general air toxics will be reduced by sixty percent (60%) from current levels. Volatile organic compounds will be reduced by seventy percent (70%) from current levels. There are at least thirteen (13) potential Indiana sources. Sources must comply by February 3, 2004.

Miscellaneous organic chemical manufacturing (40 CFR 63, Subpart FFFF)

This source category includes twenty-two (22) categories on U.S. EPA's initial list of source categories, including miscellaneous chemical production and polymers and resins. Also included in this rule is chlorinated paraffin production, rubber chemical production, polyester resin production, and alkyd resin production. This NESHAP requires sources to install pollution prevention emission controls at process vents, storage tanks, equipment leak areas, wastewater systems, and transfer operations. Nationwide, U.S. EPA estimates that emissions will be reduced by sixteen thousand eight hundred (16,800) tons per year. There are at least eighteen (18) potential Indiana sources. Sources must comply by November 10, 2006.

Surface coating of automobiles and light duty trucks (40CFR 63, Subpart IIII)

The surface coating of automobiles and light-duty trucks is a process of applying decorative, protective, or functional coatings to new automobile and light-duty truck bodies and body parts. Coating materials include primer, topcoat, sealer, sound deadener, windshield primer, and adhesive. Various air toxics emitted include xylenes, toluenes, ethyl benzene, and methyl isobutyl ketone. Nationwide, U.S. EPA estimates that emissions will be reduced by sixty percent (60%) from the estimated 1997 baseline. U.S. EPA estimates at least four (4) potential Indiana sources. Sources must comply by February 26, 2007.

Surface coating of metal cans (40 CFR 63, Subpart KKKK)

Metal can surface coating operations include process that coat metal cans or ends such as decorative tins or metal crowns or closure during any stage of the can manufacturing process. Coating materials include basecoats, decorative inks, end seals or end lining compounds, side seam stripes, inside sprays, interior lacquers, overvarnishes, and repair spray coatings. Emission limits will be met using pollution prevention techniques such as improved coatings. Nationwide, U.S. EPA estimates that emissions will reduced by seventy percent (70%) from the estimated 1997 baseline. There are at least six (6) potential Indiana sources. Sources must comply by November 13, 2006.

Site remediation (40 CFR 63, Subpart GGGGG)

Site remediation involves the removal of hazardous substances from contaminated media such as soil or groundwater, removal of the contaminated media itself, or removal of the hazardous substances by themselves. This NESHAP requires emission controls or work practice standards for three groups of emission points: process vents, management units such as tanks and containers, and equipment leaks. There are at least twelve (12) potential Indiana sources. Sources must comply by October 8, 2006.

Miscellaneous coating manufacturing (40 CFR 63, Subpart HHHHH)

Miscellaneous coating manufacturing sources produce paints, inks and/or adhesives. Sources will comply with the NESHAP by installing emission controls at process vessels, storage tanks, equipment leaks, wastewater systems, and transfer operations. Nationwide, U.S. EPA estimates that emissions will be reduced by four thousand nine hundred (4,900) tons per year. There are at least eighteen (18) potential Indiana sources. Sources must comply by December 11, 2006.

Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. Affected entities must comply with the federal rule, and IDEM does not propose to add more stringent requirements.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Gayl Killough, Rules Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6021 (in Indiana).

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on the incorporation by reference of the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asphalt processing and asphalt roofing manufacturing; brick and structural clay products manufacturing; clay ceramics manufacturing; coke ovens: pushing, quenching, and battery stacks; engine test cells/stands; hydrochloric acid production; printing, coating, and dyeing of fabrics and other textiles; surface coating of metal furniture; and surface coating of wood building products. These findings are prepared under IC 13-14-9-8 and are as follows:

(1) The draft rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.

(2) Indiana is required by federal law and state law to adopt NESHAPs or adopt rules that are as stringent as the federal regulations.

(3) The citizens and regulated community of Indiana will benefit from prompt adoption of this rule because the state will have the legal authority to enforce these NESHAPs.

(4) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.

(5) The draft rule is hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Gayl Killough, Rule Development Section, Office of Air Quality (317) 233-8628 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 20-83 IS ADDED TO READ AS FOLLOWS:

Rule 83. Organic Liquid Distribution (Non-Gasoline)

326 IAC 20-83-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.2334 (69 FR 5064, February 3, 2004).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart EEEE* (69 FR 5063, February 3, 2004, National Emission Standards for Hazardous Air Pollutants: Organic Liquid Distribution (Non-Gasoline))*.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-83-1)*

SECTION 2. 326 IAC 20-84 IS ADDED TO READ AS FOLLOWS:

Rule 84. Miscellaneous Organic Chemical Manufacturing

326 IAC 20-84-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.2435* (68 FR 63888, November 10, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart FFFF* (68 FR 63888, November 10, 2003, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing)*.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-84-1)*

SECTION 3. 326 IAC 20-85 IS ADDED TO READ AS FOLLOWS:

Rule 85. Surface Coating of Automobiles and Light-Duty Trucks

326 IAC 20-85-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.3081* (69 FR 22624, April 26, 2004)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart IIII* (67 FR 22623, April 26, 2004, National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks)*.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-85-1)*

SECTION 4. 326 IAC 20-86 IS ADDED TO READ AS FOLLOWS:

Rule 86. Surface Coating of Metal Cans

326 IAC 20-86-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.3481* (68 FR 64447, November 13, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart KKKK* (67 FR 64446, November 13, 2003, National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-86-1)*

SECTION 5. 326 IAC 20-87 IS ADDED TO READ AS FOLLOWS:

Rule 87. Site Remediation

326 IAC 20-87-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7881* (68 FR 58191, October 8, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart GGGGG* (68 FR 58190, October 8, 2003, National Emission Standards for Hazardous Air Pollutants: Site Remediation)*.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-87-1)*

SECTION 6. 326 IAC 20-88 IS ADDED TO READ AS FOLLOWS:

Rule 88. Miscellaneous Coating Manufacturing

326 IAC 20-88-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7985* (68 FR 69185, December 11, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HHHHH* (68 FR 69185, December 11, 2003, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-88-1)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8, and IC 13-14-9, notice is hereby given that on October 6, 2004 at 1:00 p.m, at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on new rules 326 IAC 20-83, 326 IAC 20-84, 326 IAC 20-85, 326 IAC 20-86, 326 IAC 20-87, and 326 IAC 20-88.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Gayl Killough, Rules Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

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

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

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

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana and are open for public inspection.

TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
#04-13(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING DRINKING WATER STANDARDS, SPECIFICALLY CONCERNING RADIONUCLIDES, LONG TERM 1 EN-

HANCED SURFACE WATER TREATMENT, ARSENIC, MINOR CORRECTIONS TO INTERIM ENHANCED SURFACE WATER TREATMENT, DISINFECTANTS AND DISINFECTION BYPRODUCTS, LEAD AND COPPER, PUBLIC NOTIFICATION, AND ANALYTICAL METHODS FOR PUBLIC DRINKING WATER SYSTEMS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to drinking water rules at 327 IAC 8-2, 327 IAC 8-2.1, and 327 IAC 8-2.6 concerning radionuclides, long term 1 enhanced surface water treatment, arsenic, minor corrections to interim enhanced surface water treatment, disinfectants and disinfection byproducts, lead and copper, public notification, and analytical methods for public drinking water systems. 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: February 1, 2004, Indiana Register (27 IR 1656).

CITATIONS AFFECTED: 327 IAC 8-2; 327 IAC 8-2.1; 327 IAC 8-2.6.

AUTHORITY: IC 13-13-5-1; IC 13-14-8-1; IC 13-14-8-2; IC 13-18-3-2; IC 13-18-16-9.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

On December 7, 2000, U.S. EPA published National Drinking Water Regulations for radionuclides. Amendments to existing Indiana drinking water rules would not change existing IDEM standards for radionuclides but would add a standard for uranium, which currently is not regulated. The amendments would also change existing IDEM requirements for monitoring, reporting, and public notification for radionuclides in drinking water. The purpose of these rule changes is to reduce cancer and toxicity risks from radioactive constituents in drinking water, and the changes affect only community public drinking water systems.

On January 22, 2001, U.S. EPA published National Drinking Water Regulations for arsenic. Amendments to existing Indiana drinking water rules would require community and nontransient noncommunity public drinking water systems to comply with an arsenic standard more stringent than presently exists in rule. Only community systems are currently required to comply with the existing standard. These changes would reduce cancer and toxicity risks from arsenic in drinking water. Additionally, the amendments would clarify monitoring and compliance requirements for chemical contaminants that are detected in samples from public drinking water systems.

On January 14, 2002, U.S. EPA published National Drinking Water Regulations for Long-Term 1 Enhanced Surface Water Treatment. Amendments to existing Indiana drinking water rules would make changes to the Indiana surface water treatment rule as published April 12, 1993. These changes would affect all public drinking water systems using surface water and serving fewer than ten thousand (10,000) people. The changes are very similar to the changes recently adopted in the interim enhanced surface water treatment rule for surface water systems serving ten thousand (10,000) people or more. The intended effect of the rule is to strengthen microbial protection, including provisions specifically to address Cryptosporidium, and to address risk trade-offs with disinfection byproducts.

This rulemaking will also include revisions to correct minor errors in the following: (1) the existing interim enhanced surface water treatment rule; (2) the stage 1 disinfection and disinfection byproducts rule; (3) the lead and copper rule; (4) the drinking water public notification rule; and (5) analytical methods.

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. The only differences between the federal regulations and the draft changes to state regulations are adjustments to deadlines for compliance with various requirements. Federal regulations require deadlines of January 23, 2004, January 14, 2005, and January 23, 2006. (The 2004 and 2006 deadlines apply to the arsenic rule and the 2005 deadline applies to the Long Term 1 Enhanced Surface Water Treatment Rule.) The state draft rule amendments have shifted each of those dates slightly earlier to January 1, 2004, January 1, 2005, and January 1, 2006. These revisions were made in order to create uniform compliance dates for all contaminants and to assist both public water systems and the state regulatory department in tracking compliance with the regulations.

Potential Fiscal Impact

There is no additional fiscal impact to this rule beyond what is already imposed by federal regulations. If Indiana does not adopt these regulations, the public water systems would still be required to comply with the requirements as they exist in federal law. Indiana has primacy implementing drinking water programs within the state. States with primacy are eligible for federal funding from U.S. EPA. Failure to adopt these federal drinking water regulations into state regulation could result in decrease or withdrawal of federal funding to Indiana's Drinking Water State Revolving Loan Fund.

Fiscal impact analyses of the federal drinking water rules that Indiana must adopt may be found in the Federal Register as indicated below:

1. Radionuclides rule: Federal Register: December 7, 2000, Volume 65, Number 236, Part II, Pages 76733-76737.

2. Arsenic rule: Federal Register: January 22, 2001, Volume 66, Number 14, Part VIII, Pages 6975-7066.

3. Long term 1 enhanced surface water treatment rule (LT1ESWTR): Federal Register: January 14, 2002, Volume 67, Number 9, Part II, Pages 1822-1827.

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 necessary, please contact MaryAnn Stevens, Rules Section, Office of Water Quality at (317)232-8635 or Stacy Jones, Drinking Water Branch, Office of Water Quality at (317) 308-3292 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from February 1, 2004, through March 1, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#04-13(WPCB) Amendments to Drinking Water Standards
MaryAnn Stevens, Senior Rulewriter
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 receptionist on duty at the 12th floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana. Comments also may be submitted by facsimile to (317) 232-8406, Monday through Friday, between 8:15 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, faxed, or hand delivered by September 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 these drinking water standards may be obtained from Stacy Jones, Drinking Water Branch, Office of Water Quality, (317) 308-3292 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 8-2-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-1 Definitions

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-18

Sec. 1. In addition to the definitions contained in IC 13-11-2 and 327 IAC 1, the following definitions apply throughout this rule, 327 IAC 8-2.1, 327 IAC 8-2.5, and 327 IAC 8-2.6:

(1) "Act" means the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(2) "Action level" means the concentration of lead or copper in water specified in section 36(c) of this rule ~~which~~ **that** determines, in some cases, the treatment requirements contained in sections 36 through 47 of this rule that a water system is required to complete.

(3) "Adjustment program" means the addition of fluoride to drinking water by a public water system for the prevention of dental cavities.

(4) "Administrator" means the administrator of the U.S. EPA.

(5) "Best available technology" or "BAT" means best technology, treatment techniques, or other means ~~which~~ **that** the commissioner finds are available, after examination for efficacy under field conditions, and not solely under laboratory conditions, and after taking cost into consideration. For the purpose of setting maximum contaminant levels for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.

(6) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

(7) "Commissioner" means the commissioner of the Indiana department of environmental management or the designated agent of the commissioner.

(8) "Community water system" or "CWS" means a public water system ~~which~~ **that** serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(9) "Compliance cycle" means the nine (9) year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three (3) three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.

(10) "Compliance period" means a three (3) year calendar year period within a compliance cycle. Each compliance cycle has three (3) three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001. Within the second compliance cycle, the first compliance period runs from January 1, 2002, to December 31, 2004; the second from January 1, 2005, to December 31, 2007; and the third from January 1, 2008, to December 31, 2010. Within the third compliance cycle, the first compliance period runs from January 1, 2011, to December 31, 2013; the second from January 1, 2014, to December 31, 2016; and the third from January 1, 2017, to December 31, 2019.

(11) "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with 327 IAC 8-2.6-1, the comprehensive performance evaluation must consist of at least the following components:

(A) Assessment of plant performance.

(B) Evaluation of major unit processes.

(C) Identification and prioritization of performance limiting factors.

(D) Assessment of the applicability of comprehensive technical assistance.

(E) Preparation of a CPE report.

(12) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(13) "Contaminant" means any:

(A) microorganisms;
(B) chemicals;
(C) waste;
(D) physical substance;
(E) radiological substance; or
(F) any wastewater;

introduced or found in the drinking water.

(14) "Conventional filtration treatment" means a series of processes including:

(A) coagulation;
(B) flocculation;
(C) sedimentation; and
(D) filtration;

resulting in substantial particulate removal.

(15) "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(16) "CT" or "CTcalc" is the product of residual disinfectant

concentration (C) in milligrams per liter determined before or at the first customer and the corresponding disinfectant contact time (T) in minutes, such as C × T. If a public water system applies disinfectants at more than one (1) point prior to the first customer, ~~it~~ **the public water system** must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point. $CT_{99.9}$ is the CT value required for ninety-nine and nine-tenths percent (99.9%) (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appears in Tables 1.1-1.6, 2.1, and 3.1 of paragraph 141.74(b)(3)[1].

$$\frac{CTcalc}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios or total inactivation ratio shown as:

$$\sum \frac{(CTcalc)}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one (1.0) is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(17) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which:

(A) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and

(B) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(18) "Direct filtration" means a series of processes, including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(19) "Disinfectant" means any oxidant, including, but not limited to:

(A) chlorine;

(B) chlorine dioxide;

(C) chloramines; and

(D) ozone;

added to water in any part of the treatment or distribution process that is intended to kill or inactivate pathogenic microorganisms.

(20) "Disinfectant contact time" (T in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one (1) C is measured, T is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one (1) C is measured, T is:

(A) for the first measurement of C, the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured; and

(B) for subsequent measurements of C, the time in minutes that it takes for water to move from the previous C measurement point to the C measurement point for which the particular T is being calculated.

Disinfectant contact time in pipelines must be calculated based on plug flow by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

(21) "Disinfection" means a process ~~which~~ **that** inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(22) "Disinfection profile" means a summary of daily Giardia lamblia inactivation through a treatment plant. **The procedure for developing a disinfection profile is contained in 327 IAC 8-2.6-2 for systems serving at least ten thousand (10,000) individuals and 327 IAC 8-2.6-2.1 for systems serving fewer than ten thousand (10,000) individuals.**

(23) "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(24) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRUM).

(25) "Drinking water violation" means violations of the maximum contaminant level (MCL), treatment technique (TT), monitoring requirements, and testing procedures in this rule. 327 IAC 8-2.1-16 identifies the tier assignment for each specific violation or situation requiring a public notice.

(26) "Effective corrosion inhibitor residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe for the purpose of sections 36 through 47 of this rule only.

(27) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(28) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(29) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

(30) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(31) "First draw sample" means a one (1) liter sample of tap water collected in accordance with section 37 of this rule, that has been standing in the plumbing pipes at least six (6) hours and is collected without flushing the tap.

(32) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(33) "GAC10" means granular activated carbon filter beds with an empty-bed contact time of ten (10) minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty (180) days.

(34) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(35) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(36) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia or, for Subpart H systems serving at least ten thousand (10,000) individuals ~~only~~ **and beginning January 1, 2005, systems serving fewer than ten thousand (10,000) individuals,** Cryptosporidium; or

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH ~~which~~ **that** closely correlate to climatological or surface water conditions.

Direct influence must be determined for individual sources in accordance with criteria established by the commissioner. The commissioner's determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

(37) "Haloacetic acids (five)" or "HAA5" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds:

(A) monochloroacetic acid;

(B) dichloroacetic acid;

(C) trichloroacetic acid

(D) monobromoacetic acid; and

(E) dibromoacetic acid;

rounded to two (2) significant figures after addition.

(38) "Halogen" means one (1) of the chemical elements chlorine, bromine, or iodine.

(39) "Initial compliance period" means January 1993 to December 1995, for the contaminants listed in sections 4 (other than arsenic, barium, cadmium, fluoride, lead, mercury, selenium, and silver), 5, and 5.4(a) (other than benzene, vinyl chloride, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, and para-dichlorobenzene) of this rule.

(40) "Large water system" means a water system that serves more than fifty thousand (50,000) people for the purpose of sections 36 through 47 of this rule only.

(41) "Lead service line" means a service line made of lead ~~which~~ **that** connects the water main to the building inlet and any lead pigtail, gooseneck, or other fitting ~~which~~ **that** is connected to such lead line.

(42) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(43) "Manmade beta particle and photon emitters" means all radionuclides emitting beta particle ~~and/or~~ **or** photons, **or both,** listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure", NBS Handbook 69, as amended August 1973, U.S. Department of Commerce, except the daughter products of thorium-232, uranium-235, and uranium-238.

(44) "Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water ~~which~~ **that** is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

(45) "Maximum contaminant level goal (MCLG)" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur and ~~which~~ **that** includes an adequate margin of safety. Maximum contaminant level goals are nonenforceable health goals.

(46) "Maximum residual disinfectant level" or "MRDL" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

(47) "Maximum residual disinfectant level goal" or "MRDLG" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of individuals would occur and ~~which~~ **that** allows an adequate margin of safety.

(48) "Maximum total trihalomethane potential" or "MTP" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven (7) days at a temperature of twenty-five (25) degrees Celsius or above.

(49) "Medium size water system" means a water system that serves greater than three thousand three hundred (3,300) and less than or equal to fifty thousand (50,000) persons for the purpose of sections 36 through 47 of this rule only.

(50) "Near the first service connection" means at one (1) of the twenty percent (20%) of all service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

(51) "Noncommunity water system" means a public water system ~~which~~ **that** has at least fifteen (15) service connections used by nonresidents or ~~which~~ regularly serves twenty-five (25) or more nonresident individuals daily for at least sixty (60) days per year.

(52) "Nontransient noncommunity water system" or "NTNCWS" means a public water system that is not a community water system ~~which~~ **that** regularly serves the same twenty-five (25) or more persons at least six (6) months per year.

(53) "Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations for the purpose of sections 36 through 47 of this rule only.

(54) "Performance evaluation sample" means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the administrator. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

(55) "Picocuri" **or** "pCi" means the quantity of radioactive material producing two and twenty-two hundredths (2.22) nuclear transformations per minute.

(56) "Point of disinfectant application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water run-off.

(57) "Point-of-entry treatment device" or "POE" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in drinking water distributed throughout the house or building.

(58) "Point-of-use treatment device" or "POU" is a treatment device to a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap.

(59) "Primacy agency" is the department of environmental management where the department exercise primary enforcement responsibility as granted by EPA.

(60) "Public water system" means a public water supply for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. ~~"Public water system"~~ **The term** includes any:

(A) collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and ~~any~~

(B) collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.

A public water system is either a community water system or a noncommunity water system, as defined in subdivisions (8) and (51).

(61) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A millirem (mrem) is one-thousandth ($^{1}/_{1,000}$) of a rem.

(62) "Repeat compliance period" means any subsequent compliance period after the initial compliance period.

(63) "Residual disinfectant concentration"(C in CT calculations) means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.

(64) "Sanitary survey" means an on-site inspection of the water source, facilities, equipment, construction, and operation and maintenance of a public water system for the purpose of evaluating the adequacy of ~~such~~ **the** source, facilities, equipment, construction, and operation and maintenance for producing and distributing safe drinking water.

(65) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(66) "Service line sample" means a one (1) liter sample of water collected in accordance with section 37(b)(3) of this rule that has been standing at least six (6) hours in a service line.

(67) "Single family structure" means a building constructed as a single family residence that is currently being used as either a residence or a place of business for the purpose of sections 36 through 47 of this rule only.

(68) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than four-tenths (0.4) meter per hour or forty-five (45) to one hundred fifty (150) gallons per day per square foot) resulting in substantial particulate removal by physical and biological mechanisms.

(69) "Small water system" means a water system that serves three thousand three hundred (3,300) persons or fewer for the purpose of sections 36 through 47 of this rule only.

(70) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(71) "Subpart H system" means a public water system using surface water or ground water under the direct influence of surface water as a source that is subject to ~~the requirements of 327 IAC 8-2.6-1.~~ **327 IAC 8-2.6.**

(72) "Supplier of water" means any person who owns ~~and/or~~ **or** operates, **or both,** a public water system.

(73) "Surface water" means all water occurring on the surface of the ground, including water in:

(A) a stream;

(B) natural and artificial lakes;

(C) ponds;

(D) swales;

(E) marshes; and

(F) diffused surface water.

(74) "SUVA" means specific ultraviolet absorption at two hundred fifty-four (254) nanometers, an indicator of the humic content of water. ~~It~~ **SUVA** is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of two hundred fifty-four (254) nanometers (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

(75) "System with a single service connection" means a public water system ~~which~~ **that** supplies drinking water to consumers via a single service line.

(76) "Too numerous to count" means that the total number of bacterial colonies exceeds two hundred (200) on a forty-seven (47) millimeter diameter membrane filter used for coliform detection.

(77) "Total organic carbon" or "TOC" means total organic carbon in milligrams per liter, measured using:

(A) heat;

(B) oxygen;

(C) ultraviolet irradiation;

(D) chemical oxidants; or

(E) combinations of these oxidants;

that convert organic carbon to carbon dioxide, rounded to two (2) significant figures.

(78) "Total trihalomethanes" or "TTHM" means the sum of the concentration in milligrams per liter of the trihalomethane compounds:

(A) trichloromethane (chloroform);

(B) dibromochloromethane;

(C) bromodichloromethane; and

(D) tribromomethane (bromoform);

rounded to two (2) significant figures.

(79) "Transient noncommunity water system" or "TWS" means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year.

(80) "Trihalomethane" or "THM" means one (1) of the family of organic compounds, named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(81) "Uncovered finished water storage facility" means a tank, reservoir, or other facility open to the atmosphere that is used to store water that will undergo no further treatment except residual disinfection.

(82) "U.S. EPA" or "EPA" means the United States Environmental Protection Agency.

(83) "Virus" means a virus of fecal origin ~~which~~ **that** is infectious to humans by waterborne transmission.

(84) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness epidemiologically associated with the ingestion of water from a public water system ~~which~~ **that** is deficient in treatment as determined by the commissioner.

[1]Federal Register, Part II, 40 CFR 141, June 29, 1989, Volume 54, Number 124, pages 27532 through 27534. *(Water Pollution Control Board; 327 IAC 8-2-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 705; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1003; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2151; filed Aug 24, 1994, 8:15 a.m.: 18 IR 19; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Oct 24, 1997, 4:30 p.m.: 21 IR 932; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1623; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1075; filed May 1, 2003, 12:00 p.m.: 26 IR 2808)*

SECTION 2. 327 IAC 8-2-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-4 Inorganic chemicals; maximum contaminant levels

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 4. (a) The following MCLs for inorganic chemicals apply to all community water systems, nontransient noncommunity water systems, and transient noncommunity systems except as provided in subsection (b):

Contaminant	Level in Milligrams Per Liter
Nitrate	10 (as nitrogen)
Nitrite	1 (as nitrogen)
Nitrate and nitrite	10 (as nitrogen)

(b) The commissioner may allow nitrate levels up to, but not to exceed, twenty (20) milligrams per liter in a noncommunity water system if the supplier of water meets all of the following conditions:

(1) Such water will not be available to children under six (6) months of age.

(2) There will be continuous posting of the fact that nitrate levels exceed ten (10) milligrams per liter and the potential health effects of exposure.

(3) Local and state public health authorities shall be notified annually of nitrate levels that exceed ten (10) milligrams per liter.

(4) No adverse health effects shall result.

(5) The commissioner may require additional notice to the public as provided by 327 IAC 8-2.1-14.

(c) The following MCL for fluoride applies to all community water systems:

Contaminant	Level in Milligrams Per Liter
Fluoride	4.0

(d) The following MCLs for inorganic chemicals apply to all community water systems and nontransient noncommunity water systems:

Contaminant	Level in Milligrams Per Liter Except Asbestos
Antimony	0.006
Arsenic	~~0.05~~ **0.010**[1]
Asbestos	7 (MFL)[+2]
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (free)	0.2
Mercury	0.002
Selenium	0.05
Thallium	0.002

[1]Effective January 1, 2006. Until then, the arsenic MCL is 0.05 mg/l.

[+2]MFL = million fibers per liter greater than ten (10) micrometers.

(e) For the inorganic chemicals listed in this section and nickel, the monitoring frequency is specified in section 4.1 of this rule and analytical methods are specified in section 4.2 of this rule.

(f) The commissioner hereby identifies the following as the best available technology, treatment technique, or other means available for achieving compliance with the MCLs for inorganic contaminants identified in subsections (a), (c), and (d), except fluoride:

BAT for Inorganic Chemicals Listed in This Section

Chemical Name	BATs
Antimony	2,7
Arsenic[4]	**1, 2, 5, 6, 7, 9, 12[5]**
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6[2],7
Cyanide	5,7,10
Mercury	2[1],4,6[1],7[1]
Nitrate	5,7,9
Nitrite	5,7
Selenium	1,2[3],6,7,9
Thallium	1,5

[1]BAT only if influent mercury concentrations less than ten (10) micrograms per liter.

[2]BAT for Chromium III only.

[3]BAT for Selenium IV only.

[4]BATs for Arsenic V. Preoxidation may be required to convert Arsenic III to Arsenic V. Arsenic BATs apply beginning January 1, 2006.

[5]To obtain high removals, iron to arsenic ratio must be at least 20:1.

Key to BATs in Table

1 = Activated alumina

2 = Coagulation/filtration **(not BAT for systems < 500 service connections)**

3 = Direct and diatomite filtration

4 = Granular activated carbon

5 = Ion exchange

6 = Lime softening **(not BAT for systems < 500 service connections)**

7 = Reverse osmosis

8 = Corrosion control

9 = Electrodialysis

10 = Chlorine

11 = Ultraviolet

12 = Oxidation/filtration

(g) The commissioner, pursuant to Section 1412 of the Act, hereby identifies in the following table the affordable technology, treatment technique, or other means available to systems serving ten thousand (10,000) persons or fewer for achieving compliance with the maximum contaminant level for arsenic that will be applicable beginning January 1, 2006:

Small System Compliance Technologies (SSCTs)[1] for Arsenic[2]

Small system compliance technology	Affordable for listed small system categories[3]
Activated alumina (centralized)	**All size categories**
Activated alumina (point-of-use)[4]	**All size categories**
Coagulation/filtration[5]	**501-3,300, 3,301-10,000**
Coagulation-assisted microfiltration	**501-3,300, 3,301-10,000**
Electrodialysis reversal[6]	**501-3,300, 3,301-10,000**
Enhanced coagulation/filtration	**All size categories**
Enhanced lime softening (pH > 10.5)	**All size categories**
Ion exchange	**All size categories**
Lime softening[5]	**501-3,300, 3,301-10,000**
Oxidation/filtration[7]	**All size categories**
Reverse osmosis (centralized)[6]	**501-3,300, 3,301-10,000**
Reverse osmosis (point-of-use)[4]	**All size categories**

[1]Section 1412(b)(4)(E)(ii) of the Act specifies that SSCTs must be affordable and technically feasible for small systems.

[2]SSCTs for Arsenic V. Preoxidation may be required to convert

Arsenic III to Arsenic V.

[3]The Act (ibid.) specifies three (3) categories of small systems as follows:

(A) Those serving twenty-five (25) or more, but fewer than five hundred one (501).

(B) Those serving more than five hundred (500), but fewer than three thousand three hundred one (3,301).

(C) Those serving more than three thousand three hundred (3,300), but fewer than ten thousand one (10,001).

[4]When POU or POE devices are used for compliance, programs to ensure proper long term operation, maintenance, and monitoring must be provided by the water system to ensure adequate performance.

[5]Unlikely to be installed solely for arsenic removal. May require pH adjustment to optimal range if high removals are needed.

[6]Technologies reject a large volume of water; may not be appropriate for areas where water quantity may be an issue.

[7]To obtain high removals, iron to arsenic ratio must be at least 20:1.

(Water Pollution Control Board; 327 IAC 8-2-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 706; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1006; filed Aug 24, 1994, 8:15 a.m.: 18 IR 22; filed Aug 25, 1997, 8:00 a.m.: 21 IR 34; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1079)

SECTION 3. 327 IAC 8-2-4.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-4.1 Collection of samples for inorganic chemical testing

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 4.1. (a) Community water systems shall conduct monitoring to determine compliance with the MCLs specified in section 4(a), 4(c), and 4(d) of this rule in accordance with this section. Nontransient noncommunity water systems shall conduct monitoring to determine compliance with the MCLs specified in section 4(a) and 4(d) of this rule in accordance with this section. Transient noncommunity water systems shall conduct monitoring to determine compliance with the MCLs specified in section 4(a) of this rule in accordance with this section.

(b) When a contaminant listed in section 4 of this rule exceeds the MCL, the supplier of water shall report to the commissioner under section 13 of this rule and shall give notice to the public under 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Monitoring after public notification shall be at a frequency designated by the commissioner and shall continue until the MCL has not been exceeded in two (2) successive samples or until a monitoring schedule as a condition to an enforcement action shall become effective.

(c) Monitoring shall be conducted as follows:

(1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system ~~which~~ **that** is representative of each well after treatment (hereafter called a sampling point) beginning in the compliance period starting January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems, including systems with a combination of surface and ground sources, shall take a minimum of one (1) sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point ~~which~~ **that** is representative of each source after treatment (hereafter called a sampling point) beginning in the compliance period beginning January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(3) If a system draws water from more than one (1) source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions, for example, when water is representative of all sources being used.

(4) The commissioner may reduce the total number of samples ~~which~~ **that** must be analyzed by allowing the use of compositing. Composite samples from a maximum of five (5) samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($^1/_5$) of the MCL. Compositing of samples must be completed in the laboratory as follows:

(A) When a composite sample is analyzed, if the concentration in the composite sample is greater than or equal to one-fifth ($^1/_5$) of the MCL of any inorganic chemical, then a follow-up sample must be analyzed within fourteen (14) days at each sampling point included in the composite. These samples must be analyzed for the contaminants ~~which~~ **that** exceeded one-fifth ($^1/_5$) of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are the following:

Contaminant	MCL (mg/l)	Methodology	Detection Limit (mg/l)
Antimony	0.006	Atomic absorption; furnace	0.003
		Atomic absorption; platform	0.0008[5]
		ICP-mass spectrometry	0.0004
		Hydride-atomic absorption	0.001
Arsenic	**0.010[6]**	**Atomic absorption; furnace**	**0.001**
		Atomic absorption; platform - stabilized temperature	**0.0005[7]**
		Atomic absorption; gaseous hydride	**0.001**
		ICP-mass spectrometry	**0.0014[8]**
Asbestos	7 MFL[1]	Transmission electron microscopy	0.01 MFL
Barium	2	Atomic absorption; furnace	0.002
		Atomic absorption; direct aspiration	0.1
		Inductively coupled plasma	0.002
			(0.001)
Beryllium	0.004	Atomic absorption; furnace	0.0002
		Atomic absorption; platform	0.00002[5]
		Inductively coupled plasma[2]	0.0003
		ICP-mass spectrometry	0.0003

Cadmium	0.005	Atomic absorption; furnace	0.0001
		Inductively coupled plasma	0.001
Chromium	0.1	Atomic absorption; furnace	0.001
		Inductively coupled plasma	0.007
			(0.001)
Cyanide	0.2	Distillation, spectrophotometric[3]	0.02
		Distillation, automated spectrophotometric[3]	0.005
		Distillation, selective electrode[3]	0.05
		Distillation, amenable, spectrophotometric[4]	0.02
Fluoride	4.0	Colorimetric SPADNS; with distillation	0.1
		Potentiometric ion selective electrode	0.1
		Automated alizarin fluoride blue; with distillation (complexone)	0.05
		Automated ion selective electrode	0.1
Mercury	0.002	Manual cold vapor technique	0.0002
		Automated cold vapor technique	0.0002
Nitrate	10 (as N)	Manual cadmium reduction	0.01
		Automated hydrazine reduction	0.01
		Automated cadmium reduction	0.05
		Ion selective electrode	1
		Ion chromatography	0.01
Nitrite	1 (as N)	Spectrophotometric	0.01
		Automated cadmium reduction	0.05
		Manual cadmium reduction	0.01
		Ion chromatography	0.004
Selenium	0.05	Atomic absorption; furnace	0.002
		Atomic absorption; gaseous hydride	0.002
Thallium	0.002	Atomic absorption; furnace	0.001
		Atomic absorption; platform	0.0007[5]
		ICP-mass spectrometry	0.0003

[1]MFL = million fibers per liter greater than ten (10) micrometers.

[2]Using a 2× preconcentration step as noted in Method 200.7. Lower method detection limits may be achieved when using a 4× preconcentration.

[3]Screening method for total cyanides.

[4]Measures "free" cyanides.

[5]Lower method detection limits are reported using stabilized temperature graphite furnace atomic absorption.

[6]The value for arsenic is effective January 1, 2006. Until then, the MCL is 0.05 mg/l.

[7]The MDL reported for EPA Method 200.9 (Atomic Absorption; Platform - Stabilized Temperature) was determined using a 2× concentration step during sample digestion. The MDL determined for samples analyzed using direct analyses, that is, no sample digestion, will be higher. Using multiple depositions, EPA 200.9 is capable of obtaining MDL of 0.0001 mg/l.

[8]Using selective ion monitoring, EPA Method 200.8 (ICP-MS) is capable of obtaining a MDL of 0.0001 mg/l.

(B) If the population served by the system is greater than three thousand three hundred (3,300) persons, then compositing may only be permitted by the commissioner at sampling points within a single system. In systems serving ~~less~~ **fewer** than or equal to three thousand three hundred (3,300) persons, the commissioner may permit compositing among different systems provided the five (5) sample limit is maintained.

(C) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use these instead of resampling. The duplicate must be analyzed and the results reported to the commissioner within fourteen (14) days after completing analysis of the composite sample, provided the holding time of the sample is not exceeded.

(5) The frequency of monitoring for:

(A) asbestos shall be in accordance with subsection (d);

(B) antimony, **arsenic,** barium, beryllium, cadmium, chromium, cyanide, fluoride, nickel, mercury, selenium, and thallium shall be in accordance with subsection (e);

(C) nitrate shall be in accordance with subsection (f); **and**

(D) nitrite shall be in accordance with subsection (g). ~~and~~

~~(E) arsenic shall be in accordance with subsection (l).~~

(d) The frequency of monitoring conducted to determine compliance with the MCL for asbestos specified in section 4(d) of this rule shall be conducted as follows:

(1) Each community and nontransient noncommunity water system is required to monitor for asbestos during the first three (3) year compliance period of each nine (9) year compliance cycle beginning in the compliance period starting January 1, 1993.

(2) If the system believes it is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, it may apply to the commissioner for a waiver of the monitoring requirement in subdivision (1). If the commissioner grants the waiver, the system is not required to monitor.

(3) The commissioner may grant a waiver based upon a consideration of the following factors:

(A) Potential asbestos contamination of the water source.

(B) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(4) A waiver remains in effect for the initial monitoring of the first three (3) year compliance period. Systems not receiving a waiver must monitor in accordance with ~~the provisions of~~ subdivision (1).

(5) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one (1) sample at a tap

served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(6) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with ~~the provision of~~ subsection (c).

(7) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(8) A system ~~which~~ **that** exceeds the MCLs as determined in section 4 of this rule shall monitor quarterly beginning in the next quarter after the violation occurred.

(9) The commissioner may decrease the quarterly monitoring requirement to the frequency specified in subdivision (1) provided the commissioner has determined that the system is reliably and consistently below the MCL. In no case can the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four (4) quarterly samples.

(10) If monitoring data collected after January 1, 1990, are generally consistent with ~~the requirements of~~ this subsection, then the commissioner may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(e) The frequency of monitoring conducted for nickel and to determine compliance with the MCLs in section 4 of this rule for antimony, **arsenic,** barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium shall be as follows:

(1) Ground water systems shall take one (1) sample at each sampling point during each compliance period. Surface water systems (or combined surface/ground) shall take one (1) sample annually at each sampling point.

(2) The system may apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision (1).

(3) A condition of the waiver shall require that a system take a minimum of one (1) sample while the waiver is effective. The term during which the waiver is effective shall not exceed one (1) compliance cycle, which is nine (9) years.

(4) The commissioner may grant a waiver provided surface water systems have monitored annually for at least three (3) years and ground water systems have conducted a minimum of three (3) rounds of monitoring. (At least one (1) sample shall have been taken since January 1, 1990.) Both surface and ground water systems shall demonstrate that all previous analytical results were less than the maximum contaminant level. Systems that use a new water source are not eligible for a waiver until three (3) rounds of monitoring from the new source have been completed. The commissioner may grant a public water system a waiver for monitoring of cyanide, provided that the commissioner determines that the system is not vulnerable due to lack of any industrial source of cyanide.

(5) In determining the appropriate reduced monitoring frequency, the commissioner shall consider the following:

(A) Reported concentrations from all previous monitoring.

(B) The degree of variation in reported concentrations.

(C) Other factors ~~which~~ **that** may affect contaminant concentrations such as **changes in:**

(i) ~~changes in~~ ground water pumping rates;

(ii) ~~changes in~~ the system's configuration;

(iii) ~~changes in~~ the system's operating procedures; or

(iv) ~~changes in~~ stream flows or characteristics.

(6) A decision by the commissioner to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the commissioner or upon an application by the public water system. The public water system shall specify the basis for its request. The commissioner shall review and, where appropriate, revise the determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency becomes available.

(7) Systems ~~which~~ **that** exceed the MCLs as calculated in subsection (k) shall monitor quarterly beginning in the next quarter after the violation occurred.

(8) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivisions (1) and (2) provided it has determined that the system is reliably and consistently below the MCL. In no case can the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(9) All new systems or systems that use a new source of water that begin operation after January 1, 2004, must demonstrate compliance with the MCL within a period of time specified by the commissioner. The system must also comply with the initial sampling frequencies specified by the commissioner to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with this section.

(f) All public water systems (community, nontransient noncommunity, and transient noncommunity systems) shall monitor to determine compliance with the MCL for nitrate in section 4(a) of this rule under the following monitoring schedules:

(1) Community and nontransient noncommunity water systems served by ground water systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993.

(2) For community and nontransient noncommunity water systems, the repeat monitoring frequency for ground water systems shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty percent (50%) of the MCL. The commissioner may allow a ground water system to reduce the sampling frequency to annually after four (4) consecutive quarterly samples are reliably and consistently less than the MCL.

(3) For community and nontransient noncommunity water systems, the commissioner may allow a surface water system to reduce the sampling frequency to annually if all analytical results from four (4) consecutive quarters are less than fifty percent (50%) of the MCL. A surface water system shall return to quarterly monitoring if any one (1) sample is greater than or equal to fifty percent (50%) of the MCL.

(4) Each transient noncommunity water system shall monitor annually beginning January 1, 1993.

(5) After the initial round of quarterly sampling is completed, each community and nontransient noncommunity system ~~which~~ **that** is monitoring annually shall take subsequent samples during the quarter ~~which~~ **that** previously resulted in the highest analytical result.

(g) All public water systems (community, nontransient noncommunity, and transient noncommunity systems) shall monitor to determine compliance with the MCL for nitrite in section 4(a) of this rule under the following monitoring schedules:

(1) All public water systems shall take one (1) sample at each sampling point in the compliance period beginning January 1, 1993, and ending December 31, 1995.

(2) After the initial sample, systems where an analytical result for nitrite is less than fifty percent (50%) of the MCL shall monitor at the frequency specified by the commissioner.

(3) For community, nontransient noncommunity, and transient noncommunity water systems, the repeat monitoring frequency for any water system shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty percent (50%) of the MCL. The commissioner may allow a system to reduce the sampling frequency from quarterly to annually after determining the system is reliably and consistently less than the MCL.

(4) Systems ~~which~~ **that** are monitoring annually shall take each subsequent sample during the quarter ~~which~~ **that** previously resulted in the highest analytical result.

(h) Confirmation sampling shall be as follows:

(1) Where the results of sampling for:

(A) antimony;
(B) arsenic;
(C) asbestos;
(D) barium;
(E) beryllium;
(F) cadmium;
(G) chromium;
(H) cyanide;
(I) fluoride;
(J) mercury;
(K) selenium; or
(L) thallium;

indicate the MCL has been exceeded, the commissioner may require that one (1) additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two (2) weeks) at the same sampling point.

(2) Where nitrate or nitrite sampling results indicate the MCL has been exceeded, the system shall take a confirmation sample within twenty-four (24) hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the twenty-four (24) hour sampling requirement must immediately notify the consumers served by the public water system in accordance with 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Systems exercising this option must take and analyze a confirmation sample within two (2) weeks of notification of the analytical results of the first sample.

(3) If a commissioner-required confirmation sample is taken for any contaminant, the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with subsection (k). The commissioner has the discretion to delete results of obvious sampling errors.

(i) The commissioner may require:

(1) more frequent monitoring than specified in subsections (d) through (g); or ~~may require~~

(2) confirmation samples;

for positive and negative results.

(j) Systems may apply to the commissioner to conduct more frequent monitoring than the minimum monitoring frequencies specified in this section.

(k) Compliance with section 4 of this rule shall be determined based on the analytical results obtained at each sampling point in the following manner:

(1) For systems ~~which~~ **that** are conducting monitoring at a frequency greater than annual, compliance with the MCLs for:

(A) antimony;
(B) arsenic;
(C) asbestos;
(D) barium;
(E) beryllium;
(F) cadmium;
(G) chromium;
(H) cyanide;
(I) fluoride;
(J) mercury;
(K) selenium; or
(L) thallium;

is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one (1) sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero (0) for the purpose of determining the annual average. **If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.**

(2) For systems ~~which~~ **that** are monitoring annually, or less frequently, the system is out of compliance with the MCLs for:

(A) antimony;
(B) arsenic;
(C) asbestos;
(D) barium;
(E) beryllium;
(F) cadmium;
(G) chromium;
(H) cyanide;
(I) fluoride;
(J) mercury;
(K) selenium; or
(L) thallium;

if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the commissioner, the determination of compliance will be based on the **annual** average of the ~~two (2)~~ **initial MCL exceedance and any commissioner-required confirmation** samples. **If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.**

(3) Compliance with the MCLs for nitrate and nitrite is determined based on one (1) sample if the levels of these contaminants are below the MCLs. If the levels of nitrate or nitrite, or both, exceed the MCLs in the initial sample, a confirmation sample is required in accordance with subsection (h)(2), and compliance shall be determined based upon the average of the initial and confirmation samples.

(4) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commissioner may allow the system to give public notice to only the area served by that portion of the system ~~which~~ **that** is out of compliance.

(5) Beginning January 1, 2006, arsenic sampling results will be

reported to the nearest one-thousandth (0.001) mg/l.

~~(l) The frequency of monitoring conducted to determine compliance with the MCL for arsenic shall be as follows:~~

~~(1) Analyses for all community water systems utilizing surface water sources shall be sampled annually.~~

~~(2) Analyses for all community water systems utilizing only ground water sources shall be repeated at three (3) year intervals.~~

~~(3) The commissioner has the authority to determine compliance or initiate enforcement action based on analytical results.~~

~~(4) If the result of an analysis conducted as required in this section indicates that the results exceed the MCL as determined in section 4 of this rule, the supplier of water shall report to the state within seven (7) days and initiate three (3) additional analyses at the same sampling point within one (1) month.~~

~~(5) When the average of four (4) analyses made pursuant to this section, rounded to the same number of significant figures as the MCL for the arsenic, exceeds the MCL, the supplier of water shall notify the commissioner and give notice to the public under section 16 of this rule. Monitoring after public notification shall be at a frequency set by the commissioner and shall continue until the MCL has not been exceeded in two (2) consecutive samples or until a monitoring schedule as a condition to an enforcement action shall become effective~~.

~~(m)~~ **(l)** Each public water system shall monitor at the time designated by the commissioner during each compliance period.

~~(n)~~ **(m)** Sample collection for:

(1) antimony;
(2) arsenic;
(3) asbestos;
(4) barium;
(5) beryllium;
(6) cadmium;
(7) chromium;
(8) cyanide;
(9) fluoride;
(10) mercury;
(11) nickel;
(12) nitrate;
(13) nitrite;
(14) selenium; and
(15) thallium;

under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the following table:

Contaminant	Preservative[3]	Container[1]	Time[2]
Antimony	HNO_3	P or G	6 months
Arsenic	**HNO_3**	**P or G**	**6 months**
Asbestos	4°C	P or G	48 hours[4]
Barium	HNO_3	P or G	6 months
Beryllium	HNO_3	P or G	6 months
Cadmium	HNO_3	P or G	6 months
Chromium	HNO_3	P or G	6 months
Cyanide	4°C, NaOH	P or G	14 days
Fluoride	none	P or G	1 month
Mercury	HNO_3	P or G	28 days
Nickel	HNO_3	P or G	6 months
Nitrate	4°C	P or G	48 hours[5]
Nitrate-nitrite[6]	H_2SO_4	P or G	28 days
Nitrite	4°C	P or G	48 hours
Selenium	HNO_3	P or G	6 months
Thallium	HNO_3	P or G	6 months

[1]P = Plastic, hard or soft; G = glass.

[2]In all cases, samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers, or holding times that is specified in method.

[3]When indicated, samples must be acidified at the time of collection to pH < 2 with concentrated acid or adjusted with sodium hydroxide to pH > 12. When chilling is indicated the sample must be shipped and stored at four (4) degrees Celsius or less.

[4]Instructions for containers, preservation procedures, and holding times as specified in Method 100.2 must be adhered to for all compliance analyses including those conducted with Method 100.1.

[5]If the sample is chlorinated, the holding time for an unacidified sample kept at four (4) degrees Celsius is extended to fourteen (14) days.

[6]Nitrate-nitrite refers to a measurement of total nitrate.

(Water Pollution Control Board; 327 IAC 8-2-4.1; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1007; filed Aug 24, 1994, 8:15 a.m.: 18 IR 23; filed Aug 25, 1997, 8:00 a.m.: 21 IR 34; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1347; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3946; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1080)

SECTION 4. 327 IAC 8-2-4.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-4.2 Analytical methods for inorganic chemical testing

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 4.2. (a) Analyses conducted to determine compliance with section 4 of this rule shall be made in accordance with one (1) of the following methods* for each contaminant:

(1) Antimony as follows:
(A) Atomic absorption; furnace, Method 3113B*.
(B) Atomic absorption; platform, Method 200.9*.
(C) ICP-mass spectrometry, Method 200.8*.
(D) Hydride-atomic absorption, Method D-3697-92*.

(2) Arsenic* as follows:
(A) Atomic absorption; furnace, Method D-2972-93C* or Method 3113B*.
(B) Hydride-atomic adsorption, Method D-2972-93B* or Method 3114B*.
(C) Atomic absorption, platform, Method 200.9*.
(D) Inductively coupled plasma technique*, Method 200.7* or Method 3120B*.
(E) ICP-mass spectrometry, Method 200.8*.

(3) Asbestos, transmission electron microscopy, Method 100.1* or Method 100.2*.

(4) Barium as follows:
(A) Atomic absorption; furnace, Method 3113B*.
(B) Atomic absorption; direct, Method 3111D*.
(C) Inductively coupled plasma, Method 200.7* or Method 3120B*.
(D) ICP-mass spectrometry, Method 200.8*.

(5) Beryllium as follows:
(A) Atomic absorption; furnace, Method D-3645-93B or Method 3113B.

(B) Atomic absorption; platform, Method 200.9*.
(C) Inductively coupled plasma, Method 200.7* or Method 3120B*.
(D) ICP-mass spectrometry, Method 200.8.
(6) Cadmium as follows:
(A) Atomic absorption; furnace, Method 3113B*.
(B) Inductively coupled plasma, Method 200.7*.
(C) ICP-mass spectrometry, Method 200.8*.
(D) Atomic absorption; platform, Method 200.9*.
(7) Chromium as follows:
(A) Atomic absorption; furnace, Method 3113B*.
(B) Inductively coupled plasma, Method 200.7* or Method 3120B*.
(C) ICP-mass spectrometry, Method 200.8*.
(D) Atomic absorption; platform, Method 200.9*.
(8) Cyanide as follows:
(A) Manual distillation followed by:
(i) Spectrophotometric; amenable, Method D-2036-91B* or Method 4500-CN^-G*.
(ii) Spectrophotometric; manual, Method D-2036-91A*, Method 4500-CN^-E*, or Method I-3300-85*.
(iii) Spectrophotometric; semiautomated, Method 335.4*.
(iv) Method 4500-CN^-C*.
(v) Method D-2036-91A*.
(B) Selective electrode, Method 4500-CN-F*.
(9) Fluoride as follows:
(A) Ion chromatography, Method 300.0*, Method D-4327-91*, or Method 4110B*.
(B) Manual distillation; color. SPADNS, Method 4500F^-B, D*.
(C) Manual electrode, Method D1179-93B* or Method 4500F^-C*.
(D) Automated electrode, Method 380-75WE*.
(E) Automated alizarin, Method 4500F^-E* or Method 129-71W*.
(10) Mercury as follows:
(A) Manual cold vapor, Method 245.1, Method D3223-91*, or Method 3112B*.
(B) Automated cold vapor, Method 245.2*.
(C) ICP-mass spectrometry, Method 200.8*.
(11) Nickel as follows:
(A) Atomic absorption; furnace, Method 3113B*.
(B) Atomic absorption; platform, Method 200.9.
(C) Atomic absorption; direct, Method 3111B*.
(D) Inductively coupled plasma, Method 200.7* Method 3120B*.
(E) ICP-mass spectrometry, Method 200.8*.
(12) Nitrate as follows:
(A) Manual cadmium reduction, Method D3867-90B* or Method 4500-NO_3-E*.
(B) Automated cadmium reduction, Method 353.2*, Method D3867-90A*, or Method 4500-NO_3-F*.
(C) Ion selective electrode, Method 4500-NO_3-D* or Method 601*.
(D) Ion chromatography, Method 300.0*, Method D4327-91*, Method 4110B*, or Method B-1011*.
(13) Nitrite as follows:
(A) Ion chromatography, Method 300.0*, Method D4327-91*, Method 4110B*, or Method B-1011*.
(B) Automated cadmium reduction, Method 353.2*, Method D3867-90A*, or Method 4500-NO_3-F*.
(C) Manual cadmium reduction, Method D3867-90B* or Method 4500-NO_3-E*.
(D) Spectrophotometric, Method 4500-NO_2-B*.
(14) Selenium as follows:
(A) Hydride-atomic absorption, Method D3859-93A* or Method 3114B*.
(B) ICP-mass spectrophotometry, Method 200.8*.
(C) Atomic absorption; platform, Method 200.9*.
(D) Atomic absorption; furnace, Method D3859-93B* or Method 3113B*.
(15) Thallium as follows:
(A) Atomic absorption; platform, Method 200.9*.
(B) ICP-mass spectrometry, Method 200.8*.

(b) Analysis under this section shall only be conducted by laboratories that have been certified by EPA or the commissioner. Laboratories may conduct sample analyses under provisional certification until January 1, 1996. To receive certification to conduct analyses for antimony, **arsenic,** asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium, the laboratory must do the following:

(1) Successfully analyze performance evaluation (PE) samples provided by EPA, the commissioner, or by a third party with approval of the EPA or the commissioner, at least once a year.

(2) For each contaminant that has been included in the PE sample and for each method for which the laboratory desires certification achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance Limit
Antimony	±30% at ≥0.006 mg/l
Arsenic[1]	~~2 standard deviations based on study statistics~~ ± **30% at ≥ 0.003 mg/l**
Asbestos	2 standard deviations based on study statistics
Barium	±15% at ≥0.15 mg/l
Beryllium	±15% at ≥0.001 mg/l
Cadmium	±20% at ≥0.002 mg/l
Chromium	±15% at ≥0.01 mg/l
Cyanide	±25% at ≥0.1 mg/l
Fluoride	±10% at ≥1 to 10 mg/l
Mercury	±30% at ≥0.0005 mg/l
Nickel	±15% at ≥0.01 mg/l
Nitrate	±10% at ≥0.4 mg/l
Nitrite	±15% at ≥0.4 mg/l
Selenium	±20% at ≥0.01 mg/l
Thallium	±30% at ≥0.002 mg/l

[1]Acceptance limit effective January 1, 2006. Until then, limit should be two (2) standard deviations based on study statistics.

*Methods referenced in this section may be obtained as follows:

(1) Method 245.2, "Methods for Chemical Analysis or Water and Wastes", EPA-600/4-79-020, March 1983, available at NTIS, PB84-128677.

(2) Methods 200.8, 200.9, 200.7, and 245.1 may be found in "Methods for the Determination of Metals in Environmental Samples–Supplement I", EPA-600/94-111, May 1994, available from NTIS, PB95-125472, 800-553-6847.

(3) Methods D-3697-92, D-2972-93C, D-2972-93B, D-3645-93B, D2036-91B, D2036-91A, D4327-91, D1179-93B, D3223-91, D3867-90A, D3867-90B, D3859-93A, and D3859-93B, may be found in "Annual Book of ASTM Standards", 1994 and 1996, Vols. 11.01 and 11.02, American Society for Testing and Materials, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(4) Methods 3113B, 3120B, 3114B, 3111D, 4500-CN^-C, 4500-CN^-

G, 4500-CN^-E, 4500-CN^-F, 4110B, 4500F^-B, D, 4500F^-C, 4500F^-E, 3112B, 3111B, 4500-NO_3-F, 4500-NO_3-D, 4500-NO_3-E, and 4500-NO_2-B may be found in "18th Edition of Standard Methods for the Examination of Water and Wastewater", 1992, or "19th Edition of Standard Methods for the Examination of Water and Wastewater", 1995, American Public Health Association, available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. Either edition may be used.

(5) Method I-3300-85 may be found in Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A-1, 3rd Edition, 1989, available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, Colorado 80225-0425.

(6) Methods 335.4, 300.0, and 353.2 may be found in "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA-600/R-93-100, August 1993, available from NTIS, PB94-120821.

(7) Method 601 may be found in Technical Bulletin 601 "Standard Method of Test for Nitrate in Drinking Water", July 1994, PN 221890-001, Analytical Technology, Inc., available from ATI Orion, 529 Main Street, Boston, Massachusetts 02129.

(8) Method B-1011 may be found in "Waters Test Method for Determination of Nitrate/Nitrite in Water Using Single Column Ion Chromatography", August 1987, available from Waters Corporation, 34 Maple Street, Milford, Massachusetts 01757.

(9) Method 100.1 may be found in "Analytical Methods for Determination of Asbestos Fibers in Water", EPA-600/4-83-043, EPA, September 1983, available from NTIS, PB83-260471.

(10) Method 100.2 may be found in "Determination of Asbestos Structure Over 10-µm in Length in Drinking Water", EPA-600/R-94-134, June 1994, available from NTIS, PB94-201902.

(11) Method 129-71W may be found in "Fluoride in Water and Wastewater", December 1972, Technicon Industrial Systems, available from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, Illinois 60089.

(12) Method 380-75WE may be found in "Fluoride in Water and Wastewater", February 1976, Technicon Industrial Systems, available from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, Illinois 60089.

(13) Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2× preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis, that is, no sample digestion, will be higher. For direct analysis of cadmium and arsenic by Method 200.7 and arsenic by Method 3120 B, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559-90D unless multiple in-furnace depositions are made.

(14) If ultrasonic nebulization is used in the determination of arsenic by Method 200.7, 200.8, or 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For Methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of one hundred (100) µL of thirty percent (30%) hydrogen peroxide per one hundred (100) ml of solution. For direct analysis of arsenic with Method 200.8 using ultrasonic nebulization, samples and standards must contain one (1) mg/l of sodium hypochlorite.

(15) After January 1, 2006, analytical methods using the ICP-AES technology when analyzing for arsenic may not be used because the detection limits for these methods are eight-thousandths (0.008) mg/l or higher. This restriction means that the two (2) ICP-AES methods (Methods 200.7 and 3120 B) approved for use for the MCL of five-hundredths (0.05) mg/l may not be used for compliance determinations for the revised MCL of ten-thousandths (0.010) mg/l. However, prior to 2005, a system may have compliance samples analyzed with these less sensitive methods.

These methods are also available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2-4.2; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1008; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Aug 24, 1994, 8:15 a.m.: 18 IR 29; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 40; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3951)*

SECTION 5. 327 IAC 8-2-5.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.1 Collection of samples for organic chemical testing other than volatile organic compounds and total trihalomethanes

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5.1. To determine compliance with section 5(a) of this rule, collection of samples for organic chemical testing, other than volatile organic compounds and total trihalomethanes, shall be made as follows:

(1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system ~~which~~ **that** is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems, including those systems with a combination of surface and ground sources, shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(3) If the system draws water from more than one (1) source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions, such as when water representative of all sources is being used.

(4) The monitoring frequency is as follows:

(A) Each community and nontransient noncommunity water system shall take four (4) consecutive quarterly samples for each contaminant listed in section 5(a) of this rule during each compliance period beginning with the initial compliance period.

(B) Systems serving more than three thousand three hundred (3,300) persons ~~which~~ **that** do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of two (2) quarterly samples in one (1) year during each repeat compliance period.

(C) Systems serving less than or equal to three thousand three hundred (3,300) persons ~~which~~ **that** do not detect a contaminant in the initial compliance period may reduce the sampling fre-

quency to a minimum of one (1) sample during each repeat compliance period.

(5) Each community and nontransient noncommunity water system may apply to the commissioner for a waiver from the requirement of subdivision (4). A system must reapply for a waiver for each compliance period.

(6) The commissioner may grant a waiver after evaluating the knowledge of previous use, including transport, storage, or disposal of the contaminant within the watershed or zone of influence of the system. If a determination by the commissioner reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(A) Previous analytical results.

(B) The proximity of the system to a potential point or nonpoint source of contamination. (Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Nonpoint sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses).

(C) The environmental persistence and transport of the pesticide or polychlorinated biphenyls (PCBs).

(D) How well the water source is protected against contamination due to such factors as:

(i) depth of the well;

(ii) the type of soil; and

(iii) the integrity of the well casing.

(E) Elevated nitrate levels at the water supply source.

(F) Use of PCBs in equipment used in the production, storage, or distribution of water, including, but not limited to, PCBs used in pumps or transformers.

(7) If an organic contaminant listed in section 5(a) of this rule is detected as defined by subdivision (16), in any sample, then the monitoring requirements are as follows:

(A) Each system must monitor quarterly at each sampling point ~~which~~ **that** resulted in a detection.

(B) The commissioner may decrease the quarterly monitoring requirement specified in clause (A) provided it has determined that the system is reliably and consistently below the MCL. In no case shall the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(C) After the commissioner determines the system is reliably and consistently below the MCL, the commissioner may allow the system to monitor annually. Systems ~~which~~ **that** monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(D) Systems ~~which~~ **that** have three (3) consecutive annual samples with no detection of contaminant may apply to the commissioner for a waiver as specified in subdivision (6).

(E) If monitoring results in detection of one (1) or more of certain related contaminants:

(i) aldicarb;

(ii) aldicarb sulfoxide;

(iii) aldicarb sulfone;

(iv) heptachlor; and

(v) heptachlor epoxide;

then subsequent monitoring shall include analyses for all related contaminants.

(8) Systems ~~which~~ **that** violate ~~the requirements of~~ section 5(a) of this rule as determined by subdivision (11) must monitor quarterly. After a minimum of four (4) quarterly samples shows the system is in compliance and the commissioner determines the system is reliably and consistently below the MCL, as specified in subdivision (11), the system shall monitor at the frequency specified in subdivision (7)(C).

(9) The commissioner may require a confirmation sample for positive or negative results. If a confirmation sample is required by the commissioner, the result must be averaged with the first sampling result and the average used for the compliance determination as specified in subdivision (11). The commissioner has the discretion to delete results of obvious sampling errors from this calculation.

(10) The commissioner may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($^1/_5$) of the MCL. Compositing of samples must be done in the laboratory and analyzed within fourteen (14) days of sample collection in accordance with the following:

(A) When a composite sample is analyzed, if the concentration in the composite sample detects one (1) or more contaminants listed in section 5(a) of this rule, then a follow-up sample must be analyzed within fourteen (14) days from each sampling point included in the composite and analyzed for that contaminant.

(B) If duplicates of the original sample taken from each sampling point used in the composite samples are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the commissioner within fourteen (14) days after completion of the composite analysis or before the holding time for the initial sample is exceeded, whichever is sooner.

(C) If the population served by the system is greater than three thousand three hundred (3,300) persons, then compositing may only be permitted by the commissioner at sampling points within a single system. In systems serving less than or equal to three thousand three hundred (3,300) persons, the commissioner may permit compositing among different systems provided the five (5) sample limit is maintained.

(11) Compliance with section 5(a) of this rule shall be determined **such that, if one (1) sampling point is in violation of an MCL, the system is in violation of the MCL and** based on the analytical results obtained at each sampling point in the following manner:

(A) For systems ~~which~~ **that** are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. ~~If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero (0) for purposes of determining the annual average.~~

(B) ~~If~~ **Systems** monitoring ~~is conducted~~ annually, or less frequently, **whose sample results exceed the regulatory detection level as specified in subdivision (16) must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one (1) year of quarterly sampling.**

(C) If any sample result will cause the running annual average

to exceed the MCL at any sampling point, the system is out of compliance ~~if the level of a contaminant at any sampling point is greater than~~ **with** the MCL **immediately.**

(D) If a ~~confirmation sample is~~ **system fails to collect the** required ~~by the commissioner, the determination~~ **number** of **samples,** compliance will be based on the ~~average~~ **total number** of ~~two (2)~~ samples **collected.**

(E) If a sample result is less than the detection limit, zero (0) will be used to calculate the annual average.

(12) If monitoring data collected after January 1, 1990, are generally consistent with ~~the requirements of~~ this section and section 5.2 of this rule, then the commissioner may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period.

(13) The commissioner may increase the required monitoring frequency, where necessary, to detect variations within the system such as fluctuations in concentration due to seasonal use and changes in water source.

(14) The commissioner has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by the commissioner's sanctioned representatives or agencies, or both.

(15) Each public water system shall monitor at the time designated by the commissioner within each compliance period.

(16) Method detection levels for contaminants listed in section 5(a) of this rule are as follows:

Contaminant	Detection Limit (mg/l)
Alachlor	0.0002
Atrazine	0.0001
Benzo[a]pyrene	0.00002
Carbofuran	0.0009
Chlordane	0.0002
Dalapon	0.001
1,2-dibromo-3-chloropropane (DBCP)	0.00002
Di(2-ethylhexyl)adipate	0.0006
Di(2-ethylhexyl)phthalate	0.0006
Dinoseb	0.0002
Diquat	0.0004
2,4-D	0.0001
Endothall	0.009
Endrin	0.00001
Ethylene dibromide (EDB)	0.00001
Glyphosate	0.006
Heptachlor	0.00004
Heptachlor epoxide	0.00002
Hexachlorobenzene	0.0001
Hexachlorocyclopentadiene	0.0001
Lindane	0.00002
Methoxychlor	0.0001
Oxamyl	0.002
Picloram	0.0001
Polychlorinated biphenyls (PCBs) (as decachlorobiphenyl)	0.0001
Pentachlorophenol	0.00004
Simazine	0.00007
Toxaphene	0.001
2,3,7,8-TCDD (dioxin)	0.000000005
2,4,5-TP (silvex)	0.0002

(17) All new systems or systems that use a new source of water that begin operation after January 1, 2004, must demonstrate compliance with the MCL within a period of time specified by the commissioner. The system must also comply with the initial sampling frequencies specified by the commissioner to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

(Water Pollution Control Board; 327 IAC 8-2-5.1; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1010; filed Aug 24, 1994, 8:15 a.m.: 18 IR 33; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 44; filed Apr 21, 1999, 3:22 p.m.: 22 IR 2862; errata filed Apr 28, 1999, 6:36 p.m.: 22 IR 2883; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3953; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1084)

SECTION 6. 327 IAC 8-2-5.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.2 Analytical methods for organic chemical testing other than volatile organic compounds and total trihalomethanes

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5.2. (a) Analysis for the contaminants listed in section 5(a) of this rule shall be conducted using the following EPA methods or their ~~equivalent~~ **equivalents** as approved by EPA established as follows:

(1) Dioxin, as described in Method 1613*.

(2) 2,4-D[3] (as acid, salts, and esters), as described in Method 515.2, Rev 1.1*, Method 555*, Method 515.1*, Method 515.3*, or Method D5317-93*.

(3) 2,4,5-TP[3] (silvex), as described in Method 515.2, Rev 1.1*, Method 555*, Method 515.1*, Method 515.3*, or Method D5317-93*.

(4) Alachlor[1], as described in Method 505, Rev 2.1*, Method 507, Rev 2.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.

(5) Atrazine[1], as described in Method 505, Rev 2.1*, Method 507, Rev 2.1*, Method 525.1*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.

(6) Benzo(a)pyrene, as described in Method 525.2, Rev 2.0*, Method 550*, or Method 550.1*.

(7) Carbofuran, as described in Method 531.1, Rev 3.1*, or Method 6610*.

(8) Chlordane, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, or Method 508.1, Rev 2.0*.

(9) Dalapon, as described in Method 552.1, Rev 1.0*, Method 515.1*, Method 552.2, Rev 1.0*, or Method 515.3*.

(10) Di(2-ethylhexyl)adipate, as described in Method 506, Rev 1.1* or Method 525.2, Rev 2.0*.

(11) Di(2-ethylhexyl)phthalate, as described in Method 506, Rev 1.1* or Method 525.2, Rev 2.0*.

(12) Dibromochloropropane (DBCP), as described in Method 504.1, Rev 1.1* or Method 551.1, Rev 1.0*.

(13) Dinoseb[3], as described in Method 515.2, Rev 1.1*, Method 555*, Method 515.1*, or Method 515.3*.

(14) Diquat, as described in Method 549.2*.

(15) Endothall, as described in Method 548.1*.

(16) Endrin, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.

(17) Ethylene dibromide (EDB), as described in Method 504.1, Rev 1.1* or Method 551.1, Rev 1.0*.
(18) Glyphosate, as described in Method 547* or Method 6651*.
(19) Heptachlor, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
(20) Heptachlor epoxide, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
(21) Hexachlorobenzene, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
(22) Hexachlorocyclopentadiene, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
(23) Lindane, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.1*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
(24) Methoxychlor, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.1*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
(25) Oxymyl, as described in Method 531.1, Rev 3.1* or Method 6610*.
(26) PCBs[1]:
(A) as decachlorobiphenyl, as described in Method 508A*; or
(B) as arochlors, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, or Method 508.1, Rev 2.0*.
(27) Pentachlorophenol, as described in Method 515.2, Rev 1.1*, Method 525.2, Rev 2.0*, Method 555*, Method 515.1*, Method 515.3*, or Method D5317-93*.
(28) Picloram[3], as described in Method 515.2, Rev 1.1*, Method 555*, Method 515.1*, Method 515.3* or Method D5317-93*.
(29) Simazine[1], as described in Method 505, Rev 2.1*, Method 507, Rev 2.1*, Method 525.2, Rev 2.0*, Method 508.1, Rev 2.0*, or Method 551.1, Rev 1.0*.
(30) Toxaphene, as described in Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 525.2, Rev 2.0*, or Method 508.1, Rev 2.0*.

[1]Substitution of the detector specified in Method 505, Rev2.1, Method 507, Rev 2.1, Method 508, Rev 3.1, or Method 508.1, Rev 3.0 for the purpose of achieving lower detection limits is allowed as follows. Either an electron capture or nitrogen phosphorus detector may be used provided all regulatory requirements and quality control criteria are met.

[2]PCBs are qualitatively identified as Arochlors and measured for compliance purposes as decachlorobiphenyl. Users of Method 505, Rev 2.1 may have more difficulty in achieving the required detection limits than users of Method 508.1, Rev 2.0, Method 525.2, Rev 2.0 or Method 508, Rev 3.1.

[3]Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in Method 515.1, Method 515.2, Rev 1.1, Method 515.3, Method 555, and Method D5317-93.

(b) Analysis for PCBs shall be conducted as follows using the methods in subsection (a):
(1) Each system ~~which~~ **that** monitors for PCBs shall analyze each sample using either Method 505, Rev 2.1*, Method 508, Rev 3.1*, Method 508.1, Rev 2.0*, or Method 525.2, Rev 2.0*. Users of Method 505, Rev 2.1 may have more difficulty in achieving the required Arochlor detection limits than users of Method 508.1, Rev 2.0, Method 525.2, Rev 2.0 or Method 508, Rev 3.1.
(2) If PCBs (as one (1) of seven (7) arochlors) are detected, as designated as follows, in any sample analyzed using Method 505, Rev 2.1* or Method 508, Rev 3.1*, the system shall reanalyze the sample using Method 508A* to quantitate PCBs (as decachlorobiphenyl):

Arochlor	Detection Limit (mg/l)
1016	0.00008
1221	0.02
1232	0.0005
1242	0.0003
1248	0.0001
1254	0.0001
1260	0.0002

(3) Compliance with the PCB maximum contaminant level shall be determined based upon the quantitative results of analyses using Method 508A*.

(c) Analysis under this section shall only be conducted by laboratories that have received certification by EPA or the commissioner and have met the following conditions:
(1) Successfully analyze performance evaluation (PE) samples provided by the EPA, the commissioner, or by a third party with the approval of the EPA or the commissioner, at least once per year by each method for which the laboratory desires certification.
(2) For each contaminant that has been included in the PE sample achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance Limits (Percent)
DBCP	±40
EDB	±40
Alachlor	±45
Atrazine	±45
Benzo(a)pyrene	2 standard deviations
Carbofuran	±45
Chlordane	±45
Dalapon	2 standard deviations
Di(2-ethylhexyl)adipate	2 standard deviations
Di(2-ethylhexyl)phthalate	2 standard deviations
Dinoseb	2 standard deviations
Diquat	2 standard deviations
Endothall	2 standard deviations
Endrin	±30
Glyphosate	2 standard deviations
Heptachlor	±45
Heptachlor epoxide	±45
Hexachlorobenzene	2 standard deviations
Hexachlorocyclopentadiene	2 standard deviations
Lindane	±45
Methoxychlor	±45
Oxamyl	2 standard deviations
PCBs (as decachlorobiphenyl)	0-200
Picloram	2 standard deviations
Simazine	2 standard deviations
Toxaphene	±45
Pentachlorophenol	±50
2,3,7,8-TCDD (dioxin)	2 standard deviations
2,4-D	±50

2,4,5-TP (silvex) ±50

*The methods referenced in this section may be obtained as follows:

(1) Method 508A and Method 515.1 may be found in "Methods for the Determination of Organic Compounds in Drinking Water", EPA-600/4-88-039, December 1988, revised July 1991, available from NTIS, PB91-231480, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(2) Methods 547, 550, and 550.1 may be found in "Methods for the Determination of Organic Compounds in Drinking Water–Supplement I", EPA-600-4-90-020, July 1990, available from NTIS, PB91-146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(3) Methods 548.1, 549.1, 552.1, and 555 may be found in "Methods for the Determination of Organic Compounds in Drinking Water–Supplement II", EPA-600/R-92-129, August 1992, available from NTIS, PB92-207703, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(4) Methods **502.2,** 504.1, Rev 1.1, 505, Rev 2.1, 506, Rev 1.1, 507, Rev 2.1, 508, Rev 3.1, 508.1, Rev 2.0, 515.2, Rev 1.1, **524.2,** 525.2, Rev 2.0, 531.1, Rev 3.1, 551.1, Rev 1.0, and 552.2, Rev 1.0 may be found in "Methods for the Determination of Organic Compounds in Drinking Water - Supplement III", EPA-600/R-95-131, August 1995, available from NTIS, PB95-261616, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(5) Method 1613 may be found in "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS", EPA 821-B-94-005, October 1994, available from NTIS, PB95-104774, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(6) Method 6651 may be found in "18th Edition of Standard Methods for the Examination of Water and Wastewater" and "19th Edition of Standard Methods for the Examination of Water and Wastewater", 1992 and 1995, American Public Health Association, available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. Either edition may be used.

(7) Method 6610 may be found in "Supplement to the 18th Edition of Standard Methods for Water and Wastewater" or "19th Edition of Standard Methods for the Examination of Water and Wastewater", 1994 and 1995, American Public Health Association, available from the National Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005. Either publication may be used.

(8) Other required analytical test procedures germane to the conduct of these analyses are contained in "Technical Notes of Drinking Water Methods", EPA/600/R-94-173, October 1994, available from NTIS, PB95-104766, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(9) EPA Methods 515.3 and 549.2 are available from U.S. EPA National Exposure Research Laboratory (NERL), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268; the phone number is (513) 569-7586.

(10) **ASTM** Method D5317-93 may be found in the "Annual Book of ASTM Standards", 1996, Vol. 11.02, available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. Method D5317-93 may also be found in any other edition of the "Annual Book of ASTM Standards" published from 1993 until the effective date of this rule.

These methods are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2-5.2; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1011; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Aug 24, 1994, 8:15 a.m.: 18 IR 35; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 46; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1347; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3956)*

SECTION 7. 327 IAC 8-2-5.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.5 Collection of samples for volatile organic compound testing other than total trihalomethanes; community and nontransient noncommunity water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5.5. ~~(a)~~ Community water systems and nontransient noncommunity water systems shall collect samples for volatile organic compound testing in order to determine compliance with section 5.4 of this rule, beginning with the initial compliance period, as follows:

(1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system ~~which~~ **that** is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point, unless conditions make another sampling point more representative of each source or treatment plant, or within the distribution system.

(2) Surface water systems (or combined surface/ground) shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point, unless conditions make another sampling point more representative of each source or treatment plant, or within the distribution system.

(3) If the system draws water from more than one (1) source and sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions such as when water representative of all sources is being used.

(4) Each community and nontransient noncommunity water system shall take four (4) consecutive quarterly samples for each contaminant listed in section 5.4 of this rule, except vinyl chloride, during each compliance period, beginning in the initial compliance period.

(5) If the initial monitoring for contaminants listed in section 5.4 of this rule, as allowed by ~~subsection (b),~~ **subdivision (16),** has been completed by December 31, 1992, and the system did not detect any contaminant listed in section 5.4 of this rule, then each ground and surface water system shall take one (1) sample annually beginning with the initial compliance period.

(6) After a minimum of three (3) years of annual sampling, the commissioner may allow ground water systems with no previous detection of any contaminant listed in section 5.4 of this rule to take one (1) sample during each compliance period.

(7) Each community and nontransient noncommunity ground water system ~~which~~ **that** does not detect a contaminant listed in section 5.4 of this rule may apply to the commissioner for a waiver from ~~the requirements of~~ subdivisions (5) and (6) after completing the initial monitoring. As used in this section, "detection" means greater than or equal to five ten-thousandths (0.0005) milligram per liter. A waiver shall be effective for no more than six (6) years (two (2) compliance periods). The commissioner may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

(8) The commissioner may grant a waiver after evaluating the following factors:

(A) Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the commissioner reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted.

(B) If previous use of the contaminant is unknown or if the contaminant has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(i) Previous analytical results.

(ii) The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.

(iii) The environmental persistence and transport of the contaminants.

(iv) The number of persons served by the public water system, and the proximity of a smaller system to a larger system.

(v) How well the water source is protected against contamination, such as whether it is a surface or ground water system. Ground water systems must consider factors such as the depth of the well, the type of soil, and wellhead protection. Surface water systems must consider watershed protection.

(9) As a condition of the waiver, a ground water system must take one (1) sample at each sampling point during the time the waiver is effective, for example, one (1) sample during two (2) compliance periods or six (6) years, and update its vulnerability assessment considering the factors listed in subdivision (8). Based on this vulnerability assessment, the commissioner must reconfirm that the system is nonvulnerable. If the commissioner does not make this reconfirmation within three (3) years of the initial determination, then the waiver is invalidated and the system is required to sample annually as specified in subdivision (5).

(10) Each community and nontransient noncommunity surface water system ~~which~~ **that** does not detect a contaminant listed in section 5.4 of this rule may apply to the commissioner for a waiver from ~~the requirements of~~ subdivision (5) after completing the initial monitoring. Composite samples from a maximum of five (5) sampling points are allowed provided that the detection limit of the method used for analysis is less than one-fifth ($^1/_5$) of the MCL. Systems meeting this criterion must be determined by the commissioner to be nonvulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the commissioner (if any).

(11) If a contaminant listed in section 5.4 of this rule, except vinyl chloride, is detected at a level exceeding five ten-thousandths (0.0005) milligram per liter in any sample, then the monitoring requirements will be as follows:

(A) The system must monitor quarterly at each sampling point ~~which~~ **that** resulted in a detection.

(B) The commissioner may decrease the quarterly monitoring requirement specified in clause (A) provided it has determined that the system is reliably and consistently below the MCL. In no case shall the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(C) If the commissioner determines that the system is reliably and consistently below the MCL, the commissioner may allow the system to monitor annually. Systems ~~which~~ **that** monitor annually must monitor during the quarter or quarters ~~which~~ **that** previously yielded the highest analytical result.

(D) Systems ~~which~~ **that** have three (3) consecutive annual samples with no detection of a contaminant may apply to the commissioner for a waiver as specified in subdivision (7).

(E) Ground systems ~~which~~ **that** have detected one (1) or more two-carbon organic compounds:

(i) trichloroethylene;

(ii) tetrachloroethylene;

(iii) 1,2-dichloroethane;

(iv) 1,1,1-trichloroethane;

(v) cis-1,2-dichloroethylene;

(vi) trans-1,2-dichloroethylene; or

(vii) 1,1-dichloroethylene;

shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one (1) or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the commissioner may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one (1) sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the commissioner.

(12) Systems ~~which~~ **that** violate ~~the requirements of~~ section 5.4 of this rule, as determined by subdivision (15), must monitor quarterly. After a minimum of four (4) consecutive quarterly samples ~~which~~ **that** show the system is in compliance as specified in subdivision (15) if the commissioner determines that the system is reliably and consistently below the MCL, the system may monitor at the frequency and times specified in subdivision (11)(C).

(13) The commissioner may require a confirmation sample for positive or negative results. If a confirmation sample is required by the commissioner, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by subdivision (15). The commissioner has the discretion to delete results of obvious sampling errors from this calculation.

(14) The commissioner may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($^1/_5$) of the MCL. Compositing of samples must be done in the laboratory and analyzed within fourteen (14) days of sample collection as follows:

(A) If the concentration in the composite sample is greater than or equal to five ten-thousandths (0.0005) milligram per liter for any contaminant listed in section 5.4 of this rule, then a follow-up sample must be analyzed within fourteen (14) days from each sampling point included in the composite, and be analyzed for that contaminant.

(B) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use the duplicates instead of resampling. The duplicates must be analyzed and the results reported to the commissioner within fourteen (14) days after completing analysis of the composite sample, provided the holding time of the sample is not exceeded.

(C) Compositing may only be permitted by the commissioner at sampling points within a single system if the population served by the system is greater than three thousand three hundred (3,300) persons. In systems serving less than or equal to three thousand three hundred (3,300) persons, the commissioner may permit

compositing among different systems provided the five (5) sample limit is maintained.

(D) Compositing of samples prior to gas chromatography (GC) analysis shall be as follows:

(i) Add five (5) milliliters or equal larger amounts of each sample (up to five (5) samples are allowed) to a twenty-five (25) milliliter glass syringe. Special precautions must be made to maintain zero (0) headspace in the syringe.

(ii) The samples must be cooled at four (4) degrees Celsius during this step to minimize volatilization losses.

(iii) Mix well and draw out a five (5) milliliter aliquot for analysis.

(iv) Follow sample introduction, purging, and desorption steps described in the method.

(v) If less than five (5) samples are used for compositing, a proportionately smaller syringe may be used.

(E) Compositing of samples prior to gas chromatography/mass spectrometry (GS/MS) analysis shall be as follows:

(i) Inject five (5) milliliters or larger amounts of each aqueous solution (up to five (5) samples are allowed) into a twenty-five (25) milliliter purging device using the sample introduction technique described in the method.

(ii) The total volume of the sample in the purging device must be twenty-five (25) milliliters.

(iii) Purge and desorb as described in the method.

(15) Compliance with section 5.4 of this rule shall be determined **such that, if one (1) sampling point is in violation of an MCL, the system is in violation of the MCL and** based on the analytical results obtained at each sampling point using the following criteria:

(A) For systems ~~which~~ **that** are conducting monitoring at a frequency greater than annually, compliance is determined by a running annual average of all samples taken at each sampling point. ~~If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately.~~

(B) ~~If~~ **Systems** monitoring ~~is conducted~~ annually, or less frequently, **whose sample results exceed the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one (1) year of quarterly sampling.**

(C) If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance ~~if the level of a contaminant at any sampling point is greater than~~ **with** the MCL **immediately.**

(D) If a ~~confirmation sample is~~ **system fails to collect the** required ~~by the commissioner, the determination~~ **number** of **samples,** compliance will be based on the ~~average~~ **total number** of ~~two (2)~~ samples **collected.**

(E) If a sample result is less than the detection limit, zero (0) will be used to calculate the annual average.

~~(C)~~ **(F)** If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commissioner may allow the system to give public notice to only that area served by that portion of the system ~~which~~ **that** is out of compliance.

~~(b)~~ **(16)** The commissioner may allow the use of monitoring data collected after January 1, 1988, for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements of this section, the commissioner may use these data (a single sample rather than four (4) quarterly samples) to satisfy the initial monitoring requirement of ~~subsection (a)(4).~~ **subdivision (4).** Systems ~~which~~ **that** use grandfathered samples and do not detect any contaminant listed in section 5.4 of this rule, except vinyl chloride, shall begin monitoring annually in accordance with ~~subsection (a)(5),~~ **subdivision (5),** beginning with the initial compliance period.

~~(c)~~ **(17)** The commissioner may increase required monitoring where necessary to detect variations within the system.

~~(d)~~ **(18)** To receive certification to conduct analyses for the contaminants in section 5.4 of this rule, excluding vinyl chloride, each certified laboratory must meet the following requirements:

~~(1)~~ **(A)** Successfully analyze performance evaluation (PE) samples provided by EPA, the commissioner, or by a third party with the approval of EPA or the commissioner, at least once a year by each method for which the laboratory desires certification.

~~(2)~~ **(B)** Achieve the quantitative acceptance limits under ~~subdivisions (3) and (4)~~ **clauses (C) and (D)** for at least eighty percent (80%) of the regulated organic chemicals in section 5.4 of this rule, excluding vinyl chloride.

~~(3)~~ **(C)** Achieve quantitative results on the analyses performed under ~~subdivision (1)~~ **clause (A)** that are within plus or minus twenty percent (±20%) of the actual amount of the substances in the PE sample when the actual amount is greater than or equal to ten-thousandths **(0.010)** milligrams per liter. ~~(≥ 0.010 mg/l).~~

~~(4)~~ **(D)** Achieve quantitative results on the analyses performed under ~~subdivision (1)~~ **clause (A)** that are within plus or minus forty percent (±40%) of the actual amount of the substances in the PE sample when the actual amount is less than ten-thousandths **(0.010)** milligrams per liter. ~~(< 0.010 mg/l).~~

~~(5)~~ **(E)** Achieve a method detection limit of five ten-thousandths **(0.0005)** milligram per liter, ~~(0.0005 mg/l),~~ according to the procedures in 40 CFR 136, Appendix B*.

~~(e)~~ **(19)** To receive certification to conduct analyses for vinyl chloride, the laboratory must meet the following requirements:

~~(1)~~ **(A)** Successfully analyze PE samples provided by EPA, the commissioner, or by a third party with the approval of EPA or the commissioner, at least once a year by each method for which the laboratory desires certification.

~~(2)~~ **(B)** Achieve quantitative results on the analyses performed under ~~subdivision (1)~~ **clause (A)** that are within plus or minus forty percent (±40%) of the actual amount of vinyl chloride in the PE sample.

~~(3)~~ **(C)** Achieve a method detection limit of five ten-thousandths **(0.0005)** milligram per liter, ~~(0.0005 mg/l),~~ according to the procedures in 40 CFR 136, Appendix B*.

~~(4)~~ **(D)** Obtain certification for the contaminants listed in section 5.4 of this rule.

~~(f)~~ **(20)** Each public water system shall monitor at the time designated by the commissioner within each compliance period.

~~(g)~~ **(21)** The commissioner may increase required monitoring where necessary to detect variations within the system.

~~(h)~~ **(22)** The commissioner has the authority to determine compliance or initiate enforcement based upon analytical results or other information.

(23) All new systems or systems that use a new source of water that begin operation after January 1, 2004, must demonstrate compliance with the MCL within a period of time specified by the commissioner. The system must also comply with the initial sampling frequencies specified by the commissioner to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accor-

dance with the requirements in this section.

40 CFR 136, Appendix B is incorporated by reference. Copies of this regulation may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402, or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2-5.5; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1014; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Aug 24, 1994, 8:15 a.m.: 18 IR 39; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Oct 24, 1997, 4:30 p.m.: 21 IR 936; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3960; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1089)*

SECTION 8. 327 IAC 8-2-8.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-8.5 Requirement for filtration and disinfection
Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 8.5. (a) Effective June 29, 1993, a public water system that uses a surface water source must provide filtration in accordance with this section.

(b) A public water system that uses a ground water source under the direct influence of surface water shall provide filtration in accordance with this section beginning eighteen (18) months after the commissioner determines that it is under the direct influence of surface water from the date specified in section 8.2 of this rule.

(c) A public water system that uses a surface water source or a ground water source under the direct influence of surface water must provide treatment consisting of both disinfection, as specified in section 8.6 of this rule, and filtration treatment. Filtration treatment shall be done by one (1) of the following techniques, and the turbidity level of representative samples of a system's filtered water, regardless of filtration technique used, shall at no time exceed five (5) nephelometric turbidity units (NTU) in any given sample, measured as specified in section 8.7 of this rule:

(1) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to one-half (0.5) NTU in at least ninety-five percent (95%) of the total number of measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule, except that if the commissioner determines that the system is capable of achieving at least ninety-nine and nine-tenths percent (99.9%) removal ~~and/or~~ **or** inactivation, **or both,** of Giardia lamblia cysts at some turbidity level higher than one-half (0.5) NTU in at least ninety-five percent (95%) of the total number of measurements taken each month, the commissioner may substitute this higher turbidity limit for that system. However, in no case may the commissioner approve a turbidity limit that allows more than one (1) NTU in more than five percent (5%) of the samples taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule. Upon the effective date of this rule, systems serving a population of at least ten thousand (10,000) individuals **and, beginning January 1, 2005, systems serving a population of fewer than ten thousand (10,000) individuals** shall meet the turbidity requirements in 327 IAC 8-2.6-3.

(2) For systems using slow sand filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to one (1) NTU in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule, except where the commissioner determines that there is no significant interference with disinfection at a higher turbidity level.

(3) For systems using diatomaceous earth filtration, the turbidity level of representative samples of a public water system's filtered water must be less than or equal to one (1) NTU in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule.

(4) A public water system may use a filtration technology not listed in this subsection if it demonstrates to the commissioner, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets ~~the requirements of~~ section 8.6 of this rule, consistently achieves ninety-nine and nine-tenths percent (99.9%) removal ~~and/or~~ **or** inactivation, **or both,** of Giardia lamblia cysts and ninety-nine and ninety-nine hundredths percent (99.99%) removal ~~and/or~~ **or** inactivation, **or both,** of viruses. For a system that makes this demonstration, ~~the requirements of~~ this subsection ~~apply.~~ **applies.** Upon the effective date of this rule, systems serving a population of at least ten thousand (10,000) individuals **and, beginning January 1, 2005, systems serving a population of fewer than ten thousand (10,000) individuals** shall meet the requirements for other filtration technologies in 327 IAC 8-2.6-3.

(d) During plant operation, each public water system subject to this section shall be operated only by personnel who have been certified by the commissioner under 327 IAC 8-11 through 327 IAC 8-12.

(e) In addition to complying with requirements in this section, systems serving a population of at least ten thousand (10,000) individuals **and, beginning January 1, 2005, systems serving a population of fewer than ten thousand (10,000) individuals** shall also comply with the requirements in ~~327 IAC 8-2.6-1.~~ **327 IAC 8-2.6.** *(Water Pollution Control Board; 327 IAC 8-2-8.5; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1024; errata filed Apr 5, 1991, 3:30 p.m.: 14 IR 1626; errata, 14 IR 1730; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2160; filed May 1, 2003, 12:00 p.m.: 26 IR 2816)*

SECTION 9. 327 IAC 8-2-8.7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-8.7 Analytical and monitoring requirements; fecal coliform, total coliform, turbidity, disinfection
Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 8.7. Only the analytical methods and procedures specified in this section, or otherwise approved by EPA, may be used to demonstrate compliance with ~~the requirements of~~ sections 8.5 and 8.6 of this rule. Measurements for pH, turbidity, temperature, and residual disinfectant concentrations must be conducted using methods specified in this rule. Measurements for total coliforms, fecal coliforms, and HPC must be conducted by a laboratory certified by the commissioner or EPA under 40 CFR 141.28*. Until laboratory certification criteria are developed for the analysis of fecal coliforms and HPC, any laboratory certified for total coliforms analysis by the commissioner or EPA is deemed certified for fecal coliforms and HPC analysis. The following procedures shall be conducted in accordance with the publications listed as follows:

(1) Total coliform[1] as set forth in the following:

(A) Total coliform fermentation technique[2, 3, 4], Method 9221A*, B*, and C*.
(B) Total coliform membrane filter technique[~~7~~ 6], Method 9222A*, B*, and C*.
(C) ONPG-MUG test membrane[5], Method 9223*.
(2) Fecal coliforms[1] as set forth in:
(A) fecal coliform procedure [7], Method 9221E*; or
(B) fecal coliform filter procedure, Method 9222D.
(3) Heterotrophic bacteria[1], Method 9215B*, pour plate method.
(4) Turbidity as set forth in:
(A) nephelometric method, Method 2130B* or Method 180.1*; or
(B) Great Lakes Instruments method, Method 2*.
(5) Residual disinfectant concentrations for free chlorine and combined chlorine (chloramines) as set forth in the following methods:
(A) Method 4500-Cl D*, amperometric titration method.
(B) Method 4500-Cl F*, DPD ferrous titrimetric method.
(C) Method 4500-Cl G*, DPD colorimetric method.
(D) Method 4500-Cl H*, syringaldazine (FACTS).
(E) DPD colorimetric test kits, if approved by the commissioner.
(F) Free chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument, provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five (5) days, or with a protocol approved by the commissioner.
(6) Residual disinfectant concentrations for ozone by the indigo method, Method 4500-O_3 B*.
(7) Residual disinfectant concentrations for chlorine dioxide must be measured by Method 4500-ClO_2 C, amperometric method, Method 4500-ClO_2 E*, amperometric method, or Method 4500-ClO_2 D*, DPD method.
(8) Residual disinfectant concentrations for total chlorine by the following methods:
(A) Method 4500-Cl D*, amperometric titration.
(B) Method 4500-Cl E*, amperometric titration (low level measurement).
(C) Method 4500-Cl F*, DPD ferrous titrimetric.
(D) Method 4500-Cl I, iodometric electrode.
(E) Method 4500-Cl G*, DPD colorimetric.
(F) Total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument, provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five (5) days, or with a protocol approved by the commissioner.

[1]The time from sample collection to initiation of analysis may not exceed ~~eight (8)~~ **thirty (30)** hours. Systems must hold samples below ten (10) degrees Celsius during transit.

[2]Lactose broth, as commercially available, may be used ~~in lieu~~ **instead** of lauryl tryptose broth if the system conducts at least twenty-five (25) parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliforms using lactose broth, is less than ten percent (10%).

[3]Media should cover inverted tubes at least one-half (½) to two-thirds (b) after the sample is added.

[4]No requirement exists to run the completed phase on ten percent (10%) of all total coliform-positive confirmed tubes.

[5]The ONPG-MUG test is also known as the Autoanalysis Colilert System.

[6]MI Agar may also be used*.

~~*~~ [7]A-1 broth may be held up to three (3) months in a tightly closed screwcap tube at four (4) degrees Celsius.

*The following methods are incorporated by reference:

(1) Methods referenced in this section, except Method 180.1 and the Great Lakes Instruments Method 2, may be found in "18th Edition of Standard Methods for the Examination of Water and Wastewater" and "19th Edition of Standard Methods for the Examination of Water and Wastewater", 1992 and 1995, available from the American Public Health Association, 1015 Fifteenth Street, Washington, D.C. 20005. Either edition may be used.

(2) Method 180.1 may be found in "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA-600/R-93-100, August 1993, available from NTIS, PB94-121811, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(3) The Great Lakes Instrument (GLI) Method 2 may be found in "Turbidity", November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.

(4) 40 CFR 141.28 may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

These methods are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2-8.7; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1025; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2161; filed Aug 25, 1997, 8:00 a.m.: 21 IR 53; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1348; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3970)*

SECTION 10. 327 IAC 8-2-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-9 Radium-226, radium-228, gross alpha particle radioactivity, and uranium; maximum contaminant levels

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 9. The following are the maximum contaminant levels for radium-226, radium-228, ~~and~~ gross alpha particle radioactivity, **and uranium:**

(1) Combined radium-226 and radium-228: five (5) picocuri per liter. **The combined radium-226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.**

(2) Gross alpha particle activity (including radium-226 but excluding radon and uranium): fifteen (15) picocuri per liter.

(3) Uranium: thirty (30) micrograms per liter.

~~(3)~~ **(4)** The sampling frequency for the contaminants listed in this section shall be ~~pursuant to~~ **under** section 10.2 of this rule.

(5) The uranium MCL is effective December 8, 2003.

(Water Pollution Control Board; 327 IAC 8-2-9; filed Sep 24, 1987, 3:00 p.m.: 11 IR 708; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1027)

SECTION 11. 327 IAC 8-2-10.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-10.1 Analytical methods for radioactivity

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 10.1. (a) The following methods shall be used to determine compliance with sections 9 through 10 of this rule, except in cases where alternative methods have been approved in accordance with section 32 of this rule:

(1) One (1) of the following methods shall be used to test for gross alpha and beta:
(A) Method 900.0*.
(B) Page 1 of "Interim Radiochemical Methodology for Drinking Water*".
(C) Method 00-01*.
(D) Page 1 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".
(E) Method 302*.
(F) Method 7110 B*.
(G) Method R-1120-76*.

(2) One (1) of the following methods shall be used to test for gross alpha:
(A) Method 00-02*.
(B) Method 7110 C*.

(3) One (1) of the following methods shall be used to test for radium 226:
(A) Method 903.1*.
(B) Method 903.0*.
(C) Page 16 of "Interim Radiochemical Methodology for Drinking Water*".
(D) Page 13 of "Interim Radiochemical Methodology for Drinking Water*".
(E) Method Ra-04*.
(F) Method Ra-03*.
(G) Page 19 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".
(H) Method 7500-Ra C*.
(I) Method 304*.
(J) Method 305*.
(K) Method 7500-Ra B*.
(L) Method D 3454-91*.
(M) Method D 2460-90*.
(N) Method R-1141-76*.
(O) Method R-1142-76*.
(P) Method Ra-05*.
(Q) New York Method.

(4) One (1) of the following methods shall be used to test for radium 228:
(A) Method 904.0*.
(B) Page 24 of "Interim Radiochemical Methodology for Drinking Water*".
(C) Method Ra-05*.
(D) Page 19 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".
(E) Method 304*.
(F) Method 7500-Ra D*.
(G) Method R-1142-76*.
(H) New York Method.

(5) One (1) of the following methods shall be used to test for uranium:
(A) Method 908.0*.
(B) Method 908.1*.
(C) Method 00-07*.
(D) Page 33 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".
(E) 7500-U B*.
(F) 7500-U C*.
(G) D2907-91*.
(H) D 3972-90*.
(I) D 5174-91*.
(J) R-1180-76*.
(K) R-1181-76*.
(L) R-1182-76*.
(M) U-04*.
(N) U-02*.
(O) New Jersey Method.
(P) ICP-MS Method 200.8, D5673-03, or 3125*.

(6) One (1) of the following methods shall be used to test for radioactive cesium:
(A) Method 901.0*.
(B) Method 901.1*.
(C) Page 92 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".
(D) Method 7500-Cs B*.
(E) Method 7120*.
(F) Method D 2459-72*.
(G) Method D 3649-91*.
(H) Method R-1111-76*.
(I) Method R-1110-76*.
(J) Method 4.5.2.3*.
(K) Page 4 of "Interim Radiochemical Methodology for Drinking Water*".

(7) One (1) of the following methods shall be used to test for radioactive iodine:
(A) Method 902.0*.
(B) Method 901.1*.
(C) Page 6 of "Interim Radiochemical Methodology for Drinking Water*".
(D) Page 9 of "Interim Radiochemical Methodology for Drinking Water*".
(E) Page 92 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".
(F) Method 7500-I B*.
(G) Method 7500-I C*.
(H) Method 7500-I D*.
(I) Method 7120*.
(J) Method D 4785-88*.
(K) Method 4.5.2.3*.
(L) Method D 3649-91*.

(8) One (1) of the following methods shall be used to test for radioactive strontium 89 and 90:
(A) Method 905.0*.
(B) Page 29 of "Interim Radiochemical Methodology for Drinking Water*".
(C) Method Sr-04*.
(D) Page 65 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".
(E) Method 303*.
(F) Method 7500-Sr B*.
(G) Method R-1160-76*.
(H) Method Sr-01*.
(I) Method Sr-02*.

(9) One (1) of the following methods shall be used to test for tritium:
(A) Method 906.0*.
(B) Page 34 of "Interim Radiochemical Methodology for Drinking Water*".
(C) Method H-02*.
(D) Page 87 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".

(E) Method 306*.
(F) Method 7500-3H B*.
(G) Method D 4107-91*.
(H) Method R-1171-76*.

(10) One (1) of the following methods shall be used to test for gamma emitters:
(A) Method 901.1*.
(B) Method 902.0*.
(C) Method 901.0*.
(D) Page 92 of "Radiochemical Analytical Procedures for Analysis of Environmental Samples*".
(E) Method 7120*.
(F) Method 7500-Cs B*.
(G) Method 7500-I B*.
(H) Method D 3649-91*.
(I) Method D 4785-88*.
(J) Method R-1110-76*
(K) Method 4.5.2.3*.

(b) When the identification and measurement of radionuclides other than those listed in subsection (a) is required, the following references are to be used, except in cases where alternative methods have been approved in accordance with section 32 of this rule:
(1) Procedures for Radiochemical Analysis of Nuclear Reactor Aqueous Solutions, H.L. Krieger and S. Gold, EPA-R4-73-014, U.S. EPA, Cincinnati, Ohio, May 1973.
(2) HASL Procedure Manual, edited by John H. Harley. HASL 300, ERDA Health and Safety Laboratory, New York, New York 1973.

(c) For the purpose of monitoring radioactivity concentrations in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration ~~which~~ **that** can be counted with a precision of plus or minus one hundred percent (100%) at the ninety-five percent (95%) confidence level (one and ninety-six hundredths (1.96) σ where σ is the standard deviation of the net counting rate of the sample). Compliance requirements are as follows:
(1) To determine compliance with section 9(1) of this rule, the detection limit shall not exceed one (1) picocuri per liter.
(2) To determine compliance with section 9(2) of this rule, the detection limit shall not exceed three (3) picocuri per liter.
(3) To determine compliance with section 9(3) of this rule, the detection limit shall not exceed one (1) microgram per liter.
~~(3)~~ **(4)** To determine compliance with section 10 of this rule, the detection limits shall not exceed the concentrations listed in the following table:

Detection limits for manmade beta particle and photon emitters:

Radionuclide	Detection limit
Tritium	1,000 pCi/l
Strontium-89	10 pCi/l
Strontium-90	2 pCi/l
Iodine-131	1 pCi/l
Cesium-134	10 pCi/l
Gross beta	4 pCi/l
Other radionuclides	1/10 of the applicable limit

(d) To determine compliance with the MCL listed in sections 9 through 10 of this rule, averages of data shall be used and shall be rounded to the same number of significant figures as the MCL for the contaminant in question.

*The methods referenced in this section may be obtained as follows:

(1) Methods 900.0, 903.1, 903.0, 904.0, 908.0, 908.1, 901.0, 901.1, 902.0, 905.0, and 906.0 may be found in "Prescribed Procedures for Measurement of Radioactivity in Drinking Water", EPA 600/4-80-032, August 1980, PB 80-224744. Available from U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.
(2) "Interim Radiochemical Methodology for Drinking Water", EPA 600/4-75-008 (revised), March 1976, PB 253258. Available from U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.
(3) Methods 00-01, 00-02, Ra-04, Ra-03, Ra-05, 00-07, Sr-04, and H-02 may be found in "Radiochemistry Procedures Manual", EPA 520/5-84-006, December 1987, PB 84-215581. Available from U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.
(4) "Radiochemical Analytical Procedures for Analysis of Environmental Samples", March 1979, EMSL LV 053917. Available from U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 800-553-6847.
(5) Methods 7110 B, 7110 C, 7500-Ra C, 7500-Ra B, 7500-Ra D, 7500-U B, 7500-Cs B, 7500-I B, 7500-I C, 7500-I D, 7500-Sr B, and 7500-3H B may be found in "Standard Methods for the Analysis of Water and Wastewater", 17th, 18th, and 19th Editions, 1989, 1992, and 1995. Available from American Public Health Association, 1015 Fifteenth Street N.W., Washington D.C. 20005.
(6) Methods 302, 304, 305, 303, and 306 may be found in "Standard Methods for the Analysis of Water and Wastewater", 13th Edition, 1971. Available from American Public Health Association, 1015 Fifteenth Street N.W., Washington D.C. 20005.
(7) Method 7500-U C may be found in "Standard Methods for the Analysis of Water and Wastewater", 13th and 17th Editions, 1971, 1989. Available from American Public Health Association, 1015 Fifteenth Street N.W., Washington D.C. 20005.
(8) Method 7120 may be found in "Standard Methods for the Analysis of Water and Wastewater", 19th Edition, 1995. Available from American Public Health Association, 1015 Fifteenth Street N.W., Washington D.C. 20005.
(9) Methods D 3454-91, D 2460-90, D2907-91, D 3972-90, D 5174-91, D 2459-72, D 3649-91, D4785-88, and D 4107-91 may be found in Annual Book of ASTM Standards, Vol 11.02, 1994. Available from American Society of Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428.
(10) Methods R-1120-76, R-1141-76, R-1140-76, R-1142-76, R-1180-76, R-1181-76, R-1182-76, R-1111-76, R-1110-76, R-1160-76, and R-1171-76 may be found in "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments", Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available from U.S. Geologic Survey (USGS) Information Services, Box 25286, Federal Center, Denver, Colorado 80225-0425.
(11) Methods U-04, U-2, Ra-05, 4.5.2.3, Sr-01, and Sr-02 may be found in "EML Procedures Manual", 27th Edition, Volume 1, 1990. Available from Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, New York 10014-3621.
(12) New York Methods may be found in "Determination of Ra-226 and Ra-228 (Ra-02)", January 1980, Revised June 1982. Available from Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State

Plaza, Albany, New York 12201.

(13) New Jersey Method may be found in "Determination of Radium 228 in Drinking Water", August 1980. Available from State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, New Jersey 08625.

(14) If uranium (U) is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U-235 and U-238 that is characteristic of naturally occurring uranium.

(15) For uranium ICP-MS Method 200.8, refer to "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry", Revision 5.4, published in "Methods for the Determination of Metals in Environmental Samples- Supplement I", EPA 600-R-94-111, May 1994. Available at NTIS PB 95-125472.

(Water Pollution Control Board; 327 IAC 8-2-10.1; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1028; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3971)

SECTION 12. 327 IAC 8-2-10.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-10.2 Monitoring frequency for radioactivity; community water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 10.2. (a) Monitoring requirements for gross alpha particle activity, radium-226, ~~and~~ radium-228, **and uranium** in community water systems are as follows:

(1) **Initial monitoring requirements for community water systems are as follows:**

(A) Community water systems must conduct initial monitoring to determine compliance with section 9 of this rule ~~shall be based on the analysis of an annual composite of four (4) consecutive quarterly samples or the average of the analyses of four (4) samples obtained at quarterly intervals as follows:~~

~~(A) A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis, provided that the measured gross alpha particle activity does not exceed five (5) picocuri per liter at a confidence level of ninety-five percent (95%) (one and sixty-five hundredths (1.65) σ where σ is the standard deviation of the net counting rate of this sample). In localities where radium-228 may be present in drinking water, it is recommended that the commissioner require radium-226, or radium-228, or both, analyses when the gross alpha particle activity exceeds two (2) picocuri per liter.~~

~~(B) When the gross alpha particle activity exceeds five (5) picocuri per liter, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds three (3) picocuri per liter, the same or an equivalent sample shall be analyzed for radium-228.~~

~~(2) Suppliers of water shall monitor at least once every four (4) years following the procedure required by subdivision (1). At the discretion of the commissioner, when an annual record taken in conformance with subdivision (1) has established that the average annual concentration is less than one-half (½) the MCL established by section 9 of this rule, analysis of a single sample may be substituted for the quarterly sampling procedure required by subdivision (1) as follows:~~

~~(A) More frequent monitoring shall be conducted when ordered by the commissioner in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or ground water sources of drinking water.~~

~~(B) A supplier of water shall monitor in conformance with subdivision (1) within one (1) year of the introduction of a new water source for a community water system. More frequent monitoring shall be conducted when ordered by the commissioner in the event of possible contamination, or when changes in the distribution system or treatment processing occur which may increase the concentration of radioactivity in finished water.~~

~~(C) A community water system using two (2) or more sources having different concentrations of radioactivity shall monitor source water, in addition to water from a free-flowing tap, when ordered by the commissioner.~~

~~(D) Monitoring for compliance with section 9 of this rule after the initial period need not include radium-228 except when required by the commissioner, provided that the average annual concentration of radium-228 has been assayed at least once using the quarterly sampling procedure required by subdivision (1).~~

~~(E) Suppliers of water shall conduct monitoring of any community water system in which the radium-226 concentration exceeds three (3) picocuri per liter, when ordered by the commissioner.~~

~~(3) If the average annual MCL for gross alpha particle activity or total radium as set forth in section 9 of this rule is exceeded, the supplier for a community water system shall report to the commissioner pursuant to section 13 of this rule and notify the public pursuant to 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the MCL or until a monitoring schedule as a condition to an enforcement action shall become effective.~~

by December 31, 2007. Unless exempted under subdivision (2) or reduced under clause (D), systems must collect four (4) consecutive quarterly samples at all sampling points before December 31, 2007.

(B) For the purposes of monitoring for gross alpha particle activity, radium-226, radium-228, and uranium in drinking water, "detection limit" is as described in section 10.1(c) of this rule.

(C) Applicability and sampling location shall be according to the following:

(i) Every existing community water system or source using ground water or surface water or a system using both ground and surface water (to be known as "system" for the purpose of this section) must sample at every entry point to the distribution system that is representative of all sources being used (to be known as "sampling point" for the purpose of this section) under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source.

(ii) Every new community water system or source or community water system that uses a new source of water must conduct initial monitoring for the new source within the first quarter after initiating use of the source.

(iii) A system must conduct more frequent monitoring when ordered by the commissioner in the event of possible contamination or when changes in the distribution system or treatment processes occur that may increase the concentration of radioactivity in finished water.

(D) The commissioner may waive the final two (2) quarters of initial monitoring for a sampling point if the results of the

samples from the previous two (2) quarters are below the detection limit.

(E) If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the commissioner.

(2) The commissioner may allow historical monitoring data, that which is collected at a sampling point between June 1, 2000, and December 8, 2003, to satisfy the initial monitoring requirements for that sampling point in the following situations:

(A) A community water system having only one (1) entry point to the distribution system may use its acceptable historical monitoring data from the latest sampling conducted during the specified period.

(B) A community water system with multiple entry points and having appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the latest sampling conducted during the specified period.

(3) Sampling after completion of the initial monitoring specified in subdivision (1) is once every three (3) years unless reduced by the commissioner as follows:

(A) If the average of the initial monitoring results for each contaminant (gross alpha particle activity, uranium, radium-226, or radium-228) is below the detection limit specified in section 10.1 of this rule, the system must collect and analyze for at least one (1) sample for that contaminant at that sampling point every nine (9) years.

(B) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below one-half (½) the MCL:

(i) the system must collect and analyze at least one (1) sample for that contaminant at that sampling point every six (6) years; and

(ii) for combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the detection limit but at or below one-half (½) the MCL, the system must collect and analyze at least one (1) sample for radium-226 and radium-228 that sampling point every six (6) years.

(C) Systems must use the samples collected during the most recent monitoring period to determine the monitoring frequency for subsequent monitoring periods. For example, if a system's sampling point is on a nine (9) year monitoring period and the sample result is above one-half (½) the MCL, then the next monitoring period for that sampling point is three (3) years.

(D) If a system has a monitoring result that exceeds the MCL while sampling less frequently than quarterly, the system must collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are below the MCL unless the system enters into another schedule as part of a formal compliance agreement with the commissioner.

(4) To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four (4) consecutive quarterly samples from a single entry point if analysis is done within one (1) year of the first sample. The commissioner will treat analytical results from the composited sample as the average analytical result to determine compliance with the MCLs and to determine the future monitoring frequency. If the analytical result from the composited sample is greater than one-half (½) the MCL, the commissioner may direct the system to take additional quarterly samples before allowing the system to sample once every three (3) years.

(5) A gross alpha particle activity measurement may be substituted for the required:

(A) radium-226 measurement provided that the measured gross alpha particle activity does not exceed five (5) pCi/l; and

(B) uranium measurement provided that the measured gross alpha particle activity does not exceed fifteen (15) pCi/l.

The gross alpha measurement shall have a confidence interval of ninety-five percent (95%) (1.65 σ, where σ is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a system uses a gross alpha particle activity measurement instead of the measurement for radium-226 or uranium, or both, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 or uranium, or both. If the gross alpha particle activity result is less than detection, one-half (½) the detection limit will be used to determine compliance and the future monitoring frequency.

(b) **For purposes of** monitoring ~~requirements~~ for ~~manmade~~ **beta particle and photon** radioactivity in ~~community~~ **drinking** water, ~~systems are as follows:~~

~~(1) Systems using surface water sources and serving more than one hundred thousand (100,000) persons and such other community water systems as are designated by the commissioner shall be monitored for~~ **"detection limit" is as described in section 10.1(c) of this rule. To determine** compliance with **the maximum contaminant levels in** section 10 of this rule ~~by analysis of a composite of four (4) consecutive quarterly samples or analysis of four (4) quarterly samples. Compliance with section 10 of this rule may be assumed without further analysis if the average annual concentration of gross~~ **for** beta particle ~~activity is less than fifty (50) picocuri per liter and if the average annual concentrations of tritium and strontium-90 are less than those listed in the table in section 10 of this rule. Provided, that if both radionuclides are present, the sum of their annual dose equivalents to bone marrow shall not exceed four (4) millirem per year as follows:~~

~~(A) If the gross beta particle activity exceeds fifty (50) picocuri per liter an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with section 10 of this rule.~~

~~(B) Suppliers of water shall conduct additional monitoring, as ordered by the commissioner, to determine the concentration of manmade radioactivity in principal watersheds designated by the commissioner.~~

~~(C) At the discretion of the commissioner, suppliers of water utilizing only ground water may be required to monitor for manmade radioactivity.~~

~~(2) Suppliers of water shall monitor at least every four (4) years following the procedure given in subdivision (1).~~

~~(3) The supplier for any community water~~ **and photon radioactivity, a** system ~~designated by the commissioner as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioac-~~

~~tivity~~ ~~and~~ ~~annual~~ ~~monitoring~~ ~~for~~ ~~strontium-90~~ ~~and~~ ~~tritium~~ **must comply with monitoring and sampling frequency requirements** as follows:

(1) Community water systems (both surface and ground water) designated by the commissioner as vulnerable must sample for beta particle and photon radioactivity must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each sampling point beginning within one (1) quarter after being notified by the commissioner of the designation. Designated systems must continue to sample until the commissioner reviews and either reaffirms or removes the designation. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to fifty (50) pCi/l (screening level), the commissioner may reduce the frequency of monitoring at that sampling point to once every three (3) years. A system must continue to collect all other samples required by this subdivision during the reduced monitoring period.

(2) Community water systems (both surface and ground water) designated by the commissioner as utilizing waters contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. A system designated under this subdivision must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system beginning within one (1) quarter after being notified by the commissioner of the designation. A system designated as using waters contaminated by effluents from a nuclear facility must continue to sample until the commissioner reviews and either reaffirms or removes the designation. The following monitoring and frequency of sampling requirements apply to vulnerable systems:

(A) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three (3) monthly samples. The former is recommended. ~~If the gross beta particle activity in a sample exceeds fifteen (15) picocuri per liter, the same or an equivalent sample shall be analyzed for strontium-89 and cesium-134. If the gross beta particle activity exceeds fifty (50) picocuri per liter, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with section 10 of this rule.~~

(B) For iodine-131, a composite of five (5) consecutive daily samples shall be analyzed once each quarter. At the direction of the commissioner, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(C) Annual monitoring for strontium-90 and tritium shall be conducted by analysis of a composite of four (4) consecutive quarterly samples or analysis of four (4) quarterly samples. The latter procedure is recommended.

~~(D) The commissioner may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of manmade radioactivity by the supplier of water where the commissioner determines such data are applicable to a particular community water system.~~

~~(4)~~ **(D)** If the ~~average annual MCL for manmade radioactivity set forth in section 10 of this rule is exceeded, the operator of a community water system shall report to the commissioner pursuant to section 13 of this rule and give notice to the public pursuant to 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the MCL or until a monitoring schedule as a condition to an enforcement action shall become effective.~~ **gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to fifteen (15) pCi/l (screening level), the commissioner may reduce the frequency of monitoring at that sampling point to once every three (3) years. Systems must collect all samples required in this subdivision during the reduced monitoring period.**

(3) Community water systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/l) by a factor of eighty-two hundredths (0.82).

(4) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with section 10 of this rule using the formula in that section. Doses must be calculated and combined for measured levels of major radioactive constituents, tritium, and strontium to determine compliance.

(5) A system must monitor monthly at the sampling point or points that exceed the maximum contaminant level in section 10 of this rule beginning the month after the exceedance occurs. A system must continue monthly monitoring until the system has established, by a rolling average of three (3) monthly samples, that the MCL is being met. A system that reestablishes compliance with the MCL must return to quarterly monitoring until the requirements set forth in subdivision (1) or (2)(D) are met.

(c) The following general monitoring and compliance requirements for radionuclides apply:

(1) The commissioner has the discretion to require:

(A) more frequent monitoring than specified in subsections (a) and (b); or

(B) confirmation samples.

The results of the initial and confirmation samples shall be averaged for use in compliance determinations.

(2) A community public water systems shall monitor at the time designated by the commissioner during each compliance period.

(3) The following shall be used to determine whether a community water system is in compliance with sections 9 through 10 of this rule:

(A) Analytical results obtained at each sampling point must meet the applicable requirement of the rules. If one (1) sampling point is in violation of an MCL, the system is in violation of the MCL.

(B) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the running annual average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(C) For systems monitoring more than once per year, if any single sample result will cause the running average to exceed the MCL at any sample point, the system is out of compliance

with the MCL immediately.

(D) A system must include all samples taken and analyzed under this section in determining compliance, even if that number is greater than the minimum required.

(E) If a system does not collect all required samples when compliance with the MCL is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(F) If a sample result is less than the detection limit, zero (0) shall be used to calculate the annual average, unless a gross alpha particle activity is being used instead of radium-226 or uranium, or both. If the gross alpha particle activity result is less than detection, one-half (½) the detection limit will be used to calculate the annual average.

(4) The commissioner has the discretion to delete results of obvious sampling or analytic errors.

(5) If the MCL for radioactivity set forth in sections 9 through 10 of this rule is exceeded, the operator of a community water system must give notice to the commissioner under section 13 of this rule and to the public as required by 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.

(Water Pollution Control Board; 327 IAC 8-2-10.2; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1029; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1094; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254)

SECTION 13. 327 IAC 8-2-10.3 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2-10.3 Best available technologies, small systems compliance technologies (SSCTs), and compliance technologies by system size category for radionuclides

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-6
Affected: IC 13-14-9

Sec. 10.3. (a) Pursuant to Section 1412 of the Act, BATs for achieving compliance with sections 9 through 10 of this rule for radionuclides are identified in the following table:

Table 10.3(a)
BAT for Combined Radium-226 and Radium-228, Uranium, Gross Alpha Particle Activity, and Beta Particle and Photon Radioactivity

Contaminant	BAT
Combined radium-226 and radium-228	Ion exchange, reverse osmosis, lime softening
Uranium	Ion exchange, reverse osmosis, lime softening, coagulation/filtration
Gross alpha particle activity (excluding radon and uranium)	Reverse osmosis
Beta particle and photon radioactivity	Ion exchange, reverse osmosis

(b) The following table lists the small systems compliance technologies (SSCTs) for radionuclides and limitations of use:

Table 10.3(b)
List of Small Systems Compliance Technologies for Radionuclides and Limitations to Use

Unit Technologies	Limitations (see footnotes)	Operator Skill Level Required[1]	Raw Water Quality Range and Considerations[1]
1. Ion exchange (IE)	(a)	Intermediate	All ground waters.
2. Point of use (POU[2]) IE	(b)	Basic	All ground waters.
3. Reverse osmosis (RO)	(c)	Advanced	Surface water usually require prefiltration.
4. POU[2] RO	(b)	Basic	Surface water usually require prefiltration.
5. Lime softening	(d)	Advanced	All waters.
6. Green sand filtration	(e)	Basic	----------
7. Coprecipitation with barium sulfate	(f)	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/electrodialysis reversal.	----	Basic to Intermediate	All ground waters.
9. Preformed hydrous manganese oxide filtration	(g)	Intermediate	All ground waters.
10. Activated Alumina	(a), (h)	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	(i)	Advanced	Can treat a wide range of water qualities.

[1]National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, D.C. 1997.

[2]A POU, or "point-of-use" technology is a treatment device installed at a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap. POU devices are typically installed at the kitchen tap. See the April 21, 2000, Federal Register, concerning Notice of Data Availability (NODA) for more details.

Limitations Footnotes: Technologies for Radionuclides:

[a]The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[b]When POU devices are used for compliance, programs for long term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance.

[c]Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in, "Small System Compliance Technology List for the Surface Water Treatment Rule", 1997, EPA 815-R-97-002, Washington, D.C.

[d]The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

[e]Removal efficiencies can vary depending on water quality.

[f]This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g]This technology is most applicable to small systems that already have filtration in place.

[h]Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

[i]Assumes modification to a coagulation/filtration process already in place.

(c) The following table lists the compliance technologies by system size category for radionuclide national primary drinking water regulations (NPDWRs):

Table 10.3(c)
Compliance Technologies by System Size Category for Radionuclide NPDWRs

Contaminant	Compliance technologies[1] for system size categories (population served)		
	25-500	501-3,300	3,300-10,000
1. Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9
2. Gross alpha particle activity	3, 4	3, 4	3, 4
3. Beta particle activity and photon activity	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4
4. Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11

[1]Numbers correspond to those technologies found listed in the table in subsection (b).

(Water Pollution Control Board; 327 IAC 8-2-10.3)

SECTION 14. 327 IAC 8-2-13 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-13 Reporting requirements; test results and failure to comply

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 13. (a) Except where a shorter period is specified in this rule, the supplier of water, ~~or the certified laboratory, as certified by the commissioner, provided the supplier of water has granted permission in writing to the laboratory~~ using forms provided by the commissioner, ~~and that permission is on file with the commissioner,~~ shall report to the commissioner the results of any test measurement or analysis required by this rule within **the shorter of the following periods of time:**

(1) The first ten (10) days following the month in which the result is received. ~~or~~

(2) The first ten (10) days following the end of the required monitoring period as stipulated by the commissioner. ~~whichever is shorter.~~

(b) **Except where a different reporting period is specified in this rule,** the supplier of water, ~~or the certified laboratory, as certified by the commissioner, provided the supplier of water has granted permission in writing to the laboratory~~ using forms provided by the commissioner, ~~and that permission is on file with the commissioner,~~ shall report to the commissioner within ~~forty-eight (48)~~ **twenty-four (24)** hours of completion of laboratory analysis **all drinking water results that indicate positive total coliform results, nitrate results that exceed five (5) milligrams per liter (mg/l), and** the failure to comply with any MCL. ~~and any other requirement set forth in this rule~~ **The report must be made** by telephone or **one (1) of** the methods specified in subsection (e). If notification is made by telephone, the results must ~~follow~~ **also be reported to the commissioner** using one (1) of the methods specified in subsection (e) within forty-eight (48) hours of the telephone notification. **If the supplier of water cannot provide the results under this subsection, the supplier of water shall make arrangements with the certified laboratory performing the analysis to submit the results directly to the commissioner using the methods specified in subsection (e).**

(c) The supplier of water ~~or the certified laboratory, as certified by the commissioner, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner, shall report to the commissioner within (48) hours of completion of laboratory analysis any positive total coliform results by telephone or the methods specified in subsection (e). If notification is made by~~

~~telephone, the results must follow using one (1) of the methods specified in subsection (c) within forty-eight (48) hours of the telephone notification.~~ **is not required to report analytical results to the commissioner when the Indiana state laboratory performs the analysis and reports the results to the commissioner.**

(d) The supplier of water, within ten (10) days of completing the public notification required by 327 IAC 8-2.1-7 through ~~327 IAC 8-2.1-16,~~ **327 IAC 8-2.1-17,** for the initial public notice and any repeat notices, shall submit to the commissioner a certification that it has fully complied with the public notification regulations. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

(e) The submittal of the information required under this section shall be submitted in one (1) of the following manners:

(1) Mail.
(2) Facsimile.
(3) Electronic mail.
(4) Hand delivery.
(5) Other means determined by the commissioner to provide the degree of:
(A) confidentiality;
(B) reliability;
(C) convenience; and
(D) security;
appropriate to the information to be submitted.

(Water Pollution Control Board; 327 IAC 8-2-13; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1030; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3974; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1096; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254; filed May 1, 2003, 12:00 p.m.: 26 IR 2817)

SECTION 15. 327 IAC 8-2-34 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-34 Maximum contaminant level goals; inorganic contaminants

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-6
Affected: IC 13-14-9

Sec. 34. MCLGs for the following contaminants are as indicated:

Contaminant	MCLG in Milligrams per Liter
Fluoride	4.0
Asbestos	7 million fibers per liter (longer than 10 micrometers)
Barium	2
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0
Mercury	0.002
Nitrate	10 (as nitrogen)
Nitrite	1 (as nitrogen)
Total nitrate + nitrite	10 (as nitrogen)
Selenium	0.05
Antimony	0.006
Arsenic	**0[1]**
Beryllium	0.004
Cyanide (as free cyanide)	0.2
Nickel	0.1
Thallium	0.0005

[1]This value for arsenic is effective January 1, 2006. Until then, there is no MCLG.

(Water Pollution Control Board; 327 IAC 8-2-34; filed Aug 24, 1994, 8:15 a.m.: 18 IR 67)

SECTION 16. 327 IAC 8-2-34.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2-34.1 Maximum contaminant level goals; radionuclides

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-6
Affected: IC 13-14-9

Sec. 34.1. MCLGs for the following contaminants are as indicated:

Contaminant	MCLG
Combined radium-226 and radium-228	**0**
Gross alpha particle activity (excluding radon and uranium)	**0**
Beta particle and photon radioactivity	**0**
Uranium	**0**

(Water Pollution Control Board; 327 IAC 8-2-34.1)

SECTION 17. 327 IAC 8-2-45 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-45 Analytical methods; lead and copper

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 45. (a) Analysis for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using the following methods:

(1) Lead as follows:
(A) Atomic absorption; furnace technique, Method D3559-90D*, Method D3559-96*, or Method 3113B*.
(B) Inductively-coupled plasma; mass spectrometry, Method 200.8*.
(C) Atomic absorption; platform furnace technique, Method 200.9*.
(D) Differential pulse anodic stripping voltammetry, Method 1001*.
(2) Copper as follows:
(A) Atomic absorption; furnace technique, Method D1688-90C*, Method D1688-95C*, or Method 3113B*.
(B) Atomic absorption; direct aspiration, Method D1688-90A*, Method D1688-95A*, or Method 3111B*.
(C) Inductively-coupled plasma; Method 200.7* or Method 3120B*.
(D) Inductively-coupled plasma; mass spectrometry, Method 200.8*.
(E) Atomic absorption; platform furnace, Method 200.9*.
(3) pH, electrometric, Method 150.1*, Method 150.2*, Method D1293-84*, Method D1293-95*, or Method 4500-H^+-B*.
(4) Conductivity, conductance, Method D1125-91A*, Method D1125-95A*, or Method 2510B*.
(5) Calcium as follows:
(A) EDTA titrimetric, Method D511-93A* or Method 3500-Ca-D*.
(B) Atomic absorption; direct aspiration, Method D511-93B* or

Method 3111-B*.

(C) Inductively-coupled plasma, Method 200.7 or Method 3120B*.

(6) Alkalinity as follows:

(A) Titrimetric, Method D1067-92B* or Method 2320B.

(B) Electrometric titration, Method I-1030-85*.

(7) Orthophosphate, unfiltered, no digestion or hydrolysis as follows:

(A) Colorimetric, automated, ascorbic acid, Method 365.1* or Method 4500-P-F*.

(B) Colorimetric, ascorbic acid, single reagent, Method D515-88A* or Method 4500-P-E*.

(C) Colorimetric, phosphomolybdate, Method I-1601-85* or automated-segmented flow, Method I-2601-90*, or automated discrete, Method I-2598-85*.

(D) Ion chromatography, Method 300.0*, Method D4327-91*, or Method 4110B*.

(8) Silica as follows:

(A) Colorimetric, molybdate blue, Method I-1700-85 or automated-segmented flow, Method I-2700-85*.

(B) Colorimetric, Method D859-88* or Method D859-95*.

(C) Molybdosilicate, Method 4500-Si-D*.

(D) Heteropoly blue, Method 4500-Si-E*.

(E) Automated method for molybdate-reactive silica, Method 4500-Si-F*.

(F) Inductively-coupled plasma, Method 200.7* or Method 3120B*.

(9) Temperature, thermometric, Method 2550*.

(b) Analyses for alkalinity, calcium, conductivity, orthophosphate, pH, silica, and temperature may be performed by any person acceptable to the commissioner. Analyses under this section for lead and copper shall only be conducted by laboratories that have been certified by the EPA or the commissioner. To obtain certification to conduct analysis for lead and copper, laboratories must do the following:

(1) Successfully analyze performance evaluation (PE) samples ~~which~~ **that** include lead and copper provided by or acceptable to EPA or the commissioner at least once each year by each method for which the laboratory desires certification.

(2) Achieve quantitative acceptance limits as follows:

(A) For lead, plus or minus thirty percent (30%) of the actual amount in the ~~performance evaluation~~ **PE** sample when the actual amount is greater than or equal to ~~five-thousandths (0.005)~~ **five-hundredths (0.05)** milligram per liter.

(B) For copper, plus or minus ten percent (10%) of the actual amount in the ~~performance evaluation~~ **PE** sample when the actual amount is greater than or equal to five-thousandths (0.005) milligram per liter.

(3) Achieve the method detection limit for lead of one-thousandth (0.001) milligram per liter according to the procedures in Appendix B of 40 CFR 136 (July 1, 1991). This need only be done if the laboratory will be processing source water composite samples under section 39 of this rule.

(4) Be currently certified by EPA or the state to perform analyses to the specifications described in subsection (a)(2).

(c) The commissioner has the authority to allow the use of previously collected monitoring data for purposes of monitoring if the data were collected and analyzed in accordance with ~~the requirements of~~ sections 36 through 44 of this rule, this section, and sections 46 and 47 of this rule.

(d) All lead levels measured between the practical quantitation level and the method detection limit must be either reported as measured or they can be reported as one-half (½) the practical quantitation level ~~(twenty-five thousandths (0.025)~~ **(twenty-five ten-thousandths (0.0025)** milligram per liter). All levels below the lead method detection level must be reported as zero (0).

(e) All copper levels measured between the practical quantitation level and the method detection limit must be either reported as measured or they can be reported as one-half (½) the practical quantitation level (twenty-five thousandths (0.025) milligram per liter). All levels below the copper method detection limit must be reported as zero (0).

[1]For analyzing lead and copper, the technique applicable to total metals must be used and samples cannot be filtered.

*Methods referenced in this section may be obtained as follows:

(1) Methods 150.1 and 150.2, may be found in "Methods for Chemical Analysis of Water and Wastes", EPA/600/4-79/020, March 1983, available from NTIS, PB84-128677, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(2) Methods 200.7, 200.8, and 200.9 may be found in "Methods for the Determination of Metals in Environmental Samples-Supplement 1", EPA-600/R-94-111, May 1994, available from NTIS, PB95-125472, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(3) Methods D3559-90D, D1688-90C, D1688-90A, D1293-84, D1125-91A, and D859-88 may be found in "Annual Book of ASTM Standards", Vols. 11.01, 1994, American Society for Testing and Materials, available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428.

(4) Methods D1067-92B, D511-93A, D511-93B, D1688-95C, D1688-95A, D1125-95A, D3559-96, D515-88A, D4327-91, D1293-95, and D859-95 may be found in "Annual Book of ASTM Standards, Vols. 11.01 and 11.02, 1994 and 1996, available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428.

(5) Methods 2320B, 3113B, 3111B, 3120B, 4500-H^+-B, 2510B, 3500-Ca-D, 2320B, 4500-P-F, 4500-P-E, 4110B, 4500-Si-D, 4500-Si-E, 4500-Si-F, and 2550 may be found in "Standard Methods for the Examination of Water and Wastewater", 18th Edition, 1992, and "Standard Methods for the Examination of Water and Wastewater", 19th Edition, 1995, American Public Health Association, available from the American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005. Either edition may be used.

(6) Methods I-1030-85, I-1601-85, I-2598-85, I-1700-85, and I-2700-85 may be found in "Techniques of Water Resources Investigation of the U.S. Geological Survey", Book 5, Chapter A-1, 3rd Edition, 1989, available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, Colorado 80225-0425.

(7) Method I-2601-90 may be found in "Methods for Analysis by the U.S. Geological Survey National Water Quality Laboratory - Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments", Open File Report 93-125, 1993, available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, Colorado 80225-0425.

(8) Methods 365.1 and 300.0 may be found in "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA-600/R-93-100, August 1993, available from NTIS, PB94-120821, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(9) Method 1001 is available from Palintest, LTC, 21 Kenton Lands

Road, P.O. Box 18395, Erlanger, Kentucky 41018 or from the Hach Company, P.O. Box 389, Loveland, Colorado 80539-0389.

These methods are also available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2-45; filed Aug 24, 1994, 8:15 a.m.: 18 IR 82; errata filed Oct 11, 1994, 2:45 p.m: 18 IR 532; filed Aug 25, 1997, 8:00 a.m.: 21 IR 72; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1349; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3978; errata filed Jul 25, 2001, 3:25 p.m.: 24 IR 3991)*

SECTION 18. 327 IAC 8-2-46 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-46 Reporting requirements; lead and copper

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 46. (a) Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring shall be as follows:

(1) Except as provided in clause (G), a water system shall report the following information for all tap water samples within the first ten (10) days following the end of each applicable monitoring period specified in sections 37 and 38 of this rule, that is, every six (6) months, annually, every three (3) years, or every nine (9) years:

(A) The results of all tap samples for lead and copper, including the location of each site and the criteria under section 37(a)(3) through 37(a)(7) of this rule, or any under which the site was selected for the system's sampling pool.

(B) Documentation for each tap water lead or copper sample for which the system requests an invalidation ~~pursuant to~~ **under** section 37(f)(2) of this rule.

(C) The ninetieth percentile lead and copper concentrations measured from among all lead and copper tap samples collected during each monitoring period (calculated in accordance with section 36(c)(3) of this rule unless the commissioner calculates the system's ninetieth percentile lead and copper levels under subsection (h)).

(D) With the exception of initial tap sampling conducted under section 37(d)(1) of this rule, the system shall designate any site ~~which~~ **that** was not sampled during previous monitoring periods and include an explanation of why sampling sites have changed.

(E) The results of all tap samples for pH and, where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under section 38(c) through 38(f) of this rule.

(F) The results of all samples collected at the entry point to the distribution system for applicable water quality parameters under section 38(c) through 38(f) of this rule.

(G) A water system shall report the results of all water quality parameter samples collected under section 38(c) through 38(f) of this rule during each six (6) month monitoring period specified in section 38(d) of this rule within the first ten (10) days following the end of the monitoring period unless the commissioner has specified a more frequent reporting requirement.

(2) For a nontransient noncommunity water system or a community water system meeting the criteria of section 44(c)(7)(A) and 44(c)(7)(B) of this rule that does not have enough taps that can provide first-draw samples, the system must do either of the following:

(A) Provide written documentation to the commissioner identifying standing times and locations for enough nonfirst-draw samples to make up its sampling pool under section 37(b)(5) of this rule by the start of the first applicable monitoring period under section 37(d) of this rule that commences after April 11, 2000, unless the commissioner has waived prior approval of nonfirst-draw sample sites selected by the system ~~pursuant to~~ **under** section 37(b)(5) of this rule.

(B) If the commissioner has waived prior approval of nonfirst-draw sample sites selected by the system, identify, in writing, each site that did not meet the six (6) hour minimum standing time and the length of the standing time for that particular substitute sample collected ~~pursuant to~~ **under** section 37(b)(5) of this rule and include this information with the lead and copper tap sample results required to be submitted ~~pursuant to~~ **under** subdivision (1)(A).

(3) No later than sixty (60) days after the addition of a new source or any change in water treatment unless the commissioner requires earlier notification, a water system deemed to have optimized corrosion control under section 40(b)(3) of this rule, a water system subject to reduced monitoring ~~pursuant to~~ **under** section 37(d)(4) of this rule, or a water system subject to a monitoring waiver ~~pursuant to~~ **under** section 37(g) of this rule, shall send written documentation to the commissioner describing the change. In those instances where prior approval by the commissioner of the treatment change or new source is not required, water systems are encouraged to provide the notification to the commissioner beforehand to minimize the risk the treatment change or new source will adversely affect optimal corrosion control.

(4) Any small system applying for a monitoring waiver under section 37(g) of this rule, or subject to a waiver granted ~~pursuant to~~ **under** section 37(g)(3) of this rule, shall provide the following information to the commissioner in writing by the specified deadline:

(A) By the start of the first applicable monitoring period in section 37(d) of this rule, any small water system applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the waiver criteria of section 37(g)(1) and 37(g)(2) of this rule.

(B) No later than nine (9) years after the monitoring previously conducted ~~pursuant to~~ **under** section 37(g)(2) or 37(g)(4)(A) of this rule, each small system desiring to maintain its monitoring waiver shall provide the information required by section 37(g)(4)(A) and 37(g)(4)(B) of this rule.

(C) No later than sixty (60) days after it becomes aware that it is no longer free of lead or copper containing materials, or both, each small system with a monitoring waiver shall provide written notification to the commissioner, setting forth the circumstances resulting in the lead or copper containing materials, or both, being introduced into the system and what corrective action, if any, the system plans to remove these materials.

(D) By October 10, 2000, any small system with a waiver granted prior to April 11, 2000, and that has not previously met the requirements of section 37(g)(2) of this rule shall provide the information required.

(5) Each ground water system that limits water quality parameter monitoring to a subset of entry points under section 38(d)(3) of this rule shall provide, by the commencement of such monitoring, written correspondence to the commissioner that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(b) Source water monitoring reporting requirements shall be as follows:

(1) A water system shall report the sampling results for all source water samples collected in accordance with section 39 of this rule within the first ten (10) days following the end of each source water monitoring period, that is, annually, per compliance period, per compliance cycle, specified in section 39 of this rule.

(2) With the exception of the first round of source water sampling conducted under section 39(b) of this rule, the system shall specify any site ~~which~~ **that** was not sampled during previous monitoring periods and include an explanation of why the sampling point has changed.

(c) This subsection establishes requirements for corrosion control treatment reporting. By the applicable dates under section 40 of this rule, systems shall report the following information:

(1) For systems demonstrating that they already have optimized corrosion control, information required in section 40(b)(2) or 40(b)(3) of this rule.

(2) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under section 41(a) of this rule.

(3) For systems required to evaluate the effectiveness of corrosion control treatments under section 41(c) of this rule, the information required under that subsection.

(4) For systems required to install optimal corrosion control designated by the commissioner under section 41(d) of this rule, a letter certifying that the system has completed installing that treatment.

(d) This subsection establishes requirements for source water treatment reporting. By the applicable dates in section 42 of this rule, systems shall provide the following information to the commissioner:

(1) If required under section 42(b)(1) of this rule, their recommendation regarding source water treatment.

(2) For systems required to install source water treatment under section 42(b)(2) of this rule, a letter certifying that the system has completed installing the treatment designated by the commissioner within twenty-four (24) months after the commissioner designated the treatment.

(e) This subsection establishes requirements for lead service line replacement reporting. Systems shall report the following information to the commissioner to demonstrate compliance with ~~the requirements of~~ section 43 of this rule:

(1) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in section 43(a) of this rule, the system shall demonstrate in writing to the commissioner that it has conducted a material evaluation, including the evaluation in section 37(a) of this rule, to identify the initial number of lead service lines in its distribution system, and shall provide the commissioner with the system's schedule for replacing annually at least seven percent (7%) of the initial number of lead service lines within its distribution system.

(2) Within twelve (12) months after a system exceeds the lead action level in sampling referred to in section 43(a) of this rule, and every twelve (12) months thereafter, the system shall demonstrate to the commissioner in writing that the system has done either of the following:

(A) Replaced in the previous twelve (12) months, at least seven percent (7%) of the initial lead service lines (or a greater number of lines specified by the commissioner under section 43(e) of this rule) in its distribution system.

(B) Conducted sampling ~~which~~ **that** demonstrates that the lead concentration in all service line samples from an individual line, taken under section 37(b)(3) of this rule, is less than or equal to fifteen-thousandths (0.015) milligram per liter. In such cases, the total number of lines replaced and ~~which~~ **that** meet the criteria in section 43(b) of this rule shall equal at least seven percent (7%) of the initial number of lead lines identified under subsection (a) (or the percentage specified by the commissioner under section 43(e) of this rule).

(3) The annual letter submitted to the commissioner under subdivision (2) shall contain the following information:

(A) The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule.

(B) The number and location of each lead service line replaced during the previous year of the system's replacement schedule.

(C) If measured, the water lead concentration and location of each service line sampled, the sampling method, and the date of sampling.

(4) Any system that collects lead service line samples following partial lead service line replacement required by section 43 of this rule shall report the results to the commissioner within the first ten (10) days of the month following the month when the system receives the laboratory results or as specified by the commissioner. A system shall also report any additional information as specified by the commissioner. The results shall be reported in the time and manner prescribed by the commissioner to verify that all partial lead service line replacement activities have taken place.

(f) The following are requirements for public education program reporting:

(1) Any water system that is subject to the public education requirements in section 44 of this rule shall, within ten (10) days after the end of each period in which the system is required to perform public education tasks in accordance with section 44(c) of this rule, send written documentation to the commissioner that contains the following information:

(A) A demonstration that the system has delivered the public education materials that meet the content requirements in section 44(a) and 44(b) of this rule and the delivery requirements in section 44(c) of this rule.

(B) A list of all the:

(i) newspapers;

(ii) radio stations;

(iii) television stations;

(iv) facilities; and

(v) organizations;

to which the system delivered public education materials during the period in which the system was required to perform the public education tasks.

(2) Unless required by the commissioner, a system that previously submitted the information required by subdivision (1)(B) **need not resubmit the information required** as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(g) Any system that collects sampling data in addition to that required by sections 36 through 45 of this rule, this section, and section 47 of this rule shall report the results to the commissioner within the first ten (10) days following the end of the applicable monitoring period under sections 37 through 39 of this rule during which the samples are collected.

(h) A water system is not required to report the ninetieth percentile lead and copper concentrations measured from among all lead and copper tap water samples collected in each monitoring period as required by subsection (a)(1)(C) if the following conditions are met:

(1) The commissioner has previously notified the water system that it will calculate the water system's ninetieth percentile lead and copper concentrations, based on the lead and copper results submitted ~~pursuant to~~ **under** subdivision (2)(A), and has specified a date before the end of the applicable monitoring period by which the system must provide the results of lead and copper tap water samples.

(2) The system has provided the following information to the commissioner by the date specified in subdivision (1):

(A) The results of all tap samples for lead and copper including the location of each site and the criteria under section 37(a)(3), 37(a)(4), 37(a)(5), 37(a)(6), or 37(a)(7) of this rule, under which the site was selected for the system's sampling pool ~~pursuant to~~ **under** subsection (a)(1)(A).

(B) An identification of the sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods and an explanation why sampling sites have changed.

(3) The commissioner has provided the results of the ninetieth percentile lead and copper calculations, in writing, to the water system before the end of the monitoring period.

(i) The information required by this section shall be submitted to the commissioner using the methods specified in section 13(e) of this rule.

(Water Pollution Control Board; 327 IAC 8-2-46; filed Aug 24, 1994, 8:15 a.m.: 18 IR 84; filed Oct 24, 1997, 4:30 p.m.: 21 IR 945; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3980; filed Oct 26, 2001, 4:55 p.m.: 25 IR 784; errata filed Oct 30, 2001, 10:50 a.m.: 25 IR 813; errata filed Feb 22, 2002, 1:59 p.m.: 25 IR 2254)

SECTION 19. 327 IAC 8-2.1-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-3 Content of the reports

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 3. (a) A community water system shall provide to its customers an annual report that contains the information specified in this section and section 4 of this rule.

(b) The report must contain information on the source of the water delivered, including the following:

(1) The source or sources of water delivered by the community water system by including information on **the:**

(A) ~~the~~ type of water, such as surface water or ground water; and

(B) ~~the~~ commonly used name, if any, and location of the body or bodies of water.

(2) If a source water assessment has been completed, the report must notify the consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information. Where a system has received a source water assessment from the commissioner, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the commissioner or written by the operator.

(c) The report must include the following definitions:

(1) "Maximum contaminant level goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(2) "Maximum contaminant level" or "MCL" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(d) A report that contains data on contaminants that the department or EPA regulates and uses any of the following terms must include definitions, as applicable, of the terms used:

(1) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(2) "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that a water system shall follow.

(3) "Maximum residual disinfectant level" or "MRDL" means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(4) "Maximum residual disinfectant level goal" or "MRDLG" means the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLG does not reflect the benefits of the use of disinfectants to control microbial contaminants.

(e) A report must include the information specified in this subsection for the following contaminants subject to mandatory monitoring, other than Cryptosporidium:

(1) Contaminants subject to an MCL, action level, or treatment technique, hereafter referred to as regulated contaminants.

(2) Disinfection byproducts or microbial contaminants for which monitoring is required by 40 CFR 141.142* and 40 CFR 141.143*, except as provided in subsection ~~(c)(1),~~ **(f)(1)** and that are detected in the finished water.

(3) The data relating to these contaminants must be displayed in one (1) table or in several adjacent tables. Any additional monitoring results that a community water system chooses to include in its report must be displayed separately.

(4) The data must be derived from data collected to comply with EPA and department monitoring and analytical requirements during calendar year 1998 for the first report and subsequent calendar years thereafter, except the following:

(A) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table or tables must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five (5) years need be included.

(B) Results of monitoring in compliance with 40 CFR 141.142* and 40 CFR 141.143* need only be included:

(i) for five (5) years from the date of the last sample; or

(ii) until any of the detected contaminants becomes regulated and subject to routine monitoring requirements;

whichever comes first.

(5) For detected regulated contaminants listed in section 6(a) of this rule, the table or tables must contain the following information:

(A) The MCL for that contaminant expressed as a number equal to or greater than one and zero tenths (1.0), as listed in section 6(a) of this rule.

(B) The MCLG for that contaminant expressed in the same units as the MCL.

(C) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report shall include the definitions for treatment technique or action level, or both, as appropriate, specified in subsection ~~(c)(4).~~ **(d).**

(D) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with this rule and the range of detected levels as follows:

(i) When compliance with the MCL is determined annually or less frequently, the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point, the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the average and range of detection expressed in the same units as the MCL.

(E) When turbidity is reported ~~pursuant to~~ **under** 327 IAC 8-2-8.8 or 327 IAC 8-2.6-3, the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 327 IAC 8-2-8.8 or 327 IAC 8-2.6-3 for the filtration technology being used. The report must include an explanation of the reasons for measuring turbidity.

(F) For lead and copper, the ninetieth percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(G) For total coliform, the highest monthly:

(i) number of positive samples for systems collecting fewer than forty (40) samples per month; or

(ii) percentage of positive samples for systems collecting at least forty (40) samples per month.

(H) For fecal coliform, the total number of positive samples.

(I) The likely source or sources of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments and must be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one (1) or more of the typical sources for that contaminant listed in section 6(b) of this rule that are most applicable to the system.

(6) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources:

(A) the table must contain a separate column for each service area, and the report must identify each separate distribution system; or

(B) the system may produce separate reports tailored to include data for each service area.

(7) The table must clearly identify any data indicating violations of MCLs or treatment techniques, and the report must contain a clear and readily understandable explanation of the violation, including:

(A) the length of the violation;

(B) the potential adverse health effects; and

(C) actions taken by the system to address the violation.

To describe the potential health effects, the system shall use the relevant language of section 6(c) of this rule.

(8) For detected unregulated contaminants for which monitoring is required (except Cryptosporidium), the table must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(f) Each report must contain the following information on Cryptosporidium, radon, and other contaminants:

(1) If the system has performed any monitoring for Cryptosporidium, including monitoring performed to satisfy the requirements of 40 CFR 141.143*, that indicates Cryptosporidium may be present in the source water or the finished water, the report must include:

(A) a summary of the results of the monitoring; and

(B) an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon that indicates radon may be present in the finished water, the report must include:

(A) the results of the monitoring; and

(B) an explanation of the significance of the results.

(3) If the system has performed additional monitoring that indicates the presence of other contaminants in the finished water, the commissioner strongly encourages systems to report any results that may indicate a health concern. To determine if results may indicate a health concern, the commissioner recommends that systems find out if EPA has proposed a national primary drinking water regulation (NPDWR) or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline at (800) 426-4791. The commissioner and EPA consider levels detected above a proposed federal or state MCL or health advisory level to indicate possible health concerns. For such contaminants, the commissioner recommends that the report includes:

(A) the results of the monitoring; and

(B) an explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(g) In addition to the requirements of subsection ~~(d)(5),~~ **(e)(5),** the report must note any violation of a requirement listed in this subsection that occurred during the year covered by the report and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation. Violations of the following requirements must be included:

(1) Monitoring and reporting of compliance data.

(2) Filtration and disinfection prescribed by 327 IAC 8-2-8.5 and 327 IAC 8-2-8.6. For systems that have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes that constitutes a violation, the report must include the following language as part of the explanation of potential health effects, "inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.".

(3) Lead and copper control requirements prescribed by 327 IAC 8-2-36 through 327 IAC 8-2-47. For systems that fail to take one (1) or more actions prescribed by 327 IAC 8-2-36(d) or 327 IAC 8-2-40 through 327 IAC 8-2-43, the report must include the applicable language from section 6(c) of this rule for lead or copper, or both.

(4) Treatment techniques for acrylamide and epichlorohydrin prescribed by 327 IAC 8-2-35. For systems that violate 327 IAC 8-2-35, the report shall include the relevant language from section 6(c) of this rule.

(5) Record keeping of compliance data.

(6) Special monitoring requirements prescribed by 327 IAC 8-2-21.
(7) Violation of the terms of an administrative or judicial order.

(h) The following additional information must be contained in the report:
(1) A brief explanation regarding contaminants that may reasonably be expected to be found in drinking water, including bottled water. This explanation may include the language in clauses (A) through (C), or systems may use their own comparable language. The report must also include the language of clause (D). The language is as follows:
(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material and can pick up substances resulting from the presence of animals or from human activity.
(B) Contaminants that may be present in source water include the following:
(i) Microbial contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.
(ii) Inorganic contaminants, such as salts and metals, that can be naturally-occurring or result from urban stormwater run-off, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.
(iii) Pesticides and herbicides that may come from a variety of sources, such as agriculture, urban stormwater run-off, and residential uses.
(iv) Organic chemical contaminants, including synthetic and volatile organic chemicals, that are byproducts of industrial processes and petroleum production and can also come from gas stations, urban stormwater run-off, and septic systems.
(v) Radioactive contaminants that can be naturally-occurring or be the result of oil and gas production and mining activities.
(C) In order to ensure that tap water is safe to drink, the department and EPA prescribe regulations that limit the amount of certain contaminants in water provided by public water systems. Federal Drug Administration (FDA) regulations establish limits for contaminants in bottled water that must provide the same protection for public health.
(D) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline at (800) 426-4791.
(2) The telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report.
(3) In communities with a large proportion of non-English speaking residents, in which twenty percent (20%) or more of the residents speak the same language other than English, the report must contain:
(A) information in the appropriate language or languages regarding the importance of the report; or ~~contain~~
(B) a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.
(4) The report must include information about opportunities for public participation in decisions that may affect the quality of water. This information may include, but is not limited to, the time and place of regularly scheduled board meetings.
(5) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.
*The Code of Federal Regulations (CFR) citations are incorporated by reference into this rule and are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, Twelfth Floor, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2.1-3; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1899; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3982; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1098; filed May 1, 2003, 12:00 p.m.: 26 IR 2818)*

SECTION 20. 327 IAC 8-2.1-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-4 Required additional health information
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 4. (a) A report must prominently display the language: "Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons, such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. U.S. Environmental Protection Agency and Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline at (800) 426-4791.".

(b) ~~If~~ **Ending in the report due by July 1, 2001,** a system **that** detects arsenic at levels above twenty-five (25) micrograms per liter, but below ~~the MCL, it~~ **fifty (50) micrograms per liter, and beginning in the report due by July 1, 2002, a system that detects arsenic above five (5) micrograms per liter and up to and including ten (10) micrograms per liter** shall do one (1) of the following:
(1) Include in its report ~~the language: "The U.S. Environmental Protection Agency is reviewing the~~ **a short informational statement about arsenic, using language such as "While your** drinking water **meets EPA's** standard for arsenic, ~~because of special concerns that it may not be stringent enough.~~ **it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of** arsenic, **which** is a ~~naturally-occurring~~ mineral known to cause cancer in humans at high concentrations **and is linked to other health effects such as skin damage and circulatory problems.".**
(2) Write its own educational statement, if ~~such~~ **the** statement is written in consultation with the commissioner, and include that statement in the report.

(c) If a system detects nitrate at levels above five (5) milligrams per liter, but below the MCL, ~~it~~ **the system** shall do one (1) of the following:
(1) Include in its report the language: "Nitrate in drinking water at levels above ten (10) parts per million is a health risk for infants of

less than six (6) months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, seek advice from your health care provider.".

(2) Write its own educational statement, if ~~such~~ **the** statement is written in consultation with the commissioner, and include that statement in the report.

(d) If a system detects lead above the action level in more than five percent (5%), and up to and including ten percent (10%), of homes sampled, ~~it~~ **the system** shall do one (1) of the following:

(1) Include in its report the language: "Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for thirty (30) seconds to two (2) minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline at (800) 426-4791.".

(2) Write its own educational statement, if ~~such~~ **the** statement is written in consultation with the commissioner, and include that statement in the report.

(e) If a system detects total trihalomethanes above eight-hundredths (0.08) milligrams per liter, but below the MCL in 327 IAC 8-2-5(a), as an annual average, monitored and calculated under ~~the provisions of~~ 327 IAC 8-2-5.3, ~~it~~ **the system** shall include in its report the health effects language in table 17(G)(74) contained in section 17 of this rule.

(f) Beginning in the report due by July 1, 2002, and ending December 31, 2005, a community water system that detects arsenic above ten-hundredths (0.10) mg/l and up to and including fifty-hundredths (0.50) mg/l must include the arsenic health effects language in Table 17(B)(4) of section 17 of this rule. *(Water Pollution Control Board; 327 IAC 8-2.1-4; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1902; filed May 1, 2003, 12:00 p.m.: 26 IR 2821)*

SECTION 21. 327 IAC 8-2.1-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-6 Other required information

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 6. (a) In order to convert MCLs to numbers greater than or equal to one and zero-tenths (1.0) for the required table referenced in section 3 of this rule, a community water system shall use the following table:

Table 6-1: Converting MCL Compliance Values for Consumer Confidence Reports

Contaminant	MCL in Compliance Units (mg/l)	multiply by...	MCL in CCR Units	MCLG in CCR Units
Microbiological contaminants				
1. Total coliform bacteria	**5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).**		5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).	0
2. Fecal coliform and E. coli	**0**		A routine sample and a repeat sample are total coliform positive, and one (1) is also fecal coliform or E. coli positive.	0
3. Total organic carbon	TT		TT	n/a
4. Turbidity	**TT**		TT (NTU)	n/a
Radioactive contaminants				
5. Beta/photon emitters	4 mrem/year		4 mrem/year	0
6. Alpha emitters	15 pCi/l		15 pCi/l	0
7. Combined radium	5 pCi/l		5 pCi/l	0
8. Uranium	**0.030**	**1,000**	**30 ppb**	**0**
Inorganic contaminants				
~~8.~~ **9.** Antimony	0.006	1,000	6 ppb	6
~~9.~~ **10.** Arsenic	~~0.05~~ **0.010**[1]	1,000	~~50~~ **10**[1] ppb	~~n/a~~ **0**[1]
~~10.~~ **11.** Asbestos	7 MFL		7 MFL	7
~~11.~~ **12.** Barium	2		2 ppm	2
~~12.~~ **13.** Beryllium	0.004	1,000	4 ppb	4
14. Bromate	**0.10**	**1,000**	**10 ppb**	**0**
~~13.~~ **15.** Cadmium	0.005	1,000	5 ppb	5
16. Chloramines	**MRDL=4.0**		**MRDL=4.0 ppm**	**MRDLG=4**
17. Chlorine	**MRDL=4.0**		**MRDL=4.0 ppm**	**MRDLG=4**

18. Chlorine dioxide	**MRDL=0.8**	**1,000**	**MRDL=800 ppb**	**MRDLG=800**
19. Chlorite	**1**		**1 ppm**	**0.8**
~~14.~~ **20.** Chromium	0.1	1,000	100 ppb	100
~~15.~~ **21.**Copper	AL = 1.3		AL = 1.3 ppm	1.3
~~16.~~ **22.** Cyanide	0.2	1,000	200 ppb	200
~~17.~~ **23.** Fluoride	4		4 ppm	4
~~18.~~ **24.** Lead	AL = 0.015	1,000	AL = 15 ppb	0
~~19.~~ **25.** Mercury (inorganic)	0.002	1,000	2 ppb	2
~~20.~~ **26.** Nitrate (as nitrogen)	10		10 ppm	10
~~21.~~ **27.** Nitrite (as nitrogen)	1		1 ppm	1
~~22.~~ **28.** Selenium	0.05	1,000	50 ppb	50
~~23.~~ **29.** Thallium	0.002	1,000	2 ppb	0.5
Synthetic organic contaminants including pesticides and herbicides				
~~24.~~ **30.** 2,4-D	0.07	1,000	70 ppb	70
~~25.~~ **31.** 2,4,5-TP (silvex)	0.05	1,000	50 ppb	50
~~26.~~ **32.** Acrylamide	**TT**		TT	0
~~27.~~ **33.** Alachlor	0.002	1,000	2 ppb	0
~~28.~~ **34.** Atrazine	0.003	1,000	3 ppb	3
~~29.~~ **35.** Benzo(a)pyrene (PAH)	0.0002	1,000,000	200 ppt	0
~~30.~~ **36.** Carbofuran	0.04	1,000	40 ppb	40
~~31.~~ **37.** Chlordane	0.002	1,000	2 ppb	0
~~32.~~ **38.** Dalapon	0.2	1,000	200 ppb	200
~~33.~~ **39.** Di(2-ethylhexyl)adipate	.4	1,000	400 ppb	400
~~34.~~ **40.** Di(2-ethylhexyl)phthalate	0.006	1,000	6 ppb	0
~~35.~~ **41.** Dibromochloropropane	0.0002	1,000,000	200 ppt	0
~~36.~~ **42.** Dinoseb	0.007	1,000	7 ppb	7
~~37.~~ **43.** Diquat	0.02	1,000	20 ppb	20
~~38.~~ **44.** Dioxin (2,3,7,8-TCDD)	0.00000003	1,000,000,000	30 ppq	0
~~39.~~ **45.** Endothall	0.1	1,000	100 ppb	100
~~40.~~ **46.** Endrin	0.002	1,000	2 ppb	2
~~41.~~ **47.** Epichlorohydrin	**TT**		TT	0
~~42.~~ **48.** Ethylene dibromide	0.00005	1,000,000	50 ppt	0
~~43.~~ **49.** Glyphosate	0.7	1,000	700 ppb	700
~~44.~~ **50.** Heptachlor	0.0004	1,000,000	400 ppt	0
~~45.~~ **51.** Heptachlor epoxide	0.0002	1,000,000	200 ppt	0
~~46.~~ **52.** Hexachlorobenzene	0.001	1,000	1 ppb	0
~~47.~~ **53.** Hexachlorocyclopentadiene	0.05	1,000	50 ppb	50
~~48.~~ **54.** Lindane	0.0002	~~1,000~~ **1,000,000**	200 ppt	200
~~49.~~ **55.** Methoxychlor	0.04	1,000	40 ppb	40
~~50.~~ **56.** Oxamyl (vydate)	0.2	1,000	200 ppb	200
~~51.~~ **57.** PCBs (polychlorinated biphenyls)	0.0005	1,000,000	500 ppt	0
~~52.~~ **58.** Pentachlorophenol	0.001	1,000	1 ppb	0
~~53.~~ **59.** Picloram	0.5	1,000	500 ppb	500
~~54.~~ **60.** Simazine	0.004	1,000	4 ppb	4
~~55.~~ **61.** Toxaphene	0.003	1,000	3 ppb	0
Volatile organic contaminants				
~~56.~~ **62.** Benzene	0.005	1,000	5 ppb	0
~~57. Bromate~~	~~.010~~	~~1,000~~	~~10 ppb~~	~~0~~
~~58.~~ **63.** Carbon tetrachloride	0.005	1,000	5 ppb	0
~~59. Chloramines~~	~~MRDL = 4~~		~~MRDL = 4 ppm~~	~~MRDLG = 4~~
~~60. Chlorine~~	~~MRDL = 4~~		~~MRDL = 4 ppm~~	~~MRDLG = 4~~
~~61. Chlorite~~	~~1~~		~~1 ppm~~	~~.8~~

~~62. Chloride dioxide~~	~~MRDL = .8~~	~~1,000~~	~~MRDL = 800ppb~~	~~MRDLG = 800~~
~~63.~~ **64.** Chlorobenzene	0.1	1,000	100 ppb	100
~~64.~~ **65.** o-Dichlorobenzene	0.6	1,000	600 ppb	600
~~65.~~ **66.** p-Dichlorobenzene	0.075	1,000	75 ppb	75
~~66.~~ **67.** 1,2-Dichloroethane	0.005	1,000	5 ppb	0
~~67.~~ **68.** 1,1-Dichloroethylene	0.007	1,000	7 ppb	7
~~68.~~ **69.** cis-1,2-Dichloroethylene	0.07	1,000	70 ppb	70
~~69.~~ **70.** trans-1,2-Dichloroethylene	0.1	1,000	100 ppb	100
~~70.~~ **71.** Dichloromethane	0.005	1,000	5 ppb	0
~~71.~~ **72.** 1,2-Dichloropropane	0.005	1,000	5 ppb	0
~~72.~~ **73.** Ethylbenzene	0.7	1,000	700 ppb	700
~~73.~~ **74.** Haloacetic acids (HAA)	.060	1,000	60 ppb	n/a
~~74.~~ **75.** Styrene	0.1	1,000	100 ppb	100
~~75.~~ **76.** Tetrachloroethylene	0.005	1,000	5 ppb	0
~~76.~~ **77.** 1,2,4-Trichlorobenzene	0.07	1,000	70 ppb	70
~~77.~~ **78.** 1,1,1-Trichloroethane	0.2	1,000	200 ppb	200
~~78.~~ **79.** 1,1,2-Trichloroethane	0.005	1,000	5 ppb	3
~~79.~~ **80.** Trichloroethylene	0.005	1,000	5 ppb	0
~~80.~~ **81.** TTHMs (total trihalomethanes)	0.1	1,000	100 ppb	n/a
~~81.~~ **82.** Toluene	1		1 ppm	1
~~82.~~ **83.** Vinyl chloride	0.002	1,000	2 ppb	0
~~83.~~ **84.** Xylenes	10		10 ppm	10

[1]These arsenic values are effective January 1, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

Key:

AL = Action level.

MCL = Maximum contaminant level.

MCLG = Maximum contaminant level goal.

MFL = Million fibers per liter.

MRDL = Maximum residual disinfectant level.

MRDLG = Maximum residual disinfectant level goal.

mrem/year = Millirems per year (a measure of radiation absorbed by the body).

N/A = Not applicable.

NTU = Nephelometric turbidity units.

pCi/l = Picocuries per liter (a measure of radioactivity).

ppm = Parts per million, or milligrams per liter (mg/l).

ppb = Parts per billion, or micrograms per liter (µg/l).

ppt = Parts per trillion, or nanograms per liter (ng/l).

ppq = Parts per quadrillion, or picograms per liter (pg/l).

TT = Treatment technique.

(b) In order to show potential sources of contamination for the table required by section 3 of this rule, a community water system shall use the following table:

Table 6-2: Regulated Contaminants

Contaminant (units)	MCLG	MCL	Major Sources in Drinking Water
Microbiological contaminants			
1. Total coliform bacteria	0	5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).	Naturally present in the environment.

2. Fecal coliform and E. coli	0	A routine sample and a repeat sample are total coliform positive, and one (1) is also fecal coliform or E. coli positive.	Human and animal fecal waste.
3. Total organic carbon	n/a	TT	Naturally present in the environment.
4. Turbidity	n/a	TT	Soil run-off.
Radioactive contaminants			
5. Beta/photon emitters (mrem/year)	0	4	Decay of natural and manmade deposits.
6. Alpha emitters (pCi/l)	0	15	Erosion of natural deposits.
7. Combined radium (pCi/l)	0	5	Erosion of natural deposits.
8. Uranium (ppb)	**0**	**30**	**Erosion of natural deposits.**
Inorganic contaminants			
~~8.~~ **9.** Antimony (ppb)	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
~~9.~~ **10.** Arsenic (ppb)	~~n/a~~ **0**[1]	~~50~~ **10**[1]	Erosion of natural deposits; run-off from orchards; run-off from glass and electronics production wastes.
~~10.~~ **11.** Asbestos (MFL)	7	7	Decay of asbestos cement water mains; erosion of natural deposits.
~~11.~~ **12.** Barium (ppm)	2	2	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits.
~~12.~~ **13.** Beryllium (ppb)	4	4	Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries.
14. Bromate (ppb)	**10**	**0**	**Byproduct of drinking water disinfection.**
~~13.~~ **15.** Cadmium (ppb)	5	5	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; run-off from waste batteries and paints.
16. Chloramines (ppm)	**MRDLG = 4**	**MRDL = 4.0**	**Water additive used to control microbes.**
17. Chlorine (ppm)	**MRDLG = 4**	**MRDL = 4.0**	**Water additive used to control microbes.**
18. Chlorine dioxide (ppb)	**MRDLG = 800**	**MRDL = 800**	**Water additive used to control microbes.**
19. Chlorite (ppm)	**0.8**	**1**	**Byproduct from drinking water disinfection.**
~~14.~~ **20.** Chromium (ppb)	100	100	Discharge from steel and pulp mills; erosion of natural deposits.
~~15.~~ **21.** Copper (ppm)	1.3	AL = 1.3	Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives.
~~16.~~ **22.** Cyanide (ppb)	200	200	Discharge from steel/metal factories; discharge from plastic and fertilizer factories.
~~17.~~ **23.** Fluoride (ppm)	4	4	Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories.
~~18.~~ **24.** Lead (ppb)	0	AL = 15	Corrosion of household plumbing systems; erosion of natural deposits.
~~19.~~ **25.** Mercury (inorganic) (ppb)	2	2	Erosion of natural deposits; discharge from refineries and factories; run-off from landfills; run-off from cropland.
~~20.~~ **26.** Nitrate (as nitrogen) (ppm)	10	10	Run-off from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits.
~~21.~~ **27.** Nitrite (as nitrogen) (ppm)	1	1	Run-off from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits.
~~22.~~ **28.** Selenium (ppb)	50	50	Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines.

~~23.~~ **29.** Thallium (ppb)	0.5	2	Leaching from ore-processing sites; discharge from electronics, glass, and drug factories.
Synthetic organic contaminants, including pesticides and herbicides			
~~24.~~ **30.** 2,4-D (ppb)	70	70	Run-off from herbicide used on row crops.
~~25.~~ **31.** 2,4,5-TP (Silvex) (ppb)	50	50	Residue of banned herbicide.
~~26.~~ **32.** Acrylamide	0	TT	Added to water during sewage/wastewater treatment.
~~27.~~ **33.** Alachlor (ppb)	0	2	Run-off from herbicide used on row crops.
~~28.~~ **34.** Atrazine (ppb)	3	3	Run-off from herbicide used on row crops.
~~29.~~ **35.** Benzo(a)pyrene (PAH) (ppt)	0	200	Leaching from linings of water storage tanks and distribution lines.
~~30.~~ **36.** Carbofuran (ppb)	40	40	Leaching of soil fumigant used on rice and alfalfa.
~~31.~~ **37.** Chlordane (ppb)	0	2	Residue of banned termiticide.
~~32.~~ **38.** Dalapon (ppb)	200	200	Run-off from herbicide used on rights-of-way.
~~33.~~ **39.** Di(2-ethylhexyl)adipate (ppb)	400	400	Discharge from chemical factories.
~~34.~~ **40.** Di(2-ethylhexyl)phthalate (ppb)	0	6	Discharge from rubber and chemical factories.
~~35.~~ **41.** Dibromochloropropane (ppt)	0	200	Run-off/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.
~~36.~~ **42.** Dinoseb (ppb)	7	7	Run-off from herbicide used on soybeans and vegetables.
~~37.~~ **43.** Diquat (ppb)	20	20	Run-off from herbicide use.
~~38.~~ **44.** Dioxin (2,3,7,8-TCDD) (ppq)	0	30	Emissions from waste incineration and other combustion; discharge from chemical factories.
~~39.~~ **45.** Endothall (ppb)	100	100	Run-off from herbicide use.
~~40.~~ **46.** Endrin (ppb)	2	2	Residue of banned insecticide.
~~41.~~ **47.** Epichlorohydrin	0	TT	Discharge from industrial chemical factories; an impurity of ~~same~~ **some** water treatment chemicals.
~~42.~~ **48.** Ethylene dibromide (ppt)	0	50	Discharge from petroleum refineries.
~~43.~~ **49.** Glyphosate (ppb)	700	700	Run-off from herbicide use.
~~44.~~ **50.** Heptachlor (ppt)	0	400	Residue of banned ~~termiticide.~~ **pesticide.**
~~45.~~ **51.** Heptachlor epoxide (ppt)	0	200	Breakdown of heptachlor.
~~46.~~ **52.** Hexachlorobenzene (ppb)	0	1	Discharge from metal refineries and agricultural chemical factories.
~~47.~~ **53.** Hexachlorocyclopentadiene (ppb)	50	50	Discharge from chemical factories.
~~48.~~ **54.** Lindane (ppt)	200	200	Run-off/leaching from insecticide used on cattle, lumber, **and** gardens.
~~49.~~ **55.** Methoxychlor (ppb)	40	40	Run-off/leaching from insecticide used on fruits, vegetables, alfalfa, **and** livestock.
~~50.~~ **56.** Oxamyl (vydate) (ppb)	200	200	Run-off/leaching from insecticide used on apples, potatoes, and tomatoes.
~~51.~~ **57.** PCBs (polychlorinated biphenyls) (ppt)	0	500	Run-off from landfills; discharge of waste chemicals.
~~52.~~ **58.** Pentachlorophenol (ppb)	0	1	Discharge from wood preserving factories.
~~53.~~ **59.** Picloram (ppb)	500	500	Herbicide run-off.
~~54.~~ **60.** Simazine (ppb)	4	4	Herbicide run-off.
~~55.~~ **61.** Toxaphene (ppb)	0	3	Run-off/leaching from insecticide used on cotton and cattle.
Volatile organic contaminants			
~~56.~~ **62.** Benzene (ppb)	0	5	Discharge from factories; leaching from gas storage tanks and landfills.
~~57. Bromate (ppb)~~	~~0~~	~~10~~	~~Byproduct of drinking water chlorination.~~

~~58.~~ **63.** Carbon tetrachloride (ppb)	0	5	Discharge from chemical plants and other industrial activities.
~~59. Chloramines (ppm)~~	~~MRDLG = 4~~	~~MRDL = 4~~	~~Water additive used to control microbes.~~
~~60. Chlorine (ppm)~~	~~MRDLG = 4~~	~~MRDL = 4~~	~~Water additive used to control microbes.~~
~~61. Chlorite (ppm)~~	~~.8~~	~~1~~	~~Byproduct of drinking water chlorination.~~
~~62. Chloride dioxide (ppb)~~	~~MRDLG = 800~~	~~MRDL = 800~~	~~Water additive used to control microbes.~~
~~63.~~ **64.** Chlorobenzene (ppb)	100	100	Discharge from chemical and agricultural chemical factories.
~~64.~~ **65.** o-Dichlorobenzene (ppb)	600	600	Discharge from industrial chemical factories.
~~65.~~ **66.** p-Dichlorobenzene (ppb)	75	75	Discharge from industrial chemical factories.
~~66.~~ **67.** 1,2-Dichloroethane (ppb)	0	5	Discharge from industrial chemical factories.
~~67.~~ **68.** 1,1-Dichloroethylene (ppb)	7	7	Discharge from industrial chemical factories.
~~68.~~ **69.** cis-1,2-Dichloroethylene (ppb)	70	70	Discharge from industrial chemical factories.
~~69.~~ **70.** trans-1,2-Dichloroethylene (ppb)	100	100	Discharge from industrial chemical factories.
~~70.~~ **71.** Dichloromethane (ppb)	0	5	Discharge from pharmaceutical and chemical factories.
~~71.~~ **72.** 1,2-Dichloropropane (ppb)	0	5	Discharge from industrial chemical factories.
~~72.~~ **73.** Ethylbenzene (ppb)	700	700	Discharge from petroleum refineries.
~~73.~~ **74.** Haloacetic Acids (HAA) (ppb)	n/a	60	Byproduct of drinking water disinfection.
~~74.~~ **75.** Styrene (ppb)	100	100	Discharge from rubber and plastic factories; leaching from landfills.
~~75.~~ **76.** Tetrachloroethylene (ppb)	0	5	Discharge from factories and dry cleaners.
~~76.~~ **77.** 1,2,4-Trichlorobenzene (ppb)	70	70	Discharge from textile-finishing factories.
~~77.~~ **78.** 1,1,1-Trichloroethane (ppb)	200	200	Discharge from metal degreasing sites and other factories.
~~78.~~ **79.** 1,1,2-Trichloroethane (ppb)	3	5	Discharge from industrial chemical factories.
~~79.~~ **80.** Trichloroethylene (ppb)	0	5	Discharge from metal degreasing sites and other factories.
~~80.~~ **81.** TTHMs (total trihalomethanes) (ppb)	n/a	~~100~~ **80**	Byproduct of drinking water chlorination.
~~81.~~ **82.** Toluene (ppm)	1	1	Discharge from petroleum factories.
~~82.~~ **83.** Vinyl chloride (ppb)	0	2	Leaching from PVC piping; discharge from plastics factories.
~~83.~~ **84.** Xylenes (ppm)	10	10	Discharge from petroleum factories; discharge from chemical factories.

[1]These arsenic values are effective January 1, 2006. Until then, the MCL is 0.05 mg/l and there is no MCLG.

Key:

AL = Action level.

MCL = Maximum contaminant level.

MCLG = Maximum contaminant level goal.

MFL = Million fibers per liter.

MRDL = Maximum residual disinfectant level.

MRDLG = Maximum residual disinfectant level goal.

mrem/year = millirems per year (a measure of radiation absorbed by the body).

N/A = Not applicable.

NTU = Nephelometric turbidity units.

pCi/l = Picocuries per liter (a measure of radioactivity).

ppm = Parts per million, or milligrams per liter (mg/l).

ppb = Parts per billion, or micrograms per liter (µg/l).

ppt = Parts per trillion, or nanograms per liter (ng/l).

ppq = Parts per quadrillion, or picograms per liter (pg/l).

TT = Treatment technique.

(c) The language in section 17 of this rule shall be used if there is a violation referenced in section 3 of this rule and health effects language is required. ~~unless alternate language is listed in this subsection as follows:~~

~~(1) Fecal coliform/E. coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with~~

~~animal or human wastes. Microbes in these wastes can cause short term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.~~
~~(2) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.~~

(Water Pollution Control Board; 327 IAC 8-2.1-6; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1903; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1100; filed May 1, 2003, 12:00 p.m.: 26 IR 2822)

SECTION 22. 327 IAC 8-2.1-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-8 Tier 1 public notice; form, manner, and frequency of notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 8. (a) The following violations or situations require a Tier 1 public notice:

(1) Violation of the MCL for total coliforms when fecal coliform or E. coli are present in the water distribution system as specified in 327 IAC 8-2-7(b), or the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform as specified in 327 IAC 8-2-8.3.

(2) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in 327 IAC 8-2-4, or when the water system fails to take a confirmation sample within twenty-four (24) hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in 327 IAC 8-2-4.1(h)(2).

(3) Exceedance of the nitrate MCL by noncommunity water systems, where permitted to exceed the MCL by the commissioner under 327 IAC 8-2-4 **and section 14 of this rule.**

(4) Violation of the 327 IAC 8-2-8.5(c) **or 327 IAC 8-2.6-1** treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit as identified in section 16 of this rule, where the commissioner determines after consultation that a Tier 1 notice is required or where consultation does not take place within twenty-four (24) hours after the system learns of the violation.

(5) Occurrence of a waterborne disease outbreak, as defined in 327 IAC 8-2-1, or other waterborne emergency. This includes failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.

(6) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short term exposure, as determined by the commissioner either in its regulations or on a case-by-case basis.

(7) Violation of the MRDL for chlorine dioxide as defined in 327 IAC 8-2.5-3(a) and determined according to 327 IAC 8-2.5-5 **when one (1) or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system, as specified in 327 IAC 8-2.5-7(c)(2).**

(b) Tier 1 public notice needs to be provided as follows:

(1) Provide a public notice as soon as practical but no later than twenty-four (24) hours after the system learns of the violation.

(2) Initiate consultation with the commissioner as soon as practical, but no later than twenty-four (24) hours after the public water system learns of the violation or situation, to determine additional public notice requirements.

(3) Comply with any additional public notification requirements that are established as a result of the consultation with the commissioner, including any repeat notices or direction on the duration of the posted notices. To reach all persons served, such requirements may include **the following:**

(A) Timing.
(B) Form.
(C) Manner.
(D) Frequency. ~~and~~
(E) Content of repeat notices and other actions designed.

(4) Public water systems must provide the notice within twenty-four (24) hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and nontransient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one (1) or more of the following forms of delivery:

(A) Appropriate broadcast media, such as:
(i) radio; or
(ii) television.
(B) Posting of the notice in conspicuous locations throughout the area served by the water system.
(C) Hand delivery of the notice to persons served by the water system.
(D) Another delivery method approved in writing by the commissioner.

(5) A community public water system shall give a copy of the most recent public notice to all new billing units or new hookups ~~prior to~~ **before** or at the time service begins for any of the following outstanding violations:

(A) Any maximum contaminant level.
(B) Any maximum residual disinfectant level.
(C) Any treatment technique requirement.

(c) For violations of the MRDLs of disinfectants that may pose an acute risk to human health, a copy of the notice must be furnished to the radio and television stations serving the area served by the public water system as soon as possible but in no case later than seventy-two (72) hours after the violation. *(Water Pollution Control Board; 327 IAC 8-2.1-8; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1110; filed May 1, 2003, 12:00 p.m.: 26 IR 2828)*

SECTION 23. 327 IAC 8-2.1-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-9 Tier 2 notice; form, manner, and frequency of notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 9. (a) The following violations or situations require a Tier 2 public notice:

(1) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under section 8(a) of this rule or where the commissioner determines a Tier 1 notice is required.

(2) Violations of the monitoring and testing procedure requirements, where the commissioner determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation.

(b) Tier 2 public notice needs to be provided as follows:
(1) Public water systems must provide the public notice as soon as practical, but no later than thirty (30) days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven (7) days, even if the violation or situation is resolved. The commissioner may, in appropriate circumstances, allow additional time for the initial notice of up to three (3) months from the date the system learns of the violation. It is not appropriate for the commissioner to grant an extension to the thirty (30) day deadline for any unresolved violation or to allow across-the-board extensions by rule or policy for other violations or situations requiring a Tier 2 public notice. Extensions granted by the commissioner must be in writing.
(2) The public water system must repeat the notice every three (3) months as long as the violation or situation persists, unless the commissioner determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. It is not appropriate for the commissioner to allow less frequent repeat notice for an MCL violation under the 327 IAC 8-2-7, 327 IAC 8-2-8, 327 IAC 8-2-8.1, and 327 IAC 8-2-8.3 or a treatment technique violation under 327 IAC 8-2-8.5, 327 IAC 8-2-8.6, and 327 IAC 8-2-8.8. The commissioner determinations allowing repeat notices to be given less frequently than once every three (3) months must be in writing.
(3) If there is a violation of the treatment technique requirement in 327 IAC 8-2-8.5(c) **or 327 IAC 8-2.6-1** that results from a single exceedance of the maximum allowable turbidity limit, then public water systems must consult with the commissioner as soon as practical but no later than twenty-four (24) hours after the public water system learns of the violation, to determine whether a Tier 1 public notice under section 8(a) of this rule is required to protect public health. When consultation does not take place within the twenty-four (24) hour period, the water system must distribute a Tier 1 notice of the violation within the next twenty-four (24) hours (for example, no later than forty-eight (48) hours after the system learns of the violation), following the requirements under section 8(b) and 8(c) of this rule.

(c) Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but ~~it~~ **the public notice** must at a minimum meet the following requirements:
(1) Unless directed otherwise by the commissioner in writing, community water systems must provide notice by the following methods:
(A) Mail or other direct delivery to:
(i) each customer receiving a bill; and ~~to~~
(ii) other service connections to which water is delivered by the public water system.
(B) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (A). Such persons may include those who do not pay water bills or do not have service connection addresses, including any of the following:
(i) House renters.
(ii) Apartment dwellers.
(iii) University students.
(iv) Nursing home patients.
(v) Prison inmates.
(C) Other methods may include any of the following:
(i) Publication in a local newspaper.
(ii) Delivery of multiple copies for distribution by customers that provide their drinking water to others, such as:
(AA) apartment building owners; or
(BB) large private employers.
(iii) Posting in public places served by the system or on the Internet.
(iv) Delivery to community organizations.
(2) Unless directed otherwise by the commissioner in writing, noncommunity water systems must provide notice by the following methods:
(A) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system.
(B) By mail or direct delivery to each customer and service connection if known.
(C) Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in clauses (A) and (B). Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include:
(i) publication in a local newspaper or newsletter distributed to customers;
(ii) use of e-mail to notify employees or students; or
(iii) delivery of multiple copies in central locations, such as community centers.

(Water Pollution Control Board; 327 IAC 8-2.1-9; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1110)

SECTION 24. 327 IAC 8-2.1-14 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-14 Special notice for nitrate exceedances above MCL by noncommunity water systems; granted permission by the commissioner under 327 IAC 8-2-4(b)

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 14. (a) The owner or operator of a noncommunity water system granted permission by the commissioner under 327 IAC 8-2-4(b) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under ~~327 IAC 8-2-8.1.~~ **section 8 of this rule.**

(b) Noncommunity water systems granted permission by the commissioner to exceed the nitrate MCL under 327 IAC 8-2-4(b) must provide continuous posting of **the:**
(1) ~~the~~ fact that nitrate levels exceed ten (10) milligrams per liter; and
(2) ~~the~~ potential health effects of exposure;
in accordance with the requirements for Tier 1 notice delivery under section 8 of this rule and the content requirements under section 11 of this rule. *(Water Pollution Control Board; 327 IAC 8-2.1-14; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1114)*

SECTION 25. 327 IAC 8-2.1-16 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-16 Drinking water violations; other situations requiring public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 16. (a) Drinking water violations and other situations that require public notice according to this rule are contained in the following table:

Table 16. Drinking Water Violations and Other Situations Requiring Public Notice

	MCL/MRDL/TT/AL Violations		Monitoring and Testing Procedure Violations	
Contaminant	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
I. Violations of Drinking Water Regulations:				
A. Microbiological Contaminants				
1. Total coliform	2	327 IAC 8-2-7(a)	3	327 IAC 8-2-8 327 IAC 8-2-8.1 327 IAC 8-2-8(f) 327 IAC 8-2-8.2 327 IAC 8-2-8.3
2. Fecal coliform/E. coli	1	327 IAC 8-2-7(b)	1, 3	327 IAC 8-2-8.3
3. Turbidity TT (resulting from a single exceedance of maximum allowable turbidity levels)	2,1	327 IAC 8-2-8.5(a) 327 IAC 8-2.6-3(1)(B)<br~~327 IAC 8-2.6-3(2)~~ **327 IAC 8-2.6-(3)**	3	327 IAC 8-2-8.8(b) 327 IAC 8-2.6-4
4. Surface water treatment rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	327 IAC 8-2-8.5 327 IAC 8-2-8.6	3	327 IAC 8-2-8.8
5. Interim enhanced surface water treatment rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	327 IAC 8-2.6-1 327 IAC 8-2.6-2 327 IAC 8-2.6-3	3	327 IAC 8-2.6-2 327 IAC 8-2.6-4
6. Filter backwash recycling rule	2	327 IAC 8-2.6-6	3	327 IAC 8-2.6-6
7. Long term 1 enhanced surface water treatment rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	**2**	**327 IAC 8-2.6-1 327 IAC 8-2.6-2.1 327 IAC 8-2.6-3**	**3**	**327 IAC 8-2.6-2.1 327 IAC 8-2.6-4**
B. Inorganic Chemicals (IOCs)				
1. Antimony	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
2. Arsenic	2	327 IAC 8-2-4(d)<br~~327 IAC 8-2-4.1(l)(5)~~	3	327 IAC 8-2-4.1(c)<br~~327 IAC 8-2-4.1(l)(3)~~<br~~327 IAC 8-2-4.1(l)(4)~~ **327 IAC 8-2-4.1(e)**
3. Asbestos (fibers >10 µm)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(d)
4. Barium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
5. Beryllium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
6. Cadmium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
7. Chromium (total)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
8. Cyanide	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
9. Fluoride	2	327 IAC 8-2-4(c)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)

10. Mercury (inorganic)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
11. Nitrate	1	327 IAC 8-2-4(b)	1, 3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(f) 327 IAC 8-2-4.1(h)(2)
12. Nitrite	1	327 IAC 8-2-4(b)	1, 3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(g) 327 IAC 8-2-4.1(h)(2)
13. Total nitrate and nitrite	1	327 IAC 8-2-4(b)	3	327 IAC 8-2-4.1(c)
14. Selenium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
15. Thallium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
C. Lead and Copper Rule				
1. Lead and copper rule (TT)	2	327 IAC 8-2-36 327 IAC 8-2-40 327 IAC 8-2-41 327 IAC 8-2-42 327 IAC 8-2-43 327 IAC 8-2-44	3	327 IAC 8-2-37 327 IAC 8-2-38 327 IAC 8-2-39 327 IAC 8-2-45
D. Synthetic Organic Chemicals (SOCs)				
1. 2,4-D	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
2. 2,4,5-TP (silvex)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
3. Alachlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
4. Atrazine	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
5. Benzo(a)pyrene (PAHs)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
6. Carbofuran	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
7. Chlordane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
8. Dalapon	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
9. Di (2-ethylhexyl) adipate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
10. Di (2-ethylhexyl) phthalate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
11. Dibromochloropropane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
12. Dinoseb	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
13. Dioxin (2,3,7,8-TCDD)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
14. Diquat	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
15. Endothall	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
16. Endrin	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
17. Ethylene dibromide	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
18. Glyphosate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
19. Heptachlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
20. Heptachlor epoxide	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
21. Hexachlorobenzene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
22. Hexachlorocyclopentadiene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
23. Lindane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
24. Methoxychlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
25. Oxamyl (vydate)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
26. Pentachlorophenol	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
27. Picloram	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
28. Polychlorinated biphenyls (PCBs)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
29. Simazine	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
30. Toxaphene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
E. Volatile Organic Chemicals (VOCs)				
1. Benzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
2. Carbon tetrachloride	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
3. Chlorobenzene (monochlorobenzene)	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
4. o-Dichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5

5. p-Dichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
6. 1,2-Dichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
7. 1,1-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
8. cis-1,2-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
9. trans-1,2-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
10. Dichloromethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
11. 1,2-Dichloropropane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
12. Ethylbenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
13. Styrene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
14. Tetrachloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
15. Toluene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
16. 1,2,4-Trichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
17. 1,1,1-Trichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
18. 1,1,2-Trichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
19. Trichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
20. Vinyl chloride	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
21. Xylenes (total)	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
F. Radioactive Contaminants				
1. Beta/photon emitters	2	327 IAC 8-2-10	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(b)
2. Alpha emitters	2	327 IAC 8-2-9(2)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
3. Combined radium (226 and 228)	2	327 IAC 8-2-9(1)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
4. Uranium	**2**	**327 IAC 8-2-9(3)**	**3**	**327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)**
G. Disinfection Byproducts (DBPs). Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of DBPs in drinking water.				
1. Total trihalomethanes (TTHMs)	2	327 IAC 8-2-5(a) and 327 IAC 8-2-5(c)	3	327 IAC 8-2-5.3
2. Haloacetic acids (HAA5)	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
3. Bromate	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
4. Chlorite	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
5. Chlorine (MRDL)	2	327 IAC 8-2.5-3(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(c)
6. Chloramine (MRDL)	2	327 IAC 8-2.5-3(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(c)
7. Chlorine dioxide (MRDL), where any 2 consecutive daily samples at entrance to distribution system only are above MRDL	2	327 IAC 8-2.5-3(a)	2, 3	327 IAC 8-2.5-6(a), 327 IAC 8-2.5-6(c), and 327 IAC 8-2.5-7(c)(2)
8. Chlorine dioxide (MRDL), where samples in distribution system the next day are also above MRDL	1	327 IAC 8-2.5-3(a)	1	327 IAC 8-2.5-6(a), 327 IAC 8-2.5-6(c), and 327 IAC 8-2.5-7(c)(2)
9. Control of DBP precursors - TOC (TT)	2	327 IAC 8-2.5-9(a) and 327 IAC 8-2.5-9(b)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(d)
10. Bench marking and disinfection profiling	N/A	N/A	3	327 IAC 8-2.6-2 **327 IAC 8-2.6-2.1**
11. Development of monitoring plan	N/A	N/A	3	327 IAC 8-2.5-6(f)
H. Other Treatment Techniques				
1. Acrylamide (TT)	2	327 IAC 8-2-35	N/A	N/A
2. Epichlorohydrin (TT)	2	327 IAC 8-2-35	N/A	N/A

II. Unregulated Contaminant Monitoring:				
A. Nickel	N/A	N/A	3	327 IAC 8-2-4.1(e)
III. Other Situations Requiring Public Notification:				
A. Fluoride secondary maximum contaminant level (SMCL) exceedance	3	40 CFR § 143.3*	N/A	N/A
B. Exceedance of nitrate MCL for noncommunity systems, as allowed by the commissioner	1	327 IAC 8-2-4(b)	N/A	N/A
C. Waterborne disease outbreak	1	327 IAC 8-2-1	N/A	N/A
D. Other waterborne emergency	1	N/A	N/A	N/A
E. Other situations as determined by the commissioner	1, 2, 3	N/A	N/A	N/A

Key:

MCL = Maximum contaminant level

MRDL = Maximum residual disinfectant level

TT = Treatment technique

Violations of drinking water regulations include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

(b) Drinking water violations and other situations that require public notice according to this rule are contained in the following provisions:

(1) Violations and other situations not listed in table 16 in subsection (a), such as reporting violations and failure to prepare Consumer Confidence Report do not require notice, unless otherwise determined by the commissioner. The commissioner may, at their option, also require a more stringent public notice tier such as Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3 for specific violations and situations listed in table 16 in subsection (a).

(2) Failure to test for fecal coliform or E. coli is a Tier 1 violation if testing is not done after any repeat sample tests positive for coliform. All other total coliform monitoring and testing procedure violations are Tier 3.

(3) Systems with treatment technique violations involving a single exceedance of maximum turbidity limit under the:

(A) surface water treatment rule (SWTR);

(B) interim enhanced surface water treatment rule (IESWTR); or

(C) long term 1 enhanced surface water treatment rule (LT1ESWTR);

are required to initiate consultation with the commissioner within twenty-four (24) hours after learning of the violation. Based on this consultation, the commissioner may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the commissioner in the twenty-four (24) hour period, the violation is automatically elevated to Tier 1.

(4) Failure to take a confirmation sample within twenty-four (24) hours for nitrate or nitrite after an initial sample exceeds the MCL is a Tier 1 Violation. Other monitoring violations for nitrate are Tier 3.

(5) Other waterborne emergencies require a Tier 1 public notice under section 8(a) of this rule for situations that do not meet the definition of a waterborne disease outbreak given in 327 IAC 8-2-1, but that still have the potential to have serious adverse effects on health as a result of short term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as:

(A) failures or significant interruption in water treatment processes;

(B) natural disasters that disrupt the water supply or distribution system;

(C) chemical spills; or

(D) unexpected loading of possible pathogens into the source water.

(6) The commissioner may place other situations in any tier believed appropriate, based on threat to public health.

*40 CFR 143.3 is incorporated by reference and is available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2.1-16; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1115; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254; filed May 1, 2003, 12:00 p.m.: 26 IR 2829)*

SECTION 26. 327 IAC 8-2.1-17 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-17 Drinking water violations; standard health effects language for public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 17. A public water system must comply with the standard health effects language for public notification contained in the following table:

Table 17. Standard Health Effects Language for Public Notification

Contaminant	MCLG mg/l	MCL mg/l	Standard Health Effects Language for Public Notification
Drinking Water Regulations:			
A. Microbiological Contaminants, Surface Water Treatment Rule, ~~and~~ Interim Enhanced Surface Water Treatment Rule, **and Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR)**			

1a. Total coliform	0	See footnote[1]	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed, and this was a warning of potential problems.
1b. Fecal coliform/E. coli	0	0	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
2a. Turbidity (MCL)[2]	None	1 NTU[2] /5 NTU	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms, such as nausea, cramps, diarrhea, and associated headaches.
2b. Turbidity (SWTR TT, ~~and~~ IESWTR TT, **and LT1ESWTR TT)**[2]	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms, such as nausea, cramps, diarrhea, and associated headaches.
2c. Giardia lamblia	0	TT[4]	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms, such as nausea, cramps, diarrhea, and associated headaches.
2d. Viruses			
2e. Heterotrophic plate county (HPC) bacteria[3]			
2f. Legionella			
2g. Cryptosporidium			
B. Inorganic Chemicals (IOCs)			
3. Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
4. Arsenic[5]	~~None~~ **0**	~~0.05~~ **0.10**	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system and may have an increased risk of getting cancer.
5. Asbestos (>10 µm)	7 MFL	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
6. Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
7. Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
8. Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
9. Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
10. Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
11. Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine (9) years ~~old.~~ **of age.** Mottling, also known as dental fluorosis, may include brown staining or pitting of the teeth, or both, and occurs only in developing teeth before they erupt from the gums.
12. Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
13. Nitrate	10	10	Infants below ~~the age of~~ six (6) months **of age** who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
14. Nitrite	1	1	Infants below ~~the age of~~ six (6) months **of age** who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

15. Total nitrate and nitrite	10	10	Infants below ~~the age of~~ six (6) months **of age** who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
16. Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
17. Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
C. Lead and Copper Rule			
18. Lead	0	TT	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
19. Copper	1.3	TT	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
D. Synthetic Organic Chemicals (SOCs)			
20. 2,4-D	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
21. 2,4,5-TP (silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
22. Alachlor	0	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
23. Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
24. Benzo(a)pyrene (PAHs)	0	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
25. Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood or nervous or reproductive systems.
26. Chlordane	0	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system and may have an increased risk of getting cancer.
27. Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
28. Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
29. Di (2-ethylhexyl) phthalate	0	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
30. Dibromochloropropane (DBCP)	0	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
31. Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
32. Dioxin (2,3,7,8-TCDD)	0	3×10^{-8}	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
33. Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
34. Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

35. Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
36. Ethylene dibromide	0	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys and may have an increased risk of getting cancer.
37. Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
38. Heptachlor	0	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
39. Heptachlor epoxide	0	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
40. Hexachlorobenzene	0	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
41. Hexachlorocyclopentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
42. Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
43. Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
44. Oxamyl (vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
45. Pentachlorophenol	0	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys and may have an increased risk of getting cancer.
46. Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
47. Polychlorinated biphenyls (PCBs)	0	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties and may have an increased risk of getting cancer.
48. Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
49. Toxaphene	0	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid and may have an increased risk of getting cancer.
E. Volatile Organic Chemicals (VOCs)			
50. Benzene	0	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets and may have an increased risk of getting cancer.
51. Carbon tetrachloride	0	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
52. Chlorobenzene (monochlorobenzene)	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
53. o-Dichlorobenzene	0.6	0.6	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
54. p-Dichlorobenzene	0.075	0.075	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen or changes in their blood.
55. 1,2-Dichloroethane	0	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
56. 1,1-Dichloroethylene	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
57. cis-1,2-Dichloroethylene	0.07	0.07	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

58. trans-1,2-Dichloroethylene	0.1	0.1	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
59. Dichloromethane	0	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
60. 1,2-Dichloropropane	0	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
61. Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
62. Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
63. Tetrachloroethylene	0	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.
64. Toluene	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
65. 1,2,4-Trichlorobenzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
66. 1,1,1-Trichloroethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
67. 1,1,2-Trichloroethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
68. Trichloroethylene	0	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
69. Vinyl chloride	0	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
70. Xylenes (total)	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
F. Radioactive Contaminants			
71. Beta/photon emitters	0	4 mrem/yr	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta **particle** and photon ~~emitters~~ **radioactivity** in excess of the MCL over many years may have an increased risk of getting cancer.
72. Alpha emitters	0	15 pCi/l	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
73. Combined radium (226 and 228)	0	5 pCi/l	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
74. Uranium	**Zero**	**30 µg/l**	**Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.**
G. Disinfection Byproducts (DBPs): Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water.			
~~74.~~ **75.** Total trihalomethanes (TTHMs)	N/A	~~0.10/~~ 0.080[6]	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system and may have an increased risk of getting cancer.
~~75.~~ **76.** Haloacetic acids (HAA)	N/A	0.060[7]	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
~~76.~~ **77.** Bromate	0	0.010	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
~~77.~~ **78.** Chlorite	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

~~78.~~ **79.** Chlorine	4 MRDLG	4.0 MRDL	Some people who use drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
~~79.~~ **80.** Chloramines	4 MRDLG	4.0 MRDL	Some people who use drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
~~80a.~~ **81a.** Chlorine dioxide, where any ~~2~~ **two** consecutive daily samples taken at the entrance to the distribution system are above the MRDL	0.8 MRDLG	0.8 MRDL	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system that delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
~~80b.~~ **81b.** Chlorine dioxide, where one or more distribution system samples are above the MRDL	0.8 MRDLG	0.8 MRDL	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system ~~which~~ **that** delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
~~81.~~ **82.** Control of DBP precursors (TOC)	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or ~~kindney~~ **kidney** problems, or nervous system effects and may lead to an increased risk of getting cancer.
H. Other Treatment Techniques			
~~82.~~ **83.** Acrylamide	0	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood and may have an increased risk of getting cancer.
~~83.~~ **84.** Epichlorohydrin	0	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems and may have an increased risk of getting cancer.

Key:
MCLG - Maximum contaminant level goal
MCL - Maximum contaminant level
MRDL = Maximum residual disinfectant level
MRDLG = Maximum residual disinfectant level goal
NTU - Nephelometric turbidity unit
TT - Treatment technique
MFL - Millions of fiber per liter
Action Level (Lead) = 0.015 mg/L
Action Level (Copper) = 1.3 mg/L
mrem - millirems per year
ppq - picocuries per liter

~~(1)~~ [1]For water systems analyzing at least forty (40) samples per month, no more than five percent (5.0%) of the monthly samples may be positive for total coliforms. For systems analyzing fewer than forty (40) samples per month, no more than one (1) sample per month may be positive for total coliforms.

[2]There are various regulations that set turbidity standards for different types of systems, including the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule, and the 2001 Long Term 1 Enhanced Surface Water Treatment Rule. The following apply:

(1) Systems subject to 327 IAC 8-2-8.5 through 327 IAC 8-2-8.8 (also known as the Surface Water Treatment Rule (SWTR)), for both filtered and unfiltered systems, may not exceed five (5) NTU. In addition, in filtered systems, ninety-five percent (95%) of samples each

month must not exceed five-tenths (0.5) NTU in systems using conventional or direct filtration and must not exceed one (1) NTU in systems using slow sand or diatomaceous earth filtration or other filtration technologies approved by the commissioner.

(2) For systems subject to 327 IAC 8-2.6-1, 327 IAC 8-2.6-2, 327 IAC 8-2.6-3, 327 IAC 8-2.6-4, and 327 IAC 8-2.6-5 (also known as the Interim Enhanced Surface Water Treatment Rule (IESWTR)), for systems serving at least ten thousand (10,000) individuals using surface water or ground water under the direct influence of surface water that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter effluent may not exceed three-tenths (0.3) NTU in at least ninety-five percent (95%) of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed one (1) NTU at any time.

(3) Systems subject to 327 IAC 8-2.6-1, 327 IAC 8-2.6-2, 327 IAC 8-2.6-3, 327 IAC 8-2.6-4, and 327 IAC 8-2.6-5, the IESWTR, using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the commissioner.

(4) For systems subject to 327 IAC 8-2.6-1 through 327 IAC 8-2.6-5 (also known as the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR)), for systems serving fewer than ten thousand (10,000) individuals using surface water or ground water under the direct influence of surface water that use conventional filtration or direct filtration, after January 1, 2005, the turbidity level of a system's combined filter effluent may not exceed three-tenths (0.3) NTU in at least ninety-five percent (95%) of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed one (1) NTU at any time.

(5) Systems subject to 327 IAC 8-2.6-1 through 327 IAC 8-2.6-5, the LT1ESWTR, using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the commissioner.

~~(2)~~ [3]The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

~~(3)~~ [4]SWTR, **IESWTR, and LT1ESWTR** treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

~~(4) The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.~~

[5]The arsenic MCL and MCLG are effective January 1, 2006. Until then, the MCL is 0.05 mg/l and there is no MCLG.

~~(5)~~ [6]The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

[7]The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.

(Water Pollution Control Board; 327 IAC 8-2.1-17; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1118; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254; filed May 1, 2003, 12:00 p.m.: 26 IR 2833)

SECTION 27. 327 IAC 8-2.6-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-1 General requirements; enhanced filtration and disinfection

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 1. (a) Upon the effective date of this rule, unless otherwise specified in this section, all Subpart H systems serving a population of at least ten thousand (10,000) individuals **and, beginning January 1, 2005, systems serving a population of fewer than ten thousand (10,000) individuals** shall establish treatment technique requirements ~~in lieu~~ **instead** of maximum contaminant levels for the following contaminants:

(1) Giardia lamblia.
(2) Viruses.
(3) Heterotrophic plate count bacteria.
(4) Legionella.
(5) Cryptosporidium.
(6) Turbidity.

The systems shall also provide treatment of their source water that complies with these treatment technique requirements in addition to those identified in 327 IAC 8-2-8.5.

(b) The treatment technique requirements consist of installing and properly operating water treatment processes that reliably achieve the following:

(1) At least ninety-nine percent (99%) (2-log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water run-off and a point downstream before or at the first customer for filtered systems or Cryptosporidium control under the water shed control plan for unfiltered systems.

(2) Compliance with the profiling and benchmark requirements under section 2 of this rule **for systems serving a population of at least ten thousand (10,000) individuals and, beginning January 1, 2005, section 2.1 of this rule for systems serving a population of fewer than ten thousand (10,000) individuals.**

(c) A public water system subject to ~~the requirements of~~ this section is considered to be in compliance with ~~the requirements of~~ subsections (a) and (b) if it meets the:

(1) disinfection requirements in 327 IAC 8-2-8.6 and section 2 of this rule **for systems serving a population of at least ten thousand (10,000) individuals and, beginning January 1, 2005, section 2.1 of this rule for systems serving a population of fewer than ten thousand (10,000) individuals;** or

(2) applicable filtration requirements in either 327 IAC 8-2-8.5 or section 3 of this rule and the disinfection requirements in 327 IAC 8-2-8.6 and section 2 of this rule **for systems serving a population of at least ten thousand (10,000) individuals and, beginning January 1, 2005, section 2.1 of this rule for systems serving a population of fewer than ten thousand (10,000) individuals.**

(d) Subpart H systems ~~serving a population of greater than ten thousand (10,000)~~ are not permitted to begin construction of uncovered finished water storage facilities after the effective date of this rule.

(e) Subpart H systems that did not conduct optional monitoring under section 2 of this rule when such monitoring was required because they served fewer than ten thousand (10,000) individuals but serve more than ten thousand (10,000) individuals prior to January 1, 2005, must comply with this section and sections 3 through 5 of this rule. These systems must also consult with the commissioner to establish a disinfection benchmark. A system that

decides to make a significant change to its disinfection practice, as described in section 2(c)(1)(A) through 2(c)(1)(D) of this rule must consult with the commissioner before making such change. *(Water Pollution Control Board; 327 IAC 8-2.6-1; filed May 1, 2003, 12:00 p.m.: 26 IR 2854)*

SECTION 28. 327 IAC 8-2.6-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-2 Disinfection profiling and benchmarking for systems serving a population of at least 10,000 individuals

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 2. (a) A public water system subject to ~~the requirements of~~ this section will determine its TTHM annual average using the procedure in subdivision (1) and its HAA5 annual average using the procedure in subdivision (2). The annual average is the arithmetic average of the quarterly averages of four (4) consecutive quarters of monitoring. A public water system subject to ~~the requirements of~~ this section shall meet the following monitoring requirements to determine its TTHM annual average and its HAA5 annual average:

(1) The TTHM annual average must be the annual average during the same period as is used for the HAA5 annual average. Those Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that:

(A) collected data under 40 CFR 141* must use the results of the samples collected during the last four (4) quarters of required monitoring under 40 CFR 141.142*;

(B) use grandfathered HAA5 occurrence data that meet the provisions of subdivision (2)(B) must use the TTHM data collected at the same time under 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3; and

(C) use HAA5 occurrence data that meet the provisions of subdivision (2)(C)(i) must use the TTHM data collected at the same time under 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3.

(2) The HAA5 annual average must be the annual average during the same period as is used for the TTHM annual average. Those Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that:

(A) collected data under 40 CFR 141* must use the results of the samples collected during the last four (4) quarters of required monitoring under 40 CFR 141.142*;

(B) have collected four (4) quarters of HAA5 occurrence data that meets the routine monitoring sample number and location requirements for TTHM in 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3 and handling and analytical method requirements of 40 CFR 141.142(b)(1)* may use those data to determine whether ~~the requirements of~~ this section ~~apply;~~ **applies;** and

(C) have not collected four (4) quarters of HAA5 occurrence data that meets the provisions of ~~either~~ clause (A) or (B) by March 16, 1999, must either:

(i) conduct monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in 327 IAC 8-2-5(a), 327 IAC 8-2-5.3, and handling and analytical method requirements of 40 CFR 141.142(b)(1)* to determine the HAA5 annual average and whether ~~the requirements of~~ subsection (b) ~~apply.~~ **applies.** This monitoring must be completed so that the applicability determination can be made no later than March 31, 2000; or

(ii) comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with subsection (b).

(3) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals may request that the commissioner approve a more representative annual data set than the data set determined under subdivision (1) or (2) for the purpose of determining applicability of ~~the requirements of~~ this section.

(4) The commissioner may require that a system use a more representative annual data set than the data set determined under subdivision (1) or (2) for the purpose of determining applicability of ~~the requirements of~~ this section.

(5) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall submit data to the commissioner based on the following schedules:

(A) Those Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that collected TTHM and HAA5 data under 40 CFR 141*, as required by subdivisions (1)(A) and (2)(A), shall submit the results of the samples collected during the last twelve (12) months of monitoring required under 40 CFR 141.142* not later than December 31, 1999.

(B) Those Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that have collected four (4) consecutive quarters of HAA5 occurrence data that meets the routine monitoring sample number and location for TTHM in 327 IAC 8-2-5(a), 327 IAC 8-2-5.3, and handling and analytical method requirements of 40 CFR 141.142(b)(1)*, as allowed by subdivisions (1)(B) and (2)(B), must submit those data to the commissioner not later than April 15, 1999. Until the commissioner has approved the data, the system shall conduct monitoring for HAA5 using the monitoring requirements specified under subdivision (2)(C).

(C) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that conduct monitoring for HAA5 using the monitoring requirements specified by subdivision (2)(C)(i) shall submit TTHM and HAA5 data not later than March 31, 2000.

(D) Those systems that elect to comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with this section, as allowed under subdivision (2)(C)(ii), shall notify the commissioner in writing of their election not later than December 31, 1999.

(E) If the system elects to represent that the commissioner approve a more representative annual data set than the data set determined under subdivision (2)(A), the system must submit this request in writing not later than December 31, 1999.

(6) Any Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals having either a TTHM annual average greater than or equal to sixty-four thousandths (0.064) milligram per liter or an HAA5 annual average greater than or equal to forty-eight thousandths (0.048) milligram per liter during the period identified in subdivisions (1) and (2) shall comply with subsection (b).

(b) Disinfection profiling requirements are as follows:

(1) Any Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that meets the criteria in subsection (a)(6) shall develop a disinfection profile of its disinfection practice for a period of up to three (3) years.

(2) Not later than April 1, 2000, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall monitor daily for a period of twelve (12) consecutive calendar

months to determine the total logs of inactivation for each day of operation based on the CT99.9 values in Tables 1.1 through 1.6, 2.1, and 3.1 of 40 CFR 141.74(b)*, as appropriate, through the entire treatment plant. At a minimum, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals with a single or multiple point of disinfectant application prior to entrance to the distribution system shall conduct the monitoring in clauses (A) through (D) for each disinfection segment. The system shall monitor the parameters necessary to determine the total ~~inactiavation~~ **inactivation** ratio using analytical methods in 327 IAC 8-2-8.7 as follows:

(A) The temperature of the disinfection water shall be measured one (1) time per day at each residual disinfectant concentration sampling point during peak hourly flow.

(B) If the system uses chlorine, the pH of the disinfected water shall be measured one (1) time per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

(C) The disinfectant contact time (T) shall be determined for each day during peak hourly flow.

(D) The residual disinfectant concentration (C) of the water before or at the first customer and prior to each additional point of disinfection shall be measured each day during peak hourly flow.

(3) ~~In lieu~~ **Instead** of the monitoring conducted under subdivision (2) to develop the disinfection profile, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals may elect to meet either of the following requirements:

(A) Not later than March 31, 2000, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that ~~has~~ **have** three (3) years of existing operational data may submit those data, a profile generated using those data, and a request that the commissioner approve use of those data ~~in lieu~~ **instead** of monitoring under subdivision (2). The commissioner shall determine whether these operational data are substantially equivalent to data collected under subdivision (2) and whether these data are representative of Giardia lamblia inactivation through the entire treatment plant and not just of certain treatment segments. Until the commissioner approves this request, the system is required to conduct monitoring under subdivision (2).

(B) In addition to the disinfection profile generated under subdivision (2), Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that ~~has~~ **have** existing operational data may use those data to develop a disinfection profile for additional years. Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) **individuals** may use these additional yearly disinfection profiles to develop a benchmark under subsection (c). The commissioner shall determine whether these operational data are substantially equivalent to data collected under subdivision (2). These data must also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(4) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall calculate the total inactivation ratio as follows:

(A) If the system uses only one (1) point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment by using either of the following methods:

(i) Determine one (1) inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow.

(ii) Determine successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine (Σ ($CTcalc/CT_{99.9}$)).

(B) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that use more than one (1) point of disinfectant application before the first customer shall determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CTcalc/CT_{99.9}$) value of each segment and (Σ ($CTcalc/CT_{99.9}$) shall be calculated using the method in clause (A).

(C) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall determine the total logs of inactivation by multiplying the value calculated in clause (A) or (B) by three and zero-tenths (3.0).

(5) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that use either chloramines or ozone for primary disinfection shall also calculate the logs of inactivation for viruses using a method approved by the commissioner.

(6) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the commissioner for review as part of sanitary surveys conducted by the commissioner.

(c) Disinfection benchmarking requirements are as follows:

(1) A Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals required to develop a disinfection profile under subsections (a) and (b) that decides to make a significant change to its disinfection practice shall consult with the commissioner ~~prior to~~ **before** making ~~such~~ **the** change. As used in this subdivision, "significant changes" means **changes to** the following:

(A) ~~Changes to the~~ Point of disinfection.

(B) ~~Changes to the~~ Disinfectants used in the treatment plant.

(C) ~~Changes to the~~ Disinfection process.

(D) Any other modification identified by the commissioner.

(2) A Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals that is modifying its disinfection practice shall calculate its disinfection benchmark using the following procedures:

(A) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall determine the lowest average monthly Giardia lamblia inactivation for each year of profiling data collected and calculated under subsection (b). The system shall determine the average Giardia lamblia inactivation for each calendar month for each year of profiling data by dividing the sum of daily Giardia lamblia inactivation by the number of values calculated for that month.

(B) The disinfection benchmark is the lowest monthly average value (for Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) with one (1) year of profiling data) or average of lowest monthly average values (for Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals with more than one (1) year of profiling data) of the monthly logs of Giardia lamblia inactivation for each year of profiling data.

(C) Subpart H systems serving a population of ~~greater than~~ **at**

least ten thousand (10,000) individuals that use either chloramines or ozone for primary disinfection shall also calculate the disinfection benchmark for viruses using a method approved by the commissioner.

(D) The system shall submit the following information to the commissioner as part of its consultation process:

(i) A description of the proposed change in disinfection practice.

(ii) The disinfection profile for Giardia lamblia (and, if necessary, viruses) under subsection (b) and benchmark as required by this subsection.

(iii) An analysis of how the proposed change will affect the current levels of disinfection.

*40 CFR 141, 40 CFR 141.142, 40 CFR 141.142(b)(1), and 40 CFR 141.74(b) are incorporated by reference and are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2.6-2; filed May 1, 2003, 12:00 p.m.: 26 IR 2854)*

SECTION 29. 327 IAC 8-2.6-2.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.6-2.1 Disinfection profiling and benchmarking for systems serving a population of fewer than 10,000 individuals beginning January 1, 2005

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-6
Affected: IC 13-14-9

Sec. 2.1. (a) A disinfection profile is a graphical representation of a system's level of Giardia lamblia or virus inactivation measured during the course of a year. Beginning January 1, 2005, Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must develop a disinfection profile unless the commissioner determines that the system's profile is unnecessary. The commissioner may approve the use of a more representative data set for disinfection profiling than the data set required under subsection (c).

(b) The commissioner may only determine that a system's profile is unnecessary if a system's TTHM and HAA5 levels are below sixty-four thousandths (0.064) mg/l and forty-eight thousandths (0.048) mg/l, respectively. To determine these levels, TTHM and HAA5 samples must be collected after January 1, 1998, during the month with the warmest water temperature and at the point of maximum residence time in a system's distribution system.

(c) Disinfection profiling requirements are as follows:

(1) A disinfection profile consists of three (3) steps:

(A) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must collect data for several parameters from the plant over the course of twelve (12) months according to subdivision (2). If the system serves between five hundred (500) and nine thousand nine hundred ninety-nine (9,999) individuals, the system must begin to collect data no later than July 1, 2003. If the system serves fewer than five hundred (500) individuals, the system must begin to collect data no later than January 1, 2004.

(B) The system must use this data to calculate weekly log inactivation according subdivisions (3) and (4).

(C) The system must use these weekly log inactivations to develop a disinfection profile as specified in subdivisions (5) through (8).

(2) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must monitor the following parameters to determine the total log inactivation using the analytical methods in 327 IAC 8-2-8.7, once per week on the same calendar day, over twelve (12) consecutive months:

(A) The temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow.

(B) If the system uses chlorine, the pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow.

(C) The disinfectant contact time or times (T) during peak hourly flow.

(D) The residual disinfectant concentration or concentrations (C) of the water before or at the first customer and prior to each additional point of disinfection during peak hourly flow.

(3) Calculate the total inactivation ratio using the following table and multiply the value by three and zero-tenths (3.0) to determine log inactivation of Giardia lamblia:

For systems that ***	The system must determine ***
(A) Use only one (1) point of disinfectant application	(i) One (1) inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow or (ii) Successive $CT_{calc}/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, systems must calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine ($3CT_{calc}/CT_{99.9}$).
(B) Use more than one (1) point of disinfectant application before the first customer	The ($CT_{calc}/CT_{99.9}$) value of each disinfection segment immediately prior to the next point of disinfectant application or, for the final segment, before or at the first customer during peak hourly flow using the procedure specified in (A)(ii) of this table.

(4) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals that use chloramines, ozone, or chlorine dioxide for primary disinfection must also calculate the logs of inactivation for viruses and develop an additional disinfection profile for viruses using methods approved by the commissioner.

(5) Develop a disinfection profile by plotting each log inactivation as a data point. Systems should have fifty-two (52) measurements to plot (one (1) for every week of the year).

(6) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals and the commissioner should evaluate the disinfection profile to examine microbial inactivation variations over the course of the year by looking at all fifty-two (52) measurements.

(7) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must retain the disinfection profile data in graphic form, such as a spreadsheet, that must be available for review by the commissioner as part of a sanitary survey.
(8) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must use this data to calculate a benchmark if they are considering changes to disinfection practices.

(d) Disinfection benchmark requirements are as follows:
(1) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals that are required to develop a disinfection profile under subsections (a) through (c) must develop a disinfection benchmark if a significant change is made to the system's disinfection practices.
(2) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must consult with the commissioner for approval before implementing a significant disinfection practice change. Significant changes to disinfection practices include changes to the following:
(A) Point of disinfection.
(B) Disinfectant or disinfectants used in the treatment plant.
(C) Disinfection process.
(D) Any other modification identified by the commissioner.
(3) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals that are considering a significant change to their disinfection practices must calculate a disinfection benchmark or benchmarks according to subdivisions (4) and (5) and provide the benchmark or benchmarks to the commissioner. Subpart H systems serving a population of fewer than ten thousand (10,000) individuals may make a significant disinfection practice change only after consulting with the commissioner for approval. Subpart H systems serving a population of fewer than ten thousand (10,000) individuals must submit the following information to the commissioner as part of the consultation and approval process:
(A) A description of the proposed change.
(B) The disinfection profile for Giardia lamblia (and, if necessary, viruses) and disinfection benchmark.
(C) An analysis of how the proposed change will affect the current levels of disinfection.
(D) Any additional information requested by the commissioner.
(4) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals that are making a significant change to their disinfection practices must calculate a disinfection benchmark using the following procedure:
(A) Using the data collected by the system to develop the disinfection profile, determine the average Giardia lamblia inactivation for each calendar month by dividing the sum of all Giardia lamblia inactivations for that month by the number of values calculated for that month.
(B) Determine the lowest monthly average value out of the twelve (12) values. This value becomes the disinfection benchmark.
(5) Subpart H systems serving a population of fewer than ten thousand (10,000) individuals and using chloramines, ozone, or chlorine dioxide for primary disinfection must calculate the disinfection benchmark from the data collected for viruses by the system to develop the disinfection profile in addition to the Giardia lamblia disinfection benchmark calculated under subdivision (4). This viral benchmark must be calculated in the same manner used to calculate the Giardia lamblia disinfection benchmark in subdivision (4).
(Water Pollution Control Board; 327 IAC 8-2.6-2.1)

SECTION 30. 327 IAC 8-2.6-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-3 Enhanced filtration
Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 3. By December 31, 2001, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals **and, beginning January 1, 2005, Subpart H systems serving a population of fewer than ten thousand (10,000) individuals** shall provide treatment consisting of both disinfection, as specified in 327 IAC 8-2-8.6, and filtration treatment that complies with the following:
(1) Requirements for systems using conventional filtration or direct filtration are as follows:
(A) For Subpart H systems ~~serving a population of greater than ten thousand (10,000) individuals~~ using conventional filtration or direct filtration, the turbidity level of representative samples of the system's filtered water must be less than or equal to three-tenths (0.3) nephelometric turbidity unit in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in 327 IAC 8-2-8.7 and 327 IAC 8-2-8.8.
(B) The turbidity level of representative samples of the system's filtered water must at no time exceed one (1) nephelometric turbidity unit, measured as specified in 327 IAC 8-2-8.7 and 327 IAC 8-2-8.8.
(C) A system that uses lime softening may acidify representative samples prior to analysis using a protocol approved by the commissioner.
(2) A Subpart H system ~~serving a population greater than ten thousand (10,000)~~ may use filtration technologies other than:
(A) conventional filtration treatment;
(B) direct filtration;
(C) slow sand filtration; or
(D) diatomaceous earth filtration;
if it demonstrates to the commissioner, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of 327 IAC 8-2-8.6, consistently achieves ninety-nine and nine-tenths percent (99.9%) removal or inactivation of Giardia lamblia cysts and ninety-nine and ninety-nine hundredths percent (99.99%) removal or inactivation of viruses, and ninety-nine percent (99%) removal of Cryptosporidium oocysts, and the commissioner approves the use of the filtration technology.
(3) For each approval under subdivision (2), the commissioner will set turbidity performance requirements that the system must meet at least ninety-five percent (95%) of the time **(not to exceed 1 NTU)** and that the system may not exceed at any time at a level that consistently achieves ninety-nine and nine-tenths percent (99.9%) removal or inactivation of Giardia lamblia cysts, ninety-nine and ninety-nine hundredths percent (99.99%) removal or inactivation of viruses, and ninety-nine percent (99%) removal of Cryptosporidium oocysts **(not to exceed 5 NTU).**
(Water Pollution Control Board; 327 IAC 8-2.6-3; filed May 1, 2003, 12:00 p.m.: 26 IR 2857)

SECTION 31. 327 IAC 8-2.6-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-4 Filtration sampling requirements
Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 4. (a) In addition to monitoring required by 327 IAC 8-2-8.7, a Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals **and, beginning January 1, 2005, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals** that provides conventional filtration treatment or direct filtration shall comply with the following:

(1) Conduct continuous monitoring of turbidity for each individual filter using an approved method in 327 IAC 8-2-8.7.

(2) Calibrate turbidimeters using the procedure specified by the manufacturer.

(3) Record the results of individual filter monitoring every fifteen (15) minutes.

(4) Monthly reporting must be completed and records must be maintained according to section 5 of this rule.

(b) If there is a failure in the continuous turbidity monitoring equipment, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals must conduct grab sampling every four (4) hours ~~in lieu~~ **instead** of continuous monitoring, but for no more than five (5) working days following the failure of the equipment. **Beginning January 1, 2005, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals must conduct grab sampling every four (4) hours instead of continuous monitoring until the turbidimeter is back in operation. The system has fourteen (14) days to resume continuous monitoring before a violation is incurred.**

(c) Beginning January 1, 2005, if a system serving a population of fewer than ten thousand (10,000) individuals only consists of two (2) or fewer filters, the system may conduct continuous monitoring of combined filter effluent turbidity instead of individual filter effluent turbidity monitoring. Continuous monitoring must meet the same requirements set forth in subsections (a) and (b). *(Water Pollution Control Board; 327 IAC 8-2.6-4; filed May 1, 2003, 12:00 p.m.: 26 IR 2857)*

SECTION 32. 327 IAC 8-2.6-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.6-5 Enhanced filtration and disinfection reporting and record keeping requirements
Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 5. Beginning January 1, 2002, a Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals **and, beginning January 1, 2005, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals** that is subject to the requirements of section 3 of this rule and provides conventional filtration treatment or direct filtration shall meet the following requirements in addition to the reporting and record keeping requirements in 327 IAC 8-2-14:

(1) Turbidity measurements as required by section 3 of this rule shall be reported within ten (10) days after the end of each month the system serves water to the public. Information that shall be reported includes the following:

(A) The total number of filtered water turbidity measurements taken during the month.

(B) The number and percentage of filtered water turbidity measurements taken during the month ~~which~~ **that** are less than or equal to the turbidity limits specified in section 3 of this rule.

(C) The date and value of any turbidity measurements taken during the month that exceed:

(i) one and zero-tenths (1.0) nephelometric turbidity unit for systems using conventional filtration treatment or direct filtration; or

(ii) the maximum level set by the commissioner under section 3 of this rule. This reporting requirement is ~~in lieu~~ **instead** of the reporting specified in 327 IAC 8-2-14(b).

(2) Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall maintain the results of individual filter monitoring taken under section 4 of this rule for at least three (3) years. These systems shall report that they have conducted individual filter turbidity monitoring under section 3 of this rule within ten (10) days after the end of each month they serve water to the public if measurements demonstrate one (1) or more of the following conditions:

(A) For any individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) nephelometric turbidity unit in two (2) consecutive measurements taken fifteen (15) minutes apart, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall report the:

(i) filter number; ~~the~~

(ii) turbidity measurement; and ~~the~~

(iii) date ~~on which~~ **when** the exceedance occurred.

In addition, the system shall either produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced or report the obvious reason for the exceedance.

(B) For any individual filter that has a measured turbidity level of greater than five-tenths (0.5) in two (2) consecutive measurements taken fifteen (15) minutes apart at the end of the first four (4) hours of continuous filter operation after the filter has been backwashed or otherwise taken off-line, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall report the:

(i) filter number; ~~the~~

(ii) turbidity **measurement;** and ~~the~~

(iii) date ~~on which~~ **when** the exceedance occurred.

In addition, the system shall either produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced or report the obvious reason for the exceedance.

(C) For any individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) nephelometric turbidity unit in two (2) consecutive measurements taken fifteen (15) minutes apart at any time in each of three (3) consecutive months, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) shall report the filter number, the turbidity measurement, and the date ~~on which~~ **when** the exceedance occurred. In addition, the system shall conduct a self-assessment of the filter within fourteen (14) days of the exceedance and report that the self-assessment was conducted. The self-assessment shall consist of at least the following components:

(i) Assessment of filter performance.

(ii) Development of a filter profile.

(iii) Identification and prioritization of factors limiting filter performance.

(iv) Assessment of the applicability of corrections.

(v) Preparation of a filter self-assessment report.

(D) For any individual filter that has a measured turbidity level of greater than two and zero-tenths (2.0) nephelometric turbidity units in two (2) consecutive measurements taken fifteen (15) minutes apart at any time in each of two (2) consecutive months, Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall report the:

(i) filter number; ~~the~~

(ii) turbidity measurement; and ~~the~~

(iii) date ~~on which~~ **when** the exceedance occurred.

In addition, the system shall arrange for the conduct of a comprehensive performance evaluation by the commissioner or a third party approved by the commissioner no later than thirty (30) days following the exceedance and have the evaluation completed and submitted to the commissioner no later than ninety (90) days following the exceedance.

(3) Additional reporting requirements **for Subpart H systems serving a population of at least ten thousand (10,000) individuals** are as follows:

(A) If at any time the turbidity exceeds one and zero-tenths (1.0) nephelometric turbidity unit in representative samples of filtered water in a Subpart H system serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals using conventional filtration treatment or direct filtration, the system shall inform the commissioner as soon as possible, but no later than the end of the next business day.

(B) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the commissioner under section 3 of this rule for filtration technologies other than:

(i) conventional filtration treatment;

(ii) direct filtration;

(iii) slow sand filtration; or

(iv) diatomaceous earth filtration;

Subpart H systems serving a population of ~~greater than~~ **at least** ten thousand (10,000) individuals shall inform the commissioner as soon as possible, but no later than the end of the next business day.

(4) Beginning January 1, 2005, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals shall maintain the results of individual filter monitoring taken under section 4 of this rule for at least three (3) years. The system shall report to the commissioner the results of conducting individual filter turbidity monitoring under section 3 of this rule within ten (10) days after the end of each month that water is served to the public if measurements demonstrate one (1) or more of the following conditions:

(A) If the turbidity of an individual filter (or the turbidity of combined filter effluent (CFE) for systems with two (2) filters that monitor CFE instead of individual filters) exceeds one and zero-tenths (1.0) NTU in two (2) consecutive recordings fifteen (15) minutes apart, a Subpart H system serving a population of fewer than ten thousand (10,000) individuals must report to the commissioner by the tenth day of the following month and include:

(i) the filter number or numbers;

(ii) corresponding date or dates; and

(iii) turbidity value or values;

that exceeded one and zero-tenths (1.0) NTU and the cause (if known) for the exceedance or exceedances.

(B) If a Subpart H system serving a population of fewer than ten thousand (10,000) individuals was required to report to the commissioner for three (3) months in a row and turbidity exceeded one and zero-tenths (1.0) NTU in two (2) consecutive recordings fifteen (15) minutes apart at the same filter (or CFE for systems with two (2) filters that monitor CFE instead of individual filters), the system must conduct a self-assessment of the filter or filters within fourteen (14) days of the day the filter exceeded one and zero-tenths (1.0) NTU in two (2) consecutive measurements for the third straight month unless a CPE as specified in clause (C) was required. Systems with two (2) filters that monitor CFE instead of individual filters must conduct a self-assessment on both filters. The system must report to the commissioner the date that the self-assessment was triggered and the date it was completed. The self-assessment must consist of at least the following components:

(i) Assessment of filter performance.

(ii) Development of a filter profile.

(iii) Identification and prioritization of factors limiting filter performance.

(iv) Assessment of the applicability of corrections.

(v) Preparation of a filter self-assessment report.

(C) If a Subpart H system serving a population of fewer than ten thousand (10,000) individuals was required to report to the commissioner for two (2) months in a row and turbidity exceeded two and zero-tenths (2.0) NTU in two (2) consecutive recordings fifteen (15) minutes apart at the same filter (or CFE for systems with two (2) filters that monitor CFE instead of individual filters), the system must arrange to have a comprehensive performance evaluation (CPE) conducted by the commissioner or a third party approved by the commissioner not later than sixty (60) days following the day the filter exceeded two and zero-tenths (2.0) NTU in two (2) consecutive measurements for the second straight month. The system must also report to the commissioner that a CPE is required and the date that it was triggered within ten (10) days after the end of each month that water is served to the public. If a CPE has been completed by the commissioner or a third party approved by the commissioner within the twelve (12) prior months or the system and commissioner are jointly participating in an ongoing comprehensive technical assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the commissioner not later than one hundred twenty (120) days following the day the filter exceeded two and zero-tenths (2.0) NTU in two (2) consecutive measurements for the second straight month.

(5) Beginning January 1, 2005, disinfection profiling and benchmarking reporting and record keeping requirements for Subpart H systems serving a population of fewer than ten thousand (10,000) individuals are as follows:

(A) Disinfection profiling reporting and record keeping requirements are as follows:

(i) Systems must report results of optional monitoring that show:

(AA) TTHM levels less than sixty-four thousandths (0.064) mg/l and HAA5 levels less than forty-eight thousandths (0.048) mg/l (only if the system is not conducting a profile); or

(BB) the system has begun disinfection profiling by July 1, 2003, for systems serving five hundred (500) to nine thousand nine hundred ninety-nine (9,999) and January 1, 2004, for systems serving fewer than five hundred (500).

(ii) Systems subject to disinfection profiling under section 2.1

of this rule must keep results of profiling (including raw data and analysis) indefinitely.

(B) Disinfection benchmarking reporting and record keeping requirements are as follows:

(i) A system considering a significant change to its disinfection practice that is subject to disinfection benchmarking requirements under section 2.1 of this rule must report the following to the commissioner:

(AA) A description of the proposed change in disinfection.

(BB) The system's disinfection profile for Giardia lamblia (and, if necessary, viruses).

(CC) The system's disinfection benchmark.

(DD) An analysis of how the proposed change will affect the current levels of disinfection.

(ii) Systems subject to disinfection benchmarking under section 2.1 of this rule must keep the benchmark (including raw data and analysis) indefinitely.

(6) Systems that use lime softening may apply to the commissioner for alternative exceedance levels for the levels specified in ~~subdivision~~ **subdivisions** (2) and ~~this subdivision~~ **(4)** if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(Water Pollution Control Board; 327 IAC 8-2.6-5; filed May 1, 2003, 12:00 p.m.: 26 IR 2857)

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 November 10, 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 will hold a public hearing on amendments to drinking water rules at 327 IAC 8-2, 327 IAC 8-2.1, and 327 IAC 8-2.6.

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 the rulemaking action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or (800) 451-6027 (in Indiana). Technical information concerning these drinking water standards may be obtained from Stacy Jones, Drinking Water Branch, Office of Water Quality, (317) 308-3292 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). 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 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 327 WATER POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD
#04-228(WPCB)

DEVELOPMENT OF NEW RULES CONCERNING WETLAND ACTIVITY PERMITS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules 327 IAC 17-1, 327 IAC 17-2, 327 IAC 17-3, and 327 IAC 17-4 concerning wetland activity permits. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: 327 IAC 17.

AUTHORITY: IC 13-18-3-1; IC 13-18-22.

STATUTORY REQUIREMENTS

House Enrolled Act 1798 (P.L.282-2003) directed that this rulemaking be conducted in accordance with IC 13-14-9-7. IC 13-14-9-7 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 the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

(1) the environment; or

(2) persons to be regulated or otherwise affected by the proposed rule.".

Background and Issues

This rulemaking is mandated under House Enrolled Act (HEA) 1798, passed in the 2003 Indiana General Assembly, and HEA 1277, passed in the 2004 Indiana General Assembly. The Acts require Indiana to develop a state regulated wetlands permitting program for those wetlands not under federal jurisdiction. Following the U.S.

Supreme Court Decision in *Solid Waste Agency of Northern Cook County vs. U.S. Army Corps of Engineers*, many of Indiana's wetlands were removed from federal jurisdiction. This rulemaking provides the framework for Indiana's nonfederally jurisdictional wetlands.

The Acts mandate that the Water Pollution Control Board (Board) adopt rules for general permits for minimal impacts to Class I and II state regulated wetlands, as well as permits for more significant impacts to Class I state regulated wetlands by February, 2005. The Acts also mandate that the Board adopt rules for individual permits for impacts to Class II and III state regulated wetlands by June 2005. Rather than conduct two (2) separate rulemakings, it was determined that the issues to be discussed were sufficiently connected that one (1) rulemaking containing all types of permits would be the most efficient method of meeting the statutory mandates. Because of the relatively short time frame for adoption of the rules, a workgroup of interested parties was formed this spring to obtain input on how best to implement the new law.

The department has convened a group of wetland scientists (Wetlands Science Advisory Group) to discuss approaches for classifying wetlands per HEA 1798/1277. Consequently, this rulemaking is not intended to provide further definitions or clarification on wetland classification. Please contact James Robb, (317) 233-8802, at IDEM to obtain additional information related to the wetland classification discussions.

IDEM specifically solicits comments on the draft rules on a few key issues relating to ensuring that a mitigation wetland is successful at achieving its intent under the state law. The draft rule requires that a general and individual permit contain a wetland mitigation plan. Draft rule language requires inclusion of monitoring requirements to gauge progress in creating the compensatory mitigation and includes language requiring an environmental notice on deeds for compensatory wetlands for Class I and environmental deed restrictions for compensatory wetlands for Class II and Class III wetlands. The latter requirement is intended to obviate the need for burdensome long term monitoring and reporting requirements for difficult to recreate wetlands as represented in Class II and Class III.

Other key issues are:

- How to determine a "successful" mitigation wetland.
- Should a mitigated wetland become a "state regulated wetland" before its success has been demonstrated?
- What length of time should a mitigated wetland be allowed to develop, undisturbed, before it can again be impacted as a state regulated wetland?
- Are there additional requirements from the U.S. Army Corps' Nationwide permits that should be included within this rule?
- What are the criteria to determine what is a minimal vs. significant impact to a wetland?
- What is the most efficient way to regulate tracts of land with wetlands of different classes?

The workgroup and the Wetland Science Advisory Group will continue to meet throughout this rulemaking process to assist in refining the rule and address these and other issues. Information regarding the workgroup is contained below. The department seeks comments on the issues outlined above as well as the draft rule language contained in this notice.

Identification of Restrictions and Requirements Not Imposed Under Federal Law

The Indiana legislature crafted HEA 1798 and HEA 1277 in such away as to be applicable only to those wetlands that are not federally jurisdictional. Therefore, all elements of these draft rules impose either a restriction or a requirement on persons to whom the draft rules apply that is "not imposed under federal law" (NIFL elements). These rules are required under IC 13-14-9-3, IC 13-18-22-2, IC 13-18-22-3, and IC 13-18-22-4.

Fiscal Impact Statements Accompanying the Enacted Wetlands Statutes

These rules are designed to implement the wetland provisions in HEA 1277 and HEA 1798 and, therefore, are not anticipated to have a fiscal impact beyond those created by the statutes. A fiscal impact statement for HEA 1277 was prepared on March 4, 2004. A fiscal impact statement for HEA 1798 was prepared on April 28, 2003. The fiscal impact statement for HEA 1277 addresses the fiscal impact of the rulemaking and the Environmental Quality Service Council (EQSC) review. It does not specifically address the fiscal impact of ongoing regulation. The fiscal impact statement for HEA 1798 stated that because IDEM has historically operated a certification program for wetlands, and since fewer wetlands would require an individual permit or "certification," significantly fewer state resources would be needed to review applications. However, the statement goes on to say that the categorization of wetlands required by the Act is new to IDEM and that significant additional effort would be required to implement this provision. The resources necessary was indeterminable. As IDEM has just begun to work with interested persons to outline approaches for determining wetland classification under the new state law, the resources needed are still indeterminable at this time.

Potential Fiscal Impact of the Rules

There are a number of provisions of the rules that will have a fiscal impact upon regulated entities. Because the actual cost associated with implementation depends largely on the type of wetland being impacted and the mitigation plan, attaching specific dollar figures to the provisions at this time is not possible. The following are activities under the rule for which the regulated entities would incur costs. This list is not exhaustive but it represents those major issues within the rules for which fiscal impacts have been identified.

1. Classification of wetland—the applicant must determine what class of wetland is proposed to be impacted to determine whether the exemptions within the rule apply as well as what type of permit would be required. Classification of wetland is required for permit applications.
2. Delineation of a wetland—the cost of wetlands delineation depends on a number of factors, including the size of the wetland. A wetlands delineation is required for permit applications.
3. Preparation of permit applications—the cost of preparation of applications depends on the type of permit being sought.
4. Mitigation costs—the cost to mitigate an impacted wetland depends on the type of wetland being impacted as well as whether mitigation is occurring on-site or off-site. Mitigation costs may be reduced by using an exempt isolated wetland as a mitigated wetland, thereby eliminating the cost of developing another wetland for mitigation purposes.
5. Preparation of a compensatory mitigation plan—costs will vary depending on the size of the mitigated wetlands, as well as type of wetland. A compensatory mitigation plan is required for all permit applications unless the applicant can demonstrate that the site or activity meets the requirements for an exception to mitigation.
6. Mitigation banking—an applicant may propose the use of mitigation banks instead of the actual mitigation.

As the rule is refined and more specific information is obtained regarding the fiscal impacts of these rules, the information will be provided to the Water Pollution Control Board, workgroup members, and all interested parties.

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. As there are many technical issues involved in this rulemaking a Wetland Science Advisory Group has also been established. Workgroup information is available at http://www.in.gov/idem/rules/progress/water/wpcb04xx/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 Megan Wallace, Rules Section, Office of Water Quality at (317) 233-8669 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on wetland activity permits. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) In accordance with House Enrolled Act 1798 (P.L.282-2003) and House Enrolled Act 1277 (P.L.52-2004), IDEM is required to submit this notice under IC 13-14-9-7.

(2) The draft rule is hereby incorporated into these findings.

Lori Kaplan
Commissioner
Indiana Department of Environmental Management

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 rule. Mailed comments should be addressed to:

#04-228(WPCB) Wetland Activity Permits
Larry Wu, Chief
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 receptionist on duty at the 12th floor reception desk, Office of Water Quality, 100 North Senate Avenue, 12th Floor West, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (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 Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by September 30, 2004.

Additional information regarding this action may be obtained from Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 17 IS ADDED TO READ AS FOLLOWS:

ARTICLE 17. WETLAND ACTIVITY PERMITS

Rule 1. State Regulated Wetlands

327 IAC 17-1-1 Purpose
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. (a) This article governs the issuance of wetland activity general and individual permits in state regulated wetlands (SRWs) and establishes procedures and criteria for the review of applications for wetland activity general and individual permits.

(b) The purpose of this article, consistent with the Clean Water Act, is to:

(1) promote a net gain in high quality isolated wetlands; and

(2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program.

(Water Pollution Control Board; 327 IAC 17-1-1)

327 IAC 17-1-2 Applicability
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This article applies to persons proposing to undertake wetland activities in SRWs. *(Water Pollution Control Board; 327 IAC 17-1-2)*

327 IAC 17-1-3 Definitions
Authority: IC 13-11-2; IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4; IC 13-18-22-6

Sec. 3. The following definitions apply throughout this article:

(1) "Class I wetland" means an isolated wetland described by one (1) or both of the following:

(A) At least fifty percent (50%) of the wetland has been disturbed or affected by human activity or development by one (1) or more of the following:

(i) Removal or replacement of the natural vegetation.

(ii) Modification of the natural hydrology.

(B) The wetland supports only minimal wildlife or aquatic habitat or hydrologic function because the wetland does not provide critical habitat for threatened or endangered species listed in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at least one (1) of the following:

(i) The wetland is typified by low species diversity.

(ii) The wetland contains greater than fifty percent (50%) areal coverage of nonnative invasive species of vegetation.

(iii) The wetland does not support significant wildlife or aquatic habitat.

(iv) The wetland does not possess significant hydrologic function.

(2) "Class II wetland" means either of the following:

(A) An isolated wetland that is not a Class I or Class III wetland.

(B) A type of wetland listed in subdivision (3)(B) that would meet the definition of Class I wetland if the wetland were not a rare or ecologically important type.

(3) "Class III wetland" means an isolated wetland:

(A) that:

(i) is located in a setting undisturbed or minimally disturbed by human activity or development; and

(ii) supports more than minimal wildlife or aquatic habitat or hydrologic function; or

(B) unless classified as a Class II wetland under subdivision (2)(B), that is of one (1) of the following rare and ecologically important types:

(i) Acid bog.

(ii) Acid seep.

(iii) Circumneutral bog.

(iv) Circumneutral seep.
(v) Cypress swamp.
(vi) Dune and swale.
(vii) Fen.
(viii) Forested fen.
(ix) Forested swamp.
(x) Marl beach.
(xi) Muck flat.
(xii) Panne.
(xiii) Sand flat.
(xiv) Sedge meadow.
(xv) Shrub swamp.
(xvi) Sinkhole pond.
(xvii) Sinkhole swamp.
(xviii) Wet floodplain forest.
(xix) Wet prairie.
(xx) Wet sand prairie.

(4) "Clean Water Act" refers to:
(A) 33 U.S.C. 1251 et seq.; and
(B) regulations adopted under 33 U.S.C. 1251 et seq.

(5) "Compensatory mitigation" means the:
(A) restoration; or
(B) creation;
of wetlands to offset or compensate for a loss of wetlands resulting from an authorized wetland activity. Wetlands enlargement, enhancement, and preservation may be considered compensatory mitigation on a case-by-case basis, particularly for Class III wetlands.

(6) "Dredged material" means material that is dredged or excavated from an isolated wetland.

(7) "Exempt isolated wetland" means an isolated wetland that:
(A) is a voluntarily created wetland unless:
(i) the wetland is approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act or IC 13-18-22;
(ii) the wetland is reclassified as an SRW under IC 13-18-22-6(c); or
(iii) the owner of the wetland declares, by a written instrument:
(AA) recorded in the office of the recorder of the county or counties in which the wetland is located; and
(BB) filed with the department;
that the wetland is to be considered in all respects to be an SRW;
(B) exists as an incidental feature in or on:
(i) a residential lawn;
(ii) a lawn or landscaped area of a commercial or governmental complex;
(iii) agricultural land;
(iv) a roadside ditch;
(v) an irrigation ditch; or
(vi) a manmade drainage control structure;
(C) is a fringe wetland associated with a private pond;
(D) is, or is associated with, a manmade body of surface water of any size created by:
(i) excavating;
(ii) diking; or
(iii) excavating and diking;
dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes;
(E) is a Class I wetland with an area, as delineated, of one-half (½) acre or less;
(F) is a Class II wetland with an area, as delineated, of one-fourth (¼) acre or less;
(G) is located on land:
(i) subject to regulation under the United States Department of Agriculture wetland conservation rules, also known as Swampbuster (16 U.S.C. §§ 3801-3862), because of voluntary enrollment in a federal farm program; and
(ii) used for agricultural or associated purposes allowed under the rules referred to in this clause; or
(H) for purposes of clause (B), an isolated wetland exists as an incidental feature:
(i) if:
(AA) the owner or operator of the property or facility described in clause (B) does not intend the isolated wetland to be a wetland;
(BB) the isolated wetland is not essential to the function or use of the property or facility; and
(CC) the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; and
(ii) if the isolated wetland satisfies any other factors or criteria established in rules that are:
(AA) adopted by the water pollution control board; and
(BB) not inconsistent with the factors and criteria described in this clause.
(I) The total acreage of Class I wetlands on a tract to which the exemption described in clause (E) may apply is limited to the larger of:
(i) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (E); and
(ii) fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (E) but for the limitation of this subdivision.
(J) The total acreage of Class II wetlands on a tract to which the exemption described in clause (F) may apply is limited to the larger of:
(i) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (F); and
(ii) thirty-three and one-third percent (33⅓%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (F) but for the limitation of this subdivision.
(K) An isolated wetland described in clauses (E) and (F) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under clauses (E) and (F) consistent with the applicable limitations described in clauses (J) and (K).

(8) "Isolated wetland" means a wetland that is not subject to regulation under Section 404(a) of the Clean Water Act.

(9) "State regulated wetland" or "SRW" means an isolated wetland located in Indiana that is not an exempt isolated wetland.

(10) "Tract" means any area of land that is:
(A) under common ownership; and
(B) contained within a continuous border.

(11) "Voluntarily created wetland", for purposes of this article, means an isolated wetland that:

(A) was restored or created in the absence of a governmental order, directive, or regulatory requirement concerning the restoration or creation of the wetland; and

(B) has not been applied for or used as compensatory mitigation or another regulatory purpose that would have the effect of subjecting the wetland to regulation as waters by:

(i) the department; or

(ii) another governmental entity.

(12) "Waters" means the accumulations of water, surface and underground, natural and artificial, public and private, or a part of the accumulations of water that are wholly or partially within, flow through, or border upon Indiana. The term does not include:

(A) an exempt isolated wetland;

(B) a private pond; or

(C) an off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.

The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C. 1362(7)), that are located in Indiana.

(13) "Wetland activity" means the discharge of:

(A) dredged; or

(B) fill;

material into an isolated wetland.

(14) "Wetlands" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include the following:

(A) Swamps.

(B) Marshes.

(C) Bogs.

(D) Similar areas.

(15) "Wetlands delineation" or "delineation", for purposes of this rule, means a technical assessment:

(A) of whether a wetland exists on an area of land; and

(B) if so, of the type and quality of the wetland based on the presence or absence of wetlands characteristics, as determined consistently with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers.

(Water Pollution Control Board; 327 IAC 17-1-3)

327 IAC 17-1-4 Wetlands not considered disturbed or affected

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 4. For purposes of the definitions of Class I wetland, Class II wetland, and Class III wetland, a wetland or setting is not considered disturbed or affected as a result of an action taken after January 1, 2004, for which a permit is required under IC 13-18-22 but has not been obtained. *(Water Pollution Control Board; 327 IAC 17-1-4)*

327 IAC 17-1-5 Compensatory mitigation for state regulated wetlands

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-6; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. Except as otherwise specified in section 6 of this rule, compensatory mitigation shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-Site Ratio	Off-Site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1 Nonforested 2 to 1 Forested	2 to 1 Nonforested 2.5 to 1 Forested
Class III	Class III	2 to 1 Nonforested 2.5 to 1 Forested	2.5 to 1 Nonforested 3 to 1 Forested

(1) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(2) The off-site location of compensatory mitigation must be within the same:

(A) eight (8) digit U.S. Geological Service hydrologic unit code; or

(B) county;

as the isolated wetlands subject to the authorized wetland activity.

(3) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in SRWs. An exempt isolated wetland that is used to provide compensatory mitigation becomes a SRW.

(4) Mitigation plans required under 327 IAC 17-2-3(2)(A), 327 IAC 17-3-3(7), and 327 IAC 17-4-3(7) shall contain monitoring provisions that are sufficient to monitor the performance of the compensatory mitigation wetland until it is demonstrated to successfully offset the loss of wetlands authorized by the permit consistent with section 1(b)(2) of this rule.

(5) If, after a reasonable monitoring period, the department finds that the compensatory mitigation does not successfully offset the loss of wetlands authorized by the permit consistent with section 1(b)(2) of this rule, the department may require corrective action.

(Water Pollution Control Board; 327 IAC 17-1-5)

327 IAC 17-1-6 Exceptions to mitigation

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. At the discretion of the commissioner, the department may allow exceptions to compensatory mitigation in specific, limited circumstances. *(Water Pollution Control Board; 327 IAC 17-1-6)*

327 IAC 17-1-7 Exempt activities

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 7. The following activities are exempt from permitting:

(1) The discharge of:

(A) dirt;

(B) sand;

(C) rock;

(D) stone;

(E) concrete; or

(F) other inert fill materials;

in a de minimis amount.

(2) A wetland activity at a surface coal mine for which the

department of natural resources has approved a plan to:

(A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;

(B) otherwise effectuate environmental values; and

(C) enhance those values where practicable.

(3) Any activity listed under Section 404(f) of the Clean Water Act, including the following:

(A) Normal farming, silviculture, and ranching activities, such as:

(i) plowing;

(ii) seeding;

(iii) cultivating;

(iv) minor drainage;

(v) harvesting for the production of food, fiber, and forest products; or

(vi) upland soil and water conservation practices.

(B) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as:

(i) dikes;

(ii) dams;

(iii) levees;

(iv) groins;

(v) riprap;

(vi) breakwaters;

(vii) causeways and bridge abutments or approaches; and

(viii) transportation structures.

(C) Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches.

(D) Construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters.

(E) Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to assure that:

(i) flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired;

(ii) the reach of the navigable waters is not reduced; and

(iii) any adverse effect on the aquatic environment will be otherwise minimized.

(Water Pollution Control Board; 327 IAC 17-1-7)

327 IAC 17-1-8 Denial of a permit

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 8. The department may deny a permit for cause. The department must support a denial by a written statement of reasons. *(Water Pollution Control Board; 327 IAC 17-1-8)*

327 IAC 17-1-9 Reasonable alternative demonstration

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 9. A wetland activity is considered to be without reasonable alternative if:

(1) an executive of the county or municipality in which the wetland is located issues a resolution stating that the wetland activity is without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located;

(2) a local government entity that has authority over the proposed use of the property on which the wetland is located issues a permit or other approval stating that the wetland activity is without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; or

(3) the department, in the absence of a local determination under this section, determines the wetland activity is without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located.

(Water Pollution Control Board; 327 IAC 17-1-9)

327 IAC 17-1-10 Reasonably necessary or appropriate demonstration

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 10. A wetland activity is considered to be reasonably necessary or appropriate if:

(1) an executive of the county or municipality in which the wetland is located issues a resolution stating that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located;

(2) a local government entity, having authority over the proposed use of the property on which the wetland is located, issues a permit or other approval stating that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; or

(3) the department, in the absence of a local determination under this section, makes a determination that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located.

(Water Pollution Control Board; 327 IAC 17-1-10)

327 IAC 17-1-11 Notice of decision

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 4-21.5-3-5; IC 13-18-3; IC 13-18-4

Sec. 11. The department shall issue notices of decision in accordance with IC 4-21.5-3-5(b). *(Water Pollution Control Board; 327 IAC 17-1-11)*

Rule 2. General Permit for Minimal Impacts to State Regulated Wetlands

327 IAC 17-2-1 Purpose

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-4; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. This rule:

(1) governs the issuance of; and

(2) establishes procedures and criteria for the review of applications for;

wetland activity general permits for minimal impacts to SRWs. *(Water Pollution Control Board; 327 IAC 17-2-1)*

327 IAC 17-2-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. (a) This rule applies to persons proposing to undertake wetland activities in Class I and Class II SRWs that will have minimal impacts, including activities applicable to SRWs that would be allowed under the nationwide permit program (as published in 67 FR 2077-2095 (2002)).

(b) Wetland activities covered by this rule include the following:

(1) Activities related to the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by this rule, 327 IAC 17-3, or 327 IAC 17-4, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement, are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. As used in this subdivision, "Currently serviceable" means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. A permit issued under this subdivision authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two (2) years of the date of their destruction or damage. In cases of catastrophic events, such as tornadoes, this two-year limit may be waived by the commissioner, provided the permittee can demonstrate funding, contract, or other similar delays.

(2) Discharges of dredged or fill material, including excavation, into SRWs to remove accumulated sediments and debris in the vicinity of, and within, existing structures, for example, bridges, culverted road crossings, water intake structures, and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the wetland in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than two hundred (200) feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the commissioner under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the commissioner.

(3) Discharges of dredged or fill material, including excavation, into SRWs, for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a SRW. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without permit provided the uplands are restored to their original pre-event location. A permit issued under this subdivision is for the activities in SRWs associated with the replacement of the uplands.) The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The department retains the right to determine the extent of the preexisting conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent wetland is limited to fifty (50) cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the preexisting bottom contours of the wetland. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with subdivision (11) to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes. Any work authorized by this permit must not cause more than minimal degradation of water quality or increase flooding. A permit issued under this subdivision authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the 327 IAC 17-1-7(3)(B) exemption for maintenance.

(4) Fish and wildlife harvesting devices and activities, such as duck blinds. A permit issued under this subdivision does not authorize impoundments and semi-impoundments of waters of the state for the culture or holding of motile species.

(5) The use of devices designed to measure and record scientific data, such as:

- **(A) staff gauges;**
- **(B) water recording devices;**
- **(C) water quality testing and improvement devices; and**
- **(D) similar structures.**

(6) Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources. The following are not authorized under this subdivision:

- **(A) Discharges and structures associated with the recovery of historic resources.**
- **(B) Drilling and the discharge of excavated material from test wells for oil and gas exploration. However, the plugging of such wells is authorized.**
- **(C) Fill placed for roads, pads, and other similar activities**
- **(D) Permanent structures.**

The discharge of drilling mud and cuttings may require a permit under 327 IAC 5.

(7) Activities required for the construction, maintenance, and repair of utility lines and associated facilities in SRWs as follows:

- **(A) The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all SRWs, provided there is no change in preconstruction contours. As used in this clause, a "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. Material resulting from trench excavation may be temporarily side cast (up to three (3) months) into SRWs, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The commissioner may extend the period of temporary side casting not to exceed a total of one hundred eighty (180) days, where appropriate. In wetlands, the top six (6) inches to twelve (12) inches of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be**

constructed in such a manner as to drain SRWs, for example, backfilling with extensive gravel layers, creating a french drain effect. For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the SRWs through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each SRW.

(B) The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all SRWs, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(C) The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in SRWs, provided the discharges do not cause the loss of greater than one-half (½) acre of SRWs. Access roads shall be the minimum width necessary. Access roads must be constructed so that the length of the road minimizes the adverse effects on SRWs and as near as possible to preconstruction contours and elevations, for example, at grade corduroy roads or geotextile/gravel roads. Access roads constructed above preconstruction contours and elevations in SRWs must be properly bridged or culverted to maintain surface flows. As used in this clause, "utility line" does not include activities that drain a SRW, such as drainage tile or french drains; however, the term does include pipes conveying drainage from another area. For the purposes of this clause, the loss of SRWs includes the filled area plus SRWs that are adversely affected by flooding, excavation, or drainage as a result of the project.

Activities authorized by clauses (A) through (C) may not exceed a total of one-half (½) acre loss of SRWs. SRWs temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of SRWs. This includes temporary construction mats, for example, timber, steel, and geotextile, used during construction and removed upon completion of the work. Where certain functions and values of SRWs are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level. Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of SRWs that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this rule. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions.

(8) Return water from upland, contained dredged material disposal area. The dredging itself may require a permit under IC 13-18-22-1. The return water from a contained disposal area is administratively defined as a discharge of dredged material, even though the disposal itself occurs on the upland and does not require a IC 13-18-22-1 permit.

(9) Activities in SRWs associated with the restoration of former wetlands, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, and the restoration and enhancement of streams and open water areas as follows:

(A) The activity is conducted on:

(i) nonfederal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations;

(ii) reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the Indiana department of natural resources (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(iii) any other public, private, or tribal lands.

(B) Planting of only native species should occur on the site.

Activities authorized by this subdivision include, to the extent that a IC 13-18-22-1 permit is required, the removal of accumulated sediments; the installation, removal, and maintenance of dikes, and berms; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove nonnative invasive, exotic, or nuisance vegetation; and other related activities. This subdivision does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this subdivision authorizes the relocation of wetlands on the project site provided there are net gains in aquatic resource functions and values. For example, this subdivision may authorize the creation of an open water impoundment in an emergent wetland provided the emergent wetland is replaced by creating that wetland type on the project site. For enhancement, restoration, and creation projects conducted under item (iii), this subdivision does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases, a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under items (i) and (ii), this subdivision also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use, that is, prior to the restoration, enhancement, or creation activities. The reversion must occur within five (5) years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after a permit issued under this subdivision expires. This subdivision also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require an IC 13-18-

22-1 permit). The five-year reversion limit does not apply to agreements without time limits reached under item (i). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity, the permittee or the appropriate federal or state agency must notify the commissioner and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the department's regulatory requirements will be at that future date.

(10) Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on federally-owned or managed property, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include:

(A) the repair or maintenance of dikes; and

(B) plowing or discing to impede succession, prepare seed beds, or establish fire breaks.

Sufficient vegetated buffers must be maintained adjacent to all open waterbodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This subdivision does not authorize the construction of new dikes, roads, water control structures, etc., associated with the management areas. This subdivision does not authorize converting wetlands to uplands, impoundments, or other open waterbodies.

(11) New construction, agriculture, and mining activities. The following activities are authorized:

(A) New construction activities associated with the construction or installation of new facilities or structures. Typically, these include residential, commercial, industrial, institutional, and recreational activities. These activities include:

(i) filling and grading;

(ii) dredging;

(iii) stormwater, sediment, and erosion control activities; and

(iv) roads, infrastructures, and utilities;

provided the individual and cumulative impacts are minimal.

(B) Agriculture and mining activities. These include work or discharges of dredged or fill material associated with the:

(i) buildings or work pads;

(ii) stock piling of material;

(iii) staging, loading, and unloading areas;

(iv) roads;

(v) land leveling;

(vi) berms, dikes, dams, and ditch construction;

(vii) drainage facilities; and

(viii) erosion and water control activities.

This subdivision does not affect those agricultural and mining activities that are exempt in accordance with 327 IAC 17-1-7.

(C) Discharges of dredged or fill material authorized by this subdivision are limited to one-tenth (0.1) acre or less of SRWs.

(D) The following activities are not authorized by this subdivision:

(i) Activities that are denied any required local, state, or federal authorization.

(ii) Activities that the department determines to have the potential to cause unacceptable adverse impacts on aquatic resources or other public interest factors.

(E) The department may on a case-by-case basis require a 327 IAC 17-3 or 327 IAC 17-4 permit. The department will notify the applicant that the project does not qualify for a general permit under this rule and instruct the applicant on the procedures to seek authorization under the 327 IAC 17-3 or 327 IAC 17-4 permit. The department may also require a 327 IAC 17-3 or 327 IAC 17-4 permit for any after-the-fact applications or any unauthorized activity, or both, regardless of whether or not the discharge meets the area limitation specified in clause (C).

(c) Wetland activities that would have more than minimal impacts to water quality, either viewed individually or collectively with other projects that may affect the same waterbody affected by the proposed project, are excluded. *(Water Pollution Control Board; 327 IAC 17-2-2)*

327 IAC 17-2-3 Notice of intent requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. As a prerequisite to applicability of the minimal impact general permit to a specific wetland activity, a person proposing the discharge is required to submit to the department a notice of intent with the following information to be covered by the general permit:

(1) An identification of the wetlands to be affected by the wetland activity including the following:

(A) The location of the tract and location of the wetlands on the tract.

(B) A delineation of all wetlands on the tract.

(C) A classification of all SRWs on the tract.

(D) A description of the proposed wetland activities and project at the site.

(E) For the purpose of making the determinations at 327 IAC 17-1-4, 327 IAC 17-1-3(7)(L), 327 IAC 17-1-3(7)(A), IC 13-18-22-2(c), IC 13-18-22-10, and IC 13-18-22-11, the person proposing the activity shall disclose dates for the following:

(i) Actions that disturb or affect isolated wetlands under 327 IAC 17-1-3(1)(A) that occurred after January 1, 2004.

(ii) Wetland activities exempted by 327 IAC 17-1-3(7)(E) or 327 IAC 17-1-3(7)(F) that occurred after January 1, 2004.

(iii) Voluntary creation of isolated wetlands under 327 IAC 17-1-3(7)(A) and 327 IAC 17-1-3(11).

(iv) Restoration of isolated wetlands under IC 13-18-22-2(c).

(v) Filling, draining, or elimination by other means isolated wetlands after January 1, 2004, under IC 13-18-22-10.

(vi) Wetland activities that occurred after January 1, 2004, on land previously exempted by 327 IAC 17-1-3(7)(G) if the land is no longer subject to United States Department of Agriculture wetland conservation rules under IC 13-18-22-11.

(2) The provision of:

(A) a compensatory mitigation plan to reasonably offset the loss of wetlands allowed by the general permit; or

(B) a demonstration that the site or activity meets the specific circumstances for the exception to mitigation according to 327 IAC 17-1-6.

(3) A signed statement of affirmation from the responsible party.

(4) Correspondence from the United States Army Corps of Engineers (USACOE) that states that the wetland is not federally jurisdictional.

(Water Pollution Control Board; 327 IAC 17-2-3)

327 IAC 17-2-4 General conditions

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The recipient of the general permit shall comply with the following general conditions:

(1) Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

(2) Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date. The permittee shall deposit any dredged material in a contained upland disposal area to prevent sediment run-off to any waterbody. Sampling may be required to determine if the dredged sediment is contaminated.

(3) No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the wetland, including those species that normally migrate through the area.

(4) Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

(5) The permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality.

(6) No activity is authorized under this general permit where state endangered, threatened, or rare species are documented on a permanent or seasonal basis within a one-half (½) mile radius of the proposed project site by the Indiana Natural Heritage Data Center.

(7) Every permittee will submit a signed certification regarding the completed work and any required mitigation to the department. The certification will include the following:

(A) A statement that the authorized work was done in accordance with the department authorization, including any conditions.

(B) A statement that any required mitigation was completed in accordance with the permit conditions.

(C) The signature of the permittee certifying the completion of the work and mitigation.

(8) The use of more than one (1) general permit for a single and complete project is prohibited, except when the acreage loss of SRWs authorized by the general permits does not exceed the acreage limit of the general permit with the highest specified acreage limit.

(9) No activity may occur in the proximity of a public water supply intake, except where the activity is for repair of the public water supply intake structures.

(10) No activity, including structures and work in SRWs or discharges of dredged or fill material, may consist of unsuitable material, for example:

(A) trash;

(B) debris;

(C) car bodies; and

(D) asphalt;

and material used for construction or discharged must be free from toxic pollutants in toxic amounts.

(11) When determining compensatory mitigation to reasonably offset the loss of wetlands allowed by the general permit, the commissioner will consider the following factors:

(A) The commissioner will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(B) Permittees may propose the use of mitigation banks to meet the wetland mitigation requirements.

(C) In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing or complying, or both, with the mitigation plan.

(12) Activities in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

(13) Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

(14) Critical resource waters include critical habitat for federally listed threatened and endangered species, state natural heritage sites, outstanding national resource waters, water pollution control board designated waters, for example, outstanding state or national resource waters, or both, exceptional use waters, outstanding state protected wetland, or other waters officially designated by the state as having particular environmental or ecological significance and identified by the commissioner after notice and opportunity for public comment. The commissioner may also designate additional critical resource waters after notice and opportunity for comment.

(A) Except as noted below, discharges of dredged or fill material into SRWs are not authorized by section 2(b)(7), 2(b)(8), or 2(b)(11) of this rule for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(B) For section 2(b)(1) and 2(b)(9) through 2(b)(11) of this rule, the commissioner may authorize activities under these general permits only after it is determined that the impacts to the critical resource waters will be no more than minimal.

(15) For purposes of this general condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps. Discharges of dredged or fill material into SRWs within the mapped 100-year floodplain, resulting in permanent abovegrade fills, are not authorized by general permit.

(16) For activities that have not been verified by the department and the project was commenced or under contract to commence by the expiration date of the general permit (or modification or revocation date), the work must be completed within twelve (12) months after such date (including any modification that affects the project). For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the department. For projects that have been verified by the department, an extension of a department approved completion date may be requested. This request must be submitted at least one (1) month before the previously approved completion date.

(17) The permittee shall clearly mark the construction limits shown in the plans at the tract during construction.

(18) The permittee shall allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials to:

(A) enter upon the tract;

(B) have access to and copy at reasonable times any records that must be kept under the conditions of the permit;

(C) inspect, at reasonable times, any:

(i) monitoring or operational equipment or method;

(ii) collection, treatment, pollution management, or discharge facility or device;

(iii) practices required by the permit; and
(iv) wetland mitigation site; and
(D) sample or monitor any discharge of pollutants or any mitigation site.
(19) Any activity involving fill that is associated with additional impacts to waters of the state, such as dredging, excavation, or damming, is not authorized by a general permit unless the total area of wetland affected is less than or equal to the area allowed by the general permit.
(20) Execute the project as proposed in the notice of intent.
(21) Implement the mitigation plan submitted with the notice of intent.
(22) Complete all activities necessary to construct the mitigation wetland within one (1) year of the effective date of this general permit, unless the department grants a written extension upon request.
(23) Clearly identify, on the tract, all mitigation wetlands after construction of the mitigation wetlands. Install survey markers to identify the boundaries of the wetlands. If the mitigation wetlands being constructed are adjacent to or near existing wetlands, then the survey markers must distinguish the constructed wetland from the existing wetland.
(24) Protect all areas upon which a Class II or Class III mitigation wetland is to be created with a conservation easement or deed restriction. These areas shall be protected as wetlands for the length of time consistent with the time required for maturation of the wetland type being restored or created. The discharge of pollutants, including fill material, in them or their excavation shall be prohibited. A copy of the signed and recorded modification to the deed shall be filed with the department within sixty (60) days of the applicant's release from monitoring requirements.
(25) An applicant establishing a Class I mitigation wetland must file a signed and recorded environmental notice, which describes the compensatory mitigation contained in the mitigation plan, with the department within sixty (60) days of the applicant's release from monitoring requirements.
(26) If the project will disturb more than one (1) acre of soil during construction, contact the department's stormwater permits section to determine need for 327 IAC 15-5 (Rule 5) permit.
(27) If the project is located within a floodway, contact the Indiana department of natural resources to determine the need for possible construction in the floodway permit.

(Water Pollution Control Board; 327 IAC 17-2-4)

327 IAC 17-2-5 Review requirements
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department shall review the notice of intent to determine whether the proposed activity is within the scope of the minimal impact general permit. If the department finds that the proposed activity is not within the scope of the minimal impact general permit, the department shall require the activity to be permitted by the applicable permit at 327 IAC 17-3 or 327 IAC 17-4, as appropriate. *(Water Pollution Control Board; 327 IAC 17-2-5)*

327 IAC 17-2-6 Review deadlines
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. The general permit becomes effective with respect to a proposed wetland activity that is within the scope of the general permit on the thirty-first day after the department receives a notice of intent from the person proposing the wetland activity that the wetland activity be authorized under the general permit. *(Water Pollution Control Board; 327 IAC 17-2-6)*

Rule 3. Permit for Impacts in Class I State Regulated Wetlands

327 IAC 17-3-1 Purpose
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. This rule establishes procedures and criteria for the review of applications for wetland activity permits for significant impacts to Class I SRWs. *(Water Pollution Control Board; 327 IAC 17-3-1)*

327 IAC 17-3-2 Applicability
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This rule applies to persons proposing to undertake wetland activities in Class I SRWs that will have significant impacts. *(Water Pollution Control Board; 327 IAC 17-3-2)*

327 IAC 17-3-3 Notice of registration requirements
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. As a prerequisite to applicability of the Class I permit to a specific wetland activity, a person proposing the discharge is required to submit to the department a notice of registration to be covered by the permit that includes the following:
(1) Applicant information.
(2) Agent information if applicable.
(3) Purpose and description of activity.
(4) Current and proposed use of the tract.
(5) Correspondence from the USACOE that states that the wetland is not federally jurisdictional.
(6) Identification of the wetlands to be affected by the wetland activity including the following:
(A) The location of the tract and location of the wetlands on the tract.
(B) A delineation of all wetlands on the tract.
(C) A classification of all SRWs on the tract.
(D) For the purpose of making the determinations at 327 IAC 17-1-4, 327 IAC 17-1-3(7)(L), 327 IAC 17-1-3(7)(A), IC 13-18-22-2(c), IC 13-18-22-10, and IC 13-18-22-11, the person proposing the activity shall disclose dates for the following:
(i) Actions that disturb or affect isolated wetlands under 327 IAC 17-1-3(1)(A) that occurred after January 1, 2004.
(ii) Wetland activities exempted by 327 IAC 17-1-3(7)(E) or 327 IAC 17-1-3(7)(F) that occurred after January 1, 2004.
(iii) Voluntary creation of isolated wetlands under 327 IAC 17-1-3(7)(A) and 327 IAC 17-1-3(11).
(iv) Restoration of isolated wetlands under IC 13-18-22-2(c).
(v) Filling, draining, or elimination by other means isolated wetlands after January 1, 2004, under IC 13-18-22-10.
(vi) Wetland activities that occurred after January 1, 2004, on land previously exempted by 327 IAC 17-1-3(7)(G) if the land is no longer subject to United States Department of Agriculture wetland conservation rules under IC 13-18-22-11.

(7) A compensatory mitigation plan to reasonably offset the loss of wetlands allowed, unless the applicant can demonstrate that the site or activity meets the specific circumstances for the exception to mitigation at 327 IAC 17-1-6.

(8) A signed statement of affirmation from the applicant.

(Water Pollution Control Board; 327 IAC 17-3-3)

327 IAC 17-3-4 General conditions

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The recipient of this general permit shall comply with the general conditions at 327 IAC 17-2-4. *(Water Pollution Control Board; 327 IAC 17-3-4)*

327 IAC 17-3-5 Review requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department shall review the notice of registration and notify the applicant if the proposed activity is outside the scope of the applicability of the Class I permit. *(Water Pollution Control Board; 327 IAC 17-3-5)*

327 IAC 17-3-6 Review deadlines

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. Except as provided by section 7 of this rule, a permit to undertake a wetland activity in a Class I wetland under this rule is considered to have been issued to any applicant on the thirty-first day after the department receives a notice of registration submitted under section 3 of this rule if the department has not previously authorized the wetland activity. *(Water Pollution Control Board; 327 IAC 17-3-6)*

327 IAC 17-3-7 Denial of a permit

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 7. The department may deny a registration for a permit for cause before the period in section 6 of this rule expires. The department must support a denial by a written statement of reasons. *(Water Pollution Control Board; 327 IAC 17-3-7)*

Rule 4. Permit for Wetland Activities in Class II and Class III State Regulated Wetlands

327 IAC 17-4-1 Purpose

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. This rule governs the issuance of wetland activity individual permits and establishes procedures and criteria for the review of applications for wetland activity individual permits in Class III and certain Class II wetlands. *(Water Pollution Control Board; 327 IAC 17-4-1)*

327 IAC 17-4-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This rule applies to persons who propose to undertake wetland activities in a:

(1) Class III wetland; and

(2) Class II wetland, except wetland activities that are regulated by a minimal impact general permit under 327 IAC 17-2.

(Water Pollution Control Board; 327 IAC 17-4-2)

327 IAC 17-4-3 Permit application requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. A person proposing the discharge is required to submit to the department an application that includes the following:

(1) Applicant information.

(2) Agent information if applicable.

(3) Purpose and description of activity.

(4) Current and proposed use of the tract.

(5) Correspondence from the USACOE that states that the wetland is not federally jurisdictional.

(6) Identification of the wetlands to be affected by the wetland activity including the following:

(A) The location of the tract and location of the wetlands on the tract.

(B) A delineation of all wetlands on the tract.

(C) A classification of all SRWs on the tract.

(D) For the purpose of making the determinations at 327 IAC 17-1-4, 327 IAC 17-1-3(7)(L), 327 IAC 17-1-3(7)(A), IC 13-18-22-2(c), IC 13-18-22-10, and IC 13-18-22-11, the person proposing the activity shall disclose dates for the following:

(i) Actions that disturb or affect isolated wetlands under 327 IAC 17-1-3(1)(A) that occurred after January 1, 2004.

(ii) Wetland activities exempted by 327 IAC 17-1-3(7)(E) or 327 IAC 17-1-3(7)(F) that occurred after January 1, 2004.

(iii) Voluntary creation of isolated wetlands under 327 IAC 17-1-3(7)(A) and 327 IAC 17-1-3(11).

(iv) Restoration of isolated wetlands under IC 13-18-22-2(c).

(v) Filling, draining, or elimination by other means isolated wetlands after January 1, 2004, under IC 13-18-22-10.

(vi) Wetland activities that occurred after January 1, 2004, on land previously exempted by 327 IAC 17-1-3(7)(G) if the land is no longer subject to United States Department of Agriculture wetland conservation rules under IC 13-18-22-11.

(7) A compensatory mitigation plan to reasonably offset the loss of wetlands allowed, unless the applicant demonstrates that the site or activity meets the specific circumstances for the exception to mitigation at 327 IAC 17-1-6.

(8) The applicant shall demonstrate, as a prerequisite to the issuance of the permit, that the wetland activity is as follows:

(A) Without reasonable alternative under 327 IAC 17-1-9.

(B) Reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located under 327 IAC 17-1-10.

(C) For a Class III wetland, as follows:

(i) Without practical alternative.

(ii) Will be accompanied by taking steps that are practicable and appropriate to minimize potential adverse impacts of the discharge on the aquatic ecosystem of the wetland.

(9) A signed statement of affirmation from the applicant.

(Water Pollution Control Board; 327 IAC 17-4-3)

327 IAC 17-4-4 Conditions

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The department shall condition an approval as necessary to do the following:

(1) Achieve the goals of the permitting program under 327 IAC 17-1-1.

(2) Provide compensatory mitigation to reasonably offset the loss of wetlands allowed by the permits except as provided in 327 IAC 17-1-6.

(Water Pollution Control Board; 327 IAC 17-4-4)

327 IAC 17-4-5 Review requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department may notify the applicant that the completed application is deficient. If the department fails to give notice to the applicant under this section not later than fifteen (15) days after the department's receipt of the completed application, the application is considered not to have been deficient. After receipt of a notice under this section, the applicant may submit an amended application that corrects the deficiency. The department shall make a decision to issue or deny an individual permit under the amended application within a period that ends a number of days after the date the department receives the amended application equal to the remainder of:

(1) one hundred twenty (120) days; minus

(2) the number of days the department held the initial application before giving a notice of deficiency under this section.

(Water Pollution Control Board; 327 IAC 17-4-5)

327 IAC 17-4-6 Review deadlines

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. Subject to section 5 of this rule, the department shall make a decision to issue or deny an individual permit not later than one hundred twenty (120) days after receipt of the completed application. If the department fails to make a decision on a permit application by the deadline under this section or section 5 of this rule, a permit is considered to have been issued by the department in accordance with the application. *(Water Pollution Control Board; 327 IAC 17-4-6)*

327 IAC 17-4-7 Denial of a permit

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 7. The department may deny an application for a permit for cause before the period in section 5 or 6 of this rule expires. The department must support a denial by a written statement of reasons. *(Water Pollution Control Board; 327 IAC 17-4-7)*

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 November 10, 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 will hold a public hearing on a proposed new rule concerning wetland activity permits.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. 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 Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 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 or (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 Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, 12th Floor, Indianapolis, Indiana and are open for public inspection.

State of Indiana
Notice of Public Hearing on Proposed SFY 2005
Drinking Water State Revolving Fund (DWSRF) and Wastewater State
Revolving Fund (WWSRF) Program
Project Priority Lists (PPLs)

Notice is given that Indiana's Drinking Water State Revolving Fund (DWSRF) Loan Program has developed the proposed State Fiscal Year 2005 Project Priority Lists (PPLs) for wastewater and drinking water infrastructure projects that could be funded through the SRF Programs. The PPL is prepared annually as part of the Intended Use Plan, which details the uses, goals and objectives of the SRF Programs. The PPL is a list of potential projects for funding in order of priority as determined by the Priority Ranking System. Projects must be on the PPL to receive SRF financing. The PPL may be amended as described in the Project Ranking System.

Pursuant to 40 CFR 25.5, notice is given that the SRF Programs will hold quarterly public hearings on the PPL to inform the public of any new projects or ranking changes. The quarterly hearings will be held as follows:

2nd quarter: 1:00 p.m., September 17, 2004, SRF Conference Room, 12th floor, Indiana Government Center North (IGCN) 1275.
Written comments must be submitted by September 27, 2004.

3rd quarter: 1:00 p.m., December 17, 2004, SRF Conference Room, 12th floor, IGCN 1275.
Written comments must be submitted by December 27, 2004.

4th quarter: 1:00 p.m., March 17, 2004, SRF Conference Room, 12th floor, IGCN 1275.
Written comments must be submitted by March 27, 2004

Copies of the PPL quarterly updates will be made available upon request, or can be viewed online at www.srf.in.gov beginning 14 days prior to the public hearing dates. Copies of the State Fiscal Year 2005 Intended Use Plans for both programs are also available.

Inquiries about and requests for the updated Drinking Water SRF PPL should be directed to:

Ms. Cortney Stover
DWSRF Administrator
IGCN, Rm. 1275
Indianapolis, IN 46204
317/232-8663
cstover@dem.state.in.us

Inquiries about and requests for the updated Wastewater SRF PPL should be directed to:

Mr. Arthur Carter
WWSRF Administrator
IGCN, Rm. 1275
Indianapolis, IN 46204
317/233-2474
acarter@dem.state.in.us

Interested persons are invited to be present or represented at the hearing. Oral statements will be heard; but for accuracy of the record, all testimony should be submitted in writing. Written statements may be provided to the hearing officer at the hearing or mailed to Ms. Stover or Mr. Carter at the above address, postmarked on or before the dates listed above.

INDIANA EMERGENCY MEDICAL SERVICES COMMISSION

Title: Definition of the Term "Rhythm Interpretation"
Identification Number: 01-2004
Date of Original Adoption: July 23, 2004
Date Revised:
Other Policies Repealed or Amended:
Brief Description of Subject Matter: Definition of the term rhythm interpretation as used in the description of the scope of practice for emergency medical technician basic-advanced.
Citations Affected: IC 16-18-2-33.5(a)(11); 836 IAC 1-1-1(12); 836 IAC 1-1-1(24); 836 1-1-1(25); 836 IAC 4-7-3(d)

This non-rule policy statement has been adopted pursuant Indiana Code 4-22-7-7 and does not have the effect of law or represent a formal decision or final action of the Indiana Emergency Medical Services Commission. This nonrule policy statement interprets, supplements, or implements a statute or rule; or specifies a policy that the Indiana Emergency Medical Services Commission and the State Emergency Management Agency relies upon to enforce a statute or rule, conduct an audit or investigation to determine compliance with a statute or rule, or impose a sanction for violation of a statute or rule. This nonrule policy statement shall be used in conjunction with applicable laws. It does not replace laws, and if it conflicts with these laws, the laws shall control. A revision to this nonrule policy statement may be put into effect by the Indiana Emergency Medical Services Commission once the revised nonrule policy statement is made available for public inspection and copying. The Indiana Emergency Medical Services Commission will submit revisions to the Indiana Register for publication.

I. INTRODUCTION

The purpose of this nonrule policy is to define the term "rhythm interpretation" as it is used in reference to the skills of an emergency medical technician-basic advanced. The term "Rhythm interpretation" as used in 836 IAC 1-1-1(24); 836 IAC 1-1-1(25) and 836 IAC 4-7-3(d) is not defined in either the Indiana Code or the Indiana Administrative Code.

An emergency medical technician-basic advanced is defined under 836 IAC 1-1-1(24) as an individual who is certified under IC 16-31 to provide basic life support at the scene of an accident or an illness or during transport and has been certified to perform manual or automated defibrillation, rhythm interpretation, and intravenous line placement.

The term "rhythm interpretation" is also used in 836 IAC 1-1-1(25) and 836 IAC 4-7-3(d) in reference to the skills of an emergency medical technician-basic advanced.

Basic life support for an emergency medical technician-basic advanced includes electrocardiogram interpretation, manual external defibrillation, and intravenous fluid therapy as defined under Indiana Code 16-18-2-33.5(a)(11) and Indiana Administrative Code 836 IAC 1-1-1(12)(K).

II. POLICY

Rhythm interpretation, as that term is used in 836 IAC in reference to the skills of an emergency medical technician-basic advanced, means electrocardiogram interpretation specifically for the purpose of identifying cardiac rhythms requiring defibrillation.

Adopted: July 23, 2004

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NONRULE POLICY DOCUMENT

The following nonrule policy documents have expired or are no longer in use by the Indiana Department of Environmental Management, Office of Quality.

Title: Maximum Available Control Technology: provides clarity on implementation of Section 112(g) of Title III of the 1990 Clean Air Act Amendments.
Identification Number: Air-001-NPD
Date Originally Effective: December 13, 1995
Dates Revised: August 31, 1996; March 31, 1997
Brief Description of Subject Matter: Provides clarity on implementation of Section 112(g) of Title III of the 1990 Clean Air Act Amendments.

Title: Auto Refinishing: Requirements for Gun Cleaners
Identification Number: Air-002-NPD
Date Originally Effective: May 6, 1996
Dates Revised: September 9, 1996; January 31, 1997; June 10, 1997

Brief Description of Subject Matter: Enforcement of 326 IAC 8-10-5, which requires that by May 1, 1996, automobile refinishers use enclosed gun cleaners. 326 IAC 8-10-5(a) was the citation affected by this nonrule policy document.

Title: Requirements for Construction Permits: for small sources constructed prior to January 1, 1994.
Identification Number: Air-008-NPD
Date Originally Effective: March 10, 1997
Dates Revised: none
Brief Description of Subject Matter: Construction Permitting Requirements for Small Sources

Title: Clean Fuel Fleets Flexible Enforcement guidelines: delays initial purchase requirements due to insufficient availability.
Identification Number: Air-015-NPD
Date Originally Effective: November 14, 1997
Dates Revised: none
Brief Description of Subject Matter: Provides guidelines for the enforcement of the Clean Fuel Vehicle purchase requirements.

Title: Natural Gas Emission Factors/SIP Compliance
Identification Number: Air-021-NPD
Date Originally Effective: November 18, 1998
Dates Revised: None
Brief Description of Subject Matter: Compliance with current state implementation plan particulate matter limits by combustion sources burning only natural gas. 326 IAC 6-1 was the citation affected by this nonrule policy document.

Title: Lead-Based Paint License Transition: regarding the transition to IDEM"s administration of the lead-based paint rule at 326 AIC 23
Identification Number: Air-022-NPD
Date Originally Effective: February 22, 1999
Dates Revised: October 6, 1999
Brief Description of Subject Matter: Describes IDEM's policy regarding a transition to the administration of the lead-based paint rule, 326 IAC 23.

Title: Lead-Based Paint License Transition (Extension)
Identification Number: Air-022(b)-NPD
Date Originally Effective: Feb. 22, 1999
Dates Revised: October 6, 1999
Date Effective: November 5, 1999
Other Policies Repealed or Amended: Air-022-NPD
Brief Description of Subject Matter: Describes IDEM's policy regarding a transition to the administration of the lead-based paint rule, 326 IAC 23.

Title: Guidance on the use of new emission factors for the Reinforced Plastic Composites Fabricating Industry.
Identification Number: Air-024-NPD
Date Originally Effective: November 5, 1999
Dates Revised: none
Brief Description of Subject Matter: Guidance on the Use of New Emission Factors for the Reinforced Plastic Composites Fabricating Industry

Title: Lead-Based Paint License Transition
Identification Number: Air-030-NPD
Date Originally Effective: July 5, 2002
Dates Revised: none
Brief Description of Subject Matter: Describes IDEM's policy regarding House Enrolled Act 1171 statutory changes to lead-based paint licensing expiration dates.

NATURAL RESOURCES COMMISSION
Information Bulletin #45

Disposition of Permanently Injured, Non-Releasable Wild Animals

1. Purpose

The purpose of this nonrule policy document is to establish guidelines for permanently injured and non-releasable wild animals taken in by licensed wildlife rehabilitators. The desire is to protect wild animal populations and provide for conservation education, but also to emphasize the need to euthanize a wild animal humanely when appropriate and prevent wild animals from being kept as pets.

2. Rehabilitation of Indiana's Wildlife

Sick, injured or orphaned wild animals are captured every year by the public and given to licensed rehabilitators with the intent of releasing them back into the wild. The rehabilitation of wild animals such as white-tailed deer serves a need that satisfies the conscience of society, although scientific evidence has not proven that this is an effective tool for the management of wild animal populations. Some wild animals are unable to be released even after medical treatment due to a serious injury or an acclimation to humans. As a result, wildlife rehabilitators often keep these permanently injured or non-releasable animals under various permits, including wild animal possession and education permits.

3. Requirements of Wild Animal Rehabilitation Permits

As a condition of the rehabilitation permit, wild animals taken in for rehabilitation are to be released within 180 days. If a rehabilitator intends to possess a wild animal beyond this 180-day rehabilitation period, a conservation officer must be contacted as to the disposition. Reasonable extensions may be made to facilitate release back into the wild if approved by a conservation officer prior to elapse of the conditional timeframe (180 days). The time of year and extensive injuries are factors that will be taken into consideration for the release of the wild animals.

4. Procedures

Disposition of Permanently Injured, Non-releasable Small Mammals and Non-Migratory Game Birds

1) The mammal or non-migratory game bird can be retained under an educational permit. The educational permit has to be approved and issued by the Division of Fish and Wildlife for that specific mammal or non-migratory game bird and for the purpose outlined in the application.

2) Mammals that have been retained prior to January 1, 2004 as non-releasable under a rehabilitation permit can continue to be possessed, but only under a valid wild animal possession permit. The wild animal possession permit can be obtained after making application that includes a successfully completed inspection by a conservation officer and approval from the Division of Fish and Wildlife.

3) The mammal or non-migratory game bird that is deemed non-releasable and does not fall under categories one and two listed above should be euthanized. It is the responsibility of the rehabilitator to cause it to be euthanized.

Disposition of Permanently Injured, Non-releasable White-Tailed Deer

1) All white-tailed deer taken in by a rehabilitator and deemed non-releasable must be euthanized. It is the responsibility of the rehabilitator to cause the animal to be euthanized.

2) Injured or orphaned white-tailed deer may be given to licensed wild animal rehabilitators, but must be released within 180 days or euthanized. Orphaned or rehabilitated white-tailed deer may not be sold or given to licensed Indiana game breeders.

3) Non-releasable white-tailed deer transferred from a rehabilitation permit to a valid game breeder license with authorization from a conservation officer prior to January 1, 2004 can still be possessed under the game breeder license.

4) White-tailed deer that are unlawfully possessed will be euthanized.

Disposition of Permanently Injured, Non-releasable Reptiles and Amphibians

1) The reptile or amphibian can be retained under an educational permit. The educational permit has to be approved and issued by the Division of Fish and Wildlife for that specific reptile or amphibian and the purpose outlined in the application.

2) As of January 1, 2005, turtles that are non-releasable or obtained from owners who no longer want to possess them may be retained (possessed) under a valid special purpose turtle possession permit. The special purpose turtle possession permit can be obtained after making application that includes a successfully completed inspection by a conservation officer and approval from the Division of Fish and Wildlife. Turtles possessed under this permit cannot be released into the wild.

3) The reptile or amphibian should be euthanized. It is the responsibility of the rehabilitator to cause it to be euthanized.

INDIANA STATE RECOUNT COMMISSION
Guidelines for Conduct of an Election Recount and Contest
As Amended, July 6, 2004
Guideline #1-2004

Chapter 1. Definitions

Sec. 1. (a) "Candidate" refers to a candidate for nomination or election to an office for which a recount or contest petition has been filed.

(b) If a candidate who is entitled to file a recount or contest petition does not do so in accordance with IC 3-12-11, a state chairman or county chairman who files a recount petition under IC 3-12-11, has the rights and responsibilities of a "candidate" under these guidelines.

Sec. 2. "Chad" means the part of a ballot card that indicates a vote on the card when punched out by the voter.

Sec. 3. "Commission" refers to the state recount commission established by IC 3-12-10-1.

Sec. 4. "Cross-petitioner" includes a candidate who was opposed in the primary or election by the petitioner, whether or not the candidate chose to file a cross-petition with the commission under IC 3-12.

Sec. 5. "Disputed ballot" refers to a ballot challenged by a party to a recount or to a ballot that the state board of accounts determines does not conform with these guidelines or IC 3-12.

Sec. 6. "No votes" refers to ballots subjected to the recount which:

(1) do not indicate a vote cast for any candidate subject to the recount; and

(2) are otherwise classified as either "valid" or "invalid" under these guidelines or IC 3-12.

Sec. 7. "Precinct tally sheet" refers to the written record used by the state board of accounts to record the precinct vote tally and other evidence concerning the voting process in a precinct.

Sec. 8. "Recount" means the determination by the state recount commission of the number of valid votes received by each candidate for the office subject to a recount.

Sec. 9. "Tally" means the counting by the state board of accounts of votes cast for each candidate in each of the following categories: undisputed valid, undisputed invalid, or disputed.

Sec. 10. All other terms used in these guidelines have the meaning set forth in IC 3-5.

Chapter 2. Conduct of Election Recounts and Contests Generally

Sec. 1. The state recount commission shall conduct all recounts and contests under identical procedures to the extent reasonably possible.

Sec. 2. The commission makes the final decision as to whether a disputed ballot will be counted.

Sec. 3. (a) All tallying shall be physically performed by the state board of accounts in accordance with these guidelines.

(b) The state board of accounts staff manual for recounts (*Agency Guidelines for Conduct of Recount for the State Recount Commission,* May 2004 edition) is approved for use in recounts conducted by the commission. If any conflict exists between this manual and these guidelines, the guidelines control to the extent of that conflict.

(c) The commission shall conduct the recount at times and locations designated by it, but all tallying of votes shall be conducted within the county where the votes were cast unless the parties consent to a change of location.

Sec. 4. The commission shall appoint a director who is responsible for supervising the conduct of the tally by the state board of accounts. The state board of accounts shall prepare for the director a report on the tally by the state board of accounts. The director shall present the report to the commission to enable the commission to make final decisions in a fair and prompt manner.

Sec. 5. (a) The commission may order with consent of all parties to a recount, that a prerecount inspection of impounded election material be conducted by the attorneys representing the parties. This inspection:

(1) must be conducted under the supervision of the state board of accounts and the Indiana state police at all times; and

(2) is designed to enable the parties to narrow the issues and material subject to dispute in the recount so that the recount may be conducted efficiently.

The director shall attend this inspection and is authorized to resolve any dispute regarding its scope and procedures.

(b) When the recount begins, all tallying must be conducted by audit teams composed of at least two staff members of the state board of accounts. The director may assign additional staff members to the audit teams to conduct the recount. Where possible, team assignments should be rotated daily so that the same auditors do not work as a team on consecutive days.

(c) Except as provided in subsection (d), the audit team shall inspect and tally all ballots in accordance with these guidelines. The audit team may classify a ballot as invalid only for reasons set forth in these guidelines or IC 3-12 and if no party to the recount disputes that determination. The audit team shall also inspect all poll lists, voter affidavits, absentee envelopes, and other documents relevant to the recount, as determined by the director.

(d) If a recount is conducted concerning a primary election, the ballots cast in the primary conducted for the candidates of the other major party, and the ballots cast solely for school board candidates or on public questions are not to be recounted, but shall be documented solely for the purpose of reconciling the number of voters who cast ballots in person or by absentee ballot at the precinct (according to the poll list) with the number of ballots cast in the precinct according to the canvass.

Sec. 6. (a) The state board of accounts shall designate one of its staff to act as a supervisor for each group of audit teams.

(b) Each supervisor should be present at the tallying location while the tally is being conducted, assist the director in managing the tallying process, and keep the director advised of the progress of the tallying.

(c) The supervisor shall inspect all absentee ballot envelopes not distributed to the precinct election boards or to central count absentee ballot counters and shall permit observers to inspect the envelopes. The supervisor may not open the envelope.

Sec. 7. At least one state police officer must be present at each counting location during the tallying. The state police are responsible for the safety and integrity of all election materials during and after the recount, until further order of the commission.

Sec. 8. Each candidate in a race being tallied may observe each audit team as it conducts the tally. Each candidate may also designate one observer per audit team and not more than two managers for the candidate's observers in each county. The audit team shall allow each candidate or his/her manager or observer a reasonable opportunity to view each ballot, document, voting machine or other materials reviewed by the audit team. An audit team does not have to delay the tallying process because of the absence of a candidate or candidate's manager or observer.

Sec. 9. During the tallying of ballots in each precinct, one member of the audit team shall be responsible for inspecting each ballot and determining the tally category for that ballot. The other member of the audit team shall keep all necessary records. The members of the audit team may consult with one another or the director.

Sec. 10. The candidates, and their managers and observers, may not argue or interfere with the audit team but may request that a ballot be identified by the audit team as a disputed ballot. The candidate, manager or observer need not state the reason for the challenge. Unless a ballot is challenged by a candidate, manager, or observer before the audit team signs the precinct tally sheet, the audit team's decision as to the classification of that ballot is final. The commission shall review disputed ballots upon completion of the tally by the state board of accounts.

Sec. 11. The audit team shall mark any disputed ballot as an exhibit. The mark must contain at least the following information: county, township or ward, precinct, exhibit number and the name of the candidate challenging the ballot, or whether the ballot is disputed by the state board of accounts.

Sec. 12. The director shall attempt to resolve procedural problems (other than ballot validity issues) not resolved by these guidelines. The director shall keep the commission advised of the progress of the tallying, procedural problems he/she resolves and any disagreement with his/her actions. If an issue arises during the tallying process, the commission may meet to resolve such an issue at the request of a candidate.

Sec. 13. Each audit team shall tally only one precinct at a time, and election materials for each precinct shall be kept separate by precinct.

Sec. 14. The audit team shall record information relevant to seals on the voting machines and ballot boxes or other containers of election materials on the precinct tally sheet.

Sec. 15. (a) The audit team shall then open the container of election materials and record the following information, if available, on the precinct tally sheet:

(1) the total number of votes recorded on the precinct certificate;

(2) the number of voters' signatures on the poll list;

(3) the number of absentee ballots delivered to the precinct;

(4) the number of absentee voters listed on the poll list;

(5) the number of absentee ballots not counted;

(6) the number of absentee voter applications; and

(7) the number of votes for each candidate in the relevant race as reported by the precinct election board or the county election board.

(b) Any discrepancies between the numbers recorded by election officials and the numbers recorded by the audit team should also be recorded on the precinct tally sheet.

Sec. 16. The audit team may not independently examine the absentee voter applications and affidavits on absentee ballot envelopes but shall permit each candidate, manager, or observer to inspect them and to challenge ballots cast pursuant to any of them.

Sec. 17. The audit team may not remove from its envelope any absentee ballots not removed from their ballot envelopes by the precinct election board or the central count absentee ballot counters.

Sec. 18. The audit team shall:

(1) tally the total number of undisputed valid ballots cast for each candidate in each relevant race;

(2) tally the number of undisputed invalid ballots for each candidate rejected by the audit team;

(3) tally the number of disputed ballots for each candidate;

(4) tally the number of no votes in the precinct;

(5) sign and date the precinct tally sheet;

(6) place all precinct materials in the precinct container; and

(7) return the container and the completed precinct tally sheet to the state board of accounts supervisor or director.

Sec. 19. The director or supervisor shall make copies of each precinct tally sheet available to each candidate's representatives and the media as soon as possible.

Sec. 20. (a) Upon completion of the tallying by the state board of accounts, the commission shall convene to review the report of the director and to receive from the candidates evidence relevant to whether disputed votes should be counted.

(b) The commission shall proceed to conduct the count required under IC 3-12-11-17.7(a) in the following manner:

(1) If the tallying by the state board of accounts indicates that there are not disputed ballots in one or more precincts, the director shall present a report of the votes cast for each candidate in the indicated precincts. The commission shall order the votes counted for the designated candidates and shall order any undisputed invalid ballots or no votes in the precinct to not be counted.

(2) After the disposition of all precincts with no disputed ballots, the commission shall proceed to count all ballots in precincts with one or more disputed ballots.

(3) If the recount is to be conducted in more than one county, the commission may begin with any county agreed upon by the parties. If no agreement exists between the parties, the recount shall begin in the county designated by the commission and proceed to subsequent counties in accordance with an order adopted by the commission. The commission shall conduct the recount in precincts within one county in alphanumeric order, according to the precinct name, unless all parties to the recount join in requesting that the count be conducted in an alternative manner.

(4) The commission shall begin by recognizing the director to present the state board of accounts report regarding the votes cast within all precincts other than the precincts described in (1). The director shall state the number of:

(a) undisputed valid votes cast for each candidate in each precinct;

(b) undisputed invalid votes cast for each candidate; and

(c) no votes cast in each precinct.

(5) The commission shall then order:

the votes described in 4(a) to be counted for the designated candidates; and

the votes described in 4(b) or 4(c) not counted.

(6) If, following the designation of a ballot as disputed, the party who disputed the ballot determines that the ballot should be designated as either an undisputed valid vote cast for a specific candidate, or as an undisputed invalid vote, the party may file a written statement to that effect with the director. The statement must:

(a) identify the ballot according to the "Exhibit No." on the state board of accounts exhibit list of disputed ballots;

(b) state whether the ballot should be categorized as an undisputed valid vote for a specified candidate, or as an undisputed invalid vote; and

(c) be signed by the party to the recount who disputed the ballot.

(7) After the commission acts under (5) to order that ballots be counted or not counted, the director shall report to the commission whether a statement described by (6) has been filed with the director regarding any disputed ballot. If so, the commission shall proceed to order the ballot to be counted for a specified candidate, or not counted, in accordance with the statement.

(8) The commission shall then recognize the petitioner to present ballots disputed by the petitioner or state board of accounts to the commission that the petitioner contends should be counted as votes for the petitioner. The petitioner shall present each ballot in the order that the ballot is designated as an exhibit number in the exhibit list of disputed ballots and for the first such precinct according to the precinct order listed in (3). However, the commission may consent to the consideration of more than one ballot in the precinct at the same time if requested by the petitioner, and the commission determines that the issues regarding the disputed ballots are essentially identical so that there is no need for a determination regarding each ballot in this group.

(9) After the presentation of a ballot (or when permitted, a group of ballots) under (8), the commission shall determine based on all relevant evidence whether or not the ballot(s) shall be counted as a vote (or votes) for the petitioner, a vote (or votes) for the cross-petitioner, or whether the ballots shall not be counted for any candidate.

(10) After the completion of the petitioner's case-in-chief in all of the precincts included in the recount, the commission shall then recognize the cross-petitioner to present ballots disputed by the cross-petitioner or state board of accounts to the commission that the cross-petitioner contends should be counted as votes for the cross-petitioner. The cross-petitioner shall present each ballot in the order that the ballot is designated as an exhibit number in the exhibit list of disputed ballots and for the first such precinct according to the precinct order listed in (3). However, the commission may consent to the consideration of more than one ballot in the precinct at the same time if requested by the cross-petitioner, and the commission determines that the issues regarding the disputed ballots are essentially identical so that there is no need for a determination regarding each ballot in this group.

(11) After the presentation of a ballot (or when permitted, a group of ballots) under (11), the commission shall determine based on all relevant evidence whether or not the ballot(s) in the precinct shall be counted as a vote (or votes) for the petitioner, a vote (or votes) for the cross-petitioner, or whether the ballots shall not be counted for any candidate.

(12) After completion of the cross-petitioner's case-in-chief in all of the precincts included in the recount, the commission shall

then recognize the director to report whether any disputed ballots in any precinct have not been presented by either the petitioner or cross-petitioner to the commission. If the director identifies any ballots that remain disputed, the director shall present these ballots to the commission for determination.

Sec. 21. (a) Except as provided in subsection (b), (c), or (d), a member of the commission (or an individual acting on behalf of the commission) shall not initiate, permit, or consider ex parte communications, or consider other communications made to the member or individual outside the presence of the parties, concerning a pending or impending proceeding.

(b) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized if the member or individual reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication and promptly notifies the commission and all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(c) A member or individual may consult with commission staff and others whose function it is to aid the member or individual in carrying out the member or individual's responsibilities.

(d) A member or individual may, with the consent of the parties, confer separately with the parties and their lawyers to mediate or settle matters pending before the commission.

Sec. 22. All testimony presented to the commission by an individual shall be sworn to (or affirmed) by that individual.

Sec. 23. The commission may accept evidence in a proceeding even if the evidence would not be admissible in a judicial proceeding under the rules of evidence. In accepting the evidence described by this section, the commission shall ensure that the commission's proceedings are conducted with the decorum required to protect the rights of the parties to the proceeding and other individuals.

Sec. 24. Unless otherwise ordered by the commission, if the commission requests or requires that written briefs be submitted in a proceeding before the commission, the briefs must be filed with the election division no later than forty-eight (48) hours before the commission is scheduled to meet to consider the matter.

Sec. 25. After the commission has completed its count under Section 20, the commission shall adjust accordingly the tallies certified by the state board of accounts, resolve any other issues raised in the recount, or contest and certify the results to the election division pursuant to IC 3-12-11-15.

Chapter 3. Tallying Votes in a Ballot Card Voting System Precinct

Sec. 1. This chapter applies only to tallying votes in a precinct that uses ballot cards for registering votes.

Sec. 2. The director shall obtain the use of one or, if possible, two automatic tabulating machines in each county. The director may seek the assistance of county election officials in preparing the machines for use in the tallying.

Sec. 3. The state board of accounts shall prepare a test deck of sample ballot cards, and the candidates may jointly prepare test decks. At the beginning and end of each day of tallying, the counting machine shall be tested by running decks prepared by the candidates. Candidates and their managers or observers may observe all testing and operation of automatic tabulating machines.

Sec. 4. The audit team shall examine the precinct header card to determine whether it is the correct card for the precinct. Candidates, managers, or observers may inspect the precinct header card and have it marked as an exhibit for review by the commission.

Sec. 5. (a) The audit team shall manually inspect each ballot card in the container of election materials to determine whether it should be counted.

(b) A ballot marked "REJECTED", "VOID", "SPOILED", or "CANCELLED" or with any other similar notation regarding the reliability of the ballot permitted under the state law must be disputed by the audit team. The audit team shall record any available information concerning the reasons the marking appears on a ballot.

Sec. 6. The audit team shall divide all ballots into three groups:

(1) Ballot cards to be counted that are undisputed.

(2) Ballot cards that are disputed.

(3) Ballot cards not to be counted that are undisputed, including no votes.

Sec. 7. (a) All undamaged ballots to be counted shall then be counted on two separate automatic tabulating machines, if available; otherwise, the ballots shall be counted twice on one machine. The audit team shall compare the totals for each candidate from each machine run and shall record the totals.

(b) If the totals are identical on both machines, or on both runs on the same machine, no further counting will be necessary.

(c) If the totals are not identical, the audit team shall manually count the ballots at least twice, so that the audit team and supervisor are satisfied that the manual count is accurate.

Sec. 8. The director may order any appropriate test or a hand count in any precinct he/she believes there is a substantial question concerning the accuracy of the tabulating machine count.

Sec. 9. Notwithstanding sections 7 and 8 of this chapter if a petition or cross petition for a recount request that the ballot cards in a specific precinct be counted manually, the audit teams shall count the cards accordingly and may not use automatic tabulating machines except in a test unless the petitioner or cross-petitioner withdraws the request after the state board of accounts conducts a test of the automatic tabulating machine to ascertain its accuracy. A written withdrawal of such a request is effective upon delivery to the director, supervisor, or commission.

Chapter 4. Tallying Votes in Voting Machine Precincts

Sec. 1. This chapter applies to tallying votes in a precinct that uses voting machines.

Sec. 2. If the precinct includes votes on a voting machine and paper ballots, the audit team shall inspect and tally all paper ballots in the container.

Sec. 3. The audit team shall divide the paper ballots into three groups:

(1) Paper ballots to be counted that are undisputed.

(2) Paper ballots that are disputed.

(3) Paper ballots not to be counted that are undisputed, including no votes.

Sec. 4. The audit team shall inspect each voting machine used for voting in the precinct. If evidence tape has been placed on the machine, the audit team shall record whether the tape is broken or intact.

Sec. 5. The audit team shall compare and record the public counter number and protective opening and protective closing numbers on the tally sheet prepared by the precinct election board. Any discrepancies shall be noted.

Sec. 6. (a) If the review of the precinct election materials and tallying of paper ballots is done in a different location than where the voting machines are stored, each audit team shall complete as much of the precinct tally sheet as possible without inspecting the voting machines before the director or state board of accounts supervisor and audit team proceed to the voting machine location, inspect the voting machines, and complete the precinct tally sheets.

(b) The audit team, upon instructions from the director, may accept a report from another state board of accounts audit team that has made the physical inspection of the voting machines and use the information in the report for making the precinct tally.

Chapter 5. Tallying Votes in Paper Ballot Precincts

Sec. 1. This chapter applies only to tallying votes in a precinct that uses paper ballots for registering votes.

Sec. 2. The audit team shall divide the paper ballots into three groups:

(1) Paper ballots to be counted that are undisputed.

(2) Paper ballots that are disputed.

(3) Paper ballots not to be counted that are undisputed, including no votes.

Sec. 3. (a) The audit team shall manually inspect each paper ballot in the container of election materials.

(b) A ballot marked "REJECTED" or "VOID" or "SPOILED" or "CANCELLED" or with any other similar notation regarding the reliability of the ballot permitted under the state law may not be counted by the audit team. The audit team shall record any available information concerning the reasons the marking appears on a ballot.

Chapter 6. Tallying Votes in an Electronic Voting System Precinct

Sec. 1. This chapter applies only to tallying votes in a precinct that uses the electronic voting system.

Sec. 2. (a) The audit team shall check the election night printout to ensure that the test of the electronic voting machine showed that the votes were recorded correctly, no over voting could occur, and the vote tallies for each office were equal to zero. The team shall note any discrepancies.

(b) The team shall check the election night results reported by the precinct election board with the printout for accuracy and shall note any discrepancies.

Sec. 3. If requested by a candidate or candidate's representative, the audit team shall cause a new printout to be made from the memory cartridges for a precinct. The new printout shall be compared with the old printout and election night results reported by the precinct election board. The audit team shall note any discrepancies.

Sec. 4. If a new printout is requested under Section 3 from more than one memory cartridge, the cartridges shall be read on one electronic voting system designated by the director, unless a party requests the use of the electronic voting system in which the cartridge was originally used.

Sec. 5. Unless otherwise requested by a party, a memory cartridge read on an electronic voting system is not required to also be read on the computer program maintained by the county election board for use in election night tabulations.

AS ADOPTED AND AMENDED BY THE STATE RECOUNT COMMISSION

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #37
SALES TAX
AUGUST 2004
(Replaces Bulletin #37 dated January 2003)

DISCLAIMER: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on the Department or the taxpayer. Therefore, information provided in

this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Sales by Out-of-State Merchants

REFERENCES: IC 6-2.5-4-1; IC 6-2.5-4-14; IC 6-2.5-3-1; IC 6-2.5-8-1

I. Definition of Indiana Retail Merchant

A person is an Indiana Retail Merchant and must be registered with the Department to collect Indiana Use Tax if the retail merchant is engaged in selling at retail for use, storage, or consumption in Indiana and is:

1. Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in Indiana unless the property is subsequently shipped to another state;
2. Has a representative, agent, salesman, canvasser, or solicitor operating in Indiana under the authority of the retail merchant or its subsidiary for the purpose of selling, delivering, installing, repairing, assembling, setting up, accepting returns, billing, invoicing or taking orders for the sale of any tangible personal property for use, storage or consumption in Indiana;
3. Closely related to another person that maintains a place of business in Indiana; or
4. Entering into a contract to provide property or services to a state agency or a state educational institution.

II. Engaged in Business in Indiana

An out-of-state vendor is engaged in business in Indiana and must be registered as an Indiana Retail Merchant and charge Indiana Use Tax on tangible personal property delivered into Indiana if the out-of-state vendor's only Indiana activity is within one of the four categories above. This activity may include any of the following:

a. maintaining an administrative office;
b. maintaining a research facility;
c. displaying merchandise at local trade fairs and exhibitions;
d. maintaining a factory or warehouse; or
e. delivering goods into Indiana by the seller's truck where title and possession transfer in Indiana.

III. Not Engaged in Business in Indiana

An out-of-state vendor is NOT engaged in business in Indiana and therefore is NOT required to register as an Indiana Retail Merchant and charge Indiana Use Tax on tangible personal property delivered in Indiana where the out-of-state vendor's ONLY Indiana activity is any of the following:

1. owning Indiana realty for investment;
2. being "qualified" to do business in Indiana;
3. purchasing goods in Indiana;
4. conducting credit investigations;
5. delivering goods by common carrier or parcel post.

IV. Consigned Goods

An out-of-state seller who consigns tangible personal property to an Indiana resident "on approval" is deemed to be engaged in business in Indiana, and must register as an Indiana Retail Merchant to collect Indiana Use Tax on such transactions.

An out-of-state seller whose only business activity in Indiana is the consignment of tangible personal property to an Indiana resident on a "sale or return" basis is deemed not to be engaged in business in Indiana and is not required to register to collect Indiana Use Tax.

V. Registration Procedures, Requirements and Privileges

An Indiana Registered Retail Merchant's Certificate will provide the registrant authority to collect Indiana Sales or Use Tax. In addition, the registrant is entitled to privileges of exemption from the tax on purchases of items to be used for an exempt purpose. The Indiana Registered Retail Merchant's Certificate is permanent. The registration fee is $25.00.

VI. Purchaser's Use Tax Liability

If an out-of-state vendor is not required to collect Indiana Use Tax, the Indiana purchaser is liable for the Indiana Use Tax on such purchases if the property is to be used, stored, or consumed in Indiana.

VII. Out-Of-State Tax Collection Permit

An out-of-state merchant not required to become registered as an Indiana Retail Merchant may voluntarily register for an Out-of-State Use Tax Collection and Remittance Permit. Holders of such permits must collect and remit Indiana Use Tax to the Department on sales of tangible personal property subject to the tax. This is a free registration. Registration may be done online at: www.in.gov/dor/electronic

Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #91
INCOME TAX
AUGUST 2004

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Blended Biodiesel Tax Credits

REFERENCES: IC 6-3.1-27

INTRODUCTION

P.L.224-2003, SECTION 199, effective January 1, 2004 provides for three new tax credits. The first is a credit for producing biodiesel; the second credit is for producing blended biodiesel; and the third is for the retail sale of blended biodiesel through a metered pump at a service station. The credits can be applied against the sales tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax.

I. BIODIESEL TAX CREDIT

Biodiesel is defined as a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specification D6751-02 for biodiesel fuel (B100) blend stock distillate fuels.

A taxpayer that produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of one dollar ($1.00) multiplied by the number of gallons of biodiesel produced by the taxpayer during the taxable year and used to produce blended biodiesel.

The total amount of credits allowed may not exceed one million dollars ($1,000,000) for all taxpayers and all taxable years.

II. BLENDED BIODIESEL TAX CREDIT

Blended biodiesel is defined as a blend of biodiesel with petroleum diesel, so that the percentage of biodiesel in the blend is at least two percent (2%) (B2 or greater). The term does not include biodiesel (B100).

A taxpayer that produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of two cents ($.02) multiplied by the number of gallons of blended biodiesel produced at the Indiana facility and blended with Indiana produced biodiesel.

The total amount of credits allowed may not exceed one million dollars ($1,000,000) for all taxpayers and all taxable years.

III. RETAIL SALE OF BLENDED BIODIESEL TAX CREDIT

A taxpayer that is a dealer and operates a service station in Indiana at which blended biodiesel is sold and dispensed through a metered pump in a taxable year is entitled to a credit against the taxpayer's state tax liability.

The credit allowed is one cent ($.01) multiplied by the number of gallons of blended biodiesel sold and dispensed through all the metered pumps located at the service station. The credit must be computed separately for each service station operated by the taxpayer.

The total amount of credits allowed may not exceed one million dollars ($1,000,000) for all taxpayers and all taxable years.

IV. APPLICATION FORM AND APPROVAL OF THE TAX CREDIT

Taxpayers desiring to claim one of the three credits must file a claim for credit on Form BD-100 Biodiesel Credit Application, which is available at the Department's web site (www.in.gov/dor/taxforms/f&eforms).

The claim for credit must be completed by the taxpayer and filed with the Department for approval. The approved claim will be returned to the applicant. A copy of the approved claim must be attached to any return on which the credit is taken. The application and claim can be filed on a monthly, quarterly, semi-annual or annual basis depending on which tax type the taxpayer is claiming the credit for. Failure to submit the approved BD-100 with the tax return will result in the claim being denied by the Department.

V. ADMINISTRATION OF THE TAX CREDITS

Qualifying taxpayers include pass through entities such as S Corporations, partnerships, limited liability companies, and limited liability partnerships. If the pass through entity is entitled to a credit, but does not have state tax liability to which the credit can be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit in the same percentage as the person's distributive income to which the person is entitled.

If the credit is applied against the taxpayer's adjusted gross income tax, financial institutions tax, or insurance premiums tax, the credit shall be taken on the annual return filed by the taxpayer. If the credit is to be applied against a taxpayer's sales tax liability, the credit can be taken on a monthly basis. A taxpayer may not take a credit against sales tax collected as a retail merchant, but may take a credit against the use tax due on the taxpayer's taxable purchases.

If the credit claimed exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry over the excess to the following taxable years. The taxpayer is not entitled to a refund or carryback of any unused credits.

Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN # 92
INCOME TAX
AUGUST 2004

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SUBJECT: Individual Earned Income Tax Credit (EITC) Procedures

REFERENCES: IC 6-3-4-8; IC 6-3.1-21

INTRODUCTION:

The Indiana earned income tax credit is effective until December 31, 2005. The statute requires the Department to allow an advance payment of the earned income tax credit through reduced income tax withholdings.

I. CALCULATION OF THE EARNED INCOME CREDIT

An individual is eligible for the Indiana earned income tax credit if the person is eligible for the federal earned income tax credit under Section 32 of the Internal Revenue Code. The Indiana credit amount is equal to six percent (6%) of the amount of federal earned income tax credit that the individual is eligible to receive and claim for the taxable year.

If the credit amount exceeds the taxpayer's actual tax liability for the taxable year, the excess credit shall be refunded to the taxpayer.

II. CALCULATION OF ADVANCE EARNED INCOME CREDIT PAYMENTS

An employee subject to withholding of Indiana adjusted gross income tax may request his/her employer to reduce the amount of adjusted gross income tax withheld as an advance payment of the Indiana earned income tax credit.

To qualify for the advance earned income tax credit payment, the individual must be an Indiana resident, have a federal Form W-5 on file with the employer, and receive federal advance earned income tax credit payments from his/her employer.

To request an Indiana advance earned income tax credit payment, the employee must complete and sign Form WH-5, which the employer is required to maintain for three (3) years after the year that the form is completed by the employee.

The employer shall advance to the employee six percent (6%) of the federal advance earned income tax credit payment, but is not required to advance the credit payment if the amount is less than one dollar ($1) per pay period.

III. REPORTING OF ADVANCE EARNED INCOME TAX PAYMENT AMOUNTS BY THE EMPLOYER

The total amount that the employer advances to all employees shall be reported when the employer remits the Indiana adjusted gross income tax withheld. The advance shall be deducted from the total tax withheld for all employees when calculating the net remittance that the employer is required to remit to the Department.

The total annual amount that the employer advances for the earned income tax credit payments will be reported on the Form WH-3, Annual Withholding Tax Reconciliation Return.

The total amount advanced to individual employees will be shown on the Form W-2 Wage and Tax Statement in the box directly beneath box 19, with 'INADV' directly beneath box 20.

Kenneth L. Miller
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #94
INCOME TAX
SEPTEMBER 2004
(Replaces Information Bulletin #91 dated January 2003)

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to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Rerefined Lubrication Oil Facility Tax Credit

REFERENCE: IC 6-3.1-22.2

INTRODUCTION:

This Bulletin is intended to summarize the tax credit available for property tax paid for an oil rerefining facility.

I. REREFINED LUBRICATION OIL

Rerefined lubrication oil is base oil manufactured from at least ninety-five percent (95%) used oil, and uses not more than two percent (2%) previously unused oil in a refining process that effectively removes physical and chemical impurities and spent and unspent additives to the extent that the base oil is capable of meeting industry standards for engine oil.

II. ELIGIBLE ENTITIES AND TAXES FOR WHICH THE CREDIT MAY BE APPLIED AGAINST

A taxpayer is an individual or entity that has state tax liability, including pass through entities.

The tax credit can be applied against the following taxes:

- State Gross Retail and Use Tax
- Adjusted Gross Income Tax
- Financial Institutions Tax
- Insurance Premiums Tax

III. QUALIFICATION FOR THE CREDIT

A person is entitled to a credit against his/her state tax liability in a taxable year for a percentage of the ad valorem property taxes paid in the taxable year for: real property on which a facility that processes rerefined lubrication oil is located; and personal property used in the processing of rerefined lubrication oil, including personal property used in the transportation of rerefined lubrication oil to and from the processing facility.

IV. CALCULATION OF THE CREDIT

The amount of the credit to which a taxpayer is entitled equals the product of:

The amount of ad valorem property taxes paid by the taxpayer in a taxable year; multiplied by the percentage that corresponds to the tax year listed below.

YEAR	PERCENTAGE OF CREDIT
2001	100%
2002	80%
2003	60%
2004	40%
2005	20%

A taxpayer is entitled to a carry-forward of any unused credit for a period not to exceed two years. However, no unused credit may be carried forward to a tax year beginning after December 31, 2007.

The Department of Commerce shall determine if the taxpayer is entitled to the credit.

Kenneth L. Miller

Commissioner

DEPARTMENT OF STATE REVENUE

IN REGARDS TO THE MATTER OF:
FORT MIAMI DETACHMENT
MARINE CORPS LEAGUE, INC.
DOCKET NO. 29-2004-0095

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED DEPARTMENTAL ORDER

An administrative hearing was held on Thursday, April 22, 2004 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Fort Miami Detachment Marine Corps League, Inc., was represented by Arend J. Abel and Marilyn Moores of

Cohen & Malad, LLP, One Indiana Square, Suite 1400, Indianapolis, Indiana 46204. John M. Miller appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-21.5 et seq., evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Departmental Order.

REASON FOR HEARING

Petitioner was the subject of an audit which was completed on or about September 27, 2002. The audit and subsequent assessments covered the periods ending May 31, 1999 through May 31, 2002. On January 5, 2004, the Petitioner's charity gaming license was suspended for three (3) years, and Petitioner was assessed civil penalties in the amount of seven thousand one hundred dollars ($7,100). The Petitioner protested in a timely manner.

FINDINGS OF FACTS

1) The Indiana Department of Revenue completed a charity game audit of Petitioner on or about September 27, 2002. (Department's Exhibit B).

2) The Department also conducted an income tax, sales, and use tax audit of the Petitioner. (Department's Exhibit B).

3) Petitioner did not protest the Department's assessments, and paid all of its liabilities in full no later than February 4, 2003. (Petitioner's Exhibit #1).

4) On March 2, 2002 the Department issued a letter outlining civil penalties and a suspension based upon the September 27, 2002 audit results. (Department's Exhibit A).

5) In its letter of March 2, 2002 the Department stated, "The investigation by the Department revealed that Fort Miami Marine Corps League failed to keep accurate records of the allowable events it conducted, and to make accurate and timely reports of all financial aspects of the allowable events as required by IC 4-32-9-17. The Department reconstructed that gaming records pertaining to the sale of pull tabs. The investigation determined that Fort Miami understated its gross receipts derived from the sale of pull tabs by $105,309. This understatement of gross receipts derived from the sale of pull tabs resulted in the organization's charity gaming license fees being underreported by $3,750 for the periods ended April 30, 1999 and April 30, 2000…**The Department imposes a civil penalty of five hundred dollars ($500.00)**." (Department's Exhibit A).

6) Michael Broz, Commandant of Petitioner's organization stated in his affidavit, "After the audit was completed, I discovered in an outside building that used to be a concession stand, numerous boxes of unused gaming materials that were not reported on our organization's annual inventory filed with the Department of Revenue…"(Petitioner's Exhibit #1).

7) The Department's letter dated March 2, 2002 also stated, "The audit noted that on three occasions Fort Miami Marine Corps League sold pull tab games with a payout of more than $20,000. One game was called 5365 Red Hot and had a payout of $2,400. Another game was called CRW 105 Cruisin with a payout of $2,982. The third game was called BTW 104 Spin Bottle with a payout of $2,188. All games were purchased from Clarke Bingo. *Indiana Code § 4-32-9-33. Prize limits for pull tab, punchboard and tip board games. (a) The total prizes awarded fro one (1) pull tab, punchboard and tip board game may not exceed two thousand dollars ($2,000)*…**The Department imposes a civil penalty for the second violation of one-thousand six hundred dollars ($1,600)**. It is the Department's opinion that an organization should not profit from pull tab games exceeding the maximum dollar limit." (Department's Exhibit A).

8) As to whether Petitioner on three separate occasions sold pull tab games with payouts in excess of $2,000, Petitioner's counsel stated, "We have not presented any evidence refuting that, that particular point. In fact, I pressed—we pressed for that. Our client describes to us, saying no contest, because we can't prove or disprove it." (Record at 59-60).

9) Finally, the Department's letter of March 2, 2003 stated, "During the audit, it was noted that Fort Miami Marine Corps League had 8 unauthorized "Cherry Master" gambling machines. An investigation by the Criminal Investigation Division in November of 2001 noted that Fort Miami Marine Corps League possessed unauthorized gambling machines. The operation of gambling machines as defined in IC 35-45-5-1 constitutes illegal gambling. *Indiana Administrative Code, 45 IAC 18-1-18, defines "Conduct prejudicial to the public confidence in the department" to include operating a gambling device, including any activity illegal under IC 35-45-5-1*…In this case the organization has engaged in conduct prejudicial to the public confidence in the department and **the Department imposes a civil penalty of five thousand dollars ($5,000)**. *Indiana Code § 4-32-12-3. Additional penalties authorized. In addition to the penalties described in section 2 [IC 4-32-12-2] of this chapter, the department may do all or any of the following: (1) Suspend or revoke the license. (2) Lengthen a period of suspension of the license. (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization. (4) Impose an additional civil penalty of not more than one hundred dollars ($100) for each day the civil penalty goes unpaid.* Since the Fort Miami Marine Corps League has been found to be in possession of illegal gambling machines, "Cherry Masters", the Department hereby suspends the charity gaming license of the Fort Miami Detachment Marine Cops League, Inc for a period of three (3) years effective with the receipt of this letter. The Department noted on 2 different occasions, once by the Criminal Investigation Division November 2001 and again by the Audit Division in September 2002 that Fort Miami Marine Corps League possessed gambling machines that were in violation

of Indiana Administrative Code 45 § 18-1-18 and Indiana Code § 35-45-5-1." (Department's Exhibit A).
10) During Petitioner's audit, eight (8) "Cherry Master" video machines were observed at Petitioner's location. (Department's Exhibit B).
11) On Cross-Examination of the Department's witness, the questioning was as follows:

Q. Did you see anyone at Fort Miami receive cash as a result of playing Cherry Masters at any time when you were there?
A. No.

MR. DRERUP[1]: Your actual lottery work was in the other part of the building, wasn't it, Tom?
THE DEPONENT: Right.
MR. DRERUP: I mean quite a distance and through doorways. You didn't even come through that entrance normally, where the Cherry Masters are.
THE DEPONENT: I came through that entrance a few days, but all I saw was people, one or two people. It wasn't a whole lot. But I saw no payout. (Record at 26).

12) Michael Broz, Commandant of Petitioner's organization stated in his affidavit, "We have removed all "Cherrymaster" amusement machines, which had been located in a private location requiring key card access on our premises, completely separated from the public area where bingo is conducted…"(Petitioner's Exhibit #1).
13) The collection reports obtained by the Department show the amount of money in the gaming machines, the merchant's share, and the amount due the operator (Department's Exhibits C, D, and E). These reports only show the amount of money in each machine when it is serviced by the vendor. This income is then split between the vendor and Petitioner. Therefore, the records only show the amount of money received by the Petitioner from each machine. The reports do not show whether there were any payouts to patrons.
14) On January 5, 2004, the Petitioner's charity gaming license was suspended for three (3) years, and Petitioner was assessed civil penalties in the amount of seven thousand one hundred dollars ($7,100).

STATEMENT OF LAW

1) The periods at issue are the years ending May 31, 1999 through May 31, 2002. Pursuant to IC 4-32-8-1, IC 6-8.1 applies to the department's decision making process under this article, except that a formal protest of any decision, intended decision, or other action must be filed not more than seventy-two (72) hours after receipt of the notice of decision, intended decision, or other action. (*As added by P.L.24-1992, SEC.49).* The Department's hearings were governed by IC 6-8.1-5-1 during the years at issue. However, the Department also followed the hearing procedures found in IC 4-21.5 in order to conduct its hearings in an orderly manner. This allowed the court reporter to produce a thorough written transcript in case the matter was appealed. Charity gaming matters do not fall under the jurisdiction of the tax court. Charity gaming matters shall be appealed to a local Circuit or Superior whose review is not de novo.
2) The Department's hearings are now governed by IC 4-21.5 exclusively. (See IC 4-32-8-5. *As added by P.L.188-2003, SEC.3.).*
3) Pursuant to IC 6-8.1-5-1, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings. (Burden of proof now found in 45 IAC 18-8-4).
4) The Department's administrative hearings are conducted pursuant to IC 6-8.1- 5-1 and IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
5) IC 4-21.5-3-25(b) provides in pertinent part, "The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts…"
6) IC 4-21.5-2-26(a) states, "The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exemption to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence."
7) "It is reasonable…to adopt a preponderance of the evidence standard…." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
8) 45 IAC 18-1-18 states, "'Conduct prejudicial to the public confidence in the department,' as used in this article and in IC 4-32-1 means conduct that gives the appearance of impropriety, including the failure to file tax returns, conducting a gaming event without a license, sports betting, operating a gambling device, using or possessing a computer or other technologic aid, as defined in section 16 of this rule, or any other activity illegal under IC 35-45-5-1 et seq.". *(Department of State Revenue; 45 IAC 18-1-18; filed Feb 28,2003, 2:16 p.m.: 26 IR 2302).*
9) IC 4-32-9-17 states, "A qualified organization shall maintain accurate records of all financial aspects of an allowable event under this article. A qualified organization shall make accurate reports of all financial aspects of an allowable event to the department within the time established by the department. The department may prescribe forms for this purpose. The department shall, by rule, require a qualified organization to deposit funds received from an allowable event in a separate and

segregated account set up for that purpose. All expenses of the qualified organization with respect to an allowable event shall be paid from the separate account."

10) IC 35-45-5-1 states, "…"Gambling device" means:

(1) a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance;

(2) a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation;

(3) a mechanism, furniture, fixture, construction, or installation designed primarily for use in connection with professional gambling;

(4) a policy ticket or wheel; or

(5) a subassembly or essential part designed or intended for use in connection with such a device, mechanism, furniture, fixture, construction, or installation.

In the application of this definition, an immediate and unrecorded right to replay mechanically conferred on players of pinball machines and similar amusement devices is presumed to be without value…"

11) IC 110 35-45-5-3 provides that, "A person who knowingly or intentionally:

(1) engages in pool-selling;

(2) engages in bookmaking;

(3) maintains, in a place accessible to the public, slot machines, one-ball machines or variants thereof, pinball machines that award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punchboards, jars, or spindles;

(4) conducts lotteries, gift enterprises, or policy or numbers games, or sells chances therein;

(5) conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the stakes therein; or

(6) accepts, or offers to accept, for profit, money or other property risked in gambling; commits professional gambling, a Class D felony."

12) "'Gambling device' is defined as 'a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance,' as well as 'a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation.'" 2001 Op. Att'y Gen 9 (2002).

13) The court in Maillard held that because the quarter slide machine did not always return the same value or property for the same consideration upon each operation, the machine was "a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance," therefore, it was found to be a gambling device prohibited by statute. State v. Maillard, 695 N.E.2d 637, 641 (Ind. Ct. App. 1998), transfer denied by Cain v. Maillard, 706 N.E.2d 173 (Ind. 1998).

14) IC 4-32-9-33 provides in part, "(a) The total prizes awarded for one (1) pull tab, punchboard, or tip board game may not exceed two thousand dollars ($2,000).

(b) A single prize awarded for one (1) winning ticket in a pull tab, punchboard, or tip board game may not exceed three hundred dollars ($300).

(c) The selling price for one (1) ticket for a pull tab, punchboard, or tip board game may not exceed one dollar ($1).

15) IC 4-32-12-1(a) provides in pertinent part, "The Department may suspend or revoke the license or levy a civil penalty against a qualified organization or an individual under this article for any of the following: (1) Violation of a provision of this article or of a rule of the department...(5) Conduct prejudicial to public confidence in the department."

16) IC 4-32-12-2 states, "The department may impose upon a qualified organization or an individual the following civil penalties:

(1) Not more than one thousand dollars ($1,000) for the first violation.

(2) Not more than two thousand five hundred dollars ($2,500) for the second violation.

(3) Not more than five thousand dollars ($5,000) for each additional violation."

17) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:

(1) Suspend or revoke the license.

(2) Lengthen a period of suspension of the license.

(3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.

(4) Impose an additional civil penalty of not more than one hundred dollars ($100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

1) The Department's audit investigation revealed that Petitioner had failed to keep accurate records of the allowable events it conducted. This is evidenced by the numerous boxes of gaming materials Petitioner states were subsequently found.

2) Petitioner inability to accurately account for all its bingo and charity gaming supplies show a failure to make accurate and timely reports of all financial aspects of the allowable events. This is a violation of IC 4-32-9-17.

3) Petitioner's counsel acquiesced to the Department's assertion that on three separate occasions sold pull tab games with payouts in excess of $2,000 a violation of IC 4-32-9-33.

4) Petitioner possessed eight (8) "Cherry Master" video machines.

5) The Department cited 45 IAC 18-1-18 and levied a civil penalty of five thousand dollars ($5,000) for violating this provision of the Indiana Code. However, 45 IAC 18-1-18 was not in effect at the time the alleged violation occurred.

6) Pursuant to IC 6-8.1-5-1, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The Department's investigation establishes a prima facie presumption of the validity of the Department's findings. However, the Department at a minimum must have a reasonable basis for its findings.

7) Depending upon how the machines in question are used, they could be used for amusement purposes. The machines can also be used as an illegal gambling device. Evidence of possible illegal use could include a reset button which is used to clear the machine after each player has finished, or a machine that produces a paper ticket showing the number of credits earned and is therefore used to receive payment.

8) There was no evidence offered by the Department showing in fact that the Cherry Master machines were used in an illegal manner, or that they in fact meet the definition of a gambling device as defined in IC 35-45-5-1.

9) Pursuant to IC 4-32-12-3 the Department has the statutory authority to lengthen a period of suspension of the license to conduct charity gaming.

10) Petitioner's allegation that the Department's actions were in retaliation for the organization filing a lawsuit in another matter was not supported by any evidence, and can only be viewed as mere speculation.

PROPOSED DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied in part and sustained in part. The Department's audit investigation revealed that Petitioner had failed to keep accurate records of the allowable events it conducted. This is evidenced by the numerous boxes of gaming supplies Petitioner's representative states were subsequently found. Petitioner's inability to accurately account for all its bingo and charity gaming supplies shows a failure to make accurate and timely reports of all financial aspects of the allowable events. This is a violation of IC 4-32-9-17. Petitioner's counsel acquiesced to the Department's assertion that on three separate occasions it sold pull tab games with payouts in excess of $2,000 a violation of IC 4-32-9-33. Petitioner could not have violated the provisions of 45 IAC 18-1-18 because the regulation did not exist at the time of the alleged violation. The Department failed to establish a reasonable basis for its assertion that the video gaming machines in question were used for illegal purposes or constituted gambling devices as defined in IC 35-45-5-1.

The years that were subject to audit by the Department are closed. The Petitioner's failure to pursue its right to protest negates the Department's ability to review the numerous boxes of records recently found by Petitioner. However, since the assessments were paid in full, by statute, the Petitioner may file a claim for refund which would allow the Department to review these records. Any subsequent review of these records will have no bearing upon the findings of this hearing.

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 DEPARTMENTAL 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

[1] Stephen Drerup an auditor, was not being questioned by Petitioner's attorney. Mr. Drerup was sworn in at the beginning of the hearing as were all of the potential witnesses. His spontaneous answers were unsolicited, but were made on the record and under oath. There were no objections to his spontaneous responses by either party.

DEPARTMENT OF STATE REVENUE

04980017.LOF

LETTER OF FINDINGS NUMBER: 98-0017
Sales and Use Tax
For the Years 1997-Present

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-Denial of Sales Tax Exemption

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-3-6, IC 6-2.5-5-8.

The taxpayer protests the denial of sales tax exemption on an airplane.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

The taxpayer is a limited liability corporation that owns an airplane. The taxpayer applied for an exemption from sales tax based on its status as a retail merchant engaged in the renting and leasing of the airplane to the public. The Indiana Department of Revenue, hereinafter referred to as the "department," denied this request for exemption. The taxpayer protested the denial and a hearing was held. This Letter of Findings results.

I. Sales and Use Tax-Denial of Sales Tax Exemption

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 sales tax on the transfer of property in a retail transaction. IC 6-2.5-2-1. In the case of aircraft, taxpayers are to pay the tax directly to the department when registering the aircraft unless the aircraft qualifies for an exemption. IC 6-2.5-3-6. The taxpayer contends that the subject aircraft qualifies for an exemption from the sales tax because the taxpayer is a retail merchant in the business of leasing aircraft to the public in the ordinary course of business without changing the form of the aircraft. IC 6-2.5-5-8. The department denied this exemption contending that the taxpayer was a private flying club rather than a business engaged in the leasing of an airplane.

In support of its position, the taxpayer provided substantial documentation including a copy of the Articles of Incorporation, a tax return, flying log sheets, a copy of the computer home page, copies of checks paying sales tax on rentals, and financial records. Close scrutiny of the documentation, however, reveals several features which do not support the taxpayer's contention that the taxpayer is a business rather than a flying club. Article I of the Articles of Incorporation states that as follows:

> The purpose of this Company shall be to provide for its Members convenient means for operating high performance aircraft for personal non-commercial use, at economical rates.

Further, Article XVII indicates that any net profit of the corporation will be used to reduce the hourly flying rates for members. This is a private benefit to the owners rather than an anticipation of earning an income as in the typical business. The corporate internet home page discusses membership requirements. Submitted records indicate that most rentals are to members at a significantly reduced membership hourly rental rate. The rental fees do not approach covering the taxpayer's expenses. In fact, tax records indicate that the corporation lost at least $7,800.00 each year between 1997 and 2002 with an average loss of $16,000.00. The evidence supports the determination that the taxpayer is not in reality a leasing business but rather a private flying club. It is not entitled to an exemption from the sales tax on the purchase of its aircraft.

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. The taxpayer contends that the negligence penalty is inappropriate in this situation because the taxpayer did not intentionally fail to pay the proper amount of tax.

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.

After reviewing the particular facts and circumstances of this case, the department finds that the negligence penalty is not warranted.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

02990293.LOF

LETTER OF FINDINGS NUMBER 99-0293
GROSS INCOME TAX FOR THE PERIOD COVERING THE
FISCAL YEARS ENDING SEPTEMBER 30, 1993, 1994 AND 1995
(4TH QUARTER 1992--3RD QUARTER 1995)

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the *Indiana Register* and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the *Indiana Register*. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—Installment Contract Interest
Tax Procedure—Protests—Burden of Proof

Authority: IC § 6-8.1-1-5-1(b) (1998); IC §§ 6-2.1-1-2, -1-16(28) and -2-2(a) (1988) (1993)(repealed 2003); IC § 6-8.1-1-3 (1988) (1993); *Okla. Tax Comm'n v. Chickasaw Nation*, 115 S.Ct. 2214 (U.S. 1995); *New York ex rel. Cohn v. Graves*, 57 S.Ct. 466 (U.S. 1937); *Wheeling Steel Corp. v. Fox*, 56 S.Ct. 773 (U.S. 1936); *Lawrence v. State Tax Comm'n of Miss.*, 52 S.Ct. 556 (U.S. 1932); *State v. Huffman*, 643 N.E.2d 899 (Ind. 1994); *Miles v. Dep't of Treasury*, 199 N.E. 372 (Ind. 1935) ("*Miles II*"); *Miami Coal Co. v. Fox*, 176 N.E. 11 (Ind. 1931); *Bethlehem Steel Corp. v. Ind. Dep't of State Revenue*, 597 N.E.2d 1327 (Ind. Tax Ct. 1992) ("*Bethlehem Steel I*"), *aff'd* 639 N.E.2d 264 (Ind. 1994) ("*Bethlehem Steel II*"); *Associated Ins. Cos. v. Ind. Dep't of State Revenue*, 655 N.E.2d 1271 (Ind. Tax Ct. 1995); 45 IAC §§ 1-1-7, -51 (1992) (repealed 1999); Judith A. Frank, *Preneed Funeral Plans: The Case for Uniformity*, 4 ELDER L.J. 1 (1996)

The protesting affiliated group (hereinafter "the protestant"), as second successor in interest to the taxpayer, argues that certain interest income the taxpayer received from pre-need funeral installment contracts should be excluded from gross income. The protestant alleges that the interest was from out-of-state business situses.

II. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—"Pre-Need" Trust Interest and Dividend Distributions

Authority: 42 U.S.C.A. §§ 1381-1383(d) (West 1991 & Supp. 1995); FLA. STAT. ANN. § 497.415(1) (West 1988 & Supp. 1995); IC §§ 6-2.1-1-2, -16(28), and -2-2(a) (1988) (1993) (repealed 2003); IC §§ 6-8.1-1-3, -5-1(b) (1998); MICH. COMP. LAWS ANN. § 328.222(1) (West 1992); *Guar. Trust Co. v. Virginia*, 59 S.Ct. 1 (U.S. 1938); *New York ex rel. Cohn v. Graves*, 57 S.Ct. 466 (U.S. 1937); *Maguire v. Trefry*, 40 S.Ct. 417 (U.S. 1920); *Hunt v. Rousmanier's Adm'rs*, 5 L.Ed. 589 (U.S. 1823); *Whidden v. Sunny South Packing Co.*, 162 So. 503 (Fla. 1935); *Hawley v. Smith*, 45 Ind. 183 (1873); *Ind. Family & Soc. Servs. Admin. v. Culley*, 769 N.E.2d 680 (Ind. Ct. App. 2002); *Bethlehem Steel Corp. v. Ind. Dep't of State Revenue*, 597 N.E.2d 1327 (Ind. Tax Ct. 1992) ("*Bethlehem Steel I*"), *aff'd* 639 N.E.2d 264 (Ind. 1994) ("*Bethlehem Steel II*"); 45 IAC § 1-1-51 (1992) (repealed 1999); RESTATEMENT (SECOND) OF TRUSTS § 130(a) (1959); 90 C.J.S. *Trusts* § 240 (2002); Judith A. Frank, *Preneed Funeral Plans: The Case for Uniformity*, 4 ELDER L.J. 1 (1996)

The protestant contends that the Department should exclude from the taxpayer's gross income interest and dividends distributed to it from pre-need funeral trusts that receive deposits of, and invest, pre-need installment contract payments. The protestant submits that the interest and dividends should be excluded because the trusts are maintained and managed outside Indiana.

III. Gross Income Tax—Definition of "Gross Income"—Amortization of Intangibles—Pre-Need Trusts
Gross Income Tax—Definition of "Gross Income"—Amortization of Intangibles—Situses of Intangibles

Authority: I.R.C. (26 U.S.C.) § 167(a) (1988 & Supp. V 1993) (1994); IC §§ 6-2.1-1-2(a), -10, -11(1988) (1993) (repealed 2003); *Newark Morning Ledger Co. v. United States*, 113 S.Ct. 1670 (U.S. 1993); *INDOPCO, Inc. v. Comm'r*, 112 S.Ct. 1039 (U.S. 1992); *Davis v. United States*, 110 S.Ct. 2014 (U.S. 1990); *Buchanan v. Warley*, 38 S. Ct. 16 (U.S. 1917); *Dep't of Ins. v. Motors Ins. Corp.*, 138 N.E.2d 157 (Ind. 1956); *Ind. Dep't of State Revenue v. Colpaert Realty Corp.*, 109 N.E.2d 415 (Ind. 1952); *Dep't of Fin. Insts. v. Holt*, 108 N.E.2d 629 (Ind. 1952); *Dep't of Fin. Insts. v. Gen. Fin. Corp.*, 86 N.E.2d 444 (Ind. 1949); *Gardner-White Co. v. Dunckel*, 295 N.W. 624 (Mich. 1941)

The protestant argues that the Department should exclude from the taxpayer's gross income certain federal income tax deductions it took to amortize the pre-need trusts associated with two Texas mortuaries it acquired and later merged into itself. The protestant contends that the pre-need trust amortization deductions are not gross income, or in the alternative that if they are gross income, then they arise from out-of-state business situses.

IV. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—(Insurance Commissions)(Fiscal Year Ending 09/30/1993)

Authority: I.R.C. (26 U.S.C.) § 1361(b)(1)(B) (1988) (1994)IC §§ 6-2.1-1-2, -16(28), -2-2(a) and –5-5(a) (1988) (1993) (repealed 2003); IC §§ 6-8.1-1-3, -5-1(b) (1998); 11A KY. REV. STAT. ANN. §§ 304.9-270(1) and 304.9-425 (Michie 1996 & 2001 Repls.); OHIO REV. CODE ANN. §§ 3905.18(A), 3905.181 [sic; should read "3905.18.1"] and 3905.20(B)(1). (Anderson 1996 & 2002 Repls.); *Ariz. Ins. Guar. Ass'n v. Humphrey*, 508 P.2d 1146 (Ariz. 1973); *Miami Coal Co. v. Fox*, 176 N.E. 11 (Ind. 1931); *Sample v. Kinser Ins. Agency, Inc.*, 700 N.E.2d 802 (Ind. Ct. App. 1998); *Vector Eng'g & Mfg. Corp. v. Pequet*, 431 N.E.2d 503 (Ind. Ct. App. 1982); *Bethlehem Steel Corp. v. Ind. Dep't of State Revenue*, 597 N.E.2d 1327 (Ind. Tax Ct. 1992) ("*Bethlehem Steel I*"), *aff'd* 639 N.E.2d 264 (Ind. 1994) ("*Bethlehem Steel II*"); *Bishop v. Am. States Life Ins. Co.*, 635 S.W.2d 313 (Ky. 1982); *Boro Hall Agency, Inc. v. Citron*, 329 N.Y.S.2d 269 (N.Y. Civ. Ct. 1972); *Hartford Fire Ins. Co. v. Whitman*, 79 N.E. 459 (Ohio 1906); *Cockrell v. Grimes*, 740 P.2d 746 (Okla. Ct. App. 1987); 45 IAC §§ 1-1-49(5) and -51 (1992) (repealed 1999); 43 AM.JUR.2D *Insurance* §§ 146 and 147 (2003); 2A C.J.S. *Agency* § 334 (2003); 44 C.J.S. *Insurance* §§ 201 and 205 (1993); 13 ERIC MILLS HOLMES, HOLMES' APPLEMAN ON INSURANCE 2D: LAW OF INSURANCE AGENTS §§ 95.1, 97.2 and 97.8 (LEXIS Publ'g 1999); Judith A. Frank, *Preneed Funeral Plans: The Case for Uniformity*, 4 ELDER L.J. 1 (1996)

The protestant submits that certain alleged insurance commissions paid by an insurance subsidiary of the taxpayer to two Kentucky and Ohio companies should be excluded from gross income because they were earned by out-of-state business situses.

V. Gross Income Tax—Imposition on Domiciliary—Receipt of Gross Income by Insurer as Agent (Insurance Commissions)(Fiscal Year Ending 09/30/1993)

Authority: IC §§ 6-2.1-1-2(a) and (b), -10, -11, -13 and -2-2 (1988) (1993) (repealed 2003); IC § 27-1-18-2(b) (1988) (1993); *Oil Supply Co. v. Hires Parts Serv., Inc.*, 726 N.E.2d 246 (Ind. 2000); *Derloshon v. City of Ft. Wayne Dep't of Redev.*, 234 N.E.2d 269 (Ind. 1968); *W. Adj. and Insp. Co. v. Gross Income Tax Div.*, 142 N.E.2d 630 (Ind. 1957); *Dep't of Treasury v. Ice Serv., Inc.*, 41 N.E.2d 201 (Ind.1942); *United Artists Theatre Circ., Inc. v. Ind. Dep't of State Revenue*, 459 N.E.2d 754 (Ind. Ct. App. 1984); *Rotation Prods. Corp. v. Dep't of State Revenue*, 690 N.E.2d 795 (Ind. Tax Ct. 1998); *Universal Group Ltd. v. Ind. Dep't of State Revenue*, 642 N.E.2d 553 (Ind. Tax Ct. 1994) ("*Universal Group III*"); 45 IAC §§ 1-1-8 to -10, -17, -51, -54 and -64 (1992) (repealed 1999)

In the alternative to its out-of-state-business-situs argument concerning the alleged insurance commissions, the protestant alleges that the taxpayer was not liable for gross income tax because the insurance subsidiary held the alleged commissions as agent for the Kentucky and Ohio companies.

VI. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—Other Miscellaneous Gross Receipts From Out-of-State Business Situses

Authority: IC § 6-8.1-5-1(b) (1998)

The protestant contends that the taxpayer was not liable for gross income tax on certain miscellaneous gross receipts allegedly earned by business situses outside Indiana.

VII. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—Miscellaneous Service Gross Receipts (Open/Close Trust Withdrawals) (Fiscal Year Ending 09/30/1993)

Authority: IC §§ 6-2.1-2-2(a)(1), -5(9), -7(b) and (c) (1988) (1993)(repealed 2003); IC § 6-8.1-5-1(b) (1998); *Okla. Tax Comm'n v. Chickasaw Nation*, 115 S.Ct. 2214 (U.S. 1995); *Guar. Trust Co. v. Virginia*, 59 S.Ct. 1 (U.S. 1938); *New York ex rel. Cohn v. Graves*, 57 S.Ct. 466 (U.S. 1937); *Wheeling Steel Corp. v. Fox*, 56 S.Ct. 773 (U.S. 1936); *Lawrence v. State Tax Comm'n of Miss.*, 52 S.Ct. 556 (U.S. 1932); *Maguire v. Trefry*, 40 S.Ct. 417 (U.S. 1920); *Ind. Dep't of State Revenue v. Bethlehem Steel Corp.*, 639 N.E.2d 264 (Ind. 1994) ("*Bethlehem Steel II*"), *aff'g* 597 N.E.2d 1327 (Ind. Tax Ct. 1992) ("*Bethlehem Steel I*"); *Indiana Department of State Revenue v. E.W. Bohren, Inc.*, 178 N.E.2d 438 (Ind. 1961); *Miles v. Dep't of Treasury*, 199 N.E. 372 (Ind. 1935) ("*Miles II*"); *Miami Coal Co. v. Fox*, 176 N.E. 11 (Ind. 1931); 45 IAC §§ 1-1-51, -112 (1992) (repealed 1999); RESTATEMENT (SECOND) OF TRUSTS § 130(a) (1959); 90 C.J.S. *Trusts* § 240 (2002)

The protestant submits that the taxpayer was not liable for gross income tax on certain pre-need trust principal withdrawals for grave-digging services performed at cemeteries it owned located outside Indiana.

VIII. Gross Income Tax—Deductions from Gross Income—Inter-Company Transactions

Authority: IC §§ 6-2.1-4-6, -5-5 (1988) (1993) (repealed 2003); 45 IAC §§ 1-1-166, -167 (1992)

The protestant argues that the taxpayer was entitled to deduct from gross income certain receipts the protestant alleges were the result of transactions between members of the taxpayer's Indiana affiliated group.

IX. Tax Administration—Amending Returns—Departmental Authority to Amend

Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—(Insurance Commissions)(Fiscal Year Ending 09/30/1994)

Gross Income Tax—Deductions from Gross Income—Bad Debt Deductions (All Years)

Authority: IC §§ 6-8.1-5-2(a), -6-3(a)(1), -10-3(a) (1993) (1998); *Middleton Motors, Inc. v. Ind. Dep't of State Revenue*, 380 N.E.2d 79 (Ind. 1978); 45 IAC §§ 15-5-7(d), -11-3 (1996) (2001)

The protestant requests the Department to amend the taxpayer's returns for the audit period to reflect gross income that the protestant alleges was included, and deductions that it alleges were omitted, in error.

X. Tax Administration—Negligence Penalty (Inter-Company Service Charges Adjustment)

Authority: IC § 6-8.1-10-2.1(e) (1998); 45 IAC § 15-11-2(c) (2001)

The protestant requests the Department to abate the negligence penalties imposed.

STATEMENT OF FACTS

The taxpayer was an affiliated group engaged in the mortuary and cemetery (including mausoleum) businesses in Indiana and several other states. It filed consolidated annual income tax returns at the federal level and for both Indiana gross and adjusted gross income tax purposes, using the accrual method of accounting and a fiscal year that ended on September 30. The Department conducted an income tax audit of the taxpayer for the fiscal years ending on September 30 of 1993, 1994 and 1995 (hereinafter "fiscal year 1993," "fiscal year 1994" and "fiscal year 1995," respectively) (collectively, "the audit period"). During those years the parent corporation (hereinafter "the parent") was incorporated and headquartered in Indiana. However, after the end of the audit period, the taxpayer was the subject of two mergers. It was first acquired by and merged into a Delaware corporation, which took the parent's name. It was this successor corporation with which the auditor dealt in conducting the audit. However, the acquiring corporation was thereafter in turn acquired by and merged into another corporation, chartered in a state other than Indiana or Delaware, and engaged in the same businesses as the taxpayer. Since it was this last corporation that filed the protest, the Department will refer to this second successor in interest as "the protestant" in this letter in order to distinguish it from the taxpayer.

The Department conducted a prior income tax audit of the taxpayer for fiscal years 1989 through 1991. In 1994 issued original and rehearing Letters of Findings in response to the taxpayer's protest of the proposed gross income tax assessments that arose out of that audit. At the hearing on the present dispute and in a follow-up telephone conversation the protestant, through its attending employees, represented that during the audit period the taxpayer, with one exception, did not change its business practices from those it used in fiscal years 1989 through 1991. Accordingly, the Department finds that during the audit period the taxpayer centralized all the financial and administrative operations of the subsidiaries and of the parent's various locations at the parent's Indiana headquarters. The parent was responsible for paying all the subsidiaries' and locations' expenses. It made periodic automatic sweeps of the operating accounts of all of the parent's locations, and of those of all but two of the subsidiaries, transferring these revenues to the parent's checking account at an Indiana bank headquartered in the same city as the parent. The parent then paid the subsidiaries' payables out of those proceeds. In turn the subsidiaries, and the parent's various locations, were each responsible for reimbursing the parent for a part of the financial and administrative services it rendered to its locations and to the subsidiaries. The parent called these reimbursements "overhead allocations" in its chart of accounts.

The audit was for all types of Indiana income taxes, including under the former Gross Income Tax Act of 1933, chapter 50, 1933 Indiana Acts 388 (repealed 2003) and its implementing regulation, each formerly codified during the audit period, as amended, at IC article 6-2.1 (1988) (1993) and at 45 IAC article 1-1 (1992) (repealed and recodified 1999 as former 45 IAC article 1.1 (1996 and Supp. 1998) (repealed 2003)), respectively. The present protest involves only the parts of the proposed assessments that are for gross income tax. The Department will provide additional facts if and as needed.

SUMMARY OF FINDINGS

The Department denies the protest in part and sustains it in part. The Department denies the protest as to all issues except Issue III, as to which the protest is sustained.

I. Gross Income Tax—Exclusions From Definition of "Gross Income"—Interest and Dividend Gross Receipts From Out-of-State Business Situses

Tax Procedure—Protests—Burden of Proof

Gross Income Tax—Exclusions From Definition of "Gross Income"—Service Gross Receipts From Out-of-State Business Situses

DISCUSSION

A. OVERVIEW OF PRE-NEED FUNERAL CONTRACTS

The present issue and several others in this protest involve what the mortuary and cemetery industries call "pre-need" contracts and "pre-need" trusts. The discussion of these issues in the protest letter was at best conclusory and incomplete. In particular, the protestant's discussions in both that letter and its post-hearing memorandum on "pre-need trust amortization," the subject of Issue III, were confusing. Accordingly, the Department conducted its own research on these subjects. The Department therefore will discuss the taxpayer's specific activities during the audit period concerning such trusts in the context of those industries' relevant general practices concerning "pre-need" sales, and the state regulatory schemes that govern "pre-need" trusts, as revealed by the Department's research.

One legal commentator has described "pre-need" contracts as follows:

> The concept of the preneed funeral contract has aptly been described as "pay now - die later." Typically, a consumer enters an agreement to presently pay for a package of funeral services and goods which will be delivered upon the death of a designated person. The consumer may prearrange his own funeral or arrange a funeral for another person.….
>
> ….
>
> With many preneed contracts, the consumer may customize fully his funeral by specifying the exact services to be provided as well as the specific goods to be used in conjunction with the funeral. Alternatively, the consumer can leave the details to his survivors.
>
> One option available with many preneed funeral contracts is the "guaranteed price" or "inflation proof" contract. An inflation proof contract establishes a fixed price for specified goods and services and requires that the funeral home provide these goods and services at the price established at contract execution. In effect, the consumer has locked in the price of the services and goods regardless of any inflation that may occur between contract execution and future delivery.

Judith A. Frank, *Preneed Funeral Plans: The Case for Uniformity*, 4 ELDER L.J. 1, 5-6 (1996) (footnotes omitted) (hereinafter Frank, *Preneed Funeral Plans*). The term "pre-need" was coined to describe such contracts, since the individual obviously pays for these items before they are needed. The prospective decedent's status with the mortuary or cemetery company changes from "pre-need" to "at-need" at death.

Although the consumer has the option to prepay in a lump sum, "pre-need payments are customarily made in…installments over a long period of time." JESSICA MITFORD, THE AMERICAN WAY OF DEATH REVISITED 87 (Alfred A. Knopf 1998) (hereinafter MITFORD, REVISITED). Pre-need contracts are thus a species of retail installment contract or conditional sales contract. *See* BLACK'S LAW DICTIONARY 324 (7th ed. 1999) (defining "retail installment contract"). Installment pre-need contracts, like all installment contracts, include a finance charge (i.e., interest) calculated on the declining balance of the amount financed or principal (i.e., the "guaranteed" or fixed price for the property and services selected).

B. THE PROPOSED ADJUSTMENT FOR PRE-NEED CONTRACT INTEREST AND THE PROTESTANT'S ARGUMENT

Parts of each of the Department's Notices of Proposed Assessment to the taxpayer were for gross income tax at high rate on five categories of interest the taxpayer received during the audit period. The protestant has challenged the proposed assessments as to three of these categories. The taxpayer described these categories on its federal Forms 1120 (U.S. Corporation Income Tax Return) for the audit period as "Merchandise Trust Interest," "Funeral Pre-need Trust Interest" (both discussed under Issue II below) and "Installment Contract Interest" (i.e., pre-need contract interest). As authority for the parts of the proposed assessments levied on the interest, the auditor applied, and found that the taxpayer satisfied, the "commercial domicile" test of former 45 IAC § 1-1-51 (1992) (repealed 1999)(last version at 45 IAC § 1.1-6-2 (2001) (repealed 2003)), the implementing regulation that specifically governed taxation of gross income from intangibles.

The protestant argues that the pre-need contract interest was not subject to imposition of gross income tax based on its factual representation that those contracts were sold at business locations outside Indiana. However, other than the respective locations of the parent and the subsidiaries, the protestant has not provided any facts to support this contention.

This omission is the first of several failures by the protestant to submit evidence, make argument, or cite to authorities to support its positions on the issues. In particular, the protestant has failed to prove enough facts to make its case, both as to the present issue and almost every other issue in this dispute. As to one of these other issues, specifically Issue V, the protestant has also failed to convince the Department that the protestant's legal position is sound.

C. INDIANA AUTHORITIES GOVERNING DETERMINATION OF THE GROSS INCOME TAX SITUS OF AN INTANGIBLE

1. Summary of the Implementing Regulation and Its Origins

Former 45 IAC § 1-1-51 applies to the present issue because, as noted above, pre-need contracts are a type of conditional sales contract, and the regulation's definition of "intangible" or "intangible property" specifically included conditional sales contracts. *Id.* The equitable interests in the various pre-need trusts forming the subjects of Issues II and III are also intangibles under the former regulation, as the Department will discuss under Issue II. So are the insurance agent licenses, agent registrations, agency contracts and insurance policies sold underlying the alleged commission income discussed under Issue IV. The definition includes, in addition to the categories specifically enumerated in former 45 IAC § 1-1-51, "*all* other evidences of similar rights capable of being transferred, acquired or sold." *Id* (emphasis added).

The former regulation is too long for the Department to quote even just the relevant parts in full in this letter. However, in *Indiana Department of State Revenue v. Bethlehem Steel Corp.*, 639 N.E.2d 264 (Ind. 1994) ("*Bethlehem Steel II*"), *aff'g* 597 N.E.2d 1327 (Ind. Tax Ct. 1992) ("*Bethlehem Steel I*"), the Indiana Supreme Court summarized this regulation as follows:

> **A. The Interpreting Regulation.** The Department's regulation, 45 IAC 1-1-51, provides two tests for determining when intangible income derives from an Indiana activity, business, *or source*. First, *the "business situs" test* provides that if the taxpayer has established a business situs in Indiana, and "the intangible forms an integral part of a business regularly conducted at [that] situs," then the intangible has an Indiana situs for tax purposes. Second, *the "commercial domicile" test holds that if the taxpayer has established its commercial domicile in Indiana, then "all of the income from intangibles will be taxed...*

except that income which may be directly related to an integral part of a business regularly conducted at a 'business situs' outside Indiana." If the taxpayer has established its commercial domicile in another state, then "no income from intangibles will be taxed... unless the taxpayer has also established a business situs in Indiana and the intangible income derived therefrom forms an integral part of that Indiana activity." *Id.*

Bethlehem Steel II, 639 N.E.2d at 268 (emphases added) (insertion by the court). However, "the Department did not construct its situs approach from whole cloth. The analysis was derived from the property tax context[.]" *Id.* Specifically, the regulation codified the "business situs" test of *Miami Coal Co. v. Fox*, 176 N.E. 11 (Ind. 1931), and the "commercial domicile" test of *Wheeling Steel Corp. v. Fox*, 56 S.Ct. 773 (U.S. 1936). *See generally Bethlehem Steel II*, 639 N.E.2d at 268-269 and *Bethlehem Steel I*, 597 N.E.2d at 1333-1334 (both discussing *Miami Coal* and *Wheeling Steel*). The "commercial domicile" test is the one the auditor used, and the "business situs" test as applied to intangibles acts as an exception to the "commercial domicile" test. The Department therefore will first discuss the "commercial domicile" test, and the effect of commercial domicile Indiana's power to tax income earned out of state.

2. Definition and Effect of "Commercial Domicile" on State Taxing Power Over Income Earned Out of State

A "commercial domicile" is "the actual seat of…corporate government." *Wheeling Steel*, 56 S.Ct. at 778. "The commercial domicile may also be called the 'nerve center' or 'corporate center of all the business functions of the taxpayer." Former 45 IAC § 1-1-51, fifth paragraph, last sentence. As its name implies, it is a type of domicile. " 'Domicil[e] implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance.' " *Ulrey v. Ulrey*, 106 N.E.2d 793, 795 (Ind. 1952), quoting *Williams v. North Carolina*, 65 S.Ct. 1092, 1095 (U.S. 1945). Among these responsibilities is that of paying taxes to the state in which one is domiciled. Domicile was one of the bases for imposing the gross income tax, both as a matter of explicit statutory language and of judicial construction. Former IC § 6-2.1-2-2(a)(1) imposed the gross income tax on "[t]he entire taxable gross income of a taxpayer who is a resident *or a domiciliary* of Indiana[.]" *Id* (emphasis added). In *Miles v. Department of Treasury*, 199 N.E. 372 ("*Miles II*"), *modifying on reh'g* 193 N.E. 855 (Ind. 1935), the Indiana Supreme Court, in upholding the gross income tax against both state and federal constitutional attacks, said:

> We conclude that the tax in question is an excise, *levied upon those domiciled within the state* or who derived income from sources within the state, *upon the basis of the privilege of domicile* or the privilege of transacting business within the state, and that the burden may reasonably be measured by the amount of income. The reasoning which justifies a tax upon the basis of domicile as readily supports and justifies a tax upon the basis of the right to receive income within, or transact business under the protection of, the state. We feel that the weight of reason and authority sustains this view.

Id. at 379 (emphases added).

Miles II also clearly recognized that the power to levy the gross income tax on Indiana domiciliaries included the power to levy it on income those domiciliaries earned outside the state. That opinion, *id.* at 378, quoted extensively from *Lawrence v. State Tax Commission of Mississippi*, 52 S.Ct. 556 (U.S. 1932), in which a Mississippi resident challenged that state's tax assessment on contracting income he earned in Tennessee. In sustaining the assessment the United States Supreme Court said:

> The obligation of one domiciled within a state to pay taxes there, arises from unilateral action of the state government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expenses of government and to distribute its burdens equably among those who enjoy its benefits. Hence, *domicile in itself establishes a basis for taxation.* Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable from the responsibility for sharing the costs of government. *See Fidelity & Columbia Trust Co. v. Louisville*, 245 U.S. 54, 58[,] [38 S.Ct. 40, 40 (1917)]; *Maguire v. Trefry*, 253 U.S. 12, 14, 17[,] [40 S.Ct. 417, 418, 419 (1920)]; *Kirtland v. Hotchkiss*, 100 U.S. 491, 498[,] [25 L.Ed. 558, 562 (1879)]; *Shaffer v. Carter*, 252 U.S. 37, 50[, 40 S.Ct. 221, 224-225 (1920)]. The Federal Constitution imposes on the states no particular modes of taxation, and apart from the specific grant to the federal government of the exclusive power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, *it leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is* upon property within the state or *on privileges enjoyed there*, and is not so palpably arbitrary or unreasonable as to infringe the Fourteenth Amendment. *Kirtland v. Hotchkiss*, *supra*.
>
> ….
>
> It is enough, so far as the constitutional power of the state to levy it is concerned, that the tax is imposed by [that state] on its own citizens with reference to the receipt and enjoyment of income derived from the conduct of business, *regardless of the place where it is carried on*. *The tax*, which is apportioned to the ability of the taxpayer to bear it, *is founded upon the protection afforded to the recipient of the income* by the state, in his person, in *his right to receive the income*, and in his enjoyment of it when received. *These are rights and privileges incident to his domicile in the state* and to them the economic interest realized by the receipt of income or represented by the power to control it, bears a direct legal relationship.

52 S.Ct. at 557 (emphases and insertions added, and omission, by the Department).

Both the Indiana courts and the United States Supreme Court continue to take the position that the state can tax all of the income of its residents and domiciliaries. In *Thomas v. Indiana Department of State Revenue*, 675 N.E.2d 362 (Ind. Tax Ct. 1997),

an individual Indiana adjusted gross (i.e., net) income taxpayer appealed this Department's denial of an a credit for income tax paid to, and assessed him tax on income earned in, the District of Columbia. On appeal, the taxpayer "challenge[d] Indiana's authority to levy the adjusted gross income tax on sources of income earned outside Indiana." *Id.* at 367. In response the Indiana Tax Court said:

> This claim is clearly without merit. It is well-established that a state "may tax *all* the income of its residents, even income earned outside the taxing jurisdiction." *Oklahoma Tax Comm'n v. Chickasaw Nation*, [515] U.S. [450], [462-463], 115 S.Ct. 2214, 2222, 132 L.Ed.2d 400 (1995)[emphasis in *Chickasaw Nation*]. In *New York ex rel. Cohn v. Graves*, the [United States] Supreme Court explained:
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> > That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. *Domicile itself affords a basis for such taxation.* Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from the responsibility for sharing the costs of government.... A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. *The tax, which is apportioned to the ability of the taxpayer to pay it, is founded upon the protection afforded by the state to the recipient of the income in his person, in his right to receive the income and in his enjoyment of it when received. These are rights and privileges which attach to domicile within the state.* To them and to the equitable distribution of the tax burden, the economic advantage realized by the receipt of income and represented by the power to control it, bears a direct relationship.
> >
> > *Neither the privilege nor the burden is affected by the character of the source from which the income is derived.*
>
> 300 U.S. 308, 312-13, 57 S.Ct. 466, 467-68 (1937) (citations omitted [by the Indiana Tax Court]). That a state chooses to grant a credit to residents for taxes paid in other jurisdictions should not be mistaken for a lack of authority to levy on such proceeds. *See* 2 J. Hellerstein & W. Hellerstein, *State Taxation* § 20.04 (Supp. 1993). Thus, *this Court holds that Indiana has the authority to tax the out-of-state income of its residents.*

675 N.E.2d at 367-368 (all emphases after first added by the Department). The fact that the tax in issue here is gross rather than net, as was the case in *Cohn* and *Thomas*, and in *Chickasaw Nation* in relevant part, is a distinction without a difference. The type of income tax does not affect the fact that the state has the power to tax the income of its residents or domiciliaries, but only the extent to which it has chosen to exercise that power. *Miles II*, if no other opinion, remained dispositive authority that Indiana continued to have full power and authority to impose tax on the entire gross income of its domiciliaries, commercial or otherwise, wherever earned. Any abatement of that liability can only be in the form of an exclusion, exemption, deduction or credit, given as a matter of legislative, or authorized regulatory, grace. *See Thomas*, 675 N.E.2d at 368. Under IC § 6-8.1-5-1(b) (1998), the person against whom a proposed assessment is made has the burden of proving that it is wrong. This burden of proof includes proving entitlement to an exclusion, exemption, deduction or credit that the auditor disallowed.

The protestant admits that the commercial domicile of the parent was in Indiana. However, the parent's centralizing all the subsidiaries' financial and administrative operations at its Indiana headquarters indicates that Indiana was also in fact the headquarters, and thus the commercial domicile of not only the parent, but also of each member of the affiliated group and of the group as a whole. This was the case partly as a result of the group's own actions. The group chose to file consolidated Indiana gross income tax returns for the audit period. "The spirit and intent of the gross income tax consolidated filing statute [former IC § 6-2.1-5-5] is to treat an affiliated group as a single taxpayer." *Associated Ins. Cos. v. Ind. Dep't of State Revenue*, 655 N.E.2d 1271, 1274 (Ind. Tax Ct. 1995). By filing consolidated returns, the Indiana affiliated group thereby agreed to such treatment. Moreover, Indiana was the commercial domicile of that group not only in fact but also as a pure matter of law. The Indiana affiliated group is the taxpayer as a matter of substantive definition. *See* former IC § 6-2.1-1-16(28) and IC § 6-8.1-1-3 (1988) (1993) (1998) (respectively defining "taxpayer" and "person" as including, *inter alia*, any "group or combination acting as a unit[]") and former 45 IAC § 1-1-7 (defining a "taxpayer" as, *inter alia*, "a 'person' "). Legally, therefore, that group, not just the parent, was the taxpayer.

It follows from all of the foregoing facts and authorities that the commercial domicile of the parent is also the commercial domicile of the Indiana affiliated group, i.e. the taxpayer, and of each of its members. It further follows that Indiana, and this Department as the state agency authorized to administer the gross income tax, have full legal authority to assess that tax on all the gross income of the entire Indiana affiliated group unless the taxpayer proves that an exception, such as the "business situs" test discussed below, applies.

3. The "Business Situs" Test: Business Situs of a Taxpayer and Its Relationship to the "Commercial Domicile" Rule and to the "Tax Situs" of an Intangible

Former IC § 6-2.1-2-2(a)(1) imposed the gross income tax on "[t]he entire taxable gross income of a *taxpayer* [as previously defined, i.e. including an affiliated group] who is a resident *or a domiciliary* of Indiana[.]" *Id* (emphases added). Thus, both former IC § 6-2.1-2-2(a)(1) and former 45 IAC § 1-1-51 imposed gross income tax on all of the interest the taxpayer earned on its pre-need contracts as being, respectively, gross income in general and gross income from intangibles in particular, unless it can show that these contracts are *"directly related to an integral part of a business regularly conducted at a 'business situs' outside Indiana."* Former 45 IAC § 1-1-51, sixth paragraph, first sentence (emphasis added). The protestant thus has the burden of proving that the

pre-need contracts fall within this exception to the "commercial domicile" test. The exception, like all "exceptions to a statute [or a regulation,] must be strictly construed." *Natural Res. Comm'n v. Porter County Drainage Bd.*, 576 N.E.2d 587, 589 (Ind. 1991). "The rules of statutory construction apply to the construction of administrative regulations[.]" *State Bd. of Tax Comm'rs v. Two Market Square Assocs., L.P.*, 679 N.E.2d 882, 885 (Ind. 1997).

The Tax Court explained the "business situs" test in *Bethlehem Steel I*, saying that

> the dispositive analysis for imposing tax under the "business situs" test focuses, as the [Indiana] supreme court did in *Miami Coal*, on the relationship between the intangible and the "business situs." A conclusion that an intangible is integrally connected with a taxpayer's "business situs" determines what may be termed the *intangible's "business situs"* or the *"tax situs" or "source"* of the intangible.

597 N.E.2d at 1334 (first emphasis in original) (second emphasis added). As the preceding quote indicates, the Tax Court created the phrase "tax situs," which the Indiana Supreme Court adopted on appeal (*see Bethlehem Steel II*, 639 N.E.2d at 269 and 270), as a synonym for an intangible's "business situs." In addition, *Bethlehem Steel I* refers to the "source" of an intangible as another synonym for its "business situs" (and, by extension, its tax situs). 597 N.E.2d at 1335. It does so because former IC § 6-2.1-2-2(a)(2) imposed the tax on the gross income of non-resident or non-domiciliary taxpayers "derived from activities or businesses or any other *sources* within Indiana[.]" *Id* (emphasis added). Many, if not most, of the reported Indiana opinions since *Miami Coal* that decided the "business situs" of an intangible, including the *Bethlehem Steel* opinions, did so under former IC § 6-2.1-2-2(a)(2) and its predecessors. However, the taxpayer in *Miami Coal* itself was an Indiana domiciliary corporation that the Indiana Supreme Court held had been improperly assessed property tax on accounts receivable the court found had an out-of-state business situs. The analysis for determining the business situs of an intangible under former 45 IAC § 1-1-51 is thus the same for resident or domiciliary taxpayers with out-of-state operations subject to former IC § 6-2.1-2-2(a)(1) and for non-resident or non-domiciliary taxpayers with in-state operations subject to former IC § 6-2.1-2-2(a)(2).

No single fact, such as the jurisdiction in which a business situs of a taxpayer is located, the physical location of an intangible, or the residence or domicile of the customer or buyer where the intangible in question is a contract, is conclusive in determining that intangible's tax situs. As a result of the *Bethlehem Steel* opinions, "we [now] look to the whole of the income-producing transaction—the actors, activity, and property—and weigh the in-state and out-of-state elements to determine if the intangible has an Indiana tax situs." *Bethlehem Steel II*, 639 N.E.2d at 269-270. "Deciding the source of income, or 'business situs,' [of an intangible] for purposes of state taxation,…is fact sensitive, requiring a case by case determination." *Bethlehem Steel I*, 597 N.E.2d at 1337. Making that determination, however, requires evidence of what those facts are, evidence that, as the Department will discuss below, the protestant has failed to provide.

D. THE PROTESTANT HAS FAILED TO SUSTAIN ITS BURDEN OF PROOF THAT THE PRE-NEED CONTRACTS HAD OUT-OF-STATE TAX SITUSES.

1. The Mortuary and Cemetery Industries Generally Market Pre-Need Contracts on a Centralized, Rather than a Local, Basis.

As previously noted, the protestant has not provided the Department with any evidence indicating the office through which each pre-need contract to be performed at an out-of-state location was sold. In particular, the protestant has provided no evidence indicating the office of the taxpayer through which each such pre-need contract was marketed, negotiated and brought into being, the office (if different) that decided to approve the contract and extend credit to each consumer, that kept the payment accounts and other records of executory contracts, and that supervised collection proceedings on delinquent contracts. The Department thus has none of the necessary facts before it from which it can make the fact-sensitive determination of the business situs of each pre-need contract to be performed at an out-of-state location.

The Department cannot simply presume from the mere circumstance that a pre-need contract was or is to be *performed* by an out-of-state subsidiary or location that it was also in fact *marketed and negotiated from, signed at and serviced from* that subsidiary or location. The latter circumstances do not necessarily follow from the former because of the existence of an alternative to local activity that the mortuary and cemetery industries generally use to market pre-need contracts. The best-known popular commentator on these industries describes this alternative marketing method as follows:

> All of the clever planning[,] [which the author had previously described,] to extract the maximum use from each acre of [cemetery] land would avail little if the cemetery promoter then had to sit back and wait upon the haphazard whim of the Grim Reaper. With the death rate at its present [1995-96] level, he might have to wait a very long time indeed to begin to realize profit on his investment. This barrier has been brilliantly surmounted by the massive "pre-need" sales campaign, *employing squads of telemarketers*…. One of the most successful devices in the history of merchandising, pre-need selling is the key to the runaway growth of the modern cemetery business.

MITFORD, REVISITED at 86 (emphasis added). *See also* JESSICA MITFORD, THE AMERICAN WAY OF DEATH 130 (Simon and Schuster 1963), which the above quotation repeats almost *verbatim*, but which instead refers to "squads of door-to-door salesmen[,]" *id.* The sales force might consist of employees of a mortuary or cemetery company, or could be a marketing company hired by that mortuary or cemetery company but acting as an independent contractor.

2. There Is Some Evidence From a Partly Overlapping Sales and Use Tax Audit of the Taxpayer Suggesting It Used a Centralized

Sales Force to Market Pre-Need Contracts.

Thus, sales representatives that were operating out of, or controlled from, a location other than the out-of-state subsidiaries or locations at which the pre-need contracts were to be performed, may have contacted and solicited all or some of the consumers that entered into these contracts. In this connection the Department notes that the auditor included several completed copies of a form Prepaid Funeral Retail Installment Contract in the workpapers of a gross retail (sales) and use tax audit of the parent the auditor conducted simultaneously with the taxpayer's income tax audit, and that partly overlapped the income tax audit period. The contracts, most of which were executed in the third quarter of 1995 (i.e., within the income tax audit period), include a paragraph above the signature block in bold-faced type entitled "Purchaser's Right to Cancel." That paragraph repeats *verbatim* the statement of the buyer's right to cancel a home solicitation sale set out in Uniform Consumer Credit Code ("U.C.C.C.") § 2.503 (1968 Act), 7 U.L.A. Pt. III 285, 398-399 (2002), enacted by P.L. No. 366, § 3,1971 Ind. Acts 1557, 1605 and formerly codified at IC § 24-4.5-2-503 (1988) (repealed 1992). (IC § 24-4.5-2-502 (1988 and Supp. 1992) (1993), which incorporated the FTC Cooling-Off Rule, 16 C.F.R. Part 429 (1992-1994), performed the same function as the repealed statute during the audit period). The fact that the parent felt it necessary to use this paragraph, and continued to use it throughout the income tax audit period, implies that the parent was using a door-to-door or a telemarketing sales force. (P.L. 237, § 1, 1979 Ind. Acts 1132, amended IC § 24-4.5-2-501(1), the Indiana enactment of U.C.C.C. § 2.501(1), 7 U.L.A. Pt. III at 395, to define "home solicitation sale" as "including a solicitation over the telephone[.]" 1979 Ind. Acts at 1132).

3. The Protestant Has Not Submitted Any Evidence In this Protest Concerning the Pre-Need Contracts.

a. There Is No Evidence that the Taxpayer's Members Marketed the Pre-Need Contracts at Their Various Out-of-State Locations.

The protestant has submitted no evidence whatever in this protest concerning the pre-need contracts to be performed at the out-of-state subsidiaries or locations. It has by necessary implication therefore also failed to submit any evidence that any of the contracts were anything other than pre-need contracts the taxpayer solicited, as distinguished from pre-need or at-need contracts entered into by "walk-in" consumers at those locations. More importantly, the protestant has failed to submit any evidence that the taxpayer's members used sales forces that were operated and supervised from their respective out-of-state locations to market, negotiate and close these contracts. However, the Department wishes to make it clear that it is not finding that the taxpayer operated or controlled a centralized sales force from the parent's Indiana headquarters. It is only finding that the protestant has failed to prove that the out-of-state subsidiaries and locations each had decentralized sales forces separate from any sales force that the parent's headquarters may have operated or controlled.

b. There Is No Evidence that the Out-of-State Subsidiaries and Locations Had Independent Authority to Accept Pre-Need Contracts.

The Department also cannot simply assume that the out-of-state subsidiaries and locations accepted each of the pre-need contracts on their own authority and without approval by the parent's Indiana headquarters. (*See* former 45 IAC § 1-1-49(5), which stated that one way of establishing a business situs, either in Indiana or another state, is "[a]cceptance of orders without the right of approval or rejection in another state[,]" *id.*) In this connection, it is important to remember that these are installment contracts and the decision to enter into one with a consumer is thus an extension of credit to that consumer. Typically, prior to extending credit, a prospective consumer creditor obtains a report on the prospective consumer to determine his or her creditworthiness. The creditor gets the report either from a national credit reporting company affiliated with, or directly from, a credit bureau located where the consumer resides, since the information the report will contain is at least in part a matter of local knowledge. However, the preparation of that report, which a third-party independent contractor performs, does not necessarily also imply that the decision to extend credit to the consumer is made by the prospective creditor's local outlet, rather than by its headquarters or an intermediate-level office. The Department is not finding that the parent's headquarters approved each of the pre-need contracts to be performed by an out-of-state subsidiary or location. However, as to any contracts it may have accepted, the intangible each such contract represented would have acquired an Indiana tax situs. This would be the case by operation of the "commercial domicile" rule as discussed above. However, in this connection it is also significant to note that the contract would be considered made in Indiana as a matter of consumer law, even if made with a non-resident consumer. IC §§ 24-4.5-1-201(1) and 1-201(1)(a), the Indiana versions of U.C.C.C. §§ 1.201(1) and 1.201(1)(a), 7 U.L.A. Pt. III at 315, respectively state that "this article applies to sales,…made in this state" and that "a sale…is made in this state if the buyer's agreement or offer to purchase…is received by the seller or a person acting on behalf of the seller in this state[]"). (The reference to "a person acting on behalf of the seller was added to IC § 24-4.5-1-201(1)(a) during the audit period by P.L. 122-1994, § 4, 1994 Ind. Acts 1473, 1476.) *See also* U.C.C.C. §§ 2.104(1) and 2.105(3), 7 U.L.A. Pt. III at 330 and 333, respectively codified at IC §§ 24-4.5-2-104(1) and -2-105(3), and which define "consumer credit sale" as including a "sale of…services," and "services" as "includ[ing] …(b) privileges with respect to… *funerals [and] cemetery accommodations*[.]" *Id* (emphasis added). The taxpayer, as an Indiana domiciliary, was chargeable with constructive knowledge of all of these legal authorities. It was thus doubly incumbent on the protestant to affirmatively establish that an out-of-state subsidiary or location, and not the parent's Indiana headquarters, made the final decision to accept each pre-need contract to be performed by that subsidiary or location. The protestant has failed to do so.

c. There Is No Evidence that the Out-of-State Subsidiaries and Locations Serviced Consumers' Payments on Executory Pre-Need Contracts.

Nor can the Department presume that the out-of-state subsidiaries or locations received and processed the payments on the pre-need contracts while these contracts were executory. As noted in the Statement of Facts, the parent centralized all the administrative and financial operations of the subsidiaries and of the parent's various locations at the parent's headquarters. All but two of the subsidiaries made daily wire transfers of their revenues to the parent's checking account at an Indiana bank headquartered in the same city as the parent. Logically, this financial centralization should have included, not just payments by new, "walk-in" pre-need or at need consumers, but also payments on already existing pre-need contracts. As noted earlier in this Discussion, "pre-need selling is the key to the runaway growth of the modern cemetery business." MITFORD, REVISITED at 86. Given this fact, the pre-need contract payments would have been too important a part of the taxpayer's cash flow for the parent not to have accounted for and managed them on the respective behalves of all of the taxpayer's members, including those with out-of-state operations. The Department is aware, as it will discuss under Issue II below, that most states require the deposit of pre-need contract payments into trusts specially created and maintained for that purpose. It is also aware that the taxpayer maintained at least one such trust in the name of each member of the taxpayer's Indiana affiliated group with out-of-state operations at a financial institution in that location's local market. However, these circumstances do not preclude the possibility that the taxpayer centralized the management and use of the pre-need contract payments. In this connection the Department notes that at the hearing the protestant submitted in evidence a Form 1041 (U.S. Income Tax Return for Estates and Trusts) for calendar year 1995 for a grantor trust the parent created, named for one of its out-of-state subsidiaries.

Aside from this fiduciary return, however, the protestant has not provided the Department with any evidence establishing how pre-need contract payments were treated, and in particular how they were routed and processed. The Department therefore cannot find that the consumers made their payments directly to the out-of-state subsidiaries or locations which then transferred the payments into their respective local pre-need trusts without any involvement of the parent's Indiana headquarters.

d. There Is No Evidence that the Out-of-State Subsidiaries and Locations Collected Delinquent Pre-Need Contract Balances.

Lastly, the protestant has submitted no evidence that each out-of-state subsidiary or location supervised the collection of delinquent contracts independent of the parent's Indiana headquarters. As far as the actual initiation of the collection process was concerned, Subparagraph 6(c) of the form Pre-Need Funeral Retail Installment Contract states that a "default [would be] referred to an attorney by SELLER[]" (emphasis in original), which on its face would appear to refer to the contracting member of the taxpayer. However, it does not follow from these circumstances that a contracting out-of-state subsidiary or location also in fact supervised the collecting firm subsequent to its being retained. In the absence of any evidence to this effect it is possible that the parent's headquarters could have done so, either directly through any collections personnel or in-house counsel it may have had, or indirectly through any debt collection or law firm, it may have retained. Such supervision would have been consistent with the parent's centralization at its Indiana headquarters of the taxpayer's administrative and financial operations and payment of the members' expenses, including presumably any fees they incurred for professional collection services. It also would have been a logical extension of any accounting and management activities in which the parent engaged in connection with any contract payments it may have received on executory contracts not in default. The Department is not finding that the parent in fact engaged in such supervision, but only that the protestant has failed to prove that the out-of-state subsidiaries and locations did so.

4. The "Commercial Domicile" Test Therefore Applied and The Pre-Need Contract Interest Was Subject to Indiana Gross Income Tax.

In summary, the protestant has failed to submit any evidence to the Department from which it could determine the business situses of the pre-need contracts, which would not necessarily be same as the respective locations of the out-of-state subsidiaries and locations. The protestant has thus failed to meet its burdens of production of evidence, and of proof, that these intangibles had business situses outside Indiana and therefore fell within the "out-of-state business situs" exception to the "commercial domicile" test of former 45 IAC § 1-1-51, sixth paragraph. Having failed to bring the taxpayer within this exception, the "commercial domicile" test of that regulation is fully applicable to this issue. The proposed assessments of gross income tax on the interest that the pre-need contracts earned are fully consistent with this test as set out in former 45 IAC § 1-1-51 and the judicial opinions on which the regulation is based and which have interpreted it, as discussed above. The auditor, who used the "commercial domicile" test of the regulation as authority, therefore did not err in adjusting the taxpayer's gross income tax liability to propose these parts of the assessments.

However, even if the protestant had met its burden of proof that out-of-state tax situses had generated the interest, it would have been unavailing as to interest received by the parent from its direct outlets (as distinguished from any interest that subsidiaries incorporated and operating out of state may have received). Former IC § 6-2.1-1-2(c)(6) did state that as to Indiana-chartered corporations the definition of "gross income" excluded gross receipts "from a trade or business situated and regularly carried on at a legal situs outside Indiana or from activities incident to such trade or business…." *Id.* However, former IC § 6-2.1-1-2(d) qualified this exclusion in relevant part by stating that "[t]he exclusion provided by clause (6) of subsection (c) does not apply to any receipts of a taxpayer received as *interest or dividends*, from sales,…or to bonuses or commissions received by any taxpayer." *Id* (emphasis added). The auditor did not cite this latter statute as a basis for this adjustment, but the Department finds that it provides additional support for these parts of the proposed assessments as to any pre-need contract interest the parent received.

FINDING

The Department denies the protest as to this issue.

II. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—"Pre-Need" Trust Interest and Dividend Distributions

DISCUSSION

A. THE PROPOSED ASSESSMENTS AND THE PROTESTANT'S ARGUMENT

The file indicates that each member of the group maintained one or more of what are called "pre-need trusts" in connection with the operations of each of that member's locations. All of these trusts had the same name as the member or location in question, and were described as being either "Funeral Pre-need Trusts" or "Merchandise Trusts." As noted in the Discussion of Issue I above, the Notices of Proposed Assessment to the taxpayer include proposed assessments of gross income tax at high rate on five categories of interest as depicted on the taxpayer's federal Forms 1120 filed during the audit period. In addition to the previously discussed category of "Installment Contract Interest," the protestant also challenges the proposed assessments as to the "Merchandise Trust Interest" and "Funeral Pre-need Trust Interest" categories. The Notices also include proposed assessments of gross income tax on dividends that the merchandise and funeral pre-need trusts earned during the audit period and distributed to the taxpayer, to which the protestant also objects. It argues that the interest and dividends distributed to the taxpayer's members were not subject to imposition of gross income tax on the ground that the trusts, and the trust securities that generated that income, were managed and maintained by trustees outside Indiana. Before addressing the merits of this argument, however, the Department will first discuss "pre-need" trust state regulatory schemes, both generally and in particular in states where the various members of the taxpayer's Indiana affiliated group were incorporated or maintained facilities. The Department will then examine how the terms of the taxpayer's pre-need contracts with its various customers relating to pre-need trusts and the income they earn fit within this statutory framework.

B. OVERVIEW OF STATUTORY REGULATION OF PRE-NEED FUNERAL TRUSTS

"The most common funding methods [for pre-need contracts] recognized under state statutes are (1) the state-regulated trust and (2) the funeral insurance or annuity policy." Frank, *Preneed Funeral Plans* at 7. (The Department discusses funeral insurance or annuity policies under Issue IV below.) "The most common form of funding for a preneed funeral contract…is the state-regulated trust." *Id.* Thirty-seven states "expressly require the creation of a trust account in connection with the sale of a preneed funeral contract." *Id* & n.27 (listing statutes from thirty-seven states that require creation of pre-need trusts, escrow or trust accounts, or equivalent forms of deposit). These states include Indiana, the parent's state of incorporation and commercial domicile, and Maryland, Michigan, Pennsylvania and West Virginia. *See id* (citing, *inter alia*, Indiana, Maryland, Michigan, Pennsylvania and West Virginia statutes). Another eight states make the use of a pre-need trust one valid option for the funding of a pre-need contract. *Id.* at 7 & n.28 (listing statutes from eight states that make pre-need trust optional). Among these are Florida, Illinois and Texas. *See id* (citing, *inter alia*, Florida, Illinois and Texas statutes). At least one member of the taxpayer's Indiana affiliated group had been incorporated or maintained an outlet in Florida, Illinois, Maryland, Michigan, Pennsylvania, Texas and West Virginia during the audit period.

Frank describes the basic method of administering pre-need funeral trusts as follows:

> In the simplest preneed funeral trust, the consumer pays the seller the agreed consideration for the future funeral services and goods. The seller in turn deposits the funds into a special account. Over the life of the agreement, the trust funds grow. Upon the death of the recipient, the provider performs the funeral. After giving proof of performance to the trustee, the provider seeks reimbursement out of the trust funds.

Frank, *Preneed Funeral Plans* at 22. Statutes in states that have mandated or authorized pre-need trusts also require the contracting mortuary or cemetery company to deposit into such trusts a percentage of the consumer's payments under the pre-need contract that varies from state to state. *See generally id.* at 26-27 & 26 nn.143-147 (respectively noting variance and classifying statutes specifying required percentages of deposit). "[T]he majority of states require preneed funeral sales proceeds to remain in trust accruing interest[.]" *Id.* at 28 & n.160 (citing, *inter alia*, Florida, Indiana, Michigan, Ohio, Texas, Virginia and West Virginia statutes). "The vast majority of states require that preneed funeral contract sale proceeds be entrusted to a fiscal institution as trustee or placed directly into some other financial depository." *Id.* at 23 & n.130 (citing, *inter alia*, Illinois, Indiana, Maryland, Pennsylvania, Texas and West Virginia statutes). The pre-need contract may include language declaring the consumer's payments to such a trust to be irrevocable. Such language enables consumers who need to dispose of assets to qualify for Medicaid or for Supplemental Security Income without incurring a penalty. *See* MITFORD, REVISITED at 268-69 (discussing this subject), Frank, *Preneed Funeral Plans* at 9 (same) and *id.* n.36 (citing 42 U.S.C.A. §§ 1381-1383(d) (West 1991 & Supp. 1995)). *See also Ind. Family & Soc. Servs. Admin. v. Culley*, 769 N.E.2d 680, 683 (Ind. Ct. App. 2002) and authorities cited there (discussing exemption of transfer of irrevocable Indiana funeral trusts from Medicaid applicant asset transfer restrictions).

The beneficiary, and the ownership of the beneficial interest in the trust corpus, also varies among the states that have enacted statutes on these subjects. Of the states in which the members of the taxpayer's Indiana affiliated group were incorporated or had outlets, Michigan, like twenty-one other states, requires the trust funds to be held for the benefit of the consumer or decedent. *Id.*

at 8 & n.32 (listing statutes from twenty-two states that so require, including, *inter alia*, MICH. COMP. LAWS ANN. § 328.222(1) (West 1992)). Illinois and West Virginia are two of four states whose trust statutes do not specify a beneficiary. *Id.* at 8 & n.34 (listing statutes from four such states, including, *inter alia*, Illinois and West Virginia). However, in Florida, where the Department finds the greatest number of the taxpayer's outlets to have been incorporated or located, and in Indiana, the beneficiary is the seller or provider of the funeral services. *See id.* at 8 n.33 (citing Florida and Indiana statutes). *See also id.* at 27-28 (stating that "in Florida, the statutory language makes it clear that the certificate holder (seller) is the owner of funds paid into trust[]") and *id.* at 28 n.155 (citing FLA. STAT. ANN. § 497.415(1) (West 1988 & Supp. 1995)). If the taxpayer had the beneficial interest in the Florida trust accounts' principal it follows that it also had the beneficial interest in any income those trust accounts earned.

C. THERE IS EVIDENCE THAT THE TAXPAYER CONTRACTED WITH CONSUMERS TO USE THE PRE-NEED TRUSTS' CORPUSES AND INCOMES AS ITS OWN.

The taxpayer further strengthened its claims to the trusts' corpuses and incomes by contracting with consumers to that effect, thereby insuring it would receive those sums in states whose statutes permitted, or that at least did not clearly bar, that practice. As noted under the Discussion of Issue I, the auditor included several completed copies of a form Prepaid Funeral Retail Installment Contract of the parent in the workpapers of its gross retail (sales) and use tax audit, which partly overlapped the taxpayer's income tax audit period. The Department will assume for purposes of this letter, without finding, that the members of the taxpayer's Indiana affiliated group used this or a substantially similar form pre-need contract in other states, in light of the protestant's failure to submit a copy of any other such contract any of them may have used, and given the taxpayer's centralization of administrative operations, presumably including professional legal services. Two paragraphs of this contract set out the parent's rights as between it and the consumer on the questions of entitlement to trust corpus and income, among other matters:

> 7. Interest will accrue to the trust account(s) and *the principal and interest earned shall inure to the benefit of the beneficiary of the trust(s) (SELLER)* to cover all costs incident to the beneficiary's performance of this Agreement, any excess shall be refunded to the PURCHASER, their estate or their heirs at law. Disbursement of funds discharging this Agreement may be made by the Trustee, upon receipt of evidence satisfactory to Trustee that the Agreement has been performed. PURCHASER represents and acknowledges that PURCHASER understands the IRREVOCABLE nature of such trust(s).
>
> 8. *PURCHASER hereby appoints and irrevocably designates SELLER as PURCHASER's agent and attorney-in-fact with respect to PURCHASER's interest in the trust account(s) and all matters pertaining to same.* The Trustee shall be permitted to follow all lawful instructions of SELLER. PURCHASER empowers Trustee to invest in a life insurance or annuity policy or policies, the owner and beneficiary of which shall be the Trustee. *This power of attorney is coupled with an interest, is irrevocable, and shall not be affected by PURCHASER's subsequent death, disability or incapacity.*

(Emphases added.)

As can be seen, Paragraph 7 gave the parent (and presumably the other members of the taxpayer's Indiana affiliated group) the beneficial interest in the trust principal and income to the extent necessary to perform the contract. The consumer or the consumer's estate would get a refund only if there were any excess over that amount. However, the parent (and presumably the taxpayer) included other language in Paragraph 8 to insure that it would have immediate beneficial ownership of the entire trust corpus and income, including any such excess. In that paragraph the consumer grants the seller an irrevocable power of attorney coupled with an interest. The Department presumes that the parent chose this language intentionally and with full understanding of its effect. It is well settled at common law that where a power of attorney is coupled with a vested interest in the property that is the subject of the power, both the power and the interest survive the principal's death, the power does not create an agency and the putative agent becomes the principal concerning the interest. *Hunt v. Rousmanier's Adm'rs*, 5 L.Ed. 589, 597(U.S. 1823) (Marshall, C.J.); *see also, e.g., Whidden v. Sunny South Packing Co.*, 162 So. 503, 505 (Fla. 1935) and *Hawley v. Smith*, 45 Ind. 183, 203-06 (1873) (both quoting *Hunt*).

The parent, and any subsidiaries with Florida operations, had the beneficial interest in the Florida pre-need trusts by statute, and by extension to their income as well. By virtue of the power-coupled-with-an-interest language in Paragraph 8 of the form Prepaid Funeral Retail Installment Contract, the parent (and presumably the taxpayer) also had the beneficial interest in the other out-of-state pre-need trusts' principal and income in all states in which it operated that recognized such language. The taxpayer thereby was entitled to treat the earnings on all those trust deposits as its own. Such evidence as the protestant has submitted indicates that the taxpayer did exactly that. In addition to the Form 1041 for calendar 1995 for the grantor trust the parent created, mentioned in the Discussion of Issue I above, the taxpayer also submitted Forms 1041 for calendar 1995 for three pre-need merchandise trusts. Schedule K-1 (Beneficiary's Share of Income, Deductions, Credits, etc.) of each return indicates that the parent is the beneficiary. The returns also indicate, for that year at least, the entire adjusted total income earned during the year and indicated on Line 17 was distributed to the parent, for which the trusts claimed income distribution deductions on Line 18 of the 1041s. All four trusts are maintained out-of-state and are named after out-of-state subsidiaries or locations of the parent. The grantor trust is maintained in Florida. The other three are maintained in Pennsylvania. One of the three has the same name as one of four wholly owned Pennsylvania subsidiaries that the parent merged into itself effective December 31, 1991 and operated thereafter as outlets under its own name. The Department cannot identify the other two pre-need trusts from the names appearing on their

respective 1041s as relating to any location maintained by a member of the taxpayer's Indiana affiliated group.

D. THE PRE-NEED TRUSTS' LEGAL SITUSES AND THE TRUSTEES' DOMICILES ARE IRRELEVANT TO THE QUESTIONS OF THE SITUSES OF THE TAXPAYER'S EQUITABLE INTERESTS IN THE TRUSTS AND ITS GROSS INCOME TAX LIABILITY ON THE DISTRIBUTED INTEREST AND DIVIDEND INCOME.

As previously noted, the protestant contends that the Department cannot assess gross income tax on the interest and dividends the pre-need trusts distributed to the taxpayer because the trust securities that generated that income were managed and maintained out of state. However, as a pure question of Indiana's power to tax, the fact that *legal* title to the pre-need trust assets may have been maintained in other states does not bar the Department from taxing the trust income distributed to the *equitable* owner of the corpus (i.e., the taxpayer). *See Maguire v. Trefry*, 40 S.Ct. 417, 419 (U.S. 1920) (holding that Massachusetts could tax the income a Massachusetts beneficiary received from a trust consisting of assets held and administered in Pennsylvania), reaffirmed in *New York ex rel. Cohn v. Graves*, 57 S.Ct. 466, 468 (U.S. 1937). *See also Guaranty Trust Co. v. Virginia*, 59 S.Ct. 1, 3 (U.S. 1938) (holding that Virginia could levy an income tax on a trust beneficiary residing in Virginia even though the New York trustees had paid New York taxes on the same income), citing *Lawrence* and *Cohn*, discussed under Issue I above. As found there, the taxpayer was an Indiana domiciliary whose income Indiana had full power to tax. The taxing of income distributed to the taxpayer as a beneficiary of out-of-state trusts is merely a specific application of this general power. The domiciles of the various trustees thus are irrelevant to this question. Whatever effect they may have for these trusts' respective gross receipts, fiduciary income or property tax liabilities in other states, the trustees' domiciles have no bearing on whether the taxpayer was, and the protestant as its successor in interest is, subject to gross income tax on the distributed income and dividends.

The physical locations of the trusts' respective assets are also irrelevant as a matter of Indiana gross income tax law. The protestant stated that the interest and dividends the taxpayer received derived from securities, i.e. intangible personal property, held in the pre-need trusts. The taxpayer's beneficial interests in the respective pre-need trusts were therefore also intangible to that extent. "Unless statutes provide otherwise, the beneficial estate or interest of the cestui que trust is subject to the same incidents, properties and consequences as attach to similar legal estates and interests." 90 C.J.S. *Trusts* § 240, at 367 (2002). "[I]f the trust property is personal property, the interest of the beneficiary is personal property[.]" RESTATEMENT (SECOND) OF TRUSTS § 130(a) (1959). The authorities discussed under Issue I above used to determine the tax situs/es of intangibles therefore apply as well to the taxpayer's equitable interests in the pre-need trusts as their beneficiary, to the extent that they derived from intangibles. Former 45 IAC § 1-1-51, eighth paragraph stated that "*[t]he physical location of the intangible at the time any income is received* under either the 'business situs' test or the 'commercial domicile' test *is not a controlling factor* but will be considered in view of all of the facts presented." *Id* (emphases added). In the specific context of the pre-need trust intangibles the taxpayer as beneficiary used in its business, the physical locations of the trusts' constituent intangibles are only relevant in determining the respective legal situses of those intangibles and any corresponding liabilities of the pre-need trusts for tax imposed by the trustees' respective domiciliary states. Given that the respective business situses of those intangibles could in principle be completely different from their legal situses, the intangibles' physical locations are irrelevant to the question of whether the taxpayer is liable for Indiana gross income tax.

In short, the question is not whether the pre-need trustees, as holders of the legal titles to the respective trusts' intangibles, may have managed and maintained those intangibles outside Indiana. The legal situs/es of those intangibles for purposes of the tax laws of other states might very well be different from the tax situs/es of the taxpayer's equitable interests in those intangibles for Indiana gross income tax purposes. The real issue, in terms of the authorities discussed under Issue I, is what the tax situs/es of those equitable interests were, which can only be determined from evidence of where and how the taxpayer used them in its business.

E. THE PROTESTANT'S EVIDENCE FAILS THE "BUSINESS SITUS" TEST.

To prove that the assessment of gross income tax on the distributed trust interest and dividends was wrong, the protestant has the burden of proving that its use of the intangibles the pre-need trusts purchased, and the distributed interest and dividends those intangibles generated, were "'directly related to an integral part of a business regularly conducted at [its]'business situs[es]' outside Indiana.'" 45 IAC § 1-1-51, sixth paragraph, *quoted in Bethlehem Steel II*, 639 N.E.2d at 268. Specifically, the taxpayer has to prove that its members regularly used its equitable interests in those intangibles and their distributed income in the business operations of the respective out-of-state business locations for which it named the pre-need trusts. Doing so thereby would have given those interests out-of-state tax or business situses as well. However, the Department, after reviewing the evidence the protestant has submitted, finds that it has failed to sustain this burden of proof, as discussed below.

Strictly speaking, two of the three Forms 1041 the protestant has submitted for the merchandise trusts in question are irrelevant to the protestant's argument on this issue, in that neither of the subsidiaries or locations for which these trusts were named were members of the taxpayer's Indiana affiliated group during the audit period. These two returns therefore do not necessarily prove how the taxpayer treated the income it received from pre-need trusts named for locations maintained by members of that group.

However, even if they had been for such locations, neither they nor the 1041s for the Florida grantor trust and the merged Pennsylvania location help the protestant's argument. All four returns indicate that the parent received each of the trusts' entire adjusted total incomes for the year, and nothing else. The returns do not indicate any effective legal restrictions on the purposes for

which the parent could use the distributed income, nor what it in fact did with the income once received. Nor has the protestant submitted any other evidence on these points. It has not submitted any records to the hearings officer, such as copies of the respective documents that created each trust, indicating that trust beneficiaries' use of the income was restricted to fulfilling pre-need contracts performed at, or to subsidizing the day-to-day operations of, the locations to which the trusts related. Paragraph 7 of the Prepaid Funeral Retail Installment Contract does state that "interest earned [would] inure to the benefit of the beneficiary of the trust(s) (SELLER) to cover all costs incident to the beneficiary's performance of this Agreement[.]" However, the power-coupled-with-an-interest language of Paragraph 8 of the same agreement in effect removed this restriction by enabling the taxpayer to treat the distributed earnings as its own. Most importantly, however, the protestant did not submit any books or records to the hearings officer indicating that the parent or any other member actually used distributed trust income to fulfill pre-need contracts at, or to subsidize day-to-day operations of, the namesake locations for the pre-need trusts. Nor has the protestant submitted any books or records indicating that the Michigan pre-need trust either held that income for, or distributed it to the respective consumers or on behalf of the respective decedents, as MICH. COMP. LAWS ANN. § 328.222(1) would seem to imply. Given this lack of a record, there is nothing to indicate that the taxpayer did not use the income distributed from the pre-need trusts for any business purpose of, or at any location maintained by, any member.

F. CONCLUSION: THE "COMMERCIAL DOMICILE" TEST APPLIES AND THE DISTRIBUTED INTEREST AND DIVIDEND TRUST INCOME IS SUBJECT TO INDIANA GROSS INCOME TAX.

The protestant has thus failed to sustain its burden of proof that the taxpayer's intangible equitable interests in the pre-need trusts had out-of-state tax situses, i.e. that they were "integrally connected with [the] taxpayer's '[out-of-state] business situs[es.]' " *Bethlehem Steel I*, 597 N.E.2d at 1334. Indiana being the taxpayer's commercial domicile, the auditor was correct to propose assessments of gross income tax on the interest and dividends distributed from the pre-need trusts. Even if the protestant had proved its case, the interest and dividends received by the Indiana parent (as distinguished from the out-of-state subsidiaries) would still have remained gross income taxable by Indiana by virtue of former IC § 6-2.1-1-2(d), which specifically refers to "interest or dividends," *id.*

FINDING

The Department denies the protest as to this issue.

III. Gross Income Tax—Definition of "Gross Income"—Amortization of Intangibles—Pre-Need Trusts
Gross Income Tax—Definition of "Gross Income"—Amortization of Intangibles—Situses of Intangibles

DISCUSSION

A. THE PARENT'S ACQUISITION OF, BOOK AMORTIZATION OF THE PRE-NEED TRUSTS RELATED TO, AND STATUS DURING THE AUDIT PERIOD OF, TWO TEXAS MORTUARIES

The parent acquired two Texas mortuaries with cemeteries attached in 1985 and 1986. After these two acquisitions, the parent decided to amortize the respective pre-need trusts maintained and administered in connection with each of these facilities, as each of those trusts was constituted on each acquisition's closing date. To do so the parent created a category on its chart of accounts it called "Pre-Need Trust Amortization," and each year of the audit period it recognized a certain amount of this amortization on its books. It merged one of the Texas mortuaries into itself at the end of calendar 1991, along with the four wholly owned Pennsylvania cemetery subsidiaries mentioned above in the Discussion of Issue II. As it did with those latter mortuaries, the parent thereafter ran the merged Texas mortuary as an outlet under its own name. The other one merged into the parent immediately after the end of the audit period, but remained a wholly owned subsidiary during that time.

B. THE TAXPAYER'S FEDERAL INCOME TAX TREATMENT OF THE AMORTIZATION OF THE TEXAS PRE-NEED TRUSTS

The taxpayer was also able during the audit period to begin deducting each year's pre-need trust amortization on its federal Forms 1120 due to major changes in federal tax law on depreciation and amortization of goodwill-related intangibles that occurred in the second half of the taxpayer's 1993 fiscal year. On April 20, 1993 the United States Supreme Court issued its opinion in *Newark Morning Ledger Co. v. United States*, 113 S.Ct. 1670 (U.S. 1993). The Court held that "a taxpayer able to prove that a particular [customer-based intangible] asset can be valued and that it has a limited useful life may depreciate its value [under I.R.C. (26 U.S.C.) § 167(a)] over its useful life regardless of how much the asset appears to reflect the expectancy of continued patronage, [i.e., goodwill]…." *Id.* at 1681. On August 10, 1993, less than four months later, Congress enacted I.R.C. § 197 (1988 & Supp. V 1993) (1994) in the Revenue Reconciliation Act of 1993 (Omnibus Budget Reconciliation Act of 1993, Title XIII), Pub. L. No. 103-66, § 13261, 107 Stat. 416, 532-541. Section 197 grants an amortization deduction for goodwill, customer-based and other types of intangibles identified therein as being amortizable, and sets out general rules under which federal income taxpayers may, and restrictions on when they may not, amortize them. Circumstantially, however, it appears unlikely that the taxpayer used I.R.C. § 197 for two reasons. First, subparagraph (e)(1)(A) of that section explicitly excludes interests in trusts from the definition of "section 197 intangible" in I.R.C. § 197(d). Second, the taxpayer chose a twenty-year useful life over which to amortize the pre-need trusts rather than the fifteen-year period for which I.R.C. § 197(a) provides. The Department therefore assumes for purposes of this discussion, without finding, that the taxpayer claimed its deductions under I.R.C. § 167(a) as interpreted in *Newark Morning Ledger*

instead of I.R.C. § 197.

C. THE AUDITOR'S ADJUSTMENT

The auditor treated the pre-need trust amortization figures, which he took from reports the taxpayer used to prepare its 1120s, as gross income. He did not give an explicit reason why he believed such was the case, but he allocated them to the taxpayer's Indiana commercial domicile. The Department infers from this allocation that the auditor believed the sums amortized to be derived from intangible personal property. That property specifically consisted of the parent's and the remaining Texas subsidiary's respective equitable interests in the deposited pre-need contract payments, and intangible personal property purchased with those deposits for investment, constituting the pre-need trusts' corpuses. Each of those equitable interests included the parent's and the remaining Texas subsidiary's rights to receive a distribution of corpus each time they performed a pre-acquisition pre-need contract for which payments had been deposited. Their rights to receive, and actual receipts of, those distributions were in turn the legal and factual bases, respectively, for the amortization of the trusts. The auditor proposed to assess gross income tax on the amortized sums at high rate pursuant to former 45 IAC § 1-1-112 (1992), which imposed gross income tax at high rate on gross income derived from sources not otherwise described in the Gross Income Tax Act and the regulations. *See also* former IC § 6-2.1-2-5(9) (imposing gross income tax at high rate on any activity on which tax is not assessed at low rate).

D. THE PROTESTANT'S ARGUMENTS

The protestant has challenged these parts of the proposed assessments on two grounds. First, it asserts that the pre-need trust amortization is not gross income. Second, it claims that the amortization is related to the purchase of non-Indiana business locations, in essence claiming that the sums amortized derive from out-of-state business situses and that the "commercial domicile" rule is therefore inapplicable. The Department agrees with the protestant's first argument, for the reasons set out below, making it unnecessary to address the second argument.

E. THE TAXPAYER'S FEDERAL INCOME TAX DEDUCTIONS FOR PRE-NEED TRUST AMORTIZATION WERE NOT GROSS INCOME.

1. The Pre-Need Trust Amortization Deductions Were Not "Receipts."

a. Gross Income Means Gross "Receipts," Which Includes "Credits" and "Other Property."

Former IC § 6-2.1-1-2(a) defined "gross income" as "all the gross *receipts* a taxpayer receives" from the categories that subsection enumerates. *Id* (emphasis added). Former IC § 6-2.1-1-10 defined "receipts" as being "cash, notes, *credits, or other property* that is received by a taxpayer or a third party,…for the taxpayer's benefit." *Id* (emphasis added). The pre-need trust amortization deductions were plainly not cash or notes, so the only possible bases on which the auditor could have classified them as receipts was on the theory that they were either "credits" or "other property." The Department will examine each of these classifications in turn.

b. The Pre-Need Trust Amortization Deductions Were Not "Credits" as the Definition of "Receipts" Uses That Word.

In *Indiana Department of State Revenue v. Colpaert Realty Corp.*, 109 N.E.2d 415 (Ind. 1952), the Indiana Supreme Court had to define "credit" as used in § 1(h) of the Gross Income Tax Act of 1933 (ch. 50, 1933 Ind. Acts 388, as added by ch. 370, sec. 1, 1947 Ind. Acts 1471, 1474), a predecessor of former IC § 6-2.1-1-10. The court said:

> In the case of *Gardner-White Co. v. Dunckel* (1941), 296 Mich. 225, 295 N.W. 624, it was said that the term "credit" as used in [Michigan's] General Sales Tax Act defining the phrase "gross proceeds," "[']represents a type of property... that is capable of being borrowed upon or discounted at financial institutions. It is an item of incorporeal personal property just as much as a share of stock or a bond, chattel mortgage, real estate mortgage or other form of collateral.[']" [296 Mich. at 233, 295 N.W. at 627 (quoting and adopting the definition of the trial court).]
>
> It is in this sense, we think, that the phrase "credits and/or other property" was used in § 1 (h) of the [Indiana gross income tax] statute. *The word* [credit] *as there used imports the existence of something of value which may presently be demanded by the one in whose favor the credit is created, if one is created; something of value capable of being withdrawn and used; a claim or demand for money or other thing of value presently existing.*

Id. at 420 (emphasis added).

A "credit" as former IC § 6-2.1-1-10 used that word is therefore an intangible asset that can be made immediately available as money or other present value, and is immediately usable, upon demand of the person entitled to it (i.e., the creditor/taxpayer). The classic example would be a checking or passbook account or other demand deposit in a financial institution.

In contrast, a taxpayer cannot simply demand that the IRS allow it a deduction, or demand a refund based on a claimed deduction, without more. "[T]he burden of clearly showing [the IRS] the right to [a] claimed [federal income tax] deduction is on the taxpayer." *INDOPCO, Inc. v. Comm'r,* 112 S.Ct. 1039, 1043 (U.S. 1992) (internal quotation marks omitted). A taxpayer's burden of proof of entitlement to a depreciation deduction for customer-based, goodwill-related intangibles in particular is "substantial" and "often …too great to bear." *Newark Morning Ledger,* 113 S.Ct. at 1683 and 1681, respectively.

The taxpayer therefore was anything but entitled to demand that the IRS recognize the pre-need trust amortization deductions. The taxpayer would have had to rigorously prove its entitlement to those deductions to the satisfaction of a presumably very skeptical IRS in any audit of its 1120s for the audit period, and thereafter if necessary in the federal courts. The pre-need trust amortization

deductions thus do not fit the definition of "credit" as it is used in former IC § 6-2.1-1-10 or, by extension, that statute's definition of "receipts." Nor could the taxpayer have received those deductions as former IC § 6-2.1-1-11 defined "receives," since they could not be "credit[ed] to the taxpayer," *id.* The auditor erred in classifying the pre-need trust amortization deductions as gross receipts, and by extension as gross income, from intangible personal property to the extent that he may have believed them to be credits.

c. The Pre-Need Trust Amortization Deductions Were Not "Other Property" as the Definition of "Receipts" Uses That Term, and as Indiana Judicial Precedent Defines "Property."

Nor do the deductions constitute "other property" as IC § 6-2.1-1-10 uses that phrase. In *Department of Insurance v. Motors Insurance Corp.*, 138 N.E.2d 157 (Ind. 1956), the Indiana Supreme Court gave the following definitions of "property":

> This court in *Dept. of Financial Inst. v. General Finance Corp.* (1949), 227 Ind. 373, 384, 86 N.E. 2d 444, 10 A.L.R. 2d 436, quoting from *Buchanan v. Warley* (1917), 245 U.S. 60, 74, 62 L. Ed. 149, 161, 38 S. Ct. 16, said:
>
> "'Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, *use, and dispose* of it. The Constitution protects these essential attributes of property. *Holden v. Hardy*, 169 U.S. 366, 391, 42 L. Ed. 780, 790, 18 S. Ct. 383 [(1898)]. Property consists of the free *use, enjoyment, and disposal* of a person's acquisitions without control or diminution save by the law of the land.'" [86 N.E.2d at 448, quoting 38 S.Ct. at 18.]
>
> "Property" in its legal sense means a valuable right or interest in something rather than the thing itself, and is the right to possess, *use and dispose* of that something in such a manner as is not inconsistent with law. *Dept. of Financial Institutions v. Holt, etc.* (1952), 231 Ind. 293, 303, 108 N.E.2d 629, 634; *Meek v. State* (1933), 205 Ind. 102, 105, 185 N.E. 899.

138 N.E.2d at 162-163 (emphases added by the Department).

"The term [property] includes valid contracts." *Holt*, 108 N.E.2d at 634, citing *General Finance*, 86 N.E.2d at 448. The pre-need contracts between the two Texas mortuaries and the various consumers who entered into them before the parent acquired those mortuaries thus were property. So were the previously discussed equitable interests of the parent, as successor in interest to one of those mortuaries, and of the remaining mortuary, in the corpuses of the pre-need trusts respectively maintained in connection with those locations. Those corpuses included deposits of payments made under contracts consumers had entered into with the two funeral homes prior to the parent's respective acquisitions of them. The parent and the remaining mortuary also had, as part of their equitable interests in the trusts, the rights to receive distributions of corpus upon their respective performances of pre-need contracts at the two Texas locations. Once deposited to those locations' respective operating accounts, the received corpus distributions became subject to the parent's periodic sweeps of those accounts mentioned in the Statement of Facts. The parent thereafter could use those distributions in the operation of the taxpayer's business, i.e. the business of the entire affiliated group. To the extent that those distributions represented pre-acquisition deposits of pre-need contract principal, the parent and the remaining Texas mortuary thereby depreciated those trusts, for which the taxpayer was entitled to claim deductions under I.R.C. 167(a) as interpreted in *Newark Morning Ledger* for each year of the audit period.

However, the rights to claim those deductions, standing alone, were not property because the taxpayer could not acquire or dispose of them independently of the parent's and the remaining Texas mortuary's respective equitable interests in the pre-need trusts, from which those rights derived. This finding follows from a fundamental rule of federal income tax law that applies here. That rule is that "[u]nless there is a specific statutory provision to the contrary, a taxpayer ordinarily reports his own income and takes his own deductions." *Davis v. United States*, 110 S.Ct. 2014, 2023 (U.S. 1990). I.R.C. § 167 does not have a provision allowing any entity other than a taxpayer who owns an interest in depreciable property to claim a depreciation deduction. Any putative buyer of the pre-need trust depreciation deductions thus would not have been able to claim them legally on its federal income tax returns for the reporting periods covering the audit period. If any such "buyer" had done so and had its returns audited, the IRS presumably would have disallowed the "bought" deductions. Although the taxpayer in the *Bethlehem Steel* case did sell federal tax attributes, it was only able to do so because former I.R.C. § 168(f)(8) (repealed 1986) explicitly made such a sale possible. Thus, in contrast to its being controlling authority under Issues I and II above and Issue IV below, the *Bethlehem Steel* opinions do not control on the more specific question of whether the pre-need trust depreciation deductions were property under Indiana law. They are legally distinguishable on this particular point from the present issue because that case arose under a former paragraph of the Internal Revenue Code structured differently than I.R.C. § 167.

In light of the foregoing analysis, the Department finds that the auditor erred in classifying the pre-need trust depreciation deductions as gross receipts, and by extension as gross income, from intangible personal property, to the extent that he may have believed them to be property.

2. Since the Pre-Need Trust Amortization Deductions Were Not "Receipts," They Could Not Be "Gross Income."

The pre-need trust amortization deductions were not "receipts" as former IC § 6-2.1-1-10 defined that word, nor could the parent or the remaining Texas mortuary have received them as former IC § 6-2.1-1-11 defined "receives." By extension, the deductions also were not "gross income" as former IC § 6-2.1-1-2(a) defined that term.

Since the deductions were not credits or other intangible personal property capable of having a situs, it is unnecessary for the Department to determine their tax situs state under the authorities discussed under Issue I above. The Department therefore respectfully declines to address the protestant's second argument on the present issue.

FINDING

The protest is sustained as to this issue.

IV. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—(Insurance Commissions)(Fiscal Year Ending 09/30/1993)

DISCUSSION

A. OVERVIEW OF INSURANCE FUNDING OF PRE-NEED CONTRACTS

> Another method of funding preneed funeral contracts is through the use of an insurance policy or annuity plan. With insurance policies, the consumer purchases, either in a lump sum or by installments, a funeral or burial policy. The consumer names the seller or the funeral provider as the beneficiary of the insurance or annuity policy. The benefit is paid out at the death of the consumer or the decedent. An annuity plan works essentially the same way, except that the consumer pays the seller or provider in installments over a specified period of time.
>
> Frank, *Preneed Funeral Plans* at 9-10 (footnotes omitted). *See also Ind. Family & Soc. Servs. Admin. v. Culley*, 769 N.E.2d 680, 683-684 (Ind. Ct. App. 2002) (holding that FSSA abused its discretion in imposing a Medicaid disqualification asset transfer penalty on a Medicaid recipient who had used cash to buy insurance policies to fund such trusts for her children and their spouses). "The seller…arranges for any necessary insurance policy underwriting." Frank, *Preneed Funeral Plans* at 18-19 (footnote omitted). The mortuary or cemetery company thus commonly doubles as an insurance agent in a pre-need contract transaction. The entity responsible for closing the sale, whether that company or some other entity acting on its behalf, therefore can collect two commissions: one for the pre-need contract itself, and a second one for selling the insurance.

B. THE TAX TREATMENT OF THE TAXPAYER'S CREDIT LIFE INSURANCE OPERATION AND THE PROTESTANT'S ARGUMENTS

During the audit period the parent owned an Indiana-chartered insurance company that issued policies of credit life insurance. Credit life insurance is defined as "insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction." IC § 27-8-4-2(b)(1) (1988) (1993). The insurer issued these policies to consumers who entered into pre-need contracts and who chose to take out such policies as a contingent method of paying off any outstanding balance under the pre-need contract at the consumer's death. *See generally* Consumer Credit Protection Act § 106(b), 15 U.S.C. § 1605(b) (1988) (1994) requiring the creditor to include credit life, accident and health insurance premiums in the finance charge unless the debtor receives written disclosures that insurance is not a factor in the decision to extend credit and of the cost of the insurance, and the debtor indicates the desire for such insurance in writing). *See also* Federal Reserve Bd. Regulation Z (Truth-in-Lending Regulations) § 226.4(d)(1), 12 C.F.R. § 226.4(d)(1) (1992-95) (permitting exclusion of credit life insurance premiums from the finance charge if the fact that the creditor does not require, and the premium for the initial term of, such insurance are disclosed, and the consumer signs or initials a written request for the insurance).

The taxpayer reported the receipts of this insurer for gross income tax purposes during the audit period net after deducting what the auditor characterized in the Audit Summary as "management fees." The auditor adjusted the taxpayer's liability by proposing to assess gross income tax at high rate on these deducted sums. The protestant objects to the parts of the assessments on these receipts, characterizing them as sales commissions the insurer paid to two Subchapter S Kentucky and Ohio corporations commonly owned by the parent's individual shareholders on the policies that those corporations sold. According to the protestant, these sums are not subject to gross income tax for two reasons. First, they were earned by out-of-state locations (i.e., the intangibles that gave rise to them had business situses outside Indiana). Second, and in the alternative, the insurer received the sums as an agent of, and immediately turned them over to, the Kentucky and Ohio Subchapter S corporations.

C. THE PROTESTANT HAS SUBMITTED NO EVIDENCE TO SUPPORT ITS OUT-OF-STATE-TAX-SITUSES ARGUMENT.

1. There Is No Evidence That Either the Ohio or the Kentucky Subchapter S Corporation Sold, or Earned Commissions From the Sale of, the Credit Life Insurance Subsidiary's Policies.

The protestant has not submitted any evidence or authority to support either its out-of-state business situs assertion or its agency assertion. Turning first to the claim of out-of-state business situses, the Department notes at the outset that the protestant did not submit any evidence to the hearings officer indicating that the assessed sums in fact consisted of commissions, rather than of "management fees" as characterized in the Audit Summary. However, assuming without deciding that the sums in question were in fact commissions, the Department notes that the protestant's claim suffers from much the same deficiencies as were discussed under Issue I when it made the same claim concerning pre-need contract interest. As stated in that discussion, "the protestant has provided no evidence indicating the office of the taxpayer through which each [installment] pre-need contract was marketed, negotiated and brought into being, [and] the office (if different) that decided to approve the contract and extend credit to each consumer, that kept the payment accounts and other records of executory contracts[.]" Similarly, concerning the present issue, the protestant submitted no evidence whatever to the hearings officer that the Ohio or Kentucky Subchapter S corporations in fact made the sales out of which the alleged commissions arose.

2. There Is No Evidence That Either the Ohio or the Kentucky Subchapter S Corporation, or Any Officer or Employee of Either Corporation, Was a Licensed, Registered Insurance Agent.

There is nothing in the protest record to indicate that these corporations were even licensed, appointed insurance agents entitled as such to receive commissions. During the audit period both Kentucky and Ohio, among other states, barred (and still bar) an insurer from paying, or an agent from receiving, a commission if the agent does not hold a license. Ch. 171, § 6, 1982 Ky. Acts 417, 420, codified at 11A KY. REV. STAT. ANN. § 304.9-425(Michie 1996 & 2001 Repls.) (current version at 11A KY. REV. STAT. ANN. § 304.9-425(1)-(2) (Cum. Supp. 2003); OHIO REV. CODE ANN. §§ 3905.18(A)-(B) and 3905.181 [sic; should read "3905.18.1"] (Anderson 1996 & 2002 Repls.) (same, respectively). *See also* 43 AM.JUR.2D *Insurance* § 147 (2003) (same) and 44 C.J.S. *Insurance* § 205, at 389 (1993) (same). However, the protestant did not submit copies of official records of the Ohio or Kentucky state insurance departments of any insurance agent licenses issued to the Ohio or Kentucky Subchapter S corporations, or any of their officers or employees. Nor has the protestant provided this Department with copies of any official records of the heads of the Ohio or Kentucky state insurance departments evidencing that the insurer registered its appointment of the Ohio and Kentucky Subchapter S corporations, or any of the individuals previously mentioned, as the insurer's agent in those corporations' respective markets. Both jurisdictions require registration of such appointments. 11A KY. REV. STAT. ANN. § 304.9-270(1); OHIO REV. CODE ANN. § 3905.20(B)(1).

3. There Is No Evidence That an Insurer/Insurance Agent Contractual Relationship Existed Between the Credit Life Insurance Subsidiary and Either the Ohio or the Kentucky Subchapter S Corporation, or Any Officer or Employee of Either Corporation.

The protestant also failed to submit copies of any insurance agency contract/s that may have existed between either of the Subchapter S corporations, or any of their officers or employees, and the insurer. Any such contract would have been relevant evidence of the existence of an insurer/insurance agency relationship, since the contract would specify the terms of the agency. "The parties have the right to agree upon the terms of a contract of agency, and their rights are determined by the provisions of such contract[.]" 13 ERIC MILLS HOLMES, HOLMES' APPLEMAN ON INSURANCE 2D: LAW OF INSURANCE AGENTS § 95.1, at 478 (LEXIS Publ'g 1999) (hereinafter HOLMES' APPLEMAN ON INSURANCE 2D); *see also* opinions cited at 13 *id.* n.19. Whether the Ohio and Kentucky Subchapter S corporations, or any of the previously mentioned individuals, could approve insurance applications for, or otherwise bind the insurer to issue, policies on their own authority might have been among those terms. The presence or absence of such authority would have been a relevant (but not the only) factor for the Department to consider in determining whether or not the Subchapter S corporations had business situses for insurance (as distinguished from mortuary or cemetery) purposes. *See* 45 IAC § 1-1-49(5) (stating that one way of establishing a business situs, either in Indiana or another state, is "[a]cceptance of orders without the right of approval or rejection in another state[,]" *id.*). The terms of the contract/s also would have included those upon the occurrence of which the agent would earn a commission. 13 HOLMES' APPLEMAN ON INSURANCE 2D § 97.2, at 642; 43 Am.Jur.2d *Insurance* § 146 (1982); 44 C.J.S. *Insurance* § 205, at 389 (1993) and 2A C.J.S. *Agency* § 334, at 606 (2003). Lastly, the protestant failed to submit to the hearings officer copies of any books or records to indicate that the Subchapter S corporations, or any of their officers or employees, in fact sold any life insurance policies of the insurer or earned any commissions as a result of any such sales. Such records could have included, for example, insurance applications approved by the putative agents and policies (including declarations pages identifying the consumer) the insurer issued based on such applications.

4. There Is Thus No Evidence of Any Out-of-State Tax Situs Out of Which the Alleged Commissions Arose.

Applying the precedents discussed under Issue I, the protestant has wholly failed to show any relationship between any supposed intangibles (i.e., any insurance agency license, registration, agency contract and sold policies) from which the alleged commissions may have arisen and the Ohio or Kentucky Subchapter S corporations' respective business situses. Even assuming (without finding) that all of these intangibles existed, the protestant has not proved that either of the Subchapter S corporations performed any activity related to the putative intangibles at its business situs, or the degree of any such activity. In particular, the protestant has failed to prove that either of the Subchapter S corporations marketed, negotiated, sold, had actual or implied authority to approve issuance of, and serviced the insurer's policies at and through that corporation's business situs. An office, other than the headquarters, of a taxpayer whose regular income derives from sales has a business situs at that office only if it is engaged in such activity and has independent authority to enter into sales contracts. *See Miami Coal*, 176 N.E. at 16 (out-of-state office that serviced accounts receivable arising from its sales of coal was business situs of accounts receivable for property tax purposes), approved in *Bethlehem Steel II*, 639 N.E.2d at 269-270. *See also* former 45 IAC § 1-1-49(5) (stating that one way of establishing a business situs, either in Indiana or another state, is "[a]cceptance of orders without the right of approval or rejection in another state[,]" *id.*).

However, the Department can no more assume that either of these Subchapter S corporations, or any of their officers or employees, conducted insurance sales activities, had authority to approve the policy applications or bind the insurer to issue the policies that gave rise to the alleged commissions, than it could assume that they sold the pre-need contracts the policies were intended to finance. As discussed under Issue I, centralized sales forces are prevalent in the mortuary and cemetery industries. Given these marketing conditions and the fact that the parent and the Subchapter S corporations had common shareholders, it is possible that these three companies, acting in concert, jointly employed such a force to market not only pre-need contracts, but also simultaneously any insurance policies related to them. (In this connection the Department notes that the original protest letter states the insurer sold credit life insurance. Paragraph 4 and Subparagraph 5(d) of the form Prepaid Funeral Retail Installment Contracts discussed under Issue I gave the consumer the option of purchasing credit life insurance, implying that the contract and the insurance

are marketed in the same transaction.) However, as under Issue I, the Department is not finding that the parent or the taxpayer, and the Subchapter S corporations, jointly employed a centralized sales force. It is only finding that the protestant has failed to sustain its burden of production of evidence, and thus its burden of proof, that the Ohio and Kentucky Subchapter S corporations were each operating its own decentralized sales force as an insurance agency under contract with the insurer, with the authority to approve policy applications or bind the insurer to issue policies.

5. The "Commercial Domicile" Test Therefore Applied to Give Any Intangibles Underlying the Alleged Commissions an Indiana Tax Situs.

Given the total absence of evidence that the Ohio and Kentucky Subchapter S corporations were so acting, the "commercial domicile" test of former 45 IAC § 1-1-51 applied. Without proof that either Subchapter S corporation, or any of their officers or employees, had actual or implied authority to approve policy applications or otherwise bind the insurer, the Department can only assume that the insurer had reserved the right to approve applications, making the alleged commissions gross income attributable to Indiana as the state of the insurer's, and the insurer's parent's, commercial domicile. This result is supported not only by the regulation, but also by judicial precedent in Indiana and other jurisdictions, including Ohio and Kentucky, governing when a sales agent (whether in the insurance or some other sales business) earns a commission. "[T]he general rule is that a person employed on a commission basis is entitled to those commissions when the order is accepted by the employer." *Sample v. Kinser Ins. Agency, Inc.*, 700 N.E.2d 802, 804 (Ind. Ct. App. 1998); *see also Vector Eng'g & Mfg. Corp. v. Pequet*, 431 N.E.2d 503, 505 (Ind. Ct. App. 1982) (same, cited in *Sample, id.* and citing opinions from other jurisdictions). "Generally, in the absence of an agreement [or here, proof of an agreement] to the contrary, an agent's commission is earned on the date that the customer is insured by the insurance company." *Ariz. Ins. Guar. Ass'n v. Humphrey*, 508 P.2d 1146, 1148 (Ariz. 1973) (citing *Boro Hall Agency, Inc. v. Citron*, 329 N.Y.S.2d 269, 270-71 (N.Y. Civ. Ct. 1972)), quoted in 13 HOLMES' APPLEMAN ON INSURANCE 2D § 97.8, at 672 and cited at 13 *id.* n.146. *See also Cockrell v. Grimes*, 740 P.2d 746, 749 (Okla. Ct. App. 1987) (same) (quoting *Ariz. Ins. Guar. Ass'n, supra*), quoted in 44 C.J.S. *Insurance* § 205, at 389 (1993) and cited at *id.* n.31. "A contract of insurance is consummated [and the agent earns a commission] upon the unconditional acceptance of the application of the insured by the insurer." *Hartford Fire Ins. Co. v. Whitman*, 79 N.E. 459, 461 (Ohio 1906), cited in 43 Am.Jur.2d *Insurance* § 201, at 283 n.47 (1982), *inter alia*. *See also Bishop v. Am. States Life Ins. Co.*, 635 S.W.2d 313, 315 (Ky. 1982) (holding that the agent had earned his commission once the insurer accepted his tender of the insured's application and first premium check, stating that "nothing more was required of [the agent.]" If the Ohio and Kentucky Subchapter S corporations earned their alleged commissions when the insurer accepted their respective consumers' applications, and that acceptance occurred in Indiana, then it follows that the alleged commissions were earned, and were in fact premium gross income attributable to the taxpayer, in Indiana. Thus, the Department can subject the gross income that the management fees or alleged commissions represent to assessment of Indiana gross income tax unless the protestant can prove that the insurer held them as agent for the Ohio and Kentucky Subchapter S corporations, to which question the Department now turns.

FINDING

The protest is denied as to this issue.

V. Gross Income Tax—Imposition on Domiciliary—Receipt of Gross Income by Insurer as Agent (Insurance Commissions)(Fiscal Year Ending 09/30/1993)

DISCUSSION

A. EVIDENTIARY ELEMENTS AND BURDEN OF PROOF OF AGENCY AND OF GROSS INCOME RECEIVED IN AN AGENCY CAPACITY

During the audit period the Department had codified its gross income tax regulation on agency receipts at former 45 IAC § 1-1-54 (last version at 45 IAC §§ 1.1-1-2 and –6-10), which read in relevant part as follows:

> Sec. 54. Agents. Taxpayers are not subject to gross income tax on income they receive in an agency capacity. However, before a taxpayer may deduct such income in computing his taxable gross receipts, he must meet two (2) requirements:
>
> *(1) The taxpayer must be a true agent. Agency is a relationship which results from the manifestation of consent by one person to another authorizing the other to act on his behalf and subject to his complete control, and consent by the other to so act.* Agency may be established by oral or written contract, or may be implied from the conduct of the parties. *However, the representation of one party that he is an agent of another without a manifestation of consent by the alleged principal is insufficient to establish agency.* Both parties must intend to act in such a relationship.
>
> Characteristic of agency is the principal's right to complete and continuous control over the acts of the agent throughout the entire performance of the contract. This right to control cannot be limited to the accomplishment of a desired result. *In addition, the principal must be liable for the authorized acts of the agent.*
>
> *(2) The agent must have no right, title or interest in the money or property received or transferred as an agent.* In other words, the income received for work done or services performed on behalf of a principal must pass intact to the principal or a third party; the agent is merely a conduit through which the funds pass. A contractual relationship whereby one person incurs expense under an agreement to be reimbursed by another is not an agency relationship unless the other elements of agency exist, particularly the element of control, discussed above.….

In summary, when applying the above factors to a taxpayer, *the critical factor is that of control. Notwithstanding the fact that the taxpayer acting for another has no right, title or interest in the money or property received, he is not entitled to deduct such income from his gross receipts unless he was acting as a true agent subject at all times to the control of his principal. Id* (emphases added).

The protestant's agency argument by its own terms is governed by subsection (1). Its assertion that it immediately turned over the alleged commissions to the Ohio and Kentucky Subchapter S corporations implies that the insurer had no right, title or interest in those sums, and thus is governed by subsection (2), of the former regulation. IC § 6-8.1-5-1(b), discussed under Issue I, imposes the burden of proving each of these elements on the protestant. The statute essentially requires "the person against whom the assessment is made," *id.*, to raise, prove and convince the Department of any affirmative defenses to the assessment that the person may have. Agency and the absence of any right, title or interest in the assessed receipts are such defenses. *See W. Adj. And Insp. Co. v. Gross Income Tax Div.*, 142 N.E.2d 630, 635 (Ind. 1957) (stating that the taxpayer "ha[s] the burden of making out an affirmative [agency or trusteeship] case"). *Cf. Vawter v. Baker*, 23 Ind. 63, 65 (1864) (holding agency to be an affirmative defense in a breach of contract action and placing the burden of proof of agency on the defendant). However, the last passage emphasized in the above-quoted regulation makes it clear that an agency relationship must be found to exist before the question of an assessed person's absence of any right, title or interest in receipts becomes material. Accordingly, before the Department can address the protestant's assertion that the insurer immediately turned the alleged commissions over to the Ohio and Kentucky Subchapter S corporations, the Department must first find that there were agency relationships between each of these corporations as principals and the insurer as agent. The Department therefore turns to this latter question first.

The definition of "agency" in subsection (1) of the former regulation is in substantial accord with Indiana judicial definitions of "agent." "An agent is one who acts on behalf of some person, with that person's consent and subject to that person's control. *See Dept. of Treasury v. Ice Service, Inc.*, 220 Ind. 64, [67-68,] 41 N.E.2d 201[,] [203] (Ind.1942) (citing RESTATEMENT (SECOND) OF AGENCY § 1(1) (1958) [sic])." *Oil Supply Co. v. Hires Parts Serv., Inc.*, 726 N.E.2d 246, 248 (Ind. 2000). Therefore, "the elements of an actual agency relationship are three: [1] manifestation of consent by the principal; [2] acquiescence by the agent; and [3] control exerted by the principal." *Hope Lutheran Church v. Chellew*, 460 N.E.2d 1244, 1247 (Ind. Ct. App. 1984). The principal's right to and exercise of control need not be complete. *Universal Group Ltd. v. Ind. Dep't of State Revenue*, 642 N.E.2d 553, 557-58 (Ind. Tax Ct. 1994) ("*Universal Group III*"), *granting reh'g on and withdrawing* 634 N.E.2d 891 (Ind. Tax Ct. 1994). However, as former 45 IAC § 1-1-54(1) stated, "[t]his right to control cannot be limited to the accomplishment of a desired result[,]" *id.*, which is the criterion for identifying an independent contractor. "*An agent, on the other hand, is subject to the control of the principal with respect to the details of the work.*" *W. Adj.*, 142 N.E.2d at 634 (emphasis added).

B. THE PROTESTANT HAS SUBMITTED NO EVIDENCE THAT THE TAXPAYER'S CREDIT INSURANCE SUBSIDIARY WAS AN AGENT OF EITHER THE OHIO OR THE KENTUCKY SUBCHAPTER S CORPORATION AS TO THE ALLEGED COMMISSIONS.

The only material that the protestant has offered to the Department is its uncorroborated assertion that the insurer was acting as the Ohio and Kentucky Subchapter S corporations' agent. Such a statement is not proof of agency under Indiana common law. "It is a well established rule that agency cannot be proven by the declarations of the agent alone." *United Artists Theatre Circ., Inc. v. Ind. Dep't of State Revenue*, 459 N.E.2d 754, 758 (Ind. Ct. App. 1984). Former 45 IAC § 1-1-54(1) adopted this rule in substance. "[T]he representation of one party that he is an agent of another without a manifestation of consent by the alleged principal is insufficient to establish agency." *Id.* The Department cannot presume that the insurer was the agent of the Ohio and Kentucky Subchapter S corporations based solely on the protestant's unsubstantiated assertion. If anything, the idea of the insurer acting as an agent for those two companies, which would themselves be called "agencies" if they were in fact selling insurance, while not impossible, appears at first blush to be an implausible case of the tail wagging the dog. The Department therefore cannot simply accept the protestant's assertion without actual proof that the insurer was an agent. "An administrative tribunal cannot rely on its own information for support of its findings, and an order of the tribunal must be based on *evidence produced in the hearing*…." *Derloshon v. City of Ft. Wayne Dep't of Redev.*, 234 N.E.2d 269, 273 (Ind. 1968) (internal quotation marks omitted; emphasis added). The protestant has submitted no evidence during this protest that the insurer acted as the agent of either Subchapter S corporation, or what kind of work it did for them under any alleged agency agreements, including why it was holding the alleged commissions for these companies. Nor has the protestant submitted any evidence that they exercised control over the insurer, or how much or what kind of control they exercised. Given the lack of any evidence of agency, the Department therefore must presume that the insurer was not the agent of either the Ohio or the Kentucky Subchapter S corporation.

C. EVEN IF THE CREDIT INSURANCE SUBSIDIARY HAD BEEN AN AGENT, AS A MATTER OF LAW IT HAD AN INTEREST IN THE ALLEGED COMMISSIONS.

Since the protestant has not provided any evidence of agency to the Department, it is unnecessary, strictly speaking, for the Department to address the protestant's implied lack-of-right-title-or-interest argument. However, the Department would note that even if the protestant had submitted evidence sufficient to establish that the insurer was an agent, the protestant's assertion that the insurer lacked any interest in the alleged commissions is insufficient in law. Former IC § 6-2.1-1-2(b) stated that "no deductions

from a taxpayer's gross income may be taken for [among other items]…commissions paid or credited[.]" *Id.* The implementing regulation, former 45 IAC § 1-1-17 (last version at 45 IAC § 1.1-1-10), is to the same effect. Former 45 IAC § 1-1-64, which applied the definition of the phrase "gross income" in former IC § 6-2.1-1-2(a) to life, health and hospitalization insurance companies, is also relevant to this question. It read in relevant part as follows:

> The gross income tax applies to those life, health and hospitalization insurance companies that do not elect to pay the [gross] premium tax as administered by the Indiana Department of Insurance under IC 27-1-18-2(b) of the Indiana Insurance Act.
>
> Gross income as it applies to receipts of life, health and hospitalization insurance companies means the amount of gross premiums, interest, dividends, rents and all other earnings with respect to conducting the business of the company. *Commissions, fees or other expenses incurred with respect to the various insurance company transactions are not to be deducted in determining gross earnings therefrom;….*

Id (emphasis added). (Similarly, the gross premiums tax of IC § 27-1-18-2 does not permit commissions to be deducted. *Id.*)

Former IC § 6-2.1-1-13 defined "taxable gross income as "the remainder of: all *gross income* which is not exempt from tax under IC 6-2.1-3; *less* (2) *all deductions* which are allowed under IC 6-2.1-4." *Id* (emphases added). "Deduction" is in turn defined in relevant part as "[a]n amount subtracted *from gross income*…." BLACK'S LAW DICTIONARY 422 (definition 2) (7th ed. 1999) (emphasis added). Both authorities thus necessarily imply that a sum that a taxpayer seeks to deduct was already part of that taxpayer's gross income. This latter circumstance in turn necessarily implies that the taxpayer in question (and not some other entity) had a right, title or interest in that gross income. By stating that commissions are not deductible, the legislature decided that commissions were to remain part of the gross income that is the proceeds of a sale of a principal's property or product that the agent or broker helped the parties consummate. In the present case, the product was credit life insurance policies and the proceeds were premiums, all of which (including the alleged commissions) were, and remain, gross income to the insurer. The insurer in turn was a member of the taxpayer's affiliated group. The taxpayer therefore was, and the protestant as its successor in interest is, liable for gross income tax on its receipts for these premiums/alleged commissions.

Neither the agency tax opinions discussed above, nor former 45 IAC § 1-1-54, require a different result. For the Department to find that this part of the assessment was wrong, it would also have to interpret these authorities as allowing a deduction from gross income that both the General Assembly and this Department have explicitly stated is not available. Only the legislature can create deductions. *Cf. Rotation Prods. Corp. v. Dep't of State Revenue*, 690 N.E.2d 795, 798 (Ind. Tax Ct. 1998)(stating that "courts have no power to create an exemption in the absence of statutory authority"). The Department cannot create a deduction. "It does not lie with the Department to promulgate a regulation in excess of, or contrary to, the law." *Universal Group III*, 642 N.E.2d at 557. It would be particularly inappropriate for the Department to do so as to this issue because it would create a conflict between former 45 IAC § 1-1-54, the regulation making income received in an agency capacity not subject to gross income tax, and former 45 IAC § 1-1-64, which stated that commissions are not deductible from the gross income of life, health and hospitalization insurance carriers. As previously noted under Issue I, the rules governing statutory interpretation also govern interpretation of regulations. *Two Market Square Assocs.*, 679 N.E.2d at 885. The Department promulgated former 45 IAC §§ 1-1-54 and -64 at the same time. *See* Final Rules, Gross Income Tax, LSA Doc. No. 8-15(F), 1 IR 950, 962 and 966 (1978), respectively. Statutes relating to taxation and enacted simultaneously "must be construed together as parts of one body of law and as together expressing the legislative will." *Lutz v. Arnold*, 193 N.E. 840, 848 (Ind. 1935). It therefore follows that regulations relating to taxation and promulgated simultaneously by the same agency must also be construed together. *See id.* Accordingly, the Department construes former 45 § 1-1-54 as not having created a deduction for commissions.

The protestant, therefore, has failed to sustain its burden of proof that the part of the gross income tax assessment for fiscal year 1993 on the management fees or alleged commissions was wrong. These sums were part of the taxpayer's gross receipts or gross income under former IC §§ 6-2.1-1-2, -1-10 and -1-11, former 45 IAC §§ 1-1-8 to –10, -17, -51 and -64. The field auditor was therefore correct to assess the taxpayer for those receipts because under former IC § 6-2.1-2-2(a)(1) they were part of the entire taxable gross income of a taxpayer who was a domiciliary of Indiana.

FINDING

The protest is denied as to this issue.

VI. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—Other Miscellaneous Gross Receipts From Out-of-State Business Situses

DISCUSSION

The auditor also proposed to assess gross income tax on certain receipts characterized on the taxpayer's chart of accounts as "Miscellaneous Income: Other." As it did with the pre-need contract interest and the pre-need trust interest and dividends, the protestant argues that these unidentified receipts are not subject to Indiana gross income tax because non-Indiana business locations generated them. However, the protestant has not submitted any evidence on this issue, and has not even specified the activity or activities that generated these receipts. The Department accordingly finds, as it did under Issues I, II, IV and V, that the protestant has also failed to sustain its burden of proof that the assessment of gross income tax for each year of the audit period on the other miscellaneous receipts was wrong.

FINDING

The protest is denied as to this issue.

VII. Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—Miscellaneous Service Gross Receipts (Open/Close Trust Withdrawals) (Fiscal Year Ending 09/30/1993)

DISCUSSION

Each member of the taxpayer's Indiana affiliated group engaged in cemetery operations provided what the taxpayer called "opening/closing services," consisting of the digging of a grave before, and the filling of that grave after, any graveside service for a decedent. After completing the closing, the member that performed these services received a withdrawal from the local pre-need trust. The taxpayer described these receipts as "Open/Close Trust Withdraw" (sic) on its chart of accounts and reported them as "Other Income" on Line 10 of its federal Forms 1120 for each year of the audit period. The auditor allocated the full amounts of the withdrawals reported on the federal returns to the taxpayer's Indiana commercial domicile and proposed to assess gross income tax on them at high rate pursuant to former 45 IAC § 1-1-112, previously discussed under Issue III.

The protestant challenges the parts of the assessments levied on the open/close trust withdrawals on the grounds that the locations that allegedly received those payments, and the trusts from which they received them, were all outside Indiana. The Department has already found under Issue II above that the domiciles of the various pre-need trustees are irrelevant and, without more, are no bar to imposing Indiana gross income tax on pre-need trust distributions. That discussion is incorporated by reference as if fully set out here. The protestant has not submitted any books, records or other documents to the Department to support its other assertion. There is thus no evidence before the Department indicating the respective amounts of open/close trust withdrawal receipts that were attributable to openings and closings conducted at the taxpayer's out-of-state and in-state cemeteries.

In *Indiana Department of State Revenue v. E.W. Bohren, Inc.*, 178 N.E.2d 438 (Ind. 1961), the Indiana Supreme Court cited the failure of the taxpayer in that case to segregate intrastate from interstate receipts as one basis for its denying that taxpayer the interstate commerce exemption of U.S. CONST. article I, § 8, clause 3 and a predecessor to former IC § 6-2.1-3-3. 178 N.E.2d at 442. As statutory support for this part of its rationale, the court cited to a predecessor to former IC § 6-2.1-2-7. Subsection (b) of the latter statute required gross income taxpayers to separate on their records gross income that was taxable at different rates (the lower rate presumably being zero where part of the receipts were eligible for an exemption). *Id.* Subsection (c) subjected the entire gross income to the higher applicable rate if the taxpayer failed to properly segregate the income that would otherwise be taxable at the lower rate. *Id.*

The Department finds both *E.W. Bohren* and former IC § 6-2.1-2-7(b) and (c) to be persuasive analogous authority on the present issue. The question of whether receipts were earned in interstate commerce can be closely related, although not necessarily identical, to the question of whether an out-of-state business or legal situs earned those receipts. If failure to segregate receipts can be a basis for denying the interstate commerce exemption, then it can also be a proper basis for denying an exclusion from gross income of receipts from a taxpayer's out-of-state business or legal situses. The protestant has failed to submit any evidence that the taxpayer made such a segregation of receipts. For this reason, and because of the previously mentioned irrelevance of the pre-need trusts' situses, the protestant has failed to meet its burden of proof on this issue.

FINDING

The protest is denied as to this issue.

VIII. Gross Income Tax—Deductions from Gross Income—Inter-Company Transactions

DISCUSSION

A. THE "INTERCOMPANY CHARGES" AND "OVERHEAD ALLOCATIONS" ADJUSTMENTS

The taxpayer reported certain receipts it described as "Intercompany Charges" under "Other Income" on each of its federal Forms 1120 for the audit period. It also reported its "Overhead Allocations" under "Other Deductions" at Line 28 on its Forms 1120 for fiscal years 1994 and 1995. The auditor disallowed in full or in part the inter-company transaction deductions from gross income that the taxpayer had claimed for these receipts under former IC § 6-2.1-4-6(a) on its Forms IT-20 for the audit period. The work papers indicate that the auditor based the disallowance in part because he could not identify the affiliates that had paid on the various "Intercompany Charges" and "Overhead Allocations" and could not establish whether the taxpayer had included these subsidiaries in the Indiana affiliated group. The auditor disallowed the deduction in full for fiscal year 1993, and partly disallowed the deductions for fiscal years 1994 and 1995. He did allow the deductions for these latter years as to certain receipts described in the Audit Summary as "Intercompany Eliminations." (The implementing regulation, former 45 IAC § 1-1-166, stated in pertinent part that "receipts from *intercompany* sales of property and payments of dividends, rents, interest and service charges may be *eliminated* from gross receipts." *Id* (emphases added)). However, the auditor also disallowed the deductions for fiscal 1994 and 1995 as to both "Intercompany Charges" and "Overhead Allocations," less the respective amounts for these years of the "Intercompany Eliminations," each of which was smaller than the respective sums of the other two categories. Thus, the net effect of the adjustments for these years was to disallow the deductions in part.

B. THE PROTESTANT'S ARGUMENT

The protestant objects to these adjustments on the ground that the auditor allegedly failed to recognize that certain subsidiaries

were qualified to do business in Indiana. It indicated in its protest letter that the taxpayer was entitled to deduct "Intercompany Charges" in all three years of the audit period attributable to six such subsidiaries, which the Department will call Subsidiaries 1 through 6. The protestant also indicated in its protest letter that the taxpayer was entitled to deduct "Overhead Allocations" in fiscal years 1994 and 1995 of three such companies. Subsidiary 1 was among these latter subsidiaries. The Department will identify the other two as Subsidiaries 7 and 8.

C. MOST, BUT NOT ALL, OF THE SUBSIDIARIES IN ISSUE WERE AUTHORIZED TO DO BUSINESS IN INDIANA FOR MOST OF THE AUDIT PERIOD.

The protestant is correct to recognize that authorization to do business in Indiana is one of the conditions of entitlement to claim the inter-company transactions deduction. Former IC § 6-2.1-4-6(a), which granted this deduction, stated that

[e]xcept as provided in subsections (b) and (c), [which are not in issue here,] each taxable year an affiliated group or corporations filing a consolidated return pursuant to IC 6-2.1-5-5 is entitled to a deduction from the gross income reported on such a return. The amount of the deduction equals the total amount of gross income received during the taxable year from transactions *between members of the group* that are incorporated or *authorized to do business in Indiana*.

Id (emphases added). (Incorporation, or authorization to do business, in Indiana was also a condition of eligibility to file a consolidated gross income tax return by virtue of former IC § 6-2.1-5-5(b). *Id.*)

However, the protestant has not submitted any evidence to substantiate its assertion that Subsidiaries 1 through 8 were authorized to do business in Indiana. The Department therefore has searched the on-line records of the Business Services Division of the office of the Indiana Secretary of State under the names of each of these subsidiaries to learn whether they were authorized to do business in Indiana during the audit period, and if so for which year/s. The results of that search are summarized in the following table:

Subsidiary No.	Fiscal Year 1993	Fiscal Year 1994	Fiscal Year 1995
1	Not authorized	Authorized (03/31/1994)	Authorized (but withdrew 12/28/1995)
2	Not authorized	Not authorized	Not authorized
3	Not authorized	Authorized (04/14/1994)	Authorized (but withdrew 12/28/1995)
4	Not authorized	Authorized (04/06/1994)	Authorized (but merged 05/30/1995)
5	Not authorized	Authorized (4/14/1994)	Authorized (but withdrew 12/28/95)
6	Not authorized	Authorized (04/14/1994)	Authorized (but merged 12/31/1995)
7	Not applicable	Authorized (04/07/1994)	Authorized (but merged 12/31/1995)
8	Not applicable	Not authorized	Not authorized

It is thus clear from the above table that the auditor was correct to deny the inter-company transactions deduction for fiscal year 1993 in its entirety, for Subsidiary 2 for the entire audit period and for Subsidiary 8 for fiscal years 1994 and 1995. It is also clear that Subsidiaries 1 and 3 through 7 were authorized to do business in Indiana in the latter two fiscal years.

D. HOWEVER, THE PROTESTANT HAS SUBMITTED NO EVIDENCE THAT BOTH PARTIES TO THE "INTERCOMPANY CHARGES" AND "OVERHEAD ALLOCATIONS" TRANSACTIONS WERE AUTHORIZED TO DO BUSINESS IN INDIANA

What is not clear, however, is whether each of the "Intercompany Charges" and "Overhead Allocations" arose "from transactions *between members of the group that* [were] incorporated or *authorized to do business in Indiana*." IC § 6-2.1-4-6(a) (1988) (1993) (repealed 2003) (emphases added). The taxpayer did not produce any records during the audit, and the protestant did not submit any records to the hearings officer, indicating that both parties to each transaction in these two categories were incorporated or authorized to do business in this state. The parent, which was party to the "Overhead Allocations," admittedly was an Indiana corporation, but in the absence of records the Department cannot simply assume that all of the transactions that generated the receipts in this category were between the parent and Subsidiaries 1, 7 or 8. Similarly, the Department cannot assume that all of the "Intercompany Charges" were paid to Subsidiaries 1 through 6 by, or that one of these subsidiaries received such charges from, a company that was incorporated or authorized to do business in Indiana. The unidentified parties to these transactions may have been members of the taxpayer's federal affiliated group, but not of its Indiana affiliated group. The auditor therefore was correct to deny the inter-company deductions for fiscal years 1994 and 1995 as well.

FINDING

The protest is denied as to this issue.

IX. Tax Administration—Amending Returns—Departmental Authority to Amend

Gross Income Tax—Imposition on Domiciliary—Source State of Gross Income—(Insurance Commissions)(Fiscal Year Ending 09/30/1994)

Gross Income Tax—Deductions from Gross Income—Bad Debt Deductions (All Years)

DISCUSSION

The protestant has asked the Department to amend the taxpayer's return for fiscal year 1994 to remove certain insurance

commission gross income from the taxpayer's Ohio and Kentucky subsidiaries that the protestant alleges that the taxpayer erroneously included in that return. The protestant also asks that the Department amend the taxpayer's returns for all three years of the audit period to include deductions for certain alleged bad debts that the taxpayer failed to claim. The two adjustments combined, if granted, would not generate any refunds.

Strictly speaking, neither of these requests is a protest issue, since the protestant is not requesting these adjustments in response to anything that the auditor did or failed to do. Nevertheless, in the interest of efficiency and completeness, and because the requested insurance commissions adjustment relates to Issue IV of this protest on the same subject, the Department will address the protestant's requests in this letter.

The protestant cannot claim that it is, or the taxpayer was, ignorant of the Indiana income tax laws and their reporting deadlines. "All persons are charged with the knowledge of the rights and remedies prescribed by statute." *Middleton Motors, Inc. v. Ind. Dep't of State Revenue*, 380 N.E.2d 79, 81 (Ind. 1978). Nor can the protestant seriously claim that it or its two predecessors were unable, or in need of the Department's help, to comply with those deadlines. The taxpayer and its first successor in interest operated, and the protestant operates, a complex multi-jurisdictional business requiring sophisticated management. Therefore, the taxpayer and both its successors were perfectly capable of timely and appropriately amending the taxpayer's Indiana income tax returns. In this connection the Department notes that in the summer of 1996 the taxpayer's first successor in interest filed Forms IT-20X (Amended Corporation Income Tax Return) for the taxpayer for fiscal years 1992, 1993 and 1994 to conform the original returns to the adjustments the IRS made in its audit of the taxpayer for those years. It would have been a simple matter for the first successor in interest to draft the amended returns for fiscal years 1993 and 1994, and to draft an amended return for fiscal year 1995, to include the changes the protestant now requests. The fact that it did not do so may not be the protestant's fault, but that circumstance does not enable the protestant to take the place of the General Assembly and to convey power on the Department that the legislature did not grant.

Lastly, even if the Department were authorized to make the amendment requested for 1994 in particular and the protestant had requested it timely, the Department would not grant it. In the absence of contrary evidence, the insurance commission gross income in question was earned in Indiana for the reasons given under Issue IV. The Department fully incorporates the Discussion of that issue by reference here.

FINDING

The protestant's requests for the Department to amend the taxpayer's Indiana income tax return for fiscal year 1995, and to further amend its Indiana income tax returns for fiscal years 1993 and 1994, are denied.

X. Tax Administration—Negligence Penalty (Inter-Company Service Charges Adjustment)

DISCUSSION

The auditor recommended, and on review the Audit Division approved, proposing the assessment of ten percent negligence penalties on the parts of the proposed assessments levied on inter-company service charges. The protestant requests that the Department waive these penalties. It makes general allegations that the taxpayer did not act negligently and made good faith efforts to comply with the Indiana tax laws, and that the Department has made no showing that the taxpayer engaged in willful neglect or bad faith.

As mentioned under Issue I above, under IC § 6-8.1-5-1(b) (1998) the person against whom a proposed assessment is made has the burden of proof that it is wrong. As to penalties in particular, "[a] person who wishes to avoid the penalty imposed under [IC § 6-8.1-10-2.1(a) and (b) (1998)] must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust[.]" IC § 6-8.1-10-2.1(e). *See also* 45 IAC § 15-11-2(c) (2001) requiring a taxpayer to "affirmatively establish[,]" specifying the standard for the existence of, and enumerating the factors that may be considered in determining the presence or absence of, reasonable cause). The burden of proof is not on the Department to show willful neglect or bad faith. The protestant has made no factual showing of reasonable cause why the Department should waive the proposed negligence penalties, and has accordingly failed to meet its burdens of production and proof on this issue.

FINDING

The protest is denied as to this issue.

DEPARTMENT OF STATE REVENUE

02-990630.LOF

LETTER OF FINDINGS NUMBER: 99-0630
Adjusted Gross Income Tax
For the Years 1992-1997

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. Adjusted Gross Income Tax-Net Operating Losses

Authority: Ind. Code § 6-3-2-2.6; 45 IAC 3.1-1-9; I.R.C. § 382.

Taxpayer protests the assessment of taxes based on the auditor's disallowance of net operating loss carryforwards after the taxpayer had merged with another company.

II. Tax Administration - Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2(b).

Taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is a company engaged in heating, ventilation, air conditioning and refrigeration manufacturing and sales. Taxpayer filed consolidated returns for federal tax purposes for several years; however, taxpayer filed Indiana returns for only one entity with Indiana nexus for those years. Prior to 1988, taxpayer's predecessor was a publicly-traded corporation with significant net operating losses. In 1988, taxpayer's predecessor became a closely-held corporation. Between 1988 and 1991, taxpayer incurred further net operating losses, with some offsets. In late 1991, taxpayer's predecessor and another affiliated company merged to form taxpayer's present business. On taxpayer's Indiana corporate income tax returns, taxpayer carried over predecessor's net operating losses. On taxpayer's pro forma federal tax return for taxpayer, no net operating loss carryforward was shown.

Upon audit, the Department made several adjustments, including the disallowance of taxpayer's net operating loss carryovers from the predecessor. All other issues have been resolved with the exception of net operating loss carryovers and penalties, which taxpayer has protested.

I. Adjusted Gross Income Tax-Net Operating Losses

DISCUSSION

Taxpayer protests the imposition of adjusted gross income tax, and more particularly the disallowance of net operating loss carryovers after its merger. Ind. Code § 6-3-2-2.6 states:

(a) This section applies to a corporation or a nonresident person, for a particular taxable year, if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, derived from sources within Indiana is the remainder determined under STEP FOUR of the following formula:

STEP ONE: Determine, in the manner prescribed in section 2 of this chapter, the taxpayer's adjusted gross income, for the taxable year, derived from sources within Indiana, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.

STEP TWO: Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5, and that are derived from sources within Indiana.

STEP THREE: Enter the larger of zero (0) or the amount determined under STEP TWO.

STEP FOUR: Subtract the amount entered under STEP THREE from the amount determined under STEP ONE.

(b) For purposes of STEP TWO of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of STEP TWO of subsection (a), the amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's income derived from sources within Indiana is determined, under section 2 of this chapter, for the same taxable year during which each loss was incurred. Also, for purposes of STEP TWO of subsection (a), the following procedures apply:

(1) The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.

(2) A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a negative number.

(3) A modification that is to be subtracted from federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a positive number.

(4) A net operating loss under this section shall be considered even though in the year the taxpayer incurred the loss the taxpayer was not subject to the tax imposed under section 1 of this chapter because the taxpayer was:

(A) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or

(B) an insurance company subject to tax under Section 831

In effect, three prongs must occur for a deduction for net operating losses to offset Indiana adjusted gross income. First, a corporation must have incurred a net operating loss in a given year. Second, a corporation must have some portion of its Indiana

adjusted gross income apportionable or allocable to Indiana for the year in which the net operating loss is incurred. Third, a corporation must have its adjusted gross income on its federal return reduced by a net operating loss for the taxable year in which it seeks to use the offset for Indiana purposes. Once a corporation meets these three prongs, the portion of the net operating loss deemed to be incurred to Indiana sources may be carried back and carried forward in the same manner as taxpayer may elect on its federal return. 45 IAC 3.1-1-9. If a corporation is deemed to have acquired a predecessor's net operating loss for federal tax purposes, then the net operating loss is treated as passing to the successor corporation for Indiana purposes as well. *Id.*

In this case, audit stated that taxpayer was not able to carry its net operating losses forward from 1992, after a corporate reorganization. In particular, the auditor noted that, due to the fact that taxpayer is a different corporation from the predecessor, the taxpayer was unable to carryforward its predecessor's net operating losses. The auditor also noted that I.R.C. § 382, which limits the use of certain tax attributes in the event of an ownership change, precluded the taxpayer's use of net operating loss carryforwards.

Relevant to this analysis is I.R.C. § 382(g). Under I.R.C. § 382(g), net operating losses are partially or totally limited if taxpayer experiences an increase of fifty percent of the aggregate shares owned by shareholders owning five or more percent of the corporation over a three-year period. In the merger, taxpayer's overall ownership did not change; instead, two predecessor corporations with common ownership merged. As a result, the taxpayer was able, within the meaning of federal law, to carry forward the net operating losses of its predecessor, and thus its carryover was otherwise permitted under Indiana law.

Taxpayer has maintained that its lack of carryover of net operating losses on its pro forma tax returns for the separate company failed to show the net operating loss because of an internal error in its preparation of those returns. Regardless of this issue, taxpayer has otherwise properly computed its net operating losses in accordance with Indiana law for the years in question.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration-Penalty

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. Ind. Code 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's has provided sufficient information that its position was not negligent, but rather due to the exercise of reasonable care on the part of taxpayer.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

1820010162.LOF

LETTER OF FINDINGS: 01-0162
Financial Institutions Tax
For the Years 1992 through 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Constitutionality of the Indiana Financial Institutions Tax.

Authority: U.S. Const. art. I, § 8; Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1974); IC 6-5.5-1-12; IC 6-5.5-1-12, 13; IC 6-5.5-1-17(a); IC 6-5.5-1-18; IC 6-5.5-2-1(a); IC 6-5.5-2-2; IC 6-5.5-2-3; IC 6-5.5-3-1(6); IC 6-5.5-5-1(a).

Taxpayer argues that it does have an Indiana nexus and that the imposition of the Financial Institutions Tax (FIT) violates the Commerce Clause and is unconstitutional.

II. Computational Errors.

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayer maintains that the Department of Revenue (Department) audit report contains numerous computational errors; taxpayer asks that the Department's audit personnel return to taxpayer's out-of-state business location and explain the basis for the audit report's methodology and conclusions.

III. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c)

Taxpayer states that because of the Department's mistaken conclusions as to the applicability of the FIT and because of the Department's numerous computation errors, the ten-percent negligence penalty should be abated in its entirety.

STATEMENT OF FACTS

Taxpayer is an out-of-state bank holding company. Taxpayer – along with its subsidiaries – provides a variety of consumer and commercial financial services. Beginning in 1999 and extending through 2001, the Department conducted an audit review of taxpayer's 1992 through 1996 business records and tax returns. The final audit report was completed in February 2001. The report found that taxpayer had failed to submit FIT returns and that it owed unpaid taxes for three of the years considered during the review process. As a result, in May 2001 the Department issued notices of "Proposed Assessment" for 1992, 1993, and 1996 in which taxpayer was billed for additional tax. Taxpayer determined that the assessments were incorrect and submitted a protest to that effect during June 2001.

There is nothing in the record indicating that the Department acted on the protest letter until June 2003 when the original protest was submitted for administrative review. There is nothing in the record which indicates that taxpayer chose to pursue its initial protest after it submitted the 2001 protest letter.

Taxpayer was notified in June 2003 that its protest was being administratively reviewed and that it was entitled to participate in a hearing and to submit additional information justifying the basis for the protest. From June 2003 until May 2004, taxpayer took no further action and declined the opportunity to participate in an administrative hearing or to provide additional documentation to substantiate the protest. Consequently, this Letter of Findings is based upon the contents of the original June 2001 protest letter and on phone conversations which took place with taxpayer's representative.

DISCUSSION

I. Constitutionality of the Indiana Financial Institutions Tax.

Taxpayer maintains that it is not subject to Indiana's FIT because it does not have nexus with the state and that the Department's attempt to assess the tax offends the Commerce Clause (U.S. Const. art. I, § 8). Taxpayer asks the Department to "please withdraw this assessment."

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 the FIT, a "'[t]axpayer' means a corporation that is transacting the business of a financial institution in Indiana, 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 FIT is imposed on both "nonresident taxpayers" and "resident taxpayers" transacting the business of a financial institution within this state. IC 6-5.5-1-12, 13. The statute defines a "nonresident taxpayer" as "a taxpayer that (1) is transacting business within Indiana as provided in IC 6-5.5-3; and (2) has its commercial domicile outside Indiana." IC 6-5.5-1-12. A resident taxpayer, not filing a combined return, determines its FIT liability based on the resident taxpayer's adjusted gross income from whatever source derived. IC 6-5.5-2-2. In contrast, a nonresident taxpayer determines its FIT liability based on its apportioned income consisting of

the taxpayer's adjusted gross income "multiplied by the quotient of (1) the taxpayer's total receipts attributable to transacting business in Indiana... divided by (2) the taxpayer's total receipts from transacting business in all jurisdictions...." IC 6-5.5-2-3.

The FIT definition of "transacting business" within this state includes the activities of a company which "regularly engages in transactions with customers in Indiana that involve intangible property, including loans... [that] result in receipts flowing to the taxpayer from within Indiana." IC 6-5.5-3-1(6).

Taxpayer challenges the three-year FIT assessment on the ground that taxpayer does not have a substantial nexus with Indiana. In Complete Auto Transit Inc. v. Brady, 430 U.S. 274 (1974), the Supreme Court stated that a tax will not be deemed to interfere with interstate commerce when it "is applied to an activity with a substantial nexus within the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the state." Id. at 279.

The Department must disagree with taxpayer's contention that the assessment of the FIT is unconstitutional because, during 1992 through 1996, taxpayer owned subsidiaries which were doing business within Indiana and because those subsidiaries were earning money from business activities conducted within the state. Taxpayer does not challenge the determination that the subsidiaries were members of taxpayer's "unitary group" as defined under IC 6-5.5-1-18. Taxpayer's constitutional argument does not avoid the fact that it was required to file a combined return reporting the financial activities of the unitary group under IC 6-5.5-5-1(a). "[A] unitary group consisting of least two (2) taxpayers *shall file* a combined return covering all the operations of the unitary business and including all of the members of the unitary business." Id. (*Emphasis added*).

Taxpayer has provided nothing upon which to base its conclusion that the FIT assessment was not based upon a fair apportionment of the unitary group's business, that the assessment was unrelated to the services the subsidiaries received from this state, or that assessment impedes interstate commerce.

Taxpayer is a banking holding company conducting – by means of its subsidiaries – the business of a financial institution within Indiana. Therefore, it was required to timely file FIT returns reporting the adjusted gross income of its unitary group. To the extent that taxpayer challenges the constitutionality of the FIT as applied to non-resident companies having only an "economic nexus" with Indiana, the Department declines to address the question because the Department will not overturn a tax scheme crafted by the state legislature based upon taxpayer's facial constitutional challenge and because the Department does not agree with taxpayer's argument that it has only an abstract economic presence within this state.

FINDING

Taxpayer's protest is denied.

II. Computational Errors.

Taxpayer argues the FIT assessment is erroneous because the original audit report contains numerous and substantial mistakes. As taxpayer states, "There are too many corrections that need to be made to the audit's workpapers, that they can't be all listed in this protest." Among other errors, taxpayer complains that the audit workpapers employ an "Indiana credit factor" but does not explain how the factor was calculated. Taxpayer maintains that the amount of gross receipts does not take into account foreign branch gross income and that there are errors in the calculation of foreign source income and foreign gross receipts. In addition, taxpayer complains that the audit relied upon information contained within its annual report "but does not take into account that there is foreign source income in these numbers."

Taxpayer failed to file FIT returns for the years considered by the audit review. IC 6-8.1-5-1(a) states that, "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 for the best information available to the department." At the time the Department conducted the audit review, taxpayer was unable to provide the requested information because – according to the taxpayer – the information simply did not exist. Taxpayer explained that because of changes in its structure, mergers with other banks, the discharge of certain key personnel, and because of certain storage problems – including a warehouse fire – it was not possible to provide the detailed financial information requested. Because the information was not available, the Department extrapolated information from 1996 in order to project income for 1992 through 1995. In addition, the department relied upon information contained with taxpayer's annual and 10-K reports.

Taxpayer now complains that the methodology employed by the audit was flawed. However, taxpayer has provided no specific basis for challenging the audit report's conclusions. Instead – seeing itself deeply aggrieved – expects that the Department will return to its corporate headquarters, reexamine the same incomplete records, and arrive at different results after having explained and justified each and every step of the audit process.

The original audit examination was conducted over a period extending from approximately 1999 through 2001. There is not a shred of substantive evidence which would justify revisiting this lengthy audit process based simply upon taxpayer's dissatisfaction with the results of the original audit when that report was based upon the information – albeit incomplete – which the taxpayer itself supplied to the audit. In addition, it should be noted that taxpayer declined the opportunity to provide additional information during the 11-month administrative review process and declined the opportunity to take part in an administrative hearing during which it would have the opportunity to more fully explain the basis for its complaint.

Faced with a taxpayer which failed to file FIT returns for five years, the audit relied upon the abbreviated information which

taxpayer provided. The audit was entirely justified in making "a proposed assessment of the amount of the unpaid tax on the basis for the best information available to the Department." IC 6-8.1-5-1(a). After the Department's audit personnel reviewed the available records, after the personnel consulted with taxpayer's representatives, and after those personnel prepared the final audit report, it was the taxpayer's responsibility to provide a basis for refuting that report. IC 6-8.1-5-1(b) states that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. 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 its burden of demonstrating that the proposed assessments are incorrect.

FINDING

Taxpayer's protest is denied.

III. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer asks that the Department exercise its discretion to abate the ten-percent negligence penalty. In its June 2001 protest letter, taxpayer maintains simply that "no penalties should be assessed."

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayer did not file FIT tax returns, was audited during by the Department, and was assessed for three years of unpaid taxes. Taxpayer is a substantial, sophisticated business receiving large amounts of money from sources within Indiana. Taxpayer's larger constitutional question aside, the decision to overlook this state's FIT is not the evidence of the "ordinary business care and prudence" expected of an "ordinary reasonable taxpayer" that would warrant abatement of the ten-percent negligence penalty.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020061.LOF

LETTER OF FINDINGS NUMBER: 02-0061
Sales and Use Tax
For the Years 1998-1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax-Utilities

Authority: IC 6-8.1-5-1, IC 6-8.1-5-4, IC 6-2.5-2-1, IC 6-2.5-3-2 (a), IC 6-2.5-5-5.1.

The taxpayer requests a credit for sales taxes paid on utilities.

II. Sales and Use Tax-Imposition of Use Tax

Authority: IC 6-2.5-3-2(a).

The taxpayer protests the imposition of use tax on several items.

STATEMENT OF FACTS

The taxpayer is a roofing contractor. The Indiana Department of Revenue, hereinafter referred to as the "department," audited the taxpayer and assessed additional sales and use tax, interest, and penalty. The taxpayer protested a portion of this assessment and requested a credit for a portion of the sales taxes paid on utilities. The department requested several items of documentation from the taxpayer. The taxpayer did not provide the requested documentation. A hearing was scheduled and the taxpayer's representative was notified. No one appeared on behalf of the taxpayer. This Letter of Findings is based upon the contents of the file.

I. Sales and Use Tax-Utilities

DISCUSSION

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. Taxpayers are required to keep and produce at the department's request any books and records necessary for the

department to determine the taxpayer's correct tax liability. IC 6-8.1-5-4.

Indiana imposes a sales tax on the transfer of property in a retail transaction. IC 6-2.5-2-1. Complementary to the sales tax, Indiana imposes an excise 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 (a). Purchases of electricity in Indiana are subject to the sales/use tax unless they are "consumed in the direct production of other tangible personal property in his business of manufacturing" IC 6-2.5-5-5.1. During the audit period, the taxpayer paid sales tax on its purchases of electricity. The taxpayer requested a credit for sales taxes paid on the electricity that was consumed in its direct production process. However, the taxpayer never presented the department with any documentation to substantiate its request for credit. The taxpayer did not sustain its burden of proving that the department's refusal to grant a credit was incorrect.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax-Imposition of Use Tax

DISCUSSION

Pursuant to IC 6-2.5-3-2(a), the department assessed use tax on several items of tangible personal property which the taxpayer purchased and used. These items included additional capital assets, a hyster, small tools, supplies for a contract job, copper coil, crane rentals, and paint. The taxpayer was asked to submit specific documentation for each item that would prove that use tax was not due on the item. The taxpayer failed to submit any of this documentation. Therefore, the taxpayer did not sustain its burden of proving that the use tax was improperly imposed on the protested items.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020435.LOF

LETTER OF FINDINGS NUMBER: 02-0435
Sales and Use Tax
For the Years 1998- 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax-Imposition

Authority: IC 6-8.1-5-1, IC 6-2.5-3-2 (a), IC 6-2.5-5-3 (b), 45 IAC 2.2-5-8.

The taxpayer protests the imposition of use tax.

II. Tax Administration-Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b). 45 IAC 2.2-5-8 (c),

The taxpayer protests the imposition of the ten percent (10 %) negligence penalty.

STATEMENT OF FACTS

The taxpayer manufactures metal component sheets cut to customer specifications. The taxpayer slits, shears, levels, and cuts metal sheets for use in the manufacture of automobiles, appliances, computer housings, farm equipment, and a variety of other manufactured products. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested the assessment of use tax on replacement parts for certain cranes and the penalty. A hearing was held on these issues. This Letter of Findings results.

I. Sales and Use Tax-Imposition

DISCUSSION

The taxpayer purchased parts to overhaul overhead cranes for bay 2 and bay 3 without paying sales tax at the point of purchase or self assessing use tax. The overhead cranes for bay 2 and 3 are used to move heavy metal coils from trucks into storage 30% and 40% of the time respectively. The cranes are used to remove the metal coils from storage to the first production machine 70% and 60% of the time for bays 2 and 3 respectively. The taxpayer protested the department's assessment of use tax on the percentage of the repair parts used for moving the metal coils from storage to the spindle.

Indiana imposes an excise tax on tangible personal property stored, used or consumed in Indiana. IC 6-2.5-3-2 (a). There are several statutory exemptions from the use tax. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. The taxpayer bears the burden of showing that any item meets the tests to qualify for

exemption.. IC 6-8.1-5-1.

The taxpayer contends that the protested replacement parts for the overhead cranes in Bays 1 and 2 qualified for exemption from the use tax pursuant to the following provisions of IC 6-2.5-5-3 (b):

> Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

This exemption is clarified at 45 IAC 2.2-5-8 (c) as follows:

> The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

The exemption is explained as applying to repair and replacement parts of exempt machinery at 45 IAC 2.2-5-8(h)(2):

> Replacement parts, used to replace worn, broken, inoperative or missing parts or accessories on exempt machinery and equipment, are exempt from tax.

The regulation concerns the exemption of machinery if it is used in an integral and essential manner in the production process. To qualify for exemption, machinery must have an immediate effect on the production of the end product. It can only have an immediate effect if it touches and affects the raw material in such a way as to actually change it. Machinery is exempt only if it is used during the production process, not before the production process begins or after the production process ends. In the taxpayer's situation, the integrated production process begins at the first machine that has an immediate effect on the product. That first step in the integrated production process would be the spindle holding the coils for the slit-to-length or shearing machines. The movement of steel from storage to this point does not qualify for exemption.

The taxpayer contends that the taxability of the subject tangible personal property should be governed by the following example set out at 45 IAC 2.2-5-8(f)(12):

> A crane is used 40% of the time for the purpose described in Example (8), and 60% of the time to move raw materials from the stockpile to a production machine for processing. The taxpayer is entitled to an exemption equal to 60% of the gross retail income attributable to the transaction in which the crane was purchased.

The purpose referred to in the previous example is found at 45 IAC 2.2-5-8(f)(8) as follows:

> A truck is used on the federal highway and must be registered with the Indiana bureau of motor vehicles for highway use. The truck is used to transport a finished component part from the last step of a production process to be introduced into another integrated production process at another business location. The truck is taxable.

The taxpayer's example of exempt transportation does not apply in this situation. Example 12 refers to moving material from a stockpile in an integrated production process to a machine in that process rather than moving material to the beginning of an integrated production process as in example 8. The first step in the taxpayer's integrated production process is the spindle holding the steel for treatment by machines. The cranes at issue move raw material to that first step. Therefore, example 8 more closely resembles taxpayer's situation. The truck in example 8 is taxable. Likewise, the taxpayer's cranes and their repair parts are taxable.

FINDING

The taxpayer's protest is denied.

I. 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 failed to pay sales tax or self assess use tax on several clearly taxable items such as office supplies, office telephones, office computers, logo golf balls, and warehouse supplies. In a previous audit, the taxpayer was also assessed additional use tax on office supplies. The taxpayer's inattention to its duty to pay these taxes during this audit period constitutes negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020568.LOF

LETTER OF FINDINGS NUMBER: 02-0568
Sales and Use Tax
For the Years 1999- 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration- Interest

Authority: IC 6-8.1-5-1(b), IC 6-8.1-10-1(a)(e).

The taxpayer protests the imposition of interest.

II. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer operated a gas station. After an audit, the taxpayer was assessed additional sales and use tax, interest, and penalty. The taxpayer protested the assessment of penalty and interest and a hearing was scheduled. The taxpayer failed to appear. This Letter of Findings is based upon the documentation in the file.

I. Tax Administration- Interest

DISCUSSION

All tax assessments are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC 6-8.1-5-1(b).

The department assessed interest against the taxpayer pursuant to IC 6-8.1-10-1(a) as follows:

> 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.

In this case, the taxpayer had a sales and use tax deficiency. The department, pursuant to the terms of the statute, imposed interest. IC 6-8.1-10-1(e) states that "the department may not waive the interest imposed under this section." Therefore, the department has no authority to waive the interest assessment.

FINDING

The taxpayer's protest is denied.

II. 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 purchased miscellaneous supplies on which sales tax was not paid at the point of purchase. The taxpayer's disregard of its duty to self assess and remit use tax on these purchases constitutes negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420030148.LOF

LETTER OF FINDINGS NUMBER: 03-0148
Sales Tax and Withholding Tax
Responsible Officer
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.

ISSUES

1. Sales Tax and Withholding Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-3-4-8(f), IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan, 654 N.E.2nd 270 (Ind. 1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes

STATEMENT OF FACTS

The taxpayer was an incorporator and secretary of a corporation that did not properly remit collected sales and withholding taxes to the state during the tax period 2000-2002. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the additional sales taxes, withholding taxes, interest and penalty against the taxpayer as a responsible officer. The taxpayer protested the assessment of tax and penalty. A hearing was held and this Letter of Findings results.

1. Sales Tax and Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against Taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Pursuant to Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270 (Ind. 1995) at page 273: "The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid." The factors considered to determine whether a person has such authority are the following:

1. The person's position within the power structure of the corporation;

2. The authority of the officer as established by the Articles of Incorporation, By-laws or employment contract; and

3. Whether the person actually exercised control over the finances of the business including control of the bank account, signing checks and tax returns or determining when and in what order to pay creditors.

The taxpayer was one of the incorporators and the secretary of the corporation. She was a signatory on the bank accounts. She prepared payment vouchers for the remittance of taxes to the state. She received regular reports from the accountant that should have made her aware of the tax liability. As an example, the 2001 year end statement indicated that the corporation had serious financial problems and had not remitted all of the collected sales taxes to the state. The taxpayer was on notice that the proper taxes were not being remitted. She had the authority to remit those taxes on behalf of the corporation and chose not to. Therefore, she exercised control over the decision of not remitting the trust taxes. In accord with the finding of the Safayan case, the taxpayer had the requisite duty to remit trust taxes to the state. Therefore, she was a responsible officer, personally liable for those corporate taxes.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120030440.LOF

LETTER OF FINDINGS NUMBER: 03-0440
Adjusted Gross Income Tax
For the Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position

concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax-Disallowance of Exemptions

Authority: IC 6-8.1-5-1(b), IC 6-3-1-35(a)(3),(4), IC 6-3-1-3.5(a)(5)(A), 26 USCA 151(c)(1)(B), 26 USCA 151(d)(2), 45 IAC 3.1-1-5(b)(4).

The taxpayer protests the disallowance of certain exemptions.

STATEMENT OF FACTS

In 2000, the taxpayer had a son who was 19 years old and a full time student. The taxpayer claimed his son as an exemption on his 2000 IT-40 on line 8 and as an additional exemption on line 9. The taxpayer did not claim his son as an exemption on his 2000 federal 1040; thus allowing the son to take advantage of the federal education credits on his own federal return. The Indiana Department of Revenue, hereinafter referred to as the "department," disallowed the exemptions. The taxpayer protested the disallowance and a telephone hearing was held. This Letter of Findings results.

I. Adjusted Gross Income Tax-Disallowance of Exemptions

DISCUSSION

All tax assessments are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC 6-8.1-5-1(b).

The taxpayer argues that he was legitimately entitled to claim all exemptions on his state return even though he chose to claim only one exemption on the corresponding federal return. The taxpayer maintains that his decision, not to claim his dependent child on the federal return, did not preclude him from claiming that child on the state return.

Insofar as relevant to the taxpayer's "Line 8" deductions, IC 6-3-1-3.5(a)(3),(4) states that the Indiana taxpayer is to "Subtract one thousand dollars ($1,000.), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars ($1,000). Subtract one thousand dollars ($1,000) for each of the exemptions provided by Section 151 (c) of the Internal Revenue Code." Insofar as relevant to the taxpayer's "Line (9)" deductions, IC 6-3-1-3.5(a)(5)(A) permits an Indiana taxpayer to "subtract one thousand five hundred dollars ($1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996."

The statutory formula is straightforward; an Indiana taxpayer may claim a $1,000 exemption on line 8 of his Indiana return if that exemption is allowed under Section 151(c) The Indiana taxpayer may claim a $1,500 deduction on line 9 of his Indiana return if that exemption is allowed under Section 151(c)1)(B). There is nothing apparent in the statute which requires-as a condition precedent to claiming those Indiana exemptions-that the taxpayer first claim the identical exemptions on his federal return.

The explanatory language on the 1999 IT-40 return is equally straightforward: line eight on the form states that the taxpayer is to report the "[n]umber of exemptions claimed on your federal return." The IT-40 also states that the taxpayer is entitled to claim an "a]dditional exemption for certain dependent children" and to report that number on line nine.

Relevant to line eight, the Department's accompanying instructional booklet states that, "You are allowed a $1,000 exemption on your Indiana tax return for each *exemption you claim on your federal return.*" (Emphasis added.) Relevant to line nine, the booklet states that, "An additional exemption, which has been increased to $1,500, is allowed for certain dependent children." On their face, the IT-40 directions would seem to preclude taxpayer from claiming the dependent child on his state return when he declined to report the otherwise qualifying dependent child on the federal return. The mandatory nature of the instructional language is reinforced by 45 IAC 3.1-1-5(b)(4) which directs the taxpayer to "[s]ubtract $1000 for each exemption taken on the Federal return for taxpayer or spouse aged 65 or above..." and to subtract "$500 [now $1,500] *for each exemption taken on the Federal return* for a qualified dependent." (Emphasis added.)

The instructions printed on the Indiana tax form, the accompanying instructional booklet, and the Department's regulation preclude an Indiana taxpayer from claiming an exemption unless the exemption has also been claimed on the corresponding federal return.

Additionally, the taxpayer argued that the Indiana law concerning the dependent exemptions requires only that the taxpayer be allowed to take the child as a dependent on a federal return. The law does not require that the child actually be taken as an exemption on the federal return. However, each federal exemption can only be used by one taxpayer. 26 USCA 151(d)(2) states as follows:

> In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual shall be zero.

In this case, the child used his federal deduction for personal exemption on his own federal return. Therefore, the taxpayer was not allowed to take it on his return even though the son met the other requirements for consideration as a dependent. Consequently, the taxpayer was not entitled to take the child as a dependent on his state return either.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

03-20030443P.LOF

LETTER OF FINDINGS NUMBER: 03-0443P
Withholding Tax
For the Calendar Year 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 – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

II. Tax Administration - Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The late penalty and interest were assessed on the late payment of required Indiana withholding for non-resident partners for the calendar year 2002.

The taxpayer is a company located out-of-state.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error was the result of misinformation from a Department employee. Furthermore, the taxpayer feels the requirement that the partnership withhold is moot since the nonresident partners file Indiana tax returns.

With regard to the misinformation, the Department points out that the conversation with the Department employee happened two weeks after the due date for the filing of the withholding return. As there is no way the conversation with the Department employee could allow for a timely filing of the withholding return, the taxpayer fails to establish reasonable cause on this point.

With regard to the Indiana regulation which requires partnership withholding, Indiana law requires the Department to follow the law in applying guidelines for tax compliance. As Indiana regulation 45 IAC 3.1-1-107(a) states the partnership is required to withhold on nonresident partners, the Department is required by law to see that the taxpayer in question properly withholds.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. As inattention is negligence and subject to penalty, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

I. Tax Administration – Interest

Interest may not be waived according to statute. IC 6-8.1-10-1.

DEPARTMENT OF STATE REVENUE

0220040012.LOF

LETTER OF FINDINGS NUMBER: 04-0012
Adjusted Gross Income Tax
For the Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position

concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax-Disallowance of Exemptions

Authority: IC 6-8.1-5-1(b), IC 6-3-1-3.5(a)(3),(4), IC 6-3-1-3.5(a)(5)(A), 26 USCA 151(c)(1)(B), 26 USCA 151(d)(2), 45 IAC 3.1-1-5(b)(4).

The taxpayer protests the disallowance of certain exemptions.

STATEMENT OF FACTS

In 2000, the taxpayer had a son who was 19 years old and a full time student. The taxpayer claimed his son as an exemption on his 2000 IT-40 on line 8 and as an additional exemption on line 9. The taxpayer did not claim his son as an exemption on his 2000 federal 1040; thus allowing the son to take advantage of his personal exemption on his own federal return. The Indiana Department of Revenue, hereinafter referred to as the "department," disallowed the exemptions. The taxpayer protested the disallowance and a hearing was held. This Letter of Findings results.

I. Adjusted Gross Income Tax-Disallowance of Exemptions

DISCUSSION

All tax assessments are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC 6-8.1-5-1(b).

The taxpayer argues that he was legitimately entitled to claim all exemptions on his state return even though he chose not to claim his son's exemption on the corresponding federal return. The taxpayer maintains that his decision, not to claim his dependent child on the federal return, did not preclude him from claiming that child on the state return.

Insofar as relevant to the taxpayer's "Line 8" deductions, IC 6-3-1-3.5(a)(3),(4) states that the Indiana taxpayer is to "Subtract one thousand dollars ($1,000.), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars ($1,000). Subtract one thousand dollars ($1,000) for each of the exemptions provided by Section 151 (c) of the Internal Revenue Code." Insofar as relevant to the taxpayer's "Line (9)" deductions, IC 6-3-1-3.5(a)(5)(A) permits an Indiana taxpayer to "subtract one thousand five hundred dollars ($1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996."

The statutory formula is straightforward; an Indiana taxpayer may claim a $1,000 exemption on line 8 of his Indiana return if that exemption is allowed under Section 151(c) The Indiana taxpayer may claim a $1,500 deduction on line 9 of his Indiana return if that exemption is allowed under Section 151(c)1)(B). There is nothing apparent in the statute which requires-as a condition precedent to claiming those Indiana exemptions-that the taxpayer first claim the identical exemptions on his federal return.

The explanatory language on the 1999 IT-40 return is equally straightforward: line eight on the form states that the taxpayer is to report the "[n]umber of exemptions claimed on your federal return." The IT-40 also states that the taxpayer is entitled to claim an [a]dditional exemption for certain dependent children" and to report that number on line nine.

Relevant to line eight, the Department's accompanying instructional booklet states that, "You are allowed a $1,000 exemption on your Indiana tax return for each *exemption you claim on your federal return.*" (Emphasis added.) Relevant to line nine, the booklet states that, "An additional exemption, which has been increased to $1,500, is allowed for certain dependent children." On their face, the IT-40 directions would seem to preclude taxpayer from claiming the dependent child on his state return when he declined to report the otherwise qualifying dependent child on the federal return. The mandatory nature of the instructional language is reinforced by 45 IAC 3.1-1-5(b)(4) which directs the taxpayer to "[s]ubtract $1000 for each exemption taken on the Federal return for taxpayer or spouse aged 65 or above..." and to subtract "$500 [now $1,500] *for each exemption taken on the Federal return* for a qualified dependent." (Emphasis added.)

The instructions printed on the Indiana tax form, the accompanying instructional booklet, and the Department's regulation preclude an Indiana taxpayer from claiming an exemption unless the exemption has also been claimed on the corresponding federal return.

Additionally, the taxpayer argued that the Indiana law concerning the dependent exemptions requires only that the taxpayer be allowed to take the child as a dependent on a federal return. The law does not require that the child actually be taken as an exemption on the federal return. However, each federal exemption can only be used by one taxpayer. 26 USCA 151(d)(2) states as follows:

> In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual shall be zero.

In this case, the child used his federal deduction for personal exemption on his own federal return. Therefore, the taxpayer was not allowed to take it on his return even though the son met the other requirements for consideration as a dependent. Consequently, the taxpayer was not entitled to take the child as a dependent on his state return either.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320040059P.LOF

LETTER OF FINDINGS NUMBER: 04-0059P
Withholding Tax
For the months July & August 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2; West Publishing Co. v. Ind. Dept of Revenue (1988), Ind. Tax. 524 N.E.2d 1329, 1333.

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of monthly withholding tax returns for the months July & August 2003.

The taxpayer is a company located in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the error was the result of misinformation from a Department employee.

The taxpayer's computer system was affected by a computer virus. The taxpayer was unable to operate the parallel system as the parallel system (which was at the taxpayer's POA office) was also affected by said computer virus. Because of this situation, the taxpayer was unable to obtain the information necessary to complete the withholding tax returns.

The Department states the taxpayer could have made an estimated payment. Both the taxpayer and the Department agree an estimated tax payment could have been made.

However, according to the taxpayer's POA, the POA was not aware an estimated payment was allowed by the Department. The POA called the Department prior to the due date to find out what could be done about the situation. The POA talked to an unidentified clerk in Taxpayer Services. The POA asked the clerk what could be done but received no answer.

With regard to the misinformation from the Department employee, the taxpayer provides no clear evidence that the Department employee made a misrepresentation. "The state will not be estopped in the absence of clear evidence that its agents made representations upon which the party asserting estoppel relied." West Publishing Co. v. Ind. Dept of State Revenue (1988), Ind. Tax 524 N.E.2d 1329, 1333. Thus, as the taxpayer is unable to provide clear evidence of a misrepresentation from a Department employee, the taxpayer fails to establish reasonable cause for filing late.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. As inattention is negligence and subject to penalty, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

43-20040139.LOF

LETTER OF FINDINGS NUMBER: 04-0139
Underground Storage Tank Fees
For The Tax Periods 1991-2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position

concerning a specific issue.

ISSUE

I. Underground Storage Tank Fees – Imposition

Authority: Ind. Code § 6-8.1-1-1, Ind. Code § 6-8.1-1-6, Ind. Code § 13-11-2-150; Ind. Code § 13-11-2-158; Ind. Code § 13-23-12-1; Ind. Code § 29-1-7-23; *Ind. Dept. of State Revenue v. Estate of Riggs*, 735 N.E.2d 340 (Ind. Tax 2000)

Taxpayer protests the assessment of the underground storage tank owner registration fee.

STATEMENT OF FACTS

Taxpayer was assessed underground storage tank fees for the periods of 1991 through 2003. Taxpayer is the estate of a decedent ("Decedent") who operated a gas station prior to his death on October 2, 2001. Decedent had operated the gas station jointly with his brother, who passed away on January 8, 1999 and whose interest in the real estate on which the filling station was located passed to Decedent. Taxpayer protests the assessment of the fees for the years in question.

I. Underground Storage Tank Fees – Imposition

DISCUSSION

The underground storage tank fee is administered by the Indiana Department of Revenue per IC § 6-8.1-1-6 which states in relevant part: "The provisions of this article apply for the purposes of imposing, collecting, and administering the listed taxes." The fee is based on IC §13-23-12-1 and constitutes a listed tax by inclusion in the definition of "Listed taxes" at IC § 6-8.1-1-1.

IC 13-23-12-1 states:

(a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:

(1) rules adopted under IC 13-23-1-2; or

(2) a requirement imposed by the commissioner before the adoption of rules under IC 13-23-1-2;

shall pay to the department of state revenue an annual registration fee.

(b) The annual registration fee required by this section is as follows:

(1) Ninety dollars ($90) for each underground petroleum storage tank.

(2) Two hundred forty-five dollars ($245) for each underground storage tank containing regulated substances other than petroleum.

(c) If an underground storage tank consists of a combination of tanks, a separate fee shall be paid for each tank.

The term "owner" is defined by Ind. Code § 13-11-2-150, which states:

(a) "Owner", for purposes of IC 13-23 except as provided in subsection (b), means:

(1) for an underground storage tank that was:

(A) in use on November 8, 1984; or

(B) brought into use after November 8, 1984;

for the storage, use, or dispensing of regulated substances, a *person* [emphasis added] who owns the underground storage tank; or

(2) for an underground storage tank that is:

(A) in use before November 8, 1984; but

(B) no longer in use on November 8, 1984;

a person who owned the tank immediately before the discontinuation of the tank's use.

(b) "Owner", for purposes of IC 13-23-13, does not include a person who:

(1) does not participate in the management of an underground storage tank;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of regulated substances; and

(3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

Further, Ind. Code § 13-11-2-158 states in relevant part:

(a) "Person", for purposes of:

(1) IC 13-21;

(2) air pollution control laws;

(3) water pollution control laws; and

(4) environmental management laws, except as provided in subsections (c), (d), (e), and (h);

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, *an estate* [emphasis added], a municipal corporation, a city, a school city, a town, a school town, a school district, a school corporation, a county, any consolidated unit of government, political subdivision, state agency, a contractor, or any other legal entity.

***

(d) "Person", for purposes of IC 13-23, has the meaning set forth in subsection (a). The term includes a consortium, a joint venture, a commercial entity, and the United States government.

Taxpayer states that it did not own the property where the tanks were situated until October 2001. Further, Taxpayer states that Decedent's estate is also not the proper taxpayer because the interest in the property transferred to the decedent's heirs at the time of his death, and cites *Ind. Dept. of State Revenue v. Estate of Riggs*, 735 N.E.2d 340 (Ind. Tax 2000) for that proposition. With respect to the period prior to Decedent's death, Taxpayer was not the owner of the property in question. While the legal ownership passes to Decedent's heirs at the moment of death, an estate is an intermediary step to effect that transfer, and until the final transfer of title is effected, the estate, as a separate entity, is acting as a fiduciary for those heirs. Ind. Code § 29-1-7-23. At the time of billing, Taxpayer was the owner of the property, as defined by Ind. Code § 13-11-2-150, until such time as the property could properly be titled in the name of decedent's heirs. Further, within the meaning of Ind. Code §§ 13-11-2-150 and -158, Taxpayer, an estate, is a person responsible for payment of the fees in question, and thus is liable under Indiana law.

FINDING

The Taxpayer's protest is sustained in part and denied in part. Taxpayer is not liable for any fees due prior to October 2, 2001. However, Taxpayer is liable for fees subsequent to the aforementioned date to present.

DEPARTMENT OF STATE REVENUE

2820040217.LOF

LETTER OF FINDINGS NUMBER: 04-0217
Controlled Substance Excise Tax
For the Year 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax-Imposition

Authority: IC 6-7-3-5, IC 6-8.1-5-1(b).

The taxpayer protests the assessment of controlled substance excise tax.

STATEMENT OF FACTS

The taxpayer was arrested for possession of controlled substances. The local prosecutor requested in writing that the Indiana Department of Revenue assess the Controlled Substance Excise Tax. A Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand was issued on March 31, 2004, in a base tax amount of $23,253.75. The taxpayer filed a protest to the assessment. The taxpayer's representative waived the hearing and requested that the department's decision be based upon the documentation in the file. This Letter of Findings results.

I. Controlled Substance Excise Tax-Imposition

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of controlled substances in the State of Indiana. The taxpayer bears the burden of proving that the assessment of tax is incorrect. IC 6-8.1-5-1(b). The arresting officer's report and Indiana State Police Laboratory report indicate that the taxpayer was in possession of marijuana. Therefore, the Controlled Substance Excise Tax was properly imposed in this situation.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

2820040218.LOF

LETTER OF FINDINGS NUMBER: 04-0218
Controlled Substance Excise Tax
For the Year 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana

Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax-Imposition

Authority: IC 6-7-3-5, IC 6-8.1-5-1(b).

The taxpayer protests the assessment of controlled substance excise tax.

STATEMENT OF FACTS

The taxpayer was arrested for possession of controlled substances. The local prosecutor requested in writing that the Indiana Department of Revenue assess the Controlled Substance Excise Tax. A Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand was issued on March 31, 2004, in a base tax amount of $23,253.75. The taxpayer filed a protest to the assessment. The taxpayer's representative waived the hearing and requested that the department's decision be based upon the documentation in the file. This Letter of Findings results.

I. Controlled Substance Excise Tax-Imposition

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of controlled substances in the State of Indiana. The taxpayer bears the burden of proving that the assessment of tax is incorrect. IC 6-8.1-5-1(b). The arresting officer's report and Indiana State Police Laboratory report indicate that the taxpayer was in possession of marijuana. Therefore, the Controlled Substance Excise Tax was properly imposed in this situation.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE
REVENUE RULING #2004-01 ST
June 28, 2004

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until 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/Use Tax – Application of Sales/Use Tax to Purchase, Storage, Use and/or Consumption of Tangible Personal Property Utilized in Generating Electric Power – Manufacturing Exemption

Authority: IC 6-2.5-5-3, IC 6-2.5-5-5.1, IC 6-2.5-1-27

The taxpayer requests the Department to rule whether or not the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment and certain related consumables, such as syngas, is exempt from sales/use tax under the manufacturing exemption.

2. Sales/Use Tax - Application of Sales/Use Tax to Purchase, Storage, Use and/or Consumption of Tangible Personal Property Utilized in Generating Electric Power – Pollution Control Exemption

Authority: IC 6-2.5-5-30

The taxpayer requests the Department to rule whether or not the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment, is exempt from sales/use tax under the pollution control exemption.

STATEMENT OF FACTS

The taxpayer is a developer and manufacturer of electric power generators. In cooperation with certain customers, the taxpayer is demonstrating its technology in an effort to provide electricity through a method that will be "cleaner" than traditional methods commonly utilized. The taxpayer's technology generates electric power using fossil fuels through an electrochemical reaction without combustion which is unlike conventional fossil fuel power plants. By eliminating combustion, greater efficiencies are achieved while pollution is dramatically reduced.

In order to perform the dual purpose of providing customers with energy and to demonstrate its ability to generate cleaner energy more efficiently than current generation equipment, the taxpayer will install and operate syngas-fueled electric power generators at various sites. Specifically, the taxpayer has entered into a cooperative arrangement with an energy company and a federal government agency to develop a project using the taxpayer's electric power generating technology at an Indiana facility. Under the arrangement between the taxpayer and the energy company, the two parties will work together to provide energy at the Indiana facility. The Indiana facility is a seller of electricity. Under a subcontract between the Indiana facility and the taxpayer, the

taxpayer will supply "cleaner" electricity to the Indiana facility. The emissions of SOx and NOx associated with the production of electricity from the taxpayer's units will be below current and anticipated future environmental standards.

Under the terms of the applicable subcontract with the Indiana facility, the Indiana facility will provide the facility site, interconnect equipment, utility support, fuel supply and agree to purchase power from the demonstrated use of the taxpayer's technology. The taxpayer's electric power generator will be installed in the Indiana facility and will deliver power into the Indiana facility's system through the interconnect provided by the Indiana facility. The Indiana facility will utilize the power produced by the taxpayer's electric power generator at the Indiana facility. The Indiana facility will be responsible for obtaining all licenses and permits or amendments to its current licenses and permits required for the installation and operation of the taxpayer's electric power generator.

Under the terms of the controlling agreements, the taxpayer's on-site facility will produce power using its electric power generator, specifically, a syngas-fueled power generator. The Indiana facility will provide the fuel and will receive a reimbursement from the taxpayer for the fuel cost, land lease and other costs incurred by the Indiana facility. In turn, the Indiana facility will take the electricity produced by the taxpayer's electric power generator and will provide the taxpayer with a price adjustment for the electricity cost. This price adjustment is based on the number of kilowatts produced at the taxpayer's facility and delivered to the Indiana facility. The Indiana facility will consume all of the electric power generated by the electric power generator and the taxpayer will be compensated for such electric power through the price adjustment clause of the operating agreement.

ISSUE #1 – DISCUSSION

The taxpayer requests the Department to rule whether or not the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment and certain related consumables, such as syngas, is exempt from sales/use tax under the manufacturing exemption.

IC 6-2.5-5-3(b) states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquired it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

IC 6-2.5-5-5.1(b) states:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

IC 6-2.5-5-5.1(a) and IC 6-2.5-1-27 provide that electricity is defined as tangible personal property.

Here, the taxpayer is producing electricity at the Indiana facility and selling the electricity to the Indiana facility. That being the case, the taxpayer's production of electricity falls within the ambit of the above exemption statutes entitling the taxpayer to purchase, store, use and/or consume tangible personal property that is directly used or consumed in direct production exempt from sales/use tax.

This conclusion remains valid regardless of the taxpayer's dual purpose of providing customers with energy and demonstrating its ability to generate cleaner energy more efficiently.

ISSUE #1 – RULING

The Department rules that the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment and certain related consumables, such as syngas, is exempt from sales/use tax under the manufacturing exemption to the extent it is directly used or consumed in direct production of electricity.

ISSUE #2 – DISCUSSION

The taxpayer requests the Department to rule whether or not the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment, is exempt from sales/use tax under the pollution control exemption.

IC 6-2.5-5-30 states in relevant part:

Sales of tangible personal property are exempt from the state retail tax if:

1. the property constitutes, is incorporated into, or is consumed in the operation of a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards; and

2. the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining or agriculture.

It is clear then, for tangible personal property to be eligible for the environmental quality compliance exemption the tangible personal property must have been acquired for the purpose of complying with any state, local or federal environmental quality statute, regulation or standard. The taxpayer has not indicated that the purchase of its technology is required to comply with any

environmental quality statute, regulation or standard at this time, hence, the tangible personal property used for this technology is not exempt from sales/use tax under the pollution control exemption (environmental quality compliance exemption).

ISSUE #2 – RULING

The Department rules that the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment, is not exempt from sales/use tax under the pollution control exemption (environmental quality compliance exemption).

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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 25 INDIANA DEPARTMENT OF ADMINISTRATION

25 IAC 6	N	04-172	27 IR 3595	

TITLE 31 STATE PERSONNEL DEPARTMENT

31 IAC 1-9-4	A	04-170	27 IR 4049	
31 IAC 2-11-4	A	04-170	27 IR 4049	

TITLE 35 BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND

35 IAC 8-1-1	A	04-18	27 IR 2305	**27 IR 3868**
35 IAC 8-1-2	A	04-18	27 IR 2305	**27 IR 3868**
35 IAC 8-2-1	A	04-18	27 IR 2306	**27 IR 3869**
35 IAC 10	N	04-18	27 IR 2307	**27 IR 3870**
35 IAC 11	N	03-131	26 IR 3678	**27 IR 1164**
35 IAC 12	N	04-18	27 IR 2308	**27 IR 3871**

TITLE 45 DEPARTMENT OF STATE REVENUE

45 IAC 1.3	N	04-125	27 IR 3101	

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)
	N	04-174	27 IR 3603	*AROC (27 IR 3707)
50 IAC 21	N	02-297	27 IR 4050	

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 1-4-1	A	04-206	*ER (27 IR 4034)
65 IAC 1-4-5	A	04-206	*ER (27 IR 4034)
65 IAC 1-4-5.5	N	04-206	*ER (27 IR 4035)
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 4-342	N	04-169	*ER (27 IR 3085)
65 IAC 4-343	N	04-93	*ER (27 IR 2511)
65 IAC 4-344	N	04-201	*ER (27 IR 4026)
65 IAC 4-346	N	04-130	*ER (27 IR 2748)
65 IAC 4-347	N	04-193	*ER (27 IR 3584)
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 1-5-1	A	04-103	27 IR 3115	
68 IAC 2-3-5	A	04-103	27 IR 3115	
68 IAC 2-3-6	A	04-103	27 IR 3117	
68 IAC 2-3-9	A	04-103	27 IR 3118	
68 IAC 2-6-49	A	04-102	27 IR 3109	
68 IAC 2-7-12	A	04-102	27 IR 3109	
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 5-3-2	A	04-102	27 IR 3109	
68 IAC 5-3-7	A	04-102	27 IR 3109	

68 IAC 6-3	N	03-204	27 IR 212	**27 IR 2440**
				*ERR (27 IR 3580)
68 IAC 8-1-11	A	04-102	27 IR 3110	
68 IAC 8-2-29	A	04-102	27 IR 3110	
68 IAC 9-4-8	A	04-102	27 IR 3110	
68 IAC 10-1-5	A	04-102	27 IR 3110	
68 IAC 11-1-8	A	04-102	27 IR 3110	
68 IAC 11-3-1	A	04-102	27 IR 3110	
68 IAC 12-1-15	A	04-102	27 IR 3111	
68 IAC 14-4-8	A	04-102	27 IR 3112	
68 IAC 14-5-6	A	04-102	27 IR 3112	
68 IAC 15-1-8	A	04-102	27 IR 3112	
68 IAC 15-9-4	A	04-102	27 IR 3112	
68 IAC 15-10-4.1	A	04-102	27 IR 3113	
68 IAC 15-13-2.5	N	04-102	27 IR 3113	
68 IAC 16-1-16	A	04-102	27 IR 3113	
68 IAC 17-1-5	A	04-102	27 IR 3114	
68 IAC 17-2-6	A	04-102	27 IR 3114	
68 IAC 18-1-2	A	04-102	27 IR 3114	
68 IAC 18-1-6	A	04-102	27 IR 3114	

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)
	A	04-222	*ER (27 IR 4037)
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 1-4	RA	04-163	27 IR 4140	
170 IAC 1-5	RA	04-163	27 IR 4140	
170 IAC 4-1-15	R	04-144	27 IR 4095	
170 IAC 4-1-16	R	04-144	27 IR 4095	
170 IAC 4-1-16.5	R	04-144	27 IR 4095	
170 IAC 4-1-16.6	R	04-144	27 IR 4095	
170 IAC 4-1-17	R	04-144	27 IR 4095	
170 IAC 4-1-23	A	04-68	27 IR 2765	
170 IAC 4-1.2	N	04-144	27 IR 4057	
170 IAC 4-4.2	N	03-305	27 IR 2312	
170 IAC 5-1-15	R	04-144	27 IR 4095	
170 IAC 5-1-16	R	04-144	27 IR 4095	
170 IAC 5-1-16.5	R	04-144	27 IR 4095	
170 IAC 5-1-16.6	R	04-144	27 IR 4095	
170 IAC 5-1-17	R	04-144	27 IR 4095	
170 IAC 5-1.2	N	04-144	27 IR 4065	
170 IAC 6-1-15	R	04-144	27 IR 4095	
170 IAC 6-1-16	R	04-144	27 IR 4095	
170 IAC 6-1-17	R	04-144	27 IR 4095	
170 IAC 6-1.2	N	04-144	27 IR 4073	
170 IAC 7-1.1-19	A	03-193	27 IR 2309	**27 IR 3872**
170 IAC 7-1.2-10	A	03-194	27 IR 558	**27 IR 2712**
170 IAC 7-1.3-2	A	04-144	27 IR 4080	
170 IAC 7-1.3-3	A	04-144	27 IR 4081	
170 IAC 7-1.3-8	A	04-144	27 IR 4083	
170 IAC 7-1.3-9	A	04-144	27 IR 4084	
170 IAC 7-1.3-10	A	04-144	27 IR 4085	
170 IAC 8.5-2-1	A	04-144	27 IR 4086	
170 IAC 8.5-2-3	A	04-144	27 IR 4087	
170 IAC 8.5-2-4	A	04-144	27 IR 4089	
170 IAC 8.5-2-5	A	04-144	27 IR 4092	

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**
240 IAC 8	RA	04-164	27 IR 4140	

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	**27 IR 3065**
312 IAC 1-1-27.5	N	03-296	27 IR 1617	**27 IR 3065**
312 IAC 1-1-29.3	N	03-296	27 IR 1617	**27 IR 3065**
312 IAC 2-2-1	A	03-220	27 IR 1205	**27 IR 3064**
312 IAC 2-2-4	A	03-220	27 IR 1205	**27 IR 3064**
312 IAC 2-3-1	A	03-220	27 IR 1205	**27 IR 3064**
312 IAC 2-4-12	A	04-67	27 IR 3604	
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)
				*ERR (27 IR 3078)
312 IAC 5-12.5	N	03-316	27 IR 2315	**27 IR 3885**
312 IAC 5-14-1	A	04-155	27 IR 4100	
312 IAC 5-14-2	A	04-155	27 IR 4100	
312 IAC 5-14-4	A	04-155	27 IR 4101	
312 IAC 5-14-5	R	04-155	27 IR 4109	
312 IAC 5-14-5.1	N	04-155	27 IR 4101	
312 IAC 5-14-6	R	04-155	27 IR 4109	
312 IAC 5-14-6.1	N	04-155	27 IR 4102	
312 IAC 5-14-7	A	04-155	27 IR 4102	
312 IAC 5-14-8	A	04-155	27 IR 4102	
312 IAC 5-14-9	A	04-155	27 IR 4103	
312 IAC 5-14-11	A	04-155	27 IR 4103	
312 IAC 5-14-15	A	04-155	27 IR 4103	
312 IAC 5-14-16	A	04-155	27 IR 4104	
312 IAC 5-14-17	A	04-155	27 IR 4104	
312 IAC 5-14-18	A	04-155	27 IR 4105	
312 IAC 5-14-19	A	04-155	27 IR 4105	
312 IAC 5-14-20	A	04-155	27 IR 4106	
312 IAC 5-14-21	A	04-155	27 IR 4106	
312 IAC 5-14-22	A	04-155	27 IR 4106	
312 IAC 5-14-24	A	04-155	27 IR 4107	
312 IAC 5-14-25	A	04-155	27 IR 4108	
312 IAC 5-14-26	R	04-155	27 IR 4109	
312 IAC 5-14-27	N	04-155	27 IR 4109	
312 IAC 6	RA	02-331	26 IR 2133	**27 IR 286**
312 IAC 6-4-3	A	04-4	27 IR 2316	**27 IR 3885**
312 IAC 6.2	N	04-66	27 IR 3119	
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	**27 IR 3886**
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	**27 IR 3065**
312 IAC 10-5-0.3	N	03-215	27 IR 1940	**27 IR 3875**
312 IAC 10-5-0.6	N	03-215	27 IR 1940	**27 IR 3875**
312 IAC 10-5-3	A	03-215	27 IR 1941	**27 IR 3876**
312 IAC 10-5-4	A	03-215	27 IR 1941	**27 IR 3876**
312 IAC 10-5-5	A	03-215	27 IR 1942	**27 IR 3878**
312 IAC 10-5-6	A	03-215	27 IR 1943	**27 IR 3878**
312 IAC 10-5-7	A	03-215	27 IR 1944	**27 IR 3880**
312 IAC 10-5-8	A	03-215	27 IR 1945	**27 IR 3880**
312 IAC 11-2-11.5	N	04-94	27 IR 4095	
312 IAC 11-3-1	A	03-203	27 IR 1201	**27 IR 3062**
	A	04-94	27 IR 4095	
312 IAC 11-4-1	A	04-4	27 IR 2316	**27 IR 3886**
312 IAC 11-4-3	A	03-203	27 IR 1202	**27 IR 3063**
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	**27 IR 3065**
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	**27 IR 3881**
312 IAC 16-1-39.5	N	03-251	27 IR 1206	**27 IR 3881**
312 IAC 16-1-44.6	N	03-251	27 IR 1206	**27 IR 3881**
312 IAC 16-3-2	A	04-121	27 IR 4097	
312 IAC 16-3-8	A	04-121	27 IR 4099	
312 IAC 16-5-14	A	04-23	27 IR 2532	
312 IAC 16-5-15	A	03-251	27 IR 1206	**27 IR 3881**
312 IAC 16-5-19	A	03-251	27 IR 1207	**27 IR 3882**
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	**27 IR 3065**
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 1-2-52	A	03-228	27 IR 3120	
326 IAC 1-2-52.2	N	03-228	27 IR 3121	
326 IAC 1-2-52.4	N	03-228	27 IR 3121	
326 IAC 1-2-65	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
326 IAC 1-2-82.5	N	03-228	27 IR 3121	
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**
	A	03-228	27 IR 3121	
326 IAC 1-4-1	A	03-70	26 IR 3092	**27 IR 1167**
	A	04-148	27 IR 3606	
326 IAC 2-1.1-7	A	03-67	27 IR 1981	**27 IR 3887**
326 IAC 2-2-1	A	03-68	27 IR 250	**27 IR 2216**
	A	03-67	27 IR 1983	**27 IR 3889**
326 IAC 2-2-2	A	03-67	27 IR 1993	**27 IR 3899**
326 IAC 2-2-3	A	03-67	27 IR 1995	**27 IR 3901**
326 IAC 2-2-4	A	03-67	27 IR 1995	**27 IR 3901**
326 IAC 2-2-5	A	03-67	27 IR 1996	**27 IR 3902**
326 IAC 2-2-6	A	03-68	27 IR 256	**27 IR 2222**
	A	03-67	27 IR 1997	**27 IR 3903**
326 IAC 2-2-7	A	03-67	27 IR 1998	**27 IR 3904**
326 IAC 2-2-8	A	03-67	27 IR 1998	**27 IR 3904**
326 IAC 2-2-10	A	03-67	27 IR 1999	**27 IR 3905**
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	**27 IR 3906**
326 IAC 2-2.3	N	03-67	27 IR 2004	**27 IR 3910**
326 IAC 2-2.4	N	03-67	27 IR 2005	**27 IR 3911**

326 IAC 2-2.5	R	03-67	27 IR 2048	**27 IR 3954**
326 IAC 2-2.6	N	03-67	27 IR 2013	**27 IR 3919**
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	**27 IR 3920**
326 IAC 2-3-2	A	03-67	27 IR 2023	**27 IR 3929**
326 IAC 2-3-3	A	03-67	27 IR 2025	**27 IR 3931**
326 IAC 2-3.2	N	03-67	27 IR 2027	**27 IR 3933**
326 IAC 2-3.3	N	03-67	27 IR 2032	**27 IR 3938**
326 IAC 2-3.4	N	03-67	27 IR 2033	**27 IR 3939**
326 IAC 2-5.1-1	RA	04-44	27 IR 3144	
326 IAC 2-5.1-2	RA	04-44	27 IR 3145	
326 IAC 2-5.1-4	A	03-67	27 IR 2041	**27 IR 3947**
326 IAC 2-5.5-1	RA	04-44	27 IR 3146	
326 IAC 2-5.5-2	RA	04-44	27 IR 3146	
326 IAC 2-5.5-3	RA	04-44	27 IR 3146	
326 IAC 2-5.5-4	RA	04-44	27 IR 3147	
326 IAC 2-5.5-5	RA	04-44	27 IR 3147	
326 IAC 2-5.5-6	RA	04-44	27 IR 3147	
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 2-6.1-1	RA	04-44	27 IR 3149	
326 IAC 2-6.1-2	RA	04-44	27 IR 3149	
326 IAC 2-6.1-3	RA	04-44	27 IR 3149	
326 IAC 2-6.1-4	RA	04-44	27 IR 3150	
326 IAC 2-6.1-5	RA	04-44	27 IR 3150	
326 IAC 2-6.1-6	RA	04-44	27 IR 3151	
326 IAC 2-6.1-7	RA	04-44	27 IR 3154	
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	**27 IR 3947**
326 IAC 2-7-11	A	03-67	27 IR 2045	**27 IR 3951**
326 IAC 2-7-12	A	03-67	27 IR 2046	**27 IR 3952**
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 2-9-1	RA	04-44	27 IR 3155	
326 IAC 2-9-2.5	RA	04-44	27 IR 3156	
326 IAC 2-9-3	RA	04-44	27 IR 3156	
326 IAC 2-9-4	RA	04-44	27 IR 3157	
326 IAC 2-9-5	RA	04-44	27 IR 3158	
326 IAC 2-9-6	RA	04-44	27 IR 3159	
326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
	RA	04-44	27 IR 3159	
326 IAC 2-9-8	A	02-337	26 IR 2010	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
	RA	04-44	27 IR 3160	
326 IAC 2-9-9	A	02-337	26 IR 2012	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
	RA	04-44	27 IR 3162	
326 IAC 2-9-10	A	02-337	26 IR 2013	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
	RA	04-44	27 IR 3163	
326 IAC 2-9-11	RA	04-44	27 IR 3164	
326 IAC 2-9-12	RA	04-44	27 IR 3165	
326 IAC 2-9-13	A	02-337	26 IR 2014	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
	RA	04-44	27 IR 3165	
326 IAC 2-9-14	RA	04-44	27 IR 3167	
326 IAC 2-10-1	RA	03-332	27 IR 2324	**27 IR 3954**
326 IAC 2-10-2.1	N	03-332	27 IR 2325	**27 IR 3954**
326 IAC 2-10-3.1	N	03-332	27 IR 2325	**27 IR 3954**
326 IAC 2-10-4.1	N	03-332	27 IR 2325	**27 IR 3955**
326 IAC 2-10-5.1	N	03-332	27 IR 2325	**27 IR 3955**
326 IAC 2-10-6.1	N	03-332	27 IR 2325	**27 IR 3955**
326 IAC 2-11-1	RA	03-333	27 IR 2326	**27 IR 3955**
326 IAC 2-11-2	A	03-333	27 IR 2327	**27 IR 3956**
326 IAC 2-11-3	RA	03-333	27 IR 2327	**27 IR 3957**
326 IAC 2-11-4	RA	03-333	27 IR 2328	**27 IR 3957**
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	*CPH (27 IR 3591)
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 18-1-1	A	03-283	27 IR 3128	*CPH (27 IR 3591)
326 IAC 18-1-2	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521)
	A	03-283	27 IR 3128	*CPH (27 IR 3591)
326 IAC 18-1-3	A	03-283	27 IR 3130	*CPH (27 IR 3591)
326 IAC 18-1-4	A	03-283	27 IR 3131	*CPH (27 IR 3591)
326 IAC 18-1-5	A	02-337	26 IR 2086	*ARR (27 IR 2500) *CPH (27 IR 2521)
	A	03-283	27 IR 3132	*CPH (27 IR 3591)
326 IAC 18-1-6	A	03-283	27 IR 3133	*CPH (27 IR 3591)
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 18-1-9	A	03-283	27 IR 3134	*CPH (27 IR 3591)
326 IAC 18-2-2	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521)
	A	03-283	27 IR 3134	*CPH (27 IR 3591)
326 IAC 18-2-3	A	02-337	26 IR 2090	*ARR (27 IR 2500) *CPH (27 IR 2521)
	A	03-283	27 IR 3136	*CPH (27 IR 3591)
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 20-25-1	A	03-264	27 IR 3123	*CPH (27 IR 3590)
326 IAC 20-25-2	A	03-264	27 IR 3124	*CPH (27 IR 3590)
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 20-56	N	03-264	27 IR 3126	*CPH (27 IR 3590)
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 20-71	N	04-107	27 IR 3168	*CPH (27 IR 3592)
326 IAC 20-72	N	04-107	27 IR 3169	*CPH (27 IR 3592)

326 IAC 20-73	N	04-107	27 IR 3169	*CPH (27 IR 3592)
326 IAC 20-74	N	04-107	27 IR 3169	*CPH (27 IR 3592)
326 IAC 20-75	N	04-107	27 IR 3169	*CPH (27 IR 3592)
326 IAC 20-76	N	04-107	27 IR 3170	*CPH (27 IR 3592)
326 IAC 20-77	N	04-107	27 IR 3170	*CPH (27 IR 3592)
326 IAC 20-78	N	04-107	27 IR 3170	*CPH (27 IR 3592)
326 IAC 20-79	N	04-107	27 IR 3170	*CPH (27 IR 3592)
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 1-1-1	A	03-129	27 IR 3608	
327 IAC 1-1-2	A	03-129	27 IR 3608	
327 IAC 1-1-3	A	03-129	27 IR 3608	
327 IAC 2-1-5	A	03-129	27 IR 3608	
327 IAC 2-1-6	A	03-129	27 IR 3609	
327 IAC 2-1-8	A	03-129	27 IR 3617	
327 IAC 2-1-8.1	A	03-129	27 IR 3617	
327 IAC 2-1-8.2	A	03-129	27 IR 3618	
327 IAC 2-1-8.3	A	03-129	27 IR 3620	
327 IAC 2-1-8.9	N	03-129	27 IR 3621	
327 IAC 2-1-9	A	03-129	27 IR 3622	
327 IAC 2-1-12	A	03-129	27 IR 3627	
327 IAC 2-1-13	N	03-129	27 IR 3627	
327 IAC 2-1.5-2	A	03-129	27 IR 3631	
327 IAC 2-1.5-6	A	03-129	27 IR 3637	
327 IAC 2-1.5-8	A	03-129	27 IR 3638	
327 IAC 2-1.5-10	A	03-129	27 IR 3650	
327 IAC 2-1.5-11	A	03-129	27 IR 3651	
327 IAC 2-1.5-16	A	03-129	27 IR 3660	
327 IAC 2-1.5-20	A	03-129	27 IR 3662	
327 IAC 2-4-3	A	03-129	27 IR 3663	
327 IAC 5-1-1.5	A	02-327	26 IR 3097	*CPH (26 IR 3366)
				27 IR 1563
327 IAC 5-1.5-72	A	03-129	27 IR 3663	
327 IAC 5-2-1.5	A	03-129	27 IR 3663	
327 IAC 5-2-11.1	A	03-129	27 IR 3664	
327 IAC 5-2-11.2	A	03-129	27 IR 3668	
327 IAC 5-2-11.4	A	03-129	27 IR 3669	
327 IAC 5-2-11.5	A	03-129	27 IR 3679	
327 IAC 5-2-11.6	A	03-129	27 IR 3689	
327 IAC 5-2-13	A	03-129	27 IR 3694	
327 IAC 5-2-15	A	03-129	27 IR 3694	
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	*CPH (27 IR 3095)
328 IAC 1-1-3	A	02-204	27 IR 2778	*CPH (27 IR 3095)
328 IAC 1-1-4	A	02-204	27 IR 2778	*CPH (27 IR 3095)

328 IAC 1-1-5.1	A	02-204	27 IR 2778	*CPH (27 IR 3095)
328 IAC 1-1-7.5	N	02-204	27 IR 2779	*CPH (27 IR 3095)
328 IAC 1-1-8	R	02-204	27 IR 2797	*CPH (27 IR 3095)
328 IAC 1-1-8.3	N	02-204	27 IR 2779	*CPH (27 IR 3095)
328 IAC 1-1-8.5	A	02-204	27 IR 2779	*CPH (27 IR 3095)
328 IAC 1-1-9	A	02-204	27 IR 2779	*CPH (27 IR 3095)
328 IAC 1-1-10	A	02-204	27 IR 2779	*CPH (27 IR 3095)
328 IAC 1-2-1	A	02-204	27 IR 2779	*CPH (27 IR 3095)
328 IAC 1-2-3	A	02-204	27 IR 2780	*CPH (27 IR 3095)
328 IAC 1-3-1	A	02-204	27 IR 2780	*CPH (27 IR 3095)
328 IAC 1-3-1.3	N	02-204	27 IR 2780	*CPH (27 IR 3095)
328 IAC 1-3-1.6	N	02-204	27 IR 2781	*CPH (27 IR 3095)
328 IAC 1-3-2	A	02-204	27 IR 2781	*CPH (27 IR 3095)
328 IAC 1-3-3	A	02-204	27 IR 2781	*CPH (27 IR 3095)
328 IAC 1-3-4	A	02-204	27 IR 2783	*CPH (27 IR 3095)
328 IAC 1-3-5	A	02-204	27 IR 2784	*CPH (27 IR 3095)
328 IAC 1-3-6	A	02-204	27 IR 2791	*CPH (27 IR 3095)
328 IAC 1-4-1	A	02-204	27 IR 2791	*CPH (27 IR 3095)
328 IAC 1-4-3	A	02-204	27 IR 2794	*CPH (27 IR 3095)
328 IAC 1-4-4	N	02-204	27 IR 2795	*CPH (27 IR 3095)
328 IAC 1-5-1	A	02-204	27 IR 2795	*CPH (27 IR 3095)
328 IAC 1-5-2	A	02-204	27 IR 2796	*CPH (27 IR 3095)
328 IAC 1-5-3	A	02-204	27 IR 2796	*CPH (27 IR 3095)
328 IAC 1-6-1	A	02-204	27 IR 2796	*CPH (27 IR 3095)
328 IAC 1-6-2	A	02-204	27 IR 2796	*CPH (27 IR 3095)
328 IAC 1-7-2	A	02-204	27 IR 2797	*CPH (27 IR 3095)
328 IAC 1-7-3	R	02-204	27 IR 2797	*CPH (27 IR 3095)

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
	A	03-312	27 IR 4110	
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 3.1-6-2	A	03-312	27 IR 4111	
329 IAC 3.1-6-3	A	03-312	27 IR 4112	
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 3.1-7.5	N	03-312	27 IR 4112	
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	**27 IR 3980**
				*ERR (27 IR 4023)
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 3.1-12-2	A	03-312	27 IR 4113	
329 IAC 3.1-13-2	A	03-312	27 IR 4114	

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)
			27 IR 3177	
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)
			27 IR 3177	
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)
			27 IR 3209	
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)
			27 IR 3209	
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)
			27 IR 3177	
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)
			27 IR 3178	
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)
			27 IR 3178	

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)
			27 IR 3178	
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962) *CPH (26 IR 2646) *CPH (26 IR 3073) *CPH (26 IR 3367) *CPH (26 IR 3671) *CPH (27 IR 2299) *CPH (27 IR 2300) *ARR (27 IR 2500) *CPH (27 IR 2521)
			27 IR 3209	
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)
			27 IR 3178	
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)
			27 IR 3178	
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)
			27 IR 3178	
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)
			27 IR 3178	
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)
			27 IR 3178	
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)
			27 IR 3209	
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)
			27 IR 3179	
329 IAC 9-1-36.5	N	01-161	27 IR 3179	
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)
			27 IR 3179	
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)
			27 IR 3209	
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)
			27 IR 3209	
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)
			27 IR 3179	
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)
			27 IR 3209	

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)
			27 IR 3179	
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)
			27 IR 3179	
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)
			27 IR 3179	
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)
			27 IR 3182	
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)
			27 IR 3183	
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)
			27 IR 3184	
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)
			27 IR 3187	
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)
			27 IR 3187	
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)
			27 IR 3187	
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)
			27 IR 3188	
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)
			27 IR 3188	
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)
			27 IR 3189	
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)
			27 IR 3189	
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)
			27 IR 3190	

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)
			27 IR 3191	
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)
			27 IR 3209	
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)
			27 IR 3192	
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)
			27 IR 3209	
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)
			27 IR 3192	
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)
			27 IR 3193	
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)
			27 IR 3196	
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)
			27 IR 3196	
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)
			27 IR 3199	
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)
			27 IR 3209	
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)
			27 IR 3200	
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)
			27 IR 3204	
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)
			27 IR 3204	
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)
			27 IR 3205	

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)
			27 IR 3205	
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)
			27 IR 3206	
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)
			27 IR 3207	
329 IAC 9-7-5	A	01-161	27 IR 3209	
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)
			27 IR 3209	
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)
				27 IR 3958
329 IAC 10-2-32	A	01-288	26 IR 1653	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
				27 IR 3958
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) **27 IR 3958**
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) **27 IR 3959**
329 IAC 10-2-116	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3959**
329 IAC 10-2-117	A	01-288	26 IR 1654	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3959**
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) **27 IR 3959**
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) **27 IR 3979**

329 IAC 10-2-135.5	N	01-288	26 IR 1655	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
				27 IR 3960
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)
				27 IR 3960
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)
				27 IR 3979
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)
				27 IR 3960
329 IAC 10-2-199.1	R	01-288	26 IR 1674	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
				27 IR 3979
329 IAC 10-2-201.1	R	01-288	26 IR 1674	*CPH (26 IR 2647)
				*CPH (26 IR 3672)
				*CPH (26 IR 3903)
				27 IR 3979
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)
				27 IR 3960
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)
				27 IR 3979

329 IAC 10-7.2	N	01-288	26 IR 1656	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3961**
329 IAC 10-8.1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3979**
329 IAC 10-8.2	N	01-288	26 IR 1657	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3961**
329 IAC 10-9-2	A	01-288	26 IR 1659	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3963**
329 IAC 10-9-4	A	01-288	26 IR 1659	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3963**
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) **27 IR 3966**
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) **27 IR 3967**
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) **27 IR 3979**
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) **27 IR 3979**
329 IAC 10-28-24	A	01-288	26 IR 1664	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3969**
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) **27 IR 3969**
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) **27 IR 3970**
329 IAC 11-2-39	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3970**
329 IAC 11-2-44	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3979**
329 IAC 11-3-2	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3971**
329 IAC 11-6-1	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3979**
329 IAC 11-7	R	01-288	26 IR 1674	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3979**
329 IAC 11-8-2	A	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3971**
329 IAC 11-8-2.5	N	01-288	26 IR 1666	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3971**
329 IAC 11-8-3	A	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3972**
329 IAC 11-9-6	N	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3972**
329 IAC 11-13-4	A	01-288	26 IR 1667	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3972**
329 IAC 11-13-6	A	01-288	26 IR 1668	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3973**
329 IAC 11-15-1	A	01-288	26 IR 1668	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3973**
329 IAC 11-19-2	A	01-288	26 IR 1669	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3974**
329 IAC 11-19-3	A	01-288	26 IR 1670	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3974**
329 IAC 11-20-1	A	01-288	26 IR 1670	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3975** *ERR (27 IR 4023)
329 IAC 11-21-4	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3976**
329 IAC 11-21-5	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3976**
329 IAC 11-21-6	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3976**
329 IAC 11-21-7	A	01-288	26 IR 1671	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3976**
329 IAC 11-21-8	A	01-288	26 IR 1672	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3977**
329 IAC 12-8-4	A	01-288	26 IR 1672	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3977**
	A	03-286	27 IR 3696	
329 IAC 12-8-5	A	03-286	27 IR 3697	
329 IAC 12-9-2	A	03-286	27 IR 3698	
329 IAC 13-3-1	A	01-288	26 IR 1673	*CPH (26 IR 2647) *CPH (26 IR 3672) *CPH (26 IR 3903) **27 IR 3978**
	A	03-312	27 IR 4115	
329 IAC 13-3-4	N	03-312	27 IR 4116	
329 IAC 13-9-5	A	03-312	27 IR 4117	

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345 IAC 1-3-6.5	R	04-147	27 IR 4136	
345 IAC 1-3-7	A	04-147	27 IR 4120	
345 IAC 1-3-9	R	04-147	27 IR 4136	
345 IAC 1-3-10	A	04-147	27 IR 4121	
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 2-4.1	R	04-147	27 IR 4136	
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 2.5	N	04-147	27 IR 4121	
345 IAC 4-4-1	A	04-135	27 IR 4118	
345 IAC 7-3.5-16	A	04-15	27 IR 2328	**27 IR 3982**
345 IAC 7-5-12	A	04-147	27 IR 4135	
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	**27 IR 3982**
345 IAC 9-10.5-2	N	04-15	27 IR 2329	**27 IR 3983**
345 IAC 10-2-5	N	04-135	27 IR 4119	
345 IAC 10-2.1-1	A	04-135	27 IR 4119	

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 1-1.5-1	A	04-142	27 IR 3699	
405 IAC 1-1.6	N	04-142	27 IR 3699	
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
				*ERR (27 IR 3580)
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	*ARR (27 IR 4024)
				*NRA (27 IR 4044)
405 IAC 2-8-1	A	03-134	26 IR 3706	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3984
405 IAC 2-8-1.1	A	03-134	26 IR 3707	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3984
405 IAC 2-10-3	A	03-134	26 IR 3707	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3984
405 IAC 2-10-7	A	03-134	26 IR 3707	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3985
405 IAC 2-10-7.1	N	03-134	26 IR 3707	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3985
405 IAC 2-10-8	A	03-134	26 IR 3708	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3985
405 IAC 2-10-9	A	03-134	26 IR 3708	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3986
405 IAC 2-10-10	R	03-134	26 IR 3709	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3986
405 IAC 2-10-11	N	03-134	26 IR 3709	*AROC (27 IR 2080)
				*NRA (27 IR 3094)
				27 IR 3986
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
	A	04-95	27 IR 3210	*NRA (27 IR 4044)
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
	A	04-95	27 IR 3210	*NRA (27 IR 4044)
405 IAC 6-4-2	A	03-260	27 IR 919	*NRA (27 IR 1935)
				27 IR 2487
	A	04-95	27 IR 3210	*NRA (27 IR 4044)
405 IAC 6-4-3	A	03-260	27 IR 920	*NRA (27 IR 1935)
				27 IR 2487
	A	04-95	27 IR 3211	*NRA (27 IR 4044)
405 IAC 6-5-1	A	03-260	27 IR 920	*NRA (27 IR 1935)
				27 IR 2487
	A	04-95	27 IR 3211	*NRA (27 IR 4044)

405 IAC 6-5-2	A	03-260	27 IR 920	*NRA (27 IR 1935)
				27 IR 2488
	A	04-95	27 IR 3211	*NRA (27 IR 4044)
405 IAC 6-5-3	A	03-260	27 IR 921	*NRA (27 IR 1935)
				27 IR 2488
	A	04-95	27 IR 3211	*NRA (27 IR 4044)
405 IAC 6-5-4	A	03-260	27 IR 921	*NRA (27 IR 1935)
				27 IR 2488
	A	04-95	27 IR 3212	*NRA (27 IR 4044)
405 IAC 6-5-6	A	03-260	27 IR 921	*NRA (27 IR 1935)
				27 IR 2489
	A	04-95	27 IR 3212	*NRA (27 IR 4044)
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	*NRA (27 IR 3589)
				27 IR 3987
407 IAC 3-13-1	A	04-35	27 IR 2535	*NRA (27 IR 3589)
				27 IR 3987

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	**27 IR 4140**
410 IAC 1-7	N	03-161	27 IR 2048	**27 IR 3496**
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)
				*AWR (27 IR 3079)
410 IAC 6-8.2	N	02-321	26 IR 3116	*CPH (26 IR 3368)
				*AWR (27 IR 3079)
410 IAC 6-9-3				*ERR (26 IR 3884)
410 IAC 6-10	R	02-321	26 IR 3131	*CPH (26 IR 3368)
				*AWR (27 IR 3079)
410 IAC 6-12-0.5	N	03-276	27 IR 3212	
410 IAC 6-12-1	A	03-276	27 IR 3212	
410 IAC 6-12-2	R	03-276	27 IR 3216	
410 IAC 6-12-3	A	03-276	27 IR 3213	
410 IAC 6-12-3.1	N	03-276	27 IR 3213	
410 IAC 6-12-3.2	N	03-276	27 IR 3213	
410 IAC 6-12-4	A	03-276	27 IR 3213	
410 IAC 6-12-5	R	03-276	27 IR 3216	
410 IAC 6-12-6	R	03-276	27 IR 3216	
410 IAC 6-12-7	A	03-276	27 IR 3213	
410 IAC 6-12-8	A	03-276	27 IR 3213	
410 IAC 6-12-9	A	03-276	27 IR 3214	
410 IAC 6-12-10	A	03-276	27 IR 3215	
410 IAC 6-12-11	A	03-276	27 IR 3215	
410 IAC 6-12-12	A	03-276	27 IR 3215	
410 IAC 6-12-13	A	03-276	27 IR 3215	
410 IAC 6-12-14	A	03-276	27 IR 3215	
410 IAC 6-12-15	R	03-276	27 IR 3216	
410 IAC 6-12-17	N	03-276	27 IR 3216	
410 IAC 7-19	R	02-317	26 IR 3385	*ARR (27 IR 878)
				27 IR 1169
410 IAC 7-20	R	04-60	27 IR 3301	
410 IAC 7-23	N	02-317	26 IR 3383	*ARR (27 IR 878)
				27 IR 1167
410 IAC 7-23-1	A	04-62	27 IR 3301	
410 IAC 7-24	N	04-60	27 IR 3216	
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	**27 IR 3987**
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	**27 IR 3988**
410 IAC 16.2-3.1-4	A	03-275	27 IR 2053	**27 IR 3989**
410 IAC 16.2-3.1-13	A	03-275	27 IR 2054	**27 IR 3990**
410 IAC 16.2-3.1-14	A	03-275	27 IR 2056	**27 IR 3993**
	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	**27 IR 3996**
410 IAC 16.2-3.1-29	A	03-275	27 IR 2060	**27 IR 3997**
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	**27 IR 3997**
410 IAC 16.2-5-1.3	A	03-275	27 IR 2066	**27 IR 4002**
410 IAC 16.2-5-1.4	A	03-275	27 IR 2067	**27 IR 4003**
	A	04-7	27 IR 2547	
410 IAC 16.2-5-2	A	03-275	27 IR 2069	**27 IR 4005**
410 IAC 16.2-5-4	A	03-275	27 IR 2069	**27 IR 4006**
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 1-10	N	03-231	27 IR 3303	
460 IAC 1.1	N	03-245	27 IR 2799	*AROC (27 IR 3344)
460 IAC 2-2.1	N	04-76	27 IR 3701	
460 IAC 2-3-1				*ERR (27 IR 3078)
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)
				*NRA (27 IR 4044)
470 IAC 3-18	N	03-233	27 IR 1627	*AROC (27 IR 3345)
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 1-3-1	A	03-185	27 IR 270	**27 IR 3504**
	A	04-101	27 IR 3305	
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	**27 IR 3499**

511 IAC 6-7-6.5	A	04-36	27 IR 2552	
511 IAC 6.1-1-2	A	03-219	27 IR 561	**27 IR 4007**
511 IAC 6.1-2-2.5	RA	04-47	27 IR 2879	**27 IR 4008**
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	**27 IR 3500**
	A	04-36	27 IR 2557	
511 IAC 6.1-5.1-10.1	A	03-151	26 IR 3940	**27 IR 3501**
	A	04-22	27 IR 2550	
511 IAC 6.2-2.5	N	03-219	27 IR 563	**27 IR 4008**
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	**27 IR 4009**
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	**27 IR 3066**
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)
	N	04-141	27 IR 3703	

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	*CPH (27 IR 3096)
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	*CPH (27 IR 3096)
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) **27 IR 4010**
655 IAC 1-2.1-2	A	03-186	27 IR 934	*AROC (27 IR 1652) **27 IR 4013**
655 IAC 1-2.1-3	A	03-186	27 IR 934	*AROC (27 IR 1652) **27 IR 4013**
655 IAC 1-2.1-6.1	A	03-186	27 IR 935	*AROC (27 IR 1652) **27 IR 4014**
655 IAC 1-2.1-6.2	A	03-186	27 IR 935	*AROC (27 IR 1652) **27 IR 4014**
655 IAC 1-2.1-6.3	A	03-186	27 IR 935	*AROC (27 IR 1652) **27 IR 4014**
655 IAC 1-2.1-6.4	A	03-186	27 IR 936	*AROC (27 IR 1652) **27 IR 4014**
655 IAC 1-2.1-12	A	03-186	27 IR 936	*AROC (27 IR 1652) **27 IR 4015**
655 IAC 1-2.1-14	A	03-186	27 IR 936	*AROC (27 IR 1652) **27 IR 4015**
655 IAC 1-2.1-15	A	03-186	27 IR 936	*AROC (27 IR 1652) **27 IR 4015**
655 IAC 1-2.1-19	A	03-186	27 IR 937	*AROC (27 IR 1652) **27 IR 4015**
655 IAC 1-2.1-19.1	A	03-186	27 IR 937	*AROC (27 IR 1652) **27 IR 4016**
655 IAC 1-2.1-20	A	03-186	27 IR 937	*AROC (27 IR 1652) **27 IR 4016**
655 IAC 1-2.1-23	A	03-186	27 IR 938	*AROC (27 IR 1652) **27 IR 4016**
655 IAC 1-2.1-23.1	A	03-186	27 IR 938	*AROC (27 IR 1652) **27 IR 4017**
655 IAC 1-2.1-24	A	03-186	27 IR 938	*AROC (27 IR 1652) **27 IR 4017**
655 IAC 1-2.1-24.1	A	03-186	27 IR 938	*AROC (27 IR 1652) **27 IR 4017**
655 IAC 1-2.1-24.2	A	03-186	27 IR 938	*AROC (27 IR 1652) **27 IR 4017**
655 IAC 1-2.1-24.3	N	03-186	27 IR 939	*AROC (27 IR 1652) **27 IR 4018**
655 IAC 1-2.1-88	A	03-186	27 IR 939	*AROC (27 IR 1652) **27 IR 4018**
655 IAC 1-3-1	A	03-186	27 IR 939	*AROC (27 IR 1652) **27 IR 4018**
655 IAC 1-3-2	A	03-186	27 IR 939	*AROC (27 IR 1652) **27 IR 4018**
655 IAC 1-3-4	A	03-186	27 IR 940	*AROC (27 IR 1652) **27 IR 4018**
655 IAC 1-3-5	A	03-186	27 IR 940	*AROC (27 IR 1652) **27 IR 4019**
655 IAC 1-3-7	A	03-186	27 IR 940	*AROC (27 IR 1652) **27 IR 4019**
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) **27 IR 4019**
655 IAC 1-4-2	A	03-186	27 IR 940	*AROC (27 IR 1652) **27 IR 4019**

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

675 IAC 12-4-11	A	03-278	27 IR 941	**27 IR 3505**
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 22-2.3-18				*ERR (27 IR 3078)
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 22-2.3-111				*ERR (27 IR 3078)
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 22-2.3-284				*ERR (27 IR 3078)
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	
675 IAC 22-2.3-305				*ERR (27 IR 3078)

TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD

685 IAC 1	RA	04-124	27 IR 3343	

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**
	A	04-139	27 IR 4136	
760 IAC 1-50-4	A	03-160	27 IR 272	**27 IR 1569**
	A	04-139	27 IR 4136	
760 IAC 1-50-5	A	03-160	27 IR 272	**27 IR 1569**
	A	04-139	27 IR 4137	
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 1-60-1	RA	04-143	27 IR 3706	
760 IAC 1-60-2	RA	04-143	27 IR 3706	
760 IAC 1-60-3	A	03-258	27 IR 2070	**27 IR 2729**
760 IAC 1-60-4	RA	04-143	27 IR 3706	
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	
760 IAC 2-1-1	A	03-303	27 IR 3306	
760 IAC 2-2-1.5	N	03-303	27 IR 3306	
760 IAC 2-2-3.1	N	03-303	27 IR 3307	
760 IAC 2-2-3.2	N	03-303	27 IR 3307	
760 IAC 2-2-3.3	N	03-303	27 IR 3307	
760 IAC 2-2-3.4	N	03-303	27 IR 3307	
760 IAC 2-2-3.5	N	03-303	27 IR 3307	
760 IAC 2-2-3.6	N	03-303	27 IR 3307	
760 IAC 2-2-3.7	N	03-303	27 IR 3307	
760 IAC 2-2-3.8	N	03-303	27 IR 3308	
760 IAC 2-2-8	A	03-303	27 IR 3308	
760 IAC 2-3-1	A	03-303	27 IR 3308	
760 IAC 2-3-2	A	03-303	27 IR 3308	
760 IAC 2-3-4	A	03-303	27 IR 3309	
760 IAC 2-3-6	A	03-303	27 IR 3310	
760 IAC 2-3-7	N	03-303	27 IR 3310	
760 IAC 2-3-8	N	03-303	27 IR 3311	
760 IAC 2-4-1	A	03-303	27 IR 3311	
760 IAC 2-4-2	N	03-303	27 IR 3312	
760 IAC 2-7-1	A	03-303	27 IR 3313	
760 IAC 2-8-1	A	03-303	27 IR 3314	
760 IAC 2-8-2	A	03-303	27 IR 3314	
760 IAC 2-8-3	A	03-303	27 IR 3314	
760 IAC 2-8-4	A	03-303	27 IR 3315	
760 IAC 2-8-6	N	03-303	27 IR 3316	
760 IAC 2-9-1	A	03-303	27 IR 3316	
760 IAC 2-10-1	A	03-303	27 IR 3316	
760 IAC 2-13-1	A	03-303	27 IR 3317	
760 IAC 2-15-1	A	03-303	27 IR 3317	
760 IAC 2-15.5	N	03-303	27 IR 3319	
760 IAC 2-16-1	A	03-303	27 IR 3320	
760 IAC 2-16.1	N	03-303	27 IR 3320	
760 IAC 2-17-1	A	03-303	27 IR 3323	
760 IAC 2-18-1	A	03-303	27 IR 3325	
760 IAC 2-19-2	A	03-303	27 IR 3325	
760 IAC 2-19.5	N	03-303	27 IR 3325	
760 IAC 2-20-10	A	03-303	27 IR 3329	
760 IAC 2-20-31.1	A	03-303	27 IR 3329	
760 IAC 2-20-34	A	03-303	27 IR 3329	
760 IAC 2-20-35	A	03-303	27 IR 3332	
760 IAC 2-20-36.1	A	03-303	27 IR 3332	
760 IAC 2-20-36.2	A	03-303	27 IR 3333	
760 IAC 2-20-37.2	A	03-303	27 IR 3334	
760 IAC 2-20-37.3	N	03-303	27 IR 3334	
760 IAC 2-20-38.1	A	03-303	27 IR 3334	
760 IAC 2-20-42	A	03-303	27 IR 3335	

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	**27 IR 3507**
836 IAC 1-1-2	A	03-188	27 IR 1215	**27 IR 3510**
836 IAC 1-1-3	A	03-188	27 IR 1216	**27 IR 3511**
836 IAC 1-1-4	N	03-188	27 IR 1217	**27 IR 3512**
836 IAC 1-1-5	N	03-188	27 IR 1217	**27 IR 3512**
836 IAC 1-1-6	N	03-188	27 IR 1219	**27 IR 3514**
836 IAC 1-1-7	N	03-188	27 IR 1220	**27 IR 3514**
836 IAC 1-1-8	N	03-188	27 IR 1220	**27 IR 3515**
836 IAC 1-2-1	A	03-188	27 IR 1221	**27 IR 3516**
836 IAC 1-2-2	A	03-188	27 IR 1222	**27 IR 3517**
836 IAC 1-2-3	A	03-188	27 IR 1222	**27 IR 3517**
836 IAC 1-2-5	N	03-188	27 IR 1225	**27 IR 3520**
836 IAC 1-3-1	A	03-188	27 IR 1225	**27 IR 3520**
836 IAC 1-3-2	A	03-188	27 IR 1226	**27 IR 3520**
836 IAC 1-3-3	A	03-188	27 IR 1226	**27 IR 3521**
836 IAC 1-3-5	A	03-188	27 IR 1228	**27 IR 3523**
836 IAC 1-3-6	A	03-188	27 IR 1229	**27 IR 3524**
836 IAC 1-4-1	A	03-188	27 IR 1230	**27 IR 3525**
836 IAC 1-4-2	A	03-188	27 IR 1230	**27 IR 3525**
836 IAC 1-11-1	A	03-188	27 IR 1231	**27 IR 3526**
836 IAC 1-11-2	A	03-188	27 IR 1231	**27 IR 3526**
836 IAC 1-11-3	A	03-188	27 IR 1232	**27 IR 3527**
836 IAC 1-11-4	A	03-188	27 IR 1234	**27 IR 3529**
836 IAC 1-12	N	03-188	27 IR 1235	**27 IR 3530**
836 IAC 2-1-1	A	03-188	27 IR 1239	**27 IR 3534**
836 IAC 2-2-1	A	03-188	27 IR 1240	**27 IR 3535**
836 IAC 2-2-2	A	03-188	27 IR 1243	**27 IR 3537**
836 IAC 2-2-3	A	03-188	27 IR 1244	**27 IR 3538**
836 IAC 2-2-4	N	03-188	27 IR 1245	**27 IR 3540**
836 IAC 2-4.1-1	A	03-188	27 IR 1245	**27 IR 3540**
836 IAC 2-4.1-2	A	03-188	27 IR 1246	**27 IR 3541**
836 IAC 2-7.1	R	03-188	27 IR 1283	**27 IR 3579**
836 IAC 2-7.2-1	A	03-188	27 IR 1247	**27 IR 3542**
836 IAC 2-7.2-2	A	03-188	27 IR 1250	**27 IR 3544**
836 IAC 2-7.2-3	A	03-188	27 IR 1250	**27 IR 3545**
836 IAC 2-7.2-4	N	03-188	27 IR 1252	**27 IR 3547**
836 IAC 2-11-1	R	03-188	27 IR 1283	**27 IR 3579**
836 IAC 2-14-1	A	03-188	27 IR 1252	**27 IR 3547**
836 IAC 2-14-2	A	03-188	27 IR 1253	**27 IR 3547**
836 IAC 2-14-3	A	03-188	27 IR 1253	**27 IR 3548**
836 IAC 2-14-5	A	03-188	27 IR 1255	**27 IR 3549**
836 IAC 3-1-1	A	03-188	27 IR 1256	**27 IR 3550**
836 IAC 3-2-1	A	03-188	27 IR 1256	**27 IR 3551**
836 IAC 3-2-2	A	03-188	27 IR 1258	**27 IR 3552**
836 IAC 3-2-3	A	03-188	27 IR 1258	**27 IR 3553**
836 IAC 3-2-4	A	03-188	27 IR 1259	**27 IR 3554**
836 IAC 3-2-5	A	03-188	27 IR 1260	**27 IR 3555**
836 IAC 3-2-6	A	03-188	27 IR 1261	**27 IR 3555**
836 IAC 3-2-7	A	03-188	27 IR 1261	**27 IR 3556**
836 IAC 3-3-1	A	03-188	27 IR 1262	**27 IR 3556**
836 IAC 3-3-2	A	03-188	27 IR 1263	**27 IR 3558**
836 IAC 3-3-3	A	03-188	27 IR 1264	**27 IR 3558**
836 IAC 3-3-4	A	03-188	27 IR 1264	**27 IR 3559**
836 IAC 3-3-5	A	03-188	27 IR 1266	**27 IR 3560**
836 IAC 3-3-6	A	03-188	27 IR 1266	**27 IR 3561**
836 IAC 3-3-7	A	03-188	27 IR 1267	**27 IR 3561**
836 IAC 3-5-1	A	03-188	27 IR 1267	**27 IR 3562**
836 IAC 4-1-1	A	03-188	27 IR 1267	**27 IR 3562**
836 IAC 4-2-1	A	03-188	27 IR 1270	**27 IR 3564**
836 IAC 4-2-2	A	03-188	27 IR 1270	**27 IR 3565**
836 IAC 4-2-3	A	03-188	27 IR 1271	**27 IR 3566**
836 IAC 4-2-4	A	03-188	27 IR 1272	**27 IR 3567**
836 IAC 4-3-2	A	03-188	27 IR 1272	**27 IR 3567**
836 IAC 4-3-3	A	03-188	27 IR 1273	**27 IR 3568**
836 IAC 4-4-1	A	03-188	27 IR 1273	**27 IR 3568**
836 IAC 4-4-2	A	03-188	27 IR 1274	**27 IR 3569**
836 IAC 4-4-3	A	03-188	27 IR 1275	**27 IR 3570**
836 IAC 4-5-2	A	03-188	27 IR 1275	**27 IR 3570**
836 IAC 4-6-1	R	03-188	27 IR 1283	**27 IR 3579**
836 IAC 4-7-1	A	03-188	27 IR 1276	**27 IR 3571**
836 IAC 4-7-2	A	03-188	27 IR 1276	**27 IR 3571**
836 IAC 4-7-3	A	03-188	27 IR 1277	**27 IR 3572**
836 IAC 4-7-3.5	A	03-188	27 IR 1277	**27 IR 3573**
836 IAC 4-7-4	A	03-188	27 IR 1278	**27 IR 3573**
836 IAC 4-7.1-1	A	03-188	27 IR 1278	**27 IR 3573**
836 IAC 4-7.1-2	A	03-188	27 IR 1278	**27 IR 3573**
836 IAC 4-7.1-3	A	03-188	27 IR 1279	**27 IR 3574**
836 IAC 4-7.1-4	A	03-188	27 IR 1280	**27 IR 3575**
836 IAC 4-7.1-5	A	03-188	27 IR 1280	**27 IR 3575**
836 IAC 4-7.1-6	A	03-188	27 IR 1281	**27 IR 3576**
836 IAC 4-8-1	R	03-188	27 IR 1283	**27 IR 3579**
836 IAC 4-9-1	A	03-188	27 IR 1281	**27 IR 3576**
836 IAC 4-9-2	A	03-188	27 IR 1281	**27 IR 3576**
836 IAC 4-9-3	A	03-188	27 IR 1282	**27 IR 3577**
836 IAC 4-9-4	A	03-188	27 IR 1282	**27 IR 3577**
836 IAC 4-9-5	A	03-188	27 IR 1282	**27 IR 3578**
836 IAC 4-9-6	A	03-188	27 IR 1283	**27 IR 3578**

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	**27 IR 3072**
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	**27 IR 3073**
856 IAC 1-33-1.5	N	03-154	27 IR 274	*ARR (27 IR 1185)
	N	03-326	27 IR 2073	**27 IR 3073**
856 IAC 1-33-2	A	03-154	26 IR 3949	
			27 IR 275	*ARR (27 IR 1185)
	A	03-326	27 IR 2073	**27 IR 3073**
856 IAC 1-33-4	A	03-154	26 IR 3950	
			27 IR 275	*ARR (27 IR 1185)
	A	03-326	27 IR 2074	**27 IR 3074**
856 IAC 1-33-5	N	03-154	27 IR 275	*ARR (27 IR 1185)
	N	03-326	27 IR 2074	**27 IR 3074**
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	**27 IR 4020**

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)
				*DG (27 IR 3346)

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	
	A	04-171	27 IR 4138	
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
872 IAC 1-1-22	R	03-126	27 IR 282	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2738
872 IAC 1-1-23	R	03-126	27 IR 282	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2738
872 IAC 1-1-25	A	03-126	27 IR 282	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2738
872 IAC 1-3-3.3	A	04-98	27 IR 3336	
872 IAC 1-3-16	A	04-5	27 IR 2335	
872 IAC 1-6	N	03-270	27 IR 2571	*AROC (27 IR 4141)

TITLE 876 INDIANA REAL ESTATE COMMISSION

876 IAC 1-1-19	A	03-124	26 IR 3744	**27 IR 877**
876 IAC 1-4-1	A	03-42	26 IR 3142	**27 IR 186**
876 IAC 1-4-2	A	03-42	26 IR 3142	**27 IR 186**
876 IAC 2-18	N	03-256	27 IR 2575	
876 IAC 3-2-7	A	03-273	27 IR 1642	**27 IR 2740**
	A	03-255	27 IR 2574	
876 IAC 3-3-3	A	03-23	26 IR 3415	**27 IR 530**
876 IAC 3-3-4	A	03-23	26 IR 3416	**27 IR 531**
876 IAC 3-3-5	A	03-23	26 IR 3417	**27 IR 532**
876 IAC 3-4-8	A	03-23	26 IR 3418	**27 IR 533**
				*ERR (27 IR 538)
876 IAC 3-5-1	A	02-245	26 IR 3139	**27 IR 184**
876 IAC 3-5-1.5	A	02-245	26 IR 3140	**27 IR 185**
876 IAC 3-5-2.5	N	03-273	27 IR 1643	**27 IR 2740**
876 IAC 3-5-6.1	N	03-23	26 IR 3418	**27 IR 533**
876 IAC 3-5-7	A	02-245	26 IR 3141	**27 IR 185**
876 IAC 3-6-2	A	03-225	27 IR 1287	**27 IR 2738**
876 IAC 3-6-3	A	03-225	27 IR 1287	**27 IR 2739**
876 IAC 3-6-4	A	02-245	26 IR 3141	**27 IR 186**
876 IAC 3-6-9	A	03-196	27 IR 282	**27 IR 1182**

TITLE 880 SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD

880 IAC 1-2	R	03-53	26 IR 3422	**27 IR 537**
880 IAC 1-2.1	N	03-53	26 IR 3419	**27 IR 534**

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

888 IAC 1.1-6-1	A	04-74	27 IR 2875	
	A	04-137	27 IR 3704	
888 IAC 1.1-10-1	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-2	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-3	RA	03-77	26 IR 3148	**27 IR 946**
888 IAC 1.1-10-4	RA	03-77	26 IR 3148	**27 IR 946**

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

905 IAC 1-5.2-9	R	03-38	26 IR 2688	*ARR (27 IR 1185)
			27 IR 1289	**27 IR 2282**
905 IAC 1-5.2-9.1	N	03-38	26 IR 2687	*ARR (27 IR 1185)
			27 IR 1288	**27 IR 2281**
905 IAC 1-5.2-9.2	N	03-38	26 IR 2687	*ARR (27 IR 1185)
			27 IR 1289	**27 IR 2281**
	A	04-111	27 IR 3337	
905 IAC 1-11.1-1	A	03-39	26 IR 2688	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2282
905 IAC 1-11.1-2	A	03-39	26 IR 2688	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2282
905 IAC 1-13-3	A	03-40	26 IR 2689	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2283
905 IAC 1-13-6	N	03-40	26 IR 2689	*ARR (27 IR 1185)
				*CPH (27 IR 1196)
				27 IR 2283
905 IAC 1-15.2-3	A	03-94	26 IR 3745	*ARR (27 IR 1185)
				*AWR (27 IR 2501)
	A	04-110	27 IR 3337	
905 IAC 1-26-3	N	04-112	27 IR 3338	
905 IAC 1-35.1	N	03-96	26 IR 3745	*ARR (27 IR 1185)
	N	03-96	27 IR 1290	*AROC (27 IR 1653)
				*AROC (27 IR 2580)
				27 IR 2497
905 IAC 1-36-2	A	03-97	26 IR 3747	
905 IAC 1-43	RA	04-14	27 IR 2579	*CPH (27 IR 3096)
905 IAC 1-44	RA	04-109	27 IR 3343	
905 IAC 1-45	N	02-338	26 IR 2128	*ERR (26 IR 2375)
				27 IR 189
905 IAC 1-45-2	A	03-319	27 IR 2576	*CPH (27 IR 3096)
905 IAC 1-45-3	A	03-319	27 IR 2576	*CPH (27 IR 3096)
905 IAC 1-46	N	03-279	27 IR 1291	*ARR (27 IR 4024)
				*AROC (27 IR 4141)
905 IAC 1-47	N	03-280	27 IR 1292	*AROC (27 IR 4142)
				27 IR 4021
905 IAC 1-48	N	04-115	27 IR 3339	

TITLE 910 CIVIL RIGHTS COMMISSION

910 IAC 2-4-6	N	03-254	27 IR 1644	**27 IR 3074**
910 IAC 2-4-7	N	03-254	27 IR 1644	**27 IR 3075**
910 IAC 2-4-8	N	03-254	27 IR 1645	**27 IR 3076**
910 IAC 2-4-9	N	03-254	27 IR 1645	**27 IR 3076**
910 IAC 2-4-10	N	03-254	27 IR 1646	**27 IR 3077**

NONCODE RULES

Accountancy, Indiana Board of			
	A	04-33	*ETR (27 IR 1931)
Air Pollution Control Board			
	N	04-9	*ETR (27 IR 1608)
	N	04-81	*ETR (27 IR 2516)
	N	04-154	*ETR (27 IR 3091)
Animal Health, Indiana State Board of			
	A	04-29	*ETR (27 IR 1930)
	A	04-119	*ETR (27 IR 2758)
Boiler and Pressure Vessel Rules Board			
	A	04-37	*ETR (27 IR 2296)
Children's Health Insurance Program, Office of the			
	A	04-104	*ETR (27 IR 2519)
	N	04-192	*ETR (27 IR 3587)
Family and Social Services, Office of the Secretary of			
	N	03-265	*ETR (27 IR 544)
	N	03-266	*ETR (27 IR 546)
	A	03-340	*ETR (27 IR 1608)
	A	04-85	*ETR (27 IR 2516)
	A	04-151	*ETR (27 IR 3092)
Local Government Finance, Department of			
	N	03-268	*ETR (27 IR 541)
	N	04-78	*ETR (27 IR 2502)
Lottery Commission, State			
	N	03-238	*ETR (27 IR 193)
	N	03-239	*ETR (27 IR 194)
	N	03-240	*ETR (27 IR 196)
	N	03-241	*ETR (27 IR 198)

N	03-248	*ETR (27 IR 203)
N	03-249	*ETR (27 IR 204)
N	03-287	*ETR (27 IR 884)
N	03-288	*ETR (27 IR 885)
N	03-289	*ETR (27 IR 886)
N	03-290	*ETR (27 IR 888)
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N	03-295	*ETR (27 IR 894)
N	03-307	*ETR (27 IR 1187)
N	03-308	*ETR (27 IR 1187)
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N	03-336	*ETR (27 IR 1599)
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N	04-25	*ETR (27 IR 1895)
N	04-27	*ETR (27 IR 1899)
N	04-48	*ETR (27 IR 2287)
N	04-49	*ETR (27 IR 2288)
		*ERR (27 IR 2284)
N	04-50	*ETR (27 IR 2290)
N	04-51	*ETR (27 IR 2292)
N	04-52	*ETR (27 IR 2293)
N	04-53	*ETR (27 IR 2294)
N	04-80	*ETR (27 IR 2506)
N	04-89	*ETR (27 IR 2506)
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N	04-92	*ETR (27 IR 2510)
N	04-128	*ETR (27 IR 2747)
N	04-129	*ETR (27 IR 2747)
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N	04-132	*ETR (27 IR 2752)
N	04-165	*ETR (27 IR 3080)
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N	04-220	*ETR (27 IR 4035)
N	04-221	*ETR (27 IR 4036)

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N	03-217	*ETR (27 IR 206)
N	03-242	*ETR (27 IR 544)
N	03-243	*ETR (27 IR 544)
N	03-306	*ETR (27 IR 1192)
N	03-341	*ETR (27 IR 1607)
N	04-20	*ETR (27 IR 1922)
N	04-45	*ETR (27 IR 2295)
N	04-59	*ETR (27 IR 2296)
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N	04-82	*ETR (27 IR 2513)
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		*ERR (27 IR 2499)
R	04-116	*ETR (27 IR 2757)
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N	04-150	*ETR (27 IR 3088)
N	04-152	*ETR (27 IR 3089)
N	04-153	*ETR (27 IR 3091)
N	04-183	*ETR (27 IR 3587)
N	04-205	*ETR (27 IR 4037)
N	04-207	*ETR (27 IR 4039)
N	04-223	*ETR (27 IR 4040)

Revenue, Department of State

A	03-304	*ETR (27 IR 879)

Tax Review, Indiana Board of

N	03-327	*ETR (27 IR 1577)
N	03-328	*ETR (27 IR 1585)
N	04-108	*ETR (27 IR 2504)
N	04-184	*ETR (27 IR 3581)

Utility Regulatory Commission, Indiana

N	03-267	*ETR (27 IR 543)

Water Pollution Control Board

A	03-299	*ETR (27 IR 897)
A	04-38	*ETR (27 IR 1923)

*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
I:	Document Ineffective
N:	New Text
NRA:	Notice of Rule Adoption
OAC:	Objection to Errata
ON:	Other Notices of Administrative Action
R:	Repealed Text
RA:	Readopted Rule
SAC:	Solicitation of Advance Comment
SPE:	Statutory Period for Promulgation Expired
SPE-SE:	Statutory Period for Promulgation Expired; Signed After Expiration
††:	Renumbered or Added in Final Rule

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