Indiana Register

Volume 28, Number 9
Pages 2655-2936

June 1, 2005

Retain this issue as a supplement to the Indiana Administrative Code (See p. 2656)

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., May 10, 2005

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 28, 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) 2005 Indiana Administrative Code (CD-ROM version).

(2) Volume 28 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 2004 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:
May 10, 2005	June 1, 2005	December 9, 2005	January 1, 2006
June 10, 2005	July 1, 2005	January 10, 2006	February 1, 2006
July 11, 2005	August 1, 2005	February 10, 2006	March 1, 2006
August 10, 2005	September 1, 2005	March 10, 2006	April 1, 2006
September 9, 2005	October 1, 2005	April 10, 2006	May 1, 2006
October 10, 2005	November 1, 2005	May 10, 2006	June 1, 2006
November 10, 2005	December 1, 2005	June 9, 2006	July 1, 2006

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 expired, 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
42 Office of the Inspector General
45 Department of State Revenue
50 Department of Local Government Finance
52 Indiana Board of Tax Review
55 Department of Commerce
58 Enterprise Zone Board
60 Oversight Committee on Public Records
62 Office of the Public Access Counselor
65 State Lottery Commission
68 Indiana Gaming Commission
†70 Indiana Horse Racing Commission
71 Indiana Horse Racing Commission
75 Secretary of State
80 State Fair Commission
85 Budget Agency

TRANSPORTATION AND PUBLIC UTILITIES

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

CORRECTIONS, POLICE, AND MILITARY

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

NATURAL RESOURCES, ENVIRONMENT, AND AGRICULTURE

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

HUMAN SERVICES

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

TITLE NUMBER

EDUCATION AND LIBRARIES

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

LABOR AND INDUSTRIAL SAFETY

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

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

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808 State Boxing Commission
812 Indiana Auctioneer Commission
816 Board of Barber Examiners
820 State Board of Cosmetology Examiners
824 Indiana Grain Buyers and Warehouse Licensing Agency
825 Indiana Grain Indemnity Corporation
828 State Board of Dentistry
830 Indiana Dietitians Certification Board
832 State Board of Funeral and Cemetery Service
836 Indiana Emergency Medical Services Commission
839 Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board
840 Indiana State Board of Health Facility Administrators
844 Medical Licensing Board of Indiana
845 Board of Podiatric Medicine
846 Board of Chiropractic Examiners
848 Indiana State Board of Nursing
852 Indiana Optometry Board
856 Indiana Board of Pharmacy
857 Indiana Optometric Legend Drug Prescription Advisory Committee
858 Controlled Substances Advisory Committee
860 Indiana Plumbing Commission
862 Private Detectives Licensing Board
864 State Board of Registration for Professional Engineers
865 State Board of Registration for Land Surveyors
868 State Psychology Board
872 Indiana Board of Accountancy
876 Indiana Real Estate Commission
878 Home Inspectors Licensing Board
879 Manufactured Home Installer 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

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

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

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-157(F)

DIGEST

Amends 312 IAC 11-2-5 to define specific seawall types that are recognized as bulkhead seawalls and include criteria for determining when a timber seawall qualifies as a bulkhead seawall. Effective 30 days after filing with the secretary of state.

312 IAC 11-2-5

SECTION 1. 312 IAC 11-2-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-5 "Bulkhead seawall" defined

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

Sec. 5. **(a)** "Bulkhead seawall" means ~~an impervious,~~ **a** vertical, or near vertical, ~~shoreline protection~~ **solid concrete, steel sheet piling, or vinyl piling** structure, **which has the purpose of shoreline protection.**

(b) A timber wall may be deemed to be a bulkhead wall if the property owner proves to the satisfaction of the division of water that the wall functions as a bulkhead wall by providing evidence in the form of a written assessment from a registered professional engineer, licensed professional geologist, or soil scientist with expertise in shoreline protection or wave dynamics. The written assessment must address and evaluate each of the following items:

(1) The structural integrity of the wall.

(2) The height of the top of the wall above normal lake level.

(3) Success of the wall in protecting the shoreline from erosion in the past.

(4) The ability of the wall to retain land or prevent land from sliding as evidenced by the lack of sinkholes or depressions behind the wall.

(5) Adequacy of existing connections to adjacent shore protection structures or tiebacks at each end of the wall.

(6) The timber wall was constructed before January 1, 1991.

(Natural Resources Commission; 312 IAC 11-2-5; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220; filed May 2, 2005, 2:15 p.m.: 28 IR 2660)

LSA Document #04-157(F)
Notice of Intent Published: July 1, 2004; 27 IR 3098
Proposed Rule Published: February 1, 2005; 28 IR 1521
Hearing Held: February 28, 2005
Approved by Attorney General: April 27, 2005
Approved by Governor: April 29, 2005
Filed with Secretary of State: May 2, 2005, 2:15 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 #04-263(F)

DIGEST

Amends 312 IAC 3-1-7, which governs the filing and service of pleadings and documents with the natural resources commission under IC 4-21.5, to conform the rule section to IC 4-21.5 with respect to private carriers, to authorize filing and service to be made by U.S. priority or express mail, and to recognize notice and service by publication. Makes other technical changes. Effective 30 days after filing with the secretary of state.

312 IAC 3-1-7

SECTION 1. 312 IAC 3-1-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-7 Filing and service of pleadings and documents

Authority: IC 14-10-2-4
Affected: IC 4-21.5-3-1; IC 4-21.5-3-29; IC 4-21.5-5; IC 14; IC 23-1-20-15; IC 25

Sec. 7. (a) **Pleadings and** documents ~~shall~~ **must** be filed with the administrative law judge and served on all other parties.

(b) The filing of a **pleading or** document with the administrative law judge may be performed by **any of the following:**

(1) Personal delivery.

(2) United States mail under any of the following categories:

(A) First class. ~~mail,~~

(B) Certified. ~~mail,~~

(C) Express.

(D) Priority.

(3) Private carrier.

(4) Interoffice mail. ~~fax, or~~

(5) Facsimile mail.

(6) Electronic mail.

(c) If ~~a party is represented by~~ an attorney or another authorized representative **represents a party,** service of a **pleading or** document must be made upon the attorney or other authorized representative. If an individual appears without separate representation, service must be made upon the individual.

(d) Filing or service is complete ~~upon deposit in~~ **on the earliest of** the **following dates:**

(1) The date on which the pleading or document is delivered.

(2) The date of the postmark on the envelope containing the pleading or document if the pleading or document is sent by a category of United States mail **described in subsection (b)(2) and is** properly addressed. ~~and first class or certified post prepaid; filing or service by another method is complete upon receipt.~~

(3) The date on which the pleading or document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the pleading or document is sent by a private carrier and is properly addressed.
(4) The date of receipt of the pleading or document, if the date of deposit or postmark cannot be determined.

(e) This section does not modify the time in which a party may file objections under IC 4-21.5-3-29 or a petition for judicial review under IC 4-21.5-5.

(f) IC 4-21.5-3-1(d) and IC 4-21.5-3-1(e) govern service by publication.

(g) As used in this section, "private carrier" means a person, other than the United States Postal Service, that delivers mail as defined in IC 23-1-20-15. *(Natural Resources Commission; 312 IAC 3-1-7; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1319; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 4, 2005, 1:15 p.m.: 28 IR 2660)*

LSA Document #04-263(F)
Notice of Intent Published: November 1, 2004; 28 IR 621
Proposed Rule Published: January 1, 2005; 28 IR 1202
Hearing Held: January 26, 2005
Approved by Attorney General: April 18, 2005
Approved by Governor: May 3, 2005
Filed with Secretary of State: May 4, 2005, 1:15 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 #03-312(F)

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. 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.

Proposed Rule and Notice of Second Public Hearing: September 1, 2004, Indiana Register (27 IR 4109).

Date of Second Hearing: October 19, 2004.

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 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~~ **subsections** (a) **through (c).** Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, Government

Printing Office, Washington, D.C. 20402. The telephone number for the Government Printing Office is (202) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

~~(c)~~ **(e)** Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

~~(d)~~ **(f)** Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

~~(e)~~ **(g)** The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions ~~which~~ **that** may be effective in Indiana ~~which~~ **that** are not incorporated in this article or are retained as federal authority. *(Solid Waste Management Board; 329 IAC 3.1-1-7; filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2661)*

SECTION 2. 329 IAC 3.1-6-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-2 Exceptions and additions; identification and listing of hazardous waste

Authority: IC 13-14-8; IC 13-22-2-4
Affected: IC 13-11-2-99; IC 13-11-2-205; IC 13-14-2-2; IC 13-14-10-1; IC 13-22-2-3; P.L.231-2003, SECTION 6; 40 CFR 261

Sec. 2. Exceptions and additions to federal standards for identification and listing of hazardous waste are as follows:

(1) This rule identifies only some of the materials ~~which~~ **that** are solid waste as defined by IC 13-11-2-205(a) and hazardous waste as defined by IC 13-11-2-99(a), including IC 13-22-2-3(b). A material ~~which~~ **that** is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of this article if, **in the case of:**

(A) ~~in the case of~~ IC 13-14-2-2, the commissioner has reason to believe that the material may be a solid waste within the meaning of IC 13-11-2-205(a) and a hazardous waste within the meaning of IC 13-11-2-99(a); or

(B) ~~in the case of~~ IC 13-14-10-1, the statutory elements are established.

(2) Delete 40 CFR 261.2(f) and substitute the following: Respondents in actions to enforce regulations implementing IC 13 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation to demonstrate that the material is not a waste or is exempt from regulation. An example of appropriate documentation is a contract showing that a second person uses the material as an ingredient in a production process. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

(3) References to the "administrator" in 40 CFR 261.10 through 40 CFR 261.11 means the SWMB.

(4) In addition to the requirements outlined in 40 CFR 261.6(c)(2), owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to 40 CFR 265.10 through 40 CFR 265.77.

(5) In addition to the listing of federal hazardous waste incorporated by reference in section 1 of this rule, the wastes listed in section 3 of this rule are added to the listing.

(6) In 40 CFR 261.4(e)(3)(iii), delete the words "in the Region where the sample is collected".

(7) Delete 40 CFR 261, Appendix IX.

(8) In 40 CFR 261.21(a)(3), delete "an ignitable compressed gas as defined in 49 CFR 173.300" and substitute "a flammable gas as defined in 49 CFR 173.115(a)".

(9) In 40 CFR 261.21(a)(4), delete "an oxidizer as defined in 49 CFR 173.151" and substitute "an oxidizer as defined in 49 CFR 173.127".

(10) Delete 40 CFR 261.23(a)(8) and substitute "It is a forbidden explosive as defined in 49 CFR 173.54; or would have been a Class A explosive as defined in 49 CFR 173.54 prior to HM-181, or a Class B explosive as defined in 49 CFR 173.88 prior to HM-181.".

(11) Delete 40 CFR 261.1(c)(9) through 40 CFR 261.1(c)(12).

(12) Delete 40 CFR 261.4(a)(13) and substitute section 4 of this rule.

(13) Delete 40 CFR 261.4(a)(14) and substitute section 4 of this rule.

(14) Delete 40 CFR 261.6(a)(3)(ii) and substitute section 4 of this rule.

(15) Delete 40 CFR 261.2(e)(1)(i) dealing with use or reuse of secondary materials to make products and substitute section 5 of this rule.

(16) In 40 CFR 261.5(j), delete "if it is destined to be burned for energy recovery" in two (2) places.

(17) The conditional exclusions from the definition of solid waste for some zinc fertilizers made from recycled hazardous secondary materials in 40 CFR 261.4(a)(20) and 40 CFR 261.4(a)(21) do not apply to any of the following industries until July 1, 2005:

Industry	Standard Industry Classification Code
Blast furnaces and steel mills	**3312**
Gray and ductile iron foundries	**3321**
Malleable iron foundries	**3322**
Steel investment foundries	**3324**
Steel foundries	**3325**
Aluminum foundries	**3365**
Copper foundries	**3366**
Nonferrous foundries	**3369**

(Solid Waste Management Board; 329 IAC 3.1-6-2; filed Jan 24, 1992, 2:00 p.m.: 15 IR 924; filed May 6, 1994, 5:00 p.m.: 17 IR 2063; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3355; filed Aug 7, 1996, 5:00 p.m.: 19 IR 3364; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1112; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2741; filed Jan 3, 2000, 10:00 a.m.: 23 IR 1096; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1638; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2432; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2662)

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663, eff Jul 1, 2005)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663, eff Jul 1, 2005)

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663, eff Jul 1, 2005)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2663, eff Jul 1, 2005)

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2664, eff Jul 1, 2005)

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2664, eff Jul 1, 2005)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2664, eff Jul 1, 2005)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2664, eff Jul 1, 2005)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2664, eff Jul 1, 2005)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2664, eff Jul 1, 2005)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2665, eff Jul 1, 2005)

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2665)

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~~ **the commissioner's** 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2665)

SECTION 7. 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.~~ **2003.**

(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,~~ **2003,** 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.~~ **2003.** 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.~~ **2003.** 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),~~ **329 IAC 13-4-5(3),** to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.
(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261, Subpart C, revised as of July 1, ~~2002,~~ **2003,** 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,~~ **2003,** 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 regula-

tion 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.~~ **2003.**

(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2666)*

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2668)

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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2669)*

SECTION 10. **SECTION 4 of this document takes effect July 1, 2005.**

LSA Document #03-312(F)
Proposed Rule Published: September 1, 2004; 27 IR 4109
Hearing Held: October 19, 2004
Approved by Attorney General: March 11, 2005
Approved by Governor: April 8, 2005
Filed with Secretary of State: April 13, 2005, 11:30 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: 40 CFR 60, Appendix A-1, revised as of July 1, 2003; 40 CFR 60, Appendix A-2, revised as of July 1, 2003; 40 CFR 60, Appendix A-3, revised as of July 1, 2003; 40 CFR 60, Appendix A-4, revised as of July 1, 2003; 40 CFR 60, Appendix A-5, revised as of July 1, 2003; 40 CFR 60, Appendix A-6, revised as of July 1, 2003; 40 CFR 60, Appendix A-7, revised as of July 1, 2003; 40 CFR 60, Appendix A-8, revised as of July 1, 2003; 40 CFR 146, revised as of July 1, 2003; 40 CFR 260.10, revised as of July 1, 2003; 40 CFR 260.22, revised as of July 1, 2003; 40 CFR 260.30 through 40 CFR 260.33, revised as of July 1, 2003; 40 CFR 260.40 through 40 CFR 260.41, revised as of July 1, 2003; 40 CFR 261, revised as of July 1, 2003; 40 CFR 262, revised as of July 1, 2003; 40 CFR 263, revised as of July 1, 2003; 40 CFR 264, revised as of July 1, 2003; 40 CFR 265, revised as of July 1, 2003; 40 CFR 266, revised as of July 1, 2003; 40 CFR 268, revised as of July 1, 2003; 40 CFR 270, revised as of July 1, 2003; 40 CFR 273, revised as of July 1, 2003.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #04-256(F)

DIGEST

Amends 329 IAC 10-2-112 and adds 329 IAC 10-11-6.5 concerning a minor modification to a municipal solid waste landfill permit for research, development, and demonstration and to incorporate federal language, with minor wording changes, into the Indiana rules. Effective 30 days after filing with the secretary of state.

HISTORY

Notice of Comment Period under IC 13-14-9-7: October 1, 2004, Indiana Register (28 IR 417).

Notice of First Hearing: October 1, 2004, Indiana Register (28 IR 419).

Date of First Hearing: November 16, 2004.

Proposed Rule and Notice of Second Hearing: January 1, 2005, Indiana Register (28 IR 1301).

Date of Second Hearing: February 15, 2005.

Finally Adopted: February 15, 2005.

329 IAC 10-2-112
329 IAC 10-11-6.5

SECTION 1. 329 IAC 10-2-112 IS AMENDED TO READ AS FOLLOWS:

329 IAC 10-2-112 "Minor modification of solid waste land disposal facilities" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 112. (a) "Minor modification of solid waste land disposal facilities" means any modification in a permitted solid waste land disposal facility that would not:

(1) increase the:

(A) facility's permitted capacity to dispose of solid waste by the lesser of:

~~(A)~~ **(i)** more than ten percent (10%); or

~~(B)~~ **(ii)** five hundred thousand (500,000) cubic yards; **or**

~~(2) increase the~~ **(B)** area within the permitted solid waste boundary by more than one (1) acre; **or**

~~(3)~~ **(2)** include those items determined to be:

(A) insignificant modifications ~~by~~ **under** 329 IAC 10-3-3(b) or by the commissioner; or

~~(4) include those items determined to be~~ **(B)** major modifications ~~by~~ **under** section 109 of this rule.

(b) A minor modification ~~may include the addition or modification of:~~ **includes, but is not limited to, the following:**

(1) An alternative daily cover (ADC) under 329 IAC 10-20-14.1(e).

(2) A baled waste management plan under 329 IAC 10-20-31(3). ~~and~~

(3) A borrow pit:

(A) owned by the owner, operator, or permittee;

(B) not permitted by the department before April 1, 2004; and

(C) located on-site or on property adjoining the facility.

(4) The run-on control systems, the liquids restriction, and the final cover as allowed under the research, development, and demonstration minor permit modification in 329 IAC 10-11-6.5.

(Solid Waste Management Board; 329 IAC 10-2-112; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1777; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3766; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1795, eff Apr 1, 2004; filed May 2, 2005, 2:30 p.m.: 28 IR 2670)

SECTION 2. 329 IAC 10-11-6.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 10-11-6.5 Research, development, and demonstration minor modification application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1
Affected: IC 13-30-2; IC 36-9-30

Sec. 6.5. (a) Except as provided in subsection (f), the commissioner may issue a minor modification for research, development, and demonstration for a new MSWLF, existing MSWLF, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods that vary from either or both of the following criteria provided that the MSWLF has a leachate collection system designed and constructed to maintain less than twelve (12) inches depth of leachate on the liner and an active gas extraction system, which is designed to extract or recover at least sixty percent (60%) of the total volume of the landfill gas produced or generated at the MSWLF:

(1) The run-on control system in 329 IAC 10-20-11(a)(1).

(2) The liquids restrictions in 329 IAC 10-20-27.

(b) The commissioner may issue a minor modification for research, development and demonstration for a new MSWLF, existing MSWLF, or lateral expansion for which the owner or operator proposes to utilize innovative and new methods that vary from the final cover requirements at 329 IAC 10-22-6, provided:

(1) the MSWLF owner/operator demonstrates that the percolation of liquid through the alternative cover system will not cause contamination of ground water or surface water; and

(2) will not cause leachate depth on the liner to exceed twelve (12) inches.

(c) Any MSWLF permit minor modification issued under this section must also meet the requirements in section 6 of this rule and must include such terms and conditions at least as protective as this article to assure protection of human health and the environment. The minor modification issued under this section shall do the following:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three (3) years, unless renewed as provided in subsection (e).

(2) Provide that the MSWLF must receive only those types and quantities of municipal solid waste and nonhazardous wastes that the commissioner deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process.

(3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the commissioner with respect to the operation of the facility.

(4) Require the owner or operator of the MSWLF with a

minor modification under this section to submit an annual report to the commissioner showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results, as well as any other operating information specified by the commissioner in the minor modification given under this section.

(5) Require compliance with all requirements, as applicable, under this article.

(d) The commissioner may revoke or amend the minor modification issued under this section and require immediate termination of all operations at the facility allowed by the minor modification issued under this section or other corrective measures at any time the commissioner determines that the overall goals of the project are not being attained, including protection of human health or the environment.

(e) Any minor modification issued under this section shall not exceed a term of three (3) years, and each renewal of this minor modification may not exceed a term of three (3) years. The following apply to this section:

(1) The total term for a minor modification issued under this section, including all renewals issued under this section, must not exceed twelve (12) years.

(2) As part of the minor modification renewal application under this section, the owner or operator shall provide the following:

(A) A detailed assessment of the approved research, development, and demonstration project showing the status with respect to achieving project goals.

(B) A list of problems and status with respect to problem resolutions.

(C) Any other information that the commissioner determines necessary to assure protection of human health or the environment for the minor modification renewal issued under this section.

(f) An owner or operator of a MSWLF:

(1) operating under an exemption set forth in 40 CFR 258.1(f)(1); or

(2) that disposes of twenty (20) tons of municipal solid waste per day or less based on an annual average;

is not eligible for a minor modification under this section.

(Solid Waste Management Board; 329 IAC 10-11-6.5; filed May 2, 2005, 2:30 p.m.: 28 IR 2670)

LSA Document #04-256(F)
Proposed Rule Published: January 1, 2005; 28 IR 1301
Hearing Held: February 15, 2005
Approved by Attorney General: April 27, 2005
Approved by Governor: April 29, 2005
Filed with Secretary of State: May 2, 2005, 2:30 p.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 #04-147(F)

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2671)

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2672)

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2672)*

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 or 345 IAC 2.5-4-4. *(Indiana State Board of Animal Health; 345 IAC 2.5-1-2; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2672)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)

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 United States Department of Agriculture 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2673)*

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 tuberculin test" or "CFT test" 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)*

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 has 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)

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 supervi-

sion 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2674)

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2675)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2676)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2677)*

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, January 1, 2005, as the operating procedures for tuberculosis control in bovine, bison, and goats. Where the Bovine TB UM&R conflicts with this rule, the 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2677)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2677)*

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 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 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 CT test. 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 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 CF 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2677)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2678)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2678)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2678)

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2678)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2678)*

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 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.

(3) "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.

(4) "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.

(5) "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.

(6) "Negative animal" means cattle and bison that are classified as negative for tuberculosis in accordance with this article and the bovine TB UM&R.

(7) "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.

(8) "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 and dairy cross breeds, that are six (6) months of age or older, from an accredited-free state or zone or a modified accredited advanced 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2678)*

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 slaugh-

tering 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, including dairy cross breeds, that are six (6) months of age or older that originate from an accredited-free state or zone or a modified accredited advanced 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 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 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 without commingling with animals from outside the production system 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2679)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2681)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2681)

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2682)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2682)*

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 CFT 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 CFT test may be released from quarantine when the suspect animals:

(A) test negative for tuberculosis using the CCT test within ten (10) days of the caudal fold injection;

(B) are retested and found to be negative for tuberculosis using the CCT 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 CCT test meets one (1) of the following sets of criteria:

(A) The animal is retested using the CCT 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 CCT 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 CFT 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2683)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2684)*

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 more than three hundred sixty (360) days and not less 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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2685)

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 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.

(3) "Goats not known to be affected" means all goats except those originating from tuberculosis affected herds or from herds containing tuberculosis suspect goats.

(4) "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.

(5) "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.

(6) "Negative goat" means goats that are classified as negative for tuberculosis in accordance with the bovine TB UM&R.

(7) "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.

(8) "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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2685)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2685)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2686)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2686)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2686)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2686)*

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; filed Apr 13, 2005, 12:30 p.m.: 28 IR 2687)*

SECTION 5. THE FOLLOWING ARE REPEALED: 345 IAC 1-3-6.5; 345 IAC 1-3-9; 345 IAC 2-4.1-1; 345 IAC 2-4.1-2.1; 345 IAC 2-4.1-2.8; 345 IAC 2-4.1-3; 345 IAC 2-4.1-4; 345 IAC 2-4.1-5; 345 IAC 2-4.1-6; 345 IAC 2-4.1-7; 345 IAC 2-4.1-8; 345 IAC 2-4.1-9; 345 IAC 2-4.1-10; 345 IAC 2-4.1-11; 345 IAC 2-4.1-12; 345 IAC 2-4.1-13; 345 IAC 2-4.1-14; 345 IAC 2-4.1-15; 345 IAC 2-4.1-16; 345 IAC 2-4.1-17; 345 IAC 2-4.1-18.

LSA Document #04-147(F)
Notice of Intent Published: June 1, 2004; 27 IR 2762
Proposed Rule Published: September 1, 2004; 27 IR 4120
Hearing Held: October 7, 2004
Approved by Attorney General: March 31, 2005
Approved by Governor: April 13, 2005
Filed with Secretary of State: April 13, 2005, 12:30 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #04-136(F)

DIGEST

Adds 460 IAC 1-11 to provide for the posting of notices at housing with services establishments, area agencies on aging, and centers for independent living that advise residents of their rights, and for procedures for residents and their representatives to file complaints concerning violations of filing disclosure requirements. Effective 30 days after filing with the secretary of state.

460 IAC 1-11

SECTION 1. 460 IAC 1-11 IS ADDED TO READ AS FOLLOWS:

Rule 11. Posting of Notices

460 IAC 1-11-1 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-9-1-1; IC 12-10-1-4; IC 12-10-5-2; IC 12-10-15; IC 12-12-8-1

Sec. 1. (a) "Administrator" means the natural person who:
(1) administers;
(2) manages;
(3) supervises; or
(4) is in general administrative charge of;
a housing with services establishment.

(b) "Area agency on aging" or "AAA" means the agency designated by the bureau of aging and in-home services in each planning and service area under IC 12-10-1-4(18).

(c) "Centers for independent living" means a consumer controlled, community based, cross-disability, private nonprofit agency that:
(1) is designed and operated within a local community by individuals with disabilities; and
(2) provides an array of independent living services.

(d) "Director" means the director of the division.

(e) "Division" means the division of disability, aging, and rehabilitative services created under IC 12-9-1-1.

(f) "Housing with services establishment" or "establishment" means a facility providing sleeping accommodations to at least five (5) residents and offering or providing for a fee at least:
(1) one (1) regularly scheduled health related service as defined in IC 12-10-15-2; or
(2) two (2) regularly scheduled supportive services;
whether offered or provided directly by the establishment or by another person arranged for by the establishment.

(g) "Operator" means a person that operates a housing with services establishment.

(h) "Resident" means an individual who has a contract to reside in a housing with services establishment.

(i) "Supportive services" means help with personal laundry, handling or assisting with personal funds of the

residents, or arranging for medical services, health related services, or social services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-1; filed May 9, 2005, 1:50 p.m.: 28 IR 2687)*

460 IAC 1-11-2 Requirement to post notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15

Sec. 2. Each housing with services establishment, center for independent living, and area agency on aging shall post a notice that advises residents of a housing with services establishment of their rights under IC 12-10-15. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-2; filed May 9, 2005, 1:50 p.m.: 28 IR 2688)*

460 IAC 1-11-3 Rights to be included in notice

Authority: IC 12-8-4-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15; IC 16-27-1-5; IC 16-28

Sec. 3. The notice required by section 2 of this rule shall advise residents of housing with services establishments of the following rights:

(1) That each resident, or the resident's representative, must be given:

(A) a complete copy of the contract between the establishment and the resident or the resident's representative;

(B) all supporting documents and attachments; and

(C) any changes whenever changes are made.

(2) That the housing with services establishment contract must include the following elements in the contract or through supporting documents or attachments in clear and understandable language:

(A) The name, street address, and mailing address of the establishment.

(B) The name and mailing address of the owner or owners of the establishment and, if the owner or owners are not natural persons, identification of the type of business entity of the owner or owners.

(C) The name and mailing address of the managing agency, through management agreement or lease arrangement, of the establishment, if different from the owner or owners.

(D) A statement describing the disclosure document and licensure status, if any, of the establishment and any person providing health related services or supportive services under arrangement with the operator.

(E) The term of the contract.

(F) A description of the services to be provided to the resident in the base rate to be paid by the resident or on the resident's behalf.

(G) A description of any additional services available for an additional fee from the establishment directly or through arrangements with the establishment.

(H) The fee schedules outlining the cost of any additional services.

(I) A description of the process through which the contract may be modified, amended, or terminated.

(J) A description of the establishment's complaint resolution process available to the residents.

(K) The resident's designated representative, if any.

(L) The establishment's referral procedures if the contract is terminated.

(M) The criteria used by the establishment to determine who may continue to reside in the establishment. That the criteria must address the following:

(i) When a resident must be transferred because the establishment and the resident are unable to develop a means for assuring that the resident is able to respond to an emergency in a manner that is consistent with local fire and safety requirements.

(ii) When the establishment is unable to assure that the resident's physical, mental, and psychosocial needs can be met.

(N) A description of the process for assuring that the resident's needs are assessed on admission and periodically thereafter in conjunction with the resident and the resident's representative and for assuring that the resident's physical, mental, and psychosocial needs are met within the terms of the contract criteria for residence provided under clause (M).

(O) The billing and payment procedures and requirements.

(3) That an establishment's contract must state that:

(A) except as stated in the contract, residency in the establishment may not be terminated due to a change in the resident's health or care needs;

(B) the ability of a resident to engage in activities away from the establishment regardless of time, duration, and distance of the activities may not be restricted;

(C) except to protect the rights and activities of other residents, the establishment may not restrict the ability of a resident to have visitors and to receive family members and guests; and

(D) except as stated in the contract and identified in the disclosure document, the operator may not:

(i) restrict the ability of a resident to use a home health agency, home health provider, hospice, home health attendant, or case management service of the resident's choice; or

(ii) require a resident to use home health services as defined in IC 16-27-1-5.

(4) That except where a resident's health or safety or the health and safety of others are endangered, an operator shall provide at least thirty (30) days notice to the resident or the resident's designated representative before terminating the resident's residency.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-3; filed May 9, 2005, 1:50 p.m.: 28 IR 2688)

460 IAC 1-11-4 Location of notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15

Sec. 4. (a) Each area agency on aging shall post a notice or notices in areas accessible to consumers, including, but not limited to, the following:

(1) Corporate waiting rooms.

(2) Senior centers.

(3) Meal sites.

(b) Each center for independent living shall post a notice or notices in each building, wing, floor, or common area that is open and available to residents and family members at any time.

(c) Each establishment shall post a notice or notices in each building, wing, floor, or common area that is open and available to residents and family members at any time. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-4; filed May 9, 2005, 1:50 p.m.: 28 IR 2688)*

460 IAC 1-11-5 Format of notice

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15

Sec. 5. (a) The notice or notices shall be in a language appropriate for the individuals residing in the facility or frequenting AAA sites.

(b) The format and the wording of the notice shall be approved by the division.

(c) The posting shall include contact information for the local and state long term care ombudsman. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-5; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-6 Filing of complaints by residents; investigation; resolution

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-13; IC 12-10-15

Sec. 6. (a) A complaint may be filed by a resident or on behalf of a resident with the local long term care ombudsman or state long term care ombudsman, or both, regarding an establishment's violation of a requirement contained in IC 12-10-15 or this rule, or both.

(b) The local long term care ombudsman or state long term care ombudsman, or both, shall perform an investigation into the allegations of the complaint.

(c) If the complaint is substantiated after investigation, the local long term care ombudsman or state long term care ombudsman, or both, will work with the facility to correct the problem.

(d) If the problem is resolved and remains resolved, the problem, condition, or incident will not be reflected on the establishment's record in the division.

(e) If the problem is not resolved, the complaint shall be referred to the director for appropriate action and will become public record. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-6; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-7 Response by establishment to a complaint

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-13; IC 12-10-15

Sec. 7. If a complaint by a resident or a resident's representative regarding an establishment's violation of a requirement contained in IC 12-10-15 or this rule, or both, is forwarded to the director, the director shall send a copy of the complaint to the establishment against which a complaint has been filed. The establishment shall have fifteen (15) days in which to file a response with the director. The director may, if necessary, require additional information from or investigation of the establishment. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-7; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-8 Imposition of penalty

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-15-14
Affected: IC 12-10-15

Sec. 8. (a) If the director finds that an establishment has violated a requirement contained in IC 12-10-15, the director shall impose a penalty of one hundred dollars ($100) per day for each requirement that has been violated.

(b) If the establishment has been found to have had two (2) or more violations within the previous two (2) years, the director may impose a fine of a minimum of two hundred dollars ($200) per day for each requirement that has been violated.

(c) A fine will be imposed beginning from the time the complaint is verified by the long term care ombudsman until such time as the violation is corrected.

(d) The total penalty for each violation may not exceed ten thousand dollars ($10,000). *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-8; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-9 Administrative review

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5-3-7; IC 12-11-1.1; IC 12-11-2.1

Sec. 9. (a) A person who is aggrieved by a penalty imposed under this rule may request review under IC 4-21.5-3-7.

(b) To qualify for administrative review of a penalty imposed under this rule, a person shall file a written petition for review that does the following:

(1) States facts demonstrating that the person is:

(A) a person to whom the action is specifically directed;

(B) aggrieved or adversely affected by the action; or
(C) entitled to review under any law.
(2) Is filed with the director of the division within fifteen (15) days after the person receives notice of the agency action or determination.

(c) Administrative review shall be conducted in accordance with IC 4-21.5.

(d) If a request for a hearing is not filed within fifteen (15) days after the penalty is imposed, the determination of the director and the penalty are final. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-9; filed May 9, 2005, 1:50 p.m.: 28 IR 2689)*

460 IAC 1-11-10 Substantial and repeated violations
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5-3-7; IC 12-10-15; IC 12-11-1.1; IC 12-11-2.1

Sec. 10. (a) If the director determines that an establishment has had substantial and repeated violations of the requirements contained in IC 12-10-15, the director may prohibit an establishment from using the term "assisted living" to describe the establishment's services and operations to the public.

(b) An establishment that is aggrieved by a penalty imposed under this rule may request review under IC 4-21.5-3-7.

(c) To qualify for administrative review of a penalty imposed under this rule, an establishment shall file a written petition for review that does the following:
(1) States facts demonstrating that the establishment is:
(A) an establishment to whom the action is specifically directed;
(B) aggrieved or adversely affected by the action; or
(C) entitled to review under any law.
(2) Is filed with the director of the division within fifteen (15) days after the establishment receives notice of the agency action or determination.

(d) Administrative review shall be conducted in accordance with IC 4-21.5. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-10; filed May 9, 2005, 1:50 p.m.: 28 IR 2690)*

460 IAC 1-11-11 Intentional violations
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12
Affected: IC 4-21.5; IC 12-10-15; IC 12-11-1.1; IC 12-11-2.1

Sec. 11. If the director determines that an operator or administrator of an establishment has intentionally violated the requirements contained in IC 12-10-15, or has made fraudulent and material misrepresentations to a resident, the director may request the attorney general to investigate and take appropriate action against the operator or administrator. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-11-11; filed May 9, 2005, 1:50 p.m.: 28 IR 2690)*

LSA Document #04-136(F)
Notice of Intent Published: June 1, 2004; 27 IR 2763
Proposed Rule Published: December 1, 2004; 28 IR 1004
Hearing Held: December 22, 2004
Approved by Attorney General: April 25, 2005
Approved by Governor: May 9, 2005
Filed with Secretary of State: May 9, 2005, 1:50 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None received by Publisher

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #04-199(F)

DIGEST

Amends 460 IAC 1-8-3 to add to the list of those who are precluded from providing attendant care services. Adds 460 IAC 1-8-11 through 460 IAC 1-8-13 regarding the hire of a fiscal agent by an individual in need of self-directed in-home care who has hired a personal services attendant, including duties, methods of payment for a personal services attendant and fiscal agent, and record keeping requirements. Effective 30 days after filing with the secretary of state.

460 IAC 1-8-3 **460 IAC 1-8-12**
460 IAC 1-8-11 **460 IAC 1-8-13**

SECTION 1. 460 IAC 1-8-3 IS AMENDED TO READ AS FOLLOWS:

460 IAC 1-8-3 Attendant care service provider registration requirement; preclusion
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-15
Affected: IC 12-10-10; IC 12-10-17; IC 12-15

Sec. 3. (a) An individual desiring to provide attendant care services must register with the division.

(b) An individual may not provide attendant care services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program for an individual in need of self-directed in-home care services unless the individual seeking to provide attendant care services is registered with the division.

(c) An individual who is a ~~legally responsible relative~~ **legal guardian** of an individual in need of self-directed in-home care, including a parent of a minor individual and a spouse, is precluded from providing attendant care services for that

individual for compensation under this section.

(d) An individual may not provide personal attendant services for compensation from Medicaid or the community and home options to institutional care for the elderly and disabled program if they have been convicted of a crime or offense involving abuse, neglect, or exploitation of an individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-3; filed Oct 2, 2002, 9:13 a.m.: 26 IR 351; filed May 9, 2005, 1:50 p.m.: 28 IR 2690)*

SECTION 2. 460 IAC 1-8-11 IS ADDED TO READ AS FOLLOWS:

460 IAC 1-8-11 Method of payment to a personal services attendant

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-15
Affected: IC 12-10-10; IC 12-10-17

Sec. 11. (a) For purposes of this rule, "fiscal agent" means an entity that is utilized by the person in need of self-directed in-home care to handle the payroll responsibilities related to the agreement between the person in need of self-directed in-home care and the personal services attendant.

(b) An individual in need of self-directed in-home care who has hired a personal services attendant who is registered with the division shall utilize a fiscal agent that must be authorized by the division of disability, aging, and rehabilitative services.

(c) The fiscal agent shall provide payroll and bookkeeping services following federal, state, and local regulations, including, but not limited to, the following:

(1) Assisting the individual in completing and submitting applications for the following:
(A) State and federal employment tax identification numbers.
(B) Unemployment insurance.
(C) Worker's compensation insurance.
(2) Processing the following:
(A) Payroll, including income tax withholdings.
(B) Social Security deductions under the Federal Insurance Contributions Act (FICA).
(C) Worker's compensation.
(D) Wages.
(3) Disbursing checks to the personal services attendant.
(4) Preparing employer tax forms, including W-4 forms.
(5) Supplying appropriate paperwork to be used by the individual in need of self-directed in-home care to document and monitor time worked by the personal services attendant.

(d) Payroll records must certify the following:
(1) The personal services attendant worked the hours as recorded.
(2) The individual in need of self-directed in-home services received the services as recorded and the services were within the limits of the authorized care plan.
(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-11; filed May 9, 2005, 1:50 p.m.: 28 IR 2691)

SECTION 3. 460 IAC 1-8-12 IS ADDED TO READ AS FOLLOWS:

460 IAC 1-8-12 Method of payment to a fiscal agent

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-15
Affected: IC 12-10-17; IC 12-10-10

Sec. 12. The fiscal agent shall be paid in accordance with the terms of the agreement with the division. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-12; filed May 9, 2005, 1:50 p.m.: 28 IR 2691)*

SECTION 4. 460 IAC 1-8-13 IS ADDED TO READ AS FOLLOWS:

460 IAC 1-8-13 Record keeping requirements

Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-17-15
Affected: IC 12-10-17; IC 12-10-10

Sec. 13. The fiscal agent shall maintain records for personal attendant services in accordance with the terms of the agreement with the division. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-8-13; filed May 9, 2005, 1:50 p.m.: 28 IR 2691)*

LSA Document #04-199(F)
Notice of Intent Published: August 1, 2004; 27 IR 3593
Proposed Rule Published: December 1, 2004; 28 IR 1007
Hearing Held: December 22, 2004
Approved by Attorney General: April 25, 2005
Approved by Governor: May 9, 2005
Filed with Secretary of State: May 9, 2005, 1:50 p.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 #04-214(F)

DIGEST

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. Effective 30 days after filing with the secretary of state.

511 IAC 5-2-4.5

SECTION 1. 511 IAC 5-2-4.5 IS ADDED TO READ AS FOLLOWS:

511 IAC 5-2-4.5 Alternate assessment based on alternate achievement standards in lieu of ISTEP+

Authority: IC 20-1-1-6; IC 20-10.1-16-10
Affected: IC 20-10.2-16

Sec. 4.5. (a) The case conference committee may determine that a student with a significant cognitive disability will be assessed on alternate achievement standards using the Indiana Standards Tool for Alternate Reporting (ISTAR) in lieu of being assessed with ISTEP+.

(b) The case conference committee's determination must be based upon the criteria in subsection (c), and the case conference committee must document on the student's individualized education program that the student satisfies each criterion.

(c) The case conference committee must find and document that the following criteria are satisfied in order for the student to be assessed on alternate achievement standards:

(1) There is empirical evidence of a significant cognitive disability that prevents the student from achieving Indiana's academic standards necessary to attain a high school diploma. Empirical evidence includes, but is not limited to, formal testing results and other evaluative data.

(2) There are data to show that the student is unable to acquire, maintain, generalize, and apply academic skills across environments even with:

(A) extensive;
(B) intensive;
(C) pervasive;
(D) frequent; and
(E) individualized;

instruction in multiple settings.

(3) The student's individualized education program:

(A) includes goals and objectives that focus primarily on functional achievement indicators; and

(B) demonstrates that the student's present level of performance significantly impedes the student's participation in and completion of the general education curriculum even with significant program modifications.

(d) The case conference committee's determination that the student will be assessed with ISTAR on alternate achievement standards cannot be based on factors other than cognitive functioning. Specifically, the case conference committee's determination may not be based on any of the following:

(1) Excessive or extensive absences.
(2) Social, cultural, or economic differences.
(3) The mere existence of an individualized education program.
(4) Identification in a specific disability category.
(5) A specific special education placement or services.
(6) Emotional, behavioral, or physical challenges.
(7) The student's anticipated score on ISTEP+.
(8) The school's concern about the calculations of adequate yearly progress.

(Indiana State Board of Education; 511 IAC 5-2-4.5; filed Apr 20, 2005, 2:00 p.m.: 28 IR 2692)

LSA Document #04-214(F)
Notice of Intent Published: September 1, 2004; 27 IR 4046
Proposed Rule Published: November 1, 2004; 28 IR 668
Hearing Held: December 2, 2004
Approved by Attorney General: March 21, 2005
Approved by Governor: April 19, 2005
Filed with Secretary of State: April 20, 2005, 2:00 p.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 #04-138(F)

DIGEST

Amends 655 IAC 1-1-5.1, 655 IAC 1-2.1, and 655 IAC 1-4-2 to amend general administrative rules and certification programs and certifications, to update certain National Fire Protection Association Standards, to amend the mandatory training program and the mandatory training requirements, and to make conforming section changes. Effective 30 days after filing with the secretary of state.

655 IAC 1-1-5.1
655 IAC 1-2.1-3
655 IAC 1-2.1-4
655 IAC 1-2.1-5
655 IAC 1-2.1-6
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 1-2.1-7.1
655 IAC 1-2.1-8
655 IAC 1-2.1-9
655 IAC 1-2.1-10
655 IAC 1-2.1-11
655 IAC 1-2.1-12
655 IAC 1-2.1-13
655 IAC 1-2.1-14
655 IAC 1-2.1-15
655 IAC 1-2.1-20
655 IAC 1-2.1-22
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 1-2.1-75
655 IAC 1-2.1-75.2
655 IAC 1-2.1-75.3
655 IAC 1-2.1-75.4
655 IAC 1-2.1-75.5
655 IAC 1-2.1-76.1
655 IAC 1-2.1-76.2
655 IAC 1-2.1-76.3
655 IAC 1-2.1-96
655 IAC 1-2.1-97
655 IAC 1-2.1-98
655 IAC 1-2.1-99
655 IAC 1-2.1-100
655 IAC 1-2.1-101
655 IAC 1-2.1-102
655 IAC 1-2.1-103
655 IAC 1-2.1-104
655 IAC 1-2.1-105
655 IAC 1-2.1-106
655 IAC 1-2.1-107
655 IAC 1-2.1-108
655 IAC 1-2.1-109
655 IAC 1-2.1-110
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:

(1) legibly signed by the authorized instructor who has taken responsibility for the verified competencies; ~~Applications shall be~~

(2) legibly completed in full; ~~Applications shall be~~ **and**

(3) 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:

(1) legibly signed by the authorized instructor who has taken responsibility for the verified competencies; ~~Applications shall be~~

(2) legibly completed in full; ~~Applications shall be~~ **and**

(3) 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-Strategy and Tactics	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-7.1**
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
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
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~~ **Rescuer-Awareness**	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75
Rope Rescuer-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-96**
Rope Rescuer-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-97**
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~~ **Rescuer-Awareness**	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.2
Vehicle and Machinery Rescuer-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-98**
Vehicle and Machinery Rescuer-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-99**
~~Rescue Technician~~ Confined Space ~~Rescue~~ **Rescuer-Awareness**	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.3
Confined Space Rescuer-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-100**
Confined Space Rescuer-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-101**
~~Rescue Technician~~ Structural Collapse ~~Rescue~~ **Rescuer-Awareness**	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.4
Structural Collapse Rescuer-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-102**
Structural Collapse Rescuer-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-103**

~~Rescue Technician~~ Trench ~~Rescue~~ **Rescuer-Awareness**	655 IAC 1-2.1-2 and 655 IAC 1-2.1-75.5
Trench Rescuer-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-104**
Trench Rescuer-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-105**
Swift Water ~~Rescue Technician~~ **Rescuer-Awareness**	655 IAC 1-2.1-2 and 655 IAC 1-2.1-76.1 ~~through 655 IAC 1-2.1-76.3~~
Swift Water Rescuer-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-106**
Swift Water Rescuer-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-107**
Wilderness Rescuer-Awareness	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-108**
Wilderness Rescuer-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-109**
Wilderness Rescuer-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-110**
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 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)
Fire Officer-Strategy and Tactics	**655 IAC 1-2.1-7.1(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~~ **Rescuer-Awareness**	~~655 IAC 1-2.1-75~~ **655 IAC 1-2.1-75(a)**
Rope Rescuer-Operations	**655 IAC 1-2.1-96(a)**
Rope Rescuer-Technician	**655 IAC 1-2.1-97(a)**
Rescue Technician-Surface Water Rescue	655 IAC 1-2.1-75.1
~~Rescue Technician~~ Vehicle and Machinery ~~Rescue~~ **Rescuer-Awareness**	~~655 IAC 1-2.1-75.2~~ **655 IAC 1-2.1-75.2(a)**
Vehicle and Machinery Rescuer-Operations	**655 IAC 1-2.1-98(a)**
Vehicle and Machinery Rescuer-Technician	**655 IAC 1-2.1-99(a)**
~~Rescue Technician~~ Confined Space ~~Rescue~~ **Rescuer-Awareness**	~~655 IAC 1-2.1-75.3~~ **655 IAC 1-2.1-75.3(a)**
Confined Space Rescuer-Operations	**655 IAC 1-2.1-100(a)**
Confined Space Rescuer-Technician	**655 IAC 1-2.1-101(a)**
~~Rescue Technician~~ Structural Collapse ~~Rescue~~ **Rescuer-Awareness**	~~655 IAC 1-2.1-75.4~~ **655 IAC 1-2.1-75.4(a)**
Structural Collapse Rescuer-Operations	**655 IAC 1-2.1-102(a)**
Structural Collapse Rescuer-Technician	**655 IAC 1-2.1-103(a)**
~~Rescue Technician~~ Trench ~~Rescue~~ **Rescuer-Awareness**	~~655 IAC 1-2.1-75.5~~ **655 IAC 1-2.1-75.5(a)**
Trench Rescuer-Operations	**655 IAC 1-2.1-104(a)**
Trench Rescuer-Technician	**655 IAC 1-2.1-105(a)**
Swift Water ~~Rescue Technician~~ **Rescuer-Awareness**	~~655 IAC 1-2.1-76.1 through 655 IAC 1-2.1-76.3~~ **655 IAC 1-2.1-76.1(a)**
Swift Water Rescuer-Operations	**655 IAC 1-2.1-106(a)**
Swift Water Rescuer-Technician	**655 IAC 1-2.1-107(a)**
Wilderness Rescuer-Awareness	**655 IAC 1-2.1-108(a)**
Wilderness Rescuer-Operations	**655 IAC 1-2.1-109(a)**
Wilderness Rescuer-Technician	**655 IAC 1-2.1-110(a)**
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~~ **Rescuer-Awareness**	655 IAC 1-2.1-2 and 655 IAC 1-2.1-76.1 ~~through 655 IAC 1-2.1-76.3~~
Swift Water Rescuer-Operations	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-106**

Swift Water Rescuer-Technician	**655 IAC 1-2.1-2 and 655 IAC 1-2.1-107**
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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2693)

SECTION 2. 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 4-Competencies for the First Responder at the Awareness Level and Chapter 5-Competencies for the First Responder at the Operational Level, 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~~ **5-1.1.1** and ~~4-1.1.2,~~ ~~1997~~ **5-1.1.2, 2002** Edition, published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(c) To the extent that Sections ~~3-1.1~~ **5-1.1** and ~~4-1.1~~ **5-1.1** of NFPA 1001 require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~2.~~ **4.**

(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2696)

SECTION 3. 655 IAC 1-2.1-4 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-4 Firefighter I
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 4. (a) The minimum training standards for Firefighter I certification shall be as set out in that certain document, being titled as NFPA 1001, Standard for Firefighter Professional Qualifications, Chapter ~~3~~ **5**-Firefighter I, ~~1997~~ **2002** Edition, published by the National Fire Protection Association (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 ~~5.~~ **4.**

(b) The candidate shall be certified as a Basic Firefighter.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-4; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3391; filed Sep 24, 1999, 10:02 a.m.: 23 IR 330; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2696)

SECTION 4. 655 IAC 1-2.1-5 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-5 Firefighter II
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 5. (a) The minimum training standards for Firefighter II certification shall be as set out in that certain document, being titled as NFPA 1001, Standard for Firefighter Professional Qualifications, Chapter ~~4~~ **6**-Firefighter II, ~~1997~~ **2002** Edition, published by the National Fire Protection Association (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 ~~5.~~ **2.**

(b) The candidate shall be certified as a Firefighter I or

Second Class Firefighter. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-5; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3391; filed Sep 24, 1999, 10:02 a.m.: 23 IR 330; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2696)*

SECTION 5. 655 IAC 1-2.1-6 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-6 Driver/Operator-Pumper
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 6. (a) The minimum training standards for Driver/Operator-Pumper certification shall be as set out in that certain document, being titled as NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, Chapters ~~2~~ **4** and ~~3,~~ ~~1998~~ **5, 2003** 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~~ **4** and ~~3~~ **5** require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~9.~~ **2.**

(b) The candidate shall:
(1) have been certified as at least a Firefighter I or ~~Second~~ **First** Class Firefighter; ~~for a period of at least one (1) year prior to the date of application.~~ **and**
~~(c) The candidate shall~~ **(2)** hold an appropriate valid driver's license.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-6; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3391; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1161; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2697)

SECTION 6. 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~~ **4** and ~~4,~~ ~~1998~~ **6, 2003** 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~~ **4** and ~~4~~ **6** require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~9.~~ **2.**

(b) The candidate shall:
(1) have been certified as at least a Firefighter I or ~~Second~~ **First** Class Firefighter; ~~for a period of at least one (1) year prior to the date of application.~~ **and**
~~(c) The candidate shall~~ **(2)** 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2697)*

SECTION 7. 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~~ **8, 2003** 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~~ **8** require compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~9.~~ **2.**

(b) The candidate shall:
(1) have been certified as at least a Firefighter I or ~~Second~~ **First** Class Firefighter; ~~for a period of at least one (1) year prior to the date of application.~~ **and**
~~(c) The candidate shall~~ **(2)** 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2697)*

SECTION 8. 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~~ **Chapter 9, 2003** 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~~ **Chapter 9 requires** compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~9.~~ **2.**

(b) The candidate shall:

(1) have been certified as at least a Firefighter I or ~~Second~~ **First** Class Firefighter; ~~for a period of at least one (1) year prior to the date of application.~~ **and**

~~(c) The candidate shall~~ **(2)** 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2697)

SECTION 9. 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~~ **Chapter 10, 2003** 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~~ **Chapter 10 requires** compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~9.~~ **2.**

(b) The candidate shall:

(1) have been certified as at least a Firefighter I or ~~Second~~ **First** Class Firefighter; ~~for a period of at least one (1) year prior to the date of application.~~ **and**

~~(c) The candidate shall~~ **(2)** 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2698)*

SECTION 10. 655 IAC 1-2.1-7.1 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-7.1 Fire Officer-Strategy and Tactics

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 7.1. (a) The minimum training standards for Fire Officer-Strategy and Tactics certification shall be as set out in this section.

(b) The candidate shall accomplish the follow objectives:
(1) List the eight (8) components of leadership and explain the importance of transition to a company officer.
(2) Explain the key safety behaviors that impact safe tactical operations.
(3) Identify the fire officer's responsibility for an organized approach to emergency incident management.
(4) Establish priorities for personal values and describe the relationship of those personal values to incident management and firefighter safety.
(5) Describe the five (5) elements of department readiness and explain the importance of each element.
(6) List four (4) benefits of effective incident communications and explain the importance of each.
(7) List the six (6) steps identified in the Communications Model and explain the importance of each step.
(8) List the five (5) classifications of building construction and explain the characteristics of each.
(9) Identify the strengths and weaknesses for each building construction classification.
(10) List and explain the critical fire behavior factors that relate to tactical operations for an assigned fire scenario.
(11) Properly calculate the required fire flow for fire suppression for structures using the National Fire Academy Fire Flow Formula.
(12) Given the required fire flow for a structure, estimate the fire personnel required for offensive operations.
(13) Given an appropriate scenario, properly complete a National Fire Academy Quick Access Pre-fire Plan.
(14) Explain why it is important to follow a logical thought process for decision making and action planning.
(15) Identify the three (3) parts of the Command Sequence.
(16) Identify the outcomes that result from each of the three (3) steps of the Command Sequence.
(17) Identify the three (3) incident priorities and the order in which they shall be accomplished.
(18) Describe the three (3) phases of size-up and their relationship to problem identification.
(19) Describe the factors that affect size-up.
(20) Given a simulated structural fire incident, demonstrate the ability to conduct an effective size-up, identify the problems presented, and communicate critical information as part of a concise size-up report.

(21) Given a structural fire scenario, demonstrate the ability to develop a strategy using the command sequence.
(22) Using the command sequence, demonstrate the ability to select tactics that will achieve a well-defined strategy.
(23) Identify three (3) methods of implementing an action plan.
(24) Demonstrate the ability to use effective communications to assign tactical objectives.
(25) Given a scenario with identified strategies and tactics, determine the acceptable assignments to implement the action plan.
(26) Explain why the use of a management system is necessary emergency incidents and demonstrate how the Incident Command System (ICS) can be applied as an effective emergency management system.
(27) Define the five (5) ICS functions, command staff positions, and staging.
(28) Define the role of the Incident Commander (IC) and the importance of the first on-scene fire department officer as the initial IC.
(29) Given a scenario, establish an effective ICS organization to manage the initial phase of the incident.
(30) Explain the purpose and use of the Communications Model and the National Fire Academy Quick Access Prefire Plan in tactical operations at fire incidents.
(31) Define the relationship among incident priorities, strategy, tactics, and implementation in the command sequence.
(32) Select an appropriate strategy mode based upon consideration of risk versus benefit and available resources.
(33) Describe the six (6) steps required to implement the Tactical Action Model.
(34) List the factors upon which apparatus placement is based.
(35) Select the appropriate ventilation tactics based upon identified ventilation principles and tactical considerations.
(36) Develop a ventilation action plan based upon the tactics selected.
(37) Select appropriate rescue tactics based upon identified rescue principles and tactical considerations.
(38) Develop a ventilation action plan based upon the tactics selected.
(39) Select and deploy the appropriate hose lines to accomplish fire confinement and extinguishment.
(40) Identify and explain the actions required to support fire confinement and extinguishment activities.
(41) Explain the correct procedures and select the appropriate size hose lines for attaching to a fire department connection.
(42) Describe the procedures for deployment of a hose line from a standpipe system.
(43) Identify the principles of water supply and tactics for establishing water supplies using municipal sources, static sources, and portable sources.
(44) Identify tactical size-up considerations for providing water supplies to meet needed fire flows and specified fire incidents.
(45) Identify the principles and tactics for protecting exposed property and areas near the fire from becoming involved.
(46) Identify tactical size-up considerations for providing exposure control at specified fire incidents.
(47) Identify the principles and tactics to achieve salvage.
(48) Identify the principles and tactics to achieve overhaul.
(49) Identify and explain the activities required to support incident operations.
(50) Identify the special construction factors affecting single-family dwellings.
(51) Identify the primary concerns to be addressed when single-family dwellings are involved in a fire.
(52) Demonstrate the use of the Communications Model while performing the role of a firefighter, fire department officer, or dispatcher.
(53) Demonstrate the Command Sequence in a decision making scenario.
(54) Determine strategy, select tactics, and operate within an appropriate IC organization in a given scenario.
(55) Demonstrate effective use of the Tactical Action Model and make appropriate risk versus benefit decisions in a given scenario.

(c) For purposes of this section, the following definitions apply:

(1) "Command sequence" means a three (3) step process as follows:

(A) Size-up, an ongoing process of gathering and analyzing information critical to incident factors that lead to problem identification.

(B) Strategy and tactics.

(C) Implementation.

(2) "Communications model" means a six (6) step process as follows:

STEP ONE: The sender formulates an idea that he or she wants to convey to another person.

STEP TWO: The sender sends the message.

STEP THREE: Transfer the message through the medium.

STEP FOUR: The receiver receives the message.

STEP FIVE: The receiver interprets the message.

STEP SIX: The receiver confirms that the message has been received and understood by providing feedback.

(3) "Fire flow formula" means the formula developed by the National Fire Academy that provides a method for determining the amount of water required, apparatus needed to deliver the water, and the number of fire companies that should be used to apply the water at an incident.

(4) "Incident command system" means the combination of facilities, equipment, personnel, procedures, and commu-

nications operating within a common organizational structure with responsibility for the management of assigned resources to effectively accomplish stated objectives pertaining to an incident.
(5) "Incident commander" means the individual responsible for the management of all incident operations.
(6) "National Fire Academy" means the facility operated by the United States Fire Administration under the Federal Emergency Management Agency of the United States Department of Homeland Security.
(7) "Quick access prefire planning" means a process that creates necessary information concerning a structure prior to a fire incident. The process includes obtaining information about the structure including, without limitation:
(A) building description;
(B) occupancy type;
(C) hazard to personnel;
(D) water supply;
(E) estimated fire flow;
(F) fire behavior predictions;
(G) predicted strategies;
(H) problems anticipated; and
(I) fixed fire protection/detection systems.
(8) "Tactical Action Model" means a six (6) step process as follows:
STEP ONE: Receive a tactical or task order.
STEP TWO: Conduct a tactical size-up.
STEP THREE: Assign tasks.
STEP FOUR: Take action to complete tactical assignment.
STEP FIVE: Evaluate effectiveness of tactical operations.
STEP SIX: Report to supervisor on the effectiveness of the tactical operations.
(9) "Tactical size-up" means:
(A) evaluation of safety considerations;
(B) construction and occupancy of the structure;
(C) area of involvement;
(D) probable fire spread;
(E) identification of problems;
(F) establishment of priorities; and
(G) evaluation of resources.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-7.1; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2698)

SECTION 11. 655 IAC 1-2.1-8 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-8 Fire Officer I
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 8. (a) The minimum training standards for Fire Officer I certification shall be as set out in that certain document, being titled as NFPA 1021, Standard for Fire Officer Professional Qualifications, Chapter ~~2,~~ ~~1997~~ **4, 2003** 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 ~~6.~~ **2.**

(b) The candidate shall have been certified as:
(1) at least a Firefighter II or First Class Firefighter for a period of at least one (1) year prior to the date of application;
(2) a Fire Officer-Strategy and Tactics; and
(3) an Instructor I.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-8; 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 Apr 13, 2005, 11:30 a.m.: 28 IR 2700)

SECTION 12. 655 IAC 1-2.1-9 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-9 Fire Officer II
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 9. (a) The minimum training standards for Fire Officer II certification shall be as set out in that certain document, being titled as NFPA 1021, Standard for Fire Officer Professional Qualifications, Chapter ~~3,~~ ~~1997~~ **5, 2003** 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 ~~6.~~ **2.**

(b) The candidate shall be certified as a Fire Officer I. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-9; 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 Apr 13, 2005, 11:30 a.m.: 28 IR 2700)*

SECTION 13. 655 IAC 1-2.1-10 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-10 Fire Officer III
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 10. (a) The minimum training standards for Fire Officer III certification shall be as set out in that certain document, being titled as NFPA 1021, Standard for Fire Officer Professional Qualifications, Chapter ~~4,~~ ~~1997~~ **6, 2003** 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 ~~6.~~ **2.**

(b) The candidate shall be certified as a Fire Officer II. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-10; 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 Apr 13, 2005, 11:30 a.m.: 28 IR 2700)*

SECTION 14. 655 IAC 1-2.1-11 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-11 Fire Officer IV
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 11. (a) The minimum training standards for Fire Officer IV certification shall be as set out in that certain document, being titled as NFPA 1021, Standard for Fire Officer Professional Qualifications, Chapter ~~5,~~ ~~1997~~ **7, 2003** 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~~ **7** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~6.~~ **2.**

(b) The candidate shall be certified as a Fire Officer III. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-11; 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 Apr 13, 2005, 11:30 a.m.: 28 IR 2701)*

SECTION 15. 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. 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~~ **4, 2003** 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~~ **4** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~8.~~ **2.** *(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2701)*

SECTION 16. 655 IAC 1-2.1-13 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-13 Fire Inspector II
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 13. (a) The minimum training standards for Fire Inspector II 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 ~~4,~~ ~~1998~~ **5, 2003** 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~~ **5** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~8.~~ **2.**

(b) The candidate shall be certified as a Fire Inspector I. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-13; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3393; filed Sep 24, 1999, 10:02 a.m.: 23 IR 331; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2701)*

SECTION 17. 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. 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~~ **6, 2003** 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~~ **6** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~8.~~ **2.** *(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2701)*

SECTION 18. 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. 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~~ **4, 2003** 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~~ **4** requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~4.~~ **2.** *(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2701)

SECTION 19. 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 5 and 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
(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~~ **The** 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~~ **the** 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2702)*

SECTION 20. 655 IAC 1-2.1-22 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-22 Safety Officer
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 22. (a) The minimum training standards for Safety Officer certification shall be as set out in that certain document, being titled as NFPA 1521, Standard for **Fire Department** Safety Officer Professional Qualifications, ~~Chapters 2 and 3, 1997~~ **Chapter 6, 2002** 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 3 require~~ **Chapter 6 requires** compliance with another NFPA standard, such standard shall be that which is referred to in Chapter ~~5.~~ **2.**

(b) The candidate shall be certified as a Fire Officer I. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-22; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3394; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1163; errata filed Jan 8, 2002, 1:55 p.m.: 25 IR 1645; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2702)*

SECTION 21. 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, 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 Chapters 4 and 5 require compliance with another NFPA standard, such standard shall be that which is referred to in ~~Chapter~~ **Chapters 1 and** 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2702)*

SECTION 22. 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 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 6 requires compliance with another NFPA standard, such standard shall be that which is referred to in ~~Chapter~~ **Chapters 1 and** 2.

(b) The candidate shall be certified as a 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2702)*

SECTION 23. 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. 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~~ **for** Professional Competence of Responders to Hazardous Materials Incidents Chapter 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 4 requires compliance with another NFPA standard, such standard shall be that which is referred to in Chapter 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2703)*

SECTION 24. 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~~ **for** Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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 5 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. *(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2703)*

SECTION 25. 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~~ **for** Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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 6 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-Operations. *(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2703)*

SECTION 26. 655 IAC 1-2.1-24.3 IS AMENDED 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~~ **for** 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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2703)*

SECTION 27. 655 IAC 1-2.1-75 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-75 Rope Rescuer-Awareness
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 75. (a) The minimum training standards for ~~Rescue Technician~~ Rope ~~Rescue~~ **Rescuer-Awareness** certification shall be as set out in ~~that~~ **those** certain ~~document,~~ **documents,** being titled as **follows:**

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapters ~~2~~ **4** and ~~4, 2000~~ **5, 2003** 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 Appendix E.~~ **NFPA 1500, NFPA 1521, and NFPA 1561 are:**

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as at least a Firefighter II or First Class Firefighter for one (1) year. *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-75; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3403; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1163; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2704)*

SECTION 28. 655 IAC 1-2.1-75.2 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-75.2 Vehicle and Machinery Rescuer-Awareness
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 75.2. (a) The minimum training standards for ~~Rescue Technician~~ Vehicle and Machinery ~~Rescue~~ **Rescuer Awareness** certification shall be as set out in ~~that~~ **those** certain ~~document,~~ **documents,** being titled as **follows:**

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, ~~Chapters 2 and 6, 2000~~ **Chapter 8, 2003** 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 Appendix E.~~ **NFPA 1500, NFPA 1521, and NFPA 1561 are:**

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2 and Section 6-2, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as ~~at least a Firefighter II or~~ **a Hazardous Materials** First ~~Class Firefighter for one (1) year.~~ **Responder-Awareness.** *(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-75.2; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1164; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2704)*

SECTION 29. 655 IAC 1-2.1-75.3 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-75.3 Confined Space Rescuer-Awareness
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 75.3. (a) The minimum training standards for ~~Rescue Technician~~ Confined Space ~~Rescue~~ **Rescuer-Awareness** certification shall be as set out in ~~that~~ **those** certain ~~document,~~ **documents,** being titled as **follows:**

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, ~~Chapters 2 and 7, 2000~~ **Chapter 9, 2003** 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 Appendix E.~~

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 4-2 and Section 5-2, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(b) The candidate shall have been certified as:

(1) at least a Firefighter II or First Class Firefighter for one (1) year;

(2) a Rope Rescuer-Awareness; and

(3) Hazardous Materials First Responder-Awareness.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-75.3; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1164; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2704)

SECTION 30. 655 IAC 1-2.1-75.4 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-75.4 Structural Collapse Rescuer-Awareness

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 75.4. (a) The minimum training standards for ~~Rescue Technician~~ Structural Collapse ~~Rescue~~ **Rescuer-Awareness** certification shall be as set out in ~~that~~ **those** certain ~~document,~~ **documents,** being titled as **follows:**

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, ~~Chapters 2 and 8, 2000~~ **Chapter 10, 2003** 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 Appendix E.~~

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 3-2, and Section 5-2, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(b) The candidate shall have been certified as:

(1) at least a Firefighter II or First Class Firefighter for one (1) year;

(2) a Rope Rescuer-Awareness;

(3) a Hazardous Materials First Responder-Awareness; and

(4) a Confined Space Rescuer-Awareness.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-75.4; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1164; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2705)

SECTION 31. 655 IAC 1-2.1-75.5 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-75.5 Trench Rescuer-Awareness

Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 75.5. (a) The minimum training standards for ~~Rescue Technician~~ Trench ~~Rescue~~ **Rescuer-Awareness** certification shall be as set out in ~~that~~ **those** certain ~~document,~~ **documents,** being titled as **follows:**

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, ~~Chapters 2 and 9, 2000~~ **Chapter 11, 2003** 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 9 require compliance with another NFPA standard, such standard shall be that which is referred to in Appendix E.~~

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 5-2 and Section 9-2, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(b) The candidate shall have been certified as:

(1) at least a Firefighter II or First Class Firefighter for one (1) year;

(2) a Confined Space Rescuer-Awareness;

(3) a Rope Rescuer-Awareness; and

(4) a Hazardous Materials First Responder-Awareness.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-75.5; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1164; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2705)

SECTION 32. 655 IAC 1-2.1-76.1 IS AMENDED TO READ AS FOLLOWS:

655 IAC 1-2.1-76.1 Swift Water Rescuer-Awareness
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 76.1. **(a)** The minimum training standards for Swift Water ~~Rescue Technician~~ **Rescuer-Awareness** certification shall be as set out in ~~this section and sections 76.2 and 76.3 of this rule.~~ **that certain document, being titled as NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Section 7-2, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:**

(1) not adopted;
(2) not enforceable; and
(3) referenced for information purposes only.

(b)The candidate shall have been certified as:
(1) at least a Firefighter II or First Class Firefighter for one (1) year; and
(2) a Rope Rescuer-Awareness.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-76.1; filed Nov 16, 2001, 4:37 p.m.: 25 IR 1164; readopted filed Dec 2, 2002, 12:59 p.m.: 26 IR 1262; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2706)

SECTION 33. 655 IAC 1-2.1-96 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-96 Rope Rescuer-Operations
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 96. (a) The minimum training standards for Rope Rescuer-Operations certification shall be as set out in those certain documents, being titled as follows:

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapters 4, 5, and 6, 2003 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 4-2 and Section 4-3, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) an Indiana First Responder; and
(2) a Rope Rescuer-Awareness.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-96; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2706)

SECTION 34. 655 IAC 1-2.1-97 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-97 Rope Rescuer-Technician
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 97. (a) The minimum training standards for Rope Rescuer-Technician certification shall be as set out in those certain documents, being titled as follows:

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapters 4, 5, and 6, 2003 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 4-2, Section 4-3, and Section 4-4, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) an Indiana First Responder;
(2) a Rope Rescuer-Awareness; and
(3) a Rope Rescuer-Operations.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-97; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2706)

SECTION 35. 655 IAC 1-2.1-98 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-98 Vehicle and Machinery Rescuer-Operations
Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 98. (a) The minimum training standards for Vehicle and Machinery Rescuer-Operations certification shall be as set out in those certain documents, being titled as follows:

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 8, 2003 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 6-2 and Section 6-3, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(b) The candidate shall have been certified as:

(1) a Hazardous Materials First Responder-Awareness;

(2) a Hazardous Materials First Responder-Operations;

(3) an Indiana First Responder;

(4) having complied with the training course mandated in IC 36-8-10.5-7(b); and

(5) a Vehicle and Machinery Rescuer-Awareness.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-98; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2706)

SECTION 36. 655 IAC 1-2.1-99 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-99 Vehicle and Machinery Rescuer-Technician

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 99. (a) The minimum training standards for Vehicle and Machinery Rescuer-Technician certification shall be as set out in those certain documents, being titled as follows:

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 8, 2003 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 6-2, Section 6-3, and Section 6-4, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;

(B) not enforceable; and

(C) referenced for information purposes only.

(b) The candidate shall have been certified as:

(1) a Hazardous Materials First Responder-Awareness;

(2) a Hazardous Materials First Responder-Operations;

(3) an Indiana First Responder;

(4) having complied with the training course mandated in IC 36-8-10.5-7(b);

(5) a Vehicle and Machinery Rescuer-Awareness; and

(6) a Vehicle and Machinery Rescuer-Operations.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-99; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2707)

SECTION 37. 655 IAC 1-2.1-100 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-100 Confined Space Rescuer-Operations

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 100. (a) The minimum training standards for Confined Space Rescuer-Operations certification shall be as set out in those certain documents, being titled as follows:

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 9, 2003 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.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 4-2, Section 5-2, and Section 5-3, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.
(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) an Indiana First Responder;
(2) a Rope Rescuer-Awareness;
(3) a Rope Rescuer-Operations;
(4) a Hazardous Materials First Responder-Awareness;
(5) a Hazardous Materials First Responder-Operations;
(6) a Vehicle and Machinery Rescuer-Awareness;
(7) a Vehicle and Machinery Rescuer-Operations;
(8) a Confined Space Rescuer-Awareness; and
(9) having complied with the training course mandated in IC 36-8-10.5-7(b).

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-100; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2707)

SECTION 38. 655 IAC 1-2.1-101 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-101 Confined Space Rescuer-Technician

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 101. (a) The minimum training standards for Confined Space Rescuer-Technician certification shall be as set out in those certain documents, being titled as follows:
(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 9, 2003 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.
(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 4-2, Section 5-2, Section 5-3, and Section 5-4, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.
(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) an Indiana First Responder;
(2) a Rope Rescuer-Awareness;
(3) a Rope Rescuer-Operations;
(4) a Rope Rescuer-Technician;
(5) a Hazardous Materials First Responder-Awareness;
(6) a Hazardous Materials First Responder-Operations;
(7) a Vehicle and Machinery Rescuer-Awareness;
(8) a Vehicle and Machinery Rescuer-Operations;
(9) a Confined Space Rescuer-Awareness;
(10) a Confined Space Rescuer-Operations; and
(11) having complied with the training course mandated in IC 36-8-10.5-7(b).

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-101; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2708)

SECTION 39. 655 IAC 1-2.1-102 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-102 Structural Collapse Rescuer-Operations

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 102. (a) The minimum training standards for Structural Collapse Rescuer-Operations certification shall be as set out in those certain documents, being titled as follows:
(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 10, 2003 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.
(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 3-2, Section 3-3, Section 4-3, Section 6-3, and Section 9-3, 1999 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. NFPA 1500, NFPA 1521, NFPA 1561, and referenced U.S. Federal Emergency Management Agency regulations are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) an Indiana First Responder;
(2) a Rope Rescuer-Awareness;

(3) a Rope Rescuer-Operations;
(4) a Hazardous Materials First Responder-Awareness;
(5) a Hazardous Materials First Responder-Operations;
(6) a Vehicle and Machinery Rescuer-Awareness;
(7) a Vehicle and Machinery Rescuer-Operations;
(8) a Confined Space Rescuer-Awareness;
(9) a Confined Space Rescuer-Operations;
(10) a Trench Rescuer-Awareness;
(11) a Trench Rescuer-Operations;
(12) a Swift Water Rescuer-Awareness; and
(13) having complied with the training course mandated in IC 36-8-10.5-7(b).

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-102; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2708)

SECTION 40. 655 IAC 1-2.1-103 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-103 Structural Collapse Rescuer-Technician

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 103. (a) The minimum training standards for Structural Collapse Rescuer-Technician certification shall be as set out in those certain documents, being titled as follows:

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 10, 2003 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.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 3-2, Section 3-3, Section 4-3, Section 4-4, Section 5-4, Section 6-4, and Section 9-4, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) an Indiana First Responder;
(2) a Rope Rescuer-Awareness;
(3) a Rope Rescuer-Operations;
(4) a Rope Rescuer-Technician;
(5) a Hazardous Materials First Responder-Awareness;
(6) a Hazardous Materials First Responder-Operations;
(7) a Vehicle and Machinery Rescuer-Awareness;
(8) a Vehicle and Machinery Rescuer-Operations;
(9) a Vehicle and Machinery Rescuer-Technician;
(10) a Confined Space Rescuer-Awareness;
(11) a Confined Space Rescuer-Operations;
(12) a Confined Space Rescuer-Technician;
(13) a Trench Rescuer-Awareness;
(14) a Trench Rescuer-Operations;
(15) a Trench Rescuer-Technician;
(16) a Swift Water Rescuer-Awareness; and
(17) having complied with the training course mandated in IC 36-8-10.5-7(b).

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-103; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2709)

SECTION 41. 655 IAC 1-2.1-104 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-104 Trench Rescuer-Operations

Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 104. (a) The minimum training standards for Trench Rescuer-Operations certification shall be as set out in those certain documents, being titled as follows:

(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 11, 2003 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 4-3, Section 5-3, Section 6-3, Section 9-2, and Section 9-3, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:

(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) a Confined Space Rescuer-Awareness;
(2) a Confined Space Rescuer-Operations;
(3) a Rope Rescuer-Awareness;
(4) a Rope Rescuer-Operations;
(5) a Vehicle and Machinery Rescuer-Awareness;
(6) a Vehicle and Machinery Rescuer-Operations;
(7) a Hazardous Materials First Responder-Awareness;
(8) a Hazardous Materials First Responder-Operations;

(9) a Trench Rescuer-Awareness;
(10) having complied with the training course mandated in IC 36-8-10.5-7(b); and
(11) an Indiana First Responder.
(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-104; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2709)

SECTION 42. 655 IAC 1-2.1-105 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-105 Trench Rescuer-Technician
Authority: IC 22-14-2-7
Affected: IC 36-8-10.5-7

Sec. 105. (a) The minimum training standards for Trench Rescuer-Technician certification shall be as set out in those certain documents, being titled as follows:
(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 11, 2003 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.
(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 4-3, Section 5-3, Section 6-3, Section 9-2, Section 9-3, and Section 9-4, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.
(3) NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, Chapter 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) a Confined Space Rescuer-Awareness;
(2) a Confined Space Rescuer-Operations;
(3) a Confined Space Rescuer-Technician;
(4) a Rope Rescuer-Awareness;
(5) a Rope Rescuer-Operations;
(6) a Rope Rescuer-Technician;
(7) a Vehicle and Machinery Rescuer-Awareness;
(8) a Vehicle and Machinery Rescuer-Operations;
(9) a Vehicle and Machinery Rescuer-Technician;
(10) a Hazardous Materials First Responder-Awareness;
(11) a Hazardous Materials First Responder-Operations;
(12) a Trench Rescuer-Awareness;
(13) a Trench Rescuer-Operations;
(14) having complied with the training course mandated in IC 36-8-10.5-7(b); and
(15) an Indiana First Responder.
(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-105; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2710)

SECTION 43. 655 IAC 1-2.1-106 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-106 Swift Water Rescuer-Operations
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 106. (a) The minimum training standards for Swift Water Rescuer-Operations certification shall be as set out in that certain document, being titled as NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Section 4-3, Section 7-2, Section 7-3.1, Section 7-3.2, Section 7-3.3, Section 7-3.4, Section 7-3.5, and Section 7-3.9, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(1) not adopted;
(2) not enforceable; and
(3) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) a Rope Rescuer-Awareness;
(2) a Rope Rescuer-Operations;
(3) a Hazardous Materials First Responder-Awareness;
(4) a Swift Water Rescuer-Awareness; and
(5) an Indiana First Responder.
(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-106; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2710)

SECTION 44. 655 IAC 1-2.1-107 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-107 Swift Water Rescuer-Technician
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 107. (a) The minimum training standards for Swift Water Rescuer-Technician certification shall be as set out in that certain document, being titled as NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Section 7-3.1, Section 7-3.2, Section 7-3.3, Section 7-3.4, Section 7-3.5, and Section 7-4.10, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(1) not adopted;
(2) not enforceable; and
(3) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) a Rope Rescuer-Awareness;
(2) a Rope Rescuer-Operations;
(3) a Hazardous Materials First Responder-Awareness;
(4) a Swift Water Rescuer-Awareness;
(5) a Swift Water Rescuer-Operations; and
(6) an Indiana First Responder.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-107; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2710)

SECTION 45. 655 IAC 1-2.1-108 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-108 Wilderness Rescuer-Awareness
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 108. (a) The minimum training standards for Wilderness Rescuer-Awareness certification shall be as set out in those certain documents, being titled as follows:
(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 14, 2003 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.
(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, and Section 8-2, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) at least a Firefighter II or First Class Firefighter for one (1) year; and
(2) a Rope Rescuer-Awareness.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-108; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2711)

SECTION 46. 655 IAC 1-2.1-109 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-109 Wilderness Rescuer-Operations
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 109. (a) The minimum training standards for Wilderness Rescuer-Operations certification shall be as set out in those certain documents, being titled as follows:
(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 1, 2003 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.
(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 8-3, and Section 4-3, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) an Indiana First Responder;
(2) a Rope Rescuer-Awareness;
(3) a Rope Rescuer-Operations;
(4) a Hazardous Materials First Responder-Awareness; and
(5) a Wilderness Rescuer-Awareness.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-109; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2711)

SECTION 47. 655 IAC 1-2.1-110 IS ADDED TO READ AS FOLLOWS:

655 IAC 1-2.1-110 Wilderness Rescuer-Technician
Authority: IC 22-14-2-7
Affected: IC 22-14-2-7

Sec. 110. (a) The minimum training standards for Wilderness Rescuer-Technician certification shall be as set out in those certain documents, being titled as follows:
(1) NFPA 1006, Standard for Standard for Rescue Technician Professional Qualifications, Chapter 14, 2003 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and
(C) referenced for information purposes only.
(2) NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, Chapter 2, Section 3-2, Section 4-4, Section 7-2, Section 8-2, and Section 8-3, 1999 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. NFPA 1500, NFPA 1521, and NFPA 1561 are:
(A) not adopted;
(B) not enforceable; and

(C) referenced for information purposes only.

(b) The candidate shall have been certified as:
(1) an Indiana First Responder;
(2) a Rope Rescuer-Awareness;
(3) a Rope Rescuer-Operations;
(4) a Rope Rescuer-Technician;
(5) a Hazardous Materials First Responder-Awareness;
(6) a Swift Water Rescuer-Awareness;
(7) a Wilderness Rescuer-Awareness; and
(8) a Wilderness Rescuer-Operations.

(Board of Firefighting Personnel Standards and Education; 655 IAC 1-2.1-110; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2711)

SECTION 48. 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) These requirements are intended only to familiarize the recruit firefighter with introductory personal safety and safe evolutions ~~prior to~~ **before** engaging in emergency firefighter activities. These requirements are not intended to replace the board's requirements for firefighter voluntary certification program **and as follows:**

(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. Includes **the following:**
(A) Communication procedures.
(B) How alarms are received.
(C) Who, what, when, and where of local fire department.

(2) Personal safety. Includes **the following:**
(A) Reason for protective clothing usage, for example:
(i) helmet;
(ii) coat;
(iii) boots; and
(iv) gloves.
(B) Safe handling of tools.

(3) Forcible entry. Includes **the following:**
(A) Safely finding hidden fires.
(B) Safely entering structure or building when it is locked.
(C) Nomenclature of tools.

(4) Ventilation. Includes **the following:**
(A) Safe letting of hot gases and smoke escape.
(B) Safe procedures.
(C) Where to properly ventilate.

(5) Apparatus. Includes **the following:**
(A) Safely mounting and dismounting from apparatus.
(B) Riding on apparatus.
(C) Safe driving of apparatus.
(D) Basic traffic and firefighting liability laws.

(6) Ladders. Includes **the following:**
(A) Safe setting positions for ground ladders.
(B) Safe climbing and getting off of ladders.
(C) Feeling for weakened floors on second floor or higher before getting off ladder.
(D) Different types of ladders used in fire service.

(7) Self-contained breathing apparatus. Includes **the following:**
(A) Critical needs for wearing self-contained breathing apparatus.
(B) Safe practices in its use.
(C) Nomenclatures of self-contained breathing apparatus.
(D) Safely donning and doffing of self-contained breathing apparatus.

(8) Hose loads. Includes **the following:**
(A) How to properly load hose.
(B) Different types of hose loads.
(C) Safely removing different hose loads.
(D) Accessing water sources by drafting or hydrants.

(9) Streams. Includes **the following:**
(A) Safe fire stream velocity and gallons per minute.
(B) Properly opening and closing of nozzles.

(10) Basic recognition of special hazards. Includes **the following:**
(A) Recognition of special hazards.
(B) DOT hazardous materials placarding recognition.
(C) Structural hazards indicating imminent collapse or cave-in.
(D) Recognition of suspicious fires.
(E) Dangers of backdraft and flashover.
(F) Overhead electrical wires.
(G) Special safety procedures.

(11) Defensive driving.

(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; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2712)

SECTION 49. THE FOLLOWING ARE REPEALED: 655 IAC 1-2.1-76.2; 655 IAC 1-2.1-76.3.

LSA Document #04-138(F)
Notice of Intent Published: June 1, 2004; 27 IR 2763
Proposed Rule Published: December 1, 2004; 28 IR 1008
Hearing Held: January 10, 2005
Approved by Attorney General: March 16, 2005

Approved by Governor: April 13, 2005
Filed with Secretary of State: April 13, 2005, 11:30 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: National Fire Protection Association Standard (NFPA) 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 2002 Edition; NFPA 1001, Standard for Fire Fighter Professional Qualifications, 2002 Edition; NFPA 1002, Standard on Fire Apparatus Driver/Operator Professional Qualifications, 2003 Edition; NFPA 1006, Standard for Rescue Technician Professional Qualifications, 2003 Edition; NFPA 1021, Standard for Fire Officer Professional Qualifications, 2003 Edition; NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, 2003 Edition; NFPA 1033, Standard for Professional Qualifications for Fire Investigator, 2003 Edition; NFPA 1051, Standard for Wildland Fire Fighter Professional Qualifications, 2002 Edition; NFPA 1521, Standard for Fire Department Safety Officer, 2002 Edition; NFPA 1670, Standard on Operations and Training for Technical Rescue Incidents, 1999 Edition.

TITLE 828 STATE BOARD OF DENTISTRY

LSA Document #04-233(F)

DIGEST

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.

828 IAC 0.5-2-3
828 IAC 5

SECTION 1. 828 IAC 0.5-2-3 IS AMENDED TO READ AS FOLLOWS:

828 IAC 0.5-2-3 Dental fees

Authority: IC 23-1.5-2-9; IC 23-1.5-2-10; IC 25-1-8-2; IC 25-13-1-5; IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-13-1-8; IC 25-14-1-10

Sec. 3. The board shall charge and collect the following fees related to the practice of dentistry:

(1) Examination administration	$250 plus the cost of supplies, models, and the use of the examination facility
(2) Reexamination administration	$150 plus the cost of supplies, models, and the use of the examination facility
(3) Licensure by endorsement	$250
(4) License renewal	$100 biennially
(5) Dental intern permit application	$100
(6) Dental intern permit renewal	$50
(7) Verification of dental licensure to another state	$10
(8) Duplicate wall license	$10
(9) Professional corporation registration application	$25
(10) Professional corporation registration renewal	$20 biennially
(11) Application fees for the following permits:	$50
(A) General anesthesia, deep sedation **(GADS)**	
(B) Light parenteral conscious sedation **(LPCS)**	
(12) Renewal fees for the following permits:	$50 biennially
(A) General anesthesia-deep sedation **(GADS)**	
(B) Light parenteral conscious sedation **(LPCS)**	
(13) Registration of an additional office in which to administer general anesthesia, deep sedation, **GADS,** or light parenteral conscious sedation **(LPCS)**	$25
(14) Reinstatement of inactive license	$250
(15) Instructor's license application	**$250**
(16) Instructor's license renewal	**$50 annually**
(17) Instructor's application for the following permits:	**$50**
(A) GADS	
(B) LPCS	
(18) Renewal fee for instructor's GADS/LPCS permit	**$25 annually**

(State Board of Dentistry; 828 IAC 0.5-2-3; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1180; filed Oct 8, 2002, 12:40 p.m.: 26 IR 376; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2713)

SECTION 2. 828 IAC 5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 5. INSTRUCTOR'S LICENSES

Rule 1. General Requirements

828 IAC 5-1-1 Application

Authority: IC 25-1-8-2; IC 25-13-1-5; IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-14-1-10

Sec. 1. (a) Applicants for licensure as an instructor under

IC 25-14-1-27.5 shall apply in the manner required by the board and shall submit the fee required by 828 IAC 0.5-2-3.

(b) The applicant for an instructor's license shall provide the following:

(1) Where the name on any document differs from the applicant's name, a notarized or certified copy of a marriage certificate or legal proof of name change.

(2) Proof that the applicant has been approved under the credentialing process of an Indiana school of dentistry or an affiliated medical center of an Indiana school of dentistry as required under IC 25-14-1-27.5. The proof shall include a notarized statement of approval submitted by an Indiana school of dentistry or an affiliated medical center of an Indiana school of dentistry and copies of all documentation reviewed by the school or affiliated medical center in determining its approval of the applicant.

(3) Documentation or a demonstration of clinical and academic competency, which shall include the following:

(A) If the applicant is a graduate of a school of dentistry outside the United States, its possessions, or Canada, the applicant must submit an original transcript of the applicant's dental education, including the degree conferred and the date the degree was conferred. If the original transcript is in a language other than English, the applicant must include a certified translation of the transcript. If an original transcript is not available, the applicant must submit the following:

(i) A notarized or certified copy of the original dental school transcript, which must include the degree conferred and the date the degree was conferred.

(ii) An affidavit fully and clearly stating the reasons that an original transcript is not available.

(B) If the applicant has taken the National Board Dental Examination provided by the Joint Commission on Dental Examinations or has taken the National Dental Examining Board of Canada Written Examination provided by the National Dental Examining Board of Canada, the applicant shall submit proof of having taken the examination and the results thereof.

(C) If the applicant has taken a clinical licensing examination in any other state, country, territory, or recognized jurisdiction, the applicant shall submit proof of having taken the examination and the results thereof.

(4) If the applicant has been convicted of a criminal offense, excluding minor traffic violations, a notarized statement detailing all criminal offenses, excluding minor traffic violations, for which the applicant has been convicted. This notarized statement must include the following:

(A) The offense of which the applicant was convicted.

(B) The court in which the applicant was convicted.

(C) The cause number under which the applicant was convicted.

(D) The penalty imposed by the court.

(5) An applicant who is now, or has been, licensed to practice any health profession in another state within the United States, or in any other country, territory, or recognized jurisdiction must submit verification of license status. This information must be sent by the state, country, territory, or other recognized jurisdiction that issued the license directly to the Indiana board.

(6) A self-query form completed by the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB) data bank.

(7) Proof of completion of at least twenty (20) hours of continuing dental education in dentistry taken in the previous two (2) years. No more than two (2) hours of training in basic life support shall count toward this requirement. Practice management courses will not be accepted.

(8) Graduates of a school of dentistry outside of the United States in which the instruction was conducted in a language other than English shall submit proof of having passed the Test of English as a Foreign Language (TOEFL).

(9) Proof that the applicant has been licensed or has had the equivalent of a license to practice dentistry in the United States or in any country, territory, or other recognized jurisdiction for not less than five (5) years out of the nine (9) years immediately preceding the submission of the application.

(10) Proof that the applicant is currently certified in basic life support or advanced cardiac life support.

(c) The applicant shall certify that the applicant will teach and practice dentistry only at or on behalf of an Indiana school of dentistry or an affiliated medical center of an Indiana school of dentistry. The applicant shall further certify that the applicant will not engage in the private practice of dentistry.

(d) All information on the application shall be submitted under oath or affirmation, subject to the penalties for perjury. *(State Board of Dentistry; 828 IAC 5-1-1; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2713)*

828 IAC 5-1-2 Jurisprudence examination

Authority: IC 25-13-1-5; IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-14-1-27.5

Sec. 2. An applicant for an instructor's license must obtain a passing score of at least seventy-five (75) on the Indiana dental and dental hygiene law examination before the applicant may be licensed. Applicants failing the law examination may retake the law examination at a time, date, and place to be set by the board not sooner than thirty (30) days from the time the law examination was last taken. *(State Board of Dentistry; 828 IAC 5-1-2; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2714)*

828 IAC 5-1-3 Duties of employer dental school or affiliated medical center

Authority: IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-14-1-27.5

Sec. 3. (a) The Indiana school of dentistry or affiliated medical center that intends to employ an instructor under IC 25-14-1-27.5 shall submit the following directly to the board:

(1) A notarized statement verifying that the applicant for an instructor's license has been approved under the credentialing process of the Indiana school of dentistry or an affiliated medical center of an Indiana school of dentistry as required under IC 25-14-1-27.5. The proof shall include copies of all documentation reviewed by the school or affiliated medical center in determining its approval of the applicant.

(2) A statement verifying the number of individuals who are currently employed by the Indiana school of dentistry as full-time faculty.

(b) The Indiana school of dentistry or affiliated medical center that employs the holder of an instructor's license shall do the following:

(1) Hold and display in plain view of the patients the instructor's license of the individual who is employed by the Indiana school of dentistry or affiliated medical center.

(2) Ensure that the holder of the instructor's license teaches and practices dentistry only at or on behalf of the Indiana school of dentistry or affiliated medical center by which the individual is employed.

(3) Notify the board in writing upon the termination of the employment contract of the holder of the instructor's license and surrender the license not later than thirty (30) days after the employment of the holder of the instructor's license is terminated.

(State Board of Dentistry; 828 IAC 5-1-3; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2714)

828 IAC 5-1-4 Renewal

Authority: IC 25-1-8-2; IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-1-8-6; IC 25-14-1-10; IC 25-14-3

Sec. 4. (a) All dentists holding an instructor's license shall renew the license annually on the date set by the health professions bureau by paying the fee required by the board under 828 IAC 0.5-2-3. If the holder of an instructor's license does not renew the license on or before the renewal date, the license expires and becomes invalid without any action by the board.

(b) As a condition of renewal, the holder of an instructor's license must complete ten (10) hours of continuing education during each annual license period subject to the following requirements:

(1) The continuing education must meet the requirements of IC 25-14-3 and 828 IAC 1-5.

(2) The holder of an instructor's license may not earn more than two and one-half (2.5) credit hours toward the continuing education requirements of this section in the area of practice management.

(c) As a condition of renewal, the holder of an instructor's license must continue to be employed by an Indiana school of dentistry or an affiliated medical center.

(d) If the dental instructor's license expires for failure to renew the license on or before the renewal date, the holder of the dental instructor's license must meet the requirements of IC 25-1-8-6 in order to renew the license. *(State Board of Dentistry; 828 IAC 5-1-4; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2715)*

828 IAC 5-1-5 General anesthesia, deep sedation, light parenteral conscious sedation permit; application

Authority: IC 25-1-8-2; IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-14-1-10

Sec. 5. (a) Prior to administering general anesthesia, deep sedation, or light parenteral conscious sedation, a dentist who holds an instructor's license shall obtain from the board a permit that authorizes the dentist to utilize the form of anesthesia or sedation desired.

(b) The board shall issue a permit to utilize the anesthesia or sedation technique requested if the following requirements are met:

(1) Submission of an application in the form and manner provided by the board.

(2) Current licensure as an instructor by the board.

(3) Payment of the required fees.

(4) Submission of proof that the applicant has been approved under the credentialing process of an Indiana school of dentistry or an affiliated medical center of an Indiana school of dentistry as required under IC 25-14-1-27.5 as qualified to administer general anesthesia, deep sedation, or light parenteral conscious sedation and meets requirements substantially equal to the requirements of 828 IAC 3. The proof shall include a notarized statement of approval submitted by an Indiana school of dentistry or an affiliated medical center of an Indiana school of dentistry and copies of all documentation reviewed by the school or affiliated medical center in determining its approval of the applicant.

(5) Submission of proof that the dentist is:

(A) trained in and has successfully completed a course in advanced cardiac life support; or

(B) certified as an instructor in advanced cardiac life support.

(c) The applicant shall certify that the applicant will teach and practice dentistry, including the administration of general anesthesia, deep sedation, or light parenteral conscious sedation, only at or on behalf of an Indiana school of dentistry or an affiliated medical center of an Indiana school of dentistry. The applicant shall further certify that the applicant will not engage in the private practice of dentistry.

(d) All information on the application shall be submitted under oath or affirmation, subject to the penalties for perjury.

(e) The holder of an instructor's license who is granted a general anesthesia, deep sedation permit may administer light parenteral conscious sedation without holding a separate light parenteral conscious sedation permit. *(State Board of Dentistry; 828 IAC 5-1-5; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2715)*

828 IAC 5-1-6 General anesthesia, deep sedation, or light parenteral conscious sedation permit; renewal

Authority: IC 25-1-8-2; IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-1-8-6; IC 25-14-1-10

Sec. 6. (a) All dentists with instructor's licenses holding a general anesthesia, deep sedation, or light parenteral conscious sedation permit shall renew the permit annually at the same time the dental instructor's license is renewed by paying the fee required by the board under 828 IAC 0.5-2-3. If the holder of a permit does not renew the permit on or before the renewal date, the permit expires and becomes invalid without any action by the board.

(b) In order to renew a permit to administer general anesthesia, deep sedation, or light parenteral conscious sedation, a dentist with an instructor's license shall obtain two and one-half (2.5) hours of continuing education in every license period in the area of anesthesia. This continuing education may include, but is not limited to, a course in advanced cardiac resuscitation protocols. Courses in basic cardiac life support will not be accepted. The two and one-half (2.5) hours of continuing education required under this section count toward the completion of continuing education requirements under section 4 of this rule.

(c) A permit invalidated under subsection (a) may be reinstated by the board as provided under IC 25-1-8-6. *(State Board of Dentistry; 828 IAC 5-1-6; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2716)*

828 IAC 5-1-7 General anesthesia, deep sedation, or light parenteral conscious sedation permit duties of employer dental school or affiliated medical center

Authority: IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-14-1-27.5

Sec. 7. The Indiana school of dentistry or affiliated medical center that employs the holder of an instructor's license and a permit to administer general anesthesia, deep sedation, or light parenteral conscious sedation shall do the following:

(1) Hold the general anesthesia, deep sedation, or light parenteral conscious sedation permit of the holder of an instructor's license who is employed by the Indiana school of dentistry or affiliated medical center.

(2) Ensure that the holder of the instructor's license teaches and practices dentistry only at or on behalf of the Indiana school of dentistry or affiliated medical center by which the individual is employed.

(3) Ensure that the facility in which the holder of the permit administers general anesthesia, deep sedation, or light parenteral conscious sedation maintains the equipment required by 828 IAC 3-1-10.

(State Board of Dentistry; 828 IAC 5-1-7; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2716)

828 IAC 5-1-8 Invalidation upon termination of employment

Authority: IC 25-14-1-13; IC 25-14-1-27.5
Affected: IC 25-14-1-27.5

Sec. 8. If the Indiana school of dentistry or affiliated medical center that employs the holder of an instructor's license notifies the board of the termination of the employment contract of the holder of the instructor's license, the instructor's license and any general anesthesia, deep sedation, or light parenteral conscious sedation permit issued to the holder of the instructor's license becomes invalid without any action of the board. *(State Board of Dentistry; 828 IAC 5-1-8; filed Apr 18, 2005, 2:00 p.m.: 28 IR 2716)*

LSA Document #04-233(F)
Notice of Intent Published: September 1, 2004; 27 IR 4048
Proposed Rule Published: November 1, 2004; 28 IR 670
Hearing Held: December 3, 2004
Approved by Attorney General: March 23, 2005
Approved by Governor: April 15, 2005
Filed with Secretary of State: April 18, 2005, 2:00 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 845 BOARD OF PODIATRIC MEDICINE

LSA Document #04-134(F)

DIGEST

Amends 845 IAC 1-5-3 to revise the list of board-approved continuing education programs. Effective 30 days after filing with the secretary of state.

845 IAC 1-5-3

SECTION 1. 845 IAC 1-5-3 IS AMENDED TO READ AS FOLLOWS:

845 IAC 1-5-3 Approval of continuing education programs

Authority: IC 25-29-2-11
Affected: IC 25-29-6-4

Sec. 3. To receive credit for continuing education programs, the program must be sponsored, accredited, or approved by any of the following organizations:

(1) American Association of Podiatric Physicians and Surgeons.

(2) American Medical Association (programs related to podiatric medicine).

(3) American Society of Podiatric Dermatology.

(4) American Society of Podiatric Medicine.

(5) Council on Podiatric Medical Education.

(6) American Podiatric Medical Association.

~~(6)~~ **(7)** A national, regional, state, district, or local organization that operates as an affiliated entity under the approval of any organizations listed in subdivisions (1) through ~~(5).~~ **(6).**

~~(7)~~ **(8)** Any of the colleges of podiatric medicine accredited by the Council on Podiatric Medical Education.

~~(8)~~ **(9)** A federal, state, or local government agency that coordinates or presents continuing education programs related to podiatric medicine.

(Board of Podiatric Medicine; 845 IAC 1-5-3; filed Apr 12, 1984, 8:28 a.m.: 7 IR 1531; filed Aug 5, 1987, 4:30 p.m.: 10 IR 2726; filed Dec 8, 1994, 5:08 p.m.: 18 IR 1284; readopted filed Jun 13, 2001, 11:45 a.m.: 24 IR 3823; filed Oct 6, 2003, 4:45 p.m.: 27 IR 528; filed Apr 18, 2005, 2:30 p.m.: 28 IR 2716) NOTE: Transferred from the Medical Licensing Board of Indiana (844 IAC 8-5-3) to the Board of Podiatric Medicine (845 IAC 1-5-3) by P.L.33-1993, SECTION 76, effective July 1, 1993.

LSA Document #04-134(F)
Notice of Intent Published: June 1, 2004; 27 IR 2764
Proposed Rule Published: October 1, 2004; 28 IR 317
Hearing Held: February 11, 2005
Approved by Attorney General: April 5, 2005
Approved by Governor: April 14, 2005
Filed with Secretary of State: April 18, 2005, 2:30 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #04-225(F)

DIGEST

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. Effective 30 days after filing with the secretary of state.

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

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

876 IAC 3-6-2 Uniform Standards of Professional Appraisal Practice

Authority: IC 25-34.1-3-8
Affected: IC 4-22-2; IC 25-34.1

Sec. 2. (a) That certain document being titled Uniform Standards of Professional Appraisal Practice, ~~2004~~ **2005** edition, as published by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, D.C. 20005, copyright ~~2004,~~ **2005,** is hereby incorporated by reference as if fully set out in this rule except for the revisions stated in section 3 of this rule. The Statements on Appraisal Standards are adopted as part of this rule. The Advisory Opinions are not adopted as part of this rule. The Comments are adopted as part of this rule.

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

(c) As used in this article, "appraiser" refers to the following:

(1) Indiana licensed trainee appraiser.

(2) Indiana licensed residential appraiser.

(3) Indiana certified residential appraiser.

(4) Indiana certified general appraiser.

(Indiana Real Estate Commission; 876 IAC 3-6-2; filed Sep 24, 1992, 9:00 a.m.: 16 IR 748; filed Dec 8, 1993, 4:00 p.m.: 17 IR 781; filed Apr 10, 1995, 10:00 a.m.: 18 IR 2124; filed Dec 24, 1997, 11:00 a.m.: 21 IR 1766; filed May 10, 1999, 12:42 p.m.: 22 IR 2879; filed Apr 24, 2000, 12:48 p.m.: 23 IR 2243; filed May 25, 2001, 2:42 p.m.: 24 IR 3068; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238; filed May 13, 2002, 2:05 p.m.: 25 IR 3181; filed May 1, 2003, 12:15 p.m.: 26 IR 3043; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2738; filed Apr 18, 2005, 2:30 p.m.: 28 IR 2717)

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

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

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

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

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

~~(1) In the Comment under the definition of "REPORT", delete the following:~~

~~(A) "personal property".~~

~~(B) "Appraisal Report: a written report prepared under Standards Rule 10-2(a)".~~
~~(C) "or 8-2(a)".~~
~~(D) "or 8-2(b)".~~
~~(E) The comma after 2-2(c) and "8-2(c) or 10-2(b)".~~
~~(2)~~ **(1)** Under the fourth paragraph of the Preamble, in the sixth bullet point, delete "ten" from the first sentence and the last three (3) sentences.
~~(3)~~ **(2)** In the third sentence in the Ethics Rules, delete "Standards 1 through 10" and insert "Standards 1 through 5".
~~(4)~~ **(3)** In the second Comment under the Ethics Rule, delete the comma after "5-3" and "6-8, 8-3, and 10-3" and before "5-3", insert "and".
~~(5)~~ **(4)** In the second Comment under the Management category of the Ethics Rule, delete the comma after "5-3" and "6-8, 8-3, or 10-3" and before "5-3", insert "or".
~~(6)~~ **(5)** In the last paragraph of the Comment under the Record Keeping category under the Ethics Rule, delete "STANDARDS 2 and 8" and insert "STANDARD 2", delete "or an Appraisal Report (for assignments under STANDARD 10),", and delete the comma after "2-2(c)(ix)" and "8-2(c)(ix), and 10-2(b)(ix)".
~~(7)~~ **(6)** In the third to last paragraph of the Comment following the Departure Rule, delete "6-7(p), 8-2(a)(xi), 8-2(b)(xi), 8-2(c)(xi), 10-2(a)(x), and 10-2(b)(x)" and before "2-2(c)(xi)", insert "and".
~~(8)~~ **(7)** In the next to last paragraph of the Comment following the Departure Rule, delete the comma after "5-3" and "6-1, 6-3, 6-6, 6-7, 6-8, 7-1, 7-2, 7-5, 7-6, 8-1, 8-2, 8-3, 9-1, 9-2, 9-3, 9-5, 10-1, 10-2, and 10-3" and before "5-3", insert "and".
~~(9)~~ **(8)** In the Comment under Standards Rule 1-4(g), delete "(See Standard 7)" and "(See Standard 9)".
~~(10)~~ **(9)** In the last paragraph of the Comment under Standard 3, delete the comma after "5-3" and "6-8, 8-3, and 10-3" and before "5-3", insert "and".
~~(11)~~ **(10)** In two (2) locations that appear in the Comment under Standard 3-1(c), delete "(STANDARD 1, **3,** 4, 6, 7, or 9)" and insert "(STANDARD 1, **3,** or 4)".
~~(12)~~ **(11)** Delete the last sentence in the Comment under Standard 3-2(d) and insert the following: "However, data and analyses provided by the reviewer to support a different value conclusion must match, at a minimum, the reporting requirements for a Summary Appraisal Report for real property appraisal (SR 2-2(b)) and an appraisal consulting report for real property appraisal consulting (SR 5-2).".
~~(13)~~ **(12)** Any references to Standards 6 through 10 in the Statements on Appraisal Standards are deleted and shall not apply.

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

(d) Delete the third paragraph of the Preamble.

(e) Add the following sentences to the end of the text of the Supplemental Standards Rule, "Any such supplemental standard shall not be considered part of this title. However, this does not preclude the possibility of disciplinary sanctions under IC 25-1-11-5(a)(3) where appropriate.". *(Indiana Real Estate Commission; 876 IAC 3-6-3; filed Sep 24, 1992, 9:00 a.m.: 16 IR 748; filed Dec 8, 1993, 4:00 p.m.: 17 IR 781; filed Apr 10, 1995, 10:00 a.m.: 18 IR 2124; errata filed May 8, 1995, 4:30 p.m.: 18 IR 2262; filed Dec 24, 1997, 11:00 a.m.: 21 IR 1767; filed May 10, 1999, 12:42 p.m.: 22 IR 2880; errata, 22 IR 3420; filed Apr 24, 2000, 12:48 p.m.: 23 IR 2244; filed May 25, 2001, 2:42 p.m.: 24 IR 3068; readopted filed May 29, 2001, 10:00 a.m.: 24 IR 3238; filed May 13, 2002, 2:05 p.m.: 25 IR 3181; filed May 1, 2003, 12:15 p.m.: 26 IR 3044; filed Apr 8, 2004, 3:25 p.m.: 27 IR 2739; filed Apr 18, 2005, 2:30 p.m.: 28 IR 2717)*

LSA Document #04-225(F)
Notice of Intent Published: September 1, 2004; 27 IR 4048
Proposed Rule Published: February 1, 2005; 28 IR 1547
Hearing Held: February 24, 2005
Approved by Attorney General: April 5, 2005
Approved by Governor: April 15, 2005
Filed with Secretary of State: April 18, 2005, 2:30 p.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: Uniform Standards of Professional Appraisal Practice, 2005 Edition

TITLE 878 HOME INSPECTORS LICENSING BOARD

LSA Document #04-191(F)

DIGEST

Adds 878 IAC concerning definitions, minimum standards of competent performance, a code of ethics, fees, licensure requirements, prelicensing course providers, and continuing education. Effective 30 days after filing with the secretary of state.

878 IAC

SECTION 1. 878 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 878 HOME INSPECTORS LICENSING BOARD

ARTICLE 1. GENERAL PROVISIONS

Rule 1. Definitions

878 IAC 1-1-1 Applicability

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 1. The definitions in this rule apply throughout this article. *(Home Inspectors Licensing Board; 878 IAC 1-1-1; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2718)*

878 IAC 1-1-2 "Alarm systems" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 2. "Alarm systems" means warning devices, installed or freestanding, including, but not limited to, the following:
(1) Carbon monoxide detectors.
(2) Flue gas and other spillage detectors.
(3) Security equipment.
(4) Ejector pumps.
(5) Smoke alarms.
(Home Inspectors Licensing Board; 878 IAC 1-1-2; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)

878 IAC 1-1-3 "Architectural service" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 3. "Architectural service" means any practice involving the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction, including, but not specifically limited to, the following:
(1) Schematic design.
(2) Design development.
(3) Preparation of construction contract documents.
(4) Administration of the construction contract.
(Home Inspectors Licensing Board; 878 IAC 1-1-3; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)

878 IAC 1-1-4 "Compensation" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 4. "Compensation" means direct or indirect payment, including the expectation of payment whether or not actually received. *(Home Inspectors Licensing Board; 878 IAC 1-1-4; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)*

878 IAC 1-1-5 "Component" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 5. "Component" means a readily accessible and observable aspect of a system. *(Home Inspectors Licensing Board; 878 IAC 1-1-5; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)*

878 IAC 1-1-6 "Decorative" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 6. "Decorative" means an item that is not required for the operation of the essential systems and components of a home. *(Home Inspectors Licensing Board; 878 IAC 1-1-6; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)*

878 IAC 1-1-7 "Dismantle" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 7. "Dismantle" means to take apart or remove any component, device, or piece of equipment that would not be taken apart or removed by a homeowner in the course of normal and routine homeowner maintenance. *(Home Inspectors Licensing Board; 878 IAC 1-1-7; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)*

878 IAC 1-1-8 "Engineering service" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 8. "Engineering service" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional service or creative work as:
(1) consultation;
(2) investigation;
(3) evaluation;
(4) planning;
(5) design; and
(6) supervision;
of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works, and processes. *(Home Inspectors Licensing Board; 878 IAC 1-1-8; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)*

878 IAC 1-1-9 "Further evaluation" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 9. "Further evaluation" means examination and analysis by a qualified professional, tradesman, or service technician beyond that provided by the home inspection. *(Home Inspectors Licensing Board; 878 IAC 1-1-9; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)*

878 IAC 1-1-10 "Installed" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 10. "Installed" means attached such that removal requires tools. *(Home Inspectors Licensing Board; 878 IAC 1-1-10; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)*

878 IAC 1-1-11 "Normal operating controls" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 11. "Normal operating controls" means devices, such as thermostats, switches, or valves, intended to be operated by the homeowner. *(Home Inspectors Licensing Board; 878 IAC 1-1-11; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)*

878 IAC 1-1-12 "Readily accessible" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 12. "Readily accessible" means available for visual inspection without requiring:

(1) moving of personal property;

(2) dismantling;

(3) destructive measures; or

(4) any action that will likely involve risk to persons or property.

(Home Inspectors Licensing Board; 878 IAC 1-1-12; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2719)

878 IAC 1-1-13 "Readily openable access panel" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 13. "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that:

(1) is within normal reach;

(2) can be removed by one (1) person; and

(3) is not sealed in place.

(Home Inspectors Licensing Board; 878 IAC 1-1-13; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)

878 IAC 1-1-14 "Recreational facilities" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 14. "Recreational facilities" means the following:

(1) Spas.

(2) Saunas.

(3) Steam baths.

(4) Swimming pools.

(5) Exercise, entertainment, athletic, playground, or other similar equipment and associated accessories.

(Home Inspectors Licensing Board; 878 IAC 1-1-14; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)

878 IAC 1-1-15 "Report" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2-2-7

Sec. 15. "Report" means to communicate, in writing, on all areas required by IC 25-20.2-2-7. *(Home Inspectors Licensing Board; 878 IAC 1-1-15; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)*

878 IAC 1-1-16 "Representative number" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 16. "Representative number" means one (1) component:

(1) per room for multiple similar interior components, such as windows and electric outlets; or

(2) on each side of the building for multiple similar exterior components.

(Home Inspectors Licensing Board; 878 IAC 1-1-16; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)

878 IAC 1-1-17 "Roof drainage system" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 17. "Roof drainage system" means components used to carry water off a roof and away from a building. *(Home Inspectors Licensing Board; 878 IAC 1-1-17; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)*

878 IAC 1-1-18 "Shut down" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 18. "Shut down" means a state in which a system or component cannot be operated by normal operating controls. *(Home Inspectors Licensing Board; 878 IAC 1-1-18; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)*

878 IAC 1-1-19 "Significantly deficient" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 19. "Significantly deficient" means unsafe or not functioning. *(Home Inspectors Licensing Board; 878 IAC 1-1-19; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)*

878 IAC 1-1-20 "Solid fuel burning appliances" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 20. "Solid fuel burning appliances" means a hearth and fire chamber or similar prepared place in which a fire may be built and that is built in conjunction with a chimney or a listed assembly of a fire chamber, its chimney, and related factory-made parts designed for unit assembly without requiring field construction. *(Home Inspectors Licensing Board; 878 IAC 1-1-20; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)*

878 IAC 1-1-21 "Structural component" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 21. "Structural component" means a component that supports nonvariable forces or weights and variable forces or weights. *(Home Inspectors Licensing Board; 878 IAC 1-1-21; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)*

878 IAC 1-1-22 "System" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 22. "System" means a combination of interacting or interdependent components assembled to carry out one (1) or more functions. *(Home Inspectors Licensing Board; 878 IAC 1-1-22; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)*

878 IAC 1-1-23 "Technically exhaustive" defined

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 23. "Technically exhaustive" means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations, or other means. *(Home Inspectors Licensing Board; 878 IAC 1-1-23; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2720)*

878 IAC 1-1-24 "Underfloor crawlspace" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 24. "Underfloor crawlspace" means the area within the confines of the foundation and between the ground and the underside of the floor. *(Home Inspectors Licensing Board; 878 IAC 1-1-24; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2721)*

878 IAC 1-1-25 "Unsafe" defined
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 25. "Unsafe" means a condition in a readily accessible, installed system or component that is judged to be a significant risk of personal injury during normal, day-to-day use. The risk may be due to:
(1) damage;
(2) deterioration;
(3) improper installation; or
(4) a change in accepted residential construction standards.
(Home Inspectors Licensing Board; 878 IAC 1-1-25; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2721)

Rule 2. Minimum Standards of Competent Practice and Code of Ethics

878 IAC 1-2-1 Minimum standards of competent performance of home inspections
Authority: IC 25-20.2-3-8; IC 25-20.2-3-9
Affected: IC 25-20.2-2-7

Sec. 1. (a) The competent performance of home inspections requires remaining current with generally accepted developments within the area of specialization and the development and exercise of judgment as to when to apply specific procedures in a reasonable, effective, efficient, and economical manner.

(b) The competent performance of home inspections includes acting within generally accepted ethical principles and guidelines of the profession and maintaining an awareness of personal and professional limitations.

(c) Purpose and scope are as follows:
(1) Licensees shall:
(A) inspect:
(i) readily accessible systems and components of homes listed in these minimum standards of competent performance; and
(ii) installed systems and components of homes listed in these minimum standards of competent performance; and
(B) report in writing, as required by IC 25-20.2-2-7:
(i) on those systems and components inspected that, in the professional opinion of the inspector, are significantly deficient or are near the end of their service lives;
(ii) a reason why, if not self-evident, the system or component is significantly deficient or near the end of its service life;
(iii) the licensee's recommendations to correct or monitor the reported deficiency; and
(iv) on any systems and components designated for inspection in these minimum standards of competent performance that were present at the time of the home inspection but were not inspected and a reason they were not inspected; and
(C) identify on the written report:
(i) licensee's name;
(ii) licensee's Indiana license number;
(iii) address of inspected residential dwelling;
(iv) name of client for whom the inspection is being prepared; and
(v) date of inspection.
(2) These minimum standards of competent performance are not intended to limit licensees from:
(A) including other inspection services, systems, or components in addition to those required by these minimum standards of competent performance;
(B) specifying repairs, provided the licensee is appropriately qualified and willing to do so; or
(C) excluding systems and components from the inspection if requested by the client.

(d) Structural systems requirements are as follows:
(1) Licensees shall:
(A) inspect:
(i) the structural components including foundation and framing; and
(ii) by probing a representative number of structural components where deterioration is suspected or where clear indications of possible deterioration exist, but probing is not required when probing would damage any finished surface or where no deterioration is visible; and
(B) describe:
(i) the foundation and report the methods used to inspect the underfloor crawlspace;
(ii) the floor structure;
(iii) the wall structure;
(iv) the ceiling structure; and
(v) the roof structure and report the methods used to inspect the attic.
(2) Licensees are not required to:
(A) provide any engineering service or architectural service; or

(B) offer an opinion as to the adequacy of any structural system or component.

(e) Exteriors requirements are as follows:
(1) Licensees shall:
(A) inspect:
(i) the exterior wall covering, flashing, and trim;
(ii) all exterior doors;
(iii) attached decks, balconies, stoops, steps, porches, and their associated railings;
(iv) the eaves, soffits, and fascias where accessible from the ground level;
(v) the vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to adversely affect the building; and
(vi) walkways, patios, and driveways leading to dwelling entrances; and
(B) describe the exterior wall covering.
(2) Licensees are not required to inspect:
(A) screening, shutters, awnings, and similar seasonal accessories;
(B) fences;
(C) geological, geotechnical, or hydrological conditions;
(D) recreational facilities;
(E) outbuildings;
(F) seawalls, breakwalls, and docks; or
(G) erosion control and earth stabilization measures.

(f) Roof systems requirements are as follows:
(1) Licensees shall:
(A) inspect:
(i) the roof covering;
(ii) the roof drainage systems;
(iii) the flashings; and
(iv) the skylights, chimneys, and roof penetrations; and
(B) describe the roof covering and report the methods used to inspect the roof.
(2) Licensees are not required to inspect:
(A) antennae;
(B) interiors of flues or chimneys that are not readily accessible; or
(C) other installed accessories.

(g) Plumbing systems requirements are as follows:
(1) Licensees shall:
(A) inspect:
(i) the interior water supply and distribution systems including all fixtures and faucets;
(ii) the drain, waste, and vent systems including all fixtures;
(iii) the water heating equipment;
(iv) the vent systems, flues, and chimneys;
(v) the fuel storage and fuel distribution systems; and
(vi) the drainage sumps, sump pumps, and related piping; and
(B) describe:
(i) the water supply, drain, waste, and vent piping materials;
(ii) the water heating equipment including the energy source; and
(iii) the location of main water and main fuel shut-off valves.
(2) Licensees are not required to:
(A) inspect:
(i) the clothes washing machine connections;
(ii) the interiors of flues or chimneys that are not readily accessible;
(iii) wells, well pumps, or water storage related equipment;
(iv) water conditioning systems;
(v) solar water heating systems;
(vi) fire and lawn sprinkler systems; or
(vii) private waste disposal systems;
(B) determine:
(i) whether water supply and waste disposal systems are public or private; or
(ii) the quantity or quality of the water supply; or
(C) operate safety valves or shut-off valves.

(h) Electrical systems requirements are as follows:
(1) Licensees shall:
(A) inspect:
(i) the service drop;
(ii) the service entrance conductors, cables, and raceways;
(iii) the service equipment and main disconnects;
(iv) the service grounding;
(v) the interior components of service panels and subpanels;
(vi) the conductors;
(vii) the overcurrent protection devices;
(viii) a representative number of installed lighting fixtures, switches, and receptacles; and
(ix) the ground fault circuit interrupters;
(B) describe:
(i) the amperage and voltage rating of the service;
(ii) the location of main disconnect or disconnects and subpanels; and
(iii) the wiring methods; and
(C) report on the:
(i) presence of solid conductor aluminum branch circuit wiring; and
(ii) absence of smoke detectors.
(2) Licensees are not required to:
(A) inspect:
(i) the remote control devices unless the device is the only control device;
(ii) the alarm systems and components;
(iii) the low voltage wiring, systems, and components; or
(iv) the ancillary wiring, systems, and components not

a part of the primary electrical power distribution system; or
(B) measure amperage, voltage, or impedance.

(i) Heating systems requirements are as follows:
(1) Licensees shall:
(A) inspect:
(i) the installed heating equipment; and
(ii) the vent systems, flues, and chimneys; and
(B) describe:
(i) the energy source; and
(ii) the heating method by its distinguishing characteristics.
(2) Licensees are not required to:
(A) inspect:
(i) the interiors of flues or chimneys that are not readily accessible;
(ii) the heat exchanger;
(iii) the humidifier or dehumidifier;
(iv) the electronic air filter; or
(v) the solar space heating system; or
(B) determine heat supply adequacy or distribution balance.

(j) Air conditioning systems requirements are as follows:
(1) Licensees shall:
(A) inspect the installed central and through-wall cooling equipment; and
(B) describe:
(i) the energy source; and
(ii) the cooling method by its distinguishing characteristics.
(2) Licensees are not required to:
(A) inspect electronic air filters; or
(B) determine cooling supply adequacy or distribution balance.

(k) Interiors requirements are as follows:
(1) Licensees shall inspect:
(A) the walls, ceilings, and floors;
(B) the steps, stairways, and railings;
(C) the countertops and a representative number of installed cabinets;
(D) a representative number of doors and windows; and
(E) garage doors and garage door operations.
(2) Licensees are not required to inspect:
(A) the paint, wallpaper, and other finish treatments;
(B) the carpeting;
(C) the window treatments;
(D) the central vacuum systems;
(E) the household appliances; or
(F) recreational facilities.

(l) Insulation and ventilation requirements are as follows:
(1) Licensees shall:
(A) inspect:
(i) the insulation and vapor retarders in unfinished spaces;
(ii) the ventilation of attics and foundation areas; and
(iii) the mechanical ventilation systems; and
(B) describe:
(i) the insulation and vapor retarders in unfinished spaces; and
(ii) the absence of insulation in unfinished spaces at conditioned surfaces.
(2) Licensees are not required to:
(A) disturb insulation or vapor retarders; or
(B) determine indoor air quality.

(m) Fireplaces and solid fuel burning appliances requirements are as follows:
(1) Licensees shall:
(A) inspect:
(i) the system components; and
(ii) the vent systems, flues, and chimneys; and
(B) describe:
(i) the fireplaces and solid fuel burning appliances; and
(ii) the chimneys.
(2) Licensees are not required to:
(A) inspect:
(i) the interiors of flues or chimneys;
(ii) the firescreens and doors;
(iii) the seals and gaskets;
(iv) the automatic fuel fee devices;
(v) the mantels and fireplace surrounds;
(vi) the combustion make-up air devices; or
(vii) the heat distribution assists whether gravity controlled or fan assisted;
(B) ignite or extinguish fires;
(C) determine draft characteristics; or
(D) move fireplace inserts or stoves or firebox content.

(n) General limitations are as follows:
(1) Inspections performed in accordance with these minimum standards of competent performance:
(A) are not technically exhaustive; and
(B) will not identify concealed conditions or latent defects.
(2) These minimum standards of competent performance are applicable to buildings with five (5) or fewer dwelling units and their garages or carports.

(o) General exclusions are as follows:
(1) Licensees are not required to perform any action or make any determination unless specifically stated in these minimum standards of competent performance, except as may be required by lawful authority.
(2) Licensees are not required to determine any of the following:
(A) The conditions of systems and components that are not readily accessible.

(B) The remaining life of any system or component.
(C) The strength, adequacy, effectiveness, or efficiency of any system or component.
(D) The causes of any condition or deficiency.
(E) The methods, materials, or costs of corrections.
(F) Future conditions including, but not limited to, failure of systems and components.
(G) The suitability of the property for any specialized use.
(H) Compliance with regulatory requirements, such as codes, regulations, laws, or ordinances.
(I) The market value of the property or its marketability.
(J) The advisability of the purchase of the property.
(K) The presence of potentially hazardous plants or animals including, but not limited to, wood-destroying organisms or diseases harmful to humans.
(L) The presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, and contaminants in soil, water, and air.
(M) The effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.
(N) The acoustical properties of any system or component.

(3) Licensees are not required to:
(A) offer or perform:
(i) any act or service contrary to law;
(ii) engineering services; or
(iii) work in any trade or any professional service other than home inspection; or
(B) offer warranties or guarantees of any kind.

(4) Licensees are not required to operate:
(A) any system or component that:
(i) is shut down or otherwise inoperable; or
(ii) does not respond to normal operating controls; or
(B) shut-off valves.

(5) Licensees are not required to enter:
(A) any area that will, in the opinion of the licensee, likely be dangerous to the licensee or other persons or damage the property or its systems and components; or
(B) the underfloor crawlspaces or attics that are not readily accessible.

(6) Licensees are not required to inspect:
(A) underground items including, but not limited to, underground storage tanks or other underground indications of their presence, whether abandoned or active;
(B) systems or components that are not installed;
(C) decorative items;
(D) systems or components located in areas that are not entered in accordance with these minimum standards of competent performance;
(E) detached structures other than garages and carports; or
(F) common elements or common areas in multiunit housing, such as condominium properties or cooperative housing.

(7) Licensees are not required to:
(A) perform any procedure or operation that will, in the opinion of the licensee, likely be dangerous to the licensee or other persons or damage the property or its systems or components;
(B) move:
(i) suspended ceiling tiles;
(ii) personal property;
(iii) furniture;
(iv) equipment;
(v) plants;
(vi) soil;
(vii) snow;
(viii) ice; or
(ix) debris; or
(C) dismantle any system or component, except as explicitly required by these minimum standards of competent performance.

(Home Inspectors Licensing Board; 878 IAC 1-2-1; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2721)

878 IAC 1-2-2 Code of ethics for home inspectors

Authority: IC 25-20.2-3-8; IC 25-20.2-3-9
Affected: IC 25-20.2

Sec. 2. (a) Integrity, honesty, and objectivity are fundamental principles embodied in this code of ethics, which sets forth obligations of ethical conduct for the home inspection profession. The home inspectors licensing board has adopted this code of ethics to provide high ethical standards to safeguard the public and the profession.

(b) Licensees shall:
(1) comply with this code of ethics;
(2) avoid association with any enterprise whose practices violate this code of ethics;
(3) strive to uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession; and
(4) avoid conflicts of interest or activities that compromise, or appear to compromise, professional independence, objectivity, or inspection integrity.

(c) Licensees shall not:
(1) inspect properties:
(A) for compensation in which they have, or expect to have, a financial interest; or
(B) under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of property;
(2) directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections of or inclusion on a list of recommended inspectors, preferred providers, or similar arrangements;
(3) receive compensation for an inspection from more than one (1) party unless agreed to by the client or clients;

(4) accept compensation, directly or indirectly, for recommending contractors, services, or products to inspection clients or other parties having an interest in inspected properties; or
(5) repair, replace, or upgrade, for compensation, systems or components covered by the minimum standards of competent performance found in section 1 of this rule for one (1) year after the inspection.

(d) Licensees shall:
(1) act in good faith toward each client and other interested parties;
(2) perform services and express opinions based on genuine conviction and only within their areas of education, training, or experience; and
(3) be objective in their reporting and not knowingly understate or overstate the significance of reported conditions.

(e) Licensees shall not disclose inspection results or client information without client approval. Licensees, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.

(f) Licensees shall avoid activities that may harm the public, discredit themselves, or reduce public confidence in their profession.

(g) Advertising, marketing, and promotion of licensees services or qualifications shall not be fraudulent, false, deceptive, or misleading.

(h) Licensees shall report substantive and willful violations of:
(1) this code of ethics; and
(2) the minimum standards of competent performance found in section 1 of this rule.
(Home Inspectors Licensing Board; 878 IAC 1-2-2; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2724)

Rule 3. Fees and License Requirements

878 IAC 1-3-1 Fees
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 1. (a) Candidates for examination shall pay the examination fee directly to the examination service.

(b) The application/issuance fee for a license to practice as a home inspector shall be four hundred fifty dollars ($450).

(c) The fee for renewal of license to practice as a home inspector shall be four hundred dollars ($400) biennially.

(d) The penalty fee for late renewal of a license to practice as a home inspector shall be fifty dollars ($50).

(e) The fee for reinstating a retired license shall be four hundred dollars ($400).

(f) The application fee for approval as a sponsor of continuing education shall be five hundred dollars ($500).

(g) The renewal fee for approval to sponsor continuing education shall be five hundred dollars ($500) biennially.

(h) The application fee for approval as a prelicensing course provider shall be five hundred dollars ($500).

(i) The renewal fee for approval to provide prelicensing courses shall be five hundred dollars ($500) biennially.

(j) The fee for verification of licensure to another state or jurisdiction shall be ten dollars ($10).

(k) The fee for a duplicate wall certificate shall be ten dollars ($10).

(l) All fees are nonrefundable and nontransferable. *(Home Inspectors Licensing Board; 878 IAC 1-3-1; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2725)*

878 IAC 1-3-2 Prelicensing course requirements
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 2. (a) Applicants for licensure must complete no fewer than sixty (60) hours with a minimum of forty (40) hours of classroom training and a minimum of twelve (12) hours of practical experience provided by a board approved prelicensing course provider.

(b) As used in subsection (a), "practical experience" means experience obtained through either on-site inspection work or experience obtained in a lab setting that includes hands-on or visual defect recognition of building systems or components.

(c) The required course must include training in the following areas:
(1) Heating systems.
(2) Cooling systems.
(3) Electrical systems.
(4) Plumbing systems.
(5) Structural components.
(6) Foundations.
(7) Roof coverings.
(8) Exterior and interior.
(9) Indiana licensure law and report writing.
(Home Inspectors Licensing Board; 878 IAC 1-3-2; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2725)

878 IAC 1-3-3 Examination requirement
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 3. Applicants for licensure shall be required to pass the National Home Inspector Examination as provided by the Examination Board of Professional Home Inspectors.

(Home Inspectors Licensing Board; 878 IAC 1-3-3; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2725)

878 IAC 1-3-4 License renewal

Authority: IC 25-20.2-3-8
Affected: IC 25-1-2; IC 25-1-12; IC 25-20.2

Sec. 4. (a) The renewal process is governed by IC 25-1-2 as the same may be amended from time to time.

(b) Extensions of time to renew due to military service are governed by IC 25-1-12 as the same may be amended or recodified.

(c) It is the responsibility of the licensee to notify the Indiana professional licensing agency of an address change.

(d) If a license has been expired for less than two (2) years, the licensee may renew the license by meeting the following requirements:

(1) File a renewal application provided by the board.

(2) Pay the current renewal fee established in section 1 of this rule.

(3) Pay the penalty fee for late renewal established in section 1 of this rule.

(4) Submit a detailed letter of explanation to the board as to why the license has lapsed.

(5) Submit proof of having met the continuing education requirements for one (1) renewal cycle within the previous twenty-four (24) months.

(6) Make a personal appearance before the board, as the board in its discretion may require.

(7) Pass the national examination established in section 3 of this rule, as the board in its discretion may require.

(e) If a license has been expired for more than two (2) years, the licensee may renew the license by meeting the following requirements:

(1) File a renewal application provided by the board.

(2) Pay the current renewal fee established in section 1 of this rule.

(3) Pay the penalty fee for late renewal established in section 1 of this rule.

(4) Submit a detailed letter of explanation to the board as to why the license has lapsed.

(5) Submit proof of having met the continuing education requirements for one (1) renewal cycle within the previous twenty-four (24) months.

(6) If the licensee was granted initial licensure under the provisions of P.L.145-2003, SECTION 15, the licensee must complete a board approved prelicensing course that meets the requirements of section 2 of this rule.

(7) Pass the required national examination established in section 3 of this rule.

(8) Make a personal appearance before the board, as the board in its discretion may require.

(Home Inspectors Licensing Board; 878 IAC 1-3-4; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2726)

878 IAC 1-3-5 Licensure retirement

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 5. (a) An individual who is licensed as a home inspector and who would like to retire the license shall notify the board, in writing, when the individual retires from practice.

(b) An individual who has placed his or her license in retirement may not practice as a home inspector until the license has been reinstated by the board.

(c) In order to reinstate a retired license, an individual shall do the following:

(1) Complete a retirement reinstatement application, which must be approved by the board.

(2) Pay a reinstatement fee established under section 1 of this rule.

(3) Submit proof of continuing education requirements, as outlined by the board, depending on the number of years the license has been in retirement as follows:

(A) Zero (0) to three (3) years, sixteen (16) hours of continuing education shall be required and must be completed within twelve (12) months before the petition for reinstatement.

(B) Three (3) to six (6) years, thirty-two (32) hours of continuing education shall be required and must be completed within twenty-four (24) months before the petition for reinstatement.

(C) Six (6) years or more shall require board determination of the continuing education needed and the licensee must pass the examination required under section 3 of this rule.

(D) Retirement years shall be calculated from the receipt of request to retire the license until reinstatement of the license.

(Home Inspectors Licensing Board; 878 IAC 1-3-5; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2726)

878 IAC 1-3-6 Display of license

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 6. An individual who is licensed as a home inspector shall:

(1) display the license or a clear copy of the license at each location where the home inspector conducts business; and

(2) present, upon the request of any client, a pocket card license that indicates the license is active and in good standing.

(Home Inspectors Licensing Board; 878 IAC 1-3-6; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2726)

Rule 4. Prelicensing Course Providers

878 IAC 1-4-1 Approval by board
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 1. No prelicensing course provider shall conduct, solicit, or accept student enrollment for a home inspector course as prescribed in this rule without approval of the provider by the board. *(Home Inspectors Licensing Board; 878 IAC 1-4-1; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2727)*

878 IAC 1-4-2 Application for prelicensing course approval; requirements and content
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 2. (a) Any course provider seeking approval of a home inspector's prelicensing course shall:
(1) make written application for approval; and
(2) submit such documents, statements, and forms as required by this rule.

(b) Applicants for approval of a home inspector's prelicensing course shall provide the board with the following:
(1) The name and address of the school's owner.
(2) A list of all instructors who will be teaching the course and include evidence to indicate that these instructors have demonstrated competence in the area of home inspection education for which the instructor will be providing instruction.
(3) A statement of objectives, which the course should achieve for its participants.
(4) A statement explaining how the provider intends to provide for the following:
(A) Adequate administration of the course, including a responsible person to coordinate and administer the course.
(B) Maintenance of proper records.
(5) A statement indicating how the course will be planned and designed to meet the requirements of 878 IAC 1-3-2.

(c) Applicants for approval of a home inspector's prelicensing course shall require a comprehensive examination, which its students must pass with a minimum score of seventy-five percent (75%) in order to successfully complete the course. Applicants shall submit the most current version of this examination at the time of filing the application for approval.

(d) Applicants for approval of a home inspector's prelicensing course shall provide the board with the following:
(1) Documentation verifying adequate funding for the educational course undertaken.
(2) An evaluation form devised and used to measure the course's effectiveness.
(3) A statement indicating the manner in which the provider will provide its course participants a meaningful record of course completion.
(Home Inspectors Licensing Board; 878 IAC 1-4-2; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2727)

878 IAC 1-4-3 Course records
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 3. Each approved provider offering approved courses must maintain records of students who successfully complete and pass the course of study for a minimum of five (5) years. The records must include attendance records, examination score records, and duplicate copies of completion certificates or the ability to reproduce duplicate completion certificates. *(Home Inspectors Licensing Board; 878 IAC 1-4-3; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2727)*

878 IAC 1-4-4 Prelicensing course provider renewals
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 4. (a) The approval of courses expires on October 1 of each odd-numbered year.

(b) To renew the approval of the prelicensing course, the provider shall:
(1) pay the renewal fee established in 878 IAC 1-3-1;
(2) file a renewal application provided by the board; and
(3) submit a biennial report, which shall contain:
(A) a list of instructors who teach any section of the course and a curriculum vitae for the instructor if the instructor was not listed on the provider's initial application for approval; and
(B) a roster of all students who attended the approved providers course during the previous renewal cycle and a report on whether each student passed or failed the course.
(Home Inspectors Licensing Board; 878 IAC 1-4-4; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2727)

878 IAC 1-4-5 Prelicensing course provider audits
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 5. The board may perform random audits of approved prelicensing course providers to ensure compliance with this rule. *(Home Inspectors Licensing Board; 878 IAC 1-4-5; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2727)*

Rule 5. Continuing Education

878 IAC 1-5-1 Continuing education requirements
Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 1. (a) A licensee who renews a license as a home inspector shall complete not less than thirty-two (32) continuing education hours in each renewal period.

(b) Continuing education hours shall be obtained within the biennial renewal period in which the licensee is applying and shall not be carried over from one (1) biennial renewal period to another.

(c) A holder of a license issued under IC 25-20.2 must retain a record of the continuing education required by subsection (b) for two (2) years following the end of the biennial renewal period for which it was obtained.

(d) Continuing education completed to satisfy the continuing education requirements of another state with which a reciprocal agreement exists, in which the licensee also holds a license as a home inspector, may be applied towards the continuing education requirement of this rule for renewal of a license issued under IC 25-20.2.

(e) A holder of a license issued under IC 25-20.2 who has been licensed for less than two (2) full years before the first renewal date for that license shall meet the following continuing education requirements for the licensee's first renewal period:

(1) A licensee who has been licensed for at least twelve (12) months, but less than twenty-four (24) months, shall complete sixteen (16) hours of continuing education for renewal of that initial license.

(2) A licensee who has been licensed for less than twelve (12) months shall be exempt from the continuing education hours required for renewal of that initial license.

(Home Inspectors Licensing Board; 878 IAC 1-5-1; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2727)

878 IAC 1-5-2 Continuing education

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 2. (a) As used in IC 25-20.2, "continuing education" means education provided by board-approved providers that is obtained by a licensee in order to maintain, improve, or expand the licensee's skills and knowledge.

(b) Continuing education shall be comprised of two (2) categories, Category I and Category II. The licensee shall obtain a minimum of seventy-five percent (75%) of the required amount of continuing education hours for renewal from Category I and may obtain a maximum of twenty-five percent (25%) of the required amount of continuing education hours for renewal from Category II.

(c) Category I is defined as continuing education that is formal programming, which includes instruction in one (1) of the following areas:

(1) Heating systems.
(2) Cooling systems.
(3) Electrical systems.
(4) Plumbing systems.
(5) Structural components.
(6) Foundations.
(7) Roof coverings.
(8) Exterior and interior components.

(d) Category II is defined as continuing education that is formal programming, which includes instruction in:

(1) any other site aspects that affect a residential dwelling; or
(2) business operations, contract writing, ethics courses, report writing, legal liability instruction, or any other formal programming that is specifically directed toward the home inspection industry.

(Home Inspectors Licensing Board; 878 IAC 1-5-2; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2728)

878 IAC 1-5-3 Approval of continuing education providers

Authority: IC 25-20.2-3-8; IC 25-20.2-6-5
Affected: IC 25-20.2

Sec. 3. (a) The following criteria shall be used for the approval of providers of continuing education courses for licensed home inspectors:

(1) The continuing education provider shall have a statement of objectives, which the provider's courses should achieve for its participants relating to and enhancing the licensees practice.

(2) The provider of continuing education courses shall provide the following:

(A) Adequate administration, including a responsible person to coordinate and administer the courses.
(B) Maintenance of proper records.

(3) Providers of continuing education courses shall provide adequate funding for the educational courses undertaken.

(4) The curriculum of continuing education courses shall be thoughtfully planned and designed to explore in considerable depth one (1) subject or a closely related group of subjects related to the licensee's practice.

(5) The continuing education provider shall have qualified faculty members with demonstrated competence in the subject areas.

(6) The continuing education provider's courses shall be held in adequate facilities that allow for an effective learning environment.

(7) Continuing education providers may employ a variety of educational methods and teaching aids that enhance the learning opportunities.

(8) Appropriate methods of evaluation shall be devised and used to measure the continuing education provider's effectiveness.

(9) The provider of continuing education courses shall provide to the participants a meaningful record of attendance stating the continuing education hours involved and whether the course involved subject matter under Category I or under Category II, as defined in section 2 of this rule.

(b) Organizations applying for board approval to be a

registered provider of continuing education courses must submit an application to the board for approval at least ninety (90) days before the presentation of any course. The board shall act upon the application within ninety (90) days of receipt. The approval, if granted, is effective until October 1 of every odd-numbered year.

(c) An approval to provide continuing education hours for licensed home inspectors will expire on September 30 of the odd-numbered years.

(d) Providers of courses are responsible for monitoring attendance in such a manner that verification of attendance throughout the entire course can be reliably assured.

(e) The provider shall maintain attendance records for a minimum of four (4) years from the date of the course. These records must include the following:

(1) The date of the course.

(2) The course title.

(3) The presenter's name.

(4) The names of all participants.

(5) The number of continuing education hours granted each participant.

(6) A record of whether the hours granted are Category I or Category II, as defined in section 2 of this rule.

(Home Inspectors Licensing Board; 878 IAC 1-5-3; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2728)

878 IAC 1-5-4 Request for a waiver of the continuing education requirement

Authority: IC 25-20.2-3-8
Affected: IC 25-1-12; IC 25-20.2

Sec. 4. (a) A holder of a license issued under IC 25-20.2, seeking renewal of that license without having completed the continuing education hours required for renewal under this rule, must submit:

(1) a statement explaining the reasons for noncompliance;

(2) a request for a waiver of the continuing education hours required for renewal; and

(3) the renewal application and all required fees;

at least forty-five (45) days before the license expiration date.

(b) The licensee must submit evidence that an extreme hardship exists, to the satisfaction of the board, to be granted a waiver.

(c) If the request is granted, the waiver will be effective for the length of the current renewal period only.

(d) If the request is denied, the licensee is responsible for completing the full amount of continuing education required for license renewal.

(e) Waivers may be granted if an extreme hardship exists. The board will determine whether an extreme hardship exists that would have prevented the licensee from obtaining his or her continuing education hours if, during the licensee's current renewal period, the licensee or an immediate family member, where the licensee has primary responsibility for the care of that family member, was suffering from or suffered a disability. A disability is a physical or mental impairment that substantially limits one (1) or more of the major life activities of an individual. The existence of the disability must be verified by a licensed physician or psychologist with special expertise in the area of the disability. Verification of the disability must include the following:

(1) The nature and extent of the disability.

(2) An explanation of how the disability would hinder the licensee from completing the continuing education requirement.

(3) The name, title, address, telephone number, professional license number, and original signature of the licensed physician or psychologist verifying the disability.

(f) Waivers of the continuing education requirement, or extensions of time in which to complete the continuing education requirement, due to military service are governed by IC 25-1-12 as the same may be amended or recodified. *(Home Inspectors Licensing Board; 878 IAC 1-5-4; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2729)*

878 IAC 1-5-5 Continuing education audits

Authority: IC 25-20.2-3-8
Affected: IC 25-20.2

Sec. 5. (a) The board may require additional evidence demonstrating the licensee's compliance with the continuing education requirements of this rule. This additional evidence shall be required in the context of a random audit. It is the responsibility of the licensee to verify that the continuing education hours obtained to meet the continuing education required for the renewal of his or her license have been approved by the board. It is the responsibility of the licensee to retain or otherwise produce evidence of compliance.

(b) The board may perform random audits of approved continuing education providers to ensure compliance with this rule. *(Home Inspectors Licensing Board; 878 IAC 1-5-5; filed Apr 18, 2005, 12:15 p.m.: 28 IR 2729)*

LSA Document #04-191(F)
Notice of Intent Published: August 1, 2004; 27 IR 3594
Proposed Rule Published: December 1, 2004; 28 IR 1060
Hearing Held: February 1, 2005
Approved by Attorney General: April 8, 2005
Approved by Governor: April 15, 2005
Filed with Secretary of State: April 18, 2005, 12:15 p.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 #04-144

Under IC 4-22-2-41, LSA Document #04-144, printed at 27 IR 4056, is withdrawn.

TITLE 327 WATER POLLUTION CONTROL BOARD

#04-293(WPCB)

Under IC 4-22-2-41, #04-293(WPCB), printed at 28 IR 1866, is withdrawn.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #04-323

Under IC 4-22-2-41, LSA Document #04-323, printed at 28 IR 1199, is withdrawn.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #05-48

Under IC 4-22-2-41, LSA Document #05-48, printed at 28 IR 2159, is withdrawn.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-83(E)

DIGEST

Adds 65 IAC 5-17 concerning the draw game Hoosier Lottery TV Bingo. Effective April 15, 2005.

65 IAC 5-17

SECTION 1. 65 IAC 5-17 IS ADDED TO READ AS FOLLOWS:

Rule 17. Hoosier Lottery TV Bingo

65 IAC 5-17-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this draw game is "Hoosier Lottery TV Bingo". *(State Lottery Commission; 65 IAC 5-17-1; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2731)*

65 IAC 5-17-2 Definitions
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

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

(b) "4 Corners pattern" means matching one (1) TV Bingo number in each corner in a play on a TV Bingo ticket before the forty-first TV Bingo number is selected in a TV Bingo selection event.

(c) "Big X pattern" means matching eight (8) TV Bingo numbers from corner to corner through the free space forming an "X" in a play on a TV Bingo ticket before the forty-first TV Bingo number is selected in a TV Bingo selection event.

(d) "Coverall pattern" means the first TV Bingo ticket or tickets matching all twenty-four (24) TV Bingo numbers in a play resulting from a TV Bingo selection event.

(e) "Pari-mutuel prize" means a prize equal to the total amount of the prize pool available for prizes of that type divided by the total number of winners of that prize.

(f) "Pickle Ball" means a green ball labeled "PICKLE" that is added to the remaining TV Bingo numbers after the fortieth number has been selected in a TV Bingo selection event.

(g) "Pickle Jar" means a prize that increases each week until a Coverall pattern results on a TV Bingo ticket with the TV Bingo number selected immediately after the Pickle Ball is drawn.

(h) "Play" means the twenty-four (24) numbers and the free space that appear on a valid draw ticket for a TV Bingo selection event in the manner described in *[section]* **4(b) of this rule.**

(i) "Player" means an eligible person who participates in a TV Bingo selection event by purchasing a draw ticket.

(j) "TV Bingo numbers" means the seventy-five (75) numbers appearing on balls that will be randomly drawn in a TV Bingo selection event.

(k) "TV Bingo selection event" means a drawing or other selection event conducted to determine the order of selection of the seventy-five (75) TV Bingo numbers and the Pickle Ball.

(l) "TV Bingo ticket" means a draw ticket purchased in the manner described in section 4(a) of this rule.

(m) "TV Bingo winning pattern" means a draw ticket containing one (1) or more of the patterns established in accordance with section 7 of this rule entitling the holder to the designated prize.

(n) "TV Bingo prize" means a prize associated with a TV Bingo winning pattern based on the order of selection of the TV Bingo numbers and the Pickle Ball in a TV Bingo selection event.

(o) "Retailer" means a person, other than a state agency or political subdivision, who sells lottery tickets on behalf of the commission pursuant to a retailer contract. *(State Lottery Commission; 65 IAC 5-17-2; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2731)*

65 IAC 5-17-3 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. The price of a draw ticket in TV Bingo shall be two dollars ($2) for one (1) play represented on each draw ticket. *(State Lottery Commission; 65 IAC 5-17-3; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2731)*

65 IAC 5-17-4 Procedure for playing
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. (a) A draw ticket for TV Bingo shall contain one (1) play and shall be purchased by requesting a quick pick from an authorized draw retailer who shall generate the draw ticket or, if available, by operating a player activated terminal to generate a quick pick draw ticket.

(b) Each play in TV Bingo shall consist of twenty-four (24) numbers and one (1) free space arranged in a matrix of five (5) rows and five (5) columns with the columns labeled "B",

"I", "N", "G", and "O", respectively. The free space, designated "FREE", shall always appear in the middle of the "N" column. The numbers in each column shall be randomly generated from among fixed sets of fifteen (15) numbers per column as follows:

(1) "B" may contain numbers from one (1) to fifteen (15), inclusively.

(2) "I" may contain numbers from sixteen (16) to thirty (30), inclusively.

(3) "N" may contain numbers from thirty-one (31) to forty-five (45), inclusively.

(4) "G" may contain numbers from forty-six (46) to sixty (60), inclusively; and

(5) "O" may contain numbers from sixty-one (61) to seventy-five (75), inclusively.

(c) The numbers printed in each play on a TV Bingo quick pick shall be randomly placed in the appropriate columns.

(d) A draw ticket is the only valid proof of a play and the only valid receipt for claiming a prize in TV Bingo. There will be no play slips for TV Bingo.

(e) Unless otherwise indicated on the draw ticket, a draw ticket in TV Bingo is effective for the next scheduled TV Bingo selection event. Subject to the restrictions of 65 IAC 5-2-10, the commission may offer multidraw draw tickets for TV Bingo which are effective for the following numbers of TV Bingo selection events:

(1) Two (2).

(2) Three (3).

(3) Four (4).

(4) Five (5).

(f) Sales of draw tickets for TV Bingo shall be suspended prior to the time of each TV Bingo selection event at a time determined by the director.

(g) The director may, in the director's sole discretion, authorize the generation of draw entry tickets from terminals with respect to certain purchases of TV Bingo tickets. *(State Lottery Commission; 65 IAC 5-17-4; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2731)*

65 IAC 5-17-5 TV Bingo selection event

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

Sec. 5. (a) The commission shall conduct the TV Bingo selection events each week under the supervision of security personnel and an independent auditor.

(b) Each TV Bingo selection event shall commence with selecting TV Bingo numbers randomly from the pool of seventy-five (75) TV Bingo numbers. After forty (40) TV Bingo numbers have been selected, the Pickle Ball shall be added to the remaining TV Bingo numbers and the TV Bingo selection event shall continue.

(c) After all of the TV Bingo numbers and the Pickle Ball have been selected, the commission shall determine which draw tickets are entitled to TV Bingo prizes based on the order of selection of the TV Bingo numbers and the Pickle Ball.

(d) The commission shall announce the TV Bingo numbers in order of selection up to and through the fortieth TV Bingo number or, if no Coverall pattern has been established, up to and through the TV Bingo numbers establishing the first TV Bingo ticket with a Coverall pattern. *(State Lottery Commission; 65 IAC 5-17-5; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2732)*

65 IAC 5-17-6 Amount and allocation of prize pools

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

Sec. 6. (a) The prize pool for all prizes in TV Bingo shall be approximately equal to fifty-six and six-hundredths percent (56.06%) of sales for the particular TV Bingo selection event.

(b) The Pickle Jar prize pool for each TV Bingo selection event shall consist of the sum of the following amounts:

(1) Five percent (5%) of the allocable prize pool for the particular TV Bingo selection event; plus

(2) Any amounts carried over from one (1) or more consecutive TV Bingo selection events in which the Pickle Jar prize pool was not awarded.

(c) The Coverall prize pool for each TV Bingo selection event shall be twenty percent (20%) of the allocable prize pool for the particular TV Bingo selection event.

(d) The Big X prize pool for each TV Bingo selection shall be fifteen and twenty-three hundredths percent (15.23%) of the allocable prize pool for the particular TV Bingo selection event distributable as follows:

(1) Three and twenty-one hundredths percent (3.21%) for a Big X pattern resulting from the first twenty-five (25) TV Bingo numbers selected in the TV Bingo selection event.

(2) Two and eighty-three hundredths percent (2.83%) for a Big X pattern resulting from the twenty-sixth through thirtieth TV Bingo numbers selected in the TV Bingo selection event.

(3) Five and twenty-four hundredths percent (5.24%) for a Big X pattern resulting from the thirty-first through thirty-fifth TV Bingo numbers selected in the TV Bingo selection event.

(4) Three and ninety-five hundredths percent (3.95%) for a Big X pattern resulting from the thirty-sixth through fortieth TV Bingo numbers selected in the TV Bingo selection event.

(e) The 4 Corners prize pool for each TV Bingo selection shall be fifteen and eighty-three hundredths percent (15.83%) of the allocable prize pool for the particular TV Bingo selection event distributable as follows:

(1) Approximately four-hundredths percent (0.04%) for a 4 Corners pattern resulting from the first four (4) TV Bingo numbers selected in the TV Bingo selection event.

(2) Eighty-six hundredths percent (0.86%) for a 4 Corners pattern resulting from the fifth through tenth TV Bingo numbers selected in the TV Bingo selection event.

(3) Two and thirty-eight hundredths percent (2.38%) for a 4 Corners pattern resulting from the eleventh through fifteenth TV Bingo numbers selected in the TV Bingo selection event.

(4) Two and eighty-six hundredths percent (2.86%) for a 4 Corners pattern resulting from the sixteenth through twentieth TV Bingo numbers selected in the TV Bingo selection event.

(5) Three and twenty-one hundredths percent (3.21%) for a 4 Corners pattern resulting from the twenty-first through twenty-fifth TV Bingo numbers selected in the TV Bingo selection event.

(6) Six and forty-eight hundredths percent (6.48%) for a 4 Corners pattern resulting from the twenty-sixth through fortieth TV Bingo numbers selected in the TV Bingo selection event.

(State Lottery Commission; 65 IAC 5-17-6; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2732)

65 IAC 5-17-7 TV Bingo winning patterns and prizes

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

Sec. 7. (a) The Pickle Jar prize is payable to the holder of a TV Bingo ticket that contains a Coverall pattern resulting from the TV Bingo number drawn immediately after the Pickle Ball, if any, in the TV Bingo selection event. If more than one (1) such TV Bingo ticket is issued with respect to a single TV Bingo selection event, the Pickle Jar prize shall become pari-mutuel and be equally divided among those holding such tickets.

(b) The Coverall prize is payable to the holder of a TV Bingo ticket that contains the first Coverall pattern based on the order of selection of the TV Bingo numbers in a TV Bingo selection event. If more than one (1) such TV Bingo ticket is issued with respect to a single TV Bingo selection event, the Coverall prize shall become pari-mutuel and be equally divided among those holding such tickets.

(c) Big X prizes in TV Bingo are as follows:

(1) Prizes of one thousand dollars ($1,000) are payable to holders presenting TV Bingo tickets containing a Big X pattern resulting from the first twenty-five (25) TV Bingo numbers selected in the TV Bingo selection event.

(2) Prizes of two hundred dollars ($200) are payable to holders presenting TV Bingo tickets containing a Big X pattern resulting from the twenty-sixth through thirtieth TV Bingo numbers selected in the TV Bingo selection event.

(3) Prizes of one hundred dollars ($100) are payable to holders presenting TV Bingo tickets containing a Big X pattern resulting from the thirty-first through thirty-fifth TV Bingo numbers selected in the TV Bingo selection event.

(4) Prizes of twenty-five dollars ($25) are payable to holders presenting TV Bingo tickets containing a Big X pattern resulting from the thirty-sixth through fortieth TV Bingo numbers selected in the TV Bingo selection event.

(d) 4 Corners prizes in TV Bingo are as follows:

(1) Prizes of one thousand dollars ($1,000) are payable to holders presenting TV Bingo tickets containing a 4 Corners pattern resulting from the first four (4) TV Bingo numbers selected in the TV Bingo selection event.

(2) Prizes of one hundred dollars ($100) are payable to holders presenting TV Bingo tickets containing a 4 Corners pattern resulting from the fifth through tenth TV Bingo numbers selected in the TV Bingo selection event.

(3) Prizes of fifty dollars ($50) are payable to holders presenting TV Bingo tickets containing a 4 Corners pattern resulting from the eleventh through fifteenth TV Bingo numbers selected in the TV Bingo selection event.

(4) Prizes of twenty dollars ($20) are payable to holders presenting TV Bingo tickets containing a 4 Corners pattern resulting from the sixteenth through twentieth TV Bingo numbers selected in the TV Bingo selection event.

(5) Prizes of ten dollars ($10) are payable to holders presenting TV Bingo tickets containing a 4 Corners pattern resulting from the twenty-first through twenty-fifth TV Bingo numbers selected in the TV Bingo selection event.

(6) Prizes of two dollars ($2) are payable to holders presenting TV Bingo tickets containing a 4 Corners pattern resulting from the twenty-sixth through fortieth TV Bingo numbers selected in the TV Bingo selection event.

(State Lottery Commission; 65 IAC 5-17-7; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2733)

65 IAC 5-17-8 Payment of prizes

Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30; IC 4-30-15-1

Sec. 8. (a) All TV Bingo prizes and *[sic.]* shall be paid in a single, lump sum payment less federal and state income withholding taxes and statutory offsets.

(b) TV Bingo prizes shall not be paid until 7:30 p.m., EST, on the Saturday following the drawing.

(c) The holder of a valid TV Bingo ticket containing one (1) or more TV Bingo winning patterns is entitled to up to

four (4) prizes associated with the draw ticket.

(d) Pari-mutuel prizes may be rounded down so that the prizes may be paid in multiples of whole dollars. *(State Lottery Commission; 65 IAC 5-17-8; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2733)*

65 IAC 5-17-9 Odds of winning
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 9. (a) The odds of winning a Pickle Jar prize (or an equal share thereof if the prize becomes pari-mutuel) are dependent on the number of TV Bingo tickets purchased for the TV Bingo selection event.

(b) The odds of winning a Coverall prize (or an equal share thereof if the prize becomes pari-mutuel) are dependent on the number of TV Bingo tickets purchased for the TV Bingo selection event.

(c) The odds of winning a Big X prize of one thousand dollars ($1,000) are approximately 1:15,598.60.

(d) The odds of winning a Big X prize of two hundred dollars ($200) are approximately 1:3,535.91.

(e) The odds of winning a Big X prize of one hundred dollars ($100) are approximately 1:954.09.

(f) The odds of winning a Big X prize of twenty-five dollars ($25) are approximately 1:316.12.

(g) The odds of winning a 4 Corners prize of one thousand dollars ($1,000) are approximately 1:1,215,450.

(h) The odds of winning a 4 Corners prize of one hundred dollars ($100) are approximately 1:5,815.55.

(i) The odds of winning a 4 Corners prize of fifty dollars ($50) are approximately 1:1,052.34.

(j) The odds of winning a 4 Corners prize of twenty dollars ($20) are approximately 1:349.27.

(k) The odds of winning a 4 Corners prize of ten dollars ($10) are approximately 1:155.73.

(l) The odds of winning a 4 Corners prize of two dollars ($2) are approximately 1:15.44. *(State Lottery Commission; 65 IAC 5-17-9; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2734)*

65 IAC 5-17-10 Termination of liability
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 10. All liability of the commission and its members, officers, directors, and employees for any prize terminates upon payment of the prize or upon the expiration of one hundred eighty (180) days after the date of the selection event associated with a TV Bingo ticket. *(State Lottery Commission; 65 IAC 5-17-10; emergency rule filed Apr 15, 2005, 5:00 p.m.: 28 IR 2734)*

LSA Document #05-83(E)
Filed with Secretary of State: April 15, 2005, 5:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-87(E)

DIGEST

Adds 65 IAC 4-356 concerning scratch-off game number 765. Effective April 29, 2005.

65 IAC 4-356

SECTION 1. 65 IAC 4-356 IS ADDED TO READ AS FOLLOWS:

Rule 356. Scratch-Off Game 765

65 IAC 4-356-1 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 765, Texas Hold 'Em". *(State Lottery Commission; 65 IAC 4-356-1; emergency rule filed Apr 29, 2005, 1:30 p.m.: 28 IR 2734)*

65 IAC 4-356-2 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 765 shall sell for five dollars ($5) per ticket. *(State Lottery Commission; 65 IAC 4-356-2; emergency rule filed Apr 29, 2005, 1:30 p.m.: 28 IR 2734)*

65 IAC 4-356-3 Play symbols and play symbol captions
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 765 shall contain fifty (50) play symbols in the game play data area all concealed under a large spot of latex material. There shall be five (5) separate and independent games labeled "DEAL 1", "DEAL 2", "DEAL 3", "DEAL 4", and "DEAL 5", respectively. Nine (9) of the play symbols and play symbol captions in each game shall represent standard playing cards with two (2) appearing in the area labeled "YOUR 2 CARDS", two (2) appearing in the area labeled "THEIR 2 CARDS", and five (5) appearing in the

area labeled "COMMUNITY CARDS". Each game shall also contain one (1) play symbol and play symbol *[sic.]* **representing a prize amount appearing in the area labeled "PRIZE".**

(b) The play symbols, reflecting suits and faces associated with standard playing cards, and play symbol captions, reflecting abbreviations for the foregoing, that appear in scratch-off game number 765 shall consist of the following possible play symbols and play symbol captions:

(1) A playing card with ♠ and the number 2
TWS
(2) A playing card with ♠ and the number 3
THS
(3) A playing card with ♠ and the number 4
FRS
(4) A playing card with ♠ and the number 5
FVS
(5) A playing card with ♠ and the number 6
SXS
(6) A playing card with ♠ and the number 7
SNS
(7) A playing card with ♠ and the number 8
ETS
(8) A playing card with ♠ and the number 9
NIS
(9) A playing card with ♠ with the number 10
TNS
(10) A playing card with ♠ with the letter "J"
JKS
(11) A playing card with ♠ with the letter "Q"
QNS
(12) A playing card with ♠ with the letter "K"
KGS
(13) A playing card with ♠ with the letter "A"
ACS
(14) A playing card with ♣ and the number 2
TWC
(15) A playing card with ♣ and the number 3
THC
(16) A playing card with ♣ and the number 4
FRC
(17) A playing card with ♣ and the number 5
FVC
(18) A playing card with ♣ and the number 6
SXC
(19) A playing card with ♣ and the number 7
SNC
(20) A playing card with ♣ and the number 8
ETC
(21) A playing card with ♣ and the number 9
NIC
(22) A playing card with ♣ with the number 10
TNC
(23) A playing card with ♣ with the letter "J"
JKC
(24) A playing card with ♣ with the letter "Q"
QNC
(25) A playing card with ♣ with the letter "K"
KGC
(26) A playing card with ♣ with the letter "A"
ACC
(27) A playing card with ♦ and the number 2
TWD
(28) A playing card with ♦ and the number 3
THD
(29) A playing card with ♦ and the number 4
FRD
(30) A playing card with ♦ and the number 5
FVD
(31) A playing card with ♦ and the number 6
SXD
(32) A playing card with ♦ and the number 7
SND
(33) A playing card with ♦ and the number 8
ETD
(34) A playing card with ♦ and the number 9
NID
(35) A playing card with ♦ with the number 10
TND
(36) A playing card with ♦ with the letter "J"
JKD
(37) A playing card with ♦ with the letter "Q"
QND
(38) A playing card with ♦ with the letter "K"
KGD
(39) A playing card with ♦ with the letter "A"
ACD
(40) A playing card with ♥ and the number 2
TWH
(41) A playing card with ♥ and the number 3
THH
(42) A playing card with ♥ and the number 4
FRH
(43) A playing card with ♥ and the number 5
FVH
(44) A playing card with ♥ and the number 6
SXH
(45) A playing card with ♥ and the number 7
SNH
(46) A playing card with ♥ and the number 8
ETH
(47) A playing card with ♥ and the number 9
NIH
(48) A playing card with ♥ with the number 10
TNH
(49) A playing card with ♥ with the letter "J"
JKH
(50) A playing card with ♥ with the letter "Q"
QNH
(51) A playing card with ♥ with the letter "K"
KGH

(52) A playing card with ♥ with the letter "A"
ACH

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 765 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) $15.00
FIFTEEN
(7) $20.00
TWENTY
(8) $25.00
TWY FIVE
(9) $40.00
FORTY
(10) $50.00
FIFTY
(11) $100
ONE HUN
(12) $200
TWO HUN
(13) $500
FIVE HUN
(14) $1,000
ONE THOU
(15) $2,000
TWO THOU
(16) $5,000
FIVE THOU
(17) $10,000
TEN THOU
(18) $100,000
HUN THOU

(State Lottery Commission; 65 IAC 4-356-3; emergency rule filed Apr 29, 2005, 1:30 p.m.: 28 IR 2734)

65 IAC 4-356-4 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. (a) The holder of a valid scratch-off ticket in scratch-off game number 765 shall remove the latex material covering the fifty (50) play symbols.

(b) In each game, the holder shall combine the "YOUR 2 CARDS" play symbols with the "COMMUNITY CARDS" play symbols and determine the best five-card poker hand. The holder shall also combine the "THEIR 2 CARDS" play symbols with the "COMMUNITY CARDS" play symbols and determine the best five-card poker hand. If the best five-card poker hand with "YOUR 2 CARDS" beats the best five-card poker hand with "THEIR 2 CARDS", the holder wins the prize amount shown in the area labeled "PRIZE" in the associated game. The best five-card poker hands from among the possible play symbols and play symbol captions are set forth on the back of each scratch-off ticket in scratch-off game number 765 and are ranked worst to best as follows:

(1) One Pair – Two (2) play symbols with the same face value but from different suits.
(2) Two Pair – Two (2) sets of two (2) play symbols with each set consisting of two (2) play symbols with the same face value but from different suits.
(3) Three of a Kind – Three (3) play symbols with the same face value but from different suits.
(4) Straight – Five (5) play symbols with consecutively increasing values in any suit.
(5) Flush – Any five (5) play symbols of the same suit.
(6) Full House – Three (3) play symbols with the same face value but from different suits and two (2) play symbols with the same face value but from different suits (one (1) Three of a Kind and one (1) Two of a Kind).
(7) Four of a Kind – Four (4) play symbols with the same face value but from different suits.
(8) Straight Flush – Five (5) play symbols with consecutively increasing values in the same suit.
(9) Royal Flush – Five (5) play symbols with the ten (10), Jack, Queen, King, and Ace, respectively, of the same suit.

(c) Play symbols have the value designated on the face of the play symbols except that those representing jacks, queens, kings, and aces, respectively, shall be treated as having consecutively increasing values. A holder of valid scratch-off game number 765 may win multiple hands, but only one (1) prize per separate and independent game on a scratch-off ticket. *(State Lottery Commission; 65 IAC 4-356-4; emergency rule filed Apr 29, 2005, 1:30 p.m.: 28 IR 2736)*

65 IAC 4-356-5 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. The number of winning games, prize symbols, prize amounts, and approximate number of winners in scratch-off game number 765 are as follows:

Number of Winning Games and Associated Prize Play Symbols	Prize Amount	Approximate Number of Winners
5 – $1.00	$5	285,600
1 – $5.00	$5	163,200
5 – $2.00	$10	204,000
2 – $5.00	$10	81,600
1 – $10.00	$10	81,600
1 – $5.00 + 1 – $10.00	$15	20,400

1 – $15.00	$15	20,400
1 – $20.00	$20	10,200
4 – $5.00	$20	20,400
5 – $4.00	$20	40,800
2 – $10.00	$20	10,200
2 – $5.00 + 3 – $10.00	$40	17,000
2 – $10.00 + 1 – $20.00	$40	8,500
1 – $40.00	$40	8,500
2 – $25.00	$50	2,550
5 – $10.00	$50	3,740
1 – $10.00 + 2 – $20.00	$50	2,550
1 – $10.00 + 1 – $40.00	$50	2,550
1 – $50.00	$50	2,550
2 – $50.00	$100	5,440
5 – $20.00	$100	5,440
2 – $25.00 + 1 – $50.00	$100	3,400
4 – $25.00	$100	3,440
1 – $100	$100	3,440
5 – $100	$500	1,020
1 – $500	$500	1,020
2 – $500	$1,000	102
5 – $200	$1,000	102
1 – $1,000	$1,000	102
5 – $2,000	$10,000	5
2 – $5,000	$10,000	5
1 – $10,000	$10,000	5
1 – $100,000	$100,000	4

(State Lottery Commission; 65 IAC 4-356-5; emergency rule filed Apr 29, 2005, 1:30 p.m.: 28 IR 2736)

65 IAC 4-356-6 Number of tickets, odds, and reorders

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

Sec. 6. (a) There shall be approximately four million (4,000,000) scratch-off tickets initially available in scratch-off game number 765.

(b) The odds of winning a prize in scratch-off game number 765 are approximately 1 in 4.04.

(c) All reorders of tickets for scratch-off game number 765 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 4-356-6; emergency rule filed Apr 29, 2005, 1:30 p.m.: 28 IR 2737)*

65 IAC 4-356-7 Second-chance drawing

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

Sec. 7. (a) The director or the director's designee shall promulgate rules and procedures to govern four (4) second-chance drawings from among qualified entries which will take place on or about May 26, 2005, June 23, 2005, July 21, 2005, with the final drawing to occur on a date determined by the director. Players may enter one (1) or more of the second-chance drawings by mailing one (1) nonwinning scratch-off ticket in scratch-off game number 765 in an envelope no larger than 9½″ × 4½″ to Texas Hold 'Em Second Chance Drawing, PMB 339, 3129 25th Street, Columbus, IN 47203 before the deadlines designated in the drawing procedures. The back of each such scratch-off ticket must contain the player's name, address, and telephone number, if any. Alternatively, players who join or who are already members of the Lotto Fun Club may enter the second-chance drawings online at www.hoosierlottery.com by clicking on the Texas Hold 'Em EZ ENTRY image and following the directions. There is no limit on the number of times a player may enter a second-chance drawing but a single scratch-off ticket may be the source of only one (1) entry or prize. Any entries received after the last drawing date will be ineligible and destroyed. Detailed rules and procedures are available at www.hoosierlottery.com or upon written request.

(b) Each of the four (4) Hold 'Em Poker second-chance drawings shall award the winner one (1) prize from among the following as described more particularly in the drawing procedures:

(1) A vacation package for the winner and one (1) guest to the World Series of Poker® tournament of the winner's choice in the continental United States. The trip package shall include:

(A) round-trip coach flight reservations for two (2) adults to tournament location;

(B) double occupancy hotel reservations for two (2) adults for a six (6) night and seven (7) day stay at the tournament location;

(C) up to a ten thousand dollar ($10,000) buy-in for a seat at the selected World Series of Poker® tournament;

(D) one thousand dollars ($1,000) in spending money;

(E) two (2) tickets to watch the finals in the tournament location;

(F) payment on the winner's behalf of federal income withholding taxes attributable to the gross prize value prize at the rate of twenty-five percent (25%); and

(G) payment on the winner's behalf of state income withholding taxes attributable to the gross vale *[sic.]* of the prize that exceeds on *[sic.]* thousand two hundred dollars ($1,200) *[sic.]* rate of three and four-tenths percent (3.4%).

(2) At the commission's option, cash of fifteen thousand dollars ($15,000) in lieu of the World Series of Poker® tournament trip.

(3) In the event a grand prize winner is less than twenty-one (21) years of age and consequently ineligible to participate in any World Series of Poker® tournaments, cash of fifteen thousand dollars ($15,000).

(State Lottery Commission; 65 IAC 4-356-7; emergency rule filed Apr 29, 2005, 1:30 p.m.: 28 IR 2737)

65 IAC 4-356-8 Last day to claim prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. The last day to claim a prize in instant game number 765 is sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any instant ticket retailer. *(State Lottery Commission; 65 IAC 4-356-8; emergency rule filed Apr 29, 2005, 1:30 p.m.: 28 IR 2738)*

LSA Document #05-87(E)
Filed with Secretary of State: April 29, 2005, 1:30 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-88(E)

DIGEST

Adds 65 IAC 5-18 concerning the draw game Indy Racing Experience 2-Seater Raffle. Effective May 1, 2005.

65 IAC 5-18

SECTION 1. 65 IAC 5-18 IS ADDED TO READ AS FOLLOWS:

Rule 18. Indy Racing Experience 2-Seater Raffle

65 IAC 5-18-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this draw game is "Indy Racing Experience 2-Seater Raffle" (herein "2-Seater Raffle"). *(State Lottery Commission; 65 IAC 5-18-1; emergency rule filed Apr 29, 2005, 1:45 p.m.: 28 IR 2738, eff May 1, 2005)*

65 IAC 5-18-2 Definitions
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

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

(b) "2-Seater Raffle prize" means the prize set forth in section 5(b) of this rule.

(c) "2-Seater Raffle selection event" means a drawing or other selection event conducted to determine the 2-Seater Raffle winning numbers.

(d) "2-Seater Raffle ticket" means a draw ticket purchased in the manner defined in section 4(a) of this rule.

(e) "2-Seater Raffle winning numbers" means the ten (10) unique eight (8) digit numbers selected by the commission in a 2-Seater Raffle selection event with digits in the exact order of selection.

(f) "Play" means the set of four (4) sequential, unique eight (8) digit numbers that appear on a valid 2-Seater Raffle ticket in the manner defined in section 4(b) of this rule.

(g) "Player" means an eligible person who participates in a 2-Seater Raffle selection event by purchasing a 2-Seater Raffle ticket.

(h) "Retailer" means a person, other than a state agency or political subdivision, who sells lottery tickets on behalf of the commission pursuant to a retailer contract. *(State Lottery Commission; 65 IAC 5-18-2; emergency rule filed Apr 29, 2005, 1:45 p.m.: 28 IR 2738, eff May 1, 2005)*

65 IAC 5-18-3 Ticket price and content
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. The price of a 2-Seater Raffle ticket shall be two dollars ($2) per ticket. Each 2-Seater Raffle ticket shall contain one (1) play consisting of four (4) unique, sequential eight (8) digit numbers and is valid for the 2-Seater Raffle selection event following its purchase. No two (2) 2-Seater Raffle tickets shall contain any of the same eight (8) digit numbers. *(State Lottery Commission; 65 IAC 5-18-3; emergency rule filed Apr 29, 2005, 1:45 p.m.: 28 IR 2738, eff May 1, 2005)*

65 IAC 5-18-4 Procedure for playing
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. (a) A 2-Seater Raffle ticket may be purchased by requesting a play and the retailer shall generate the 2-Seater Raffle ticket from the lottery terminal.

(b) Each play for 2-Seater Raffle shall consist of the set of four (4) unique, sequential eight (8) digit numbers.

(c) A 2-Seater Raffle ticket is the only valid proof of a play and the only valid receipt for claiming a prize in 2-Seater Raffle. All plays in the 2-Seater Raffle shall be quick pick. Play slips shall not be available or utilized for any 2-Seater Raffle ticket or play.

(d) Four (4) separate and independent 2-Seater Raffle selection events shall be conducted with one (1) on each of the following days: May 7, 2005, May 14, 2005, May 21, 2005, and May 28, 2005. There is no multiple draw opportunity in 2-Seater Raffle.

(e) Sales of 2-Seater Raffle tickets shall be suspended prior to the time of each 2-Seater Raffle selection event at a time determined by the director.

(f) Neither the commission, the director, nor any employee of the commission shall be liable for the inability of any person to purchase a 2-Seater Raffle ticket containing a particular play.

(g) The director may, in the director's sole discretion, authorize the generation of draw entry tickets or promotional prizes from terminals with respect to certain purchases of 2-Seater Raffle tickets. *(State Lottery Commission; 65 IAC 5-18-4; emergency rule filed Apr 29, 2005, 1:45 p.m.: 28 IR 2738, eff May 1, 2005)*

65 IAC 5-18-5 Prize

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

Sec. 5. (a) In each 2-Seater Raffle selection event there shall be ten (10) 2-Seater Raffle prizes available with one (1) such prize awarded to each holder presenting a 2-Seater Raffle ticket containing one (1) of the 2-Seater Raffle winning numbers from a 2-Seater Raffle selection event. If a 2-Seater Raffle ticket contains more than one (1) 2-Seater Raffle winning number, the holder shall be entitled to one (1) 2-Seater Raffle prize for each 2-Seater Raffle winning number on the ticket.

(b) Each 2-Seater Raffle prize shall include the following:
(1) Participation in a July 23, 2005, event day by each winner and one (1) guest at the Indianapolis Motor Speedway, which shall include lunch, a museum tour, and other amenities.
(2) Participation in the Sinden Racing Services, Inc., "Riding Experience Program", which consists of one (1) three-lap ride around the Indianapolis Motor Speedway track in a two-seat, open-wheel racecar by the winner or designee.
(3) Payment, on the winner's behalf, of federal income withholding taxes at the rate of twenty-five percent (25%) on the gross value of the prize; and
(4) Payment, on the winner's behalf, of state income withholding at the rate of three and four-tenths percent (3.4%) on the gross value of the prize in excess of one thousand two hundred dollars ($1,200).

(c) Each winner may make a one (1) time designation of another person to participate in the events and activities associated with the 2-Seater Raffle prize. No other designations will be permitted and said designation shall be for all aspects of the 2-Seater Raffle prize. Regardless of participation, an IRS Form W-2G will be sent to the winner at year end.

(d) Winners must meet weight, height, physical condition, and other eligibility requirements established by Sinden Racing Services, Inc., before they may participate in the Riding Experience Program. Winners unable to meet the eligibility requirements may designate an eligible person to participate in the winner's place in the Riding Experience Program. In the event Sinden Racing Services, Inc., in its sole discretion, determines that a winner or designee is unable to safely ride in the 2-seater racecar, such winner or designee shall be provided with a certificate for the Riding Experience Program that may be used by an eligible person selected by the winner or designee.

(e) In order to participate in the July 23, 2005, event and related activities, the holder of a 2-Seater Raffle ticket containing one (1) or more 2-Seater Raffle winning numbers must present the ticket and claim the prize on or before June 30, 2005, or such other date determined by the commission.

(f) Participants in the Riding Experience Program agree to release Sinden Racing Services, Inc., the Indy Racing League, LLC, the commission and their officers, employees, and representatives from any and all liability for property damage, bodily injury, or death arising out of said participation and the related activities. Winners agree to complete any and all forms and provide any and all information required by Sinden Racing Services, Inc., the Indy Racing League, and the commission. All forms, including those by designees, must be completed and returned to the commission by July 15, 2005, or the opportunity to participate in the July 23, 2005, event may be forfeited.

(g) In the event a winner or designee fails to meet any of the foregoing deadlines but claims the 2-Seater Raffle prize ticket and provides the completed forms within one hundred eighty (180) days after a particular 2-Seater Raffle selection event, the commission may, in its sole discretion, either schedule the winner's participation in the July 23, 2005, event or provide the winner or the designee with a Sinden Racing Services, Inc., certificate for participation in the Riding Experience Program at a later date. The commission may include other amenities with the each certificate, the choice and value of which shall be within the sole discretion of the commission.

(h) The commission shall assign each winner or designee that has complied with the requirements stated above with a check-in time for participating in the Riding Experience Program on the date of the event. If a winner or designee fails to report at the designated time and the event ends before all participants who arrived on time have completed the Riding Experience Program, such persons shall be provided with a certificate for the Riding Experience Program that may be used at a future date. Similarly, if a winner or designee is unable for any reason to participate in the Riding Experience Program before the conclusion of the

event, such person shall be provided with a certificate for the Riding Experience Program that may be used at a future date.

(i) All fulfillment associated with the Riding Experience Program certificates shall be handled through Sinden Riding Services, Inc.

(j) The commission may, in its sole discretion, select an alternate date for the 2-Seater prize activities in the event of inclement weather, equipment failure, or for any other reason. The alternate date is tentatively set for July 24, 2005. The Lottery shall not be responsible for transportation, overnight lodging, or any other expenses incurred by winners, guests, or designees in association with participation in the event. *(State Lottery Commission; 65 IAC 5-18-5; emergency rule filed Apr 29, 2005, 1:45 p.m.: 28 IR 2739, eff May 1, 2005)*

65 IAC 5-18-6 Determination of winning numbers
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. (a) The commission shall conduct four (4) 2-Seater Raffle selection events. Each 2-Seater Raffle selection event shall select ten (10) unique eight (8) digit numbers from among a pool of only those unique eight (8) digit numbers printed on 2-Seater Raffle tickets purchased prior to the particular selection event. Any eight (8) digit numbers printed on 2-Seater Raffle tickets that were cancelled shall not be included in the drawing.

(b) Each selection event shall be under the supervision of security personnel and an independent auditor. *(State Lottery Commission; 65 IAC 5-18-6; emergency rule filed Apr 29, 2005, 1:45 p.m.: 28 IR 2740, eff May 1, 2005)*

65 IAC 5-18-7 Odds of winning
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. The odds of winning the prize in 2-Seater Raffle are dependent on the number of 2-Seater Raffle numbers printed on 2-Seater Raffle tickets purchased for each particular 2-Seater Raffle selection event. *(State Lottery Commission; 65 IAC 5-18-7; emergency rule filed Apr 29, 2005, 1:45 p.m.: 28 IR 2740, eff May 1, 2005)*

65 IAC 5-18-8 Termination of liability
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. All liability of the commission and its members, officers, directors, and employees for any prize terminates upon the award of the prize or upon the expiration of one hundred eighty (180) days after the date of the 2-Seater Raffle selection event associated with a 2-Seater Raffle ticket. *(State Lottery Commission; 65 IAC 5-18-8; emergency rule filed Apr 29, 2005, 1:45 p.m.: 28 IR 2740, eff May 1, 2005)*

LSA Document #05-88(E)
Filed with Secretary of State: April 29, 2005, 1:45 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-96(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 757. Effective May 6, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 757, Gold Fever".**

SECTION 2. **Scratch-off tickets in scratch-off game number 757 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 757 shall contain twenty-seven (27) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Three (3) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Twenty-four (24) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" and be arranged in pairs representing numbers or pictures and prize amounts.**

(b) The play symbols and play symbol captions in instant game number 469 *[sic., scratch-off game number 757]***, 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) 21
TWN
(22) 22
TWT
(23) 23
THR
(24) 24
TWF
(25) 25
THV
(26) 26
TWS
(27) 27
TSN
(28) 28
TWE
(29) 29
TNI
(30) 30
TTY
(31) A money bag with a $
WIN ALL

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

(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) $12.00
TWELVE
(8) $15.00
FIFTEEN
(9) $24.00
TWY FOUR
(10) $25.00
TWY FIVE
(11) $40.00
FORTY
(12) $50.00
FIFTY
(13) $125
ONE TWY FIV
(14) $150
ONE FTY
(15) $300
THR HUN
(16) $1,500
FTN HUN
(17) $15,000
FTN THOU

SECTION 4. **The holder of a ticket in scratch-off game number 757 shall remove the latex material covering the twenty-seven (27) play symbols and play symbol captions. The prize amounts and number of winners in scratch-off game number 757 are as follows:**

Matched Play Symbols	Prize Amount	Approximate Number of Winners
1–$2.00	$2	300,000
1–$4.00	$4	240,000
1–$1.00 + 2–$2.00	$5	30,000
1–$5.00	$5	30,000
2–$6.00	$12	15,000
6–$2.00	$12	15,000
12–$1.00	$12	7,500
1–$12.00	$12	7,500
1–$15.00	$15	15,000
12–$2.00	$24	7,500
1–$24.00	$24	7,500
4–$10.00	$40	1,250
1–$40.00	$40	1,250
1–$50.00	$50	1,250
2–$150	$300	500
12–$25.00	$300	500
1–$300	$300	500
12–$125	$1,500	100
1–$1,500	$1,500	75
1–$15,000	$15,000	4

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

scratch-off game number 757.

(b) The odds of winning a prize in scratch-off game number 757 are approximately 1 in 4.41.

(c) All reorders of tickets for scratch-off game number 757 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 757 is May 31, 2006.**

SECTION 7. **This document expires April 16, 2006.**

LSA Document #05-96(E)
Filed with Secretary of State: May 6, 2005, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-97(E)

DIGEST

Temporarily adds rules concerning instant game number 758. Effective May 6, 2005.

SECTION 1. **The name of this instant game is "Instant Game Number 758, Aces High".**

SECTION 2. **Instant tickets in instant game number 758 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 758 shall contain twenty-six (26) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Twenty-six (26) play symbols and play symbol captions shall be arranged in a matrix of nine (9) rows and three (3) columns. The rows shall be nine (9) separate and independent games labeled "HAND 1", "HAND 2", "HAND 3", "HAND 4", "HAND 5", "HAND 6", "HAND 7", "HAND 8", "BONUS HAND", respectively. The columns shall be labeled "YOUR CARD", "DEALER'S CARD", and "PRIZE", respectively, except that there shall be no play symbol or play symbol caption in the row labeled "BONUS HAND".**

(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)	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

(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) $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) $5,000
FIVE THOU
(15) $10,000
TEN THOU

SECTION 4. **(a) The holder of an instant ticket in instant game number 758 shall remove the latex material covering the twenty-six (26) play symbols and play symbol captions. If the play symbol and play symbol caption exposed in the "YOUR CARD" column has a higher value than the play symbol and play symbol caption exposed in the "DEALER'S CARD" column in one (1) or more rows, the holder is entitled to the corresponding prize amounts. If a play symbol representing a picture of an "ACE" is exposed in the "YOUR CARD" area in one (1) or more rows, the holder is entitled to double the corresponding prize amounts. Play symbols and play symbol captions representing playing cards are valued in descending order with aces as the high cards.**

(b) The number of winning plays and the associated prize amount play symbols, total prize amounts, and approximate number of winners in instant game number 758 are as follows:

Matched Play Symbols	Prize Amount	Approximate Number of Winners
1 – $2.00	$2	300,000
4 – $1.00	$4	150,000
1 – $4.00	$4	90,000
5 – $1.00	$5	30,000
1 – $5.00	$5	30,000
6 – $1.00 + 2 – $2.00	$10	30,000
2 – $5.00	$10	3,750
5 – $1.00 + 1 – $5.00	$10	3,750
1 – $10.00	$10	7,500
2 – $1.00 + 6 – $3.00	$20	15,000
4 – $5.00	$20	3,750
1 – $20.00	$20	3,750
8 – $5.00	$40	5,000
4 – $10.00	$40	2,500
1 – $40.00	$40	2,500
4 – $5.00 + 4 – $20.00	$100	1,500
5 – $20.00	$100	750
2 – $25.00 + 1 – $50.00	$100	750
1 – $100	$100	750
4 – $25.00 + 2 – $50.00 + 2 – $100	$400	250
1 – $400	$400	125
1 – $1,000	$1,000	50
4 – $50.00 + 2 – $400	$1,000	50
2 – $5,000	$10,000	3
1 – $10,000	$10,000	4

SECTION 5. **(a) There shall be approximately three million (3,000,000) instant tickets initially available in instant game number 758.**

(b) The odds of winning a prize in instant game number 758 are approximately 1 in 4.40.

(c) All reorders of tickets for instant game number 758 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 758 is May 31, 2006.**

SECTION 7. **This rule** *[document]* **shall expire on June 30, 2006.**

LSA Document #05-97(E)
Filed with Secretary of State: May 6, 2005, 4:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-98(E)

DIGEST

Temporarily adds rules concerning instant game number 756. Effective May 6, 2005.

SECTION 1. **The name of this instant game is "Instant Game Number 756, Lucky 7's".**

SECTION 2. **Instant tickets in instant game number 756 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each instant ticket in instant game number 756 shall contain ten (10) play symbols and play symbol captions all concealed under a large spot of latex material. Nine (9) play symbols and play symbol captions shall appear in a matrix of three (3) rows and three (3) columns. One (1) play symbol and play symbol caption shall appear in a box labeled "PRIZE".**

(b) The play symbols and play symbol captions, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:
(1) 1
ONE

(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIVE
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN

(c) The play symbols and play symbol captions representing prize amounts shall consist of the following possible play symbols and play symbol captions:
(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $5.00
FIVE
(5) $7.00
SEVEN
(6) $17.00
SEVENTEEN
(7) $50.00
FIFTY
(8) $77.00
SVTSVN
(9) $777
SVNHNSVSV
(10) $7,777
SVTHSHSVSN

SECTION 4. **The holder of a ticket in instant game number 756 shall remove the latex material covering the ten (10) play symbols and play symbol captions. If three (3) play symbols of "7" are exposed in a row, column, or diagonal, the holder is entitled to the prize in the "PRIZE" area. The prize amounts and number of winners in instant game number 756 are as follows:**

Winning Play Prize Play Symbol	Prize Amount	Approximate Number of Winners
$1.00	$1	600,000
$2.00	$2	400,000
$3.00	$3	120,000
$5.00	$5	60,000
$7.00	$7	20,000
$17.00	$17	20,000
$50.00	$50	6,250
$77.00	$77	1,250
$777	$777	125
$7,777	$7,777	75

SECTION 5. **(a) There shall be approximately six million (6,000,000) instant tickets initially available in instant game number 756.**

(b) The odds of winning a prize in instant game number 756 are approximately 1 in 4.89.

(c) All reorders of tickets for instant game number 756 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in instant game number 756 is May 31, 2006.**

SECTION 7. **This rule** *[document]* **shall expire June 30, 2006.**

LSA Document #05-98(E)
Filed with Secretary of State: May 6, 2005, 4:00 p.m.

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #05-84(E)

DIGEST

Temporarily adds a new rule to determine the graduated wagering tax by a new licensed owner or operating agent following a transfer of controlling interest in an owner's license or operating agent contract. Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21; IC 4-33-13-1.5. Effective April 21, 2005.

SECTION 1. **When a controlling interest, as determined by the commission, in an existing owner's license or operating agent contract is purchased or otherwise acquired from a licensed owner or operating agent, the subsequent licensed owner or operating agent must pay a wagering tax in accordance with IC 4-33-13-1.5 at a graduated tax rate to be calculated based upon the cumulative adjusted gross receipts received by both:**
(1) the previous licensed owner or operating agent; and
(2) the subsequent licensed owner or operating agent;
during the entire fiscal year, as defined in IC 4-1-1-1, in

which the transaction occurred.

LSA Document #05-84(E)
Filed with Secretary of State: April 21, 2005, 11:24 a.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #05-115(E)

DIGEST

Amends 71 IAC 3-2-9 concerning the judge's list. Amends 71 IAC 3-3-11 concerning cancellation of a race. Amends 71 IAC 3-4-1 concerning general authority. Amends 71 IAC 3-11-1 concerning general authority. Amends 71 IAC 5-3-1 concerning eligibility. Amends 71 IAC 6-1-3 concerning claiming procedure. Adds 71 IAC 6-1-4 concerning excusing claimed horse. Amends 71 IAC 7-1-29 concerning declaration to start and drawing horses. Amends 71 IAC 7-3-7 concerning driving rules. Amends 71 IAC 7-3-13 concerning whip restriction. Amends 71 IAC 7-3-18 concerning time for lapped on breaks. Amends 71 IAC 7-3-29 concerning horse also suspended. Adds 71 IAC 7-3-36 concerning equipment presentation. Amends 71 IAC 7-5-1 concerning disorderly conduct; all licensees. Amends 71 IAC 7-5-2 concerning improper language. Amends 71 IAC 13.5-3-3 concerning out-of-state breeder's awards. Repeals 71 IAC 3-7-3 concerning recommend disciplinary action. Effective May 10, 2005.

71 IAC 3-2-9
71 IAC 3-3-11
71 IAC 3-4-1
71 IAC 3-7-3
71 IAC 3-11-1
71 IAC 5-3-1
71 IAC 6-1-3
71 IAC 6-1-4
71 IAC 7-1-29
71 IAC 7-3-7
71 IAC 7-3-13
71 IAC 7-3-18
71 IAC 7-3-29
71 IAC 7-3-36
71 IAC 7-5-1
71 IAC 7-5-2
71 IAC 13.5-3-3

SECTION 1. 71 IAC 3-2-9 IS AMENDED TO READ AS FOLLOWS:

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

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

(1) Making a break in a qualifying race.
(2) Making a break in a race following a qualifying race unless finishing first, second, or third. Two (2) year old nonwagering purse races for three hundred dollars ($300) or less shall be considered a qualifying race.
(3) Poor performance or failure to go in a qualifying time following a qualifying race.
(4) Poor performance in a qualifying race regardless of going in qualifying time.
(5) Failure to go in qualifying time in two (2) consecutive starts.
(6) Failure to go in qualifying time previous or subsequent to a break line.
(7) Making breaks in two (2) consecutive starts unless finishing first, second, or third in one (1) of the two (2).
(8) Being scratched sick or lame in two (2) consecutive programmings or scratched sick or lame from a race following a qualifying race.
(9) Scratched sick or lame, having failed to go in qualifying time in a previous or subsequent start to that scratch.
(10) Scratched sick/lame in a race previous or subsequent to a break line.
(11) Numerous bad lines in its last six (6) starts regardless of being consecutive on finishing first, second, or third.

(b) A horse showing a satisfactory line in one (1) of its last two (2) starts or its last start at a pari-mutuel track prior to racing at an Indiana county fair half-mile track, the aforementioned county fair lines will not be considered towards its eligibility to return to the pari-mutuel track. Notwithstanding the above satisfactory line, at the pari-mutuel track, must be within its last six (6) programmed lines but within thirty (30) days of the pari-mutuel start (race date to race date).

(c) A horse having not raced at a pari-mutuel track must show a satisfactory charted line in one (1) of its last two (2) county fair starts within the time standards set within the last thirty (30) days (race date to race date).

~~(c)~~ **(d)** A horse having not raced at a pari-mutuel track must show a satisfactory charted line in one (1) of its last two (2) county fair starts within the time standards set.

~~(d)~~ **(e)** The judges may place a horse on the judge's list when there exists a question as to the exact identification, ownership, or trainer of a horse.

~~(e)~~ **(f)** A horse that has been the subject of a finding by a commission-approved laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from the horse shall be placed on the judge's list. Such horse shall not be released from the judge's list unless and until it has tested negative by a commission-approved laboratory for the antibody of erythropoietin or darbepoietin.

~~(f)~~ **(g)** A horse may not be released from the judge's list without permission of the judges. *(Indiana Horse Racing*

Commission; 71 IAC 3-2-9; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1129; emergency rule filed Apr 9, 1998, 1:18 p.m.: 21 IR 3377; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2097; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2534; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1911; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2754; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2745)

SECTION 2. 71 IAC 3-3-11 IS AMENDED TO READ AS FOLLOWS:

71 IAC 3-3-11 Cancellation of a race
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 11. If track conditions are questionable for ~~the warming up or~~ racing of horses, the judges shall ~~convene a meeting with representatives of the drivers and trainers and a representative of association management. If required by the judges, the representatives of the drivers and trainers shall conduct a secret ballot of~~ **ask for a vote from** the drivers ~~and trainers of horses~~ participating in ~~that program of racing to determine whether racing should be conducted.~~ **the races in question and the majority shall rule.** If ~~the vote of the drivers and trainers determines that~~ more than fifty percent (50%) vote against racing, the card ~~shall~~ **will** be cancelled. If more than fifty percent (50%) ~~and less than seventy-five percent (75%)~~ vote to race, trainers will be allowed to withdraw horses, **and drivers will be allowed to refuse to drive** without penalty. ~~If more than seventy-five percent (75%) vote to race, the regular rules of withdrawal and scratching of horses will apply.~~ This subsection *[sic., section]* does not prevent the association management from ~~cancelling the~~ **canceling** races due to track or weather conditions or other unavoidable causes without consultation with the judges and the horsemen's representative. **Furthermore, the races may not be delayed longer than forty-five (45) minutes from the scheduled time.** *(Indiana Horse Racing Commission; 71 IAC 3-3-11; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1130; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2826, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2746)*

SECTION 3. 71 IAC 3-4-1 IS AMENDED TO READ AS FOLLOWS:

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

Sec. 1. The paddock judge shall be responsible for the following:

(1) Ensuring that the horses are on the race track for post parades in accordance with the schedule issued by the judges.

(2) Inspection of horses for changes of equipment, broken or faulty equipment, and head numbers.

(3) Supervision of paddock gate operators.

(4) Proper check-in and check-out of horses and drivers.

(5) Direction of the activities of the paddock horseshoer.

(6) Ensuring that only sulkies **and equipment** approved by the commission are allowed on the track during warm-ups and racing.

(Indiana Horse Racing Commission; 71 IAC 3-4-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1130; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1496; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2097; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2746)

SECTION 4. 71 IAC 3-11-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 3-11-1 General authority
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. The **track shall insure that the proof provided by its** ~~program director is responsible for furnishing the public~~ **and sent to outside sources for the purpose of printing its program for live racing contains only the information sent by the program director in a** complete and accurate **form. The** past performance **lines and** information **contained in the simulcast program shall be identical to that in the live racing program. If inaccuracies occur, the judges and/or executive director may scratch the horse in question or have that race contested as a nonwagering event.** *(Indiana Horse Racing Commission; 71 IAC 3-11-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1132; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2746)*

SECTION 5. 71 IAC 5-3-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 5-3-1 Eligibility
Authority: IC 4-31-6-2
Affected: IC 4-31

Sec. 1. (a) An applicant for a license as trainer or assistant trainer shall:

(1) be at least eighteen (18) years of age;

(2) shall hold a currently valid trainer's license issued by the USTA or CTA;

~~(2)~~ **(3)** be qualified, as determined by the judges or other commission designee, by reason of experience, background, and knowledge of racing. ~~A trainer's license from another jurisdiction, having been issued within a prior period as determined by the commission, may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one (1) or more of the following:~~

~~(A) A written examination.~~

~~(B) An interview or oral examination.~~
~~(C) A demonstration of practical skills in a barn test.~~

(b) An applicant not previously licensed as a trainer shall be required to pass a written or oral examination and a demonstration of practical skills administered by the ~~USTA, prior to being licensed as a trainer.~~ **USTA/CTA or their designee.** *(Indiana Horse Racing Commission; 71 IAC 5-3-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1145; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2746)*

SECTION 6. 71 IAC 6-1-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 6-1-3 Claiming procedure
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 3. (a) A person desiring to claim a horse must have the required amount of money on deposit with the horsemen's bookkeeper ~~or clerk of course~~ at the time the completed claim form is deposited.

(b) The claimant shall provide all information required on the claim form provided by the association.

(c) The claim form shall be completed and signed by the claimant or his authorized agent prior to placing it and the necessary transfer fees in an envelope provided for this purpose by the association and approved by the commission. The claimant shall seal the envelope and identify on the outside the date, race number, and track name only.

(d) The envelope shall be delivered to the designated area or licensed delegate at least thirty (30) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received.

(e) The claim shall be examined by the judges **or their designee** prior to the start of the race. The association's designee shall be prepared to state whether sufficient funds are on deposit in the amount equivalent to the specified claiming price and any other required fees and taxes. ~~No official~~ **The judges** shall ~~give any~~ **have a public announcement made and** information **scrolled** on **the simulcast video stating there has been a claim made or, in the case of multiple claims, the number of** claims ~~filed until~~ **made on a horse during the post parade. The successful claimant will be announced** after **the completion of** the race.

~~(f) It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim box to the judges' stand.~~

~~(g)~~ **(f)** The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

~~(h)~~ **(g)** Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of:
(1) a photostatic copy of the check presented;
(2) written detailed information to include:
(A) the name of the claimant;
(B) the bank;
(C) the branch;
(D) the account number; and
(E) the drawer of any checks; or
(3) details of any other method of payment.
This documentation is to be kept on file at race tracks for twelve (12) months and is to be produced to the commission for inspection at any time during the twelve (12) month period.

~~(i)~~ **(h)** When a claim has been submitted, it is irrevocable and is at the risk of the claimant.

~~(j)~~ **(i)** In the event more than one (1) claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges **or their designee,** and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

~~(k)~~ **(j)** Upon determining that a claim is valid, the judges shall notify the paddock judge of:
(1) the name of the horse claimed;
(2) the name of the claimant; and
(3) the name of the person to whom the horse is to be delivered.
Also, the judges shall cause a public announcement to be made.

~~(l)~~ **(k)** Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, sound or unsound, or injured during or after the race.

~~(m)~~ **(l)** A post-race test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race sample is collected. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation. **The successful claimant/trainer shall have the right to measure the horse's hopples and any other equipment that he deems necessary before the horse leaves the test barn. The claimant or his/her authorized designee shall be permitted access into the test barn. The equipment must remain on the claimed horse until the claimant or his/her**

designee has an opportunity to measure hopples or any other equipment he deems necessary.

~~(n)~~ **(m)** Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

~~(o)~~ **(n)** A claimed horse shall not:
(1) be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed;
(2) remain in or be returned to the same stable or to the care or management of the first owner or trainer; or
(3) be sold or transferred to anyone;
for a period of thirty (30) days unless reclaimed out of another claiming race.

~~(p)~~ **(o)** The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration has been received by the racing secretary for transfer to the new owner.

~~(q)~~ **(p)** The judges, at the option of the claimant, shall rule a claim invalid if the horse has been found ineligible to the race from which it was claimed.

~~(r)~~ **(q)** Mares and fillies who are in foal are ineligible for claiming races. Upon receipt of the horse, if a claimant determines within forty-eight (48) hours that a claimed filly or mare is in foal, he or she may, at his or her option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

~~(s)~~ **(r)** If a claimant demonstrates that the sex of the horse is other than reported in the official racing program, he or she may, within forty-eight (48) hours of the claim, at his or her option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed. The judge shall rule the claim of the returned horse invalid.

~~(t)~~ **(s)** When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:
(1) the amount of the claiming price and any other required fees and taxes shall be repaid to the claimant;
(2) any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and
(3) the claimant shall be responsible for any reasonable costs incurred through the care, training, or racing of the horse while it was in his or her possession.

~~(u)~~ **(t)** No horse claimed out of a claiming race shall race outside the state of Indiana for the earlier to occur of:
(1) a period of thirty (30) days; or
(2) the conclusion of the race meeting from which it was claimed;
without the permission of the judges. *(Indiana Horse Racing Commission; 71 IAC 6-1-3; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1149; emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2907; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2400; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2101; errata filed Jun 21, 2001, 3:21 p.m.: 24 IR 3652; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1915; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2747)*

SECTION 7. 71 IAC 6-1-4 IS ADDED TO READ AS FOLLOWS:

71 IAC 6-1-4 Excusing claimed horse
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 4. If a horse in a claiming race is scratched by the judges for any reason, including being declared a non-starter, any claims on the said horse is *[sic., are]* **void. However, that horse in its next start, regardless of the condition of the race entered, may be claimed for the same price as the race from which it was scratched from. The rule shall apply for a period of thirty (30) days from the date of the race in which the horse was scratched or declared a nonstarter or the end of the meet. This rule shall not include horses scratched due to entry error or ineligibility, which is verified by the race office.** *(Indiana Horse Racing Commission; 71 IAC 6-1-4; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2748)*

SECTION 8. 71 IAC 7-1-29 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-1-29 Declaration to start and drawing horses
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 29. (a) The permit holder shall provide a locked box with an aperture through which declarations shall be deposited. With the approval of the judges, the racing secretary or his designee may open the entry box.

(b) No owner, trainer, or agent for a horse with a declaration in the entry box shall be denied the privilege of being present when the box is open.

(c) The racing secretary responsibilities shall include:
(1) all entries shall be listed;
(2) the eligibility verified;
(3) preference ascertained; and
(4) starters selected.

(d) If it is necessary to reopen any race, public announcement shall be made at least twice.

(e) The judges shall conduct the draw for post positions along with a representative of the horsemen.

(f) Declarations by mail, telegraph, or telephone actually received and evidence of which is deposited in the box before the time specified to declare in shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telephone, and telegraph declarations must contain all information required by the racing secretary. It shall be the responsibility of the racing secretary to see that such entries are signed by the person receiving such entries.

(g) When a track requires a horse to be declared at a stated time, failure to declare as required shall be considered a withdrawal from the event.

(h) After declarations to start have been made, no horse shall be withdrawn from the race except by permission of the judges. A fine or suspension, or both, shall be imposed for drawing a horse without permission, and the penalty shall apply to both the horse and the party who violates this rule.

(i) In all races, drawings shall be final unless there is conclusive evidence that an entry was timely received by the racing office and was omitted from the race through the error of the association, the commission, or its agents or employees in which event the race shall be redrawn, provided the error is discovered prior to scratch time.

~~(j) Declarations shall state who shall drive the horse. Drivers may be changed until scratch time.~~ *(Indiana Horse Racing Commission; 71 IAC 7-1-29; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1156; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2863, eff Jul 1, 1995; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2406; emergency rule filed Jun 8, 1999, 9:31 a.m.: 22 IR 3129, eff May 26, 1999 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-108(E) was filed with the secretary of state June 8, 1999.]; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2106; errata filed Jun 21, 2001, 3:21 p.m.: 24 IR 3652; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2748)*

SECTION 9. 71 IAC 7-3-7 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-3-7 Driving rules
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 7. (a) Although a leading horse is entitled to any part of the track, neither the driver of the first horse or any other driver in the race shall do any of the following, which shall be considered a violation of driving rules:

(1) Change either to the right or left during any part of the race when another horse is so near that in altering the position the horse behind is compelled to shorten its stride or the driver of the horse behind is forced to pull the horse out of its stride.

(2) Jostle, strike, hook wheels, or interfere with another horse or driver.

(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers.

(4) Swerve in and out or pull up quickly.

(5) Crowd a horse or driver by putting a wheel under the horse or driver.

(6) Carry a horse out.

(7) Sit down in front of a horse or take up abruptly in front of other horses so as to cause confusion or interference among trailing horses.

(8) Let a horse pass inside needlessly or otherwise help another horse to improve its position in the race.

(9) Commit any act which shall impede the progress of another horse or cause it to break.

(10) Change course after selecting a position in the homestretch, swerve in and out, or bear in and out in such a manner as to interfere with another horse or cause it to break.

(11) Drive in a careless or reckless manner.

(12) Whip under the arch of the sulky.

(13) Kick the horse or brush hindquarters or legs with the foot.

(14) Lay off a normal place and leave a hole when it is well within a horse's capacity to keep the hole closed.

(15) Cross the inside limits of the course.

(16) If any of the violations in this subsection is committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back if, in their opinion, the violation helped improve the entry's finishing position. Otherwise, penalties may be applied individually to the drivers of any entry.

(b) All complaints by drivers of any foul driving or other misconduct during the heat must be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury. Any driver desiring to enter a claim of foul or other complaint of violation of this section must, before dismounting, indicate to the judges or patrol judge his or her desire to enter such claim or complaint and forthwith upon dismounting shall proceed to the telephone or judges' stand where and when such claim, objection, or complaint shall be immediately entered. The judges shall not cause the official sign to be displayed until such claim, objection, or complaint has been entered and considered.

(c) In case of interference, collision, or violation of any of the restrictions in subsections (a) and (b), the offending horse may be placed back one (1) or more positions in that heat or dash. In the event such collision or interference prevents any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver shall be fined, suspended, or both. In the event a horse is set back under this

subsection, it must be placed behind the horse with whom it interfered.

(d) If there be any purse money for which horses have started but were unable to finish due to interference and/or an accident, all unoffending horses who did not finish will share equally in such purse money.

(e) Every heat in a race must be contested by every horse in the race, and every horse must be driven to the finish. If the judges believe that a horse:

(1) is being driven or has been driven with intent to prevent winning a heat or dash which the horse was evidently able to win; or

(2) is being raced in an inconsistent manner or to perpetrate or to aid a fraud;

the judges shall consider it a violation and the driver, and anyone acting in concert with the driver to so affect the outcome of the race or races, may be suspended or referred to the commission. The judges may substitute a competent and reliable driver at any time. The substituted driver shall be paid at the discretion of the judges and the fee retained from the purse money due the horse, if any.

(f) The judges may impose a penalty not to exceed a suspension of sixty (60) days or a fine of one thousand dollars ($1,000), or both, or refer the matter to the commission if a driver commits any of the following violations:

(1) In the event a drive is unsatisfactory due to lack of effort or carelessness despite the judges' belief that there is no fraud, gross carelessness, or a deliberate inconsistent drive.

(2) In the event the driver shall rein in before crossing the finish line or shall fail to use his or her utmost exertion to obtain a winning performance from the horse driven by him or her.

(3) In the event a driver shall fail to set or maintain a pace or trot comparable to the class in which he or she is racing. In the event a penalty is placed on a driver under this subsection, the horse may be placed on the judges' list and may not be removed therefrom until it goes in a qualifying race and qualifies in a time comparable to the class of the horse.

(4) Drive a horse in such a manner as to have it remain classified or eligible to the same or easier condition.

(Indiana Horse Racing Commission; 71 IAC 7-3-7; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1161; emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2913; emergency rule filed Jun 8, 1999, 9:31 a.m.: 22 IR 3130, eff May 26, 1999 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-108(E) was filed with the secretary of state June 8, 1999.]; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2108; errata filed Jun 21, 2001, 3:21 p.m.: 24 IR 3652; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2749)

SECTION 10. 71 IAC 7-3-13 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-3-13 Whip restriction

Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 13. (a) Drivers will be allowed whips not to exceed three (3) feet, nine (9) inches, plus a snapper not longer than six (6) inches.

(b) The whip, including the snapper, may make contact only above and between the shafts.

(c) The whip hand shall not pass behind the shoulder.

(d) Drivers are not allowed to lay back in the sulky to gain more leverage with the whip.

(e) Provided further that the following actions may be considered as excessive or indiscriminate use of the whip:

(1) Causing visible injury, including bleeding and/or welts.

(2) Whipping a horse after a race.

(3) Whipping a horse that is exhausted or not in contention.

(4) Excessive use of the whip.

(f) Drivers shall keep a line in each hand from the start of the race until the top of the homestretch finishing the race.

(g) Sticking any part of the whip including the butt end under the tail or between the legs is prohibited. *(Indiana Horse Racing Commission; 71 IAC 7-3-13; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1162; emergency rule filed Feb 13, 1998, 10:00 a.m.:21 IR 2409; emergency rule filed Jun 8, 1999, 9:31 a.m.: 22 IR 3132, eff May 26, 1999 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-108(E) was filed with the secretary of state June 8, 1999.]; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2537; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1919; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2750)*

SECTION 11. 71 IAC 7-3-18 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-3-18 Time for lapped on breaks

Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 18. The leading horse shall be timed, and its time only shall be ~~announced~~ **posted.** No horse shall obtain a win race record by reason of the disqualification of another horse unless ~~a horse is declared a winner by reason of the disqualification of a breaking horse on which it was lapped.~~ **it complies with 71 IAC 3-9-5.** *(Indiana Horse Racing Commission; 71 IAC 7-3-18; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1163; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2750)*

SECTION 12. 71 IAC 7-3-29 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-3-29 Horse also suspended
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 29. (a) If a person is suspended, ruled off, or expelled, every horse owned wholly or in part or leased or trained by that licensee may also be suspended, ruled off, or expelled for the same period of time as the owner or trainer.

(b) Under unusual circumstances or for justifiable reasons, the judges or commission may shorten the period of suspension time for a horse.

(c) With the approval of the judges, an owner whose horses are in the care of a suspended trainer may transfer such horses to another licensed trainer. **Such horses may be required to stable and train on the track.** *(Indiana Horse Racing Commission; 71 IAC 7-3-29; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1165; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2078; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2751)*

SECTION 13. 71 IAC 7-3-36 IS ADDED TO READ AS FOLLOWS:

71 IAC 7-3-36 Equipment presentation
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 36. Jog carts, sulkies, and other racing equipment must be clean and presentable when on the race track for a live racing program. *(Indiana Horse Racing Commission; 71 IAC 7-3-36; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2751)*

SECTION 14. 71 IAC 7-5-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-5-1 Disorderly conduct; all licensees
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 1. The following shall constitute disorderly conduct and be reason for any penalty of any license as provided by these rules:
(1) Failure to obey the judges' orders.
(2) Fighting.
(3) Assaults.
(4) Offensive and profane language.
(5) Disturbing the peace.
(6) Carries or exhibits a deadly weapon.
(Indiana Horse Racing Commission; 71 IAC 7-5-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1167; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2751)

SECTION 15. 71 IAC 7-5-2 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7-5-2 Improper language
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 2. If any licensed person:
(1) uses improper language to the racing officials or member of the racing commission or threatens such officials;
(2) uses profane or indecent language; **or**
~~(3) carries or exhibits a deadly weapon; or~~
~~(4)~~ **(3)** otherwise disturbs the peace of any race track enclosure;
he or she may be ejected, fined, suspended, or referred to the commission for any penalty provided by these rules. *(Indiana Horse Racing Commission; 71 IAC 7-5-2; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1167; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2751)*

SECTION 16. 71 IAC 13.5-3-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 13.5-3-3 Out-of-state breeder's awards
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 3. An out-of-state breeder's award is the award paid to the breeder of a registered Indiana bred which wins a race in another state or Canada. The amount of the award is ten percent (10%) of the winner's share of the purse for any race when entered for a claiming price of greater than seven thousand five hundred dollars ($7,500). This award is applicable only when there is no live thoroughbred race meet in progress in Indiana (except for stake races **and for two-year-olds winning out-of-state prior to July 1).** Awards will be paid by the commission. Out-of-state breeder's awards shall be limited to a single race award not to exceed ten thousand dollars ($10,000). *(Indiana Horse Racing Commission; 71 IAC 13.5-3-3; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2787; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jan 28, 2003, 2:20 p.m.: 26 IR 1952; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1922; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2751)*

SECTION 17. 71 IAC 3-7-3 IS REPEALED.

LSA Document #05-115(E)
Filed with Secretary of State: May 10, 2005, 3:20 p.m.

Notice of Rule Adoption

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-319(F)

Under IC 12-8-3-4.4, LSA Document #04-319, printed at 28 IR 1846, was adopted by the Secretary of Family and Social Services Administration on April 28, 2005. This rule amends 405 IAC 2-2-3 to require that a person have a disabling condition that has lasted or is expected to last for at least twelve months in order to qualify for Medicaid under the disabled category. Amends 405 IAC 2-9-5 to require that an individual have earned income that exceeds the $65 per month earned income disregard in order to be considered employed for purposes of the Medicaid for Employees with Disabilities Program. The rule that was adopted is a different version than the proposed rule, which was published in the Indiana Register on March 1, 2005.

TITLE 326 AIR POLLUTION CONTROL BOARD

#04-181(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of #04-181(APCB), printed at 28 IR 2156, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 3, 2005 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 20-80 and 326 IAC 20-81.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Gayl Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027, press 0, and ask for extension 3-8628 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers also may contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

LSA Document #05-122

Under IC 4-22-2-23, the Indiana Department of Administration intends to adopt a rule concerning the following:

OVERVIEW: To establish rules to regulate (1) the traffic and parking of motor vehicles, bicycles, or other vehicles; and (2) the traffic of pedestrians on the streets, roads, paths, and grounds of real property controlled by the state through the department in and around the state capitol, office buildings, parking garages, and adjoining state controlled property. Written comments may be submitted to the Indiana Department of Administration, attn: Kevin Ober, Indiana Government Center-South, 402 West Washington Street, Room W479, Indianapolis, Indiana 46204. Statutory authority: IC 4-13-1-7; IC 4-20.5-6-8.

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

LSA Document #05-123

Under IC 4-22-2-23, the Indiana Department of Administration intends to adopt a rule concerning the following:

OVERVIEW: To establish rules regulating the registration and conduct of executive branch lobbyists. Written comments may be submitted to the Indiana Department of Administration, attn: General Counsel, Indiana Government Center-South, 402 West Washington Street, Room W479, Indianapolis, Indiana 46204. Statutory authority: IC 4-2-7 (HEA 1501-2005, SECTION 14); IC 4-13-1-4.2 (HEA 1501-2005, SECTION 16); IC 4-13-1-7.

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

LSA Document #05-129

Under IC 4-22-2-23, the Indiana Department of Administration intends to adopt a rule concerning the following:

OVERVIEW: To adopt rules to establish and implement a "Code Adam" safety protocol at the buildings that the department maintains, equips, or operates and that are open to the public. The rules will include procedures for a state employee to follow when a parent, teacher, or guardian notifies a state employee that a child is lost or missing, procedures for the department contact person to follow after being notified of a lost or missing child, and procedures for department employees to search the building in which the lost or missing child is presumed to be located. Written comments may be submitted to the Indiana Department of Administration, attn: Kevin Ober, Indiana Government Center-South, 402 West Washington Street, Room W479, Indianapolis, Indiana 46204. Statutory authority: IC 4-13-1-4(16) (SEA 12-2005, SECTION 1); IC 4-13-1-7; IC 4-20.5-6-9 (SEA 12-2005, SECTION 2).

TITLE 42 OFFICE OF THE INSPECTOR GENERAL

LSA Document #05-124

Under IC 4-22-2-23, the Office of the Inspector General intends to adopt a rule concerning the following:

OVERVIEW: To adopt rules establishing and implementing a code of ethics for the conduct of state business. Written comments are invited and should be addressed to Office of the Inspector General, Indiana Government Center-South, 402 West Washington Street, Room W198, Indianapolis, IN 46204. Statutory authority: IC 4-2-7-3 (HEA 1501-2005, SECTION 14); IC 4-2-7-5 (HEA 1501-2005, SECTION 14).

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #05-107

Under IC 4-22-2-23, the Indiana Gaming Commission intends to adopt a rule concerning the following:

OVERVIEW: Adds a new rule to specify how the graduated wagering tax rate will be calculated for a licensed owner or operating agent following a transfer of a controlling interest in an owner's license or operating agent contract. Public comments are invited. Questions concerning the rule may be directed to the following telephone number: (317) 233-0046 or e-mailed to psicuso@igc.state.in.us. Statutory authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-5; IC 4-33-4-21; IC 4-33-13-1.5.

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

LSA Document #05-100

Under IC 4-22-2-23, the Indiana Utility Regulatory Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 170 IAC 5-1-15 and 170 IAC 5-1-16

regarding customer deposits, service disconnections, and reconnections for gas utilities. Effective 30 days after filing with the Secretary of State. Questions concerning the proposed rule may be addressed to the following telephone number: (317) 232-6735. Statutory authority: IC 8-1-1-3(g).

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

LSA Document #05-130

Under IC 4-22-2-23, the Indiana Utility Regulatory Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 170 IAC 4-4.1 and 170 IAC 4-4.2 regarding cogeneration, alternate energy production facilities, and net metering. Adds 170 IAC 4-4.3 concerning interconnection standards between a public utility and a customer-generator facility. Effective 30 days after filing with the secretary of state. Statutory authority: IC 8-1-1-3(g).

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-99

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Repeals 312 IAC 17-3 that governs the regulation of geophysical surveying operations because the statutory authority for the rule was repealed by SEA 442. Questions concerning the proposed rule repeal may be directed to (317) 233-3322 or slucas@nrc.in.gov. Statutory authority: IC 14-10-2-4; IC 14-37-3-14.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-125

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 25 that assists in the administration of IC 14-34 (sometimes referred to as the "Indiana Surface Control and Reclamation Act" or "Indiana SMCRA") and that governs surface coal mining and reclamation activities. Amends 312 IAC 25-4-102 to require an applicant that proposes to establish commercial forest resources on prime farmland to submit for approval a commercial forest planting plan, commercial forest management plan, and documentation of landowner consent. Amends 312 IAC 25-6-143 to allow commercial forest resources on reclaimed prime farmland provided soil productivity is demonstrated according to soil productivity standards. Public questions and comments may be sent to the Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204, by e-mail at jkane@nrc.in.gov, or by telephone at (317) 232-4699. Statutory authority: IC 14-10-2-4; IC 14-34-2.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-126

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 25 that assists in the administration of IC 14-34 (sometimes referred to as the "Indiana Surface Control and Reclamation Act" or "Indiana SMCRA") and that governs surface coal mining and reclamation activities. Makes numerous changes to help assure conformance with state and federal law. Qualifies approved reclamation projects financed with less than 50 percent federal funding as "government-financed construction". Removes the requirement for submittal of an application for water impoundments of less than 100-acre feet. Adds a provision allowing the director of the department of natural resources to initiate an application for bond release. Clarifies the conduct of informal conferences regarding proposed bond release. Exempts impoundments that are entirely contained within an incised structure from examination requirements. Clarifies requirements for construction or reconstruction of primary roads. Clarifies the definition of "abandoned site" as used in 312 IAC 25-7-1. Public questions and comments may be sent to the Division of Hearings, Natural Resources Commission, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204, by e-mail at jkane@nrc.in.gov, or by telephone at (317) 232-4699. Statutory authority: IC 14-10-2-4; IC 14-34-2.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #05-90

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 the animal rabies control program including matters incorporated by reference. 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 #05-121

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: The rules will prescribe procedures for condemnation, indemnity and disposition of animals and objects, euthanasia of animals and destruction of objects, and cleaning and disinfecting to prevent, detect, control, and eradicate diseases and pests of animals. Effective 30 days after filing with the secretary of state. Submit questions or comments to the Indiana State Board of Animal Health, Attn: Legal Affairs, 805 Beachway Drive, Suite 50, Indianapolis, Indiana 46224 or by electronic mail to ghaynes@boah.in.gov. Statutory authority: IC 15-2.1-3-19.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-109

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 5-14 to place limitations on dental services for adults that are in accordance with HEA 1001-2005, SECTION 239. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-110

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 5-24 to place limitations on where recipients can obtain maintenance medications that are in accordance with HEA 1001-2005, SECTION 105. 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 #05-111

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: Adds provisions to permit the office of Medicaid policy and planning to collect an assessment on service revenue of providers of community based services in accordance with HEA 1001-2005, SECTION 101. Statutory authority: IC 12-8-6-5; IC 12-15-1-10.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-112

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 1-14.6 to add provisions to assess a quality assessment fee on nursing facility providers for the purpose of funding enhanced nursing facility reimbursement. Adds provisions for additional reimbursement for closing or converting nursing facilities. 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 #05-113

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 1-12 to revise reimbursement methodology to place limitations on increases in payment for services provided to Medicaid recipients by duly certified nonstate owned and operated intermediate care facilities for the mentally retarded (ICF/MR) and community residential facilities for the developmentally disabled (CRF/DD). Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-114

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 1-14.5 and 405 IAC 1-14.6 to revise reimbursement methodology to place limitations on increases in payment for services provided to Medicaid recipients by duly certified nursing facilities. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-93

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Adopt rules pertaining to the operation and management of birthing centers as well as establishing minimum licensing qualifications and establishing requirements for sanitation standards, staff qualifications, necessary emergency equipment, procedures to provide emergency care, quality assurance standards, and infection control. The rules will prescribe the operating policies, supervision, and maintenance of medical records. The rules will establish procedures for the issuance, renewal, denial, and revocation of licenses while addressing the form and content of the license and the collection of an annual license fee. The procedures and standards for inspections will also be addressed. Written comments may be submitted to the Indiana State Department of Health, Health Care Regulatory Services Commission, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-21-1-7; IC 16-21-2-2.5.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

LSA Document #05-94

Under IC 4-22-2-23, the Indiana State Department of Health intends to adopt a rule concerning the following:

OVERVIEW: Adopt rules pertaining to the operation and management of abortion clinics as well as establishing minimum licensing qualifications and establishing requirements for sanitation standards, staff qualifications, necessary emergency equipment, procedures to provide emergency care, quality assurance standards, and infection control. The rules will prescribe the operating policies, supervision, and maintenance of medical records. The rules will establish procedures for the issuance, renewal, denial, and revocation of licenses while addressing the form and content of the license and the collection of an annual license fee. The procedures and standards for inspections will also be addressed. Written comments may be submitted to the Indiana State Department of Health, Health Care Regulatory Services Commission, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-21-1-7; IC 16-21-2-2.5.

TITLE 414 HOSPITAL COUNCIL

LSA Document #05-95

Under IC 4-22-2-23, the Hospital Council intends to adopt a rule concerning the following:

OVERVIEW: Adopt rules to establish licensing fees for abortion clinics and birthing centers. Written comments may be submitted to the Secretary, Indiana Hospital Council, Indiana State Department of Health, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-21-2-12; IC 16-21-2-14.

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

LSA Document #05-120

Under IC 4-22-2-23, the Division of Mental Health and Addiction intends to adopt a rule concerning the following:

OVERVIEW: Add rules to 440 IAC 4.4 to make clearer the requirements for the certification of methadone treatment programs and the operation of the Methadone Diversion Control and Oversight Program to identify individuals who divert controlled substances from legitimate treatment use and to terminate methadone treatment of those individuals. Questions or comments may be directed to Kathy Gregory, 402 W. Washington St., W451, Indianapolis, IN 46204 or (317) 232-7856. Statutory authority: IC 12-23-1-6; IC 12-23-18-1.

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

LSA Document #05-119

Under IC 4-22-2-23, the Division of Disability, Aging, and

Rehabilitative Services intends to adopt a rule concerning the following:

OVERVIEW: Adds 460 IAC 1.2 concerning home and community based services, which will include qualifications for approved providers of home and community based services; the process by which the bureau of aging and in-home services (BAIHS) approves providers; the BAIHS process for monitoring and ensuring compliance with provider standards and requirements; the rights of individuals receiving services; protection of individuals receiving services; standards and requirements for approved providers of home and community based services; and definitions for home and community based services. Statutory authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10.5-2-2; IC 12-10.5-2-3; IC 12-11-1.1-9; IC 12-11-2.1-12; P.L.37-2005, SECTION 6, (HEA 1069-2005, SECTION 6).

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #05-105

Under IC 4-22-2-23, the Division of Family and Children intends to adopt a rule concerning the following:

OVERVIEW: Adds a new article, 470 IAC 10.3, to create a new set of eligibility rules under which the federal Temporary Assistance to Needy Families Program operates and requires recipients to be evaluated for job assistance and placement. Repeals the unrepealed sections in the article governing the assistance to families with dependent children program, 470 IAC 10.1-1, 470 IAC 10.1-2-1, 470 IAC 10.1-2-2, 470 IAC 10.1-2-4 through 470 IAC 10.1-2-6, 470 IAC 10.1-3-1, 470 IAC 10.1-3-3.1, 470 IAC 10.1-3-6, 470 IAC 10.1-5, 470 IAC 10.1-6, and 470 IAC 10.1-10 through 470 IAC 10.1-12, the article governing temporary assistance to needy families, 470 IAC 10.2, and the unrepealed sections in the article governing the welfare reform initiative, 470 IAC 14-1, 470 IAC 14-2-1 through 470 IAC 14-2-6, 470 IAC 14-2-8, 470 IAC 14-3-1 through 470 IAC 14-3-2.3, 470 IAC 14-3-4 through 470 IAC 14-3-12, and 470 IAC 14-4. Statutory authority: IC 12-8-12-7; IC 12-13-2-3(2); IC 12-13-5-1; IC 12-13-5-3.

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

LSA Document #05-128

Under IC 4-22-2-23, the Department of Workforce Development intends to adopt a rule concerning the following:

OVERVIEW: 646 IAC 3-10-9 and 646 IAC 3-10-13 will be amended to allow the department flexibility in how unemployment benefits are paid to recipients. It allows the department to use debit cards, direct deposit, or any means the department deems to be in its best interests and in the interests of the recipient to deliver unemployment benefits. Public comments are invited. Contact person: Teresa Melton, General Counsel, Department of Workforce Development, (317) 232-0197. Statutory authority: IC 22-4.1-3-3.

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

LSA Document #05-103

Under IC 4-22-2-23, the Board of Firefighting Personnel Standards and Education intends to adopt a rule concerning the following:

OVERVIEW: The proposed amendments and additions to 655 IAC 1-1 are for the purpose of amending general administrative requirements, including testing and reciprocity requirements, and making conforming section changes. Statutory authority: IC 22-12-7-7; IC 22-14-2-7.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #05-104

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: To amend the 2003 Indiana Building Code, 675 IAC 13-2.4, and the 2003 Indiana Fire Code, 675 IAC 22-2.3, by adopting the latest editions of NFPA Standards 10, 11, 12, 15, 17, 17A, 25, 33, 34, 37, 50, 50B, 51, 51B, 52, 59, 59A, 72, 82, 86, 385, 407, 704, 1123, and 2001. To repeal outdated editions of the foregoing NFPA standards. Public comments are invited and may be directed to the Department of Homeland Security, Attention: Code Services, Indiana Government Center-South, 402 West Washington Street, Room W246, Indianapolis, Indiana 46204 or by e-mail at msnyder@dhs.in.gov. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #05-108

Under IC 4-22-2-23, the Fire Prevention and Building Safety

Commission intends to adopt a rule concerning the following:

OVERVIEW: The proposed rule amends 675 IAC 12 to make changes necessitated by the enactment of SEA 56 (2005), to update the availability statement for the article, and to add Article 25, the Indiana Fuel Gas Code and Article 26, the Indiana Explosive Materials Code, to the list of commission rules in 675 IAC 12-1.1-5. Amends 675 IAC 12-3 to amend fee schedules. Amends 675 IAC 12-5 to revise the rules for variances. Amends 675 IAC 12-6 to amend and clarify the filing process for plans, exemptions from filing, and the duration of a construction design release. Amends 675 IAC 12-8 to revise the Indiana Building Rehabilitation Standard. Amends 675 IAC 12-13 to amend the scope of projects to which Rule 13 may be applied. Public comments are invited and may be directed to the Department of Homeland Security, Division of Fire and Building Safety, Attention: Code Services, Indiana Government Center-South, 402 West Washington Street, Room E243, Indianapolis, Indiana 46204 or by e-mail at msnyder@dhs.IN.gov. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #05-127

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: The proposed rule amends 675 IAC 22-2.3 to address the use of tents and other membrane structures. Public comments are invited and may be directed to the Department of Homeland Security, Division of Fire and Building Safety, Attention: Code Services, Indiana Government Center-South, 402 West Washington Street, Room E243, Indianapolis, Indiana 46204 or by e-mail at msnyder@dhs.IN.gov. Statutory authority: IC 22-13-2-2; IC 22-13-2-13.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-106

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 set standards for prelicensing and continuing education for bail agents and recovery agents and to otherwise implement IC 27-10-3. Written comments may be submitted to the Indiana Department of Insurance, Attn: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204 or by e-mail to astrati@doi.state.in.us. Statutory authority: IC 27-10-3-21 (as added by P.L.102-2005, SECTION 8).

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #05-91

Under IC 4-22-2-23, the Medical Licensing Board of Indiana intends to adopt a rule concerning the following:

OVERVIEW: Adds 844 IAC 5-5 to establish the guidelines for the use of controlled substances for the treatment of pain. Effective 30 days after filing with the secretary of state. Questions or comments concerning the proposed rule may be directed to: Medical Licensing Board of Indiana, ATTENTION: Board Director, Indiana Government Center-South, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204 or by electronic mail at ajones@hpb.state.in.us. Statutory authority: IC 25-22.5-2-7.

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

LSA Document #05-92

Under IC 4-22-2-23, the Medical Licensing Board of Indiana intends to adopt a rule concerning the following:

OVERVIEW: Establish standards for office based procedures that require moderate sedation, deep sedation, or general anesthesia. Questions or comments concerning the proposed rule may be directed to: Medical Licensing Board of Indiana, ATTENTION: Board Director, Indiana Government Center-South, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204 or by electronic mail at ajones@hpb.state.in.us. Statutory authority: IC 25-22.5-2-7.

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-102

Under IC 4-22-2-23, the Indiana Board of Pharmacy intends to adopt a rule concerning the following:

OVERVIEW: Amends 856 IAC 3 to implement rule changes based on House Enrolled Act 1098, including establishing criteria for drug returns, establishing the definitions and requirements for normal distribution chain of custody, pedigree, and the extent to which pedigrees are required, and establishing

criteria to approve an accreditation body to evaluate and inspect a person who engages in wholesale distributions of legend drugs. Questions or comments concerning the proposed rules may be directed to: Indiana Health Professions Bureau, ATTENTION: Joshua M. Bolin, Indiana Government Center-South, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204 or by electronic mail at jbolin@hpb.in.gov. Statutory authority: IC 25-26-14-8.5; IC 25-26-14-8.7; IC 25-26-14-11.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #05-101

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 876 IAC 1-4-2 to add septic/holding tank and septic mound and geothermal and heat pump to the Residential Real Estate Sales Disclosure form and to require signatures and property address information on both pages of the form. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Commission Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at nrhoad@pla.in.gov. Statutory authority: IC 25-34.1-2-5; IC 25-34.1-5-7.

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

Proposed Rule
LSA Document #05-25

DIGEST

Amends 25 IAC 5-3-2, 25 IAC 5-3-5, 25 IAC 5-3-6, 25 IAC 5-4-1, 25 IAC 5-4-2, and 25 IAC 5-6-2, relating to rules governing the division for minority and women's business enterprise development, by adding and amending provisions relating to applications for certification as an MBE or WBE, including those necessary and appropriate to comply with the directives set forth in Executive Order 05-11, amending provisions relating to control determinations and other factors considered for certifications, procedures governing denial or revocation of certification, review of department certifications, and monitoring of subcontractor participation. Makes other technical and clerical changes. Effective 30 days after filing with the secretary of state.

25 IAC 5-3-2 **25 IAC 5-4-1**
25 IAC 5-3-5 **25 IAC 5-4-2**
25 IAC 5-3-6 **25 IAC 5-6-2**

SECTION 1. 25 IAC 5-3-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-3-2 Application for certification as an MBE or a WBE

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-14-3-4; IC 5-22

Sec. 2. (a) The enterprise seeking certification as an MBE or a WBE shall submit its application on the form or forms approved by the department, accompanied by all requested documentation.

(b) An enterprise seeking certification as an MBE or a WBE has the burden of demonstrating that it meets the requirements of this rule concerning ownership and control by qualifying members.

(c) The individual signing the application for certification shall be a qualifying member. The qualifying member or members are those whose participation is relied upon to meet the ownership and control requirements, and each shall certify as to his or her status as a qualifying member. The qualifying member signing the application for certification for not-for-profit enterprise must be the highest-ranking official working in the enterprise on a day-to-day basis.

(d) An ~~enterprises~~ **enterprise** seeking MBE or WBE certification shall cooperate fully with the department's requests for information and documentation relevant to the certification process. Failure to cooperate fully may result in denial of MBE or WBE certification.

(e) An enterprise seeking MBE or WBE certification has an affirmative obligation to disclose all material and relevant information affecting ~~that's~~ **that** enterprise's eligibility for certification. Any material misrepresentation or omission may:
(1) be grounds for denial of certification; or ~~may~~
(2) result in the issuance of an order to show cause why ~~such~~ **the** certification should not be revoked.

(f) All documents submitted in connection with an application for certification as an MBE or **a** WBE are subject to the Indiana Access to Public Records Act, IC 5-14-3. The department will maintain as confidential any:
(1) tax returns; ~~other~~
(2) financial information; and
(3) trade secret information;
as authorized under ~~Indiana Code section~~ **IC** 5-14-3-4(a).

(g) An applicant (an individual who is a qualifying member) can submit a maximum of two (2) applications per year. At any time, only one (1) application can be pending.

(h) If an enterprise withdraws its application ~~prior to~~ **before** completion of the review process, it may reapply at any time, but the reapplication will be:
(1) treated as a new application; and
(2) considered in the order in which it is received.

(i) An ~~enterprises~~ **enterprise** certified as an MBE or **a** WBE as of the date these ~~rule~~ **rules** become effective shall retain its certification until it expires, unless revoked as provided in this article.

(j) If an enterprise has an application for certification as an MBE or a WBE with the department at the date these rules become effective, the department will make its certification determination based on the rules that were in effect at the time the application was received.

(k) The department may accept applications submitted on behalf of the applicant by another certifying body approved by the department, provided that:
(1) the applicant has requested in writing that the other certifying body submit the file and application materials, including the results of any on-site review, to the department on his, her, or its behalf; and
(2) the other certifying body submits to the department those documents in its files relating to the application.
For applications submitted under this subsection, nothing shall preclude the department from requesting from the applicant such other documentation or undertaking such additional investigations as may be necessary for it to make a determination on whether certification should be granted or denied by the department.

(l) The department may accept certifications from another certifying body approved by the department, provided that:

(1) the certification issued by the other certifying body requires the applicant to:

(A) submit documentation; and

(B) undergo an investigation no less stringent than the requirements imposed by these rules; and

(2) the other certifying body agrees to submit to the department upon request a full and complete copy of the applicant's file resulting in the certification.

(Indiana Department of Administration; 25 IAC 5-3-2; filed May 30, 2003, 11:00 a.m.: 26 IR 3297)

SECTION 2. 25 IAC 5-3-5 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-3-5 Control determinations

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 5. (a) In determining whether qualifying members control an enterprise, the department will consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as ~~a~~ **an** MBE or **a** WBE. An independent business is one the viability of which does not depend on its relationship with another enterprise or enterprises.

(1) In determining whether a potential MBE or WBE is an independent business, the department will scrutinize relationships with non-MBE or non-WBE enterprises in such areas as **the following:**

(A) Personnel.

(B) Facilities.

(C) Equipment.

(D) Financial.

(E) Bonding support. ~~and~~

(F) Other resources.

(2) The department must consider whether present or recent employer/employee relationships between the qualifying member of the potential MBE or WBE and non-MBE or WBE or persons associated with non-MBE or WBEs compromise the independence of the potential MBE or WBE.

(3) The department must examine the enterprise's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE or WBE enterprise.

(4) In considering factors related to the independence of a potential MBE or WBE, the department must consider the consistency of relationships between the potential MBE or WBE and non-MBE or WBE with customary industry practice.

(c) An MBE or **a** WBE must not be subject to any formal or informal restrictions that limit the customary discretion of the qualifying members. There can be no restrictions through corporate charter provisions, bylaw provisions, contracts, or any other formal or informal devices, including, but not limited to:

(1) cumulative voting rights;

(2) voting powers attached to different classes of stock;

(3) employment contracts;

(4) requirements for concurrence by nonqualifying partners;

(5) conditions precedent or subsequent;

(6) executory agreements;

(7) voting trusts; or

(8) restrictions on or assignments of voting rights;

that prevent the qualifying members, without the cooperation or vote of any nonqualifying individual, from making any business decision of the enterprise. This subsection does not preclude a spousal cosignature on documents as provided for in this section.

(d) The qualifying members must possess the power to direct or cause the direction of the management and policies of the enterprise and to make day-to-day as well as long term decisions on matters of management, policy, and operations.

(1) A qualifying member must hold the highest officer position in the enterprise, for example, chief executive officer or president.

(2) In a corporation, qualifying members must control the board of directors.

(3) In a partnership, one (1) or more qualifying members must serve as general partners with control over all partnership decisions.

(e) Individuals who are not qualifying members may be involved in an MBE or **a** WBE as owners, managers, employees, stockholders, officers, and directors. Such individuals must not, however:

(1) possess or exercise the power to control the enterprise; or

(2) be disproportionately responsible for its ~~the~~ operation.

(f) The qualifying members of the enterprise may delegate various areas of the management, policymaking, or daily operations to other participants in the enterprise, regardless of whether these participants are qualifying members. Such delegations of authority must be revocable, and the qualifying members must retain the power to hire and fire any person to whom ~~such~~ **the** authority is delegated. The managerial role of the qualifying members in the enterprise's overall affairs must be such that the department can reasonably conclude that the qualifying members actually exercise control over the enterprise's operations, management, and policy.

(g) ~~The qualifying members must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the enterprise is engaged and the enterprise's operations. The qualifying members are not required to have experience or~~

~~expertise in every critical area of the enterprise's operations, or to have greater experience or expertise in a given field than managers or key employees.~~ The qualifying **member or** members must have the ability to:

(1) intelligently and critically evaluate information presented by other participants in the enterprise's activities; and ~~to~~

(2) use this information to make independent decisions concerning the enterprise's daily operations, management, and policymaking.

Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the enterprise is insufficient to demonstrate control.

(h) If federal, state, or local law, statute, ordinance, or regulation requires an individual to have a particular license or other credential in order to own or control a certain type of enterprise, then the qualifying members who own and control a potential MBE or WBE of that type must possess the required license or credential. If federal, state, or local law does not require such a person to have such a license or credential to own or control an enterprise, the department may not deny certification solely on the ground that the person lacks the license or credential. However, the department may take into account the absence of the license or credential as a factor in determining whether the qualifying members actually control the enterprise.

(i) The department may consider differences in remuneration between the qualifying members and other participants in the enterprise in determining whether to certify an enterprise as ~~a~~ **an** MBE or **a** WBE. ~~Such~~ **The** consideration shall be in the context of the duties of the persons involved, customary industry practice, the enterprise's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the enterprise.

(1) The department may determine that an enterprise is controlled by a qualifying member although that person's remuneration is lower than that of some other participants in the enterprise.

(2) In a case where a nonqualifying individual formerly controlled the enterprise and a qualifying member now controls it, the department may consider a difference between the remuneration of the former **controller** and **the** current controller of the enterprise as a factor in determining who controls the enterprise, particularly when the nonqualifying individual:

(A) remains involved with the enterprise; and

(B) continues to receive greater compensation than the qualifying member.

(j) In order to be deemed as controlling an enterprise, a qualifying member cannot engage in outside employment or other business interests that:

(1) conflict with the management of the enterprise; or

(2) prevent the individual from devoting sufficient time and attention to the affairs of the enterprise to control its activities.

~~For example, absentee ownership of a business and part-time work in a full-time enterprise are not viewed as constituting control. However, an individual will be viewed as controlling a part-time business that operates only on evenings or weekends, or both, if the individual controls it all the time it is operating.~~

(k) The following are requirements concerning control of an enterprise run by a family:

(1) A qualifying member may control an enterprise even though one (1) or more of the individual's immediate family members (who themselves are not qualifying members) participate in the enterprise as a manager, **an** employee, **or an** owner or in another capacity. Except as otherwise provided in this subsection, the department must make a judgment about the control the qualifying member exercises vis-à-vis other persons involved in the business as it does in other situations, without regard to whether or not the other persons are immediate family members.

(2) If the department cannot determine whether a qualifying member, as distinct from the family as a whole, controls the enterprise, then the qualifying member has failed to carry his or her burden of proof concerning control, even though he or she may participate significantly in the enterprise's activities.

(l) Where an enterprise was formerly owned or controlled, or both, by a nonqualifying individual (whether or not an immediate family member), ownership or control, or both, was transferred to a qualifying member, and the nonqualifying individual remains involved with the enterprise in any capacity, the qualifying member now owning the enterprise must demonstrate ~~that:~~ **the following:**

(1) The transfer of ownership or control, or both, to the qualifying member was made for reasons other than obtaining certification as an MBE or **a** WBE.

(2) The qualifying member actually controls the management, policy, and operations of the enterprise, notwithstanding the continuing participation of a nonqualifying individual.

(m) In determining whether an enterprise is controlled by qualifying members, the department may consider whether the enterprise owns equipment necessary to perform its work. However, the department may not determine that an enterprise is not controlled by qualifying members solely because the enterprise leases, rather than owns, such equipment where:

(1) leasing equipment is a customary industry practice; and

(2) the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the enterprise.

(n) The department must grant certification to an enterprise only for specific types of work in which the qualifying members have the ability to control the enterprise. To become certified in

an additional type of work, the enterprise must have been certified:

(1) for at least six (6) months in its current type of work; or ~~certified~~

(2) by the department for at least one (1) year;

and demonstrate that its qualifying members are able to control the enterprise with respect to the newly-requested type of work. The department may not, in this situation, require that the enterprise be recertified or submit a new application for certification, but it must verify the qualifying member's control of the enterprise in the additional type of work. However, the department must apply the same standards to additional types of work that were applied originally. Certification in these additional work areas ~~are~~ **is** not guaranteed simply because the enterprise is currently certified. Further, there is a presumption against having more than three (3) industry variations in the same enterprise.

(o) An enterprise operating under a franchise or license agreement may be certified if it meets the standards in this part and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the department will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be deemed controlled by qualified members, any nonqualifying partners must not have the power, without the specific written concurrence of the qualifying member, to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The qualifying members controlling an enterprise may use an employee leasing company. The use of such a company does not preclude the qualifying members from controlling the enterprise if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

(r) There is a presumption against the ability to operate and control more than three (3) enterprises within the context of this article. *(Indiana Department of Administration; 25 IAC 5-3-5; filed May 30, 2003, 11:00 a.m.: 26 IR 3300)*

SECTION 3. 25 IAC 5-3-6 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-3-6 Other factors considered for certification

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6-4; IC 5-22

Sec. 6. (a) The department will consider whether an enterprise performs a commercially useful function in making decisions about whether to certify an enterprise as ~~a~~ **an** MBE or **a** WBE. Determination that an enterprise performs a commercially useful function will be made based on the following considerations:

(1) An MBE or **a** WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an MBE or **a** WBE is performing a commercially useful function, one must evaluate **the following:**

(A) The amount of work subcontracted.

(B) Industry practices.

(C) Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing. ~~and~~

(D) The credit claimed for its performance of the work. ~~and~~

(E) Other relevant factors.

(2) An MBE or **a** WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether an MBE or **a** WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.

(3) In the case of construction contracts, if:

(A) an MBE or **a** WBE does not perform or exercise responsibility for at least the agency's requisite percent of the total cost of its contract with its own workforce; or

(B) the MBE or WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved;

it is presumed that the enterprise is not performing a commercially useful function.

(b) The department may consider, in making certification decisions, whether an enterprise has exhibited a pattern of conduct indicating prior involvement in attempts to evade or subvert the intent or requirements of the MBE or WBE program.

(c) The department shall evaluate the eligibility of an enterprise on the basis of present circumstances. It will not refuse to certify an enterprise based solely on historical information indicating a lack of ownership or control by qualifying members in the past, if the enterprise currently meets the ownership and control standards of this part.

(d) The department will not require an MBE or **a** WBE enterprise to be:

(1) prequalified; or

(2) certified under the division of public works;

as a condition for certification. Standards for prequalification and certification are made ~~pursuant to~~ **under** 105 IAC 11 and IC 4-13.6-4, respectively. However, if the prequalification (certification) is industry/trade-specific, the department will require all enterprises that participate in its contracts and subcontracts related to that area to be prequalified.

(e) The applicant for MBE or WBE certification must possess reasonable prospects for success in competing in the public sector.

(1) The department will deem an enterprise that has been in business for two (2) full years immediately ~~prior to~~ **before** its date of application as possessing reasonable prospects for success in competing in the public sector ~~(1)~~ **if** income tax returns for each of the two (2) previous tax years ~~must~~ show operating revenues in the selected types of work for which the applicant is seeking certification.

(2) The department may waive the two (2) years in business requirement if ~~each~~ **one (1)** of the following conditions is met:

(A) The qualifying member or members have demonstrated management experience.

(B) The qualifying member or members have demonstrated technical experience to carry out **the** type of business for which certification is sought.

(C) The qualifying member has a record of successful performance on contracts from governmental or nongovernmental sources in its primary area of certification.

(D) The applicant for certification as an MBE or a WBE has demonstrated, or can demonstrate, its ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform contracts.

(Indiana Department of Administration; 25 IAC 5-3-6; filed May 30, 2003, 11:00 a.m.: 26 IR 3302)

SECTION 4. 25 IAC 5-4-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-4-1 Revocation of an enterprise's certification as an MBE or a WBE

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 1. (a) This section establishes standards for processing a complaint issued to a challenged enterprise concerning the possible revocation of its certification.

(b) Requirements for ineligibility complaints are as follows:

(1) Any person may file with the department a written complaint:

(A) alleging that a currently certified enterprise is ineligible; and

(B) specifying the alleged reasons why the enterprise is ineligible.

The department is not required to accept a general allegation that an enterprise is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the enterprise is ineligible and should not continue to be certified.

(2) The department must review:

(A) its records concerning the enterprise;

(B) any material provided by the enterprise and the complainant; and

(C) other relevant information.

The department may request additional information from the enterprise or conduct any other investigation deemed necessary.

(3) If the department determines, based on this review, that there is reasonable cause to believe that the enterprise is ineligible, the department must provide written notice to the enterprise that it proposes to find the enterprise ineligible, setting forth the reasons for the proposed determination. If the department determines that such reasonable cause does not exist, it must notify the complainant and the enterprise in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) If, based on:

(1) notification by the enterprise of a change in its circumstances; or

(2) other information that comes to the attention of the department; ~~that~~

there is reasonable cause to believe that a currently certified enterprise is ineligible, the department must provide written notice to the enterprise that it proposes to find the enterprise ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(d) Requirements for complaints from other state agencies are as follows:

(1) If a state agency determines that information in an enterprise's records, or other information available to that agency, provides reasonable cause to believe that a certified enterprise does not meet the eligibility criteria of this subsection, the state agency may request that the department ~~initiate~~ **under-**

take a ~~proceeding to remove~~ **review of** the enterprise's certification.

(2) The state agency must provide the department all relevant documentation or other information.

(e) The department may issue an order requiring an enterprise to show cause why its certification as an MBE or a WBE should not be revoked as provided in subsection (a), (b), or (c). In such case, the enterprise shall be entitled to a hearing as set forth in ~~25 IAC 5-4-2.~~ **section 2 of this rule.**

(f) The department ~~must not~~ **may** base a decision to ~~remove eligibility on a reinterpretation or changed opinion of information available to the department at the time of its~~ **revoke** certification ~~of the enterprise. It may base such a decision~~ only on one (1) or more of the following:

(1) Changes in the enterprise's circumstances since the certification of the enterprise by the department that render the enterprise unable to meet the eligibility standards of this rule.

(2) Information or evidence not available to the department at the time the enterprise was certified.

(3) Information that was concealed or misrepresented by the enterprise in previous certification actions by ~~a~~ **the** department.

(4) A change in the certification standards or requirements since the enterprise was certified.

(5) A documented finding that the department's **initial** determination to certify the enterprise was ~~factually~~ **clearly** erroneous.

(g) During the ~~pendancy~~ **pendency** of a proceeding to determine if an enterprise's WBE or MBE should be revoked or suspended, the enterprise shall retain its status until a final order revoking certification is issued by the commission.

(h) When an enterprise's certification as an MBE or a WBE has been revoked and is no longer subject to judicial review, the department will take the following action relative to prime contractors who have relied in good faith upon the certification of the disqualified entity:

(1) When a prime contractor has made a commitment to use the disqualified enterprise, or there has been a commitment to use the enterprise as a prime contractor, but a subcontract or contract has not been executed before the order to show cause provided for in subsection (e) has been issued, the ineligible enterprise does not count toward the contract goal or overall goal. The prime contractor is to:

(A) meet the contract goal with an eligible enterprise; or

(B) demonstrate that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the enterprise before the department has issued a notice to show cause, the prime contractor may continue to:

(A) use the enterprise on the contract; and ~~may continue to~~ **take** a ~~proceeding to remove~~ **review of** the enterprise's certification.

(2) The state agency must provide the department all relevant documentation or other information.

(e) The department may issue an order requiring an enterprise to show cause why its certification as an MBE or a WBE should not be revoked as provided in subsection (a), (b), or (c). In such case, the enterprise shall be entitled to a hearing as set forth in ~~25 IAC 5-4-2.~~ **section 2 of this rule.**

(f) The department ~~must not~~ **may** base a decision to ~~remove eligibility on a reinterpretation or changed opinion of information available to the department at the time of its~~ **revoke** certification ~~of the enterprise. It may base such a decision~~ only on one (1) or more of the following:

(1) Changes in the enterprise's circumstances since the certification of the enterprise by the department that render the enterprise unable to meet the eligibility standards of this rule.

(2) Information or evidence not available to the department at the time the enterprise was certified.

(3) Information that was concealed or misrepresented by the enterprise in previous certification actions by ~~a~~ **the** department.

(4) A change in the certification standards or requirements since the enterprise was certified.

(5) A documented finding that the department's **initial** determination to certify the enterprise was ~~factually~~ **clearly** erroneous.

(g) During the ~~pendancy~~ **pendency** of a proceeding to determine if an enterprise's WBE or MBE should be revoked or suspended, the enterprise shall retain its status until a final order revoking certification is issued by the commission.

(h) When an enterprise's certification as an MBE or a WBE has been revoked and is no longer subject to judicial review, the department will take the following action relative to prime contractors who have relied in good faith upon the certification of the disqualified entity:

(1) When a prime contractor has made a commitment to use the disqualified enterprise, or there has been a commitment to use the enterprise as a prime contractor, but a subcontract or contract has not been executed before the order to show cause provided for in subsection (e) has been issued, the ineligible enterprise does not count toward the contract goal or overall goal. The prime contractor is to:

(A) meet the contract goal with an eligible enterprise; or

(B) demonstrate that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the enterprise before the department has issued a notice to show cause, the prime contractor may continue to:

(A) use the enterprise on the contract; and ~~may continue to~~ **(B)** receive credit toward its goal for the enterprise's work.

In this case, or in a case where a prime contract has been awarded to an enterprise that is subsequently decertified, the portion of the decertified enterprise's performance of the contract remaining after the notice of its ineligibility shall not count toward the overall goal but may count toward the contract goal.

(Indiana Department of Administration; 25 IAC 5-4-1; filed May 30, 2003, 11:00 a.m.: 26 IR 3305)

SECTION 5. 25 IAC 5-4-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-4-2 Review of determinations by the department regarding certification as an MBE or a WBE

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 4-21.5-3-5; IC 5-22

Sec. 2. (a) An enterprise:

(1) whose application for certification as an MBE or ~~as~~ a WBE has been denied; or

(2) to which the department has issued an order to show cause why its MBE or WBE certification should not be revoked;

shall be given notice of such action and shall be entitled to petition for review under the Indiana Administrative Orders and Procedures Act, IC 4-21.5, et seq.

(b) The administrative law judge or judges appointed to hear any matter arising under this rule shall have had no prior involvement in the review or preliminary determination of the matter heard.

(c) The ultimate authority under this article is the commission.

(d) When an enterprise is denied certification, it cannot reapply for certification for ~~nine (9)~~ **twelve (12)** months. The time period for reapplication begins to run at the time the enterprise's administrative and judicial remedies are exhausted.

(Indiana Department of Administration; 25 IAC 5-4-2; filed May 30, 2003, 11:00 a.m.: 26 IR 3306)

SECTION 6. 25 IAC 5-6-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-6-2 Monitoring MBE and WBE participation as subcontractors

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 2. (a) In monitoring the participation of MBEs or WBEs as subcontractors, the department shall conduct preproject meetings with all subcontractors and prime contractors. The department shall determine which projects will require a preproject meeting. Items of discussion at the meeting shall

include, but may not be limited to, the following:

(1) Subcontractors will learn when their services are likely to be needed.

(2) The department will:

(A) explain the state's prompt payment program;

~~(3) The department will~~ **(B)** provide a review of MBE/WBE program requirements; **and**

~~(4) The department will~~ **(C)** explain the state's nondiscrimination and antidiscrimination laws.

(b) All contract amendments and change order requests must include **the following:**

(1) An explanation of how MBEs and WBEs will be used. ~~and~~

(2) The percentage represented above the current contract amount.

(c) Notify appropriate subcontractors when contracts are revised upward through amendments or change orders, or both.

(d) All prime contractors, including MBE and WBE prime contractors, must meet the contract goals through use of subcontractors. MBE and WBE prime contractors will get no credit toward the contract goal for the use of their own workforce **except for contracts under seventy-five thousand dollars ($75,000).** *(Indiana Department of Administration; 25 IAC 5-6-2; filed May 30, 2003, 11:00 a.m.: 26 IR 3307)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 22, 2005 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 22, Indianapolis, Indiana the Indiana Department of Administration will hold a public hearing on proposed amendments to 25 IAC 5, governing the division for minority and women's business enterprise development, by adding and amending provisions relating to applications for certification as an MBE or WBE, including those necessary and appropriate to comply with the directives set forth in Executive Order 05-11, by amending provisions relating to control determinations and other factors considered for certifications, procedures governing denial or revocation of certification, review of department certifications, and monitoring of subcontractor participation, and by making other technical and clerical changes. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W469 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Claudia Cummings, Deputy Commissioner
Minority and Women's Business Enterprises Division
Indiana Department of Administration

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #05-38

DIGEST

Amends 312 IAC 11, which governs construction activities along and within public freshwater lakes, concerning the regulation and treatment of a seawall and to include standards that distinguish a seawall placed in a manmade channel from one placed on a natural shoreline, to allow a bulkhead seawall to be permitted along the upland sides of a manmade channel, to define "natural shoreline", to amend the definitions of "area of special concern" and "significant wetland", and to provide discretion to grant a license for a seawall or other structure, which might not otherwise satisfy the rule, where public access is enhanced or where a written assessment by a qualified professional demonstrates a particular methodology is needed to control erosion or to stabilize the shoreline and that the methodology would not violate IC 14-26-2. Effective 30 days after filing with the secretary of state.

312 IAC 11-2-2
312 IAC 11-2-7
312 IAC 11-2-11
312 IAC 11-2-11.8
312 IAC 11-2-14.5
312 IAC 11-2-20
312 IAC 11-2-24
312 IAC 11-2-25.2
312 IAC 11-2-27.5
312 IAC 11-3-3
312 IAC 11-4-2
312 IAC 11-4-3
312 IAC 11-4-4
312 IAC 11-5-3

SECTION 1. 312 IAC 11-2-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-2 "Area of special concern" defined
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 2. "Area of special concern" means an area that contains at least one (1) of the following characteristics:

(1) An altered shoreline where bulkhead seawalls are at least two hundred fifty (250) feet apart.

(2) Bogs, fens, muck flats, sand flats, or marl beaches identified by the division of nature preserves in the Natural Community Classification System.

(3) More than ~~one~~ **six** hundred ~~(100)~~ **twenty-five (625)** square feet of contiguous emergent vegetation or rooted vegetation with floating leaves.

(Natural Resources Commission; 312 IAC 11-2-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614)

SECTION 2. 312 IAC 11-2-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-7 "Developed area" defined
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 7. "Developed area" means **the upland side or sides of a manmade channel or** an area **that** does not contain any of the following characteristics:

(1) An area of special concern.

(2) A significant wetland.

(3) A natural shoreline.

(Natural Resources Commission; 312 IAC 11-2-7; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614)

SECTION 3. 312 IAC 11-2-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-11 "Glacial stone" defined

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

Sec. 11. "Glacial stone" means a rounded stone that satisfies ~~both~~ **each** of the following:

(1) Was produced by glacial activity.

(2) No individual stone weighs more than one hundred twenty (120) pounds.

(3) At least ninety percent (90%) of the material passes through a twelve (12) inch sieve.

(4) Not more than ten percent (10%) of the material passes through a six (6) inch sieve.

(Natural Resources Commission; 312 IAC 11-2-11; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221)

SECTION 4. 312 IAC 11-2-11.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-11.8 "Manmade channel" defined

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

Sec. 11.8. "Manmade channel" means a watercourse created by mechanical means that connects to the lake at one (1) or more points and by its construction increases the total length of shoreline around the lake. The term does not include any areas within the lake cleared by either chemical or mechanical means that do not result in an increase in the total length of shoreline around the lake. *(Natural Resources Commission; 312 IAC 11-2-11.8)*

SECTION 5. 312 IAC 11-2-14.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-14.5 "Natural shoreline" defined

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

Sec. 14.5. "Natural shoreline" means a continuous section of unaltered shoreline or waterline where the distance between lawful permanent structures is at least two hundred fifty (250) feet. *(Natural Resources Commission; 312 IAC 11-2-14.5)*

SECTION 6. 312 IAC 11-2-20 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-20 "Riprap" defined

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

Sec. 20. "Riprap" means angular, limestone rock that satisfies each of the following conditions:

(1) No individual piece weighs more than one hundred twenty (120) pounds.

(2) At least ninety percent (90%) of the material passes through a twelve (12) inch sieve.

~~(3) Between twenty percent (20%) and sixty percent (60%) of the material passes through a six (6) inch sieve.~~

~~(4)~~ **(3)** Not more than ten percent (10%) of the material passes through a ~~one and one-half (1½)~~ **six (6)** inch sieve.

(Natural Resources Commission; 312 IAC 11-2-20; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

SECTION 7. 312 IAC 11-2-24 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-24 "Significant wetland" defined

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

Sec. 24. "Significant wetland" means a transitional area between terrestrial and deepwater habitats containing at least one (1) of the following:

(1) At least two thousand five hundred (2,500) square feet of contiguous, emergent vegetation or rooted vegetation with floating leaves landward or lakeward of the legally established or average normal waterline or shoreline. The areal extent of the vegetation is independent of ownership.

(2) Adjacent wetland areas designated by a federal or state agency under one (1) of the following:

(A) National Wetlands Inventory.

(B) U.S. Army Corps of Engineers Wetlands Delineation Manual (1987).

(C) National Food Security Act Manual (1994).

(3) The existence of a species listed at 15 IR 1312 in the Roster of Indiana Animals and Plants ~~which~~ **that** are Extirpated, Endangered, Threatened, or Rare.

~~(4) An alteration of the area would result in significant environmental harm.~~

~~(5) Unaltered shoreline for at least two hundred fifty (250) feet.~~

(Natural Resources Commission; 312 IAC 11-2-24; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

SECTION 8. 312 IAC 11-2-25.2 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-25.2 "Toe protection" defined

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

Sec. 25.2. "Toe protection" means the glacial stone or angular, limestone rock that is placed along the lakeward face of a bulkhead seawall to minimize lake bed erosion and undercutting at the base of the seawall and satisfies each of the following:

(1) No individual piece weighs more than one hundred twenty (120) pounds.

(2) At least ninety percent (90%) of the material passes through a twelve (12) inch sieve.

(3) Not more than ten percent (10%) of the material passes through a six (6) inch sieve.

(4) No individual piece is placed more than one (1) foot lakeward of the lakeward face of a bulkhead seawall.

(Natural Resources Commission; 312 IAC 11-2-25.2)

SECTION 9. 312 IAC 11-2-27.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-27.5 "Upland side of a manmade channel" defined

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

Sec. 27.5. "Upland side of a manmade channel" means those sections of the shoreline along a manmade channel where less than six hundred twenty-five (625) square feet of contiguous emergent vegetation or rooted vegetation with floating leaves are present. *(Natural Resources Commission; 312 IAC 11-2-27.5)*

SECTION 10. 312 IAC 11-3-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-3 Written licenses for structures that do not qualify for a general license

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-11-4; IC 14-26-2

Sec. 3. (a) Except as provided in section 1 of this rule and ~~in~~ subsection (c), a structure placed within the waterline or shoreline of a public freshwater lake requires a written license issued by the department under IC 14-26-2 and this rule.

(b) Except as provided in 312 IAC 11-4-7, a structure that is located on a public freshwater lake:

(1) more than one hundred fifty (150) feet; and

(2) less than two hundred (200) feet;

from the legally established or average normal waterline or shoreline requires a written license under IC 14-26-2, this rule, IC 14-15-7-3, and ~~310 IAC 2.1-4.~~ **312 IAC 5-4.** The department may provide that the multiple licensing requirements of this subsection be satisfied with a single written license.

(c) Except as provided in 312 IAC 11-4-7, a structure that is located:

(1) on a public freshwater lake; and

(2) not less than two hundred (200) feet from the waterline or shoreline;

does not require a license under IC 14-26-2 and this rule, but the structure does require a license under IC 14-15-7-3 and ~~310 IAC 2.1-4.~~ **312 IAC 5-4.** Only a navigation aid or water recreation structure can be licensed under ~~310 IAC 2.1-4.~~ **312 IAC 5-4.**

(d) The director or a delegate shall not issue a license under this rule except upon a written determination that shows the following:

(1) The license, including conditions attached to the license, conforms with IC 14-26-2 and this rule. In making the determination, there shall be a determination that issuance of the permit would not result in significant environmental harm to the public freshwater lake.

(2) The applicant has demonstrated that an owner of each parcel of real estate, reasonably known to be adjacent to the real estate described in subsection (e)(2), has been notified under IC 14-11-4 and 312 IAC 2-3.

(e) An application for a license under this section must include **a description of** the following:

(1) ~~A description of~~ The permanent structure, including plans and specifications of sufficient detail for the department to evaluate the project under IC 14-26-2 and this rule.

(2) ~~A description of~~ The real estate:

(A) on which the structure would be located; or ~~which~~

(B) that the structure would benefit.

(f) Examples of a structure that requires a written license under this section include the following:

(1) A marina.

(2) A new seawall or a seawall refacing.

(3) An underwater beach.

(4) A boat well excavation, construction, or fill.

(5) A fish attractor.

(6) A pier that is supported by a structure permanently:

(A) mounted in; or

(B) affixed to;

the bed of the lake.

(7) A boathouse that is totally or partially enclosed on the sides. This structure ordinarily should be:

(A) placed over a boat well constructed landward of the legally established or average normal waterline or shoreline; and

(B) constructed only after a permit is obtained to alter the legally established or average normal waterline or shoreline.

(g) The requirements of this rule are in addition to the requirements of 312 IAC 6 for any public freshwater lake that is also a navigable waterway. *(Natural Resources Commission; 312 IAC 11-3-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224)*

SECTION 11. 312 IAC 11-4-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-2 New seawalls
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 2. (a) A written license under IC 14-26-2 and this rule is required for the construction or placement of a seawall within or along the legally established or average normal waterline or shoreline of a public freshwater lake.

(b) If a new seawall is to be placed:
(1) in a significant wetland; **or**
(2) along a natural shoreline;
the seawall must be comprised of bioengineered materials.

(c) If a new seawall is to be placed in an area of special concern, the seawall must be comprised of either or both of the following:
(1) Bioengineered materials.
(2) Glacial stone.

(d) If a new seawall is to be placed in a developed area, the seawall must be comprised of one (1) or ~~some~~ **any** combination of the following:
(1) Bioengineered material.
(2) Glacial stone.
(3) Riprap.
(4) Concrete.
(5) Steel sheet piling.

(e) For a new seawall comprised of glacial stone or riprap, the base of the wall must not extend more than four (4) feet lakeward of the waterline or shoreline.

(f) The lakeward face of the new seawall must be located along the public freshwater lake's legally established or average normal waterline or shoreline as determined by the department.

(g) The lakeward extent of bioengineered material must be coordinated with the department before filing the license application.

(h) The director or a delegate may not issue a license for the placement of an impermeable material behind or beneath a new seawall.

(i) Filter cloth placed behind or beneath a new seawall must be properly anchored to prevent displacement or flotation.

(j) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake.

(k) Toe protection placed along the lakeward face of a new bulkhead seawall must not extend more than one (1) foot lakeward of the new seawall. *(Natural Resources Commission; 312 IAC 11-4-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225)*

SECTION 12. 312 IAC 11-4-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-3 Seawall refacing
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 3. (a) A written license under IC 14-26-2 and this rule is required to reface on the lakeward side of a seawall that is located within or along the waterline or shoreline of a public freshwater lake.

(b) Except as provided in 312 IAC 11-3-1(e), the director or a delegate shall not issue a license to reface a seawall if the wall has been previously refaced.

(c) To qualify for a license if a seawall is to be refaced in a significant wetland or an area of special concern, the seawall reface must be comprised of ~~either or both of~~ **like materials in accordance with** the following **seawall types:**
(1) **For an existing concrete seawall, the seawall reface may be comprised of one (1) or any combination of the following:**
(A) Concrete.
(B) Glacial stone.
(C) Bioengineered materials.
(2) **For an existing steel sheet piling seawall, the seawall reface may be comprised of one (1) or any combination of the following:**
(A) Steel sheet piling.
(B) Glacial stone.
(C) Bioengineered materials.
(3) For an existing riprap seawall, the seawall reface may be comprised of one (1) or any combination of the following:
(A) Riprap.
(B) Glacial stone.
(C) Bioengineered materials.
(4) For an existing glacial stone seawall, the seawall reface may be comprised of one (1) or any combination of the following:
(A) Glacial stone.
(B) Bioengineered materials.
(5) For an existing bioengineered seawall, the seawall reface may be comprised of bioengineered materials only.
(6) For all other seawall types, the seawall reface may be comprised of one (1) or any combination of the following:
(A) Glacial stone.
(B) Bioengineered materials.

(d) To qualify for a license if a seawall is to be refaced in a developed area, the seawall reface must be comprised of one (1) or ~~some~~ **any** combination of the following:
(1) Bioengineered material.
(2) Glacial stone.
(3) Riprap.

(4) Concrete.
(5) Steel sheet piling.

(e) For a seawall reface comprised of:
(1) glacial stone or riprap, the reface must not extend more than four (4) feet lakeward of the waterline or shoreline at the base of the existing wall;
(2) concrete, the reface must:
(A) not extend more than twelve (12) inches lakeward of the existing seawall; and
(B) be keyed to the lakeward face of the existing seawall;
(3) steel sheet piling, the reface must not extend more than six (6) inches lakeward of the existing seawall; and
(4) bioengineered material, the lakeward extent of the reface must be coordinated with the department before filing the permit application.

(f) Any walk or structural tie constructed on top of the existing seawall must be located landward of the seawall face.

(g) The director or a delegate shall not issue a license for the placement of an impermeable material behind or beneath a seawall reface.

(h) Filter cloth placed behind or beneath the seawall reface must be properly anchored to prevent displacement or flotation.

(i) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake.

(j) Toe protection placed along the lakeward face of a refaced bulkhead seawall must not extend more than one (1) foot lakeward of the refaced seawall. *(Natural Resources Commission; 312 IAC 11-4-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1616; filed May 25, 2004, 8:45 a.m.: 27 IR 3063)*

SECTION 13. 312 IAC 11-4-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-4 Underwater beaches
Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14-26-2

Sec. 4. (a) A written license under IC 14-26-2 and this rule is required to place material for an underwater beach within a public freshwater lake.

(b) The director or a delegate shall not issue a license for the placement of:
(1) filter cloth; or
(2) an impermeable material;
beneath or in an underwater beach.

(c) The director or a delegate shall not issue a license for the placement of an underwater beach:
(1) in a significant wetland; **or**
(2) along a natural shoreline.

(d) To qualify for a license to place an underwater beach in an area of special concern, the underwater beach must:
(1) not exceed six hundred twenty-five (625) square feet;
(2) not extend:
(A) more than thirty (30) feet lakeward of the normal waterline or shoreline; or
(B) to a depth of six (6) feet;
whichever occurs earlier;
(3) be placed on ~~no~~ **not** more than one-half (½) the length of the waterline or shoreline of the riparian owner;
(4) be comprised of clean, nontoxic pea gravel;
(5) not exceed six (6) inches ~~thick;~~ **in thickness;** and
(6) be thin enough or ~~be~~ tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its average normal water level.

(e) To qualify for a license to place an underwater beach in a developed area, the underwater beach must:
(1) be comprised of clean, nontoxic pea gravel;
(2) not exceed six (6) inches ~~thick;~~ **in thickness;**
(3) be placed on ~~no~~ **not** more than one-half (½) the length of the waterline or shoreline of the riparian owner;
(4) extend ~~no~~ **not:**
(A) more than fifty (50) feet lakeward from the waterline or shoreline; or
(B) beyond a depth of six (6) feet;
whichever occurs earlier; and
(5) be thin enough or ~~be~~ tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its normal water level.

(f) If beach material has been placed previously under this section, the additional material must not:
(1) extend beyond the limits of the previous beach material; and
(2) exceed the size restrictions specified in subsections (d) and (e).

(g) 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 11-4-4; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2226; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547)*

SECTION 14. 312 IAC 11-5-3 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-5-3 Licenses to enhance the public trust or to help control erosion
Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23
Affected: IC 14-26-2

Sec. 3. (a) If an applicant demonstrates to the satisfaction

of the department that modifications to conditions required under this article would promote a purpose described in subsection (b) or (c), the director or a delegate may issue a license under this section that incorporates those modifications. A person who wishes to secure a license under this section must confer with the department before filing an application.

(b) If a purpose of the license is to enhance public access to or use of the lake, the department may issue a license to any of the following:

(1) A government entity.
(2) A nonprofit organization.
(3) A lake association.
(4) An educational institution.

(c) If a purpose of the license is to control erosion and stabilize the shoreline or waterline, the department may issue a license where supported by a written assessment from a registered engineer, geologist, or soil scientist (with expertise in bank stabilization and erosion control practices) that the proposal is the only viable method for controlling erosion and stabilizing the shoreline or waterline. The written assessment must evaluate the following:

(1) The composition of existing shoreline terrain.
(2) Impacts due to wind and wave action.
(3) The severity of erosion and need for bank stabilization.
(4) The suitability of materials to armor and provide bank stabilization.

(d) The applicant for a license under this section must also demonstrate the proposal would not affect the:

(1) public safety;
(2) natural resources;
(3) natural scenic beauty; or
(4) water level;

of the lake in a manner otherwise prohibited by IC 14-26-2.

(e) The following materials do not qualify for a license under this section:

(1) Railroad ties.
(2) Treated timber.
(3) Broken concrete.
(4) Tires.
(5) Scrap metal, appliances, or vehicle bodies.
(6) Asphalt.
(7) Another material determined by the department to be unsuitable for satisfying the requirements of this section.

(Natural Resources Commission; 312 IAC 11-5-3)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 27, 2005 at 10:30 a.m., at the District 1 Headquarters, 9822 North Turkey Creek Road, Syracuse, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments concerning construction activities along and within public freshwater lakes, the regulation and treatment of a seawall, standards that distinguish a seawall placed in a manmade channel from one placed on a natural shoreline, the allowing of a bulkhead seawall to be permitted along the upland sides of a manmade channel, the definitions of "natural shoreline", "area of special concern", and "significant wetland", and providing discretion to grant a license for a seawall or other structure, which might not otherwise satisfy the rule, where public access is enhanced or where a written assessment by a qualified professional demonstrates a particular methodology is needed to control erosion or to stabilize the shoreline and that the methodology would not violate IC 14-26-2. 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 315 OFFICE OF ENVIRONMENTAL ADJUDICATION

Proposed Rule
LSA Document #05-73

DIGEST

Amends 315 IAC 1-2-1 and 315 IAC 1-3 and adds 315 IAC 1-3-2.1 and 315 IAC 1-3-15 concerning errata, a change in address, clarifications regarding amendment of pleadings, and filing procedures. Effective 30 days after filing with the secretary of state.

315 IAC 1-2-1	**315 IAC 1-3-7**
315 IAC 1-3-1	**315 IAC 1-3-8**
315 IAC 1-3-2	**315 IAC 1-3-9**
315 IAC 1-3-2.1	**315 IAC 1-3-10**
315 IAC 1-3-3	**315 IAC 1-3-12**
315 IAC 1-3-4	**315 IAC 1-3-14**
315 IAC 1-3-5	**315 IAC 1-3-15**

SECTION 1. 315 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-2-1 Definitions

Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-1-4; IC 4-21.5-1; IC 4-21.5-3-27; IC 4-21.5-7-1; IC 4-21.5-7-2; IC 13-11-2-51; IC 13-17-2; IC 13-18-1; IC 13-19-2; IC 13-23-11

Sec. 1. In addition to the definitions ~~contained~~ in IC 4-21.5-1, the definitions in this section apply throughout this title:

~~(1) "Act" means IC 4-21.5-7.~~
~~(2) "Agency" means the Indiana department of environmental management.~~
~~(3)~~ **(1)** "Board" means a board **established or** created under ~~IC 13-7-2,~~ **IC 13-17-2,** IC 13-18-1, ~~IC 13-9-2, or~~ **IC 13-19-2, or** IC 13-23-11.
~~(4)~~ **(2)** "Commissioner" means the commissioner of the department ~~of environmental management~~ or the commissioner's designee.
~~(5)~~ **(3)** "Confidential information" means any information that:
(A) is entitled to treatment as; or ~~that~~
(B) has been determined to be;
confidential information under ~~326 IAC 17-1, 327 IAC 12-1, or 329 IAC 6-1,~~ **326 IAC 17.1, 327 IAC 12.1, or 329 IAC 6.1** and includes any information submitted to the office ~~of environmental adjudication~~ under claim of confidentiality during the pendency of a final determination of the claim.
~~(6)~~ **(4)** "Decision" means an agency action, as prescribed by IC 4-21.5-1-4, **of the department.**
(5) "Department" has the meaning set forth in IC 13-11-2-51.
~~(7)~~ **(6)** "Director" means the director of the office. ~~of environmental adjudication.~~
~~(8)~~ **(7)** "Electronic facsimile transmission" or "fax" means a method of transmitting and receiving information in **eight and one-half inch** (8½) **by eleven** (11) **inch** paper medium over telephone lines or other forms of electronic transmissions available to the office.
~~(9)~~ **(8)** "Environmental law judge" **or "ELJ"** means an individual acting in the capacity of an administrative law judge in a proceeding under IC 4-21.5.
~~(10)~~ **(9)** "Final order" means an order of the ~~environmental law judge,~~ **ELJ,** acting as ultimate authority, disposing of the proceeding prescribed by IC 4-21.5-3-27.
~~(11)~~ **(10)** "Office" means the ~~Indiana~~ office of environmental adjudication.
~~(12) Notwithstanding IC 4-21.5-1-10, "party" means any person that is designated in the record of the proceeding as a party to the proceeding.~~
~~(13)~~ **(12)** "Presiding environmental law judge" means the environmental law judge assigned by the director to preside over a particular proceeding.

(Office of Environmental Adjudication; 315 IAC 1-2-1; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3732; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 2. 315 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-1 Powers and duties of the director, presiding environmental law judge, and office of environmental adjudication

Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-3-24; IC 4-21.5-3.5; IC 4-21.5-6-2; IC 4-21.5-7-6; IC 5-14-3-8

Sec. 1. (a) An ~~environmental law judge~~ **ELJ** shall **do the following:**
(1) Conduct a fair and impartial proceeding.
(2) Maintain an accurate and complete record.
(3) Adjudicate all issues necessary for resolution of the matter. ~~and~~
(4) Avoid delay.

(b) The ~~environmental law judge~~ **ELJ** shall have authority to do the following:
(1) Conduct administrative hearings under **the following:**
(A) IC 4-21.5. ~~and~~
(B) This article.
(2) Rule upon **the following:**
(A) Motions.
(B) Requests. ~~and~~
(C) Offers of proof.
(3) Dispose of procedural requests. ~~and~~
(4) Issue all necessary orders.
~~(3)~~ **(5)** Administer oaths and affirmations. ~~and~~
(6) Consider affidavits submitted by the parties.
~~(4)~~ **(7)** Examine witnesses.
(8) Admit:
(A) purported scientific evidence; and
(B) related opinions;
into evidence in accordance with applicable Indiana trial rules on admissibility of testimony by experts.
(9) Allocate among the parties appropriate costs ~~pursuant to~~ **under** IC 5-14-3-8 for the office's production of documents.
(10) Order the prefiling of testimony.
(11) Solicit testimony in appropriate cases. ~~and~~
(12) Receive documentary or other evidence.
~~(5)~~ **(13)** For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce:
(A) testimony;
(B) documents; or
(C) other nonprivileged evidence;
and, failing the production thereof without good cause being shown, draw an adverse inference against that party.
~~(6)~~ **(14)** Admit, limit, or exclude evidence in accordance with IC 4-21.5.
~~(7)~~ **(15)** Hear and decide questions of facts and law.
~~(8)~~ **(16)** Issue **the following:**
(A) Subpoenas. ~~and~~
(B) Subpoenas deuces tecum.
~~(9)~~ **(17)** Require parties to:
(A) attend conferences for the settlement or simplification of the issues; ~~to~~
(B) expedite the proceedings; or ~~to~~
(C) participate in alternative dispute resolution.
~~(10)~~ **(18)** Where ~~no~~ **not** inconsistent with IC 4-21.5 and this title, the presiding environmental law judge may apply the Indiana Rules of Trial Procedure, **except for those trial rules that provide for provisional and final remedies and**

Special Proceedings (TR 64 through 71), except as provided in section 2.1(c) of this rule.

~~(11)~~ **(19)** In addition to the remedies provided in IC 4-21.5-3-24, to impose reasonable and appropriate sanctions ~~pursuant to~~ **under the following:**

(A) IC 4-21.5-6-2. ~~and~~

(B) Indiana Trial Rules 26 through 37.

~~(12)~~ **(20)** Do all other acts and take all measures necessary for the:

(A) maintenance of order; and ~~for the~~

(B) efficient, fair, and impartial adjudication of issues arising;

in proceedings governed by this article.

~~(13)~~ **(21)** Determine whether mediation is an appropriate means of alternative dispute resolution for each type of administrative proceeding in accordance with IC 4-21.5-3.5.

(c) For failure to attend a prehearing conference, the presiding ~~environmental law judge~~ **ELJ** may **do the following:**

(1) Strike claims or defenses.

(2) Default or dismiss a party ~~pursuant to~~ **under** IC 4-21.5-3-24.

(Office of Environmental Adjudication; 315 IAC 1-3-1; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3733; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 3. 315 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-2 Initiation of a proceeding for administrative review

Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-3-7; IC 4-21.5-3-15; IC 4-21.5-4; IC 13-15-6-1

Sec. 2. (a) A proceeding before the office is initiated when a petition for administrative review, which may include a request for **a** stay, in writing, is filed with the Office of Environmental Adjudication, ~~150 West Market Street, Suite 618,~~ **Indiana Government Center-North, 100 North Senate Avenue, Room N1049,** Indianapolis, Indiana ~~46204.~~ **46204-2211.**

(b) The petition for administrative review shall contain the following information:

(1) **The:**

(A) name;

(B) address; and

(C) telephone number;

of each person filing the petition.

(2) Identification of the interest of each petitioner in the subject of the petition.

(3) **A** statement demonstrating that the petitioner is:

(A) a person to whom the order is directed;

(B) aggrieved or adversely affected by the order; or

(C) entitled to review under any law.

(4) ~~Statement~~ **State** with particularity the legal issues proposed for consideration in the proceedings ~~and~~ **as follows:**

(A) In a case involving an appeal of a permit, **identify the following:**

~~(A) identification of~~ **(i)** Environmental concerns or technical deficiencies related to the action of the commissioner ~~which~~ **that** is the subject of the petition. ~~and~~

~~(B) identification of~~ **(ii)** Permit terms and conditions that the petitioner contends would be appropriate to comply with the law applicable to the contested permit.

(B) In a case involving any other appeal of an order of the commissioner, identify those:

(i) facts;

(ii) terms; or

(iii) conditions;

for which the petitioner requests review.

(c) The petition for administrative review ~~should~~ **shall** also contain the following information:

(1) Identification of any persons represented by the person making the request ~~pursuant to~~ **under** IC 4-21.5-3-15.

(2) **A** statement identifying the person against whom administrative review is sought.

(3) A copy of the **pertinent portions of the** notice of the commissioner's action issued by the department ~~of environmental management which~~ **that** is the basis of the petition for administrative review. **This shall, at a minimum, consist of that portion of the commissioner's action that identifies the following:**

(A) The person to whom the action is directed.

(B) The identification number of the action.

(4) **A** statement indicating the identification of **the** petitioner's attorney or other representative.

(d) A petition for administrative review, filed ~~pursuant to~~ **under** IC 4-21.5-3-7(a), may be amended **as a matter of course at any time within thirty (30) days after the earlier of the following dates:**

(1) The initial prehearing conference.

(2) The filing of a motion to dismiss.

Otherwise, a party may amend his or her petition only by leave of the presiding ELJ or by written consent of all parties. Leave shall be given when justice so requires, but not later than thirty (30) days before the final hearing.

(e) If the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

~~(c)~~ **(f)** Copies of the petition for administrative review shall be sent to **the following:**

(1) The ~~agency and to any person whose interest is affected by the petition~~ **department.**

(2) All persons to whom the order is directed.

(Office of Environmental Adjudication; 315 IAC 1-3-2; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3733; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 4. 315 IAC 1-3-2.1 IS ADDED TO READ AS FOLLOWS:

315 IAC 1-3-2.1 Stay

Authority: IC 4-21.5-3; IC 4-21.5-4; IC 4-21.5-7-7
Affected: IC 13-15-6-1; IC 13-30-3-5

Sec. 2.1. (a) A stay applies automatically upon the filing of a timely petition for review when a person petitions for review of an order of the commissioner directed to that person under IC 13-30-3-5.

(b) The party requesting a stay of effectiveness has the burden of demonstrating, by a preponderance of the evidence, the following:

(1) The person will suffer irreparable harm pending the resolution of the case on the merits because its remedies at law are inadequate.

(2) The person is likely to prevail on the merits.

(3) The threatened injury to the person requesting the stay outweighs the threatened harm that the grant of the stay may inflict on the other party.

(4) The public interest will be served by the grant of the stay.

(c) A temporary emergency stay order may be granted without a hearing under the following circumstances:

(1) Upon written notice to the other parties or their attorneys only if it clearly appears:

(A) from specific facts shown by affidavit; or

(B) by a verified motion;

that immediate and irreparable injury, loss, or damage will result to the applicant before the other parties can be heard in opposition.

(2) The resulting order shall include a brief statement of the facts and the laws that justify the office's decision to issue the emergency order.

(3) The matter shall be set for an evidentiary hearing as quickly as practicable.

(4) An order issued under this section expires on the earliest of the following:

(A) The date set in the order.

(B) The date of the evidentiary hearing held under subsection (b).

(C) The lapse of sixty (60) days.

(Office of Environmental Adjudication; 315 IAC 1-3-2.1)

SECTION 5. 315 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-3 Filing and service of pleadings and documents

Authority: IC 4-21.5-2-1; IC 4-21.5-3-35; IC 4-21.5-7-7
Affected: IC 4-21.5-3-1; IC 4-21.5-3-2; IC 13-15-6-1

Sec. 3. (a) **The requirements for the** filing of pleadings and documents **are as follows:**

(1) The burden of proof for the timely filing of pleadings and documents with the office is on the person so filing.

(2) The computation of any period of time under these rules is prescribed by IC 4-21.5-3-2.

(3) The filing of a petition for administrative review with an ~~environmental law judge~~ **ELJ** may be completed, ~~pursuant to~~ **under** IC 4-21.5-3-1(f), by **any of** the following methods:

(A) Personal delivery.

(B) First class **priority or express United States** mail.

(C) Certified mail.

(D) Private carrier.

(E) Electronic fax transmission. All documents filed by fax must be accompanied by a descriptive cover sheet that states the following:

(i) The title of the document.

(ii) The number of pages.

(iii) The identity and voice telephone number of the sending party.

Filing by fax shall be followed by the filing of the signed original and attachments with the office by one (1) of the methods specified in this subdivision within one (1) day after the document is filed by fax.

(4) The filing of any other document or pleading with an ~~environmental law judge~~ **ELJ** may be completed, ~~pursuant to~~ **under** IC 4-21.5-3-1(f), by **any of** the following methods:

(A) Personal delivery.

(B) First class **priority or express United States** mail.

(C) Certified mail.

(D) Private carrier.

(E) Electronic facsimile transmission. ~~including the following:~~

~~(i) Filing by facsimile shall be followed by the filing of the signed original with the office by one (1) of the methods specified in subsection (a)(3) of this section within one (1) day after the document is filed by facsimile.~~

~~(ii)~~ All documents filed by ~~facsimile~~ **fax** must be accompanied by a descriptive cover sheet ~~which~~ **that** states the following:

~~(AA)~~ **(i)** The title of the document.

~~(BB)~~ **(ii)** The case number.

~~(CC)~~ **(iii)** The number of pages.

~~(DD)~~ **(iv)** The identity and voice telephone number of the sending party.

~~(EE)~~ **(v)** The instructions for filing.

~~(FF) The signature of the person authorizing the filing.~~

(F) If all parties and the presiding ELJ consent, by any other means.

(5) Fax transmissions will be accepted for filing only during the regular business hours as set forth in subsec-

tion (d). Transmissions received by the office after close of business shall be filed effective the next regular business day.

(b) **The requirements for** service of pleadings and documents **are as follows:**

(1) All documents and pleadings filed with the presiding ~~environmental law judge~~ **ELJ** shall be served on all parties.

(2) If a party is represented by an attorney or another authorized representative, service of a document must be made upon the attorney or other authorized representative. If ~~an individual~~ **a party** appears without separate representation, service must be made upon the ~~individual.~~ **party.**

(3) A signed certificate of service, **in substantially the following form,** stating "I certify that on the _____ day of [month], [year], service of a true and complete copy of [document being forwarded] was made upon each party or attorney of record herein by [identifying any of the methods of service prescribed by **subsection** (a)(3) or ~~(4) above]",~~ **(a)(4)]",** shall accompany each document filed or served.

(4) When the presiding ~~environmental law judge~~ **ELJ** corresponds directly with the parties:

(A) the original of the correspondence shall be maintained by the presiding ~~environmental law judge~~ **ELJ** in the official file; and

(B) a copy shall be sent to all parties. ~~by certified mail, return receipt requested, first class mail, personal service, or overnight, express mail.~~

(c) The filing of a document with the office is complete on the earliest of the following:

(1) The date on which the document is delivered to the office.

(2) The date of the postmark on the envelope containing the document if the document is mailed to the office by United States mail.

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the office by private carrier.

~~(c)~~ **(d)** Where **the** date of filing or service is determined by the date of delivery to or receipt at the office, all filing or service deliveries received after ~~4:45~~ **4:30** p.m., EST, will be deemed to have been received on the next following regular day. However, a document filed by ~~electronic facsimile~~ **fax** shall be deemed to be filed on the date on which it is electronically submitted. *(Office of Environmental Adjudication; 315 IAC 1-3-3; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3734; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)*

SECTION 6. 315 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-4 Form of pleadings and documents

Authority: IC 4-21.5-2-1; IC 4-21.5-3-35; IC 4-21.5-7-7
Affected: IC 4-21.5-3; IC 13

Sec. 4. (a) **The** form of pleadings and documents **shall be as follows:**

(1) The petition for administrative review shall be in the form prescribed by section 2 of this rule.

(2) The first page of every subsequent pleading, letter, or other document filed thereafter shall contain a caption identifying the:

(A) action; and ~~the~~

(B) case number;

that has been assigned by the office. ~~of environmental adjudication.~~

(3) The original of any pleading, letter, or other document, excepting exhibits, shall be signed by the party filing or by the party's counsel. The signature constitutes a representation by the signer that:

(A) the signer has read the pleadings, letter, or other document;

(B) ~~that~~ to the best of the signer's knowledge, information, and belief, the statements made therein are true; and

(C) ~~that~~ it is not interposed for delay.

(4) Attachments to pleadings, including, but not limited to, the permit, may be submitted electronically as follows:

(A) In a compatible format to the office.

(B) To the other parties only with their consent.

(b) Any changes in name, mailing address, or telephone number occurring during the course of a proceeding shall be communicated promptly in writing to the presiding ~~environmental law judge~~ **ELJ** and all parties to the proceeding. Service of orders or correspondence from the office shall be made to the last known address on file.

(c) Nothing in this section shall be construed to modify the time in which a party is otherwise required to file under:

(1) IC 4-21.5;

(2) IC 13; or

(3) this article.

(Office of Environmental Adjudication; 315 IAC 1-3-4; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3734; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 7. 315 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-5 Request for extension of time for filing pleading, document, or motion

Authority: IC 4-21.5-2-1; IC 4-21.5-7-7
Affected: IC 4-21.5-3-34; IC 4-21.5-3-35

Sec. 5. ~~(a)~~ Unless prohibited by statute, the presiding ~~enviornmental law judge~~ **ELJ** may grant an extension of time for the filing of any pleading, document, or motion **as follows:**

(1) Upon timely motion of a party to the proceeding.

(2) After notice to all other parties unless the moving party can show good cause why serving notice is impracticable. ~~and~~
(3) After consideration of prejudice to other parties.

~~(b) Unless prohibited by statute, the presiding environmental law judge may grant an extension of time for the filing of any pleading, document, or motion whenever all parties have consented to such extension.~~ *(Office of Environmental Adjudication; 315 IAC 1-3-5; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3735; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)*

SECTION 8. 315 IAC 1-3-7 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-7 Defaults and dismissals
Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-3-24

Sec. 7. (a) An ~~environmental law judge~~ **ELJ** may enter a final order of dismissal if the person who initiated administrative review requests the proceeding be dismissed.

(b) An ~~environmental law judge~~ **ELJ** may, sua sponte or upon the motion of a ~~person,~~ **party,** enter and serve upon all parties a proposed order of default or proposed order of dismissal under IC 4-21.5-3-24 if at least one (1) of the following applies:
(1) A party fails to:
(A) file a ~~ressponsible~~ **responsive** pleading required by statute or rule; **or**
~~(2) A party fails to~~ **(B)** attend or participate in a prehearing conference, hearing, or other stage of the proceeding.
~~(3)~~ **(2)** The party responsible for taking action does not take action on a matter for a period of at least sixty (60) days.
~~(4)~~ **(3)** The ~~person~~ **party** seeking administrative review does not qualify for review under IC 4-21.5.

(c) Within seven (7) days after service of a proposed order of default or dismissal, a party may file a written motion:
(1) requesting the order not be imposed; and
(2) stating the grounds relied upon.

(d) During the time within which a party may file a written motion under subsection (c), the presiding ~~environmental law judge~~ **ELJ** may:
(1) adjourn the proceedings; or
(2) conduct them without participation of the party against whom a proposed default order was issued;
having due regard for the interest of justice and the orderly and prompt conduct of the proceeding.

(e) If the party fails to file a written motion under subsection (c), the presiding ~~environmental law judge~~ **ELJ** shall issue an order of default or dismissal. If the party has filed a written motion under subsection (c), the presiding ~~environmental law judge~~ **ELJ** may either enter or refuse to enter the order of default or dismissal.

(f) After issuing an order of default, but before issuing a final order or disposition, the presiding ~~environmental law judge~~ **ELJ** shall:
(1) conduct any action necessary to complete the proceeding without the participation of the party in default; and ~~shall~~
(2) determine all issues in the adjudication, including those affecting the defaulted party.
(Office of Environmental Adjudication; 315 IAC 1-3-7; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3735; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 9. 315 IAC 1-3-8 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-8 Informal settlement; alternative dispute resolution
Authority: IC 4-21.5-2-1; IC 4-21.5-3-35; IC 4-21.5-3.5-1; IC 4-21.5-7-7
Affected: IC 4-21.5-3.5-2; IC 4-21.5-5-5; IC 13-30-3-5; IC 13-30-3-6

Sec. 8. (a) Settlement among and between the parties is encouraged at any time when **the settlement is:**
(1) ~~the settlement is~~ within the legal authority of the ~~agency;~~ **department;** and
(2) ~~the settlement is~~ consistent with the prescriptions and objectives of:
(A) IC 4-21.5;
(B) ~~IC 13-7;~~ **IC 13;**
~~(C) IC 13-30;~~ and
~~(D)~~ **(C)** applicable environmental regulations.

(b) In the event the parties reach **a** settlement regarding the appeal of a permit, ~~the parties to the settlement shall file with the presiding environmental law judge, a joint or stipulated motion to dismiss or withdraw petition for administrative review identifying the~~ **resolving all** issues ~~raised in the petition for~~ **in controversy, the party who initiated** administrative review ~~that have been disposed of by the settlement document or agreement between the parties.~~ **shall submit a written motion requesting that the proceeding be dismissed.** The parties need not file the settlement document or agreement with the presiding ~~environmental law judge.~~ **ELJ. The presiding ELJ shall then enter a final order of dismissal.**

(c) In the event the parties reach a settlement **resolving all issues in controversy** regarding the appeal of a commissioner's order as prescribed by IC 13-30-3-5, before the:
(1) presiding ~~environmental law judge~~ **ELJ** issues a final order; and ~~the~~
(2) commissioner approves an agreed order based on the settlement as provided by IC 13-30-3-6;
the parties shall notify the presiding ~~environmental judge~~ **ELJ** who shall then enter a final order **of dismissal.**

(d) For each type of administrative proceeding, the presiding

~~environmental law judge~~ **ELJ** shall determine whether mediation is an appropriate means of alternative dispute resolution ~~pursuant to~~ **under** IC 4-21.5-3.5.

(e) In the event the presiding environmental law judge determines mediation is an appropriate means of alternative dispute resolution, the parties to the mediation shall comply with ~~IC 4-21.5-3-5.~~ **IC 4-21.5-3.5.** *(Office of Environmental Adjudication; 315 IAC 1-3-8; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3736; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)*

SECTION 10. 315 IAC 1-3-9 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-9 Conduct of prehearing conference
Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-3-19; IC 4-21.5-3-35

Sec. 9. (a) In addition to IC 4-21.5-3-19, ~~the following may apply to~~ **for** prehearing conferences, **the parties could be required to do the following:**

(1) ~~Parties could be required to~~ Set a date to exchange **the following:**

(A) Witness lists ~~which~~ **that** shall contain the names and addresses of all witnesses expected to be relied upon at the hearing, other than witnesses intended to be used solely for the purpose of impeachment or rebuttal, **as follows:**

~~(A)~~ **(i)** The names and addresses of witnesses discovered after the exchange of lists shall be furnished to the opposing party forthwith upon such discovery.

~~(B)~~ **(ii)** Witnesses, whose names and addresses have not been exchanged, shall not be allowed to testify without permission of the presiding ~~environmental law judge.~~ **ELJ.**

~~(C)~~ **(iii)** The names of any witnesses to testify as experts shall be accompanied with a brief narrative summary of the witnesses' expected testimony.

~~(2) Parties could be required to set a date for exchange of~~ **(B)** Items intended to be offered as exhibits **as follows:**

~~(A)~~ **(i)** Copies of exhibits discovered after ~~such~~ **the** exchange shall be furnished to the opposing party forthwith upon ~~such~~ **the** discovery.

~~(B)~~ **(ii)** Documents and exhibits that have not been exchanged shall not be introduced into evidence without the permission of the presiding ~~environmental law judge.~~ **ELJ.**

~~(C)~~ **(iii)** The presiding ~~environmental law judge~~ **ELJ** shall allow the parties reasonable opportunity to review and respond to new evidence.

~~(3) The parties could be required to~~ **(2)** Set a date for stipulations to be entered with parties stipulating to the fullest extent possible the **following:**

(A) Issues.

(B) Undisputed facts.

(C) Authenticity and admissibility of exhibits. ~~and~~

(D) Any and all other matters ~~which~~ **that** will expedite the hearing by reducing formal proof.

~~(4) The parties could be required to~~ **(3)** File a statement with the presiding ~~environmental law judge~~ **ELJ** as to all existing disputed issues of fact and law of the cause of action.

~~(5) The parties could be required to~~ **(4)** Be prepared to discuss any presently contemplated or pending preliminary motions.

(b) No transcript of any prehearing conferences shall be made by the office unless:

(1) requested upon timely motion by a party; and

(2) ordered by the presiding ~~environmental law judge.~~ **ELJ.**

(c) If no transcript is required, the parties have the option of conducting the prehearing conference by telephone. The party wishing to conduct the prehearing conference telephonically shall:

(1) contact the other parties;

(2) secure their agreement to conduct the prehearing conference by telephone; and

(3) notify the office at least one (1) business day in advance of the scheduled prehearing conference.

The party requesting the telephonic prehearing conference has the obligation of initiating the necessary phone calls. The party should have all the other parties on the telephone before contacting the ELJ. *(Office of Environmental Adjudication; 315 IAC 1-3-9; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3736; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)*

SECTION 11. 315 IAC 1-3-10 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-10 Conduct of hearing; separation of witnesses
Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-3-34; IC 4-21.5-3-35

Sec. 10. (a) The presiding ~~environmental law judge~~ **ELJ** shall govern the:

(1) conduct of a hearing; and ~~the~~

(2) order of proof.

(b) The office's review of a department decision is de novo.

~~(b)~~ **(c)** On a motion by a party, ~~before the commencement of testimony,~~ the presiding ~~environmental law judge~~ **ELJ** may provide for a separation of witnesses. *(Office of Environmental Adjudication; 315 IAC 1-3-10; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3736; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)*

SECTION 12. 315 IAC 1-3-12 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-12 Continuances of prehearing conference, status conference, stay hearing, and hearing

Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-3-34; IC 4-21.5-3-35

Sec. 12. (a) Unless ~~prohbited~~ **prohibited** by statute, the presiding ~~environmental law judge~~ **ELJ** may grant a continuance of **a** prehearing conference, status conference, stay hearing, or hearing **as follows:**

(1) Upon the motion of a party to the proceeding:

(A) at least five (5) days in advance of the date ~~on which~~ **of** the prehearing conference, status conference, stay hearing, or hearing; or

(B) ~~upon~~ **for** a showing of good cause for a shorter time period.

(2) After notice to all other parties. ~~and~~

(3) After consideration of prejudice to other parties.

The party requesting the continuance shall state in the motion what efforts were made to contact the other parties and whether any other party objects to the motion.

(b) A motion to continue a hearing because of the absence of evidence must be made upon affidavit and must show the following:

(1) The materiality of the evidence expected to be obtained.

(2) That due diligence has been used to obtain the evidence.

(3) The possible location of the evidence.

(4) If based on the absence of a witness, **the following:**

(A) The name and address of the witness, if known.

(B) The probability of procuring the testimony in a reasonable time.

(C) That absence of the witness was not procured by:

(i) the party; ~~nor by~~ **or**

(ii) others at the request, knowledge, or consent of the party.

(D) What facts the party believes to be true. ~~and~~

(E) That the party is unable to prove the facts by another witness whose testimony can be readily procured.

(c) If, upon the receipt of a continuance motion under subsection (b), the adverse party stipulates to the truth of the facts the party seeking the continuance indicated could not be presented, the hearing shall not be continued.

~~(d) The presiding environmental law judge shall grant the continuance whenever all parties have consented to such continuance.~~ *(Office of Environmental Adjudication; 315 IAC 1-3-12; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3737; errata, 21 IR 4215; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)*

SECTION 13. 315 IAC 1-3-14 IS AMENDED TO READ AS FOLLOWS:

315 IAC 1-3-14 Petition for judicial review

Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-5-1; IC 4-21.5-5-8

Sec. 14. (a) A ~~person~~ **party** who wishes to take judicial review of a final order entered under this article shall serve copies of the petition for judicial review upon the persons described in IC 4-21.5-5.

(b) The copy of the petition required under IC 4-21.5-5-8(a)(1) to be served upon the ultimate authority shall be served upon the ~~environmental law judge~~ **ELJ** issuing the order being appealed at the following address:

Office of Environmental Adjudication
~~150 West Market Street~~
~~Suite 618~~
Indiana Government Center-North
100 North Senate Avenue, Room N1049
Indianapolis, Indiana ~~46204.~~ **46204-2211.**

(Office of Environmental Adjudication; 315 IAC 1-3-14; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3738; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 14. 315 IAC 1-3-15 IS ADDED TO READ AS FOLLOWS:

315 IAC 1-3-15 Representatives and attorneys; eligibility to practice

Authority: IC 4-21.5-7-7
Affected: IC 4-21.5-3

Sec. 15. (a) All attorneys who appear in a representative capacity on behalf of a party must file written notice of appearance setting forth the following:

(1) The:

(A) name;

(B) address;

(C) telephone number;

(D) fax number; and

(E) electronic address;

of the attorney.

(2) The name and address of the party.

(3) The Indiana attorney number.

(4) If not licensed in Indiana, the following:

(A) A verified statement that the attorney is in good standing.

(B) A designation of the jurisdiction in which the attorney is currently licensed to practice law.

(C) The attorney registration number.

(5) If an attorney files a petition for review of behalf of his or her client that contains the information required by subdivisions (1) through (4), the petition shall serve as a written notice of appearance.

(b) Notwithstanding provisions of Rule 5.5 of the Indiana Rules of Professional Conduct, a representative that is not an attorney of a party must file written notice of the representation. The written notice shall include the following:

(1) The information requested in subsection (a)(1) and (a)(2).

(2) The written consent of each party whom he or she purports to represent.

(c) The presiding ELJ may require an attorney or representative appearing before it to:

(1) disclose the identity of the person the attorney or representative represents; and

(2) present proof that the attorney or representative is authorized to act on the client's behalf.

(d) An attorney may only withdraw his or her appearance upon written notice to the presiding ELJ. *(Office of Environmental Adjudication; 315 IAC 1-3-15)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 2005 at 9:00 a.m., at the Office of Environmental Adjudication, Indiana Government Center-North, 100 North Senate Avenue, Room N1049, Indianapolis, Indiana the Office of Environmental Adjudication will hold a public hearing on proposed amendments concerning errata, a change of address, clarifications regarding amendment of pleadings, and filing procedures. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N1049 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Catherine Gibbs
Environmental Law Judge
Office of Environmental Adjudication

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #04-200

DIGEST

Amends 326 IAC 10-3-3, 326 IAC 10-4-1, 326 IAC 10-4-2, 326 IAC 10-4-3, 326 IAC 10-4-9, 326 IAC 10-4-13, 326 IAC 10-4-14, and 326 IAC 10-4-15 to add definitions and make clarifications to existing rule sections. Adds 326 IAC 10-5 to control nitrogen oxide emissions for internal combustion engines (ICE). Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: August 1, 2004, Indiana Register (27 IR 3708).

Second Notice of Comment Period and Notice of First Hearing: January 1, 2005, Indiana Register (28 IR 1319).

Change in Notice of Public Hearing: March 1, 2005, Indiana Register (28 IR 1711).

Date of First Hearing: May 4, 2005.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4 until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on January 1, 2005, at 28 IR 1319, 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 January 1, 2005, through February 2, 2005, on IDEM's draft rule language. The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2005, through February 2, 2005, on IDEM's draft rule language. IDEM received comments from the following parties:

ANR Pipeline Company (ANR)
Dayton Power and Light (DPL)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Under 326 IAC 10-4-2 the definition of "continuous emission monitoring systems", as it relates to combustion turbines at Montpelier Electric Generating Station, please add to the definition that (1) fuel flow monitoring systems can substitute for stack gas monitoring systems; and (2) moisture monitoring systems are not required for CEMS utilizing fuel flow monitoring systems. These changes will better reflect examples of system components that are located at this station. (DPL)

Response: The definition of continuous emissions monitors or CEMs mirrors U.S. EPA's definition and refers sources to 40 CFR 75 for specific compliance requirements. The department has added this CFR cite to the rules as an incorporation by reference to streamline the state rules. 40 CFR 75 clearly addresses all source applicability including the NO_x monitoring requirements for peaking units.

Comment: Under 326 IAC 10-5-2(8), "potential operating hours" is defined as the projected actual number of hours of operation per ozone season for an affected engine." The term that is used in this and U.S. EPA's rule is "projected operating hours." IDEM should change the term to "projected operating hours". (ANR)

Response: IDEM agrees and will change the term to projected operating hours.

Comment: Under 326 IAC 10-5-3(a)(6)(C), it is recommended that the term NOx be inserted between the words "projected" and "emission" to clarify and limit the scope of the required documentation. (ANR)

Response: IDEM agrees and will add the word "NOx" to 326 IAC 10-5-3(a)(6)(C).

Comment: Under 326 IAC 10-5-3(a)(6)(D), add the phrase "or pounds per hour (lbs/hr)" to allow for flexibility in formulating the compliance plan. (ANR)

Response: The term "pounds per hour" was not used in U.S. EPA's model rule, upon which 326 IAC 10-5 is based. U.S. EPA could consider this change to be less stringent and not approve the rule as a State Implementation Plan (SIP) amendment. For this reason, IDEM will leave the emission rates in grams per brake horsepower per hour throughout the rule.

Comment: Under 326 IAC 10-5-3(a)(6)(E)(1) and (2), tonnage reduction cannot be calculated because the rule states that the emission rate is in operating hours. It is recommended that the rule be changed to previously defined terms to reflect the language in the EPA Example Rule to the following: (1) the past NOx emission rate; and (2) the projected NOx emission rate. (ANR)

Response: IDEM agrees that the wording at 326 IAC 10-5-3(a)(6)(E)(1) and (2) is confusing. Additional language has been added to indicate exactly what each rate is multiplied by under subdivisions (1) and (2) to better clarify the intent.

Comment: Under 326 IAC 10-5-3(b) IDEM added language to this section to state that the permit shall contain an emission rate, monitoring requirement, record keeping, and reporting. This should not impose any undue burden on the permit owner. Does this interpretation agree with IDEM's intentions? (ANR)

Response: Yes, this interpretation agrees with IDEM's intentions that this should not impose any undue burden on the permit owner. The addition of these four (4) items into the rule standardizes and clarifies in simple language what is expected of each source.

Comment: Under 326 IAC 10-5-4(2) the frequency of periodic monitoring is not defined in the rule, and that may be why IDEM added language in 326 IAC 10-5-3(b) to state that the monitoring requirement would be in the permit. (ANR)

Response: The frequency of periodic monitoring is dependent on the type of monitoring that the source chooses to use. Monitoring frequency will be determined through the development of the source's compliance plan as specified in 326 IAC 10-5-3(a).

Comment: Under 326 IAC 10-5-5(a)(6) IDEM has added the following record keeping requirements: monitoring data, preventative maintenance, and corrective actions. However, this should not impose any undue burden on the owner of an affected engine because these records should already be kept by the owner of an affected engine. (ANR)

Response: IDEM agrees with your understanding that this record keeping should not impose any undue burden on the owner of an affected engine. These requirements have been added in the rule to clarify what record keeping information is needed for compliance.

Comment: 326 IAC 10-5-5(c) requires an end of the ozone season report that is in addition to the reporting requirement in 326 IAC 10-5-5(b) and not in the U.S. EPA Example Rule. It is recommended that this section be removed because the report is burdensome to operations, is a duplication of effort, and the permit will contain the NOx projected emission limit. (ANR)

Response: U.S. EPA published "Federal Implementation Plans to Reduce the Regional Transport of Ozone; Proposed rule on October 21, 1998"(63 FR 56393). In this Federal Register, an ozone season report was included in source reporting requirements and shows an intent by U.S. EPA that sources should document that the actual reductions that had been projected are achieved. IDEM can determine with this report whether the source has achieved the total NOx emissions reductions that are required as a result of this rulemaking. IDEM has revised the language to streamline the report to clarify that the source shall indicate the engine identification and a demonstration that the emission reductions have been accomplished. (ANR)

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On May 4, 2005, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 10-3 and 326 IAC 10-4 and new rule 326 IAC 10-5. No comments were made at the first hearing.

326 IAC 10-3-3
326 IAC 10-4-1
326 IAC 10-4-2
326 IAC 10-4-3
326 IAC 10-4-9
326 IAC 10-4-13
326 IAC 10-4-14
326 IAC 10-4-15
326 IAC 10-5

SECTION 1. 326 IAC 10-3-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-3-3 Emissions limits

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) After May 31, 2004, an owner or operator of any Portland cement kiln subject to this rule shall not operate the kiln during the ozone control period of each year unless the owner or operator complies with one (1) of the following:

(1) Operation of the kiln with one (1) of the following:
  (A) Low-NO_x burners.
  (B) Mid-kiln firing.

(2) A limit on the amount of NO_x emitted when averaged over the ozone control period as follows:
  (A) For long wet kilns, six (6) pounds of NO_x per ton of clinker produced.
  (B) For long dry kilns, five and one-tenth (5.1) pounds of NO_x per ton of clinker produced.
  (C) For preheater kilns, three and eight-tenths (3.8) pounds of NO_x per ton of clinker produced.
  (D) For precalciner and combined preheater and precalciner kilns, two and eight-tenths (2.8) pounds of NO_x per ton of clinker produced.

(3) Installation and use of alternative control techniques that may include kiln system modifications, such as conversions to semi-dry precalciner kiln processing, subject to department and U.S. EPA approval, that achieve a thirty percent (30%) emissions decrease from baseline ozone control period emissions. Baseline emissions shall be the average of the sum of ozone control period emissions for the two (2) highest emitting years from 1995 through 2000 determined in accordance with subsection (d)(1).

(b) The owner or operator of any Portland cement kiln proposing to install and use an alternative control technique under subsection (a)(3) shall submit the proposed alternative control technique and calculation of baseline emissions with supporting documentation to the department and U.S. EPA for approval by May 1, 2003. The department shall include the approved plan with emission limitations in the source's operating permit.

(c) The owner or operator of any affected boiler subject to this rule shall limit NO_x emissions to seventeen-hundredths **(0.17)** pound of NO_x per million Btus ~~(0.17~~ (lb/mmBtu) of heat input averaged over the ozone control period and ensure that greater than fifty percent (50%) of the heat input shall be derived from blast furnace gas averaged over an ozone control period. By May 1, 2003, the owner or operator of an affected boiler shall submit to the department a compliance plan for approval by the department and U.S. EPA including the following:

(1) Baseline stack test data, or proposed testing, for establishment of fuel specific emission factors, or the emission factors for the type of boiler from the Compilation of Air Pollutant

Emission Factors (AP-42), ~~Fifth Edition, January 1995*, Supplements A through G, December 2000*~~ **as defined at 326 IAC 1-1-3.5** for each fuel to be combusted. The fuel specific emission factor shall be developed from representative emissions testing, pursuant to 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E*, based on a range of typical operating conditions. The owner or operator must establish that these operating conditions are representative, subject to approval by the department, and must certify that the emissions testing is being conducted under representative conditions.

(2) Anticipated fuel usage and combination of fuels.

(3) If desired by the source, a proposal for averaging the emission limit and fuel allocation among commonly owned units, including the proposed methodology for determining compliance.

(d) Baseline ozone control period emissions shall be determined using one (1) of the following methods:

(1) The average of the emission factors for the type of kiln from the Compilation of Air Pollutant Emission Factors (AP-42), Fifth Edition, January 1995*, Supplements A through G, December 2000* and the NO_x Control Technologies for the Cement Industry, Final Report, September 19, 2000*.

(2) The site-specific emission factor developed from representative emissions testing, pursuant to 40 CFR 60, Appendix A, Method 7, 7A, 7C, 7D, or 7E*, based on a range of typical operating conditions. The owner or operator must establish that these operating conditions are representative, subject to approval by the department, and must certify that the emissions testing is being conducted under representative conditions.

(3) An alternate method for establishing the emissions factors, when submitted with supporting data to substantiate such emissions factors and approved by the department and U.S. EPA as set forth in subsection (b).

(4) For affected boilers, as outlined in the site-specific compliance plan submitted under subsection (c).

*These documents are incorporated by reference and may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20402 or are available for 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 10-3-3; filed Aug 17, 2001, 3:45 p.m.: 25 IR 16; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1569)*

SECTION 2. 326 IAC 10-4-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-1 Applicability

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

Sec. 1. (a) This rule establishes a NO_x emissions budget and NO_x trading program for electricity generating units and large affected units as described in this rule. The following units shall be NO_x budget units, and any source that includes one (1) or more NO_x budget units shall be a NO_x budget source and shall be subject to the requirements of this rule:

(1) An electricity generating unit (EGU) as defined under section 2(16) of this rule.

(2) A large affected unit as defined in section 2(27) of this rule.

(b) A unit described under subsection (a) shall not be a NO_x budget unit, if the unit has a federally enforceable permit that meets the requirements of subdivisions (1) through (3):

(1) The federally enforceable permit includes terms and conditions that restrict the unit to burning only natural gas or fuel oil during the ozone control period in 2004 or the first year of operation for the source and each ozone control period thereafter.

(2) The federally enforceable permit includes terms and conditions that restrict the unit's potential NO_x mass emissions for the ozone control period to twenty-five (25) tons or less.

(3) For each ozone control period, the federally enforceable permit must do the following:

(A) Restrict the unit to burning only natural gas or fuel oil during an ozone control period in 2004 or later and each ozone control period thereafter.

(B) Include one (1) of the following mechanisms for ensuring that the unit's ozone control period NO_x emissions do not exceed twenty-five (25) tons:

(i) Limit the unit's total actual control period emissions to twenty-five (25) tons of NO_x emissions, measured by a continuous emissions monitoring system (CEMS) in accordance with 40 CFR 75, Subpart H* and section 12 of this rule or monitoring approved under 40 CFR 75, Appendix E*.

(ii) Restrict the unit's **fuel use and** operating hours to the number calculated by dividing twenty-five (25) tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions, where the unit's potential NO_x mass emissions shall be calculated as follows:

(AA) Select the default NO_x emission rate in 40 CFR 75.19(c), Table LM-2* that would otherwise be applicable assuming that the unit burns only the type of fuel, for example, only natural gas or only fuel oil, that has the highest default NO_x emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Multiply the default NO_x emission rate under subitem (AA) by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as

defined under section 2(25) of this rule. The department may approve the lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that the lower value is representative of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(iii) Restrict the unit's usage of each fuel that it is authorized to burn such that the unit's potential NO_x mass emissions will not exceed twenty-five (25) tons per ozone control period, calculated as follows:

(AA) Identify the default NO_x emission rate in 40 CFR 75.19(c), Table LM-2* or an alternative emission rate determined in accordance with 40 CFR 75.19(c)(1)(iv)* for each type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(BB) Identify the amount of each type of fuel (in mmBtu) that the unit burned during the ozone control period.

(CC) For each type of fuel identified in subitem (BB), multiply the default NO_x emission rate under subitem (AA) and the amount (in mmBtu) of the fuels burned by the unit during the ozone control period.

(DD) Sum the products in subitem (CC) to verify that the unit's NO_x emissions were equal to or less than twenty-five (25) tons.

(C) Require that the owner or operator of the unit shall retain records, on site at the source or at a central location within Indiana for those owner or operators with unattended sources that includes the unit for a period of five (5) years, demonstrating that the terms and conditions of the permit related to these restrictions were met. Records retained at a central location within Indiana shall be available immediately at the location and submitted to the department or U.S. EPA within three (3) business days following receipt of a written request. Nothing in this clause shall alter the record retention requirements for a source under 40 CFR 75*.

(D) Require that the owner or operator of the unit shall report the unit's **fuel use and** hours of operation, treating any partial hour of operation as a whole hour of operation, or such other parameter as is being used to demonstrate compliance with the twenty-five (25) ton per ozone control period during each ozone control period to the department by November 1 of each year for which the unit is subject to the federally enforceable permit.

The unit shall be subject only to the requirements of this subsection starting with the effective date of the federally enforceable permit under subdivision (1).

(4) Within thirty (30) days after a final decision, the department shall notify the U.S. EPA in writing when a unit under subsection (a):

(A) is issued a federally enforceable permit under this subsection; or

(B) whose federally enforceable permit issued by the department under this subsection:

(i) is revised to remove any restriction;

(ii) includes any restriction that is no longer applicable; or

(iii) does not comply with any restriction.

(5) A unit described under this subsection shall be a NO_x budget unit, subject to the requirements of this rule if one (1) of the following occurs for any ozone control period:

(A) The fuel use restriction under subdivision (3)(A) or the applicable restriction under subdivision (3)(B) is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable.

(B) The unit does not comply with the fuel use restriction under subdivision (3)(A) or the applicable restriction under subdivision (3)(B).

The unit shall be treated as commencing operation and, for a unit under subsection (a)(1), commencing commercial operation on September 30 of the ozone control period for which the fuel use restriction or the applicable restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the applicable restriction.

(6) A unit exempt under this subsection shall comply with the restriction in subdivision (3) during the ozone control period in each year.

(7) The department will allocate NO_x allowances to the unit under section 9(d) of this rule. For each control period for which the unit is allocated NO_x allowances under section 9(d) of this rule:

(A) the owners and operators of the unit must specify a general account, in which U.S. EPA will record the NO_x allowances; and

(B) after U.S. EPA records the NO_x allowance allocation under section 9(d) of this rule, the U.S. EPA will deduct, from the general account in clause (A), NO_x allowances that are allocated for the same or a prior ozone control period as the NO_x allowances allocated under section 9(d) of this rule and that equal the NO_x emission limitation (in tons of NO_x) on which the unit's exemption under this subsection is based. The NO_x authorized account representative shall ensure that the general account contains the NO_x allowances necessary for completion of the deduction.

*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 10-4-1; filed Aug 17, 2001, 3:45 p.m.: 25 IR 18; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3551)*

SECTION 3. 326 IAC 10-4-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-2 Definitions

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

Sec. 2. For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2, the following definitions apply throughout this rule, unless expressly stated otherwise or unless the context clearly implies otherwise:

(1) "Account certificate of representation" means the completed and signed submission required by section 6 of this rule for certifying the designation of a NO_x authorized account representative for a NO_x budget source or a group of identified NO_x budget sources who is authorized to represent the owners and operators of the source or sources and of the NO_x budget units at the source or sources with regard to matters under the NO_x budget trading program.

(2) "Account number" means the identification number given by the U.S. EPA to each NO_x allowance tracking system account.

(3) "Acid rain emissions limitation" means, as defined in 40 CFR 72.2*, a limitation on emissions of sulfur dioxide or nitrogen oxides under the acid rain program under Title IV of the Clean Air Act (CAA).

(4) "Allocate" or "allocation" means the determination by the department or the U.S. EPA of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.

(5) "Automated data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under 40 CFR 75, Subpart H*, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by 40 CFR 75, Subpart H*.

(6) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other heat transfer medium.

(7) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(8) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(9) "Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation subject to the following:

(A) Except as provided in section 3 of this rule, for a unit that is a NO_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

(B) Except as provided in section 3 or 13 of this rule, for a unit that is not a NO_x budget unit under section 1 of this rule on the date the unit commences commercial operation, the date the unit becomes a NO_x budget unit under section 1 of this rule shall be the unit's date of commencement of commercial operation.

(10) "Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, startup of a unit's combustion chamber subject to the following:

(A) Except as provided in section 3 of this rule, for a unit that is a NO_x budget unit under section 1 of this rule on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(B) Except as provided in section 3 or 13 of this rule, for a unit that is not a NO_x budget unit under section 1 of this rule on the date of commencement of operation, the date the unit becomes a NO_x budget unit under section 1 of this rule shall be the unit's date of commencement of operation.

(11) "Common stack" means a single flue through which emissions from two (2) or more units are exhausted.

(12) "Compliance account" means a NO_x allowance tracking system account, established by the U.S. EPA for a NO_x budget unit under section 10 of this rule, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for an ozone control period for the purpose of meeting the unit's NO_x budget emissions limitation.

(13) "Compliance certification" means a submission to the department or the U.S. EPA, as appropriate, that is required under section 8 of this rule to report a NO_x budget source's or a NO_x budget unit's compliance or noncompliance with this rule and that is signed by the NO_x authorized account representative in accordance with section 6 of this rule.

(14) "Continuous emission monitoring system" or "CEMS" means the equipment required under 40 CFR 75, Subpart H* to sample, analyze, measure, and provide, by **means of** readings taken at least once every fifteen (15) minutes ~~of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for NO_x. The following systems are component parts included,~~ **using an automated data acquisition and handling system (DAHS), a permanent record of nitrogen oxides (NO_x) emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner** consistent with 40 CFR 75*. ~~in a~~ **The following are the principal types of** continuous emission monitoring ~~system:~~ **systems required under section 12 of this rule:**

(A) **A** flow **monitoring system, consisting of a stack flow rate** monitor **and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh).**

(B) **A** nitrogen oxides **concentration monitoring system, consisting of a NO_x** pollutant concentration ~~monitors:~~ **monitor and an automated DAHS. A NO_x concentration monitoring system provides a permanent, continuous record of NO_x emissions in units of parts per million (ppm).**

(C) **A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of:**

(i) a NO_x pollutant concentration monitor;

(ii) a diluent gas **(CO_2 or O_2)** monitor; ~~oxygen or carbon dioxide, when the~~ **and**

(iii) an automated DAHS.

A NO_x concentration monitoring ~~is required by 40 CFR 75, Subpart H*.~~ **system provides a permanent, continuous record of NO_x concentration in units of parts per million (ppm) and diluent gas concentration in units of percent O_2 or CO_2 (percent O_2 or CO_2) and NO_x emission rate in units of pounds per million British thermal units.**

(D) A ~~continuous~~ moisture ~~monitor when the~~ monitoring **system** is required by 40 CFR 75, Subpart H*. **A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent H_2O (percent H_2O).**

(E) An automated data acquisition and handling system.

(15) "Electricity for sale under firm contract to the grid" means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

(16) "Electricity generating unit" or "EGU" means the following:

(A) For units other than cogeneration units commencing operation:

~~(A) For units that commenced operation~~ **(i)** before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid;

~~(B) For units that commenced operation~~ **(ii)** on or after January 1, 1997, and before January 1, 1999, a unit serving a generator during 1997 or 1998 that had a nameplate capacity greater than twenty-five (25) megawatts and ~~produced~~ **producing** electricity for sale under a firm contract to the electric grid; **or**

~~(C) For units that commenced operation~~ **(iii)** on or after January 1, 1999, a unit serving a generator at any time that has a nameplate capacity greater than twenty-five (25) megawatts and produces electricity for sale.

(B) For cogeneration units commencing operation:

(i) before January 1, 1997, a unit serving a generator during 1995 or 1996 that had a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit for 1995 or 1996 under the acid rain program;

(ii) in 1997 or 1998, a unit serving a generator during 1997 or 1998 with a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit for 1997 or 1998 under the acid rain program; or

(iii) on or after January 1, 1999, a unit serving at any time as a generator with a nameplate capacity greater than twenty-five (25) megawatts and failing to qualify as an unaffected unit under the acid rain program for any year.

(17) "Emissions", for the purpose of this rule, means nitrogen oxides exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the U.S. EPA by the NO_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

(18) "Energy efficiency or renewable energy projects" means any of the following implemented in Indiana:

(A) End-use energy efficiency projects, including demand-side management programs.

(B) Highly efficient electricity generation for the predominant use of a single end user, such as combined cycle, combined heat and power, microturbines, and fuel cell systems. In order to be considered as highly efficient electricity generation under this clause, combined cycle, combined heat and power, microturbines, and fuel cell generating systems must meet or exceed the following thresholds:

(i) For combined heat and power projects generating both electricity and thermal energy for space, water, or industrial process heat, rated energy efficiency of sixty percent (60%).

(ii) For microturbine projects rated at or below five hundred (500) kilowatts generating capacity, rated energy efficiency of forty percent (40%).

(iii) For combined cycle projects rated at greater than five hundred (500) kilowatts, rated energy efficiency of fifty percent (50%).

(iv) For fuel cell systems, rated energy efficiency of forty percent (40%), whether or not the fuel cell system is part of a combined heat and power energy system.

(C) Zero-emission renewable energy projects, including wind, photovoltaic, and hydropower projects. Eligible hydropower projects are restricted to systems employing a head of ten (10) feet or less or systems employing a head greater than ten (10) feet that make use of a dam that existed prior to the effective date of this rule.

(D) Energy efficiency projects generating electricity through the capture of methane gas from municipal solid waste landfills, water treatment plants, sewage treatment plants, or anaerobic digestion systems operating on animal or plant wastes.

(E) The installation of highly efficient electricity generation equipment for the sale of power where such equipment replaces or displaces retired electrical generating units. In order to be considered as highly efficient under this clause,

generation equipment must meet or exceed the following energy efficiency thresholds:

(i) For coal-fired electrical generation units, rated energy efficiency of forty-two percent (42%).

(ii) For natural gas-fired electrical generating units, rated energy efficiency of fifty percent (50%).

(F) Improvements to existing fossil fuel fired electrical generation units that increase the efficiency of the unit and decrease the heat rate used to generate electricity.

Energy efficiency or renewable energy projects do not include nuclear power projects. This definition is solely for the purposes of implementing this rule and does not apply in other contexts.

(19) "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

(20) "Excess emissions" means any tonnage of NO_x emitted by a NO_x budget unit during an ozone control period that exceeds the NO_x budget emissions limitation for the unit.

(21) "Fossil fuel" means any of the following:

(A) Natural gas.

(B) Petroleum.

(C) Coal.

(D) Any form of solid, liquid, or gaseous fuel derived from the above material.

(22) "Fossil fuel-fired" means, with regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, under any of the following scenarios:

(A) Fossil fuel actually combusted comprises more than fifty percent (50%) of the annual heat input on a British thermal unit (Btu) basis during any year starting in 1995. If a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995.

(B) Fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input on a Btu basis during any year, provided that the unit shall be fossil fuel-fired as of the date, during the year, that the unit begins combusting fossil fuel.

(23) "General account" means a NO_x allowance tracking system account, established under section 10 of this rule, that is not a compliance account or an overdraft account.

(24) "Generator" means a device that produces electricity.

(25) "Heat input" means the product, in million British thermal units per unit of time (mmBtu/time), of the following:

(A) The gross calorific value of the fuel, in British thermal units per pound (Btu/lb).

(B) The fuel feed rate into a combustion device, in mass of fuel per unit of time (lb/time), as measured, recorded, and reported to the U.S. EPA by the NO_x authorized account representative and as determined by the U.S. EPA in accordance with 40 CFR 75, Subpart H*.

Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(26) "Heat input rate" means the amount of heat input (in mmBtu) divided by unit operating time (in hours) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hours) during which the unit combusts the fuel.

(27) "Large affected unit" means the following:

(A) For units **other than cogeneration units** that commenced operation:

(i) before January 1, 1997, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid;

~~(B) For units that commenced operation~~ **(ii)** on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid;

~~(C) For units that commence operation~~ **(iii)** on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour that:

~~(i)~~ **(AA)** at no time serves a generator producing electricity for sale; or

~~(ii)~~ **(BB)** at any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of twenty-five (25) megawatts or less and has the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit.

(B) For cogeneration units commencing operation:

(i) before January 1, 1997, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and qualifying as an unaffected unit under the acid rain program for 1995 and 1996;

(ii) in 1997 or 1998, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and qualifying as an unaffected unit under the acid rain program for 1997 and 1998;

(iii) on or after January 1, 1999, a unit with a maximum design heat input greater than two hundred fifty million (250,000,000) Btus per hour and qualifying as an unaffected unit under the acid rain program for each year.

Large affected unit does not include a unit subject to 326 IAC 10-3.

(28) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of the unit's total costs, pursuant

to a contract:

(A) for the life of the unit;

(B) for a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(29) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(30) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. The unit may use either of the following:

(A) 40 CFR 75, Appendix D* to report heat input. Calculate this value in accordance with 40 CFR 75*, using the maximum fuel flow rate and the maximum gross calorific value.

(B) A flow monitor and a diluent gas monitor. Report this value in accordance with 40 CFR 75*, using the maximum potential flow rate and either of the following:

(i) The maximum carbon dioxide (CO_2) concentration, in percent of CO_2.

(ii) The minimum oxygen (O_2) concentration, in percent of O_2.

(31) "Maximum potential NO_x emission rate" means:

(A) the emission rate of nitrogen oxides, in pounds per million British thermal units (lb/mmBtu);

(B) calculated in accordance with 40 CFR 75, Appendix F, Section 3*;

(C) using the maximum potential nitrogen oxides concentration as defined in 40 CFR 75, Appendix A, Section 2*; and

(D) either the:

(i) maximum oxygen (O_2) concentration in percent of O_2; or

(ii) minimum carbon dioxide (CO_2) concentration in percent of CO_2;

under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(32) "Maximum rated hourly heat input" means a unit-specific maximum hourly heat input, in million British thermal units (mmBtu), that is the higher of either the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(33) "Monitoring system" means any monitoring system that meets the requirements of 40 CFR 75, Subpart H*, including the following:

(A) A continuous emissions monitoring system.

(B) An excepted monitoring system under 40 CFR 75.19* or 40 CFR 75, Appendix D or E*.

(C) An alternative monitoring system.

(34) "Most stringent state or federal NO_x emissions limitation" means ~~with regard to a NO_x budget opt-in source,~~ the lowest NO_x emissions limitation, in terms of pounds per million British thermal units (lb/mmBtu), that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(35) "Nameplate capacity" means the maximum electrical generating output, in megawatt electrical (MWe), that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(36) "Nontitle V permit" means a federally enforceable permit issued by the department under 326 IAC 2-8.

(37) "NO_x allowance" means an authorization by the department or the U.S. EPA under the nitrogen oxides (NO_x) budget trading program to emit up to one (1) ton of NO_x during the ozone control period of the specified year or of any year thereafter, except as provided in section 14(b) of this rule. "NO_x allowance" also includes an authorization to emit up to one (1) ton of nitrogen oxides during the ozone control period of the specified year or of any year thereafter by the U.S. EPA under 40 CFR 97* or by a permitting authority in accordance with a state NO_x budget trading program established pursuant to 40 CFR 51.121* and approved and administered by the U.S. EPA.

(38) "NO_x allowance deduction" or "deduct NO_x allowances" means the permanent withdrawal of NO_x allowances by the U.S. EPA from a NO_x allowance tracking system compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x budget unit for an ozone control period, determined in accordance with 40 CFR 75, Subpart H* and section 12 of this rule, or for any other allowance surrender obligation under this rule.

(39) "NO_x allowance tracking system" means the system by which the U.S. EPA records allocations, deductions, and transfers of NO_x allowances under the NO_x budget trading program.

(40) "NO_x allowance tracking system account" means an account in the NO_x allowance tracking system established by the U.S. EPA for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(41) "NO_x allowance transfer deadline" means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x budget emissions limitation for the ozone control period immediately preceding the deadline.

(42) "NO_x allowances held" or "hold NO_x allowances" means the NO_x allowances recorded by the U.S. EPA, or submitted to the U.S. EPA for recordation, in accordance with sections 10 and 11 of this rule, in a NO_x allowance tracking system

account.

(43) "NO_x authorized account representative" means either of the following:

(A) For a NO_x budget source or NO_x budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x budget units at the source, in accordance with section 6 of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO_x budget trading program.

(B) For a general account, the natural person who is authorized, in accordance with section 10 of this rule, to transfer or otherwise dispose of NO_x allowances held in the general account.

(44) "NO_x budget emissions limitation" means, for a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for an ozone control period under sections 10(i) and 10(k) of this rule, adjusted by any deductions of the NO_x allowances for any of the following reasons:

(A) To account for excess emissions for a prior ozone control period under section 10(k)(5) of this rule.

(B) To account for withdrawal from the NO_x budget trading program.

(C) For a change in regulatory status, for a NO_x budget opt-in source under section 13(g) through 13(i) of this rule.

(45) "NO_x budget opt-in permit" means a NO_x budget permit covering a NO_x budget opt-in source.

(46) "NO_x budget opt-in source" means a source that includes one (1) or more NO_x budget units:

(A) that has elected to become a NO_x budget source under the NO_x budget trading program; and

(B) whose NO_x budget opt-in permit has been issued and is in effect under section 13 of this rule.

(47) "NO_x budget permit" means the legally binding and federally enforceable written document, or portion of the document:

(A) issued by the department under this rule, including any permit revisions; and

(B) specifying the NO_x budget trading program requirements applicable to the following:

(i) A NO_x budget source.

(ii) Each NO_x budget unit at the NO_x budget source.

(iii) The owners and operators and the NO_x authorized account representative of the NO_x budget source and each NO_x budget unit.

(48) "NO_x budget source" means a source that includes one (1) or more NO_x budget units.

(49) "NO_x budget trading program" means a multistate nitrogen oxides air pollution control and emission reduction program established in accordance with this rule, 40 CFR 97*, and a state NO_x budget trading program established pursuant to 40 CFR 51.121*and approved and administered by the U.S. EPA, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(50) "NO_x budget unit" means a unit that is subject to the NO_x budget ~~trading program~~ emissions limitation under section 1(a) or 13(a) of this rule.

(51) "Operating" means, with regard to a unit under sections 7(c)(4)(B) and 13(a) of this rule, having documented heat input for more than eight hundred seventy-six (876) hours in the six (6) months immediately preceding the submission of an application for an initial NO_x budget permit under section 13(d) of this rule.

(52) "Operator" means any person who operates, controls, or supervises a NO_x budget unit, a NO_x budget source, or a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of a unit or source.

(53) "Opt-in" means to elect to become a NO_x budget unit under the NO_x budget trading program through a final, effective NO_x budget opt-in permit under section 13 of this rule.

(54) "Overdraft account" means the NO_x allowance tracking system account, established by the U.S. EPA under section 10 of this rule, for each NO_x budget source where there are two (2) or more NO_x budget units.

(55) "Owner" means any of the following persons:

(A) Any holder of any portion of the legal or equitable title in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(B) Any holder of a leasehold interest in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(C) Any purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in permit under section 13(d) of this rule is submitted and not denied or withdrawn.

(D) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(56) "Ozone control period" means the period as follows:

(A) For 2004, beginning May 31 and ending on September 30, inclusive.

(B) For 2005 and each year thereafter, beginning May 1 of a year and ending on September 30 of the same year,

inclusive.

(57) "Percent monitor data availability" means, for purposes of sections 13(e)(2) and 15(b)(1)(D) of this rule, total unit operating hours for which quality-assured data were recorded under 40 CFR 75, Subpart H* and section 12 of this rule in a control period, divided by the total number of unit operating hours per control period, and multiplied by one hundred percent (100%).

(58) "Potential electrical output capacity" means thirty-three percent (33%) of a unit's maximum design heat input.

(59) "Rated energy efficiency" means the percentage of gross energy input that is recovered as useable net energy output in the form of electricity or thermal energy, or both, that is used for heating, cooling, industrial processes, or other beneficial uses as follows:

(A) For electric generators, rated energy efficiency is calculated as one (1) net kilowatt hour (three thousand four hundred twelve (3,412) British thermal units) of electricity divided by the unit's design heat rate using the higher heating value of the fuel.

(B) For combined heat and power projects, rated energy efficiency is calculated using the following formula:

Eff% = (NEO + UTO)/GEI

Where: Eff% = Rated energy efficiency.

NEO = Net electrical output of the system converted to British thermal units per unit of time.

UTO = Utilized thermal output or the energy value in British thermal units of thermal energy from the system that is used for heating, cooling, industrial processes, or other beneficial uses, per unit of time.

GEI = Gross energy input, based upon the higher heating value of fuel, per unit of time.

(60) "Receive" or "receipt of" means, when referring to the department or the U.S. EPA, to come into possession of a document, information, or correspondence, whether sent in writing or by authorized electronic transmission, as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the department or the U.S. EPA in the regular course of business.

(61) "Recordation", "record", or "recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the U.S. EPA from one (1) NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(62) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 60, Appendix A*.

(63) "Repowered natural gas-fired generating unit", for the purposes of this rule, means an electricity generating unit that is fueled by natural gas and provides steam to a generation turbine that was previously served by a coal-fired unit that was retired in 2000 or later.

(64) "Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the U.S. EPA, under section 10(e) through 10(g) of this rule.

(65) "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of Section 502(c) of the CAA, a source, including a source with multiple units, shall be considered a single facility.

(66) "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(A) in person;

(B) by United States Postal Service; or

(C) by other means of dispatch or transmission and delivery.

Compliance with any submission, service, or mailing deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(67) "Title V operating permit" means a permit issued under 326 IAC 2-7.

(68) "Title V operating permit regulations" means the rules under 326 IAC 2-7.

(69) "Ton" or "tonnage" means any short ton, two thousand (2,000) pounds. For the purpose of determining compliance with the NO_x budget emissions limitation, total tons for an ozone control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 CFR 75, Subpart H*, with any remaining fraction of a ton equal to or greater than fifty-hundredths (0.50) ton deemed to equal one (1) ton and any fraction of a ton less than fifty-hundredths (0.50) ton deemed to equal zero (0) tons.

(70) "Trading program budget" means the total number of NO_x tons apportioned to all NO_x budget units, in accordance with the NO_x budget trading program, for use in a given ozone control period.

(71) "Unit" means a fossil fuel-fired:

(A) stationary boiler;

(B) combustion turbine; or

(C) combined cycle system.

(72) "Unit operating day" means a calendar day in which a unit combusts any fuel.

(73) "Unit operating hour" or "hour of unit operation" means any hour, or fraction of an hour, during which a unit combusts any fuel.

(74) "United States Environmental Protection Agency" or "U.S. EPA" means the administrator of the U.S. EPA or the administrator's duly authorized representative. The department authorizes the U.S. EPA to assist the department in implementing this rule by carrying out the functions set forth for the U.S. EPA in this rule.

(75) "Utilization" means the heat input, expressed in million British thermal units per unit of time, for a unit. The unit's

total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR 75* if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75* for the year, or shall be based on the best available data reported to the U.S. EPA for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75* for the year.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-2; filed Aug 17, 2001, 3:45 p.m.: 25 IR 19; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1183; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3552)*

SECTION 4. 326 IAC 10-4-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-3 Retired unit exemption

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 any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired.

(b) Any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired shall be exempt from the NO_x budget trading program, except for the provisions of this section and sections 1, 2, 5, and 9 through 11 of this rule.

(c) An exemption under this section shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO_x authorized account representative, authorized in accordance with section 6 of this rule, shall submit a notice to the department and the U.S. EPA. The notice shall state, in a format prescribed by the department, that the unit:

(1) is permanently retired; and

(2) shall comply with the requirements of subsection (e).

(d) After receipt of the notice under subsection (c), the department shall amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subsections (b) and (e).

(e) A unit exempt under this section shall comply with the following provisions:

(1) The unit shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The owners and operators of the unit shall be allocated allowances in accordance with section 9 of this rule. For each ozone control period for which the unit is allocated one (1) or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which U.S. EPA will record the NO_x allowances.

(3) If the unit is located at a source that is required or, but for this exemption, would be required to have an operating permit under 326 IAC 2-7, the unit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days prior to the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(4) If the unit is located at a source that is required or, but for this exemption, would be required to have a FESOP permit under 326 IAC 2-8, the unit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application under section 7(c) of this rule for the unit not less than two hundred seventy (270) days prior to the later of:

(A) May 31, 2004; or

(B) the date on which the unit is to first resume operation.

(5) The owners and operators and, to the extent applicable, the NO_x authorized account representative shall comply with the requirements of the NO_x budget trading program concerning all periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.

(6) A unit that is exempt under this section is not eligible to be a NO_x budget opt-in unit under section 13 of this rule.

(7) The owners and operators shall retain records at the source, or at a central location within Indiana for those owners or operators with unattended sources, demonstrating that the unit is permanently retired for a period of five (5) years. The five (5) year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the department or the U.S. EPA. The owners and operators bear the burden of proof that the unit is permanently retired. Records retained at a central location within Indiana shall be available immediately at the location and submitted to the department or U.S. EPA within three (3) business days following receipt of a written request. Nothing in this subdivision shall alter the record retention requirements for a source under 40 CFR 75*.

(8) A unit exempt under subsection (b) shall lose its exemption on the earlier of the following dates:

(A) The date on which the NO_x authorized account representative submits a NO_x budget permit application under subdivision (3) or (4).

(B) The date on which the NO_x authorized account representative is required under subdivision (3) or (4) to submit a NO_x budget permit application.

(C) The date on which the unit resumes operation, if the unit is not required to submit a permit application for NO_x.

For the purpose of applying monitoring requirements under 40 CFR 75, Subpart H*, a unit that loses its exemption under

this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

*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 or are available for 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 10-4-3; filed Aug 17, 2001, 3:45 p.m.: 25 IR 25; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1569)*

SECTION 5. 326 IAC 10-4-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-9 NO_x allowance allocations
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 9. (a) The trading program budget allocated by the department under subsections (d) through (f) for each ozone control period shall equal the total number of tons of NO_x emissions apportioned to the NO_x budget units under section 1 of this rule for the ozone control period, as determined by the procedures in this section. The total number of tons of NO_x emissions that are available for each ozone control period for allocation as NO_x allowances under this rule are fifty-five thousand seven hundred twenty-nine (55,729) tons apportioned as follows:

(1) For existing units:

(A) forty-three thousand six hundred fifty-four (43,654) tons for electricity generating units in 2004 through 2009 and forty-five thousand thirty-three (45,033) tons thereafter; and

(B) eight thousand five hundred sixty-four (8,564) tons for large affected units;

less the sum of the NO_x limitations (in tons) for each unit under section 1(b) of this rule that is not allocated any NO_x allowances under subsection (d) for the ozone control period and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under subsection (e) for the control period.

(2) For new unit allocation set-asides:

(A) two thousand two hundred ninety-eight (2,298) tons for electricity generating units in 2004 through 2009, and nine hundred nineteen (919) tons thereafter; and

(B) ninety-eight (98) tons for large affected units in 2004 and each year thereafter.

(3) For the energy efficiency and renewable energy allocation set-aside, one thousand one hundred fifteen (1,115) tons.

(b) The department shall allocate NO_x allowances to NO_x budget units according to the following schedule:

(1) For EGUs, a three (3) year allocation that is recorded three (3) years in advance of the ozone control period that the allowances may be used as follows:

(A) Within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods in 2004, 2005, and 2006.

(B) By December 31, 2003, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2007, 2008, and 2009.

(C) By December 31, 2006, the department shall submit to the U.S. EPA the NO_x allowance allocations, in accordance with subsection (c), for the ozone control period in 2010, 2011, and 2012.

(D) By December 31, 2009, and by December 31 every three (3) years thereafter, the department shall submit to the U.S. EPA, the NO_x allowance allocations, in accordance with subsection (c), for the ozone control periods four (4) years, five (5) years, and six (6) years after the year of the allowance allocation.

(2) For large affected units, within thirty (30) days of the effective date of this rule, the department shall submit to the U.S. EPA the NO_x allowances for the ozone control periods in 2004 through 2009. By December 31, 2006, the department shall review the allocations in light of emission trends, new units, and other relevant factors to determine whether revisions are appropriate.

(3) If the department fails to submit to the U.S. EPA the NO_x allowance allocations in accordance with this rule, the U.S. EPA will allocate, for the applicable ozone control period, the same number of NO_x allowances as were allocated for the preceding ozone control period.

(4) The department shall make available for review to the public the NO_x allowance allocations under subdivision (1)(B), (1)(C), and (1)(D) on December 31 of each year cited in subdivision (1)(B), (1)(C), and (1)(D) and shall provide a thirty (30) day opportunity for submission of objections to the NO_x allowance allocations. Objections shall be limited to addressing whether the NO_x allowance allocations are in accordance with this section. Based on any such objections, the department shall consider any objections and input from affected sources and, if appropriate, adjust each determination to the extent necessary to ensure that it is in accordance with this section. Any revised NO_x allowance allocations shall be submitted to the U.S. EPA for recordation by the following April 1.

(c) The heat input, in million British thermal units (mmBtu), used for calculating NO_x allowance allocations for each NO_x budget unit under section 1 of this rule shall be:

(1) For a NO_x allowance allocation under subsection (b)(1)(A), the average of the two (2) highest amounts of the unit's heat input for the ozone control periods in 1995 through 1999.

(2) For a NO_x allowance allocation under subsection (b)(1)(B)

through (b)(1)(D), the unit's average of the two (2) highest heat inputs for the ozone control period in the years that are one (1), two (2), three (3), four (4), and five (5) years before the year when the NO_x allocation is being calculated. For the purpose of this subdivision, the ozone control period for the year 2004 shall be from May 1 through September 30.

(3) If a NO_x budget unit does not have a full five (5) years of ozone control period heat inputs, the following shall apply:

(A) For a NO_x budget unit with ozone control period heat inputs for more than two (2) years, the average of the two (2) highest ozone control period heat inputs.

(B) For a NO_x budget unit with two (2) years of ozone control period heat input, the average of the ozone control period heat input for the two (2) years.

(C) For a NO_x budget unit with one (1) year of ozone control period heat input, the actual ozone control period heat input for that year.

(4) For a NO_x allowance allocation under subsection (b)(1)(B), (b)(1)(C), and (b)(1)(D) for a unit exempt under section 1(b) of this rule, the heat input shall be treated as zero (0) if the unit was exempt during the previous allocation period.

The unit's total heat input for the ozone control period in each year shall be determined in accordance with 40 CFR 75* if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75* for the year or shall be based on the best available data reported to the department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75* for the year. The owner or operator of a NO_x budget unit shall submit heat input data within thirty (30) days if requested by the department.

(d) For each ozone control period under subsection (b), the department shall allocate to all NO_x budget units that have been in operation for at least one (1) year prior to the year in which allocations are made, and for new NO_x budget units that have commenced operation on or after May 1, 2000, and that have not submitted notification in accordance with subsection (i), a total number of NO_x allowances equal to the amount under subsection (a)(1), in accordance with the following procedures:

(1) The department shall allocate NO_x allowances to each electricity generating unit in an amount equaling:

(A) fifteen-hundredths (0.15) pound per million British thermal units; or

(B) the allowable emission rate as of the date that the unit becomes affected by this rule;

whichever is more stringent, except that a coal-fired electrical generation unit with a rated energy efficiency of forty percent (40%) or higher, a repowered natural gas-fired electrical generating unit with a rated energy efficiency of forty-five percent (45%) or higher, a natural gas-fired electrical generating unit, that is not repowered, with a rated energy efficiency of fifty percent (50%) or higher, or a combined heat and power unit with an overall rated energy efficiency of sixty percent (60%) or higher shall be allocated allowances based on fifteen-hundredths (0.15) lb/mmBtu notwithstanding the allowable emission rate, multiplied by the heat input determined under subsection (c) and the product divided by two thousand (2,000) pounds per ton, rounded to the nearest whole NO_x allowance, as appropriate.

(2) If the initial total number of NO_x allowances allocated to all electricity generating units for an ozone control period under subdivision (1) does not equal the amount under subsection (a)(1), the department shall adjust the total number of NO_x allowances allocated to all NO_x budget units for the ozone control period under subdivision (1) so that the total number of NO_x allowances allocated equals the amount under subsection (a)(1). This adjustment shall be made by:

(A) multiplying each unit's allocation by the amount under subsection (a)(1); and

(B) dividing by the total number of NO_x allowances allocated under subdivision (1) and rounding to the nearest whole NO_x allowance, as appropriate.

(3) The department shall allocate NO_x allowances to each large affected unit in an amount equaling the following:

Source	Unit	Allowances
(A) Alcoa	1	1,089
	2	1,057
	3	1,026
(B) American Electric Power-Rockport	Auxiliary Boiler 1	2
	Auxiliary Boiler 2	1
(C) BP Amoco-Boiler House 1	1	21
	2	21
	3	21
	4	21
	5	22
(D) BP Amoco-Boiler House 3	1	252
	2	252
	3	252
	4	252
	5	252
(E) Citizens Thermal Energy	11	120
	12	138
	13	85
	14	75
	15	54
	16	69
(F) Ispat Inland	211	110
	212	110
	213	109
	401	255
	402	255
	403	257
	404	257
	405	344

	501	137
	502	137
	503	137
(G) New Energy	003	238
(H) Portside Energy	Auxiliary Boiler 1	50
	Auxiliary Boiler 2	5
	Combustion Turbine	34
(I) Purdue University	1	90
	2	91
	3	8
	5	72
(J) U.S. Steel-Gary Works	720 Boiler #1	107
	720 Boiler #2	107
	720 Boiler #3	107
	701 Boiler #1	78
	701 Boiler #2	78
	701 Boiler #3	78
	701 Boiler #5	86
	701 Boiler #6	145

For units having an emission limitation only in tons on an annual basis, the allowable emission rate in pounds per million Btu (lb/mmBtu) shall be determined by dividing the emission limitation by eight thousand seven hundred sixty (8,760) hours, multiplying by two thousand (2,000) pounds, and dividing the result by the unit's permitted heat input rate. For units having an emission limitation only in parts per million (ppm), the conversion factors under 326 IAC 3-4-3 shall be used.

(e) For new NO_x budget units that commenced operation, or are projected to commence operation, on or after May 1, 2000, or for projects that reduce NO_x emissions through the implementation of energy efficiency or renewable energy measures, or both, implemented during an ozone control period beginning May 1, 2004, the department shall allocate NO_x allowances in accordance with the following procedures:

(1) The department shall establish allocation set-asides for new NO_x budget units and for energy efficiency and renewable energy projects for each ozone control period as follows:

(A) The new unit allocation set-asides shall be allocated NO_x allowances equal to the following:

(i) For EGUs, two thousand two hundred ninety-eight (2,298) tons (five percent (5%) of EGU budget) for each ozone control period in 2004 through 2009, and nine hundred nineteen (919) tons (two percent (2%) of the EGU budget) for each ozone control period thereafter.

(ii) For large affected units, ninety-eight (98) tons (one percent (1%) of the large affected unit budget) in 2004 and each year thereafter.

(B) The energy efficiency and renewable energy allocation set-aside shall be allocated NO_x allowances equal to one thousand one hundred fifteen (1,115) tons (two percent (2%) of overall trading budget).

(2) The NO_x authorized account representative of a new NO_x budget unit or a general account may submit to the department a request, in writing or in a format specified by the department, for NO_x allowances as follows:

(A) For a new NO_x budget unit, for one (1) ozone control period under subsection (b), during which the NO_x budget unit commenced, or is projected to commence, operation. The NO_x authorized account representative shall reapply each year until the NO_x budget unit is eligible to use NO_x allowances allocated under subsection (d).

(B) For energy efficiency or renewable energy projects, project sponsors may request the reservation of NO_x allowances, for one (1) control period in which the project is implemented. The NO_x authorized account representative may reapply each year, not to exceed five (5) ozone control periods. Requests for allowances may be made only for projects implemented within two (2) years of the beginning of the first ozone control period for which allowances are requested. Projects must equal at least one (1) ton of NO_x emissions, and multiple projects may be aggregated into one (1) allowance allocation request to equal one (1) or more tons of NO_x emissions.

The NO_x allowance allocation request must be submitted by September 1 of the calendar year that is one (1) year in advance of the first ozone control period for which the NO_x allowance allocation is requested and for new NO_x budget units, after the date on which the department issues a permit to construct the NO_x budget unit and final approval is granted from the Indiana utility regulatory commission.

(3) In a NO_x allowance allocation request under this subsection, the NO_x authorized account representative may request for an ozone control period, NO_x allowances in an amount that does not exceed the following:

(A) For an electricity generating unit, multiplying the following:

(i) fifteen-hundredths (0.15) pound per million British thermal units or the allowable emission rate as of the date that the unit becomes affected by this rule, whichever is more stringent, except that a coal-fired electrical generation unit with a rated energy efficiency of forty percent (40%) or higher, a repowered natural gas-fired electrical generating unit with a rated energy efficiency of forty-five percent (45%) or higher, a natural gas-fired electrical generating unit that is not repowered with a rated energy efficiency of fifty percent (50%) or higher, or a combined heat and power unit with an overall rated energy effi-

ciency of sixty percent (60%) or higher shall be allocated allowances based on fifteen-hundredths (0.15) lb/mmBtu notwithstanding the allowable emission rate;

(ii) the NO_x budget unit's maximum design heat input in million British thermal units per hour ~~as follows:~~ **for a unit that is:**

(AA) ~~For a unit that is~~ permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is not a simple cycle system, seventy-five percent (75%) of the maximum design heat input;

(BB) ~~For a unit that is~~ not permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is a combined cycle system, fifty percent (50%) of the maximum design heat input;

(CC) ~~For a unit that is~~ not permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is not combined cycle system or for a unit that is permitted as a major stationary source or major modification under 326 IAC 2-2 or 326 IAC 2-3 and that is a simple cycle system, twenty-five percent (25%) of the maximum design heat input;

(iii) the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate;

and dividing the product by two thousand (2,000) pounds per ton, and rounded to the nearest ton. The NO_x allowances requested shall not exceed annual allowable NO_x emissions.

(B) For a large affected unit multiplying:

(i) the lesser of:

~~(i)~~ **(AA)** seventeen-hundredths (0.17) pound per million British thermal units; or

(BB) the allowable emission rate as of the date that the unit becomes affected by this rule, whichever is more stringent;

(ii) the NO_x budget unit's maximum design heat input in million British thermal units per hour; and

(iii) the number of hours remaining in the ozone control period starting with the first day in the ozone control period on which the unit operated or is projected to operate;

and dividing the product by two thousand (2,000) pounds per ton and rounded to the ~~nearcast~~ **nearest** ton. The NO_x allowances requested shall not exceed annual allowable NO_x emissions.

(C) For energy efficiency or renewable energy projects:

(i) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by end-users or nonutility third parties receive allowances based upon the number of kilowatt hours of electricity saved during an ozone control period and the following formula:

Allowances = (kWS * 0.0015)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(ii) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of electricity and that are sponsored by NO_x allowance account holders that own or operate units that produce electricity and are subject to the emission limitations of this rule will be awarded allowances according to the following formula:

Allowances = (kWS * 0.000375)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWS = The number of kilowatt hours of electricity saved during an ozone control period by the project.

(iii) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are not NO_x budget units will be awarded allowances according to the following formula:

Allowances = (((Et1/Pt1) - (Et2/Pt2)) × Pt2 × NPt2 × (NPt1/NPt2))/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period prior to project implementation.

Pt1 = Units of product produced per ozone control period prior to project implementation.

Et2 = Energy consumed in the most recent ozone control period.

Pt2 = Units of product produced in the most recent ozone control period.

NPt1 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units prior to project implementation.

NPt2 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units in the most recent ozone control period.

(iv) Projects in section 2(18)(A) of this rule that claim allowances based upon reductions in the consumption of energy other than electricity and that are NO_x budget units will be awarded allowances according to the following formula:

Allowances = (((Et1/Pt1) - (Et2/Pt2)) × Pt2 × NPt2 × (NPt1/NPt2) × 0.25)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = Energy consumed per ozone control period prior to project implementation.
Pt1 = Units of product produced per ozone control period prior to project implementation.
Et2 = Energy consumed in the most recent ozone control period.
Pt2 = Units of product produced in the most recent ozone control period.
NPt1 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units prior to project implementation.
NPt2 = NO_x produced during the consumption of energy, measured in pounds per million British thermal units in the most recent ozone control period.

Product produced, as used in these formulas in this item and item (iii), may include manufactured items; raw, intermediate, or final materials; or other products measured in discrete units and produced as a result of the consumption of energy in a specific process or piece of equipment. Claims for allowances must include documentation of NO_x emissions per British thermal unit both before and after implementation of the project for the energy-consuming process for which energy savings are claimed.

(v) Projects in section 2(18)(B) of this rule that claim allowances based upon highly efficient electricity generation using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end-user that meet the thresholds specified in section 2(18)(B) of this rule, that are not electric generating units or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties, receive allowances based upon the net amount of electricity generated during an ozone control period and the following formula:

Allow = (kWG × (0.0015 - NO_x))/2000

Where: Allow = The number of allowances awarded to a project sponsor.
kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.
NO_x = The amount of NO_x produced during the generation of electricity measured in pounds per kilowatt hour.

(vi) Projects in section 2(18)(B) of this rule that claim allowances based upon highly efficient combined heat and power systems for the predominant use of a single end user that meet the thresholds specified in section 2(18)(B) of this rule, that are not electric generating units or large affected units as defined in section 2 of this rule, and that are sponsored by end-users or nonutility third parties receive allowances based upon the net amount of energy generated and used during an ozone control period and the following formula:

Allow = ~~((BtuIn × Efficiency)/3,412) × (0.0015 - (NO_xRate/EnRate))/2000~~
(NO_x convt-NO_x CHP)/2,000

Where: Allow = The number of allowances awarded to a project sponsor.
NO_x convt = [(0.15 × 3,412 × kWG / 0.34) + (0.17 × HeatOut / 0.8)]/1,000,000
NO_x CHP = (BtuIn × No_xRate) / 1,000,000
kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.
BtuIn = The number of British thermal units (Btu) of fuel used to produce electricity, heat, or steam during an ozone control period by the project.
~~Efficiency = The effective net efficiency of a combined heat and power system, calculated as (kWG × 3,412)/(BtuIn-HeatOut).~~
~~Where: kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.~~
~~HeatOut = The number of British thermal units (Btu) of heat or steam effectively used for space, water, or industrial process heat during an ozone control period by the project divided by eight-tenths (0.8).~~
NO_xRate = NO_x emitted **during normal system operation by the project** measured in pounds per ~~hour of normal system operation.~~ **million Btu of fuel input.**
~~EnRate = The amount of energy measured in British thermal units (Btu) of electricity generated and heat or steam effectively used for space, water, or industrial process heat per hour of normal system operation, divided by three thousand four hundred twelve (3,412).~~

(vii) Projects in section 2(18)(D) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period. Highly efficient electricity generation projects using systems such as combined cycle, microturbines, and fuel cell systems for the predominant use of a single end-user that meet a rated energy efficiency threshold of sixty percent (60%) for combined cycle systems and forty percent (40%) for microturbines and fuel cells and that are sponsored by NO_x allowance account holders that own or operate units that produce electricity and are subject to the emission limitations of this rule will receive allowances

based upon the net amount of electricity generated during an ozone control period and the following formula:

Allowances = (kWG * (0.0015 - NO_x) * 0.25)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of net kilowatt hours of electricity generated during an ozone control period by the project.

NO_x = The amount of NO_x produced during the generation of electricity measured in pounds per kilowatt hour.

(viii) Projects in section 2(18)(C) and 2(18)(D) of this rule receive allowances based upon the number of kilowatt hours of electricity each project generates during an ozone control period and according to the following formula:

Allowances = (kWG * 0.0015)/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

kWG = The number of kilowatt hours of electricity generated during an ozone control period by the project.

(ix) Projects in section 2(18)(E) and 2(18)(F) of this rule receive allowances based upon the difference in emitted NO_x per megawatt hour of operation for units before and after replacement or improvement and according to the following formula:

Allowances = ((Et1 - Et2) * h) * 0.25/2000

Where: Allowances = The number of allowances awarded to a project sponsor.

Et1 = The emission rate in pounds per megawatt hour of NO_x of the unit before improvement or replacement.

Et2 = The emission rate in pounds per megawatt hour of NO_x of the unit after improvement or replacement.

h = The number of megawatt hours of operation during the ozone control period.

Allowances will be awarded only after verification of project implementation and certification of energy, emission, or electricity savings, as appropriate. The department will consult the Indiana department of commerce concerning verification and certification.

(4) The department shall review, and allocate NO_x allowances pursuant to, each NO_x allowance allocation request by December 31 of each year as follows:

(A) Upon receipt of the NO_x allowance allocation request, the department shall determine whether and shall make any necessary adjustments to the request to ensure that:

(i) for electricity generating units, the ozone control period and the number of allowances specified are consistent with the requirements of subdivision (3)(A);

(ii) for large affected units, the ozone control period and the number of allowances specified are consistent with the requirements of subdivision (3)(B);

(iii) for energy efficiency and renewable energy projects the number of allowances specified are consistent with the requirements of subdivision (3)(C); and

(iv) for units exempt under section 1(b) of this rule, the department will determine the sum of the NO_x emission limitations (in tons of NO_x) on which the unit's exemption under section 1(b) of this rule is based.

(B) The department shall allocate allowances to all qualifying energy efficiency and renewable energy projects prior to allocating allowances to any new NO_x budget unit. The department shall give first priority to energy efficiency and renewable energy projects under section 2(18)(A), 2(18)(C), and 2(18)(D) of this rule, next section 2(18)(B) of this rule, next section 2(18)(E) of this rule, and finally section 2(18)(F) of this rule.

(C) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO_x allowances requested, as adjusted under clause (A), to the energy efficiency and renewable energy projects. Any unallocated allowances shall be distributed as follows:

(i) Fifty percent (50%) of the unallocated allowances shall remain in the set-aside for use in the next year's allocation.

(ii) Fifty percent (50%) of the unallocated allowances shall be returned to existing large affected units on a pro rata basis.

(D) If the energy efficiency and renewable energy allocation set-aside for the ozone control period for which NO_x allowances are requested has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), the department shall allocate the allocation set-aside on a pro rata basis, except that allowances requested for projects under section 2(18)(A), 2(18)(C), and 2(18)(D) of this rule shall be allocated first, allocated to projects under section 2(18)(B) of this rule second, allocated to projects under section 2(18)(E) of this rule third, and allocated to projects under section 2(18)(F) of this rule fourth.

(E) If the new unit allocation set-aside for the ozone control period for which NO_x allowances are requested, less the amount under clause (A)(iv), has an amount of NO_x allowances greater than or equal to the number requested, as adjusted under clause (A), the department shall allocate the amount of the NO_x allowances requested, as adjusted under clause (A), to the NO_x budget unit. If the energy efficiency and renewable energy set-aside is oversubscribed in clause (D), the remaining allowances shall be transferred to the energy efficiency and renewable energy set-aside. If the energy efficiency and renewable energy set-aside is undersubscribed in clause (C), the remaining allowances

shall be transferred to existing sources on a pro rata basis.

(F) If the new unit allocation set-aside for the ozone control period for which NO_x allowances are requested, less the amount under clause (A)(iv), has an amount of NO_x allowances less than the number requested, as adjusted under clause (A), the department shall allocate the allocation set-aside to the NO_x budget units on a pro rata basis.

(G) After a new budget unit has operated in one (1) ozone control period, it becomes an existing budget unit unless a notification has been received under subsection (i) requesting allocations under this subsection, and the department will allocate allowances for the ozone control period according to subsections (b) and (d). The unit will continue to receive allowances from the new unit set-aside according to subdivision (3) until it is eligible to use allowances allocated under subsection (d).

By December 31 of each year, the department shall take appropriate action under subdivision (4) and notify the NO_x authorized account representative that submitted the request and the U.S. EPA of the number of NO_x allowances allocated for the ozone control period to the NO_x budget unit or energy efficiency or renewable energy projects.

(f) For a new NO_x budget unit that is allocated NO_x allowances under subsection (e) for an ozone control period, the U.S. EPA will deduct NO_x allowances under section 10(k)(1) or 10(k)(8) of this rule to account for the actual emissions of the unit during the ozone control period. Any allowances remaining in the account shall be returned to the new source unit set-aside.

(g) After making the deductions for compliance under section 10(k)(1) or 10(k)(8) of this rule for an ozone control period, the U.S. EPA will notify the department whether any NO_x allowances remain in the allocation set-asides for the ozone control period. Any NO_x allowances remaining in the new unit allocation set-asides shall remain in the new unit allocation set-aside for use in the next year's allocation.

(h) If the number of banked allowances in the new unit set-asides or the energy efficiency set-aside is greater than the following amounts:

(1) For the EGU new unit set-aside, three thousand four hundred thirteen (3,413) tons for each year in 2004 through 2009 and two thousand thirty-four (2,034) tons each year thereafter.

(2) For the large affected new unit set-aside, one thousand two hundred thirteen (1,213) tons in 2004 and each year thereafter.

(3) For energy efficiency and renewable energy set-aside, two thousand two hundred thirty (2,230) tons in 2004 and each year thereafter.

Any banked allowances in excess of the values in subsection (e)(1)(A) or (e)(1)(B) shall be allocated to the relevant existing NO_x budget units on a pro rata basis. The allowances from the energy efficiency and renewable energy set-aside shall be allocated to existing large affected units.

(i) A new EGU that commenced operation on or after May 1, 2000, has the option to remain in the new unit set-aside and have allowances allocated in accordance with subsection (e) until such time that it has heat input data for at least two (2) full ozone control periods, but not more than five (5) full ozone control periods for the purpose of determining heat input under subsection (c). The new NO_x budget unit shall submit a notification to the department by no later than December 1 of the year prior to the allocation schedule in subsection (b) indicating the unit is to receive NO_x allowances is accordance with subsection (e).

*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 10-4-9; filed Aug 17, 2001, 3:45 p.m.: 25 IR 32; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1183; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3558)*

SECTION 6. 326 IAC 10-4-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-13 Individual opt-ins

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

Sec. 13. (a) A unit may qualify to become a NO_x budget opt-in source under this section if the unit meets the following requirements:

(1) Is not a NO_x budget unit under section 1 of this rule.

(2) Has all of its emissions vented to a stack.

(3) Is currently operating.

A unit that is a NO_x budget unit, is covered by an exemption under section 1(b) of this rule or a retired unit exemption under section 3 of this rule, or is not operating is not eligible to become a NO_x budget opt-in source.

(b) Except otherwise as provided in this rule, a NO_x budget opt-in source shall be treated as a NO_x budget unit for purposes of applying sections 1 through 12 and 14 of this rule.

(c) A unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, or a NO_x budget opt-in source, located at the same source as one (1) or more NO_x budget units, shall have the same NO_x authorized account representative as the NO_x budget units.

(d) In order to apply for an initial NO_x budget opt-in permit, the NO_x authorized account representative of a unit qualified under subsection (a) may submit an application to the department at any time, except as provided under subsection (g), that includes the following:

(1) A complete NO_x budget permit application under section 7(c) of this rule.
(2) A monitoring plan submitted in accordance with section 12 of this rule.
(3) A copy of the complete account certificate of representation submitted to U.S. EPA under section 6(h) of this rule, if no NO_x authorized account representative has been previously designated for the unit.

The NO_x authorized account representative of a NO_x budget opt-in source shall submit a complete NO_x budget permit application under section 7(c) of this rule to renew the NO_x budget opt-in permit in accordance with section 7(b)(1)(C) and 7(b)(2)(C) of this rule and, if applicable, an updated monitoring plan in accordance with section 12 of this rule.

(e) The department shall issue or deny a NO_x budget opt-in permit for a unit for which an initial application for a NO_x budget opt-in permit under subsection (d) is submitted, in accordance with section 7(a) of this rule and the following:
(1) The department shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x budget opt-in permit under subsection (d). A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with section 12 of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.
(2) If the department determines that the unit's monitoring plan is sufficient under subdivision (1) and after completion of monitoring system certification under 40 CFR 75, Subpart H* and section 12 of this rule, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with 40 CFR 75, Subpart H* and section 12 of this rule for one (1) full ozone control period during which percent monitor data availability is not less than ninety percent (90%) and during which the unit is in full compliance with any applicable state or federal NO_x emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a NO_x budget unit prior to issuance of a NO_x budget opt-in permit covering the unit.
(3) Based on the information monitored and reported under subdivision (2), the unit's baseline heat rate shall be calculated as the unit's total heat input, in million British thermal units, for the ozone control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x mass emissions, in pounds, for the ozone control period divided by the unit's baseline heat rate.
(4) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under subdivision (3), the department shall serve a draft NO_x budget opt-in permit on the NO_x authorized account representative of the unit.
(5) Within twenty (20) days after the issuance of the draft NO_x budget opt-in permit, the NO_x authorized account representative of the unit must submit to the department a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_x budget opt-in permit under subsection (d). The department shall treat the failure to make a timely submission as a withdrawal of the NO_x budget opt-in permit application.
(6) If the NO_x authorized account representative confirms the intention to opt in the unit under subdivision (5), the department shall issue the draft NO_x budget opt-in permit in accordance with section 7(a) of this rule.
(7) Notwithstanding subdivisions (1) through (6), if at any time before issuance of a draft NO_x budget opt-in permit for the unit, the department determines that the unit does not qualify as a NO_x budget opt-in source under subsection (a), the department shall issue a draft denial of a NO_x budget opt-in permit for the unit in accordance with section 7(a) of this rule.
(8) A NO_x authorized account representative of a unit may withdraw its application for a NO_x budget opt-in permit under subsection (d) at any time prior to the issuance of the final NO_x budget opt-in permit. Once the application for a NO_x budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x budget permit under subsection (d).
(9) The effective date of the initial NO_x budget opt-in permit shall be May 1 of the first ozone control period starting after the issuance of the initial NO_x budget opt-in permit by the department. The unit shall be a NO_x budget opt-in source and a NO_x budget unit as of the effective date of the initial NO_x budget opt-in permit.

(f) The following shall apply to the content of a NO_x budget opt-in permit:
(1) Each NO_x budget opt-in permit, including any draft or proposed NO_x budget opt-in permit, if applicable, shall contain all elements required for a complete NO_x budget opt-in permit application under section 7(c) of this rule.
(2) Each NO_x budget opt-in permit is deemed to incorporate automatically the definitions of terms under section 2 of this rule and, upon recordation by the U.S. EPA under this section and sections 10 and 11 of this rule, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x budget opt-in source covered by the NO_x budget opt-in permit or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located.

(g) The following requirements must be satisfied in order to withdraw an opt-in unit from the NO_x budget trading program:
(1) The NO_x authorized account representative of a NO_x budget opt-in source shall submit to the department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than ninety (90) days prior to the requested effective date of withdrawal.
(2) Before a NO_x budget opt-in source covered by a request under subdivision (1) may withdraw from the NO_x budget

trading program and the NO_x budget opt-in permit may be terminated under subdivision (6), the following conditions must be met:

(A) For the ozone control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the department an annual compliance certification report in accordance with section 8 of this rule.

(B) If the NO_x budget opt-in source has excess emissions for the ozone control period immediately before the withdrawal is to be effective, the U.S. EPA will deduct or have deducted from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, the full amount required under section 10(k)(5) through 10(k)(7) of this rule for the ozone control period.

(C) After the requirements for withdrawal under this subdivision and subdivision (1) are met, the U.S. EPA will deduct from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as any NO_x allowances allocated to that source under subsection (i) for any ozone control period for which the withdrawal is to be effective. The U.S. EPA will close the NO_x budget opt-in source's compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(3) A NO_x budget opt-in source that withdraws from the NO_x budget trading program shall comply with all requirements under the NO_x budget trading program concerning all years for which the NO_x budget opt-in source was a NO_x budget opt-in source, even if the requirements arise or must be complied with after the withdrawal takes effect.

(4) After the requirements for withdrawal under subdivisions (1) and (2) are met, including deduction of the full amount of NO_x allowances required, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source of the acceptance of the withdrawal of the NO_x budget opt-in source as of a specified effective date that is after the requirements have been met and that is prior to May 1 or after September 30.

(5) If the requirements for withdrawal under subdivisions (1) and (2) are not met, the department shall issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source that the NO_x budget opt-in source's request to withdraw is denied. If the NO_x budget opt-in source's request to withdraw is denied, the NO_x budget opt-in source shall remain subject to the requirements for a NO_x budget opt-in source.

(6) After the department issues a notification under subdivision (4) that the requirements for withdrawal have been met, the department shall revise the NO_x budget permit covering the NO_x budget opt-in source to terminate the NO_x budget opt-in permit as of the effective date specified under subdivision (1). A NO_x budget opt-in source shall continue to be a NO_x budget opt-in source until the effective date of the termination.

(7) If the department denies the NO_x budget opt-in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with subdivisions (1) and (2).

Once a NO_x budget opt-in source withdraws from the NO_x budget trading program and its NO_x budget opt-in permit is terminated under this section, the NO_x authorized account representative may not submit another application for a NO_x budget opt-in permit under subsection (d) for the unit prior to the date that is four (4) years after the date on which the terminated NO_x budget opt-in permit became effective.

(h) When a NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the NO_x authorized account representative shall notify the department and the U.S. EPA in writing of the change in the NO_x budget opt-in source's regulatory status within thirty (30) days of the change. If there is a change in the regulatory status, the department and the U.S. EPA will take the following actions concerning a NO_x budget opt-in source:

(1) When the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule, the department shall revise the NO_x budget opt-in source's NO_x budget opt-in permit to meet the requirements of a NO_x budget permit under section 7(d) and 7(e) of this rule as of an effective date that is the date on which the NO_x budget opt-in source becomes a NO_x budget unit under section 1 of this rule.

(2) The U.S. EPA will deduct from the compliance account for the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget source where the unit is located, NO_x allowances equal in number to, and allocated for, the same or a prior ozone control period as follows:

(A) Any NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for any ozone control period after the last ozone control period during which the unit's NO_x budget opt-in permit was effective.

(B) If the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the NO_x allowances allocated to the NO_x budget unit, as a NO_x budget opt-in source, under subsection (i) for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(3) The NO_x authorized account representative shall ensure that the compliance account of the NO_x budget unit under subdivision (1), or the overdraft account of the NO_x budget

source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under subdivision (2). If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(4) For every ozone control period during which the NO_x budget permit revised under subdivision (1) is effective, the following shall apply:

(A) The NO_x budget unit under subdivision (1) shall be treated, solely for the purposes of NO_x allowance allocations under section 9(c) through 9(e) of this rule, as a unit that commenced operation on the effective date of the NO_x budget permit revision under subdivision (1) and shall be allocated NO_x allowances under section 9(c) through 9(e) of this rule.

(B) Notwithstanding clause (A), if the effective date of the NO_x budget permit revision under subdivision (1) is during an ozone control period, the following number of NO_x allowances shall be allocated to the NO_x budget unit. The number of NO_x allowances otherwise allocated to the NO_x budget unit under section 9(c) through 9(e) of this rule for the ozone control period multiplied by the ratio of the number of days, in the ozone control period, starting with the effective date of the permit revision under subdivision (1), divided by the total number of days in the ozone control period.

(5) When the NO_x authorized account representative of a NO_x budget opt-in source does not renew its NO_x budget opt-in permit under subsection (d), the U.S. EPA will deduct from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior ozone control period as any NO_x allowances allocated to the NO_x budget opt-in source under subsection (i) for any ozone control period after the last ozone control period for which the NO_x budget opt-in permit is effective. The NO_x authorized account representative shall ensure that the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, includes the NO_x allowances necessary for completion of the deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the U.S. EPA will deduct the required number of NO_x allowances, regardless of the ozone control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(6) After the deduction under subdivision (5) is completed, the U.S. EPA will close the NO_x budget opt-in source's compliance account. If any NO_x allowances remain in the compliance account after completion of the deduction and any deduction under section 10(j) and 10(k) of this rule, the U.S. EPA will close the NO_x budget opt-in source's compliance account and will establish, and transfer any remaining allowances to a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

(i) The department shall allocate NO_x allowances to NO_x budget opt-in sources as follows:

(1) By December 31 immediately before the first ozone control period for which the NO_x budget opt-in permit is effective, the department shall allocate NO_x allowances to the NO_x budget opt-in source and submit to the U.S. EPA the allocation for the ozone control period in accordance with subdivision (3).

(2) By no later than December 31, after the first ozone control period for which the NO_x budget opt-in permit is in effect, and December 31 of each year thereafter, the department shall allocate NO_x allowances to the NO_x budget opt-in source and submit to the U.S. EPA allocations for the next ozone control period in accordance with subdivision (3).

(3) For each ozone control period for which the NO_x budget opt-in source has an approved NO_x budget opt-in permit, the NO_x budget opt-in source shall be allocated NO_x allowances according to the following procedures:

(A) The heat input, in million British thermal units, used for calculating NO_x allowance allocations shall be the lesser of the following:

(i) The NO_x budget opt-in source's baseline heat input determined pursuant to subsection (e)(3).

(ii) The NO_x budget opt-in source's heat input, as determined in accordance with section 12 of this rule, for the ozone control period in the year prior to the year of the ozone control period for which the NO_x allocations are being calculated.

(B) The department shall allocate NO_x allowances to the NO_x budget opt-in source in an amount equaling the heat input, in million British thermal units, determined under clause (A) multiplied by the lesser of: ~~the following:~~

(i) the NO_x budget opt-in source's baseline NO_x emissions rate, in pounds per million British thermal units, determined pursuant to subsection (e)(3); **or**

(ii) the most stringent state or federal NO_x emissions limitation applicable to the NO_x budget opt-in source during the ozone control period;

then the product divided by two thousand (2,000) pounds per ton and rounded to the nearest ton.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-13; filed Aug 17, 2001, 3:45 p.m.: 25 IR 48; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1184; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3568)*

SECTION 7. 326 IAC 10-4-14 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-14 NO_x allowance banking
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 14. (a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account as follows:

(1) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account shall remain in the account unless and until the NO_x allowance is deducted or transferred under:

(A) section 8(d), 8(e), 10(j), 10(k), 11, or 13 of this rule; or

(B) subsection (b).

(2) The U.S. EPA will designate, as a banked NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the U.S. EPA has made all deductions for a given ozone control period from the compliance account or overdraft account pursuant to section 10(j) and 10(k) of this rule, 40 CFR 97*, a state NO_x budget trading program established pursuant to 40 CFR 51.121*and approved and administered by the U.S. EPA, or a federal implementation plan and that was allocated for that ozone control period or a ozone control period in a prior year.

(b) Each year starting in 2005, after the U.S. EPA has completed the designation of banked NO_x allowances under subsection (a)(2) and before May 1 of the year, the U.S. EPA will determine the extent that banked NO_x allowances may be used for compliance in the ozone control period for the current year as follows:

(1) The U.S. EPA will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked NO_x allowance may be deducted for compliance in accordance with section 10(k) of this rule.

(3) If the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the trading program budget for the ozone control period, any banked allowance may be deducted for compliance in accordance with section 10(k) of this rule, except as follows:

(A) The U.S. EPA will determine the following ratio:

(i) One-tenth (0.10) multiplied by the sum of the trading program budget for the ozone control period.

(ii) Divided by the total number of banked NO_x allowances determined, under subdivision (1), to be held in compliance accounts, overdraft accounts, or general accounts.

(B) The U.S. EPA will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined under clause (A). The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with section 10(k) of this rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with section 10(k) of this rule, except that, if these NO_x allowances are used to make a deduction, two (2) NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under section 10(k) of this rule.

*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, ~~Tenth Floor,~~ Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-14; filed Aug 17, 2001, 3:45 p.m.: 25 IR 52; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1184; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3572)*

SECTION 8. 326 IAC 10-4-15 IS AMENDED TO READ AS FOLLOWS:

326 IAC 10-4-15 Compliance supplement pool
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 15. (a) The department may allow sources required to implement NO_x emission control measures by May 31, 2004, and subject to this rule, to demonstrate compliance in the 2004 and 2005 ozone control periods using credit issued from a compliance supplement pool in accordance with this section. A source may not use credit from the compliance supplement pool to demonstrate compliance after the 2005 ozone control period.

(b) The department may distribute NO_x allocations from the compliance supplement pool to NO_x budget units that are required to implement control measures using one (1) or both of the following mechanisms:

(1) The department may issue credits to NO_x budget units that implement emissions reductions beyond all applicable requirements from May 1 through and including September 30 in any year in 2001 through 2003 according to the following provisions:

(A) The department shall complete the issuance process no later than March 31, the year after the control measures were implemented.

(B) The emissions reduction may not be required by Indiana's state implementation plan (SIP), state law or rule, or be otherwise required by the Clean Air Act (CAA).

(C) The emissions reduction must be verified by the source

as actually having occurred from May 1 through and including September 30 in any year in 2001 through 2003.

(D) Each NO_x budget unit for which the owner or operator requests any early reduction credits under this section shall monitor NO_x emissions in accordance with 40 CFR 75, Subpart H* starting in the ozone control period prior to the ozone control period for which the early reduction credits are requested and for each ozone control period for which the early reduction credits are requested. The unit's percent monitor data availability shall be not less than ninety percent (90%) during the ozone control period prior to the ozone control period for which the early reduction credits are requested, and the unit must be in compliance with any applicable state or federal NO_x emissions or emissions-related requirements during the ozone control period for which the early reduction credits are requested.

(E) The emissions reduction must be quantified according to procedures set forth in 40 CFR 75, Subpart H*.

(F) The NO_x authorized account representative of a NO_x budget unit that meets the requirements of clauses (B) through (D) may submit to the department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the ozone control period for any year in 2001 through 2003. The request shall include the following:

(i) In the early reduction credit request, the NO_x authorized account may request early reduction credits for the ozone control period in an amount equal to the unit's heat input for the ozone control period in which the early reductions occurred multiplied by the difference between:

(AA) the unit's actual average NO_x emission rate in the ozone control period prior to the first ozone control period for which the early reduction credits are requested; and

(BB) the unit's NO_x emission rate for the ozone control period in which the early reductions occurred;

divided by two thousand (2,000) pounds per ton and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the department, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or a later date approved by the department.

(G) The department shall allocate NO_x allowances from the compliance supplement pool to NO_x budget units meeting the requirements of this subdivision in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the department shall accept the request only if the requirements of clauses (B) through (D) and (F)(ii) are met and, if the request is accepted, shall make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of clauses (B) through (D).

(ii) If the compliance supplement pool has an amount of NO_x allowances equal to or greater than the number of early reduction credits in all accepted early reduction credit requests for any year in 2001 through 2003, as adjusted under item (i), the department shall allocate to each NO_x budget unit covered by the accepted requests one (1) allowance for each early reduction credit requested, as adjusted under item (i).

(iii) If the compliance supplement pool has an amount of NO_x allowances less than the number of early reduction credits in all accepted early reduction credit requests for any year in 2001 through 2003, as adjusted under item (i), the department shall allocate NO_x allowances to each NO_x budget unit covered by the accepted requests according to the formula, A NO_x budget unit's allocated early reduction credits = ((NO_x budget unit's adjusted early reduction credits) ÷ (total adjusted early reduction credits requested by all NO_x budget units)) × (available NO_x allowances from the compliance supplement pool) where:

(AA) A NO_x budget unit's adjusted early reduction credits is the number of early reduction credits for the unit for any year in 2001 through 2003 in accepted early reduction credit requests, as adjusted under item (i).

(BB) Total adjusted early reduction credits requested by all NO_x budget units is the number of early reduction credits for all NO_x budget units for any year in 2001 through 2003 in accepted early reduction credit requests, as adjusted under item (i).

(CC) Available NO_x allowances from the compliance supplement pool is the number of NO_x allowances in the compliance supplement pool and available for early reduction credits for 2001 through 2003.

(H) By March 31 of the year following the request, the department shall submit to the U.S. EPA the allocations of NO_x allowances determined under clause (G). The U.S. EPA will record the allocations to the extent that they are consistent with the requirements of clauses (B) through (G).

(I) NO_x allowances recorded under clause (H) may be deducted for compliance under section 10(k) of this rule for the ozone control periods in 2004 through 2005. Notwithstanding section 14(a) of this rule, the U.S. EPA will deduct as retired any NO_x allowance that is recorded under clause (G) and is not deducted for compliance in accordance with section 10(k) of this rule for the ozone control period in 2004 or 2005.

~~(J) NO_x allowances recorded under clause (G) are treated as banked allowances in 2005 for the purposes of section 14(a) and 14(b) of this rule.~~

~~(K)~~ **(J)** Sources that receive credit according to the requirements of this section may trade the credit to other sources or persons according to the provisions in this rule.

(2) The department may issue to NO_x budget units that demonstrate a need for an extension of the May 31, 2004, compliance deadline according to the following provisions:

(A) The department shall initiate the issuance process by the later date of September 30, 2002, or after the depart-

ment issues credit according to the procedures in subdivision (1).

(B) The department shall complete the issuance process by no later than May 31, 2004.

(C) The department shall issue credit to a source only if the source demonstrates the following:

(i) For electricity generating units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with this rule.

(ii) For large affected units, compliance with the applicable control measures under this rule by May 31, 2004, would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in item (i).

(iii) For a unit subject to this rule and subdivision (1) that allows for early reduction credits, it was not possible for the source to comply with applicable control measures by generating early reduction credits or acquiring early reduction credits from other sources.

(iv) For a unit subject to an approved emissions trading program under this rule, it was not possible to comply with applicable control measures by acquiring sufficient credit from other sources or persons subject to the emissions trading program.

(D) The department shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocating compliance supplement pool credits to a NO_x budget unit under clause (C).

(c) The total number of NO_x allowances available from the compliance supplement pool shall not exceed nineteen thousand nine hundred fifteen (19,915) tons of NO_x. No more than fifty percent (50%) of the compliance supplement pool shall be allocated in 2003 for early reductions implemented in 2001 and 2002. The remainder of the compliance supplement pool shall be allocated in 2004 for early reductions implemented in 2003 and any demonstrations of need. Any NO_x allowances that remain in the compliance supplement pool after the 2005 ozone control period shall be retired.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-4-15; filed Aug 17, 2001, 3:45 p.m.: 25 IR 53; errata filed Nov 29, 2001, 12:20 p.m.: 25 IR 1184; filed Jul 7, 2003, 4:00 p.m.: 26 IR 3572)*

SECTION 9. 326 IAC 10-5 IS ADDED TO READ AS FOLLOWS:

Rule 5. Nitrogen Oxide Reduction Program for Internal Combustion Engines (ICE)

326 IAC 10-5-1 Applicability

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

Sec. 1. The requirements of this rule apply to the owner or operator of any large NO_x SIP Call engine. *(Air Pollution Control Board; 326 IAC 10-5-1)*

326 IAC 10-5-2 Definitions

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

Sec. 2. The following definitions shall apply to this rule:

(1) "Affected engine" means any stationary internal combustion engine that is a large NO_x SIP Call engine, or other stationary internal combustion engine that is subject to NO_x control under a compliance plan under section 3 of this rule.

(2) "Engine seasonal NO_x 2007 tonnage reduction" means the year 2007 seasonal NO_x emissions reductions value in tons for a large NO_x SIP Call engine. This is calculated as the difference between the 2007 ozone season base NO_x emissions and the 2007 ozone season budget NO_x emissions contained in the NO_x SIP call engine inventory.

(3) "Facility seasonal NO_x 2007 tonnage reduction" means the total of the engine seasonal NO_x 2007 tonnage reductions attributable to all of an owner or operator's large NO_x SIP Call engines.

(4) "Large NO_x SIP Call engine" means a stationary internal combustion engine identified and designated as large in the NO_x SIP Call engine inventory as emitting more than one (1) ton of NO_x per average ozone season day in 1995.

(5) "NO_x SIP Call engine inventory" means the inventory of internal combustion engines compiled by U.S. EPA as part of the NO_x SIP Call rule, including technical amendments announced in the March 2, 2000, Federal Register notice (65 FR 11222)*, and the adjustment of the 2007 budget NO_x control efficiency to eighty-two percent (82%) for large gas-fired engines announced in the April 21, 2004, Federal Register notice (69 FR 21604)* for the Phase II NO_x SIP Call rule.

(6) "Ozone season" means the time period between May 1 and September 30.

(7) "Past NO_x emission rate" means:

(A) For large NO_x SIP Call engines, the past NO_x emission rate is the 1995 uncontrolled emission rate in grams per brake horsepower hour (g/bhp-hr) that was used to determine NO_x emissions from this engine for the NO_x SIP Call emissions inventory.

(B) For an affected engine other than a large engine, the

past NO_x emission rate in grams per brake horsepower per hour (g/bhp-hr) shall be determined based on performance testing consistent with the requirements of 40 CFR 60, Appendix A*. Where such test data are not available, the past NO_x emission rate may be determined on a case-by-case basis using, for example, appropriate emission factors or data from the NO_x SIP Call engine inventory.

(8) "Projected NO_x emission rate" means the projected NO_x emission rate in g/bhp-hr after installation of controls on an affected engine.

(9) "Projected operating hours" means the projected actual number of hours of operation per ozone season for an affected engine.

(10) "Stationary internal combustion engine" means any internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one (1) location to another and remains at a single site at:

(A) a building;

(B) a structure;

(C) a facility; or

(D) an installation;

for more than twelve (12) consecutive months. Any engine that replaces an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period.

*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 10-5-2)*

326 IAC 10-5-3 Compliance plan

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) After May 1, 2007, an owner or operator of a large NO_x SIP Call engine shall not operate the engine in the period May 1 through September 30 of 2007, and any subsequent year unless the owner or operator complies with the requirements of a compliance plan which meets the following provisions:

(1) The compliance plan must be approved by the department.

(2) The compliance plan must demonstrate enforceable emission reductions from one (1) or more stationary internal combustion engines equal to or higher than the facility seasonal NO_x 2007 tonnage reduction.

(3) The compliance plan may cover some or all engines at an individual facility or at several facilities or all facilities in the state that are in control of the same owner or operator.

(4) The compliance plan must be submitted to the department by May 1, 2006.

(5) The compliance plan may include credit for decreases in NO_x emissions from large NO_x SIP Call engines due to NO_x control equipment. Credit may also be included for decreases in NO_x emissions from other engines due to NO_x control equipment not reflected in the 2007 ozone season base NO_x emissions in the NO_x SIP Call engine inventory.

(6) The compliance plan must include the following items:

(A) List of affected engines subject to the plan, including the engine's:

(i) manufacturer;

(ii) model;

(iii) facility location address; and

(iv) facility identification number.

(B) The projected ozone season hours of operation for each engine and supporting documentation.

(C) A description of the NO_x emissions control installed, or to be installed, on each engine and documentation to support projected NO_x emission rates.

(D) The past and projected NO_x emission rates for each affected engine in grams per brake horsepower per hour (g/bhp-hr).

(E) A numerical demonstration that the emission reductions obtained from all engines included under the plan will be equivalent to or greater than the owner or operator's facility seasonal NO_x 2007 tonnage reduction, based on the difference between:

(i) the past emission rate multiplied by the past operating hours; and

(ii) the projected emission rate multiplied by the projected operating hours;

multiplied by the projected operating hours for each affected engine and taking into account any credit under subdivision (5).

(F) Provisions for monitoring including the frequency of the monitoring, as specified in section 4 of this rule.

(G) Reporting and record keeping as specified in section 5 of this rule.

(b) The projected NO_x emission rate in grams per brake horsepower per hour (g/bhp-hr) for each affected engine must be included in a federally enforceable permit and the permit shall contain the following:

(1) Emission rate.

(2) Monitoring requirements.

(3) Record keeping.

(4) Reporting.

(Air Pollution Control Board; 326 IAC 10-5-3)

326 IAC 10-5-4 Monitoring and testing requirements

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

Sec. 4. Each affected engine subject to this rule shall comply with the following requirements:

(1) Complete an initial performance test consistent with

the requirements of 40 CFR 60, Appendix A*, following installation of emission controls required to achieve the emission rate limit specified in section 3(b) of this rule.

(2) Perform periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of a source's compliance with the emission rate limit specified in section 3(b) of this rule. Such periodic monitoring may include either:

(A) performance tests consistent with the requirements of:

(i) 40 CFR 60, Appendix A*; or

(ii) portable monitors using ASTM D6522-00*;

(B) a parametric monitoring program that specifies operating parameters, and their ranges, that will provide reasonable assurance that each affected engine's emissions are consistent with the requirements of section 3 of this rule;

(C) a predictive emissions measurement system that relies on automated data collection from instruments; or

(D) a continuous emission monitoring system (CEMS) that complies with 40 CFR 60* or 40 CFR 75* as required under 326 IAC 3-5.

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 10-5-4)*

326 IAC 10-5-5 Record keeping and reporting

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

Sec. 5. (a) Maintain all records necessary to demonstrate compliance with the requirements of this rule. Each record shall be maintained for a period of two (2) calendar years at the plant at which the subject engine is located. The records shall be made available to the department and U.S. EPA upon request. For each engine subject to the requirements of this rule, the owner or operator shall maintain the following records:

(1) Identification and location of each engine subject to the requirements of this rule.

(2) Calendar date of record.

(3) The number of hours the unit is operated during each ozone season compared to the projected operating hours.

(4) Type and quantity of fuel used.

(5) The results of all compliance tests.

(6) Monitoring data.

(7) Preventative maintenance.

(8) Corrective actions.

(b) Any owner or operator subject to the requirements of this rule shall submit results of all compliance tests to the department.

(c) The end of the ozone season report shall include the following:

(1) Engine identification.

(2) A numerical demonstration of the emission reductions as described at section 3(a)(5)(E) of this rule.

(Air Pollution Control Board; 326 IAC 10-5-5)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 3, 2005 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 10-3 and 326 IAC 10-4 and new rule 326 IAC 10-5.

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 rule and amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rule Development Section, Office of Air Quality, (317) 232-8229 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
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (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 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.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #04-100

DIGEST

Adds 410 IAC 1-2.4 to establish electronic reporting of emergency department visit abstract data by hospitals. Effective 30 days after filing with the secretary of state.

410 IAC 1-2.4

SECTION 1. 410 IAC 1-2.4 IS ADDED TO READ AS FOLLOWS:

Rule 2.4. Electronic Reporting of Emergency Department Visit Abstract Data by Hospitals

410 IAC 1-2.4-1 Applicability
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 1. The definitions in this rule apply throughout this rule. *(Indiana State Department of Health; 410 IAC 1-2.4-1)*

410 IAC 1-2.4-2 "Chief complaint" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 2. "Chief complaint" means the patient's set of symptoms and illnesses when the patient first presents at the emergency department. *(Indiana State Department of Health; 410 IAC 1-2.4-2)*

410 IAC 1-2.4-3 "Department" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 3. "Department" means the Indiana state department of health. *(Indiana State Department of Health; 410 IAC 1-2.4-3)*

410 IAC 1-2.4-4 "Electronic transfer" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 4. "Electronic transfer" means the transmission of required data over the Internet using a secure transfer protocol. *(Indiana State Department of Health; 410 IAC 1-2.4-4)*

410 IAC 1-2.4-5 "Emergency department visit" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 5. "Emergency department visit" means an encounter where a person is treated or evaluated, or both, in the emergency department of a hospital. *(Indiana State Department of Health; 410 IAC 1-2.4-5)*

410 IAC 1-2.4-6 "Health Level 7" or "HL7" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 6. "Health Level 7" or "HL7" means a health care information messaging and data exchange protocol developed by the Health Level 7 organization and approved as an American National Standards Institute (ANSI) standard for health-related information exchange. In this rule, the reference to HL7 means versions 2.3, 2.4, and 2.5. *(Indiana State Department of Health; 410 IAC 1-2.4-6)*

410 IAC 1-2.4-7 "Hospital" defined
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10; IC 16-21-2

Sec. 7. "Hospital" means a hospital licensed under IC 16-21-2. *(Indiana State Department of Health; 410 IAC 1-2.4-7)*

410 IAC 1-2.4-8 Emergency department visit data reporting requirements
Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 8. (a) This rule applies only to hospitals with emergency departments.

(b) Hospitals with emergency departments shall report all of the emergency department visits at that hospital to the department or the department's designated agent as follows:

(1) Through electronic transfer by HL7 messaging or file transfer protocol. Electronic transfer shall occur immediately at the time of the emergency department visit if feasible, but not later than twenty-four (24) hours from the time of the visit.

(2) Any hospitals unable to comply with the electronic transfer requirements of this section and section 10 of this rule shall become compliant on or before January 1, 2011.

(c) The information that shall be provided to the department or to the department's designated agent under subsection (b) includes the following:

(1) The name of the hospital or a unique identifier for the hospital approved by the department.
(2) The patient's name and medical record number.
(3) The patient's date of birth.
(4) The patient's sex.
(5) The street address of the patient's residence.
(6) The patient's city of residence.
(7) The patient's state of residence.
(8) The zip code of the patient's residence.
(9) The patient's county of residence.
(10) The date and time of the emergency department visit.
(11) The patient's chief complaint or complaints.

(d) The hospital shall make use of fully automated systems that require no manual intervention to conduct this electronic transfer where possible. *(Indiana State Department*

of Health; 410 IAC 1-2.4-8)

410 IAC 1-2.4-9 Release of emergency department visit data to local health departments

Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 9. Emergency department data submitted to the department may be used for epidemiological investigation or other disease intervention activities of the department or local health department. Investigation shall include obtaining laboratory and clinical data necessary for case ascertainment. Findings of the investigation shall be used to institute control measures to minimize or reduce the risk of disease spread or to reduce exposures in an emergency event. *(Indiana State Department of Health; 410 IAC 1-2.4-9)*

410 IAC 1-2.4-10 Confidentiality and security of emergency department visit data

Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 10. (a) Reporting shall be by electronic transfer. The electronic transfer method shall ensure that the confidentiality and security of emergency department visit data is maintained throughout the data transfer process.

(b) The preferred transfer protocol will be the use of HL7 messages from the hospital to the department.

(c) If HL7 messaging is not possible, daily automated file transfers via secure file transfer protocol (FTP) are acceptable.

(d) Medical or epidemiological information, wherever maintained, concerning reported cases or emergency public health events, shall be made available to the commissioner or the commissioner's designee.

(e) Emergency department visit data reported to the department is confidential whether held by the department, the department's agents, or a local health department. *(Indiana State Department of Health; 410 IAC 1-2.4-10)*

410 IAC 1-2.4-11 Incorporation by reference

Authority: IC 16-19-10-5; IC 16-19-10-8
Affected: IC 16-19-10

Sec. 11. HL7 (versions 2.3, 2.4, and 2.5) are incorporated by reference in this rule. No later versions are included. Copies of this standard are available at:

(1) www.hl7.org/Library/standards.cfm; and

(2) the department;

for inspection. *(Indiana State Department of Health; 410 IAC 1-2.4-11)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 24, 2005 at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Yoho Board Room, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on a proposed new rule to establish electronic reporting of emergency department visit abstract data by hospitals. Copies of these rules are now on file at the Information Services and Policy Commission, Indiana State Department of Health, 2 North Meridian Street and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sue Uhl
Deputy State Health Commissioner
Indiana State Department of Health

TITLE 876 INDIANA REAL ESTATE COMMISSION

Proposed Rule
LSA Document #05-47

DIGEST

Amends 876 IAC 1-1-23 to allow for the voluntary transfer of any interest earned on the broker's escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana. Effective 30 days after filing with the secretary of state.

876 IAC 1-1-23

SECTION 1. 876 IAC 1-1-23 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-23 Written offers to purchase; disposition of money received

Authority: IC 25-34.1-2-5
Affected: IC 25-34.1-2-5

Sec. 23. (a) Any and all written offers to purchase or authorization to purchase shall be communicated to the seller for his or her formal acceptance or rejection immediately upon receipt of ~~such~~ **the** offer, and ~~such~~ **the** offers or authorizations shall be made in quadruplicate, one (1) copy to the prospective purchasers at the time of signing, one (1) copy for the principal broker's files, one (1) copy to the sellers, and one (1) copy to be returned to the purchasers after acceptance or rejection. The listing principal broker shall, on or before the next two (2) banking days after acceptance of the offer to purchase by the seller, do one (1) of the following:

(1) Deposit all money received in connection with a transaction in his or her escrow/trust account.

(2) Delegate the responsibility to the selling principal broker to deposit the money in the selling broker's escrow/trust account.

In any event, the commission shall hold the listing principal broker responsible for the money. In the event the earnest money deposit is other than cash, this fact shall be communicated to the seller ~~prior to~~ **before** his or her acceptance of the offer to purchase, and ~~such~~ **the** fact shall be shown in the earnest money receipt. All money shall be retained in the escrow/trust account so designated until disbursement thereof is properly authorized. **Provided the beneficiary agrees in writing, the listing or selling principal broker holding the earnest money may voluntarily transfer any interest earned on the broker's escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana that meets the requirements of Internal Revenue Service Code 501C3.** The listing or selling principal brokers holding any earnest money are not required to make payment to the purchasers or sellers when a real estate transaction is not consummated unless the parties enter into a mutual release of the funds or a court issues an order for payment, except as permitted in subsection (b).

(b) Upon being notified that one (1) or more parties to an offer to purchase ~~intends~~ **intend** not to perform, the listing or selling principal broker, holding the earnest money, may release the earnest money deposit as provided in the offer to purchase or, if no provision is made in the offer to purchase, the selling or listing principal, holding the earnest money, may initiate the release process. The release process shall require the selling or listing principal broker to notify all parties at their last known address by certified mail that the earnest money deposit shall be distributed to the parties specified in the letter unless:

(1) all parties enter into a mutual release; or

(2) one (1) or more of the parties initiate litigation;

within sixty (60) days of the mailing date of the certified letter. If neither **the** buyer ~~or~~ **nor the** seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the earnest money deposit to the party identified in the certified letter. *(Indiana Real Estate Commission; Rule 24; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 800; filed Dec 11, 1986, 10:40 a.m.: 10 IR 878; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 102; filed Oct 28, 2002, 12:01 p.m.: 26 IR 789)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 23, 2005 at 10:10 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to allow for the voluntary transfer of any interest earned on the broker's escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Acting Executive Director
Indiana Professional Licensing Agency

TITLE 876 INDIANA REAL ESTATE COMMISSION

Proposed Rule
LSA Document #05-49

DIGEST

Amends 876 IAC 4-1-6 to allow an approved distance learning continuing education course to be conducted in a facility that is also used as a broker or salesperson office. Amends 876 IAC 4-2-1 to allow instruction for an approved distance learning education course to be more than eight hours of instruction in one day. Adds 876 IAC 4-3 to establish distance learning continuing education requirements and procedures for real estate salespersons and brokers and to establish the requirements and procedures for distance learning continuing education course sponsors. Effective January 1, 2006.

876 IAC 4-1-6
876 IAC 4-2-1
876 IAC 4-3

SECTION 1. 876 IAC 4-1-6 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-1-6 Facilities
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-5

Sec. 6. (a) No course shall be conducted in a facility ~~which~~ **that** is also used as a broker or salesperson office, **except for an approved distance learning continuing education program.**

(b) Courses shall be taught in a facility with adequate:
(1) space;
(2) seating;
(3) equipment; and
(4) instructional material;
to accommodate the number of students enrolled.

(c) The premises, equipment, and facilities shall comply with all:
(1) local;
(2) city;
(3) county;
(4) state; and
(5) federal;

regulations, such as fire, building, **and** sanitation codes and handicap accessibility.

(d) Any facility previously approved for broker or salesperson courses under IC 25-34.1-5 shall be deemed satisfactory. *(Indiana Real Estate Commission; 876 IAC 4-1-6; filed Dec 1, 1993, 10:30 a.m.: 17 IR 766; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824)*

SECTION 2. 876 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-1 Continuing education requirements
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-3-10; IC 25-34.1-9-11; IC 25-34.1-9-19

Sec. 1. (a) Every licensed real estate broker and salesperson who has not been granted:
(1) an inactive license under IC 25-34.1-3-10; or
(2) a waiver under IC 25-34.1-9-19;
must complete during each two (2) year licensure period at least sixteen (16) hours of the approved education requirements under IC 25-34.1-9-11 and this article ~~which~~ **that** are given by commission-approved sponsors of courses in order to qualify for license renewal.

(b) Licensees attending continuing education courses shall present a:
(1) government-issued photo identification; and ~~a~~
(2) real estate broker or salesperson pocket card;
for inspection by the course sponsor or a person designated by the course sponsor.

(c) Measurements and reporting shall be in full hours with a fifty (50) minute instruction period equaling one (1) hour.

(d) A course shall be a minimum of **a** two (2) ~~hours~~ **hour** instruction period.

(e) A minimum of two (2) hours and ~~no~~ **not** more than eight (8) hours of instruction may be offered in a one (1) day course. **However, instruction for an approved distance learning continuing education program may be more than eight (8) hours of instruction in a one (1) day course.**

(f) A licensee shall not be entitled to any continuing education credit for a course unless the licensee ~~attends~~ **completes** the entire course.

(g) There shall be no minimum requirement of numbers of credit hours to be completed in each single year of the two (2) year licensure period.

(h) Any continuing education credit accumulated above the minimum requirement for a two (2) year licensure period shall not be carried forward ~~o~~ **to** the next two (2) year licensure period.

(i) A licensee who attends the same approved continuing education course more than once in the same two (2) year licensure period is only entitled to continuing education credit for **one** (1) course.

(j) An instructor shall be entitled to continuing education credit for courses the instructor teaches. However, an instructor may not:
(1) be credited for more than six (6) hours of credit for instructing in any two (2) year licensure period; ~~Instructors may not~~ **or**
(2) receive credit for repeated courses.
(Indiana Real Estate Commission; 876 IAC 4-2-1; filed Dec 1, 1993, 10:30 a.m.: 17 IR 767; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:50 a.m.: 25 IR 103)

SECTION 3. 876 IAC 4-3 IS ADDED TO READ AS FOLLOWS:

Rule 3. Distance Learning Continuing Education

876 IAC 4-3-1 "Distance learning continuing education" defined
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1

Sec. 1. (a) "Distance learning continuing education" means education designed for licensed professional learners who live at a distance from the teaching institution or education provider. The term includes enrollment and study with an educational institution that provides organized, formal learning opportunities for professionals seeking to remain current on the high standards of their profession and abreast of the changes in their field. Presented in a sequential and logical order, the instruction:
(1) is offered wholly or primarily by distance study, through virtually any media; and
(2) may incorporate or make use of various media formats, including, but not limited to:
(A) printed materials;
(B) communication technologies; and
(C) Internet based delivery systems.

(b) The commission approves the following distance learning continuing education courses:
(1) Courses that meet the requirements of section 3 of this rule.
(2) Courses for which the applicant provides satisfactory documentation that the continuing education course offered has been certified by a national accrediting institution. Any commission approval based on such certification will cease immediately upon notice from the accrediting institution that certification of the continuing

education course has been discontinued for any reason.

(3) Courses completed for academic credit at an accredited university or college that cover a subject area listed under 876 IAC 4-2.

(c) A student must complete the distance learning continuing education course or courses within one (1) year of the date of enrollment.

(d) Mandatory and nonmandatory classes may be taken through distance learning continuing education courses. *(Indiana Real Estate Commission; 876 IAC 4-3-1)*

876 IAC 4-3-2 Distance learning continuing education courses

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1

Sec. 2. The commission shall approve a distance learning continuing education course if the commission determines to its satisfaction the following:

(1) The distance learning continuing education course serves to protect the public by contributing to the maintenance and improvement of the quality of the real estate services provided by the real estate licensees to the public.

(2) An appropriate and complete application has been filed and approved by the commission.

(3) The information specified in section 3 of this rule has been submitted and approved.

(4) The distance learning continuing education course meets the content requirements as prescribed in 876 IAC 4-2-2 and 876 IAC 4-2-3.

(5) The distance learning continuing education course meets all other requirements as prescribed in the statutes and rules that govern the operation of approved courses. *(Indiana Real Estate Commission; 876 IAC 4-3-2)*

876 IAC 4-3-3 Approval of distance learning continuing education

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1

Sec. 3. In order for a distance learning continuing education course to be approved, the provider shall submit the following information:

(1) Mission and objectives, as follows:

(A) A statement that clearly defines the mission of the provider's educational programs.

(B) The specific curricular objectives for the course.

(C) A plan for periodic review of the following:

(i) The mission statement.

(ii) Curricular objectives.

(2) Course design, as follows:

(A) A course outline that clearly states the following:

(i) The course objectives.

(ii) The desired student outcomes.

(B) A plan to ensure that the course content is:

(i) updated in a timely manner; and

(ii) distributed to:

(AA) students who are currently enrolled; and

(BB) future registrants.

(C) A plan for submitting substantial changes in the course to the commission. Substantial changes include, but are not limited to, the following:

(i) Expanded or reduced course content.

(ii) Changes in the time allotments for portions of the course.

(iii) Changes or redirected learning objectives.

(iv) A change of instructor.

(v) Changes in the course delivery method.

(D) The course disk or CD-ROM, if applicable.

(E) A list of reference materials provided to the students.

(F) A list of any prerequisites for the course and evidence that students are properly advised of the prerequisites before registration.

(G) Evidence that the course is structured in a mastery learning format that ensures mastery accomplishment.

(H) Evidence that the number of hours claimed is the number of hours it takes the average student to complete the course. This requirement can be met by submitting the results of the studies or field tests, or both, that will verify the claims.

(3) Interactivity, as follows:

(A) A description of how interaction is accomplished in the course.

(B) An explanation of how:

(i) interactivity is evaluated; and

(ii) feedback is gathered from students;

throughout the course.

(4) Course delivery, as follows:

(A) A plan that shows evidence that technical support will be available when needed.

(B) Evidence that instructor-student ratios are acceptable for the delivery method used.

(C) The name or names and qualifications of the instructor or instructors of the course, submitting their credentials, including any specific training for teaching, via the specified delivery method, and a plan for their continued professional development.

(D) A list of remote sites if applicable. "Remote site" means one that receives a broadcast whether by:

(i) satellite; or

(ii) teleconferencing.

(E) A list of any site facilitators and the qualifications and credentials for each.

(5) Equipment and learning environment, as follows:

(A) A list of equipment that the student will need and evidence that this information is made available to the student before registration.

(B) An acceptable plan for dealing with equipment

failures.

(6) Student support services, as follows:

(A) A copy of a student information package that contains all the necessary information about the course. This information includes, but is not limited to, the following:

(i) Information about broadcasts and distance site locations.

(ii) Faculty contact information.

(iii) The course outline and learning objectives.

(iv) Guidelines regarding what constitutes successful completion of the course.

(v) Deadlines.

(vi) Fees and refunds.

(vii) Prerequisites.

(viii) Illness policy.

(ix) A list of required student materials, including required software.

(B) An explanation of how student orientation sessions are accomplished. Each student is required to have an orientation before the student begins the course.

(C) An acceptable list of other support services made available to the students.

(7) Evaluation and assessment, as follows:

(A) An evaluation form that solicits student feedback on the following:

(i) The delivery approach.

(ii) The equipment.

(iii) Suggestions for class improvement.

(iv) The student's overall satisfaction with the course. An evaluation form is required to be given to every student in a distance learning continuing education course at the conclusion of the course.

(B) A plan for verifying student identity. The provider of any distance learning continuing education course must have an acceptable plan in place that verifies that the student enrolled in the course is the one that completes the following:

(i) The course.

(ii) Any required tests.

(8) Commitment to support, as follows:

(A) A copy of the provider's business plan that shows ongoing commitment to provide adequate financial and technical resources to support the distance learning continuing education course.

(B) A statement of how long the provider has been offering distance learning continuing education courses.

(Indiana Real Estate Commission; 876 IAC 4-3-3)

876 IAC 4-3-4 Distance learning continuing education courses by correspondence

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1

Sec. 4. Licensees may take distance learning continuing education courses by correspondence so long as the courses meet the following criteria:

(1) All courses must provide a test, and the participant must score at least seventy-five percent (75%) to pass and receive credit for the course.

(2) Tests must have multiple choice questions with at least twenty (20) questions per two (2) hours of instruction. The following types of questions are not allowed:

(A) True or false.

(B) Essay.

(3) The organization and presentation of the instructional materials shall be in accord with sound principles of learning.

(4) Correspondence courses must have sufficient security to assure against fraudulent practices.

(Indiana Real Estate Commission; 876 IAC 4-3-4)

876 IAC 4-3-5 Video instruction distance learning continuing education

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1

Sec. 5. Licensees may take distance learning continuing education courses by video instruction so long as the courses meet the following criteria:

(1) All courses must provide a test, and the participant must score at least seventy-five percent (75%) to pass and receive credit for the course.

(2) Tests must have multiple choice questions with at least twenty (20) questions per two (2) hours of instruction. The following types of questions are not allowed:

(A) True or false.

(B) Essay.

(3) The organization and presentation of the instructional materials shall be in accord with sound principles of learning.

(4) Video instruction classes must have a monitor in the room at all times to assure proper attendance.

(Indiana Real Estate Commission; 876 IAC 4-3-5)

876 IAC 4-3-6 Internet distance learning continuing education

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1

Sec. 6. Licensees may take continuing education courses via the Internet so long as the courses meet the following criteria:

(1) All courses must provide a test, and the participant must score at least seventy-five percent (75%) to pass and receive credit for the course.

(2) Tests must have multiple choice questions with at least twenty (20) questions per two (2) hours of instruction. The following types of questions are not allowed:

(A) True or false.

(B) Essay.

(3) The organization and presentation of the instructional materials shall be in accord with sound principles of learning.

(4) Internet courses must have sufficient security to assure against fraudulent practices.

(Indiana Real Estate Commission; 876 IAC 4-3-6)

SECTION 3. **SECTIONS 1 through 3 of this document take effect January 1, 2006.**

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 23, 2005 at 10:15 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to allow an approved distance learning continuing education course to be conducted in a facility that is also used as a broker or salesperson office, to allow instruction for an approved distance learning education course to be more than eight hours of instruction in one day, to establish distance learning education requirements and procedures for real estate salespersons and brokers, and to establish the requirements and procedures for distance learning education providers. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Acting Executive Director
Indiana Professional Licensing Agency

Notices of Intent to Readopt

TITLE 590 INDIANA LIBRARY AND HISTORICAL BOARD

Notice of Intent
LSA Document #05-89

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rules to be readopted without changes are as follows:

590 IAC 3 STATEWIDE LIBRARY CARD PROGRAM

Questions or comments on the readoption may be directed to Janet Meek, Library Consultant, Indiana State Library, at (317) 232-3717. Statutory authority: IC 4-23-7.1-5.1; IC 4-23-7.1-5.2.

TITLE 760 DEPARTMENT OF INSURANCE

Notice of Intent
LSA Document #05-86

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

OVERVIEW: Rules to be readopted without changes are as follows:

760 IAC 1-50-6	Appeals of continuing education courses
760 IAC 1-50-9	Solicitor's continuing education requirements
760 IAC 1-50-10	Reciprocal agreements
760 IAC 1-50-11	List of continuing education course providers
760 IAC 1-61	Viatical Settlements
760 IAC 1-64	Valuation of Life Insurance Policies

Questions or comments on the readoption may be directed to the Department of Insurance, Attn.: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana or by phone at (317) 232-0143 or e-mail to astrati@doi.state.in.us. Statutory authority: IC 27-1-12-10.5; IC 27-1-15.7-4; IC 27-1-15.7-7; IC 27-8-19.8-25; IC 27-8-19.8-26.

Proposed Readopted Rules

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

Proposed Rule
LSA Document #05-11

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.

830 IAC 1-2-6

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

830 IAC 1-2-6 Continuing education requirements for recertification

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on June 28, 2005 at 10:00 a.m., at the Health Professions Bureau, Indiana Government Center-South, 402 West Washington Street, Conference Room W064, Indianapolis, Indiana the Indiana Dietitians Certification Board 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:

Tonja Thompson
Health Professions Bureau
402 West Washington Street, Room W066
Indianapolis, IN 46204
or via e-mail to tthompson@hpb.state.in.us.

Copies of these rules are now on file at the Health Professions Bureau, Indiana Government Center-South, 402 West Washington Street, Room W066 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Frances L. Kelly
Executive Director
Health Professions Bureau

60 Day Requirement (IC 4-22-2-19)

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-26

April 20, 2005

Chairperson, Administrative Oversight Committee
c/o Sarah Burkman
Legislative Services Agency

RE: Rule pursuant to IC 16-39-9-4

Dear Chairperson:

Pursuant to IC 16-39-9-4, (PL102-1994, effective July 1, 1994), the Commissioner of the Indiana Department of Insurance may adopt rules to adjust the costs that may be charged for providing copies of medical records. Within the last year the Department was contacted by representatives of the industry that provides copying services to health care providers requesting the Department to review these costs. The Department has determined that the rates set by IC 16-39-9 should be adjusted and has begun the rulemaking process as provided by IC 16-39-9-4.

The rulemaking authority was granted in 1994. However, since the rulemaking authority is discretionary it was not clear that it is exempt from the notice requirement of IC 4-22-2-19. Therefore, the Department is submitting this letter to comply with the requirement to notify the AROC if it has not begun the rulemaking process within sixty (60) days of the grant of authority.

Therefore, the Department of Insurance is hereby notifying the Administrative Rules Oversight Committee of its intent to promulgate a rule under IC 16-39-9-4. A notice of intent was published on March 1, 2005. A proposed rule will be published on May 1, 2005.

If you have any questions I can be reached at 232-0143.

Very truly yours,
Amy E. Strati

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-116(APCB)

DEVELOPMENT OF NEW RULES CONCERNING MERCURY EMISSIONS FROM COAL-FIRED POWER PLANTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new and amended rules concerning mercury emissions from coal-fired power plants.
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 3; 326 IAC 11; 326 IAC 12; 326 IAC 21; 326 IAC 24.

AUTHORITY: IC 13-14-8; IC 13-17-3-1; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

On March 15, 2005, U.S. EPA issued the first-ever federal rule to permanently cap and reduce mercury emissions from coal-fired power plants serving a generator larger than twenty-five (25) megawatts that produces electricity for sale. The Clean Air Mercury Rule (CAMR) builds on U.S. EPA's Clean Air Interstate Rule (CAIR) to significantly reduce emissions from coal-fired power plants, the largest remaining source of mercury emissions in the nation. CAIR was also recently signed by the U.S. EPA administrator and IDEM is taking comment on state adoption of this rule in a separate rulemaking.

When fully implemented CAMR will reduce nationwide utility emissions of mercury from forty-eight (48) tons a year to fifteen (15) tons, a nationwide reduction of nearly seventy (70) percent. The CAMR establishes "standards of performance" limiting mercury emissions from new and existing coal fired power plants and creates a market-based cap and trade program that will reduce utility emissions of mercury in two phases. The first phase nationwide cap is thirty-eight (38) tons, due in 2010, with emissions reductions that are considered "co-benefit" reductions. These are mercury reductions that will be achieved by reducing sulfur dioxide (SO_2) and nitrogen oxides (NO_x) emissions under CAIR. In the second phase, due in 2018, coal fired power plants will be subject to a second cap, which will reduce emissions to fifteen (15) tons upon full implementation. New coal fired power plants will have to meet new source performance standards (NSPS) in addition to being subject to caps (40 CFR part 60, subpart Da).

Reducing the amount of mercury emitted into the air is an important step in improving the health of Indiana's citizens. Once mercury is released to the air from coal combustion and other sources it can fall to the Earth through rain and snow (wet deposition), or dust particles (dry deposition). After it settles in lake or river sediments, mercury can be converted by bacteria into methylmercury, a more toxic form of mercury. Methylmercury readily accumulates in the food chain and can build up in fish tissue. Mercury in fish, both freshwater and marine, is then consumed by people and wildlife. Women of childbearing age are considered the population of greatest concern for mercury exposure, because the developing fetus is most sensitive. Children are at risk as well since their nervous system is still developing. According to the U.S. EPA, approximately six hundred thirty thousand (630,000) children are born every year nationwide with some risk of neurological impairment from mercury exposure. At nearly two and one-half (2.5) tons per year, Indiana ranks fourth in the nation for amount of mercury emitted from power plants. Overall, utilities in the United States emit one (1) percent of the 1999 estimated global mercury emissions. All Indiana rivers, streams, and over forty-seven thousand (47,000) lake acres are under a mercury advisory by the Indiana Department of Health limiting how much fish should be consumed because of mercury contamination. U.S. EPA evaluated the impact of CAMR on mercury deposition in 2,150 watersheds encompassing the United States and found the deepest reductions in deposition would be in places where utilities had the biggest impact. By 2020, utility emissions will account for no more than twenty (20) percent of deposition in any one watershed. This is a reduction from the maximum fifty-five (55) percent contribution in the 2001 base case. On average, U.S. utilities will contribute two and one-half (2.5) percent to deposition rates in 2020 after CAMR, CAIR, and other Clean Air Act programs are in place.

The federal CAMR establishes a cap and trade system for mercury similar to U.S. EPA's Acid Rain Program. In CAMR, U.S. EPA has assigned each state and two tribes an emissions "budget" for mercury. Indiana's annual electric generating unit mercury budget in CAMR is two and ninety-eight thousandths (2.098) tons in years 2010 through 2017, a fifteen (15) percent reduction from 2002 levels and eight hundred and twenty-eight thousandths (0.828) tons in 2018 and thereafter, a sixty-six (66) percent reduction from 2002 levels. The cap is permanent, regardless of growth in the coal fired electric utility sector. The trading program promotes reductions at the sources with the lowest control costs, typically the larger sources. Controls will primarily reduce emissions of ionic mercury, the form of mercury that deposits locally. Each state must submit a State Plan revision detailing how it will meet its budget for reducing mercury from coal-fired power plants. State Plans are due eighteen (18) months from the date the U.S. EPA administrator signed CAMR, or September 15, 2006. CAMR includes a model cap and trade program (40 CFR Part 60, Subpart HHHH) that states can adopt to achieve and maintain the mercury emission budget. Emission monitoring and reporting requirements ensure that monitored data are accurate, reporting is consistent among sources, and that the emissions reductions occur. The flexibility of allowance trading creates financial incentives for coal fired power plants to look for new and low cost ways to reduce emissions and improve the effectiveness of pollution control equipment.

To ensure consistency, states participating in the national cap and trade program need to adopt the following key operational elements: allowance management; banking without restriction; accountability for affected sources; and enforcement requirements. The model cap and trade rule does allow states to modify language to best suit their unique circumstances with regard to allocation methodologies. Mercury allocation methodology elements for which states have flexibility include: 1) the cost of the allowance distribution (e.g., free distribution or auction); 2) the frequency of allocation (e.g., permanent or periodically updated); 3) the basis for distributing the allowances (e.g., heat-input or power output); and 4) the use of allowance set-asides and their size, if used (e.g., new unit set-asides or set asides for energy efficiency, for development of integrated gasification combined cycle (IGCC) technology generation, for renewables, or for small units).

The State Plan must demonstrate how the state will limit statewide emissions from affected new and existing sources to the amount of the budget. States may meet their statewide emission budget by allowing their sources to participate in a national cap and trade program or by developing some other regulatory system. Nothing in CAMR precludes states from requiring stricter controls and still being eligible to participate in the mercury budget trading program. The federal rule

allows for states to implement more stringent mercury emissions requirements.

IDEM is taking comment on options to meet the requirements in CAMR. The Air Pollution Control Board was petitioned by the Hoosier Environmental Council (HEC) in June of 2004 to regulate mercury emissions from power plants. This rulemaking notice includes the HEC petition as an alternative to adopting CAMR. The HEC petition requested mercury limits for coal fired electric generating units of six-tenths pounds of mercury per trillion British thermal units (0.6 lbs Hg/TBtu) or an emissions rate equal to ninety (90) percent reduction of mercury from the measured inlet conditions, regardless of coal type. The HEC petition did not allow for emissions trading among sources and required compliance by July 2008.

Another alternative to adopting the federal CAMR or the HEC petition is to adopt the federal rule with modification. Types of rule modifications on which IDEM is inviting comment on include, but are not limited to, reduced overall state cap, earlier compliance date for phase II, and individual unit emissions limits, either as an antibacksliding measure or to limit future growth in unit-specific emissions. IDEM invites comments on these or other regulatory options.

At this time IDEM is also considering two options for the location of CAMR requirements in the Indiana Administrative Code. One option is to adopt the new source performance standard and trading program for mercury from power plants into Article 11, Emission Limitations for Specific Types of Operations. The second option is to add a new article for power plants that would address both CAMR and CAIR rules. Under either option the additions and changes under 40 CFR part 75 for emission monitoring requirements can be addressed in Article 21, Acid Deposition Control. IDEM invites comments and suggestions on placement of the mercury rule in the administrative code.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Adopt federal rule.

Alternative 1 is to adopt CAMR, including the model trading rule (40 CFR Part 60, Subpart HHHH). Indiana would still need to determine how to allocate mercury allowances, either according to the methodology in the model trading rule or by a different method, and invites comment on this aspect of the rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Ninety (90) percent control, no cap and trade, and 2008 compliance date (HEC petition).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, CAMR was signed on March 15, 2005.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. The federal program provides for a less stringent mercury emissions limit, later compliance date, and allows emissions trading.

Alternative 3. Adopt federal rule with modifications.

Options include, but are not limited to, reduced overall state cap, earlier compliance date for phase II, and individual unit emission limits, either as an antibacksliding measure or to limit future growth in unit specific emissions.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, CAMR signed on March 15, 2005.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. The federal program would provide for a less stringent mercury emissions limit or later compliance date.

Applicable Federal Law

This rulemaking is related the federal Clean Air Mercury Rule (CAMR) signed by the U.S. EPA administrator on March 15, 2005. The federal rule has not been published in the Federal Register yet.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative would have no additional state fiscal impact since the requirements are already imposed under federal law. U.S. EPA estimates that the projected nationwide annual costs of CAMR to the power industry are one hundred and sixty (160) million dollars in 2010, one hundred (100) million dollars in 2015, and seven hundred and fifty (750) million dollars in 2020. These costs represent the total cost to the electric-generating industry of reducing mercury emissions to meet the caps in CAMR and are incremental costs to the requirements to meet the Phase 1 NOx and SO2 emissions caps set forth in CAIR. U.S. EPA also estimated that retail electricity prices are projected to increase roughly two-tenths (0.2) percent higher with CAMR in 2020 when compared to CAIR and natural gas prices roughly one and six-tenths (1.6) percent.

Potential Fiscal Impact of Alternative 2. The National Wildlife Federation's (NWF) report, "Getting the Job Done: Affordable Mercury Control at Control Burning Power Plants" provides cost estimates for ninety (90) percent mercury control at power plants in Indiana. The NWF cost estimates are based on an assumption that activated carbon injection and a polishing fabric filter would be needed to reliably reach ninety (90) percent mercury capture at most boilers in Indiana. NWF applied U.S. EPA cost estimates for these technologies and power plant configurations to calculate the cost of retrofitting Indiana's power plants. NWF estimated that total annual cost of ninety (90) percent mercury control at one hundred eighty-three (183) million dollars. IDEM has not conducted a separate cost analysis and invites comment on the fiscal impact of this alternative.

Potential Fiscal Impact of Alternative 3. There is likely to be an additional fiscal impact associated with any modifications to the federal rule that are more stringent. However, IDEM has not estimated the cost of these modifications and invites comment on them.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is for both CAMR and CAIR rulemakings, referred to as the "Utility Rules Workgroup." The workgroup is made up of IDEM staff and a cross-section of stakeholders. If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Susan Bem, Rules Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana). Please provide your name, phone number and email address, if applicable, and where you can be contacted. A workgroup meeting to discuss this rulemaking has been scheduled for June 16, 2005 at 1:00 P.M.. The meeting will be held in the Indiana Government Center South Conference Center, Room #18 located at 402 West Washington Street, Indianapolis, Indiana. More information about meeting location can be found on IDEM's Web site at:
http://www.in.gov/serv/eventcal?PF'idem&Clist'16_153_154_155_156

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:

#05-116(APCB) Mercury Rule
Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth 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 July 5, 2005.

Additional information regarding this action may be obtained from Susan Bem, Rules Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-117(APCB)

DEVELOPMENT OF NEW RULES CONCERNING NITROGEN OXIDE AND SULFUR DIOXIDE EMISSIONS FROM FOSSIL FUEL-FIRED POWER PLANTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new and amended rules concerning nitrogen oxide and sulfur dioxide emissions from fossil fuel-fired power plants. 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 3; 326 IAC 7; 326 IAC 10; 326 IAC 21; 326 IAC 24.

AUTHORITY: IC 13-14-8; IC 13-17-3-1; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Pursuant to Section 107(d) of the Clean Air Act, U.S. EPA designated twenty-four (24) Indiana counties, or portions of counties as being in nonattainment of the National Ambient Air Quality Standards (NAAQS) for ozone and seventeen (17) Indiana counties, or portions of counties as being in nonattainment of the fine particles ($PM_{2.5}$) NAAQS. The ozone designations were effective June 15, 2004, and Indiana must develop state implantation plans by June 15, 2007, containing emission control measures that will bring those counties into attainment by June 15, 2009. The $PM_{2.5}$ designations were effective April 5, 2005, and Indiana must develop state implementation plans by April 5, 2008, containing emission control measures that will bring those counties into attainment by April 5, 2010.

On March 10, 2005, the U.S. EPA administrator signed the Clean Air Interstate Rule (CAIR) to help counties in the eastern United States meet U.S. EPA air quality standards for ozone and $PM_{2.5}$. CAIR achieves substantial reductions of sulfur dioxide (SO_2) and nitrogen oxide (NO_x) emissions from fossil fuel-fired power plants. Sulfur dioxide (SO_2) and nitrogen oxide (NO_x) contribute to the long range transport and formation of fine particles ($PM_{2.5}$) and NO_x contributes to the formation of ground-level ozone. Fine particles and ozone are associated with thousands of premature deaths and illnesses each year. Additionally, these pollutants reduce visibility and damage sensitive ecosystems. U.S. EPA has determined that SO_2 and NO_x emissions from twenty-three (23) states and the District of Columbia contribute to unhealthy levels of fine particles in particular downwind states and NO_x emissions in twenty-five (25) eastern states and the District of Columbia contribute to unhealthy levels of ozone in other particular downwind states. Overall, CAIR covers twenty-eight (28) states, including Indiana, and the District of Columbia. Based on an assessment of the emissions contributing to interstate transport of air pollution and available control measures, U.S. EPA has determined that it is highly cost effective to achieve the required reductions in the twenty-eight (28) states by controlling emissions from power plants.

CAIR provides two compliance options for states to achieve the required emission reductions. The first option is to meet the state's emission budget by requiring power plants to participate in an interstate cap and trade program administered by U.S. EPA that caps emissions in two phases. The cap and trade program is based on the Acid Rain and NO_x Budget Trading programs, including two phases with declining power plant emission caps. The Acid Rain Program is under Title IV of the Clean Air Act, which required two (2) phases of reductions to achieve significant environmental and public health benefits through reductions in emissions of sulfur dioxide (SO_2) and nitrogen oxide (NO_x), the primary causes of acid rain. The NO_x Budget Trading program is a federal rule promulgated in 1998 that affected twenty-two (22) states, including Indiana. It required each state to

submit state implementation plan revisions to reduce the regional transport of ozone by reducing summertime NO_x emissions (NO_x SIP call). Indiana adopted a state rule reducing emissions of NO_x from electric generating units (EGUs), large industrial boilers, and cement kilns in June of 2001.

CAIR builds upon these two regulatory programs. CAIR's SO_2 annual caps are three and six-tenths (3.6) million tons in 2010 and two and five-tenths (2.5) million tons in 2015. The SO_2 annual trading program is designed to work with the existing Title IV Acid Rain program. Sources will turn in Title IV allowances at a ratio of greater than one (1) to one (1) to ensure reductions beyond Title IV and sources may use pre-2010 allowances at a one (1) to one (1) ratio.

CAIR adds a NO_x annual trading program. The NO_x annual caps are one and five-tenths (1.5) million tons in 2009 and one and three-tenths (1.3) million tons in 2015.

CAIR also includes a NO_x ozone season trading program that will replace the current NO_x Budget Trading Program. The NO_x ozone season caps are five hundred eighty thousand (580,000) tons in 2009 and four hundred eighty thousand (480,000) tons in 2015. Allowances cannot be traded between the NO_x annual and ozone season trading programs. The allowances are considered separate currencies. However, sources will be able to use banked NO_x allowances from the current NO_x Budget Trading Program in the new CAIR ozone season program. NO_x SIP Call sources that are not part of CAIR (i.e., non-electric generating units (nonEGUs)) can also be brought into the ozone season trading program.

When U.S. EPA proposed CAIR, IDEM expressed concern about the inclusion of nonEGUs under the current NO_x Budget Trading Program and what could happen with the energy efficiency and renewable energy (EE/RE) set-asides. As part of CAIR, U.S. EPA will allow nonEGUs under the NO_x Budget Trading Program to be included in the CAIR ozone season program. Another aspect of the current NO_x Budget Trading Program that was not mentioned in CAIR is the EE/ER set-aside. Initial conversations with U.S. EPA seem to indicate that IDEM will be able to include this set-aside in the new rule, but further discussions with U.S. EPA are needed. While interest in the EE/RE set-aside has not been wide spread, IDEM believes this set-aside and the related Clean Energy Credit Program is important. During rulemaking, IDEM will be looking at improvements to the EE/RE program, including possible changes to how the program is implemented and possible expansion to include the CAIR annual NO_x trading program. IDEM seeks comment on possible improvements or changes with the set-aside.

States will have flexibility in allocating NO_x allowances and determining new source set-aside amounts in the NO_x annual and ozone season trading programs, but not for the SO_2 trading program since those allowances are already allocated under the Acid Rain program. States are not required to but may include an individual unit opt-in provision in the state rule. However, states would need to choose an individual opt-in approach consistent with the model rule if participating in the trading program administered by U.S. EPA.

The second option is to meet the state emissions budget for SO_2 and NO_x by reducing emissions from sources other than power plants or power plants in addition to other sources. This option allows states flexibility on how to achieve the required reductions, including which sources to control and whether to join the trading program. Under either compliance option States have eighteen (18) months to submit a State Plan to U.S. EPA. However, there is a streamlined approval process for states that follow the model rule.

U.S. EPA modeling shows that while CAIR helps bring many counties into attainment for $PM_{2.5}$ and ozone, some states may need additional SO_2 and NO_x reductions to achieve attainment in all areas. In Indiana, U.S. EPA modeling predicts the reductions from CAIR will bring all of Indiana into compliance with the ozone standard by the required attainment date of 2009. For $PM_{2.5}$, U.S. EPA modeling predicts Clark (Greater Louisville), Marion, and Lake counties will not meet the standard by the required attainment date of 2010. Measured $PM_{2.5}$ levels in Lake County currently meet the ambient air quality standard. On the other hand, the Lake Michigan Air Directors Consortium (LADCO), the Midwest states' technical support organization, has conducted modeling that predicts the CAIR reductions will leave Hamilton County just above the ozone standard and Marion County above the $PM_{2.5}$ standard. LADCO is still evaluating data for Lake and Porter Counties in the Greater Chicago nonattainment area. The most recent (2002-2004) measured air quality in Lake and Porter Counties meets both the ozone and $PM_{2.5}$ standards. Further modeling later this year should determine whether "beyond CAIR" controls will be needed for ozone or $PM_{2.5}$ attainment in Indiana.

IDEM is considering different options regarding the location of CAIR in the Indiana Administrative Code. One option is to adopt the nitrogen oxide standards and trading program in Article 10, Emission Limitations for Specific Types of Operations and the sulfur dioxide standards and trading program in Article 7, Sulfur Dioxide Rules. In 2009, CAIR NOx would supercede the NO_x SIP Call rules. So either a sunset date would need to be added to the NO_x SIP call rules in Article 10 or the NOx SIP call rules would need to be amended and integrated with the new CAIR NO_x rules. Another option is to add a new article for power plants that would address both CAIR and the Clean Air Mercury Rule (CAMR). IDEM invites comments and suggestions on placement of the CAIR in administrative code.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Adopt federal cap and trade rule. There are two options within this alternative. The first option is to adopt the model cap and trade rule included in CAIR with U.S. EPA's language regarding allowance allocation and opt-in provisions. The second option is to adopt the model cap and trade rule, but select a different allowance allocation methodology that either includes or does not include an opt-in provision, i.e., flexibility as allowed in the federal rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Adopt CAIR rule with modifications, for example, lower statewide caps (withholding allowances) or unit-specific emission limits to bring all Indiana counties into attainment.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, CAIR was signed on March 10, 2005.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. The federal program provides for higher caps on SO_2 and NO_x emissions and no unit-specific limits.

Alternative 3. Do not adopt the federal rule and obtain reductions either from other sources or EGUs plus additional sources.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, CAIR signed on March 10, 2005.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. This option would not follow U.S. EPA's model rule for obtaining reductions in SO_2 and

NO_x in the most cost effective manner.

Applicable Federal Law

This rulemaking is related to the federal Clean Air Interstate Rule (CAIR) signed by the U.S. EPA administrator on March 10, 2005. The federal rule has not yet been published in the Federal Register.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. Adopting the model rule would have no additional state fiscal impact since the requirements are already imposed under federal law. U.S. EPA estimates for the affected CAIR states, that the projected annual costs of CAIR to the power industry are two and four-tenths ($2.4) billion dollars in 2010 and three six-tenths ($3.6) billion dollars in 2015. These costs represent the compliance cost to the electric generating industry of reducing SO_2 and NO_x emissions to meet the caps set forth in CAIR. When fully implemented, CAIR will reduce SO_2 emissions in twenty-eight (28) states and the District of Columbia by over seventy (70) percent and NO_x emissions by over sixty (60) percent from 2003 levels. These reductions will result in eighty- five ($85) to one-hundred ($100) billion dollars in health benefits and nearly two ($2) billion dollars in air visibility benefits per year by 2015 and will substantially reduce premature mortality in the eastern United States. Adopting alternative allowance allocation methodology or opt-in provisions could have a fiscal impact on power plants; the state invites comments on such alternatives and their cost.

Potential Fiscal Impact of Alternative 2. More stringent caps could have an additional fiscal impact but the department has not quantified that impact, and invites comments on the fiscal impact.

Potential Fiscal Impact of Alternative 3.The fiscal impact would depend upon the sources regulated and how they are regulated, so potential fiscal impact would have to be determined later in the rulemaking process.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is for both CAMR and CAIR rulemakings, referred to as the "Utility Rules Workgroup." The workgroup is made up of IDEM staff and a cross-section of stakeholders. If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Susan Bem, Rules Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana). Please provide your name, phone number and email address, if applicable, and where you can be contacted. A workgroup meeting to discuss this rulemaking has been scheduled for June 16, 2005 at 1:00 P.M.. The meeting will be held in the Indiana Government Center South Conference Center, Room #18 located at 402 West Washington Street, Indianapolis, Indiana. More information about meeting location can be found on IDEM's Web site at:
http://www.in.gov/serv/eventcal?PF'idem&Clist'16_153_154_155_156

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:
#05-117(APCB) CAIR Rule
Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth 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 July 5, 2005.

Additional information regarding this action may be obtained from Susan Bem, Rules Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-118(APCB)

DEVELOPMENT OF AMENDMENTS TO 326 IAC 7-4-2 CONCERNING SULFUR DIOXIDE EMISSION LIMITATIONS AT CITIZENS GAS & COKE UTILITY, INDIANAPOLIS, INDIANA

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rule 326 IAC 7-4-2 to revise the sulfur dioxide (SO_2) emission limitations for three coke oven battery underfire combustion stacks. 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 7-4-2.

AUTHORITY: IC 13-14-8; IC 13-17-3-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Citizens Gas & Coke Utility (CG & CU) in Indianapolis, Indiana, has requested that IDEM combine into one limit the sulfur dioxide (SO_2) emission limitations in 326 IAC 7-4-2 for each of the three coke batteries (E, H, and No. 1). CG & CU has requested a combined limit for the pounds per hour limit and the pounds per ton of coal charged limit. These limits govern the emissions from the coke oven battery underfire combustion stacks. Coke oven gas is the fuel used for underfire, which heats the batteries. All of the coke oven gas used for the underfire at the facility is desulfurized, i.e., hydrogen sulfide (H_2S) is removed, in the iron oxide boxes. The sulfur content of the coke oven gas combusted at E, H, and No. 1 battery underfire is the same, since all coke oven gas is desulfurized to the same concentration. The current pound per ton of coal charged emission limitations in 326 IAC 7-4-2 for batteries E, H, and No. 1 are seventy-nine hundredths pounds of sulfur dioxide per ton of coal charged (0.79 lb SO_2/ ton coal), seventy-nine hundredths pounds of sulfur dioxide per ton of coal charged (0.79 lb SO_2/ ton coal), and twenty-three hundredths pounds of sulfur dioxide per ton of coal charged (0.23 lb SO_2/ ton coal), respectively. The current pounds per hour emission limitations for batteries E, H, and No. 1 are thirty-one and sixteen hundredths pounds of sulfur dioxide per hour (31.16 lbs SO_2/hr), thirty-one and sixteen hundredths pounds of sulfur dioxide per hour (31.16 lbs SO_2/hr), and fifteen and six-tenths pounds of sulfur dioxide per hour (15.7 lbs SO_2/hr), respectively. CG & CU is proposing a combined pounds per hour limit as the sum of the three limits for each coke battery. The three limits for pounds of SO_2 per ton of coal are combined into one limit based on the coal charging capacity of each battery. CG & CU is also proposing that the combined limit be dependent upon the number of batteries in operation. The combined limit would tier down dependent on which batteries were in operation. A combined limit would be calculated for each battery operating scenario.

CG & CU uses iron oxide boxes to desulfurize the coke oven gas from all three coke batteries. Iron oxide boxes remove H_2S from the coke oven gas stream, which is the predominant sulfur compound found in coke oven gas. The construction permit for battery No. 1 has a limit of twenty grains of hydrogen sulfide per hundred standard cubic feet (20 grains H_2S/100 scf). However, there are number of organic sulfur compounds present in trace quantities in coke oven gas, such as carbon disulfide, carbonyl sulfide, and thiophenes. If H_2S was the only sulfur compound in the coke oven gas the H_2S limit of 20 grains H_2S/100 scf would be equivalent to the current SO_2 limit for battery No. 1 of fifteen and seven-tenths pounds per hour (15.7 lbs/hr). CG & CU is not able to consistently meet the SO_2 limit for battery No. 1 and the only way to address this would be to reduce the amount of sulfur compounds in the coke oven gas. Currently technology is not available to remove the organic sulfur compounds in the gas stream and it would be cost prohibitive to reduce the H_2S levels in the coke oven gas by installing additional iron oxide boxes. So CG & CU is requesting a combined SO_2 limit for the battery combustion stacks, while retaining the twenty grains of hydrogen sulfide limit of 20 grains H_2S/100 scf. Modeling, reviewed by IDEM, demonstrates that the proposed limits will not cause an exceedance of the National Ambient Air Quality Standards (NAAQS) in the vicinity of the plant.

Alternatives To Be Considered Within the Rulemaking

Alternative 1. Amend rule as proposed.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No, this is a site-specific state rule.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Take no action on the proposed amendments.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No, this is a site-specific rule.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

326 IAC 7-4-2 is approved by the U.S. Environmental Protection Agency (U.S. EPA) as part of Indiana's State Implementation Plan (SIP). Indiana will send these rules to U.S. EPA to be approved as part of Indiana's SIP so federal law is consistent with the state rule.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative will have no fiscal impact.

Potential Fiscal Impact of Alternative 2. This alternative would have a fiscal impact on the source since the source would have to change its operations to be able to consistently meet the emission limit for battery No. 1.

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rules Section, Office of Air Quality at (317) 233-5697 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:

#05-118(APCB) Emission Reporting/CG & CU SO_2 SIP
Susan Bem Mail Code 61-50
c/o Administrative Assistant
Rules Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue

Indianapolis, Indiana 46204.
Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth 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 July 5, 2005.

Additional information regarding this action may be obtained from Susan Bem, Rules Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD
#05-85(SWMB)

DEVELOPMENT OF NEW RULES CONCERNING EXCLUSION OF A HAZARDOUS WASTE FROM REGULATION UNDER 329 IAC 3.1 (DELISTING)

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules for exclusion of a hazardous waste from regulation under 329 IAC 3.1-5-2 (delisting). The purpose of this notice is to publish the commissioner's tentative recommendation for rulemaking and to seek public comment on the recommendation and 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 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 3.1-6-7.

AUTHORITY: IC 13-14-8; IC 13-14-9; IC 13-22-2.

STATUTORY REQUIREMENTS

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

Delisting Process

"Delisting" is the process of excluding a hazardous waste that is listed in 40 CFR 261, Subpart D, from regulation as hazardous waste if the generator can show that the waste no longer meets the criteria for which it was listed as a hazardous waste, and that it will not exhibit a hazardous waste characteristic. Once delisted, the waste may be disposed of in a municipal solid waste landfill permitted under 329 IAC 10.

This proposed delisting is a "conditional exclusion" for a waste that may exhibit future variability that excludes the waste so long as it is managed in accordance with specific conditions, such as periodic testing.

P.L.128-1997 and P.L.45-1997 required the solid waste management board to "adopt rules that provide procedures and criteria for delisting wastes as hazardous wastes." These statutes also required IDEM to "apply to the United States Environmental Protection Agency (EPA) for authority to receive petitions and delist wastes under 40 CFR 260.20 and 40 CFR 260.22." Delisting rules were adopted at 329 IAC 3.1-5-2 and 329 IAC 3.1-5-3, effective on March 19, 1998. IDEM received EPA authorization for delisting on January 4, 2001.

Under IC 13-22-2-3, generators of hazardous wastes may petition IDEM to exclude a specific hazardous waste listed in 40 CFR 261, Subpart D, that is generated at a particular facility from regulation as a hazardous waste under 329 IAC 3.1. This petition must be submitted in accordance with 329 IAC 3.1-5-2. The petition must include the information and meet the criteria required by 40 CFR 260.22 (incorporated by reference in 329 IAC 3.1-5-3).

Upon receipt of a petition that meets the requirements of 329 IAC 3.1-5-2, IDEM evaluates the petition:

(1) to determine that the information provided in the petition complies with the requirements of 40 CFR 260.22,

(2) to determine that the waste will meet the criteria in 40 CFR 260.22 when delisted,

(3) to determine that exclusion of the waste from regulation under 329 IAC 3.1 will not result in increased risk to human health and the environment, and

(4) to determine that the delisted waste can be safely managed as described in the petition.

The specific criteria for delisting are contained in 40 CFR 260.22. The petitioner must demonstrate in the petition that the waste proposed for delisting meets all applicable criteria.

Delisting of a waste under 329 IAC 3.1-5-2 affects waste generated, managed, and disposed of in Indiana. No other state recognizes Indiana's delisting authority. A waste generated in Indiana and delisted under 329 IAC 3.1-5-2 will be considered a hazardous waste when it is transported outside of Indiana unless it has also been delisted by the EPA under 40 CFR 260.20 and 40 CFR 260.22 or by the receiving state.

Petition for Delisting

On September 20, 2004, General Motors Corporation (General Motors) petitioned IDEM to exclude a hazardous waste from listing in 40 CFR 261, Subpart D, incorporated by reference at 329 IAC 3.1-6-1, also known as delisting. The hazardous waste to be delisted is described in 40 CFR 261.31 as "F019: Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such

phosphating is an exclusive conversion coating process". The particular hazardous waste for which delisting is sought is wastewater treatment sludge from the chemical conversion coating of automobile assemblies generated at General Motor's Fort Wayne Assembly Plant in Fort Wayne, Indiana. The delisted waste would be disposed of only at a municipal solid waste landfill permitted under 329 IAC 10 or a hazardous waste disposal facility permitted under 329 IAC 3.1. The petition requested delisting of up to three thousand (3,000) cubic yards of this particular wastewater treatment sludge annually.

The petition and all documents related to IDEM's review and analysis of the petition are available for viewing and copying in the Indiana Department of Environmental Management, Centralized File Room, Indiana Government Center-North, 100 North Senate Avenue, Room N1201, Indianapolis, Indiana.

Description of Proposed Action

IDEM is proposing to grant the petition submitted by General Motors for the Ft. Wayne Assembly Plant to exclude a hazardous waste from regulation under the hazardous waste rules in 329 IAC 3.1. F019 wastewater treatment sludge waste is generated when any aluminum part is attached to a vehicle body undergoing a treatment process to prepare it for painting. The conversion coating process prepares and cleans metals surfaces to accept paint. The F019 waste is listed for hexavalent chromium and cyanide. Because of the configuration of the wastewater treatment plant at the Fort Wayne Assembly Plant, the F019 waste causes all wastewater treatment sludge from this plant to be a hazardous waste. IDEM evaluated all constituents in the plant's wastewater in reviewing this petition.

Analysis of the Petition

A risk assessment using a fate and transport model was used to predict concentrations of hazardous constituents released from the waste after disposal to evaluate the potential impacts on human health and the environment. The risk assessment set specific concentrations that the waste, as a total concentration, or extracts of the waste must meet. The risk assessment was based on a specified annual volume of waste disposed and the disposal method. However, the total concentration constituent levels found in this waste are at such low levels compared to the total concentration delisting levels that it is very unlikely the waste could contain those levels. Therefore, the total concentration delisting levels are not used to determine delisting eligibility.

The risk assessment was done using Delisting Risk Assessment Software (DRAS) developed by EPA Region 6. Version 2.0 of the DRAS software was used with amendments and updates provided by EPA Region 5.

General Motors proposes to dispose of a maximum of three thousand (3,000) cubic yards of waste annually in a municipal solid waste landfill regulated under 329 IAC 10. The petition actually lists three different volumes of waste. The required concentrations of constituents for the maximum volume are the lowest concentrations and were used to determine if the exclusion is appropriate.

In addition to the hazardous constituents for which the waste was listed, several other hazardous constituents are included in the petition. The list of constituents in the petition is more extensive than the hazardous constituents of the waste or the underlying hazardous waste constituents because the wastewater treatment sludge is collected from all plant processes. However, the constituent list is abbreviated from list of hazardous constituents in 40 CFR 261, Appendix VIII.

The petition was prepared using sampling and analysis processes described in a Memorandum of Understanding (MOU) between EPA Region 5 and the Michigan Department of Environmental Quality. This MOU established a list of constituents, procedures, and consistent methods for delisting F019 in several automobile assembly plants in Michigan. IDEM agreed to use the MOU procedures with certain amendments for sampling, analysis, and preparation of this petition.

The waste was sampled with certain amendments according to the sampling and analysis plan developed in the MOU. A daily representative aliquot of the sludge was taken from the filter press and placed in a closed fifty-five (55) gallon drum. One drum was collected each week for six (6) weeks. After six (6) weeks, a sample amount adequate for all analyses was collected from the entire depth of the drum. A total of seven (7) sample sets were taken including duplicate samples. Appropriate field blanks were also taken. All samples were analyzed using appropriate methods from EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846).

The analytical data was validated by IDEM. Certain results are estimated values but are well below the maximum allowable concentrations and are acceptable.

The analytical results show that the extract concentrations determined using the Toxicity Characteristic Leaching Procedure (TCLP) (Method 1311 from SW-846) are below the levels requiring treatment under the land disposal restrictions of 40 CFR 268. The waste does not exhibit the characteristics of toxicity or reactivity.

Results of Analysis of the F019 Waste

The following table lists the maximum concentrations found in the waste, the maximum concentrations found in the TCLP extracts, and the maximum allowable TCLP concentrations for delisting.

Table A. Maximum Concentrations Observed for Hazardous Constituents

Constituent	CAS[1] Number	Maximum Observed Total Concentration (mg/kg)[2]	Maximum Observed Extract Concentration (mg/l)[3]	Maximum Allowable Delisting Concentration (mg/l)[3]
Inorganic Constituents				
Antimony	7440-36-0	ND[4]	ND	0.5
Arsenic	7440-38-2	ND	ND	0.225
Barium	7440-39-3	100	ND	100[5]
Beryllium	7440-41-7	ND	ND	1.0
Cadmium	7440-43-9	ND	ND	0.36
Chromium	7440-47-3	48	ND	3.71
Cobalt	7440-48-4	1.9	ND	18.0
Cyanide	57-12-5	0.72	ND	8.63
Lead	7439-92-1	14	ND	5.0[5]
Mercury	7439-97-6	ND	ND	0.116

Nickel	7440-02-0	1270	6.77	67.8	
Selenium	7782-49-2	0.65	ND	1.0[5]	
Silver	7440-22-4	ND	ND	5.0[5]	
Thallium	7440-28-0	ND	ND	0.211	
Tin	7440-31-5	1610	8.0	540	
Vanadium	7440-62-2	ND	ND	65.0	
Zinc	7440-66-6	4550	2.64	673	
Volatile Organic Compounds					
Acetone	67-64-1	ND[4]	0.41	1500	
Acetonitrile	75-05-8	ND	ND	77.5	
Acrylonitrile	107-13-1	ND	ND	0.006	
Allyl chloride	107-05-1	ND	ND	0.120	
Benzene	71-43-2	ND	ND	0.057	
n-Butanol	71-36-3	ND	0.26	171	
Carbon tetrachloride	56-23-5	ND	ND	0.034	
Chlorobenzene	108-90-7	ND	ND	2.70	
Chloroform	67-66-3	ND	ND	0.035	
Chloromethane	74-87-3	ND	ND	9.700	
1,1-dichloroethane	75-34-3	ND	ND	61.35	
1,2-dichloroethane	107-06-2	ND	ND	0.035	
1,1-dichloroethene	75-35-4	ND	ND	0.300	
cis-1,2-dichloroethene	156-59-2	ND	ND	3.19	
trans-1,2-dichloroethene	156-60-5	ND	ND	4.56	
Formaldehyde	50-00-0	13	0.64	43.5	
Ethyl benzene	100-41-4	ND	ND	31.9	
Methyl ethyl ketone	78-93-3	ND	ND	200[5]	
Methyl isobutyl ketone	108-10-1	ND	ND	1000	
Methyl methacrylate	80-62-6	ND	ND	460	
Methylene chloride	75-09-2	ND	ND	0.216	
Styrene	100-42-5	ND	ND	4.56	
1,1,1,2-tetrachloroethane	630-20-6	ND	ND	0.175	
1,1,2,2-tetrachloroethane	79-34-5	ND	ND	0.330	
Toluene	108-88-3	ND	0.007	4.56	
1,1,1-trichloroethane	71-55-6	ND	ND	9.11	
1,1,2-trichloroethane	79-00-5	ND	ND	0.058	
Trichloroethene	79-01-6	ND	ND	0.228	
Vinyl acetate	108-05-4	ND	ND	320	
Vinyl chloride	75-01-4	ND	ND	0.002	
Xylenes	1330-20-7	ND	ND	13.93	
Semivolatile Organic Compounds					
bis-(2ethylhexyl) phthalate	117-81-7	1.9	ND[4]	0.146	
Butyl benzyl phthalate	85-68-7	ND	ND	69.6	
m-Cresol	108-39-4	ND	ND	85.5	
o-Cresol	95-48-7	ND	ND	85.5	
p-Cresol (4-methylphenol)	106-44-5	3.5	0.025	85.5	
1,4-dichlorobenzene	106-46-7	ND	ND	3.24	
2,4-dimethylphenol	105-67-9	ND	ND	34.2	
2,4-dinitrotoluene	121-14-2	ND	ND	0.005	
Dioctyl phthalate	117-81-7	ND	ND	0.168	
Hexachlorobenzene	118-74-1	ND	ND	1.6×10^{-4}	
Hexachlorobutadiene	87-68-3	ND	ND	0.016	
Hexachloroethane	67-72-1	ND	ND	0.225	

Naphthalene	91-20-3	ND	ND	0.546
Nitrobenzene	98-95-3	ND	ND	0.855
Pentachlorophenol	87-86-5	ND	ND	0.007
Pyridine	110-86-1	ND	ND	1.71
2,4,5-trichlorophenol	95-95-4	ND	ND	68.6
2,4,6-trichlorophenol	88-06-2	ND	ND	0.290

[1]CAS means Chemical Abstract Service.

[2]mg/kg means milligrams per kilogram.

[3]mg/l means milligrams per liter.

[4]ND means the constituent was not detected.

[5]The delisting level for this constituent was higher than the toxicity characteristic regulatory level in 40 CFR 261.24, therefore the toxicity characteristic regulatory level applies.

Proposed Conditions for Exclusion

IDEM is proposing the following conditions for granting this petition:

(1) The delisted waste must not exceed any of the delisting concentrations for constituents of concern listed in Table A above.

(2) The maximum annual volume of waste to be delisted under this petition is three thousand (3,000) cubic yards per year.

(3) GM must demonstrate on a quarterly basis that the constituents detected in the initial analysis are below the delisting levels in Table 1 of the draft rule. General Motors must extract a representative sample of the waste using Method 1311, Toxicity Characteristic Leaching Procedure, or Method 1330A, Oily Waste Extraction Procedure for tin. The extracts must be analyzed for the constituents listed in Table 2 of the draft rule using the methods listed in those tables or equivalent methods acceptable to the commissioner. Detection levels of the methods used must be equal to or lower than the delisting levels. The same level of analytical quality control used in the petition must be used in the quarterly verification analysis. General Motors must also ensure that the remaining constituents listed in Table 1 of the draft rule, for which quarterly testing is not required, do not exceed the delisting levels.

(4) If waste testing shows that any constituent has exceeded the delisting level for that constituent, General Motors must notify IDEM in writing within ten (10) days of first possessing or being made aware of such data, and must manage the delisted waste as hazardous waste until General Motors receives written approval from the department to resume managing the waste under this exclusion.

(5) General Motors must submit to IDEM an annual report by February 1 of each year describing the previous year's annual test results.

(6) General Motors must compile and summarize the records of operating conditions and analytical data and maintain those records on site for at least five (5) years. General Motors must make these records available for inspection. All reports must include a signed copy of the certification statement required by 40 CFR 260.22(i)(12).

(7) General Motors must notify IDEM if the manufacturing process that generates the waste or the chemicals involved change and must manage any waste generated after the process change as a hazardous waste until General Motors demonstrates that the waste meets all delisting levels and it has received written approval from IDEM to continue to manage the waste under this exclusion.

(8) The delisted waste must be disposed of in either a municipal solid waste landfill permitted under 329 IAC 10 or a hazardous waste disposal facility permitted under 329 IAC 3.1.

(9) After disposal of the waste, if at any time General Motors has any information that any constituent listed in Table A exceeds the delisting level for that constituent, General Motors must report that information in writing to IDEM within ten (10) days of first receiving the information.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This rule is authorized under IC 13-22-2-3. While this delisting imposes a number of conditions on the generator (petitioner), these conditions and the proposed delisting meet the federal standards for delisting at 40 CFR 260.20 and 40 CFR 260.22. Indiana was authorized by EPA to delist hazardous wastes on January 4, 2001 (66 FR 733). This delisting will result in streamlined hazardous waste management operations and significantly reduced costs for the petitioner.

FINDINGS

The commissioner of IDEM has prepared written findings and a tentative recommendation regarding rulemaking on delisting of the waste described in the petition submitted by General Motors. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) Based on the department's analysis of the petition described above, I have determined that the waste described in the petition meets the criteria in 40 CFR 260.22 for delisting when tested as in the petition. At this time, I recommend that the waste described in the petition be excluded from regulation under 329 IAC 3.1-5-2 with certain conditions as described in the draft rule attached to and incorporated in these findings. This recommendation is subject to public comment as provided below. This recommendation may be modified or reversed based on the comments received.

(2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(3) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

INFORMAL PUBLIC HEARING

329 IAC 3.1-5-2(d) states that the commissioner may hold an informal public hearing to consider oral comments on the tentative recommendation for rulemaking. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. A person who requests an informal public hearing on this petition must submit the request in writing to the address below.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on both the tentative recommendation for rulemaking and the draft rule language,

including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#05-85(SWMB)[General Motors F019 Delisting]
Marjorie Samuel
Office of Land Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor East, Indianapolis, Indiana. Comments may be submitted by facsimile at (317) 232-3403, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 233-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked or hand delivered by July 1, 2005.

Additional information regarding this action may be obtained from Steve Mojonnier of the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 329 IAC 3.1-6-7 IS ADDED TO READ AS FOLLOWS:

329 IAC 3.1-6-7 Waste excluded from regulation; General Motors Corporation, Fort Wayne Assembly Plant, Fort Wayne, Indiana

Authority: IC 13-14-8; IC 13-14-9-7; IC 13-22-2
Affected: IC 13-22

Sec. 7. Wastewater treatment sludge, hazardous waste code F019, that is generated by General Motors Corporation (General Motors) at the Fort Wayne Assembly Plant, Fort Wayne, Indiana is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:

(1) Delisting levels for the waste excluded by this section are the maximum level of any constituent in the extract of the wastewater treatment sludge using the extraction methods described in subdivision (2)(A)(i). The constituent concentrations measured in any of the extracts required by this section must not exceed any of the levels listed in Table 1:

Table 1. Maximum Delisting Levels for Inorganic and Organic Constituents

Constituent	CAS[1] Number	SW-846 Analytical Method to be Used	Delisting Concentration (mg/l)[2]
Inorganic Constituents:			
Antimony	7440-36-0	6010B or 6020	0.5
Arsenic	7440-38-2	6010B or 6020	0.225
Barium	7440-39-3	6010B or 6020	100
Beryllium	7440-41-7	6010B or 6020	1.0
Cadmium	7440-43-9	6010B or 6020	0.36
Chromium	7440-47-3	6010B or 6020	3.71
Cobalt	7440-48-4	6010B or 6020	18.0
Cyanide	57-12-5	9012A	8.63
Lead	7439-92-1	6010B or 6020	5.0[3]
Mercury	7439-97-6	7470A	0.116
Nickel	7440-02-0	6010B or 6020	67.8
Selenium	7782-49-2	6020	1.0[3]
Silver	7440-22-4	6010B or 6020	5.0[3]
Thallium	7440-28-0	6010B or 6020	0.211
Tin	7440-31-5	6010B or 6020	540
Vanadium	7440-62-2	6010B or 6020	65.0
Zinc	7440-66-6	6010B or 6020	673
Volatile Organic Compounds:			
Acetone	67-64-1	8260B	1500
Acetonitrile	75-05-8	8260B	77.5
Acrylonitrile	107-13-1	8260B	0.006
Allyl chloride	107-05-1	8260B	0.120
Benzene	71-43-2	8260B	0.057
n-Butanol	71-36-3	8260B	171
Carbon tetrachloride	56-23-5	8260B	0.034
Chlorobenzene	108-90-7	8260B	2.70
Chloroform	67-66-3	8260B	0.035
Chloromethane	74-87-3	8260B	9.700
1,1-dichloroethane	75-34-3	8260B	61.35
1,2-dichloroethane	107-06-2	8260B	0.035

1,1-dichloroethene	75-35-4	8260B	0.300
cis-1,2-dichloroethene	156-59-2	8260B	3.19
trans-1,2-dichloroethene	156-60-5	8260B	4.56
Ethyl benzene	100-41-4	8260B	31.9
Formaldehyde	50-00-0	8315A	43.5
Methylene chloride	75-09-2	8260B	0.216
Methyl ethyl ketone	78-93-3	8260B	200[3]
Methyl isobutyl ketone	108-10-1	8260B	1000
Methyl methacrylate	80-62-6	8260B	460
Styrene	100-42-5	8260B	4.56
1,1,1,2-tetrachloroethane	630-20-6	8260B	0.175
1,1,2,2-tetrachloroethane	79-34-5	8260B	0.330
Tetrachloroethene	127-18-4	8260B	0.228
Toluene	108-88-3	8260B	45.6
1,1,1-trichloroethane	71-55-6	8260B	9.11
1,1,2-trichloroethane	79-00-5	8260B	0.058
Trichloroethene	79-01-6	8260B	0.228
Vinyl acetate	108-05-4	8260B	320
Vinyl chloride	75-01-4	8260B	0.002
Xylenes	1330-20-7	8260B	13.93

Semivolatile Organic Compounds:

bis-(2ethylhexyl) phthalate	117-81-7	8270C	0.146
Butyl benzyl phthalate	85-68-7	8270C	69.6
m-Cresol	108-39-4	8270C	85.5
o-Cresol	95-48-7	8270C	85.5
p-Cresol (4-methylphenol)	106-44-5	8270C	8.55
1,4-dichlorobenzene	106-46-7	8270C	3.24
2,4-dimethylphenol	105-67-9	8270C	34.2
2,4-dinitrotoluene	121-14-2	8270C	0.005
Dioctyl phthalate	117-81-7	8270C	0.168
Hexachlorobenzene	118-74-1	8270C	1.6×10^{-4}
Hexachlorobutadiene	87-68-3	8270C	0.016
Hexachloroethane	67-72-1	8270C	0.225
Naphthalene	91-20-3	8270C	0.546
Nitrobenzene	98-95-3	8270C	0.855
Pentachlorophenol	87-86-5	8270[4]	0.007
Pyridine	110-86-1	8270C	1.71
2,4,5-trichlorophenol	95-95-4	8270C	68.6
2,4,6-trichlorophenol	88-06-2	8270C	0.290

[1]CAS means Chemical Abstract Service.

[2]mg/l means milligrams per liter.

[3]The delisting level for this constituent was higher than the toxicity characteristic regulatory level in 40 CFR 261.24, therefore the toxicity characteristic regulatory level applies.

[4]Using selected ion monitoring (SIM).

(2) General Motors shall demonstrate that the constituents in the delisted waste do not exceed the delisting levels in subdivision (1) as follows:

(A) General Motors shall analyze two (2) representative samples of the delisted waste each quarter for constituents listed in Table 2 using all of the following:

(i) Constituents must be extracted using Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", U.S. Environmental Protection Agency Publication SW-846, Third Edition, as amended by Updates I, IIA, IIB, III, and IIIA* (SW-846), except that tin must be extracted using SW-846 Method 1330A, Oily Waste Extraction Procedure.

(ii) Constituents must be analyzed using the methods listed for each in Table 2.

Table 2. Constituents for which Quarterly Testing is Required

Constituent	CAS[1] Number	SW-846 Analytical Method to be Used	Delisting Concentration (mg/l)[2]
Acetone	67-64-1	8260B	1500
Barium	7440-39-3	6010B or 6020	100
bis-(2ethylhexyl) phthalate	117-81-7	8270C	0.146
n-Butanol	71-36-3	8260B	171
Chromium	7440-47-3	6010B or 6020	3.71
Cobalt	7440-48-4	6010B or 6020	18.0
p-Cresol (4-methylphenol)	106-44-5	8270C	8.55
Formaldehyde	50-00-0	8315A	43.5
Lead	7439-92-1	6010B or 6020	5.0[3]
Nickel	7440-02-0	6010B or 6020	67.8
Selenium	7782-49-2	6020	1.0[3]
Tin	7440-31-5	6010B or 6020	540
Toluene	108-88-3	8260B	45.6
Zinc	7440-66-6	6010B or 6020	673

[1]CAS means Chemical Abstract Service.

[2]mg/l means milligrams per liter.

[3]The delisting level for this constituent was higher than the toxicity characteristic regulatory level in 40 CFR 261.24, therefore the toxicity characteristic regulatory level applies.

(B) The detection level for each method used must be less than the delisting level described in subdivision (1).

(C) General Motors must comply with Chapter 1, "Quality Control", of SW-846.

(D) General Motors shall ensure that no constituent listed in Table 1 that is not subject to quarterly testing exceeds the delisting level for that constituent listed in Table 1.

*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.

(3) If waste testing shows that any constituent has exceeded the delisting level for that constituent, General Motors must:

(A) notify the department in writing within ten (10) days of first possessing or being made aware of such data; and

(B) manage the waste as hazardous waste until General Motors receives written approval from the commissioner to resume managing the waste under this exclusion.

(4) Changes in the delisted waste must be managed as follows:

(A) General Motors must notify the department in writing if:

(i) the aluminum coating process or chemicals used in the aluminum coating process change from those described in the petition for delisting; or

(ii) other changes in the Fort Wayne Assembly Plant occur that could cause hazardous constituents listed in 40 CFR 261, Appendix VIII that are not listed in Table 2 to be introduced into the plant's wastewater treatment system.

(B) General Motors must handle all wastes generated after a change described in clause (A) as hazardous waste until all of the following occur:

(i) General Motors has demonstrated that:

(AA) the wastes continue to meet all delisting levels in subdivision (1); and

(BB) no new hazardous constituents listed in 40 CFR Part 261, Appendix VIII have been introduced.

(ii) General Motors has received written approval from the commissioner to continue to manage the delisted waste under this exclusion. General Motors may request such approval in advance of implementing a change described in clause (A).

(5) General Motors must submit an annual report that summarizes the data obtained through quarterly verification testing required by subdivision (2) to the department by February 1 of the following year. The report must include the results of each quarter's analysis for the previous calendar year.

(6) General Motors must compile, summarize, and maintain records of operating conditions and analytical data. The records must be maintained for a minimum of five (5) years. The records must be made available for inspection by the department during normal working hours.

(7) All data required by subdivisions (3) through (6) must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

(8) The delisted waste must be disposed of in:

(A) a municipal solid waste landfill permitted under 329 IAC 10; or

(B) a hazardous waste disposal facility permitted under this article.

(9) If, at any time after disposal of the delisted waste, General Motors possesses or is otherwise made aware of any data, including, but not limited to, leachate data or ground water monitoring data, or any other data relevant to the delisted waste indicating that any constituent identified in:

(A) Table 1 is at a level in the leachate that is higher than the specified delisting level; or

(B) Table 3 is in the ground water at a concentration that is higher than the maximum allowable ground water concentration in Table 3;

then General Motors must report such data in writing to the department within ten (10) days of first possessing or being made aware of that data.

Table 3. Maximum Allowable Ground Water Concentrations (mg/l)[1]

Acetone	**3.75**	**Formaldehyde**	**1.38**
Barium	**2.0**	**Lead**	**0.015**
bis-(2ethylhexyl) phthalate	**0.0015**	**Nickel**	**0.75**
n-Butanol	**3.75**	**Selenium**	**0.05**
Chromium	**0.1**	**Tin**	**22.5**
Cobalt	**2.2**	**Toluene**	**1.0**
p-Cresol (4-methylphenol)	**0.19**	**Zinc**	**11.2**

[1]mg/l means milligrams per liter.

(10) No more than three thousand (3,000) cubic yards of delisted waste may be disposed of in any calendar year under this exclusion.

(Solid Waste Management Board; 329 IAC 3.1-6-7)

Notice of First Meeting/Hearing

These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the IC 13-14-9 Notices section of the Indiana Register.

Additional information regarding this action may be obtained from Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana).

Copies of these rules are now on file at the Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Centralized File Room, Room N1201, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Assistant Commissioner
Office of Land Quality

State of Indiana
Notice of Public Hearing on Proposed SFY 2006
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) and Wastewater State Revolving Fund (WWSRF) Loan Programs have developed the proposed State Fiscal Year 2006 Project Priority Lists (PPLs) for infrastructure projects that could be funded through the SRF Programs. The PPLs are prepared annually as part of the Intended Use Plans, which detail the uses, goals and objectives of the SRF Programs. The PPLs are comprised of those projects for which applications have been submitted to the SRF Programs, as projects must be on the PPLs to receive SRF financing. Projects remain un-ranked on the PPLs until preliminary engineering reports are submitted, at which time they are prioritized based on the Scoring and Ranking Systems for the DWSRF and the WWSRF Loan Programs. The PPLs may be amended as described in the respective SRF Project Ranking Systems.

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:

1st quarter: 1:00 p.m., June 16, 2005, Conference Room 20, Indiana Government Center South Conference Center.
Written comments must be submitted by June 27, 2005.

2nd quarter: 1:00 p.m., September 15, 2005, SRF Conference Room, 12th floor, Indiana Government Center North (IGCN) 1275.
Written comments must be submitted by September 26, 2005.

3rd quarter: 1:00 p.m., December 15, 2005, SRF Conference Room, 12th floor, IGCN 1275.
Written comments must be submitted by December 26, 2005.

4th quarter: 1:00 p.m., March 16, 2006, SRF Conference Room, 12th floor, IGCN 1275.
Written comments must be submitted by March 27, 2006.

Copies of the PPLs' 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 2006 Intended Use Plans for both programs are also available.

Inquiries about and requests for the updated DWSRF PPL should be directed to:

Ms. Marylou Renshaw
Section Chief and Technical Review Manager
IGCN, Rm. 1275
Indianapolis, IN 46204
317/232-8655
mrenshaw@idem.in.gov

Inquiries about and requests for the updated WWSRF PPL should be directed to:

Ms. Shelley L. Love
WWSRF Administrator
IGCN, Rm. 1275
Indianapolis, IN 46204
317/232-4396
slove@idem.in.gov

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. Renshaw or Ms. Love at the above address, postmarked on or before the dates listed above.

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER: 05-20

FOR: THE EFFECTIVENESS OF POPULATION INFORMATION FROM THE UNITED STATES BUREAU OF THE CENSUS FOR STATE LAW PURPOSES

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS.

WHEREAS, Indiana Code 1-1-3.5-3 provides that, with respect to any Indiana statute that classifies political subdivisions based on their population according to the federal census results, the effective date of each federal special census, special tabulation, or corrected population count is April 1 of the calendar year following the year in which the tabulation of population or corrected population count is delivered to the State by the United States Secretary of Commerce under 13 U.S.C. 141 and is received by the Governor; and

WHEREAS, Indiana Code 1-1-3.5-3 further provides that the Governor shall issue an Executive Order upon receipt of the tabulation of population or corrected population count:

NOW, THEREFORE, I, Mitchell E. Daniels, Jr., Governor of the State of Indiana, as required by Indiana Code 1-1-3.5-3, do hereby acknowledge delivery by the U.S. Secretary of Commerce of the following federal special census, special tabulations and corrected population counts as of the dates set forth in the list below and note that the effective date of the tabulation of such population counts or corrected population counts for the political subdivisions set forth opposite such dates is, in each case, April 1, 2005:

July 14, 2004	Lafayette, City of	60,525	(Special tabulation)
July 9, 2004	Carmel, City of	50,948	(Special tabulation)
February 27, 2004	Fishers, Town of	52,390	(Special census)
July 26, 2004	Harmony, Town of	616	(Corrected Population Count)

In compliance with IC 1-1-3.5-5(a), I have forwarded a copy of this Executive Order to the Director of the Indiana State Library for distribution under IC 1-1-3.5-5(b), to the Election Division of the Office of the Secretary of State, and to the *Indiana Register* for publication.

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 1st day of April, 2005.

Mitchell E. Daniels, Jr.
Governor of Indiana

SEAL
ATTEST: Todd Rokita
Secretary of State

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NONRULE POLICY DOCUMENT

Title: **Approval and Validation of Alternate Emission Factors**
Identification Number: **Air-014-NPD**
Date Originally Effective: **October 10, 1997; Published 4/1/98 (21 IR 2621)**
Dates Revised: **March 9, 1999; Published 5/1/99 (22 IR 2706); May 5, 2005; Published 6/1/05**
Other Policies Repealed or Amended: **None**
Brief Description of Subject Matter: **Procedures and Validation Requirements for Approval of Alternate Emission Factors**
Citations Affected: **326 IAC 2-6-4(c)(5)(E)**

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. This nonrule policy document may be put into effect by IDEM 30 days after presentation to the appropriate board**.** Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate board. If the nonrule policy is presented to more than one board, it will be effective 30 days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the board and publication.

Background

An alternate emission factor (AEF), for purposes of this policy, is defined as a representative value that attempts to relate the quantity of a pollutant released to the atmosphere (either directly, or through vents, stacks, or ducts that may or may not be associated with an air pollution control device) with the activity causing the release of that pollutant. An AEF is usually expressed as the concentration, mass emission rate, or as the weight or mass of the pollutant divided by a unit of time, weight, volume, or duration of the activity emitting the pollutant. AEFs are developed using a variety of methods. These may include emissions testing, material balance determinations, continuous emissions monitoring systems (CEMS), trade industry studies, or other methods approved by the commissioner. In most cases the methodology used in developing or validating an AEF is determined by the process for which the AEF is being developed. For instance, an AEF for particulate matter emissions from a baghouse may be developed using U.S. EPA Reference Method 5. However to develop an AEF for uncontrolled VOC emissions from a paint line, a mass balance equation may suffice.

An AEF may be used to calculate potential emissions for permitting determinations, to estimate source emissions for billing, or to develop emission inventories for use in air quality planning. With the exception of the emissions statement rule, 326 IAC 2-6-4(c)(5)(E), which requires the use of emission factors from AP-42 or other documentable methodology accepted by IDEM or U.S. EPA, there are no provisions that mandate the specific source of an emission factor. Traditionally, calculations for permitting purposes are made using emission factors from AP-42, (the) Compilation of Air Pollutant Emission Factors, produced by the U.S. EPA Office of Air Quality Planning and Standards. U.S. EPA has compiled and rated emission factors in this document based upon information available at the time of the compilation.

AP-42 emission factors range in quality from A to E depending on the number and quality of source specific studies on which they are based. Additionally, U.S. EPA maintains other sources of emission factors which are considered equivalent to AP-42.

Objective

This non-rule policy outlines the requirements for approval and validation of an AEF that sources may use to provide an accurate estimation of emissions. This policy describes some common examples where sources may wish to develop an AEF, or validate an AEF that they have submitted to the department. Validation of an AEF involves the source proving to the satisfaction of the department that the emissions from the subject unit are at or below a certain level. AEF validation testing will often take place when a source requests to use an AEF as part of a permit application. For example, validation testing of emission factors from AP-42, or equivalent, which have a low rating may be necessary. Additionally, if a source elects to take a synthetic minor limit to avoid PSD they may have to perform emission testing to show emissions are truly below PSD threshold levels. This policy details the submittal request procedure including the information sources should provide prior to developing or validating alternative emission factors. This policy was written to provide consistency in addressing the issues that may arise concerning generic emission factors or other published data. Adherence to this policy will allow the agency to determine whether the alternative emission values submitted can or cannot be validated by this agency for use by the source.

Policy

An AEF may be developed under circumstances where no emission factor exists, or when a source believes that published emission factors do not accurately represent their specific process, operation, or pollution control equipment efficiency. An AEF is an emission factor that is not found in AP-42 or another equivalent source (a New Source Performance Standard (NSPS), National Emissions Standard for Hazardous Air Pollutants (NESHAP) or other U.S. EPA database of emission factors). The department recognizes that source specific emission estimations, when properly derived, are preferable to the generic estimations developed by

U.S. EPA.

Generic emission factors are, by their general nature, at risk of being supplanted by site-specific data. With this non-rule policy, the department recognizes that there may be differences in emissions even for facilities in the same group to which the AEF is applied, and that changes in facility operation may also affect the magnitude of emissions. If a source requests to either use or develop an AEF they should be aware that the AEF is binding, enforceable, and if necessary, will be incorporated into their operating permit. However, upon successfully demonstrating the validity of the AEF, the source is eligible to use the information for permitting determinations, annual emission reporting, or calculating billing fees.

Sources may propose to use an AEF as part of their permit application package for a construction permit. This often involves the use of an emission factor other than an accepted factor from AP-42, or equivalent, however it may also include the use of a factor from AP-42, or equivalent, with a low rating, or no rating at all. The use of a low rated emission factor often affects the applicability of the source with respect to a specific rule or limitation (PSD, Title V, etc.).

Existing sources may elect to establish an alternate emission factor for a specific unit or units at anytime. This type of AEF is often used for calculating billing fees, annual emission statements, or adjusting production throughput limits.

In some situations, a source may elect to develop an AEF, and during the course of validating the AEF may find the emission rate higher than originally believed. Although the most recent AEF is binding, any AEF may be supplanted by further AEF development. However, once a source submits a request to develop an AEF to IDEM and completes any required validation, the resulting AEF will be binding until supplanted by further AEF development.

If a source elects to develop or validate a new or existing AEF, they should be aware that if the test results indicate a failure to comply with an applicable rule limit (SIP, NSPS, NESHAP, etc.), a referral to IDEM's Office of Enforcement may result. Additionally, if a source proposes to use an AEF in order to avoid a certain permitting threshold level (ie PSD), and finds the emissions are in excess of the proposed AEF, a referral to IDEM's Office of Enforcement may also result. Therefore, sources should carefully consider all possible scenarios prior to electing to develop an AEF.

Procedure

Determine the AEF on a single facility basis. It is not appropriate to use an AEF developed for another facility unless the facilities are identical, both in design and method of operation. For identical facilities, the justification should include a detailed discussion of operating conditions and a description of the installations. Submit to the department for validation the proposed AEF, including the methodology to be used to develop the AEF, under the following scenarios:

1. If a source is seeking to use an AEF for a construction permit, and is basing the AEF on testing conducted at a similar facility in another state or a pilot plant, the construction or operating permit may contain a requirement to conduct testing to validate the AEF.
2. If a source wishes to develop an AEF or AEFs for an existing process or processes for use in permitting determinations and/or rule applicability such as emission offset, or PSD review.
3. If a source wishes to develop an AEF for emissions estimates for emission statements or calculating permitting fees.

If a source has decided to pursue the development of an AEF, or where testing is necessary to validate a proposed AEF, sources should contact the OAQ Compliance Data Section prior to any testing so an acceptable test protocol can be agreed upon. In most cases these will simply be compliance test protocol forms submitted according to the requirements of 326 IAC 3-6. However in other cases the protocol may be a detailed description of a material balance proposal or a description of how testing by trade associates or industry research groups were conducted.

Once a source has decided to develop an AEF, or validate a proposed AEF, they should provide, at a minimum, the following information as part of the request:

1. Test protocol pursuant to 326 IAC 3-6-2.
2. Detailed descriptions of the process.
3. Descriptions of control devices or control technology and relevant operating parameters.
4. Raw materials used in the process which may impact emissions (different fuels, oily scrap versus clean scrap, volatile organic compounds (VOC) content of different paints, etc.)
5. Discussion of how the process will operate during the AEF determination or validation.
6. Identification of the standard AP-42 (or equivalent source) emission factor for the process or control devices in operation (if an AP-42, or equivalent factor exists).
7. Discussion of why the standard AP-42, or equivalent emission factors, are not appropriate to use if an AP-42 or equivalent factor exists.
8. Discussion of why a new AEF is being requested, if the source is requesting a new AEF to replace an AEF already granted.

The request should be submitted to the *Office of Air Quality, Permits Branch* and explain why the AEF is appropriate. If a source within the jurisdiction of a local agency requests to develop or validate an AEF, the source should provide the local agency with the same information and justification.

In certain instances, AEFs developed through extensive testing conducted by trade associates or industry research groups, which

have been published and validated through peer review, subject to the approval of this office, may be used without further validation as described in this policy. The use of data generated by a certified CEMS, operated and maintained in accordance with the applicable regulations may be used without further validation as described in this policy. Additionally, the use of a material balance may be considered as an acceptable emission factor (without the need for further validation) provided the source owner or operator can substantiate the information provided to the satisfaction of the department. However, the use of any one of these acceptable options does not preclude the department from requiring compliance tests in permits issued by the department pursuant to the general authority provided by Title 326 of the Indiana Administrative Code.

If emission testing is required to validate the AEF, the reference method testing should meet the requirements of 326 IAC 3-6, as applicable. This requires a minimum of three (3) complete test runs conducted while the unit is operating at 95-100% of maximum capacity under conditions representative of normal operations, or another operating scenario approved by the commissioner, using test methods acceptable to the department. More than one test series may be required if the proposed AEF conflicts with other available information, or if the results of the initial test series are inconclusive. The OAQ Compliance Data Section will review the completed test data and prepare a summary report for the appropriate IDEM section (e.g., Permits, Data Support, Air Planning) acknowledging the AEF as valid or invalid.

IDEM will maintain a record of all AEFs granted. This information will be available for public inspection during normal business hours by contacting IDEM's Office of Air Quality, Compliance Data Section. The records will contain information necessary to substantiate the AEF with the exception of confidential information pursuant to 326 IAC 17.1. If you have any questions regarding the information contained in this non-rule policy document, you may contact Mr. Jarrod Fisher at (317)-233-2723.

DEPARTMENT OF STATE REVENUE
Departmental Notice #2
June 1, 2005
Prepayment of Sales Tax on Gasoline

This document is not a "statement" required to be published in the Indiana Register under IC 4-22-7-7. However, under IC 6-2.5-7-14, the Department is required to publish the prepayment rate in the June and December issues of the Indiana Register. The purpose of this notice is to inform each refiner, terminal operator, and qualified distributor known to the Department to be required to collect prepayments of sales tax on gasoline of the "prepayment rate" effective for the next six-month period. A prepayment rate is calculated twice a year by the Department and is effective for the period January 1 through June 30, or, July 1 through December 31, as appropriate.

The prepayment rate is defined by IC 6-2.5-7-1 as the product of:

1) the statewide average retail price per gallon of gasoline (excluding the Indiana gasoline tax, the federal gasoline tax, and the Indiana gross retail tax); multiplied by
2) the state gross retail tax rate [6%]; multiplied by
3) ninety percent (90%); and then
4) rounded to the nearest one-tenth of one cent ($0.001)

The prepayment rate of sales tax on gasoline for the six – (6) month period beginning July 1, 2005, is seven and eight-tenths cents ($0.078) per gallon.

Using the most recent retail price of gasoline available (as required by IC 6-2.5-7-14(b)), the Department has determined the statewide average retail price per gallon of gasoline to be one dollar and forty four cents ($1.440). The most recent retail price of gasoline available was based on data contained in the May 2005 Petroleum Marketing Monthly as published by the Energy Information Agency.

The prepayment rates for periods beginning July 1, 1994 are set out below:

Period			Rate Per Gallon
July 1, 1994	to	December 31, 1994	2.9 cents
January 1, 1995	to	June 30, 1995	3.7 cents
July 1, 1995	to	December 31, 1995	3.3 cents
January 1, 1996	to	June 30, 1996	3.3 cents
July 1, 1996	to	December 31, 1996	3.4 cents
January 1, 1997	to	June 30, 1997	4.0 cents
July 1, 1997	to	December 31, 1997	3.9 cents
January 1, 1998	to	June 30, 1998	4.0 cents
July 1, 1998	to	December 31, 1998	2.9 cents

January 1, 1999	to	June 30, 1999	3.0 cents
July 1, 1999	to	December 31, 1999	2.4 cents
January 1, 2000	to	June 30, 2000	3.6 cents
July 1, 2000	to	December 31, 2000	4.6 cents
January 1, 2001	to	June 30, 2001	4.9 cents
July 1, 2001	to	December 31, 2001	4.9 cents
January 1, 2002	to	June 30, 2002	4.9 cents
July 1, 2002	to	December 31, 2002	3.2 cents
January 1, 2003	to	June 30, 2003	5.3 cents
July 1, 2003	to	December 31, 2003	6.6 cents
January 1, 2004	to	June 30,2004	6.5 cents
July 1, 2004	to	December 31, 2004	6.6 cents
January 1, 2005	to	June 30, 2005	7.6 cents
July 1, 2005	to	December 31, 2005	7.8 cents

Indiana Department of State Revenue
John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE

04-990060.LOF

LETTER OF FINDINGS NUMBER: 99-0060
Sales/Use Tax
For the Year 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. Sales/Use Tax-Manufacturing Exemptions

Authority: Ind. Code § 6-2.5-5-4; Ind. Code § 6-2.5-5-5.1

Taxpayer protests the Department's assessment of use tax with respect to various items of tangible personal property it claims were used in its manufacturing process.

II. Sales/Use Tax-Statute of Limitations

Authority: Ind. Code § 6-8.1-5-2

Taxpayer protests the Department's assessment with respect to several items that it claims were assessed outside the statute of limitations for such assessments.

III. Tax Administration-Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the ten percent (10%) penalty for negligence.

STATEMENT OF FACTS

Taxpayer is a business engaged in the production of batteries. During the year in question, Taxpayer operated two Indiana facilities in controversy. For the year in question, Taxpayer made several purchases that it asserted were used in its battery production. In addition, for several purchases, Taxpayer maintained that the items were assessed outside of the statute of limitations. Taxpayer was assessed use tax and penalty for these purchases, which Taxpayer protested.

I. Sales/Use Tax-Manufacturing Exemptions

DISCUSSION

Taxpayer protested the assessment of a number of items based on their use for the production of other tangible personal property. To qualify for the sales tax exemption for production, the items must be directly used or consumed for the direct production of tangible personal property. Ind. Code § 6-2.5-5-4 and -5.1. Here, the items in question did not meet the statutory standard for exemption.

FINDING

Taxpayer's protest is denied.

II. Sales/Use Tax-Statute of Limitations

DISCUSSION

With respect to several invoices for products used at one facility, Taxpayer protested that the assessment was untimely. Taxpayer has provided sufficient information to conclude that the assessment was made outside the statutory period provided by Ind. Code § 6-8.1-5-2.

FINDING

Taxpayer's protest is sustained.

III. Tax Administration-Penalty

Taxpayer also protests the imposition of the penalty for negligence for the years in question. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;
(2) judicial precedents set by Indiana courts;
(3) judicial precedents established in jurisdictions outside Indiana;
(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

With respect to the penalty, Taxpayer has presented a case that it acted with reasonable care expected of taxpayers generally, and thus the penalty should be waived.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220010353.LOF

LETTER OF FINDINGS NUMBER: 01-0353
Income Tax
For Tax Years 1996-1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax—Unitary Status

Authority: Container Corporation of America v. Franchise Tax Board, 463 U.S. 159 (1983); 45 IAC 3.1-1-153

Taxpayer protests its classification as a non-unitary business.

STATEMENT OF FACTS

Taxpayer is a fifty-percent (50%) partner in two partnerships which operate in the equipment leasing and asset based financial industry. The Indiana Department of Revenue ("Department") conducted an audit for the tax years involved and as a result issued proposed assessments. Taxpayer disagrees with these assessments. Further facts will be supplied as necessary.

I. Adjusted Gross Income Tax—Unitary Status

DISCUSSION

Taxpayer protests the proposed assessments for adjusted gross income tax for the tax years at issue. The Department concluded that taxpayer was not in a unitary relationship with two partnerships it owned equally with a related corporate partner. Taxpayer disagrees and believes that it is in a unitary relationship with the partnerships.

The U.S. Supreme Court discussed unitary business in Container Corporation of America v. Franchise Tax Board, 463 U.S. 159 (1983). In that case, the Court explained a three-factor formula to determine unity. Factor one is functional integration, factor two is centralization of management and factor three is economies of scale. The Court explains:

> The State Court of Appeals relied on a large number of factors in reaching its judgment that appellant and its foreign subsidiaries constituted a unitary business. These included appellant's assistance to its subsidiaries in obtaining used and new equipment and in filling personnel needs that could not be met locally, the substantial role played by appellant in loaning funds to the subsidiaries and guaranteeing loans provided by others, the "considerable interplay between appellant and its foreign subsidiaries in the area of corporate expansion," *117 Cal. App. 3d, at 997, 173 Cal. Rptr., at 127*, the "substantial" technical assistance provided by appellant to the subsidiaries, *id. at 998-999, 173 Cal. Rptr., at 128*, and the supervisory role played by appellant's officers in providing general guidance to the subsidiaries. In each of these respects, this case differs from *ASARCO* and *F.W. Woolworth*, and clearly comes closer than those cases did to presenting a "functionally integrated enterprise," *Mobil, supra, at 440*, which the State is entitled to tax as a single entity.
>
> …
>
> Id., at 179.

In the instant case, taxpayer has provided insufficient documentation of functional integration. Taxpayer has not provided any evidence that it has employees, or expenses related to operating a functional business. Without operation of a functional business, it stands to reason that there could not be any functional integration with another business. Since taxpayer has failed to satisfy the first factor of unity as explained in Container Corporation, and all three must be satisfied to qualify as a unitary business, there is no need to address the remaining two factors.

Next, 45 IAC 3.1-1-153(c) explains:

> If the corporate partner's activities do not constitute a unitary business under established standards, disregarding ownership requirements, the corporate partner's share of partnership income attributable to Indiana shall be determined as follows:
>
> (1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the partnership.
>
> (2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to apportionment.

Since taxpayer's activities do not constitute a unitary business under established standards, and since the partnership derives business income from sources within and without Indiana, 45 IAC 3.1-1-153(c)(1) provides that the three factor formula is appropriate to determine taxpayer's partnership income attributable to Indiana.

In its protest, taxpayer refers to several Financial Institutions Tax (FIT) regulations to support its claim that it is a unitary business. Since the tax at issue is Adjusted Gross Income Tax, FIT regulations are not relevant and will receive no further discussion. Taxpayer has provided insufficient documentation to establish that it is part of a functionally integrated enterprise, which is necessary to qualify as a unitary business under Container Corporation.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220010354.LOF

LETTER OF FINDINGS NUMBER: 01-0354
Income Tax
For Tax Years 1996-1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

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DISCUSSION

Taxpayer protests the proposed assessments for adjusted gross income tax for the tax years at issue. The Department concluded that taxpayer was not in a unitary relationship with two partnerships it owned equally with a related corporate partner. Taxpayer disagrees and believes that it is in a unitary relationship with the partnerships.

The U.S. Supreme Court discussed unitary business in Container Corporation of America v. Franchise Tax Board, 463 U.S. 159 (1983). In that case, the Court explained a three-factor formula to determine unity. Factor one is functional integration, factor two is centralization of management and factor three is economies of scale. The Court explains:

> The State Court of Appeals relied on a large number of factors in reaching its judgment that appellant and its foreign subsidiaries constituted a unitary business. These included appellant's assistance to its subsidiaries in obtaining used and new equipment and in filling personnel needs that could not be met locally, the substantial role played by appellant in loaning funds to the subsidiaries and guaranteeing loans provided by others, the "considerable interplay between appellant and its foreign subsidiaries in the area of corporate expansion," *117 Cal. App. 3d, at 997, 173 Cal. Rptr., at 127*, the "substantial" technical assistance provided by appellant to the subsidiaries, *id. at 998-999, 173 Cal. Rptr., at 128*, and the supervisory role played by appellant's officers in providing general guidance to the subsidiaries. In each of these respects, this case differs from *ASARCO* and *F.W. Woolworth*, and clearly comes closer than those cases did to presenting a "functionally integrated enterprise," *Mobil, supra, at 440*, which the State is entitled to tax as a single entity.
>
> …
>
> Id., at 179.

In the instant case, taxpayer has provided insufficient documentation of functional integration. Taxpayer has not provided any evidence that it has employees, or expenses related to operating a functional business. Without operation of a functional business, it stands to reason that there could not be any functional integration with another business. Since taxpayer has failed to satisfy the first factor of unity as explained in Container Corporation, and all three must be satisfied to qualify as a unitary business, there is no need to address the remaining two factors.

Next, 45 IAC 3.1-1-153(c) explains:

> If the corporate partner's activities do not constitute a unitary business under established standards, disregarding ownership requirements, the corporate partner's share of partnership income attributable to Indiana shall be determined as follows:
>
> (1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the partnership.
>
> (2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to apportionment.

Since taxpayer's activities do not constitute a unitary business under established standards, and since the partnership derives business income from sources within and without Indiana, 45 IAC 3.1-1-153(c)(1) provides that the three factor formula is appropriate to determine taxpayer's partnership income attributable to Indiana.

In its protest, taxpayer refers to several Financial Institutions Tax (FIT) regulations to support its claim that it is a unitary business. Since the tax at issue is Adjusted Gross Income Tax, FIT regulations are not relevant and will receive no further discussion. Taxpayer has provided insufficient documentation to establish that it is part of a functionally integrated enterprise, which is necessary to qualify as a unitary business under Container Corporation.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20020166.LOF

LETTER OF FINDINGS NUMBER: 02-0166
Gross Income Tax and Adjusted Gross Income Tax
For the Years 1993, 1996-1999

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. Adjusted Gross Income Tax -- Property factor

Authority: Ind. Code § 6-8.1-5-1; 45 IAC 3.1-1-44.

Taxpayer protests the Department's change in its property value for apportionment purposes.

II. Gross income tax—Out-of-state sales and agency

Authority: Ind. Code § 6-2.1-1-10; Ind. Code § 6-8.1-5-1; *Indiana Dept. Of Revenue v. Surface Combustion Corp.*, 111 N.E.2d 50 (Ind. 1953).

Taxpayer protests the imposition of gross income tax with respect to the sale of tangible personal property that it claimed was produced outside Indiana for assembly in Indiana, or alternatively that it received the proceeds in an agency capacity, and that the proceeds it received were not subject to a markup.

STATEMENT OF FACTS

Taxpayer is a business engaged in the manufacture of steam generating and related equipment. Taxpayer was audited for the years in question. Taxpayer has protested three aspects of the assessment. The first aspect was that the Department auditor included property in Indiana at a different value than taxpayer had listed it, which changed taxpayer's apportionment factors. Second, taxpayer protested an assessment of gross income tax for various contracts for which taxpayer maintains were not Indiana sales for gross income tax purposes, or alternatively that it was an agent for another affiliated company. Third, with respect to the payments made by taxpayer to the affiliated company, the taxpayer protested the addition of a ten percent markup from the amount ultimately received by the affiliated company.

I. Adjusted Gross Income Tax- Property factor

DISCUSSION

First, taxpayer protests the value of a parcel of real estate in Indiana. The real estate in question had a plant located on it, which for several years had been engaged in production. However, due to a change in market circumstances that substantially reduced demand for its key product, the plant was forced to shut down. The county and taxpayer agreed to a lower value for the real estate for property tax purposes based on the lack of economic usefulness of the real estate and building. The Department, however, used the value based on the historical cost listed on the taxpayer's federal income tax return.

Per 45 IAC 3.1-1-44, "[p]roperty owned by the taxpayer is valued at original cost. If the original cost cannot be ascertained, the property is valued at fair market value as of the date of acquisition by the taxpayer." As such, the Department's determination of the value of the real estate must stand, notwithstanding future events that reduced the property's actual value.

FINDING

Taxpayer's protest is denied.

II. Gross income tax- Out of state sales and agency

DISCUSSION

Second, taxpayer argues that certain gross receipts that it received were not taxable. Two subarguments exist here. First, taxpayer argues that manufactures the products outside Indiana, and that only the installation occurs in Indiana. Thus, under the holding of *Indiana Dept. Of Revenue v. Surface Combustion Corp.*, 111 N.E.2d 50 (Ind. 1953), in which a transaction involving tangible personal property manufactured outside Indiana but assembled at a business site in Indiana was held to be exempt from gross income tax, taxpayer's sales would be exempt. However, taxpayer has not provided sufficient information to substantiate this argument, and accordingly has not met its burden per Ind. Code § 6-8.1-5-1.

In the alternative, taxpayer asserts that it is merely a passthrough entity. In particular, taxpayer states that it divided several years ago into two separate corporations. One corporation—the taxpayer in this case— is responsible for manufacturing property, while the other is engaged solely in installation and construction of that property. In general, when a customer wished to have the property installed at the customer's facility, the customer would contract with the corporation whose business was installation. However, for various reasons largely related to liability, some contracts would indicate that the taxpayer was to receive the proceeds for the installation. In turn, taxpayer would pay the proceeds to the installing corporation. Taxpayer has argued that this created an agency relationship which would exempt the taxpayer's proceeds from gross income tax under Ind. Code § 6-2.1-1-10 (repealed effective January 1, 2003). However, taxpayer has not provided sufficient information to substantiate this argument, and accordingly has not met its burden per Ind. Code § 6-8.1-5-1.

Taxpayer also protested a ten percent markup based on the amounts that the installing corporation received. Here, taxpayer has provided sufficient documentation to conclude that the manufacturing corporation's proceeds were exactly those received by the installing corporation-no more and no less. Accordingly, this portion of the protest should be sustained.

FINDING

Taxpayer's protest is sustained with respect to the markup used by the auditor. Taxpayer's protest is otherwise denied.

DEPARTMENT OF STATE REVENUE

0420020251.LOF

LETTER OF FINDINGS NUMBER: 02-0251
Use Tax
For the Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax—Assessment; Production Supplies and Parts Washer Cleaner

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-4; IC 6-2.5-5-3(b); IC 6-2.5-5-5.1(b); IC 6-2.5-5-6.

Taxpayer protests the assessment of use tax on various maintenance chemicals and supplies.

II. Use Tax—Assessment; Trial Materials

Authority: IC 6-2.5-5-6.

Taxpayer protests the assessment of use tax on trial materials.

III. Use Tax—Assessment; Materials to Repair Roof Collapse

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-1.

Taxpayer protests the assessment of use tax on materials used to repair non-production areas of its facility.

IV. Use Tax—Assessment; Machinery, Tools, and Equipment

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-1.

Taxpayer protests the assessment of use tax on items used partially and wholly outside of exempt production.

V. Use Tax—Assessment; Rental of Tangible Personal Property

Authority: IC 6-2.5-4-1; IC 6-2.5-4-10; IC 6-2.5-3-2(a).

Taxpayer protests the assessment of use tax on rentals of equipment used partially and wholly outside of exempt production.

VI. Use Tax—Assessment; Publications and Subscriptions

Authority: IC 6-2.5-5-17.

Taxpayer protests the assessment of use tax on non-newspaper publication purchases.

VII. Use Tax—Assessment; Catering Service Charges

Authority: IC 6-2.5-5-20(c)(3).

Taxpayer protests the assessment of use tax on catered food and services.

VIII. Use Tax—Assessment; Other Purchases

Authority: IC 6-2.5-3-2(a); IC 6-2.5-3-4(a).

Taxpayer protests the assessment of use tax on various miscellaneous items.

STATEMENT OF FACTS

Taxpayer manufactures flexible retail and industrial plastic packaging used to protect food and other products. Taxpayer has one Indiana location, has locations in other states, and is headquartered in South Carolina. An audit was conducted; it did not adjust reported sales tax. An examination of purchases was made and use tax was assessed where the Department determined it to be due. Taxpayer filed a protest to the assessments and a hearing officer was assigned to hear the protest. A hearing date was set for February 8, 2005. Taxpayer phoned the hearing officer on February 7, 2005 to request that the hearing be rescheduled. Taxpayer and the hearing officer mutually agreed to a one week extension, rescheduling the hearing for February 15, 2005. Taxpayer did not appear for the hearing either in person or by phone. This Letter of Findings is written based upon the information submitted and available within the case file.

I. Use Tax—Assessment; Production Supplies and Parts Washer Cleaner

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-3-2 imposes an excise tax—known as the use tax—on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. There are exemptions to the imposition of the use tax; IC 6-2.5-3-4 exempts property upon which the sales tax has been paid and exempts property eligible under IC 6-2.5-5.

Taxpayer had purchased exempt from sales tax various chemicals for use in its manufacturing operation. Among these was part washer cleaner used in maintenance to clean production equipment. The cleaner was not used to produce product. IC 6-2.5-5-3(b) exempts manufacturing machinery, tools, and equipment if the taxpayer acquiring the property acquires 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) exempts tangible personal property if the taxpayer 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. IC 6-2.5-5-6 exempts tangible personal property if the taxpayer acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business.

The Department has considered the relevant exemption statutes but because the supplies are used to clean production equipment and are not consumed in the manufacturing of tangible personal property, no exemption for use tax exists in these circumstances.

Taxpayer also had purchased exempt from sales tax other supplies, such as labels, envelopes, ribbons, forms, and reports that were consumed outside of Taxpayer's production operation. Because these supplies are not consumed during the production of tangible personal property or incorporated into tangible personal property, no exemption from use tax exists in these circumstances.

Additionally, Taxpayer had purchased exempt from sales tax other supplies such as chemicals for their boiler that were partially used for taxable purposes such as area heat. Because these chemicals are not consumed during the production of tangible personal property or incorporated into tangible personal property for sale, no exempt use from use tax exists in these circumstances.

FINDING

For the reasons discussed above, Taxpayer's protest is denied.

II. Use Tax—Assessment; Trial Materials

DISCUSSION

Taxpayer used raw materials that had been purchased exempt from sales tax in trials. To be exempt under IC 6-2.5-5-6, the trials must be sold in business. No evidence was presented to demonstrate the trials were sold in business.

FINDING

For the reason discussed above, Taxpayer's protest is denied.

III. Use Tax—Assessment; Materials to Repair Roof Collapse

DISCUSSION

During the audit period, Taxpayer had a roof collapse over a manufacturing area due to heavy snows. Emergency repairs were made rapidly with little contract detail—so that production could be reestablished quickly. An exemption certificate was issued by Taxpayer to the contractor for the materials used in these repairs. Invoices did not disclose sufficient evidence to determine the materials that were taxable and those that were exempt. Taxpayer's engineer estimated that 10% of the materials purchased were for taxable non-production purposes. Communications by the auditor with the contractor identified the use of additional materials that were taxable. These materials were not included in the estimate by Taxpayer's engineer. Reconciliation of the differences in the estimates of taxable and exempt materials could not be accomplished and better information was not available. Due to what appeared to be additional taxable construction beyond the estimates by Taxpayer's engineer, the auditor for the Department determined that 12.5% of the materials purchased exempt from sales tax were used in a taxable manner. This is the best information available as to the taxable amount of constructions materials that were purchased exempt from sales tax. Taxpayer was unable to provide better information.

IC 6-8.1-5-1(b) states that tax assessments made by the Department are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 authorizes the Department to make an assessment of unpaid tax based on the best information available. In this situation, Department has employed the best information available method and Taxpayer has not provided better information to rebut the assessment.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

IV. Use Tax—Assessment; Machinery, Tools, and Equipment

DISCUSSION

Taxpayer purchased exempt from sales tax machinery, tools, and equipment—such as trash carts, storage cabinets, maintenance and cleaning tools, space heaters, air conditioners, fans, and scales. These purchases were not used within the production process. Taxpayer also purchased exempt from sales tax a chiller and boiler, as well as production equipment partially used for area heating and air conditioning. Taxpayer also purchased exempt from sales tax machinery, tools, and equipment—such as parts for fork lifts and area heating and air conditioning—that the Department determined were used partially outside the production process. Taxpayer provided information to indicate the taxable proportion of use. No additional information was presented to the Department outside of the audit to indicate taxable and exempt use of the above tangible personal property.

IC 6-8.1-5-1(b) states that tax assessments made by the Department are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 authorizes the Department to make an assessment of unpaid tax based on the best information available. In this situation, Department has employed the best information available method and Taxpayer has not provided additional better information to rebut the assessment.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

V. Use Tax—Assessment; Rental of Tangible Personal Property

DISCUSSION

Taxpayer rented exempt from sales tax equipment that included articulation boom lifts and scissor lifts. These rentals were for maintenance and other taxable uses. Taxpayer also rented exempt from sales tax tow motors determined to be used 30% of the time in a taxable manner for loading and unloading trucks, movement of raw materials and finished goods, and maintenance. IC 6-2.5-4-1 and IC 6-2.5-4-10 imposes sales tax on the retail transaction of rentals—the transfer of tangible personal property for consideration. IC 6-2.5-3-2(a) imposes use tax on the use of tangible personal property acquired in a retail transaction. Use tax is due on these rentals. Taxpayer has not provided additional information subsequent to the audit to rebut the determination of exempt and taxable use.

FINDING

For the reason stated above, Taxpayer's protest is denied.

VI. Use Tax—Assessment; Publications and Subscriptions

DISCUSSION

Taxpayer purchased exempt from sales tax subscriptions, publications, directories, and pamphlets. IC 6-2.5-5-17 exempts newspapers from sales tax. All other publications are taxable. Accordingly, use tax is due.

FINDING

For the reason stated above, Taxpayer's protest is denied.

VII. Use Tax—Assessment; Catering Service Charges

DISCUSSION

Taxpayer purchased catered food upon which service charges were made—but not taxed. Taxpayer also purchased exempt from sales tax other catered food. IC 6-2.5-5-20(c)(3) states that prepared food is not exempt from sales taxation; thus, catered food is taxable.

FINDING

For the reason stated above, Taxpayer's protest is denied.

VIII. Use Tax—Assessment; Other Purchases

DISCUSSION

Taxpayer purchased signs, cleaning supplies, office supplies, software, computer equipment, clothing, roofing and other building materials, video equipment, and charge card purchases from outside Indiana upon which sales tax was not charged.

IC 6-2.5-3-2(a) imposes use tax on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction—regardless of the location of that transaction or of the retail merchant making that transaction. IC 6-2.5-3-4(a) exempts from the imposition of use tax purchases made in which sales tax was paid or the purchase is exempted under IC 6-2.5-5. Taxpayer would need to have shown the Department evidence that either sales tax has been paid on these purchases or that the purchases are exempt under a statutory provision. No such evidence or documentation was provided by Taxpayer.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

28-20020320.LOF

LETTER OF FINDINGS NUMBER: 02-0320
Controlled Substance Excise Tax
For the Period: April 23, 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

Controlled Substance Excise Tax—Assessment; Liability

Authority: IC 6-8.1-5-1(b); IC 6-7-3-5; IC 6-7-3-6(b)(2); IC 6-7-3-10(b); IC 6-7-3-11; IC 6-7-3-13; Bryant v. State of Indiana, 660 N.E.2d 290, (Ind. 1995); Indiana Dept. of Revenue v. Adams, 728 N.E.2d 728 (Ind. 2002); Hall v. Indiana Dept. of Revenue, 660 N.E.2d 319 (Ind. 1995).

Taxpayer protests the assessment of CSET on possession of marijuana.

STATEMENT OF FACTS

Taxpayer was charged in County Circuit Court with:

(1) Dealing in marijuana, Class C Felony

(2) Possession of marijuana, Class D Felony
(3) Maintaining a common nuisance, Class D Felony.

A motion to suppress evidence was filed and was granted. Taxpayer pleaded guilty to: (3) Maintaining a common nuisance. The charges pertaining to the dealing in and possession of marijuana were dismissed. A detective for the County Drug Task Force received a letter from the County Prosecutor's office requesting that a Controlled Substance Excise Tax assessment be prepared on the 1,054.32 grams of marijuana seized from Taxpayer's residence. The Criminal Investigation Division of the Indiana Department of Revenue received the detective's Letter of Request for Assessment. The Department prepared an Activity Report and specifically noted that Taxpayer plead guilty to an unrelated charge to the dealing in and possession of marijuana. Taxpayer filed a protest to the assessment and a hearing was held. This letter of findings is the result.

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). In Indiana, the manufacture, possession, or delivery of marijuana is taxable. IC 6-7-3-5 imposes the Controlled Substance Excise Tax on controlled substances that are delivered, possessed, or manufactured in Indiana in violation of IC 35-48-4, **Offenses Relating to Controlled Substances**, or 21 U.S.C. 841 through 21 U.S.C. 852, (Federal Controlled Substances Act) **Offenses and Penalties**. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3. Under the CSET provisions, a taxpayer who delivers, possesses, or manufactures marijuana is required to pay $3.50 for each gram. IC 6-7-3-6(b)(2). A receipt for payment of CSET is valid for 30 days. IC 6-7-3-10(b). A person may not deliver, possess, or manufacture a controlled substance subject to CSET without having paid the tax. IC 6-7-3-11. A person who fails or refuses to pay CSET is subject to a penalty of 100% of the tax in addition to the tax. *Id.* An assessment for CSET due is considered a jeopardy assessment; the department is required under Indiana statute to demand immediate payment and is required to take action to collect the tax due. IC 6-7-3-13.

The Indiana Supreme Court has stated that the assessment of CSET is a punishment and, therefore, a jeopardy within the double jeopardy clause. Bryant v. State of Indiana, 660 N.E.2d 290, 297 (Ind. 1995). It is the second jeopardy that is constitutionally barred. Jeopardy in the imposition of CSET attaches when the Department serves a person with an assessment notice and demand. *Id.* at 299. The Indiana Supreme Court has stated that the exclusion and suppression of evidence in a criminal proceeding does not apply in the Department proceeding to assess CSET. *See* Indiana Dept. of Revenue v. Adams, 728 N.E.2d 728 (Ind. 2002).

At the tax protest hearing before the Department, Taxpayer stated that she lived with Husband and he smoked marijuana. Taxpayer stated that she was aware that Husband smoked marijuana and that he had a history of smoking marijuana. A person whom Husband had met came to the house in which Taxpayer and Husband lived to get some marijuana. Taxpayer stated to the Department at the hearing—the marijuana was sitting on a counter in the house. According to Taxpayer, the person was a police informant. Taxpayer was arrested and charged. Husband was later charged and he pleaded guilty to possession of marijuana.

In Hall v. Indiana Dept. of Revenue, 660 N.E.2d 319 (Ind. 1995), police entered and searched the home of a husband and wife. During their inspection of the property, the police discovered marijuana. The husband and wife were arrested and charged with possession of marijuana. Four days later the Department assessed CSET. The State dismissed the criminal charges against the wife. The husband pleaded guilty to possession of marijuana. The husband and wife protested the CSET assessment; the Department denied the protest. The husband and wife appealed to the Indiana Tax Court. The Tax Court concluded that the CSET assessment against the husband was a second jeopardy, but that the rights of the wife had not been violated. The case was appealed to the Indiana Supreme Court; it held that the wife was liable for the CSET assessment.

The CSET assessment—based on Taxpayer's taxable possession of marijuana—is Taxpayer's only jeopardy. Taxpayer has not been subjected to prosecution or punishment for the criminal charges related to the dealing in or the possession of marijuana. Taxpayer did plead guilty to maintaining a common nuisance, but the CSET report states that the common nuisance charge is unrelated to dealing and possession. Because the dealing and possession charges were dismissed against Taxpayer, no jeopardy attached. Taxpayer is liable for the CSET assessment.

FINDING

Taxpayer's protest is denied

DEPARTMENT OF STATE REVENUE

0220020479.LOF

LETTER OF FINDINGS: 02-0479
GROSS INCOME TAX
For the 1998 Tax Year

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana

Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Money Earned from Providing Construction Management Services – Gross Income Tax.

Authority: IC 6-2.1-2-2(a)(2); IC 6-8.1-5-1; 45 IAC 1-1-19; 45 IAC 1-1-49; 45 IAC 1-1-121(a).

Taxpayer claims that the Department of Revenue (Department) erred when it determined that money earned from providing construction management services was subject to the state's gross income tax. Taxpayer maintains that this money is not Indiana source income.

II. Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer argues that it is entitled to abatement of the ten-percent negligence penalty.

III. Abatement of the Ten-Percent Underpayment Penalty.

Authority: IC 6-3-4-4.1(e); IC 6-8.1-10-2.1(b).

Taxpayer claims that the ten-percent quarterly underpayment penalty should be abated because taxpayer had adequate grounds for calculating its 1998 state income tax liability as it did.

STATEMENT OF FACTS

Taxpayer is an out-of-state company which was in the business of providing construction and design services to steel mill companies building new facilities or revamping existing facilities.

In 1996, taxpayer's sister company entered into a multi-year contract to design and build a steel mill in Indiana. The steel company hired the sister company to provide engineering, procurement, and construction management services. The sister company then subcontracted with taxpayer to provide all the construction management services that were to be performed in relation to the new steel mill. During a prior audit, the Department determined that taxpayer did not have Indiana source income for gross income tax purposes because actual construction at the Indiana site was not set to commence until 1997 and because all previous services were rendered at taxpayer's out-of-state location.

Taxpayer filed a 1998 consolidated corporate income tax return, but claimed that it had no Indiana gross income tax liability. During 2002, the Department conducted an audit of the 1998 tax year and found that taxpayer owed gross income taxes attributable to the Indiana construction project. Accordingly, the Department sent notices of proposed assessment. Taxpayer disagreed with the assessment and submitted a protest to that effect. Correspondence was exchanged between taxpayer and the Department with taxpayer contending that it had gone into receivership and declining the opportunity to further explain the basis for its initial tax protest. This Letter of Findings was written addressing the substance of taxpayer's tax protest. Questions concerning taxpayer's receivership are not at issue.

DISCUSSION

I. Money Earned from Providing Construction Management Services – Gross Income Tax.

Taxpayer earned money because it provided construction management services related to the construction of an Indiana steel mill. The Department concluded that a portion of this income stemming from the performance of services at the Indiana site (47 percent) was subject to gross income tax.

Taxpayer disagrees stating the income is not Indiana source income on the ground that less than five-percent of its construction management activities occurred in Indiana.

The issue is whether taxpayer received gross income when it performed management services in support of the Indiana steel mill project.

IC 6-2.1-2-2(a)(2) imposes the gross income tax "upon the receipt of... the taxable gross income derived from activities or businesses or any other sources with Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." Id. 45 IAC 1-1-19 states that, "For the purpose of this Act [IC 6-2.1] and these regulations a 'trade,' 'business' or the carrying on of 'commerce' includes any activity in which *a service is provided* or property is rented, sold, transferred, exchanged, manufactured, produced or otherwise generated gross income to the owner, transferor, manufacturer, or producer." (*Emphasis added*).

Taxpayer concedes that the money it earned constituted gross income. Under 45 IAC 1-1-19, the gross income a nonresident taxpayer receives from providing services within Indiana is subject to gross income tax is taxable. However, taxpayer argues the service income it received during 1998 is not taxable because its activities in Indiana were de minimis. Specifically, taxpayer states that, "Minimal service activities within Indiana have been held insufficient to impose gross income tax on income related to the performance of services."

45 IAC 1-1-49 provides that "a taxpayer may establish a 'business situs' in ways including, but not limited to.... [p]erformance of services." However, taxpayer claims that because most of the service work was performed at its out-of-state location and because its presence within Indiana was so limited, that it never established a "business situs" within the state. In support, taxpayer points to 45 IAC 1-1-121(a) which reads as follows:

Income from a contract for the performance of services within the state is subject to gross income tax. However, if the contract

calls for the performance of services both within and without the State by a nonresident with no in-state business situs and the non-resident's performance within the State is minimal or incidental in comparison to his performance out-of-state, no service income will be taxed. In determining what will be considered "minimal" or "incidental" the Department has formulated these guidelines. If five percent (5%) or less of the total hours or total fee under the contract in any tax year is attributable to services performed in Indiana, the entire proceeds of the contract received in that year are exempt from gross income tax.

Taxpayer states that it "did not perform more than five percent (5%) of its services in Indiana, therefore, none of the receipts received [] under the Agreement is subject to gross income tax." The parties' agreement does not bear out taxpayer's contention. The Agreement contains a "summary of our estimated manpower requirements for the project broken down between Home Office and Field Services." The agreement states that the steel mill project would consume 722,900 total man-hours, that 387,700 of those hours would be spent at the out-of-state home office, and that 335,200 hours would be spent at the Indiana construction site. Based on these figures, approximately 47 percent of the time spent on the project would be spent at the Indiana construction site. The 47 percent figure is the same number used by the audit in calculating taxpayer's gross income tax liability. Taxpayer's contention – that less than 5 percent of its services were provided in Indiana and that more than 95 percent were provided at its home office – is not supported. To the contrary, if one were to consider only that portion of the project related to "construction management" – which is taxpayer's contribution to the steel mill project – the 290,000 hours attributable to "construction management" were spent exclusively at the Indiana location.

Pursuant to IC 6-8.1-5-1, taxpayer has failed to meet its burden of demonstrating that the audit's calculation of taxpayer's gross income liability and the consequent assessment are wrong.

FINDING

Taxpayer's protest is respectfully denied.

II. Ten-Percent Negligence Penalty.

Taxpayer argues that the Department should waive the ten-percent negligence penalty because it had reasonable cause for deciding that it was not subject to gross income tax during 1998.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

The Department is unable to agree that failure to report any of the income received from performing services constitutes the "reasonable care, caution, or diligence as would be expected from an ordinary reasonable taxpayer." 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is respectfully denied.

III. Abatement of the Ten-Percent Underpayment Penalty.

Taxpayer asks that the Department abate the ten-percent penalty which was assessed because taxpayer underpaid its quarterly estimated taxes. Taxpayer makes this argument because it believes it had adequate grounds for determining its 1998 Indiana tax liability as it did.

IC 6-3-4-4.1(e) states as follows:

The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on corporations failing to make payments as required in subsection (d) or (g). However, no penalty shall be assessed as to any estimated payments of adjusted gross tax plus supplemental net income tax plus gross income tax which equal or exceed:

(1) twenty percent (20%) of the final tax liability for such taxable year; or

(2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25%) of the sum of the corporation's final adjusted gross income tax plus supplemental tax income tax liability for such taxable year.

IC 6-8.1-10-2.1(b) sets the amount of penalty as ten percent.

Taxpayer was assessed a penalty because it underpaid its quarterly estimated tax. Taxpayer does not challenge the manner in which the amount of penalty was calculated but repeats its substantive argument that the construction management income was not subject to the state's gross income tax. In effect, taxpayer asks the Department to abate the underpayment penalty because taxpayer presented a colorable argument justifying its failure to report the income. Taxpayer asks the Department to exercise a discretionary authority it does not have. Without finding that taxpayer was correct when it estimated its 1998 income tax liability, the Department has no authority to abate the underpayment penalty.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04-20020605.LOF

LETTER OF FINDINGS NUMBER: 02-0605
Sales/Use Tax
For the Years 1995-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax-Exemption Certificates

Authority: Ind. Code § 6-2.5-3-7, Ind. Code § 6-2.5-8-1; Ind. Code § 6-2.5-8-8.

Taxpayer protests the assessment of sales and use tax with respect to sales made to several customers Taxpayer believed were not subject to sales and use tax.

STATEMENT OF FACTS

Taxpayer is an individual engaged in the business of stone carving. Taxpayer does two primary activities in his business. First, Taxpayer takes stones provided by other persons and engraves those stones to customer specifications. Second, Taxpayer engages in carving items which are then sold to third parties.

For the years in question, Taxpayer neither registered as a retail merchant under Indiana law nor collected sales tax. Taxpayer was assessed sales tax with respect to his various sales. Taxpayer protested the assessment with respect to several sales. A hearing was held, and this letter of findings results.

I. Sales and Use Tax-Exemption Certificates

DISCUSSION

Taxpayer argues that the sales of materials to various purchasers were exempt. In particular, Taxpayer maintains that the purchases in question were made for the customer's subsequent resale, either for their business or for further sale. Further, Taxpayer argues that the purchases were transported outside Indiana, and are thus exempt on that basis.

Taxpayer has argued that the out-of-state customers/resellers should not bear the burden of filing for retail merchant certificate for Indiana, particularly given that the customers/resellers only sold their property outside Indiana.

Under Ind. Code § 6-2.5-3-7(a):

> A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the person or the retail merchant can produce evidence to rebut that presumption.

Under Ind. Code § 6-2.5-3-7(b) (emphasis added):

> A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, *in the form prescribed by the Department*, that the acquisition was exempt from use tax.

The basic purpose of a proper exemption certificate vis-à-vis a seller of personal property is to relieve that seller of the burden of proving that the purchaser used the items sold for an exempt use and associated record keeping for every retail purchase that may be exempt. Ind. Code § 6-2.5-3-7; Ind. Code § 6-2.5-8-8. Instead, the Department must then look to the purchaser to determine their liability for use tax.

However, when a seller does not receive a valid Indiana exemption certificate for whatever reason, then the seller and purchaser jointly bear the onus of showing that the property sold to the purchaser was used by the purchaser in a manner that was exempt from tax. Ind. Code § 6-2.5-3-7(a). Upon Departmental audit of a seller in a case such as this, the seller then bears the burden of showing by alternative means that the exemption claimed by the purchaser is proper. The question then shifts to alternative means of showing such exemptions.

Here, Taxpayer has presented exemption certificates from another state, or exemption certificates dated after the dates of the sales in question. Under the Indiana statute, this does not constitute a form prescribed by the Department. Even though the purchasers were located outside Indiana, an exemption certificate is required in order to make exempt purchases in Indiana. Ind. Code § 6-2.5-8-1, -8. However, the purchaser is not subject to the application fee due under Ind. Code § 6-2.5-8-1(b). The net effect is to assign an identification number to the merchant, and to permit the merchant to make tax-exempt purchases from the Indiana seller.

In cases in which a seller does not receive an exemption certificate, the means of a taxpayer to show that the sale was exempt from tax is to follow the flow of transactions and establish exemption based on that flow. Here, Taxpayer has not met that burden, and is accordingly denied.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420030029.LOF

LETTER OF FINDINGS NUMBER: 03-0029
Sales and Use Tax
For the Tax Period 1999-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax - Imposition

Authority: IC 6-2.5-2-1, IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of sales tax.

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 is a corporation primarily involved in the sale of pre-owned vehicles. The taxpayer also finances some of the vehicles sold. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department", assessed additional sales tax, penalty, and interest. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Sales and Use Tax -Imposition

DISCUSSION

Pursuant to IC 6-8.1-5-1 (b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect.

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. The retail merchant is required to collect and remit the sales taxes due to the state. IC 6-2.5-2-1.

In performing the audit, the department's auditor compared the Bureau of Motor Vehicles listing of vehicles registered under the taxpayer's identification number, the taxpayer's dealer jackets, and the amounts remitted to the department. The total amount due is the balance of the tax collected per the taxpayer's records or dealer jackets plus the amount the Bureau of Motor Vehicles report should have been paid. The total of the taxpayer's records and the Bureau of Motor Vehicles records were each decreased by the amounts that appeared on both sets of records. The remaining amount was decreased by the amount the taxpayer had actually remitted to the department. The difference is the amount of tax due the department per the audit.

The taxpayer contended that keyboarding errors caused some automobile sales to accidentally be listed twice. The taxpayer presented substantial documentation that some vehicle sales were actually duplicated in the audit. Therefore, in several instances the audit includes two assessments for sales tax associated with one sale of an automobile. Each retail transaction is only subject to the imposition of the sales tax once. Therefore, the duplicate assessments must be deleted from the assessment.

FINDING

The taxpayer's protest is sustained as to the assessments shown to be duplicated in the assessment.

II. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protested 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 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 taxpayer's carelessness and inattention to detail in the keeping of accurate records constituted negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

03-20030083.LOF

LETTER OF FINDINGS NUMBER: 03-0083
Income Tax Withholding
For the Years 1999, 2000, and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Income Tax Withholding—Distributions to non-resident shareholders

Authority: IC 6-8.1-5-1(b); IC 6-3-4-13.

Taxpayer protests the assessment of income tax that it was required to have withheld from a distribution to a non-resident shareholder.

STATEMENT OF FACTS

Taxpayer is an Indiana S-corporation with 10 shareholders, 3 of whom are out-of-state residents. An audit examination revealed that no withholding income tax was being withheld on the non-resident shareholders' distributions. Audit assessed the S-corporation with the withholding income tax due on the non-resident shareholders' distributions.

Taxpayer filed a protest to the assessment. A hearing date was set for February 22, 2005. Taxpayer did not appear for the hearing. This letter of findings is written based upon the information available within the file.

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-3-4-13 requires an S-corporation to withhold Indiana income tax on distributions made to non-resident shareholders. Under the statute, the corporation is liable to the State of Indiana for the amount of income tax that the corporation is required to withhold. *Id.* The withholding of the income tax by the corporation does not relieve a shareholder of the obligation to file an Indiana income tax return. *Id.* But if a corporation fails to withhold and pay to the state of Indiana any amount of tax required to be withheld—and the tax is paid by the shareholder, that amount of tax paid by the shareholder shall not be collected from the corporation; but the corporation shall not be relieved from liability for interest and penalties due, caused by the corporation's failure to withhold the tax due. *Id.* In this instant case, the out-of-state shareholder has not filed an Indiana income tax return since 1996. Because the S-corporation had a duty to withhold and submit the income tax due on a non-resident distribution and because the non-resident has not filed an income tax return, Taxpayer is not relieved of the tax liability; the income tax that should have been withheld by the S-corporation Taxpayer is to be paid to the Department by S-corporation Taxpayer—including interest and penalties.

The fact that an R&D credit was available to be claimed does not abrogate the duty of the S-corporation to have withheld the income tax due on the non-resident shareholder's distribution and to have submitted the tax to the State of Indiana.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420030191.LOF

LETTER OF FINDINGS NUMBER: 03-0191
Sales and Use Tax
For The Tax Period 1999-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax - Imposition

Authority: IC 6-2.5-2-1, IC 6-8.1-5-1 (b), IC 6-8.1-5-4, IC 6-2.5-8-8.

The taxpayer protests the assessment of sales and use tax.

II. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

STATEMENT OF FACTS

The taxpayer is a corporation doing business as a retail jewelry store. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty for the tax period 1999-2001. The taxpayer protested a portion of the sales tax assessment and the penalty. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax -Imposition

DISCUSSION

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state. IC 6-2.5-2-1.

Pursuant to IC 6-8.1-5-1 (b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. Taxpayers have a statutory duty to keep records as set out at IC 6-8.1-5-4 as follows:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

The taxpayer claimed that many sales were exempt from the sales tax.

IC 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

> (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

The taxpayer did not have exemption certificates for these sales. Therefore, they were properly included in the taxpayer's total sales subject to Indiana sales tax.

The taxpayer's sales tax liability was computed by preparing a schedule comparing the taxpayer's taxable sales invoices to the taxpayer's sales tax returns filed with the department. Sales without exemption certificates were separately identified. The taxpayer was given credit for all sales that had been reported to the state. The taxable sales were totaled and tax assessed.

The taxpayer claimed that this method did not fairly and accurately reflect the actual amount of sales tax due to Indiana. To prove this contention, the taxpayer presented sales recap sheets for the tax period. The taxpayer asserted that these recap sheets indicate that there were many refunds and returns that lowered the total amount of sales against which tax should be assessed. The taxpayer did not produce source documents such as invoices or receipts to back up the recap sheets as required by the law. Therefore, the recap sheets are inadequate to sustain the taxpayer's burden of proof.

FINDING

The taxpayer's protest to the assessment of sales tax 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 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 taxpayer disregarded its duty to keep adequate records of its sales and sales tax collected. The taxpayer's inattention to this duty resulted in a substantial under remittance of sales tax to the state. This breach of the taxpayer's duty constitutes negligence.

FINDING

The taxpayer's protest to the imposition of the negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

04-20030345.LOF

LETTER OF FINDINGS NUMBER: 03-0345
Gross Retail Tax—Commercial Printing
For Years 2000 & 2001

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date

of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Gross Retail Tax—Commercial Printing

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-1-1; IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; 45 IAC 15-5-3(8); 45 IAC 2.2-1-1; 45 IAC 2.2-2-1; 45 IAC 2.2-4-1; *The Frame Station v. Indiana Department of Revenue*, 771 N.E.2d 129 (Tax Ct., 2002)

Taxpayer protests the assessment of gross retail tax on retail unitary transactions in its commercial printing business.

STATEMENT OF FACTS

Taxpayer, an S corporation whose two equal shareholders comprise the operations staff, is a commercial printer. Items taxpayer prints include business cards, posters, brochures, and stationery. Taxpayer also takes custom orders for specialty items such as wedding invitations with raised lettering, signs, and other marketing supplies. Further facts will be added as necessary.

I. Gross Retail Tax—Commercial printing

DISCUSSION

Taxpayer, an S corporation whose two equal shareholders comprise the operations staff, is a commercial printer. Items taxpayer prints include business cards, posters, brochures, and stationery. Taxpayer also takes custom orders for specialty items such as wedding invitations with raised lettering, signs, and other marketing supplies. Taxpayer collects and remits the state's gross retail tax on materials it prints. The invoice form itemizes labor and materials. Taxpayer does not collect or remit the state's gross retail tax on the labor portion of the billing invoice. The audit found that sales of printed materials fell under the definition of a retail unitary transaction pursuant to 45 IAC 2.2-1-1. A retail unitary transaction includes all items of property and/or services for which a total, combined charge is computed for payment. The audit stated that it was inconsequential that services, which are not otherwise taxable, such as printing on material supplied by the customer, are included. Therefore, the invoice total, both labor and materials for printed materials, were subject to the state's gross retail tax.

Taxpayer's protest relies on phone calls made to the Department. Taxpayer stated that phone calls to the Department elicited assurances that taxpayer's labor charges were not taxable, only the materials charges were taxable. In addition, taxpayer was informed that the transactions at issue were not retail unitary retail transactions. Taxpayer stated that he was advised not to collect or remit gross retail tax on the labor charges, and was referred to Sales Tax Bulletins # 60 and # 69. Sales Tax Bulletin # 60 does not apply to taxpayer as it concerns construction contractors. Sales Tax Bulletin # 69 also does not apply to taxpayer as it concerns exemptions for items purchased by commercial printers, not the products commercial printers sell. Taxpayer is currently collecting and remitting the state's gross retail tax on labor and materials based on the audit's advice, but feels the 2000 and 2001 assessments are improper because taxpayer relied on erroneous information.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1.

The specific statutes and regulations at issue in this protest concern the nature of retail unitary transactions. IC § 6-2.5-1-1 defines a "unitary transaction" as follows: it "includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated." IC § 6-2.5-1-2 defines a "retail transaction" as a "transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1." A "retail unitary transaction" is a "unitary transaction that is also a retail transaction." IC § 6-2.5-4-1 provides in pertinent part:

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
  (1) acquires tangible personal property for the purpose of resale; and
  (2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:
  (1) the property is transferred in the same form as when it was acquired;
  (2) the property is transferred alone or in conjunction with other property or services; or
  (3) the property is transferred conditionally or otherwise.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:
  (1) the price of the property transferred, without the rendition of any service; and
  (2) except as otherwise provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

45 IAC 2.2-1-1 tracks the language of IC § 6-2.5-1-1 in defining a unitary transaction. 45 IAC 2.2-4-1 tracks the language of IC § 6-2.5-4-1(c) and IC § 6-2.5-4-1(e) in defining a retail unitary transaction.

Indiana's Tax Court in *The Frame Station v. Indiana State Department of Revenue*, 771 N.E.2d 129 (Tax Ct., 2002), ties together all these statutes and regulations, and applies them to a business similar in nature to the one at issue in the present tax protest. The issue in *Frame Station* was whether their sales of custom-framed art constituted a retail unitary transaction and were therefore subject to Indiana's gross retail tax. Frame Station provided custom framing services, framing its customer's art in frames that it had built or specially ordered. When Frame Station billed its customers, it recorded separate subtotals on the invoices, one for the framing service and the other for the physical frame itself. During the tax years at issue, Frame Station's customers paid no money in advance for custom framing; rather, they paid a total price for the framing service and frame when they picked up the completed project. Frame Station collected and remitted gross retail tax only on the price of the frame itself, not on the price for framing the art. An audit determined Frame Station's services were also subject to the state's gross retail tax because both the sale of the frame and the service of framing the art constituted a retail unitary transaction pursuant to IC § 6-2.5-4-1(e).

The Tax Court held that Frame Station's transactions were taxable retail unitary transactions pursuant to IC § 6-2.5-4-1(e). The Court examined the statute, stating it "permits the imposition of sales tax on the otherwise non-taxable services when the services are performed with respect to property prior to the transfer of the property" to the buyer or customer. *Frame Station*, 771 N.E.2d 129 at 131.The Court cited a prior decision that stated a retail unitary transaction exists when the transfer of the property and rendition of services were "inextricable and indivisible." Identifying the point at which the transfer of property occurs is key. If services are performed prior to the transfer of property, then the transaction constitutes a taxable retail unitary transaction under IC § 6-2.5-4-1(e).

As applied in the instant case, the evidence did show that taxpayer's customers pay the total price for their printed materials when they pick them up, after all printing services have been performed. The services are performed prior to the transfer of the printed materials. Therefore, these transactions are taxable retail unitary transactions.

FINDING

Taxpayer's protest concerning the assessment of the state's gross retail tax on retail unitary transactions in its commercial printing business is denied.

DEPARTMENT OF STATE REVENUE

0220030369.LOF

LETTER OF FINDINGS: 03-0369
Indiana Corporate Income Tax
For the Years 1996 through 2000

NOTICE: Under 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Combined Indiana Income Tax Return – Adjusted Gross Income Tax.

Authority: IC 6-3-2-2(l); IC 6-3-2-2(m).

Taxpayer argues that the Department of Revenue erred when it required that taxpayer – along with three other related entities – submit a combined Indiana corporate income tax return reflecting the parties' income.

STATEMENT OF FACTS

There are five parties involved in the original audit and in the subsequent protest. These five companies are commonly owned.

1. Predecessor Company: This company was in the chemical and manufacturing business until 1993 when it reorganized itself into different operating companies. After the 1993 reorganization, Predecessor Company retained a separate identity and existence.

2. Successor Company: As part of the 1993 reorganization, this company was formed "to acquire and operate [Predecessor Company's] global chemicals business." Successor Company has an Indiana presence consisting of a sales office staffed by a secretary. This Indiana office takes orders from customers throughout the United States. A regional sales manager and global manager also work out of Indiana taxpayer's office. It is admitted that Successor Company has an Indiana nexus; it has an Indiana business situs, has Indiana employees, sells products to Indiana customers, and receives income from doing business within the state. In the original 1993 restructuring, ownership of the intellectual property was transferred from Predecessor Company to Successor Company.

3. Delaware Company: This company is another of Predecessor Company's offspring. At some point following the 1993 reorganization, Predecessor Company/Successor Company transferred to Delaware Company intellectual property rights –

consisting of "patent rights, trade secrets, and know-how." Successor Company now pays Delaware Company royalties for the right to use the intellectual property originally owned by Predecessor Company.

4. Fiber Company: A related out-of-state company which pays additional royalties to Delaware Company for the right to use the intellectual property.

5. Compounds Company: A second related out-of-state company which also pays royalties to Delaware Company for the right to use the intellectual property.

The Department of Revenue (Department) conducted an audit review of Successor Company's tax returns and business records. The audit review examined records for the years 1996 through 2000. Following that review, the Department concluded that Successor Company, Delaware Company, Fiber Company, and Compounds Company should report their income on a "combined return" in order to "fairly reflect" the parties' Indiana income. As a result of that determination, the Successor Company owed additional income tax. Thereafter, the Department issued notices of "Proposed Assessment" for three of the five years under consideration.

Taxpayer challenged the audit's decision requiring four of these entities to file a combined Indiana tax return arguing that Successor Company "is the only entity that has nexus in Indiana." It is taxpayer's assertion that Delaware Company, Fiber Company, and Compounds Company "do not have the requisite Indiana nexus and should not be subject to the Indiana Adjusted Gross Income Tax." Taxpayer submitted a protest to that effect, and an administrative hearing was conducted during which taxpayer elaborated on this argument. Subsequently, taxpayer submitted additional information outlining the original 1993 stock distribution which led to the restructuring of the Predecessor Company and the formation of the four entities now represented within the combined return. This Letter of Findings results.

DISCUSSION

I. Combined Indiana Income Tax Return – Adjusted Gross Income Tax.

In 1993, Predecessor Company "spun off" ownership of its "global chemicals businesses" by means of a "restructuring program." The Predecessor Company continued in existence as a "significant investor" in the Successor Company. As part of that restructuring program, Predecessor Company assigned to Successor Company the rights to certain specified intellectual property. Delaware Company was formed as a means to effectuate the transfer of the intellectual property from Predecessor Company to Successor Company.

By 1994, Delaware Company was – by means not entirely clear – the owner of the intellectual property consisting of trademarks, patents, and "know-how." In 1994, Delaware Company and Successor Company entered into a "License Agreement" which permitted Successor Company the right to make use of the intellectual property in return for which the Successor Company promised to make royalty payments to Delaware Company based upon the Successor Company's "aggregate Net Sales Value" of licensed products manufactured and sold by Successor Company. During 1998, 1999, and 2000, Successor Company paid Delaware Company approximately 90 million dollars in royalty payments.

Delaware Company also entered into agreements with Fiber Company and Compounds Company because those two entities also paid royalties to Delaware Company.

According to the audit report, "related foreign corporations" also paid royalties to Delaware Company. In addition, Delaware Company received "a nominal amount of royalties" from "other sources."

The issue is whether the audit was justified in requiring that Successor Company file a combined return reporting not only its own income but that of Delaware Company, Fiber Company and Compounds Company.

IC 6-3-2-2(m) provides as follows:

In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interest, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

In addition, IC 6-3-2-2(l) vests both taxpayers and the Department with authority to allocate and apportion a taxpayer's income within and among the members of a unitary group of related entities.

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable;

(1) separate accounting;

(2) the exclusion of any one (1) or more of the factors;

(3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

It is apparent from the language contained with IC 6-3-2-2(l) that the standard apportionment filing method is the preferred method of representing a taxpayer's income derived from Indiana sources. The alternate methods of allocation and apportionment – including the combined reporting method – are only employed when the standard apportionment formula does not fairly reflect

the taxpayer's Indiana income.

Taxpayer's collective business structure remains somewhat ill-defined; however, a number of facts can be established with some certainty. These five entities are owned by the same shareholders. Successor Company has an Indiana nexus; it has an Indiana office, employees, and sells products to Indiana customers. Successor Company paid substantial sums of money to Delaware Company for the right to use intellectual property originally owned by Predecessor Company. Fiber Company and Compounds Company also paid substantial royalties for the right to use the intellectual property.

Other aspects of taxpayer's collective business relationship are more ambiguous. It is not entirely clear how the intellectual property – transferred from Predecessor Company to Successor Company in 1993 – came to be owned by Delaware Company. It is not entirely clear why Successor Company is now paying royalties for the right to use the intellectual property which it once owned. It is totally unclear as to what use Delaware Company puts these royalty payments. Do the royalty payments simply accumulate in Delaware Company's bank account? Does Delaware Company spend these millions of dollars to "manage" the intellectual property and to accurately "account for the royalty receipts?" Taxpayer describes the function of Delaware Company as follows: "The responsibility of [Delaware Company] is to effectively manage the granting of these [property] rights and to account for the royalty receipts and ensure their accuracy." However, the Department is unable to discern why managing property rights and accounting for royalty receipts would be worth 90 million dollars in payments spread out over three-years. Neither is it entirely clear why Fiber Company and Compounds Company also pay millions of dollars in royalties to Delaware Company. The Department must conclude that the royalty/licensing agreement is primarily intended as an artifice to minimize Successor Company's state tax liability because the licensing agreement – outside the favorable tax consequences – does not seem to have economic substance or business purpose.

Given that conclusion, the audit was wholly justified in requiring that Successor Company, Delaware Company, Fiber Company and Compounds Company file a combined return in order to more accurately reflect the parties' Indiana income. The alternative proposed by taxpayer would distort the Successor Company's income because it would reflect – as putative "business expenses" – millions of dollars in royalty payments Successor Company paid to a related company. The Department does not agree with taxpayer's assertion that recognizing these royalty payments as legitimate, substantive "business expenses" would more fairly recognize the parties' Indiana income.

The plain language of the law states that "[i]f the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana... the department may require, in respect *to all or any part of the taxpayer's business activity*... the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income." IC 6-3-2-2(l) (*Emphasis added*). The requirement that these parties submit a combined return is a solution narrowly tailored to effectuate the purpose set out in IC 6-3-2-2(l).

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220030484.LOF

LETTER OF FINDINGS: 03-0484
Indiana Corporate Income Tax
For the Years 1998 to 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Combined Filing Requirement – Adjusted Gross Income Tax.

Authority: IC 6-3-2-2(m); IC 6-8.1-5-1(b); Hi-Way Dispatch, Inc. v. Indiana Dept. of State Revenue, 756 N.E.2d 587 (Ind. Tax Ct. 2001); Black's Law Dictionary (7th ed. 1999).

Taxpayer argues that the Department of Revenue – in calculating taxpayer's Indiana income – erred when it recomputed taxpayer's adjusted gross income to reflect on a combined basis all members of taxpayer's federal affiliated group of companies.

STATEMENT OF FACTS

Taxpayer is a Delaware corporation headquartered in Texas. Taxpayer manufacturers paper and paper products. Taxpayer does business in Indiana. Taxpayer owns various subsidiaries.

The Department of Revenue (Department) conducted an audit of taxpayer's business records and tax returns. The audit concluded that taxpayer should be required to file a combined Indiana tax return that included taxpayer's wholly owned subsidiaries. This adjustment to the tax return resulted in an assessment of additional Indiana corporate income tax. The Department sent notices of proposed adjustment which reflected the audit's determination and the consequent, additional tax assessment.

Taxpayer disagreed with the requirement that it file a combined return and with the additional tax assessment. Taxpayer submitted a protest. An administrative hearing was conducted during which taxpayer's representative explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Combined Filing Requirement – Adjusted Gross Income Tax.

Taxpayer is an out-of-state company which does business in Indiana. Taxpayer owns 100 percent of various subsidiaries. Taxpayer files a consolidated federal income tax return which includes each member of the affiliated group. Although each member is organized as a separate corporation, the taxpayer (parent company) and the subsidiaries share the same corporate officers.

The audit concluded that the taxpayer and its subsidiaries should be required to file a combined Indiana tax return in order to more fairly reflect taxpayer's Indiana income. The audit determined that the "members of the affiliated group operate a unified, highly integrated worldwide business enterprise for their mutual benefit." The audit concluded that "Indiana income as reported is distorted by inter-company charges for trademark royalties."

The audit refers to royalty payments made by taxpayer to one of its wholly owned affiliates hereinafter referred to as "Delaware subsidiary." The particular business arrangement, by which taxpayer became obligated to pay Delaware subsidiary royalties, began in 1996 when taxpayer – as the owner of certain trademarks, patents, and "know-how" (hereinafter "intellectual property") – granted Delaware subsidiary the right to sublicense that intellectual property.

Thereafter, taxpayer and Delaware subsidiary signed an agreement by which taxpayer was permitted to make use of its own intellectual property. In consideration, taxpayer agreed to pay Delaware subsidiary three percent of its gross sales though the agreement limited the amount of royalties by specifying that the total annual royalty fee paid Delaware subsidiary would not exceed 25 percent of taxpayer's net income for the year. The agreement specified that taxpayer would retain its original ownership of the intellectual property. However, the agreement did not indicate the amount of compensation Delaware subsidiary paid taxpayer for the original right to sublicense the intellectual property; the agreement did not specify if Delaware subsidiary would pay *any* compensation for the right to sublicense the intellectual property.

The audit does not indicate what Delaware subsidiary did with the royalties. The audit did not specifically determine if Delaware subsidiary loaned the royalties back to taxpayer. However, the audit did establish that taxpayer incurred interest charges which were owed Delaware subsidiary. During 1999, taxpayer incurred approximately $153,000,000 in interest charges. During 2000, taxpayer incurred approximately $169,000,000 in interest charges. These interest charges were owed to Delaware subsidiary.

Summarizing, the intellectual property sublicensing/licensing agreement worked like this:

1. Taxpayer owned intellectual property;
2. Taxpayer granted Delaware subsidiary the right to sublicense this intellectual property; Delaware subsidiary apparently paid no consideration for this property;
3. Delaware subsidiary licensed the intellectual property to taxpayer;
4. Taxpayer paid Delaware subsidiary royalties;
5. Taxpayer became obligated to Delaware subsidiary for interest charges.

The audit found that taxpayer should be required to file an Indiana combined return because the royalty and interest payments distorted taxpayer's Indiana income and because "the Taxpayer group functions as one economic entity... [and] the members of the group bring synergies to the whole with such advantages unavailable to each company standing alone."

Taxpayer disagrees. Taxpayer states that the Delaware subsidiary has significant substance, has employees, owns property, and that Delaware subsidiary "manages and expands the value of the patent portfolio." Taxpayer states that Delaware subsidiary is an active business with employees and significant assets throughout the United States.

Taxpayer claims that the standard three-factor formula accurately represents taxpayer's income derived from Indiana. In addition, taxpayer maintains that the Department is estopped from requiring that taxpayer file a combined return because the Department – in its previous audits – never suggested such a filing requirement was appropriate.

IC 6-3-2-2(l) vests both taxpayers and the Department with authority to allocate and apportion a taxpayer's income within and among the members of a unitary group of related entities.

> If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable;
>
> (1) separate accounting;
>
> (2) the exclusion of any one (1) or more of the factors;
>
> (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
>
> (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

It is apparent from the language contained with IC 6-3-2-2(l) that the standard apportionment filing method is the preferred method of representing a taxpayer's income derived from Indiana sources. The alternate methods of allocation and apportionment

– including the combined reporting method of which taxpayer complains – are employed when the standard apportionment formula does not fairly reflect the taxpayer's Indiana income.

The Department is prepared to agree with taxpayer's assertion that Delaware subsidiary is more than simply an empty business shell created simply as an imaginative tax shelter. The Department has no reason to dispute taxpayer's contention that transferring its intellectual property to Delaware subsidiary allowed taxpayer to preserve certain federal tax advantages. The Department has no reason to dispute taxpayer's contention that Delaware subsidiary conducts business activities other than simply holding taxpayer's intellectual property. However, the Department is not prepared to attach the same economic substance to the licensing agreement that taxpayer does. Taxpayer transferred licensing rights to Delaware subsidiary but did so despite the absence of any indication that taxpayer received consideration for doing so. Taxpayer then agreed to pay substantial amounts of annual royalty fees to Delaware subsidiary for permission to exploit the same intellectual property. Taxpayer agreed to pay these royalty fees despite the fact that – by the terms of the parties' own agreement –taxpayer continued to be "the sole owner of the entire right, title and interest in and to the Licensed Trademarks and the goodwill associated therewith...."

Although the audit was not able to determine whether Delaware subsidiary was simply loaning the royalty payments back to taxpayer, taxpayer has not fully addressed the questions raised by its payment of hundreds of million dollars in "interest" payments to Delaware subsidiary.

The audit concluded that taxpayer's licensing agreement, royalty payments, and interest obligations represented taxpayer's attempt to cultivate and harvest tax benefits devoid of any substantive, underlying business purpose. The audit's conclusion on these matters is presumed correct. "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b).

The audit's decision requiring filing a combined return is justified in part under IC 6-3-2-2(l) because the subsidiaries included within the filing – including the Delaware subsidiary – are taxpayer's wholly owned entities; taxpayer and the subsidiaries are "controlled directly or indirectly by the same interests...." The combined filing requirement is justified in part because the royalty payments are derivative of the taxpayer's Indiana business activity; that Indiana activity consists of the marketing of goods bearing taxpayer's trademarks; the value of the goods marketed within the state is attributable in part to taxpayer's patents and taxpayer's "know-how."

Taxpayer has not met its burden of demonstrating that the proposed assessments are incorrect.

In addition to challenging on its face the combined filing requirement, taxpayer argues that it relied on the Department's past acquiescence to the taxpayer's decision to file non-combined returns and that the Department is now estopped from belatedly changing that position. Taxpayer is interposing the defense of "equitable estoppel." Equitable estoppel is a defensive doctrine which "prevents one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way...." Black's Law Dictionary 571 (7th ed. 1999).

Taxpayer maintains that, after having relied upon earlier determinations that taxpayer was not required to file a combined return, the Department may not afterwards back-track on its position to the taxpayer's detriment.

"Equitable estoppel cannot ordinarily be applied against government entities." Hi-Way Dispatch, Inc. v. Indiana Dept. of State Revenue, 756 N.E.2d 587, 598 (Ind. Tax Ct. 2001). However, application of the doctrine against a government entity is not absolutely prohibited. Id. The exception to this general rule is where "the public interest would be threatened by the government's conduct." Id.

The Department does not agree that it is estopped from requiring that taxpayer and its subsidiaries file a combined tax return. There is no indication that the circumstances which the audit found sufficient to justify its combined filing requirement were the same circumstances present during the previous audits. There is no indication that the Department required or instructed taxpayer to file a separate return but only that the Department acquiesced to the filing of the previous, separate returns. There is no indication that the Department engaged in false, unfair, or deceptive practices which induced taxpayer to arrive at a conclusion that it could indefinitely continue to file separate tax returns. There is no indication that the Department's decision to require a combined return implicates the public's interest.

The Department concludes that taxpayer's estoppel argument is without merit.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0320040079.LOF

LETTER OF FINDINGS NUMBER: 04-0079
Withholding Tax
Responsible Officer
For the Tax Period 1998-2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of

publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1.Withholding Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that did not remit the proper amount of withholding taxes during the tax period 1998-2000. The Indiana Department of Revenue assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. This Letter of Findings is based on the taxpayer's submissions and documentation in the file.

1. 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 withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer produced substantial documentation that she had no duty to collect and remit withholding taxes to the state. Therefore, she is not personally responsible for the payment of the corporate withholding taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

42-20040084.LOF

LETTER OF FINDINGS NUMBER: 04-0084 IFTA
International Fuel Tax Agreement (IFTA)
For Years 2000, 2001, AND 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

I. IFTA – Assessment

Authority: IFTA.VII.R700

The taxpayer protested the department's assessment after an IFTA audit based on insufficient and inadequate documentation.

STATEMENT OF FACTS

Taxpayer operated one qualified recovery vehicle, 3 non-qualified recovery vehicles and one non-qualified service vehicle. The qualified recovery vehicle is a tri-axle tractor used to transport replacement tractors and tow disabled tractors when repairs cannot be made on road. The person that prepared the quarterly IFTA Filings died in February of 2003, prior to the audit. The party presenting records on behalf of the taxpayer was not familiar with the methodology used by the person who originally prepared the documents. The audit found the taxpayer failed to present mileage records relevant to the qualified vehicle or reported mileage amounts, or other relevant records that could be used to reasonably determine actual mileage and fuel information. The audit was adversely affected by severe taxpayer imposed scope limitations. The taxpayer's estimate as to the yearly mileage of the qualified vehicle was accepted, and an assessment for the IFTA liability was prepared from this mileage.

I. IFTA – Assessment

DISCUSSION

The department, pursuant to an IFTA audit, requested taxpayer records pursuant to IFTA Article VII, R700 requirements. Taxpayer protested based on the loss of the party responsible for keeping records. The record keeper, who was also the manager of the business, was diagnosed with a fatal illness and died shortly thereafter. Understandably, the record keeper was less than focused on his responsibilities for IFTA filings during the latter portion of the audit period.

Taxpayer makes no argument aside from this recitation of the circumstances related to the relevant IFTA records. The audit

computations have already reflected the department's recognition of the difficulties confronting the taxpayer. The department will also note that the audit period was for three years, and that the records for this entire period were uniformly inadequate.

Consequently, the department concludes that the taxpayer has not provided sufficient information or basis to overturn the audit assessment. Taxpayer does not cite any IFTA provisions to support this protest and fails to provide proof that the assessment was either erroneous or excessive.

FINDINGS

Taxpayer protest denied.

DEPARTMENT OF STATE REVENUE

0220040142P.LOF

LETTER OF FINDINGS NUMBER: 04-0142P
Income
For Tax 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. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments, ten percent (10%) negligence penalty and interest. Taxpayer protests the imposition of penalty. Further facts will be provided as necessary.

I. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent (10%) negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

…

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

…

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to 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.

45 IAC 15-11-2(c) provides in pertinent part:

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.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). In its protest letter, taxpayer states that it timely filed and timely paid all tax liabilities. Since the Department issued assessments for unpaid tax, and taxpayer paid the assessments except for the penalties, it stands to reason that taxpayer did not timely pay all tax liabilities. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20040147.LOF

LETTER OF FINDINGS NUMBER: 04-0147
Adjusted Gross Income Tax and Penalty
For the Years 2000-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax-Addback of state and local income taxes

Authority: Ind. Code § 6-3-1-3.5; O.R.C. Ann. §§ 5733.05-.06.

Taxpayer maintains that the Department of Revenue erred when it added back a portion of its Ohio Franchise Tax

II. Tax Administration-Penalty

Authority: Ind. Code § 6-3-4-4.1; Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent (10%) penalty for negligence.

STATEMENT OF FACTS

Taxpayer is a company doing business in multiple states, including Indiana. On its corporate income tax return, taxpayer reported its federal taxable income, adding back Indiana income taxes and a portion of its Ohio Franchise Tax. However, taxpayer did not add back a portion of Ohio Franchise Tax that it considered to be a tax on its net value as a company, rather than its income. The Department added back the excluded portion of the tax to arrive at its adjusted gross income, and assessed a negligence penalty. Taxpayer has protested this addback, and a hearing was held.

I. Adjusted Gross Income Tax-Addback of state and local income taxes

DISCUSSION

Under Indiana's corporate income tax, Ind. Code § 6-3-1-3.5(b)(3) provides that, for corporations, amounts taken as a deduction for state taxes "based on or measured by income" are to be added to federal taxable income to arrive at adjusted gross income.

Under Ohio's Franchise Tax, effectively two taxes are imposed. The first tax is a tax on the net worth of companies. For most corporations (including taxpayer in this case), the book value of the company, with minor modifications, is computed. Then, the taxpayer computes an apportionment factor based on its property, sales, and payroll in Ohio relative to its values nationally, multiplies the apportionment factor by the book value, and a tax of 0.4% is imposed on that value, up to a limit of $150,000. O.R.C. Ann. §§ 5733.05(C), 5733.06(C). The second tax is a tax imposed on the net income of the company, similar in most respects to Indiana's corporate adjusted gross income tax. O.R.C. Ann. § 5733.05(B), 5733.06(A)-(B). Once these two amounts are computed, the taxpayer pays the higher of the two taxes. Taxpayer in this case paid the amount represented by the net income tax. O.R.C. Ann. § 5733.06.

Taxpayer argues that, since the franchise tax is based on the privilege of doing business in Ohio regardless of net income, the portion of the franchise tax that is represented by the net worth portion should not be treated as a tax "based on or measured by income" for purposes of determining its adjusted gross income for Indiana purposes. Taxpayer agrees that the amount above the amount computed solely on its net worth is properly added back for Indiana purposes.

Two questions come out of this protest: one, is the franchise tax based on or measured by income; two, if it is not, what portion of the tax is a tax based on or measured by income?

Here, what has transpired is that taxpayer's Ohio state tax, by virtue of the "higher of" calculation dictated by Ohio law resulting in the tax on the income portion being due to Ohio, is a tax "based on or measured by income" within the meaning of Ind. Code § 6-3-1-3.5(b)(3). Accordingly, the full amount should have been added back.

FINDING

Taxpayer's protest is denied.

II. Tax Administration-Penalty.

Taxpayer also protests the imposition of the penalty for negligence for the years in question. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes

that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;
(2) judicial precedents set by Indiana courts;
(3) judicial precedents established in jurisdictions outside Indiana;
(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

With respect to the penalty, taxpayer has presented a case that it acted with reasonable cause, and thus the penalty should be waived.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20040149

LETTER OF FINDINGS NUMBER: 04-0149
Use Tax—Mining Exemption
Penalty—Request for Waiver
For Tax Years 2000, 2001, 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

I. Use Tax—Mining exemption

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-2 through IC § 6-2.5-3-7; IC § 6-2.5-5-3(b); 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4; 45 IAC 2.2-3-8; 45 IAC 2.2-3-12(c); 45 IAC 2.2-4-26; 45 IAC 2.2-5-9; 45 IAC 2.2-5-12(f)

Taxpayer protests the assessment of use tax on purchases of tangible personal property used in fulfilling construction contracts, arguing that it is entitled to a "pass-through" mining exemption.

II. Penalty—Request for waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the 10% negligence penalty and requests a waiver.

STATEMENT OF FACTS

Taxpayer's principal business activity is that of a land development contractor making improvements to realty on land taxpayer does not own. Contracted-for work performed by taxpayer includes clearing land, moving and excavating earth, installing water and sewage lines, constructing roads and highways, improving ditches and drainages, and preparing building sites. Taxpayer has also contracted with mining companies for box cut excavations, creating access from the top of the cut to the underground mine entrance. In connection with contract work for mining companies, taxpayer constructs slurry ponds and coarse refuse pits, rail spur lines and bridges, and coal load-out site improvements. Under some contracts, taxpayer would subcontract work that was outside its area of expertise to more specialized companies, such as concrete construction, asphalt paving, building construction, commercial landscaping and rock blasting.

The audit determined that pursuant to 45 IAC 2.2-3-7, 45 IAC 2.2-3-8, and 45 IAC 2.2-4-26, taxpayer was liable for use tax on materials used in performing its contracts where sales tax was not paid at the point of purchase. Taxpayer protested the use tax assessment and 10% negligence penalty, arguing that because of the way these particular jobs were performed, taxpayer should be allowed a "pass-through" exemption from the mining companies to them, based on an agent-principal relationship. More facts will be added as necessary.

I. Use Tax—Mining Exemption

DISCUSSION

According to taxpayer, during the tax years at issue, taxpayer's company and two others, all three equally owned by taxpayer

and his three brothers, entered into an unusual "contract." According to the sworn affidavits submitted in support of taxpayer's protest, the president of the two mining companies, pursuant to the "informal mutual consent of my other brothers... orally authorized" taxpayer to develop coal mines for the mining companies. The development began in 2000 and continued through 2002. Expenditures were in excess of $15.25 million dollars. The "parties" allege that this informal, oral contract was "[c]ontrary to normal company job bid procedures... industry standard operating procedure and company operating procedure" because there was no competitive public bid and no written contracts. Essentially, the president of the two mining companies alleges that "[a]t all times during the mine development process, [taxpayer] was operating under the direction and control of" the two mining companies. It is the informal nature of this "contract" that gives rise to taxpayer's agent-principal/pass-through exemption argument, and that it should not be held liable for the use tax assessment and 10% negligence penalty.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-2 through 6-2.5-3-7, an "excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction." An exemption is provided in IC § 6-2.5-3-4 if "the property was acquired in a retail transaction and the state gross retail tax" was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a "person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;" therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

The specific statute at issue, IC § 6-2.5-5-3(b) provides an exemption from the state's gross retail and use taxes under certain circumstances:

> Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring the property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Taxpayer maintains that because of its principal/agent relationship with the mining companies, it is entitled to the mining exemption and therefore should not be assessed use tax on items purchased without paying the state's gross retail tax. The specific regulation at issue, 45 IAC 2.2-5-9, sets forth, at great length, exactly how—and when—the exemption applies:

> (a) In general, all purchases of tangible personal property by persons engaged in extraction or mining are taxable. The exemption provided in this regulation extends only to manufacturing machinery, tools, and equipment directly used in mining or extraction. It does not apply to materials consumed in mining or extraction.
>
> (b) The state gross retail tax shall not apply to sales of manufacturing machinery, tools, and equipment which are to be directly used by the purchaser in extraction or mining.
>
> (c) Manufacturing machinery, tools, and equipment to be directly used by the purchaser in the extraction or mining process are exempt from tax provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the item being produced by mining or extraction. 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.
>
> (d) Pre-production and post-production activities. "Direct use in the extraction and mining process" begins at the point of the first operation or activity constituting part of the integrated production process." {sic} Utilization by the purchaser in extraction or mining begins with the first drilling of the shaft or well or the first removal of overburden in surface mining or quarrying. It ends when the item being mined or extracted has been physically removed from the mine, well, or quarry.
>
> (e) Equipment directly used in extraction or mining: Manufacturing machinery, tools, and equipment used directly in the mining or extraction process are taxable unless the machinery, tools, and equipment have an immediate effect upon mining or extracting the product. The fact that particular property may be considered essential to the conduct of the business of mining because its use is required either by law or practical necessity does not, of itself, mean that the property has an immediate effect upon the mining or extracting of the product. Instead, in addition to being essential for one of the above reason *[sic]*, the property must also be an integral part of an integrated process.
>
> (1) Examples of taxable machinery, tools, and equipment: transportation equipment used to convey fuel, supplies, and repair parts to coal mining equipment in the mine; field maintenance trucks used to transport men and materials to places where needed; and equipment used to load extracted and processed minerals from storage stockpiles to railroad cars.
>
> (2) Examples of exempt machinery, tools, and equipment: digging and extracting equipment used in the course of mining or extraction operations; machinery used to remove the overburden in surface mining; blasting and dislodging equipment; waste extraction and removal equipment and machinery used in the course of mining or extraction operations; derricks, pumps, pump houses, drilling rigs used in the production of oil and natural gas.
>
> (f) Storage equipment. Tangible personal property used in or for the purpose of storing raw materials or materials after

completion of the extraction or mining process is taxable.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately completely produced for resale and in fact resold.

(2) Storage containers for finished goods after the completion of the extraction or mining process are subject to tax.

(A) Receiving tanks for natural gas, crude oil, or brine are taxable.

(B) Facilities for storing coal after extraction and processing from the mine are taxable.

(3) Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers and are not subject to tax.

(g) Transportation equipment. Transportation equipment used in mining or extraction is taxable unless it is directly used in the mining or extraction process.

(1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.

(2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.

(3) Transportation equipment used to transport work-in-process or semi-finished materials within the extraction or mining process is not subject to tax.

(4) Transportation equipment used to transport work–in-process, semi-finished, or finished goods between plants which are not part of the same integrated process is taxable.

(h) Maintenance and replacement.

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery and equipment used predominantly in mining or extraction are subject to tax.

(2) Replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, however, are exempt from tax.

(j) Testing and inspection.

(1) Machinery, tools, and equipment used to test or inspect the mineral, oil, gas, stone, etc., being mined or extracted is not taxable, as such machinery, tools, and equipment are directly used in the mining or extraction process.

(2) Testing or inspection equipment used to test or inspect machinery, tools, and equipment used in extraction or mining (as distinguished from testing or inspecting the mineral, oil, gas, stone, etc., being mined or extracted) is taxable.

See also, 45 IAC 2.2-3-8, 45 IAC 2.2-4-26, and Information Bulletin # 60, December 2002. Indiana's tax statutes and regulations, especially those governing contractors, all support the taxability of taxpayer's purchases of tangible personal property used or consumed in performing the "informal contract" with the mining companies, regardless of that informality, and regardless of the exempt status of the mining companies. *See*, IAC 2.2-3-12(c) and 45 IAC 2.2-5-12(f) for "other taxable transactions."

The specific assessments taxpayer is protesting are detour signs; fuel; blasting materials and labor supplied by a subcontractor where taxpayer states the mining company reimbursed taxpayer for those expenditures used to excavate box cuts. Taxpayer alleges the detour signs were used in government construction contracts for public roads. Taxpayer cited Sales Tax Information Bulletin # 60 (December 2002) in support. This Bulletin supports the general rule of taxability and cites 45 IAC 2.2-3-12(c) as further support for the taxability of tangible personal property such as detour signs. Information Bulletin #60, however, provides that the purchase, lease or use of such items must be "to comply with the requirements of a government construction contract…, provided the item is used solely in connection with the construction and/or repair of public roads…and is not used for any other purpose." Taxpayer has failed to establish that its purchase of the detour signs qualifies for exemption under the requirements of Information Bulletin #60. Therefore, the protest concerning detour signs is denied.

With respect to the tax assessed on fuel consumption, the audit found that the fuel "was consumed in administrative or transport vehicles" and for "off-road consumption in excavation or grading heavy equipment." Taxpayer argued that since the mining company was "an organization exempt from tax" under 45 IAC 2.2-4-26(c), that exemption should "pass through" to taxpayer and therefore no tax would be due on these fuel purchases. Since no such "pass through" exemption exists, and since the mining company, in all likelihood, could not have avoided tax liability on fuel consumed in activities not directly related to direct production of coal, taxpayer's protest on this issue must be denied.

Finally, taxpayer again argues that 45 IAC 2.2-4-26(c) insulates it from tax liability for the purchase of blasting materials and labor used to excavate box cuts, a pre-production activity. In all likelihood, the mining company could not have purchased said materials and labor exempt from tax; therefore, even if there were such a thing as a "pass through" exemption, there would be nothing to pass on. Therefore, taxpayer's protest must be denied.

FINDING

Taxpayer's protest concerning the assessment of use tax on purchases of tangible personal property used in fulfilling construction contracts, based on the theory of a "pass through" mining exemption, is denied.

II. Penalty—Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due because it reasonably believed it was entitled to mining exemptions for the purchases at issue.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the penalty is not appropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed imposition of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

0420040185.LOF

LETTER OF FINDINGS NUMBER: 04-0185
Sales Tax
Responsible Officer
For The Tax Period 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 this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-8-1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes.

STATEMENT OF FACTS

The taxpayer was an employee of a corporation that did not remit the proper amount of sales taxes during the tax period 1996. The Indiana Department of Revenue assessed the unpaid sales taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The taxpayer produced substantial documentation that she had no duty to collect and remit sales and withholding taxes to the state. Therefore, she is not personally responsible for the payment of the corporate sales taxes.

FINDING

The taxpayer's protest to the 1996 responsible officer sales tax assessments is sustained.

DEPARTMENT OF STATE REVENUE

04-20040213.LOF

LETTER OF FINDINGS NUMBER: 04-0213
Gross Retail & Use Tax-Production Exemption
Penalty-Request for Waiver
For Tax Year 2000

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail and Use Taxes—Production exemption

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-6; IC § 6-2.5-3-7; IC § 6-2.5-5-5-3(b); IC § 6-2.5-5-5.1; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4; 45 IAC 2.2-5-8

Taxpayer protests the assessment of use tax on two items used in taxpayer's automobile manufacturing business where no gross retail tax was paid at the point of purchase. Taxpayer claims the materials are exempt from tax because they are part of the production process.

II. Penalty—Request for waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the 10% negligence penalty and requests a waiver.

STATEMENT OF FACTS

Taxpayer manufactures automobiles. During the tax year at issue, taxpayer failed to self-assess and remit use tax on purchases where no gross retail tax was paid at the point of purchase. Taxpayer is protesting the proposed assessment of use tax on two items: a "device" employees use to aid in installing back seats in vehicles without causing back injuries, and a paint purge thinner used to clean spray nozzles in the robotic arms that spray paint on vehicles. Additional facts will be supplied as necessary.

I. Gross Retail and Use Tax—Production exemption

DISCUSSION

Taxpayer protests the assessment of use tax on two specific items taxpayer uses in manufacturing automobiles. The first one, the "device," was developed by taxpayer's engineers as a result of employees incurring back injuries during the installation of back seats into the vehicles. The second one, the paint purge thinner system, cleans different colors of paint from robotic arm paint sprayer nozzles in between color paint applications for clear and clean paint applications. Taxpayer submitted two videotapes documenting the back seat installation and the paint application systems, plus a document attesting to the lack of injuries that followed the use of the "device" to install back seats.

The audit stated that taxpayer purchased seat turntables to use in removing car seats purchased from an outside vendor from the upper and lower levels of storage racks. The audit considered the seats to be raw materials. Taxpayer also purchased parts of lifters, which are used as the parts are removed from the "table" which, according to the audit, constitutes storage of raw materials. The audit also stated that taxpayer purchased paint purge chemicals and paint line chemicals without paying gross retail tax. The audit characterized these purchases as being used in maintenance, not production. The audit stated that the paint thinner is not mixed with the paint to be sprayed, but is used after one color stops and before the next color starts. "Production is halted for that particular piece of equipment while it is cleaned. Cleaning machinery is considered machine maintenance and not exempt...." A prior Letter of Findings denied taxpayer on this same issue.

Taxpayer stated in its protest that it had been working on measures to reduce injuries at the rear seat assembly process in the "trim and final" section of automobile production. Workers had sustained back injuries caused by the repetitive and awkward motion of lifting bulky and heavy (35 pounds) seats and installing them into vehicles. Taxpayer's engineers and workers developed a design for a "device" to help prevent such back injuries. This "device" holds several racks of rear seat assemblies at one time. Workers push buttons and the "device" automatically lifts and positions the rear seat to where the worker can install it into the vehicle without lifting the seats or moving his body into awkward and potentially injurious positions.

Taxpayer also purchased an air-powered lifter/scissor and powered turntable to install in the "device" that allows workers to lift the rear seat assemblies for installation. Taxpayer argues that the "device" is clearly not used for storage, but is an integral part of its production process. Taxpayer also states that use of the "device" has virtually eliminated the kinds of injuries workers were incurring before the "device" was developed. Taxpayer specifically cites 45 IAC 2.2-5-8(c)(2)(F) to support its contention that the "device" is an essential and integral part" of its back seat installation process: "Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production."

With respect to the paint purge thinner, taxpayer stated in its protest that it has a "very sophisticated and complex painting system which is fully automated." According to taxpayer, the process involves applying three coats of paint to each vehicle. The last

coat (top coat) is sprayed onto each vehicle by use of automatic paint robots, which are pre-programmed to make their arms perform various painting tasks based on vehicle type and model. They are also pre-programmed to match a specific topcoat color to each vehicle.

Taxpayer's typical production run consists of painting 400-600 vehicles per shift. Throughout each shift, the robots change colors as required, on average, every 9.5 vehicles. Each color change during the painting process takes three seconds and requires flashing paint thinner on the inside and tip of the robotic arms to purge the existing color paint. Taxpayer argues that without the use of the paint thinner, the old or existing paint color would mix with the new color paint, resulting in an unacceptable quality of paint on the vehicle and therefore resulting in an unmarketable product.

Taxpayer argues further that the painting process requires the paint robots to continuously apply rotating colors of paint to various types of vehicles on a moving conveyor. Taxpayer argues that the color changing process is an essential and integral part of the taxpayer's painting system, and use of the paint thinner is an essential and integral part of the color changing process.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-1 through 6-2.5-3-7, an "excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction." An exemption is provided in IC § 6-2.5-3-4 if "the property was acquired in a retail transaction and the state gross retail tax" was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a "person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;" therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

The specific statute at issue, IC § 6-2.5-5-5.1, provides in pertinent part:

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.

The specific regulation at issue, 45 IAC 2.2-5-8, provides in pertinent part:

(a) In general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. The exemption provided in this regulation extends only to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. It does not apply to material consumed in production or to materials incorporated into tangible personal property produced.

(b) The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property.

(c) 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.

(d) Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

The general rule, outlined in great detail in the regulation, is that purchases are either subject to the state's gross retail tax or the state's use tax unless the specific exemption applies. The parameters of the so-called "production exemption" are narrow: to be exempt, the tangible personal property must be directly used in the direct production of other tangible personal property. The regulation defines direct use and direct production as requiring "an immediate effect on the article being produced;" i.e., the production-exempt tangible personal property must be an essential and integral part of an integrated process."

Taxpayer's arguments with respect to the "device" are well taken. The document and videotape show that the "device" has enabled employees to install the back seats without injury. The audit characterizes the "device" as storage of raw materials. It appears that storage is ancillary to the "device's" function as providing a safe means by which taxpayer installs back seats into its vehicles while at the same time ensuring employee safety. Taxpayer's protest of this part of the assessment is sustained.

The Department has reviewed the videotape of the painting process, the prior Letter of Findings denying taxpayer on this issue, and all relevant statutes and regulations. A well-painted car is a marketable product. A badly painted car is not. The paint purge thinner is required to ensure that every vehicle is properly painted. However, that does not make the paint purge thinner part of production. Cleaning products are not part of a production process, no matter how important they are to the quality of the finished product. Taxpayer's protest of this part of the assessment is denied.

FINDING

Taxpayer's protest concerning the assessment of use tax on items taxpayer alleged fell within the production exemption to the state's gross retail and use taxes is sustained as to the "device," and denied as to the paint purge thinner.

II. Penalty—Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty on the assessment.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the 10% negligence penalty is not appropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

0120040297.LOF

LETTER OF FINDINGS: 04-0297
Individual Adjusted Gross Income Tax
For the 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Ohio Income – Adjusted Gross Income Tax.

Authority: IC 6-3-3-3(a); 45 IAC 3.1-1-74; 45 IAC 3.1-1-76; Ohio Rev. Code Ann. § 5733.40(A)(7).

Taxpayer argues that he is entitled to an Indiana tax credit based on the amount of state income taxes paid to Ohio.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. Taxpayer is the 100 percent owner of an Ohio S-Corporation. Taxpayer receives income from the S-Corporation. Taxpayer received income from the S-Corporation during 2002. Taxpayer received a distributive share of the S-Corporation's income; taxpayer received an amount designated as wages from the S-Corporation; taxpayer received rent from the S-Corporation because taxpayer owned the building out of which the S-Corporation operated.

Taxpayer reported the S-Corporation income on an Ohio income tax return. The Department of Revenue (Department) determined that taxpayer owed Indiana income tax and sent taxpayer a notice of proposed assessment. Taxpayer disagreed with the proposed assessment and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. Ohio Income – Adjusted Gross Income Tax.

Taxpayer maintains that he does not owe Indiana income tax because he paid Ohio income tax. Taxpayer states that he is entitled to a credit for the Ohio tax paid and that the credit is sufficient to offset any purported Indiana income tax liability.

Taxpayer received money from the Ohio company in three forms; taxpayer received a "distribution;" taxpayer received "wages;" taxpayer received rent because he owned the building out of which the S-Corporation ran its business.

"An Indiana resident must report income form all sources, including out-of-state income in calculating Indiana adjusted gross income." 45 IAC 3.1-1-74. Therefore, on taxpayer's 2002 Indiana income tax form, taxpayer must indicate that he received the S-

Corporation distribution, wages from the S-Corporation, and rent received from the S-Corporation. If taxpayer received $1,000 in the form of a distribution, $500 in the form of wages, and $200 in rent, taxpayer must report $1,700 in income from received from the Ohio S-Corporation during that particular year.

However, Indiana has a "reciprocal" agreement with Ohio. 45 IAC 3.1-1-76 states in part that, "Residents who have income consisting of salaries, wages, and commissions from states with which Indiana has a reciprocal tax agreement must report all such income as it were from Indiana. These states include: Illinois, Michigan, Pennsylvania, Kentucky, Ohio, Wisconsin." Under the terms of the reciprocal agreement, the Indiana resident must pay the Indiana income tax on any "wages" received from the Ohio S-Corporation. In the example cited above, taxpayer must pay Indiana income tax on the $500. If Ohio withholds income tax on the $500, that it is a matter to be resolved between the taxpayer and Ohio. Taxpayer may not claim an Indiana credit for any amount of income tax withheld or paid on the $500. "Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes." 45 IAC 3.1-1-76.

However, Ohio does not view the issue of wages received from an S-Corporation quite so simply. In the example cited above, taxpayer's W-2 may state that he received $500 in wages; Ohio disagrees interpreting that matter of wages received from an S-Corporation somewhat differently. Ohio Rev. Code Ann. § 5733.40(A)(7) states in part as follows:

> For the purposes of Chapters 5733 and 5747 of the Revised Code, guaranteed payments or compensation paid to investors by a qualifying entity that is not subject to the tax imposed by section 5733.06 of the Revised Code shall be considered a distributive share of income of the qualifying entity. Division (A)(7) of this section applies only to such payments or such compensation paid to an investor who at any time during the qualifying entity's taxable year holds at least a twenty per cent direct or indirect interest in the profits or capital of the qualifying entity.

In other words, compensation or guaranteed payments made to an investor by a pass through entity – such as an S-Corporation – are considered as a distribution by the entity. Therefore, the $500 taxpayer received from the S-Corporation is designated by Ohio as a distributive share even though the $500 was originally labeled by the S-Corporation as "wages" on the W-2 form.

Under IC 6-3-3-3(a), taxpayer is entitled to claim a credit for any Ohio income tax paid on the $500 wage/distribution. "Whenever a resident person has become liable for tax to another state upon all or any part of his income for a taxable year derived from sources without this state and subject to taxation under IC 6-3-2, the amount of tax paid by him to the other state shall be credited against the amount of the tax payable by him." If taxpayer has paid $40 in Ohio income tax on the $500 wage/distribution, taxpayer can claim a credit of $40 on any amount of tax Indiana sees fit to impose against the same $500.

The S-Corporation originally designated the $500 paid taxpayer as "wages." Ohio law says the $500 amount is not a wage but is a "distribution" for purposes of Ohio income tax because taxpayer owns 100 percent of the S-Corporation. The Department will not quarrel with Ohio over the details of Ohio's own tax laws. Ohio says the wages are a distribution; therefore, taxpayer is entitled to an Indiana credit against the amount of Ohio tax paid on that specific amount.

Similarly, taxpayer is entitled to claim a credit against the designated distribution received from the S-Corporation and the amount of money taxpayer received from the S-Corporation in the form of rent. In the example cited above, taxpayer received $1,000 in the form of a designated distribution from the S-Corporation. 45 IAC 3.1-1-74 requires that taxpayer report that amount on his Indiana income tax form. However, IC 6-3-3-3(a) also allows the taxpayer to claim a credit for any Ohio income tax paid on the $1,000. If taxpayer paid $80 in Ohio income tax on the $1,000 designated distribution, taxpayer can claim an $80 credit against any amount of income tax Indiana sees fit to impose.

For the same reasons and in the same manner, taxpayer is entitled to a claim a credit for any Ohio income tax paid on the rent received from the S-Corporation.

FINDING

To the extent that taxpayer is able to substantiate the amount of Ohio income taxes paid on the wages, distribution, and rent received from his S-Corporation, taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20040335.LOF

LETTER OF FINDINGS: 04-0335
Indiana Gross Retail Tax
For Tax Period 2000, 2002-2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail Tax—Uncollectible Receivables Deduction

Authority: IC 6-2.5-6-9; I.R.C. § 166.

The Department and taxpayer interpret the requirements of IC 6-2.5-6-9 differently. The parties disagree as to when a taxpayer may "recognize" an uncollectible receivable.

II. Tax Administration: Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the assessment of a negligence penalty.

STATEMENT OF FACTS

Taxpayer operates automobile dealerships. That is, taxpayer sells used cars. Taxpayer also provides financing for its customers' used car purchases. As an Indiana registered retail merchant, taxpayer is required to file state gross retail tax (sales tax) returns and remit Indiana sales tax to the state on a monthly basis.

In determining the amount of sales tax to remit, taxpayer includes the used car's total purchase price in its reported "gross retail income [derived] from retail transactions." From this base amount, taxpayer computes its sales tax liability.

Taxpayer's customers, from time-to-time, will default on their loan obligations. As a result, taxpayer may reacquire (i.e., repossess) the previously sold used car. Additionally, taxpayer may determine that the "delinquent" account receivable represents an "uncollectible receivable." This "uncollectible receivable" may be used by taxpayer to reduce its Indiana sales tax liabilities. Specifically, taxpayer can deduct from its reported tax base (i.e., from "gross retail income [derived] from retail transactions") the amount of the "uncollectible receivable."

The parties' disagreement concerns their respective interpretations of IC 6-2.5-6-9. In particular, the parties disagree as to when an "uncollectible receivable" can be "recognized." These differences have resulted in additional assessments of Indiana sales tax. Taxpayer now protests these assessments.

DISCUSSION

I. Gross Retail Tax—Uncollectible Receivables Deduction

Taxpayer's complaint concerns the timing of the "uncollectible receivables" (or "bad debt") deduction. Specifically, taxpayer questions the Department's determination as to when a taxpayer may recognize (or take) a properly realized IC 6-2.5-6-9 "uncollectible receivable" deduction, prior to amendment effective January 1, 2004. Taxpayer reads the statute as requiring—or at least permitting—monthly deductions. Taxpayer explains:

> [Taxpayer] takes this [uncollectible receivable] deduction on its monthly Indiana sales tax return for the month that the debt becomes uncollectible for federal income tax purposes. For example, if [taxpayer] writes off an uncollectible bad debt in the month of January for federal tax purposes, [taxpayer] takes the bad debt deduction on its Indiana sales return for January.

The Department, on the other hand, contends the Indiana sales tax "uncollectible receivable" deduction may be "recognized" only after a federal income tax return reporting the "uncollectible receivable" as a "bad debt" has been filed. That is, the Department views the federal income tax reporting requirement of IC 6-2.5-6-9 as a condition precedent; taxpayer, on the other hand, regards the federal reporting requirement as a condition subsequent.

IC 6-2.5-6-9, prior to amendment, provides (emphasis added):

> (a) In determining the amount of state gross retail and use taxes which he must remit under section 7 of this chapter, a retail merchant **shall deduct from his gross retail income from retail transactions made during a particular reporting period**, an amount equal to his receivables which:
>
> (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
>
> (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
>
> (3) **were written off as an uncollectible debt for federal tax purposes during the particular reporting period.**
>
> (b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects that receivable, then the retail merchant shall include the amount collected as part of his gross retail income from retail transactions for the particular reporting period in which he makes the collection.

Resolution of this issue depends on the meaning of IC 6-2.5-6-9(a)(3)—i.e., the phrase "were written off as an uncollectible debt for federal tax purposes during the particular reporting period." The parties agree the term "written off" refers both to an accounting determination and to a federal income tax reporting requirement. The parties agree that substantively an IC 6-2.5-6-9 "uncollectible receivable" must qualify as an IRC § 166 "bad debt." The parties also agree that procedurally an amount deducted as IC 6-2.5-6-9 "uncollectible receivable" must be deducted on taxpayer's federal tax return as an IRC § 166 bad debt. But the question remains as to whether this latter requirement must *precede* the "recognition" of the IC 6-2.5-6-9 deduction?

The Indiana "uncollectible receivable" deduction is limited, by statute, to those receivables which were "written off as an uncollectible debt for federal tax purposes during the particular reporting period." IC 6-2.5-6-9(a)(3). The Department has interpreted

this language as establishing both a substantive and a procedural requirement. The amount of the "uncollectible receivable" to be deducted pursuant to IC 6-2.6-6-9, substantively, must represent an IRC § 166 "bad debt." And procedurally, the amount to be deducted must be reported on taxpayer's federal income tax return as "bad debt." Each requirement represents a condition precedent.

The statutory language is explicit. The language specifies that entitlement to the Indiana IC 6-2.5-6-9 "uncollectible receivable" deduction is conditioned on meeting the federal "bad debt" requirements of IRC § 166. The legislature adopted a regime to ensure that only those amounts representing IRC § 166 bad debt could be deducted from taxpayer's "gross retail income from retail transactions" for Indiana sales tax purposes. IC 6-2.5-6-9(a)(3). For periods prior to January 1, 2004, a recognition that an amount meets the requirements of IRC § 166 occurs only when taxpayer claims a "bad debt" deduction on its federal tax return. Hence, the presence of a bad debt deduction on taxpayer's federal income tax return must be viewed as a condition precedent.

For periods on or after January 1, 2004, IC 6-2.5-6-9(d)(3) permits write-offs of bad debts on a monthly basis, subject to a taxpayer's substantiation that the debts became uncollectible and eligibility for a federal bad debt deduction for income tax purposes. Accordingly, taxpayer is sustained for those periods on or after January 1, 2004 subject to verification that the amounts were actually written off its books during that month.

FINDING

Taxpayer's protest is denied for periods prior to January 1, 2004. Taxpayer's protest is sustained for periods on or after January 1, 2004, subject to verification.

II. Tax Administration: Negligence Penalty

The Department may impose a ten percent (10%) negligence penalty. IC 6-8.1-10-2.1 and 45 IAC 15-11-2. Taxpayer's failure to timely file income tax returns, generally, will result in penalty assessment. IC 6-8.1-10-2.1(a)(1). The Department, however, may waive this penalty if the taxpayer can establish that its failure to file "was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). A taxpayer may demonstrate reasonable cause by showing "that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed…." *Id*. Taxpayer, in this instance, has made such a showing.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

04-20040356.LOF

LETTER OF FINDINGS NUMBER: 04-0356
Use Tax—Agricultural Exemptions
Penalty—Request for Waiver
For Years 2001, 2002, 2003

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail and Use Taxes—Agricultural exemptions

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-3-7; IC § 6-2.5-5-1; IC § 6-2.5-5-2; 45 IAC 15-5-3(8); 45 IAC 2.2-2-1; 45 IAC 2.2-3-4; 45 IAC 2.2-5-1(a) through 45 IAC 2.2-5-7; *Graham Creek Farms v. Indiana Department of State Revenue*, 819 N.E.2d 151 (Tax Ct., 2004)

Taxpayer protests the assessment of use tax on items obtained in retail transactions that taxpayer claims are entitled to agricultural exemptions.

II. Penalty—Request for Waiver

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b)

Taxpayer protests the imposition of the 10% negligence penalty and requests a waiver.

STATEMENT OF FACTS

Taxpayer owns two parcels of land in southern Indiana, purchased in 2000. Taxpayer receives rental income from the individual who actually farms the land. Because the land had been neglected for awhile, and because taxpayer wanted to turn it into productive farmland suitable for growing crops, taxpayer purchased a number of pieces of equipment to clear trees and tree limbs, dig ditches, and remove rocks so actual farming could be done. Taxpayer then purchased actual farming equipment for the tenant to use. Taxpayer remained the owner of these items, providing them to the tenant free of charge. The audit determined that all the purchases were retail transactions subject to the state's gross retail tax. However, taxpayer paid no retail tax at the point of purchase, believing all were

agriculturally exempt from taxation. The audit therefore assessed the state's consumer use tax on all the purchases. Taxpayer protested, arguing that since all the equipment was necessary to support the land's productivity as a farm, all the purchases were entitled to agricultural exemptions. Additional facts will be supplied as necessary.

I. Gross Retail and Use Taxes—Agricultural exemptions

DISCUSSION

Taxpayer protests the denial of its claim for application of the agricultural exemption to purchases connected to farming operations carried on land taxpayer rents out to another individual. Taxpayer essentially argued that the audit failed to acknowledge that taxpayer's land was a legitimate farm. The audit, however, did acknowledge that legitimate farming activities were occurring on taxpayer's land. The issue is whether taxpayer is entitled to certain agricultural exemptions based on how the farming activities are carried out.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1. Pursuant to IC §§ 6-2.5-3-2 through 6-2.5-3-7, an "excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana is the property was acquired in a retail transaction." An exemption is provided in IC § 6-2.5-3-4 if "the property was acquired in a retail transaction and the state gross retail tax" was paid at the time of purchase. Taxpayers are personally liable for the tax. (IC § 6-2.5-3-6). IC § 6-2.5-3-7 provides that a "person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana;" therefore, the presumption of taxability exists until rebutted. *See also*, 45 IAC 2.2-3-4.

The standards for sustaining a claim for agricultural exemptions for machinery and equipment can be found at IC § 6-2.5-5-1, IC § 6-2.5-5-2, and 45 IAC 2.2-5-2 through 45 IAC 2.2-5-7. IC § 6-2.5-5-2 exempts certain transactions involving particular items from the state's gross retail and use taxes if the following requirements are met: "transactions involving agricultural machinery or equipment are exempt... if" taxpayer "acquires it for use in conjunction with the production of food or commodities for sale" and if taxpayer is "occupationally engaged in the production of food or commodities which he sells for human or animal consumption." IC § 6-2.5-5-2. Exemptions are strictly construed against a taxpayer who asserts them as a defense against tax liabilities. *See, Graham Creek Farms v. Indiana Department of State Revenue*, 819 N.E.2d 151 at 156, and cases cited therein (Tax Ct., 2004). Even under a liberal interpretation of the agricultural exemption regulations, taxpayer's activities do not meet these statutory requirements.

45 IAC 2.2-5-1 through 45 IAC 2.2-5-7 provide definitions for the important terms in the statutes. A farmer is someone "occupationally engaged in producing food or agricultural commodities for sale.... Only those persons, partnerships, or corporations whose intention it is to produce such food or commodities at a profit and not those persons who intend to engage in such production for pleasure or as a hobby qualify within this definition." 45 IAC 2.2-5-1(a).

Taxpayer rents the land out. On documents taxpayer submitted in support of its protest, taxpayer is listed as the farm's operator, but does not receive checks for being in federal agricultural programs; the actual farmer(s) who rent and work the land receive the checks. Moreover, equipment used in pre-production, i.e., preparing the land so it can become productive, is not exempt at all, regardless of who uses it. Taxpayer's relationship to the agricultural activities carried out on land he rents out is that of a landlord. He may have actively purchased equipment and actively prepared the land for production, but that is not an exempt use of machinery and equipment. Further, for actual crop production, the growing of corn and soybeans, taxpayer receives no money from the sale of these crops. Taxpayer receives, once a year, a lump sum rental payment from those who actually work the land. Therefore, taxpayer is not "occupationally engaged in producing food or agricultural commodities for sale." 45 IAC 2.2-5-1(a). Therefore, the agricultural exemptions available for purchases used in agricultural production are not available to taxpayer.

FINDING

Taxpayer's protest concerning the audit's denial of the agricultural exemption on items purchased in connection with preparing land for crop production and for actual crop production is denied.

II. Penalty—Request for waiver

DISCUSSION

Taxpayer protests the imposition of the 10% negligence penalty. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due because it reasonably believed it was entitled to agricultural exemptions for the purchases at issue.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed...." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer has not set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Therefore, given the totality of all the circumstances, waiver of the penalty is not appropriate in this particular instance.

FINDING

Taxpayer's protest concerning the proposed imposition of the 10% negligence penalty is denied.

DEPARTMENT OF STATE REVENUE

0120040364.LOF

LETTER OF FINDINGS: 04-0364
Indiana 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual State Income Tax Assessment.

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); IC 6-8.1-5-1(c).

After taxpayer received a notice of "Proposed Assessment" for 2000 Indiana income taxes, taxpayer directed correspondence to the Department of Revenue challenging the propriety of the assessment.

STATEMENT OF FACTS

The Department of Revenue (Department) determined that taxpayer owed additional state income tax. On September 13, 2004, the Department sent taxpayer a notice of "Proposed Assessment."

Taxpayer first responded with a document entitled "Non-Statutory Abatement" which was received by the Department September 28, 2004. This document was purported to have been filed in "superior court, Wayne county, Indiana." Taxpayer's document contained numerous assertions including an allegation that the "Proposed Assessment" was an "abandoned paper." Taxpayer claimed that the "Proposed Assessment" was abandoned because it did not contain taxpayer's "full Christian Appellation," because it "ha[d] no foundation in law," and because the "Proposed Assessment" was "unintelligible and unrecognizable." The eight-page document cites to numerous authorities such as the "National Banking Act" and the "Revealed Law in Scripture." Summarizing, taxpayer concluded that the "Proposed Assessment" was "irregular, unauthorized, misnomered, defective upon its face and invalid and [was] abated for being a public nuisance."

Taxpayer thereafter offered a supplemental "Non-Statutory Abatement" containing similar, but not identical language which was also received by the Department on September 28, 2004.

Apparently in the belief that neither the original nor the supplemental "Non-Statutory Abatement" was sufficient, taxpayer submitted "Part Two of a Non-Statutory Abatement" In that document, taxpayer demanded that all records containing taxpayer's "nom de guerre" be "expurgated from all systems for the lawful reasons give in the plaint...."

Taxpayer subsequently submitted yet more detailed documents each of which named the Department as "Defendant." Taxpayer's subsequent documents cited as authority the "Congressional Record," "King Charles the First," the "Petition of Right," "Holy Scriptures," "Christian Common Law," the United States Supreme Court, and the "Great Charter of the Liberties of England and America."

Taxpayer declined to accept the Department's invitation to take part in an administrative hearing or to explain the basis for his challenge to the "Proposed Assessment." Taxpayer refused to accept first-class, certified letters from the Department offering him the opportunity to expand upon or further explain the basis for his challenge. The Department determined that it would treat taxpayer's numerous documents as a protest of the proposed assessment, determined that taxpayer had been provided a fair opportunity to explain the basis for his protest, and issued this Letter of Findings.

DISCUSSION

I. Individual State Income Tax Assessment.

The Department determined that taxpayer owed additional income tax and sent taxpayer a notice of "Proposed Assessment"

to that effect. Taxpayer responded, not with a specific protest, but with a series of documents styled as official filings with the "superior court, Wayne county, Indiana," presumably challenging the "Proposed Assessment" on various grounds. In the documents, taxpayer levels charges such as "attempt to plunder" against both the Department and specific employees of the Department.

The Wayne Superior Court Clerk of the Courts was unable to confirm that any of these filings have actually been submitted to that court. The various docket numbers referenced by taxpayer do not correspond with any of the docket numbers employed by the Wayne Superior Court. Without more, it is reasonable to conclude the documents are bogus court filings.

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 of the best information available to the department."

The Department sent and the taxpayer received a proposed assessment based upon the best information available to the Department. Taxpayer has not challenged the accuracy of either the proposed assessment or the accuracy of the information upon which the assessment was based.

Taxpayer has the burden of demonstrating that the proposed assessment is incorrect. 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."

Pursuant to IC 6-8.1-5-1(c), taxpayer was given the opportunity to take part in an administrative hearing and to demonstrate that the proposed assessment was incorrect. Taxpayer declined the opportunity to participate in the hearing and refused to accept letters addressed to taxpayer asking for clarification of taxpayer's protest.

Taxpayer has plainly spent considerable time and effort submitting elaborately prepared documents. These documents are written as if they were filed in the Wayne Superior Court; the documents have not filed in that court and appear to be some sort of intricate charade. Taxpayer's documents contain assertions such as:

> [T]hings done during war *flagrante bello* generally do not follow legal form, because *silent leges inter armis*, and legal form is essential for, *forma legalis forma essentialias*, because when legal form is not followed, a nullity of the act is inferred, *forma non observat, infertur adnullatia actus* and they are imposed on account of perceived "necessity" based on arbitrary autonomous reason, which does not exceed the legal memory of man, is of a *specific* time and place, and is not good beyond the limits of the necessity, *necessitas est lex temporis et loci* and *bonum nessarium extra terminus necessitates non est bonum*, and *never* terminates the Law of Peace, but only *suspends* the Law of Peace, the Law of Peace always remaining in *esse, through repentance*, for an asylum for Good and Lawful Christian Men and Women because things incorporeal are never acquired by war, *incoproralis bello non adquiruntur*. (*Emphasis in original*).

Taxpayer's remaining arguments are as equally coherent as that cited above and appear to be no more than ornately drafted folderol; pursuant to IC 6-8.1-5-1(b), taxpayer has not met his burden of demonstrating that the proposed income tax is incorrect.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420040447.LOF

LETTER OF FINDINGS NUMBER: 04-0447
Sales and Withholding Tax
Responsible Officer
For the Tax Period 1998-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that did not remit the proper amount of sales and withholding taxes during the tax period 1998-2001. The Indiana Department of Revenue assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer produced substantial documentation that she had no duty to collect and remit sales and withholding taxes to the state. Therefore, she is not personally responsible for the payment of the corporate sales and withholding taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420050005P.LOF

LETTER OF FINDINGS NUMBER: 05-0005P
Sales 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.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of an annual income tax return for the calendar year 2002.

The taxpayer is an individual residing in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the tax was paid with the filing of the income tax return on the extension due date of October 14, 2004.

The Department points out that 90% of the tax due is required to be paid by the original due date when an extension has been filed. IC 6-8.1-6-1. In the instant case, the tax was paid at the extension due date, six months after the original due date.

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 ignorant of the tax due date. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0420050012.LOF

LETTER OF FINDINGS NUMBER: 05-0012
Sales and Use Tax
For The Tax Period 2002-2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax - Imposition

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-3-2 (a), IC 6-2.5-2(c)(1), IC 6-6-6.5-8(d), 45 IAC 2.2-5-15, 45 IAC 2.2-4-27 (d).

The taxpayer protests the assessments of use tax on three airplanes.

STATEMENT OF FACTS

The taxpayer is a limited liability corporation which bought an airplane in each of the years 2002, 2003, and 2004. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed Indiana use tax, interest, and penalty on each of the airplanes. The taxpayer protested the assessments of use tax. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax -Imposition

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 (b).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC 6-2.5-3-2 (a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC 6-2.5-2(c)(1).

IC 6-6-6.5-8(d) provides for the payment of sales or use tax on an airplane as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

(1) The time the aircraft is registered; or

(2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft as proof that the taxes are inapplicable because of an exemption.

The taxpayer bases its claim for exemption on the following provisions of IC 6-2.5-5-8 which states as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property....

The law concerning the exemption for rental to others is further explained at 45 IAC 2.2-5-15 as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

The taxpayer states that it was in the business of renting aircraft and therefore qualifies for this purchase for rental exemption.

This exemption requires compliance with three elements. One of these requirements is that the taxpayer must be engaged in the reselling, renting or leasing of such property in its regular course of business. In the taxpayer's situation, the taxpayer is a limited liability corporation that rents airplanes only to its owners/members. In other words, the owners of the airplanes rent the airplanes to themselves. This is not an arms length transaction. This does not satisfy the requirement that the airplanes be rented in the regular course of the taxpayer's business.

The taxpayer also argues that the owner/members who operate its airplanes paid a lower lease rate because the owner/members paid for the gasoline pursuant to dry lease provisions. The taxpayer argues that the addition of the cost of the fuel to the lease would bring the lease rate closer to comparable lease rates. The taxpayer argues that the sales tax on the lease and the sales tax on the fuel collected and remitted by fuel sellers total the correct amount of sales tax due to the state. The issue of an appropriate lease rate is addressed at 45 IAC 2.2-4-27 (d) as follows:

> The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
>
> (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
>
> ...

The rental rates charged by the taxpayer on which it collects and remits sales tax are not based upon the total cost of the airplanes. Rather, each owner/member pays monthly dues of two hundred dollars ($200.00) per month to defray the business costs of operating the airplanes such as insurance. This amounts to a reduction of the rental rates to reflect a deduction for expenses or costs incidental to the maintenance and operation of the airplanes. No sales tax is being collected on that portion of the actual receipts.

The taxpayer's use of the airplanes does not qualify it for the purchase for rental exemption from the use tax.

FINDING

The taxpayer's protest to the assessment of use tax on its airplanes is denied.

DEPARTMENT OF STATE REVENUE

0420050020P.LOF

LETTER OF FINDINGS NUMBER: 05-0020P
Sales Tax
For the months January, February, April, May, July, and August 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of sales tax for the months January, February, April, May, July, and August 2004.

The taxpayer is a company residing outside Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer misunderstood the EFT instructions and paid the tax quarterly.

The Department had sent instructions that the tax was to be paid monthly with the recap filed quarterly.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and

circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0220050021P.LOF

LETTER OF FINDINGS NUMBER: 05-0021P
Income 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.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of the income tax return for the calendar year 2002.

The taxpayer is a company residing outside of Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the error was unintentional, and, the taxpayer did not have the figures available at the time of the due date.

The taxpayer has over 150 reporting units. This plus the fact that the revenue for Indiana had increased 300% created a situation where the taxpayer did not have the information available to pay the tax at the due date.

The Department points out the taxpayer could have paid an estimate at the due date and then request a refund when the income tax return was filed.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the
Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0420050022.LOF

LETTER OF FINDINGS NUMBER: 05-0022
Sales Tax
Responsible Officer
For the Tax Period 2002-2003

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

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes.

STATEMENT OF FACTS

The taxpayer was an officer of a corporation that did not remit the proper amount of sales and withholding taxes during the tax period October 2002-September 2003. The Indiana Department of Revenue assessed the unpaid sales taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The taxpayer produced substantial documentation that he severed all his ties with the corporation on July 24, 2001. Therefore he had no duty to collect and remit sales taxes to the state for tax periods after that date. He is not personally responsible for the payment of the corporate sales taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420050024.LOF

LETTER OF FINDINGS NUMBER: 05-0024
Sales and Use Tax
For the Tax Period 2001-2003

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.

ISSUES

I. Sales and Use Tax - Imposition

Authority: IC 6-2.5-3-2, IC 6-2.5-5-17, LOF # 04980304.

The taxpayer protests the imposition of use tax on certain magazine subscriptions.

STATEMENT OF FACTS

The taxpayer is an electric utility cooperative organized as a beneficial society under 501 (c)(2) of the Internal Revenue Code. Each month the taxpayer purchases a publication and distributes it to each of its members. After an audit, the Indiana Department of Revenue (department) assessed additional use tax on the taxpayer's use of the publication. The taxpayer protested the assessment of use tax. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax -Imposition

DISCUSSION

Indiana imposes the use tax on "the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction." IC 6-2.5-3-2. The taxpayer purchases a publication and distributes it to its members. This use is generally subject to the use tax. The taxpayer contends, however, that the publication is a newspaper and therefore qualifies for exemption from this tax pursuant to IC 6-2.5-5-17.

In a previous audit of this taxpayer for the tax period 1995-1997, the department assessed use tax on the taxpayer's use of the same publication that it purchased and distributed to its members. The taxpayer also protested that assessment. A hearing was held on the protest and Letter of Findings #04-980304 was issued on May 12, 2000. That Letter of Findings held that the taxpayer owed

the use tax on its use of the publication after that date. The taxpayer owes the use tax on its use of the publication for the tax period 2001-2003.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120050034.LOF

LETTER OF FINDINGS: 05-0034
Indiana Adjusted Gross Income Tax
For the Years 1998 through 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Federal Return.

Authority: 26 U.S.C.S. § 7701(a)(1); 26 U.S.C.S. § 7701(a)(14); United States v. Karlin, 785 F.2d 90 (3d Cir. 1986); United States v. Studley, 783 F.2d 934 (9th Cir. 1986); McKeown v. Ott, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985).

Taxpayer states that he is not a "person" or an "individual" required to file federal income tax returns and that, as a result, he is not required to file corresponding Indiana tax returns.

II. Indiana Adjusted Gross Income Tax Liability.

Authority: IC 6-3-1-3.5; Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003); Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-1; I.R.C. § 62.

Taxpayer maintains that because he did not file corresponding federal income tax returns, Indiana law and the directions on the Indiana IT-40 form do not require him to file state income tax returns.

STATEMENT OF FACT

Taxpayer resides in Indiana. The Department of Revenue (Department) determined that taxpayer owed Indiana income tax for 1998 through 2001 and sent taxpayer notices of "Proposed Assessment" dated August 24, 2004.

Taxpayer disagreed with the proposed assessments and sent a protest to that effect. The protest was received by the Department on January 25, 2005. An administrative hearing was conducted during which taxpayer further explained the basis for his protest. This Letter of Findings results.

DISCUSSION

I. Federal Return.

Taxpayer maintains that was not required to file a federal income tax return because he is neither an "individual" nor a "person" required to do so. Taxpayer argues that he is not a "person" required to report his income or to pay tax on that income because he is a "sovereign" and is not subject to the provisions of the Internal Revenue Code (IRC). Taxpayer errs. The IRC clearly defines "persons" and sets out which persons are subject to federal taxes. 26 U.S.C.S. § 7701(a)(14) defines "taxpayer" as any person subject to any internal revenue tax. 26 U.S.C.S. § 7701(a)(1) defines a "person" as any individual, trust, estate, partnership, or corporation. Taxpayer's argument that a "sovereign" individual – such as himself – is not a "person" within the meaning of the IRC has been uniformly rejected. In United States v. Karlin, 785 F.2d 90, 91 (3d Cir. 1986), the court affirmed the defendant's conviction for failing to file income returns and rejected the defendant's contention that he was "not a 'person' within the meaning of 26 U.S.C. § 7203" as "frivolous and require[ing] no discussion." In United States v. Studley, 783 F.2d 934, 937 n.3 (9th Cir. 1986), the court affirmed defendant's conviction for failing to file income tax returns on the ground that defendant was "an absolute freeborn, and natural individual" stating that "this argument has been consistently and thoroughly rejected by every branch of the government for decades." "*[A]rguments about who is a 'person' under the tax laws,* the assertion that 'wages are not income', and maintaining that payment of taxes is a purely voluntary function do not comport with common sense - let alone the law." McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (*Emphasis added*).

Taxpayer's argument, that he is not a "person" subject to the IRC or to the Indiana individual income tax, is not meritorious.

FINDING

Taxpayer's protest is denied.

II. Indiana Adjusted Gross Income Tax Liability.

Taxpayer argues that because he did not file federal returns for the years here at issue, he was not required to file state returns. According to taxpayer, because the IT-40 specifically requires that he "[e]nter [his] federal adjusted gross income from [his] federal

return," he was compelled by force of law and under penalty of perjury to not file state returns.

The Indiana tax returns here at issue employ federal adjusted gross income as the starting point for determining the taxpayer's state individual income tax liability. Line one of the Indiana IT-40 form instructs the taxpayer to "Enter your federal adjusted gross income from your federal return (see page 10)."

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code)...." Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department's own regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

Adjusted Gross Income for Individuals Defined. For Individual, "Adjusted Gross Income" is Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:

(1) Begin with gross income as defined in section 61 of the Internal Revenue Code.

(2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.

(3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer's Indiana adjusted gross income.

Taxpayer's contention – that he was compelled by force of law to not report Indiana adjusted gross income because he declared no federal adjusted gross income – is patently without merit. The statute is plainly written and is unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62 not merely as reported by the taxpayer. *See* Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated directions for completing the form and not the means for determining the taxpayer's adjusted gross income. The Indiana tax form instructs the taxpayer to put what number in what box. However, the taxpayer must not only put *a* number in the box, he must put the *correct* number in the box. The directions on the tax form notwithstanding, taxpayer is nonetheless required to actually perform the calculations necessary to determine his liability for Indiana adjusted gross income tax.

The Indiana Tax Court addressed taxpayer's contention in Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003). "[I]t must be remembered that tax forms are used merely as an aid for taxpayers in calculating their taxable income in accordance with the income tax law. Therefore, calculating Indiana's adjusted gross income begins with federal taxable income as *defined* by Section 61(a) of the United States Code, not as what a taxpayer *reports* on its federal tax form." Eibeck 779 N.E.2d at 1214 n.6 (*Emphasis in original*). Taxpayer's erroneous failure to file federal returns does not excuse the failure to file state returns; taxpayer's second error merely compounds the first.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320050038.LOF

LETTER OF FINDINGS NUMBER: 05-0038
Withholding Tax
Responsible Officer
For the Tax Period 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was an employee of a corporation that did not remit the proper amount of withholding taxes during the tax periods of July and August, 1999. The Indiana Department of Revenue assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax and a hearing was held.

1. 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 withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer produced substantial documentation that she terminated her employment with the corporation prior to the tax period. Therefore, she had no duty to collect and remit withholding taxes to the state. She is not personally responsible for the payment of the corporate withholding taxes.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420050070P.LOF

LETTER OF FINDINGS NUMBER: 05-0070P
Sales Tax
For the month October 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.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a monthly sales tax return for the month of October 2002.

The taxpayer is an out-of-state company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the tax coupon book was sent late by the Department.

According to the taxpayer, in October 2002, the taxpayer opened a new location and applied for an account with the Department. The taxpayer did not receive the sales tax coupon book until January 2003 which caused the October 2002 return to be filed late.

According to Department records, the taxpayer did not register with the Department until January 8, 2003, and therefore, the Department was not able to send the sales tax coupon book in 2002.

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 the taxpayer did not register until January 8, 2003. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0220050071.LOF

LETTER OF FINDINGS: 05-0071
Indiana 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Voluntary Nature of the Indiana Adjusted Gross Income Tax.

Authority: IC 6-8.1-11-2; Couch v. United States, 409 U.S. 322 (1975); Flora v. United States, 362 U.S. 145 (1960); Helvering v. Mitchell, 303 U.S. 391 (1938); United States v. Gerads, 999 F.2d 1255 (9th Cir. 1993); McLaughlin v. United States, 832 F.2d 986 (7th Cir. 1987); McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985).

Taxpayer argues that the state may not require her to pay Indiana adjusted gross income tax because she has not volunteered to do so.

II. Indiana Adjusted Gross Income Tax Liability.

Authority: IC 6-3-1-3.5; Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003); Cooper Industries, Inc. v. Ind. Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-1; I.R.C. § 62.

Taxpayer maintains that because she did not file a corresponding federal income tax return, Indiana law and the directions on the Indiana IT-40 tax form require that she not file a state income tax return.

III. Authority to Withhold Income Taxes.

Authority: IC 6-3-4-8(a); IC 6-3-4-8(a)(1); IC 6-3-4-8(d); IC 6-3-4-8(f).

Taxpayer argues that her employer was without authority to withhold Indiana income taxes from her paychecks and that, as a result, the Department of Revenue should promptly refund the amounts improperly withheld.

IV. Affidavit of Non-Liability.

Authority: Cheek v. United States, 498 U.S. 192 (1991); United States v. Connor, 898 F2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F2d 1328 (7th Cir. 1984); United States v. Romero, 640 F2d 1014 (9th Cir. 1981); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994); Black's Law Dictionary (7th ed. 1999).

Taxpayer states that she is not liable for the income taxes indicated on the notice of "Proposed Assessment" because she submitted an "Affidavit of Non-Liability."

STATEMENT OF FACTS

Taxpayer lives in Indiana. The Department of Revenue (Department) determined that taxpayer owed Indiana income tax for the year 2000 and sent a notice of "Proposed Assessment" to that effect. Taxpayer – describing herself as a "living spirit inhabitant" – disagreed with the assessment and sent the Department correspondence stating as much. The correspondence consisted of an "Affidavit of Non-Liability," a five-page statement setting out various legal arguments, a "STATEMENT in Lieu of a IDOR Return," a "Lawful Notice: Change of Mailing Location," and a "RELIANCE Letter" prepared on taxpayer's behalf by John J. Schlabach an "Enrolled Agent." Although denying that she was a "protestor," taxpayer's factual and legal challenge to the proposed assessment was treated as a protest, and an administrative hearing was conducted during which taxpayer summarized the basis for her challenges. This Letter of Findings results.

DISCUSSION

I. Voluntary Nature of the Indiana Adjusted Gross Income Tax.

Taxpayer claims that the proposed assessment is without foundation because she did not volunteer to pay either federal or state income taxes. In particular, taxpayer cites to Flora v. United States, 362 U.S. 145, 176 (1960) which states, "Our system of taxation is based upon voluntary assessment and payment, not upon distraint." Taxpayer accurately quotes the case language, but the quotation is taken out of context. The issue before the Court was not whether the petitioner "volunteered" to pay income tax or whether the petitioner could unilaterally decide not to pay income tax. The issue before the Court was whether the petitioner could bring a refund action against the Internal Revenue Service without first having paid the proposed assessment. Id. at 146. The Court disagreed with petitioner's argument stating that to "to accept petitioner's argument, we would sacrifice the harmony of our carefully structured twentieth century system of tax litigation...." Id. at 176. The Court held that petitioner/taxpayer had to pay the assessment before bringing the refund action. Id.

Nevertheless, Indiana's tax law clearly states that the state's adjusted gross income tax scheme is based on "voluntary compliance." IC 6-8.1-11-2 reads as follows:

> The general assembly makes the following findings: (3) The Indiana tax system is based largely on *voluntary compliance*. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve *voluntary compliance* and the relationship between the state and taxpayers. (*Emphasis added*).

Nonetheless, taxpayer's basic premise is without merit. Neither the federal nor the state income tax law suggests that an individual can opt out of one's income tax liability by declaring that he or she did not "volunteer" to pay income tax. In describing

the nature of the federal tax system, the United States Supreme Court has stated that, "In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil." Helvering v. Mitchell, 303 U.S. 391, 399 (1938).

Taxpayer's contention – that Indiana depends on its citizens' voluntary compliance with the tax laws – is undeniable. Indeed, Indiana also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that driving on the wrong side of the road is without predictable legal and practical consequences. "Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary." United States v. Gerads, 999 F.2d 1255, 1256 (9th Cir. 1993). "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." McLaughlin v. United States, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law.*" McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (Emphasis Added). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." Id. at *1.

The Supreme Court has stated that the government's federal income tax system is "largely dependent upon honest self-reporting." Couch v. United States, 409 U.S. 322, 335 (1975). However, the government's reliance on its citizens' honest, self-reporting does not support the proposition that taxes themselves are optional. Taxpayer's bare assertion, that, based on precatory language such as that contained within IC 6-8.1-11-2, she no longer "volunteers" to pay income taxes, does not fall within any reasonable definition of "honest self-reporting."

FINDING

Taxpayer's protest is denied.

II. Indiana Adjusted Gross Income Tax Liability.

Taxpayer argues that because she did not file federal returns for the year here at issue, she was not required to file a state return. According to taxpayer, because the IT-40 specifically requires that she enter her federal adjusted gross income from her federal return and because she did not file a federal return, she was compelled by force of law and under penalty of perjury to not file a state return.

The Indiana tax returns here at issue employ federal adjusted gross income as the starting point for determining the taxpayer's state individual income tax liability. Line one of the Indiana IT-40 form instructs the taxpayer to "Enter your federal adjusted gross income from your federal return (see page 10)."

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code)...." Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department's own regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

> Adjusted Gross Income for Individuals Defined. For Individuals, "Adjusted Gross Income" is Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:
>
> (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
>
> (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
>
> (3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require that an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer's Indiana adjusted gross income.

Taxpayer's contention – that she was compelled by force of law to not report Indiana adjusted gross income because she declared no federal adjusted gross income – is patently without merit. The statute is plainly written and is unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62 not merely as reported by the taxpayer. *See* Cooper Industries, Inc. v. Ind. Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated directions for completing the form; the directions are not the means for determining the taxpayer's adjusted gross income liability. The Indiana tax form instructs the taxpayer to put what number in what box. However, the taxpayer must actually put *a* number in the box and must put the *correct* number in the box. The directions on the tax form notwithstanding, taxpayer is nonetheless required to actually perform the calculations necessary to determine his liability for Indiana adjusted gross income tax and must file a state return reflecting those calculations.

The Indiana Tax Court addressed taxpayer's contention in Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003). "[I]t must be remembered that tax forms are used merely as an aid for taxpayers in calculating their taxable income in accordance with the income tax law. Therefore, calculating Indiana's adjusted gross income begins with federal taxable income as *defined* by Section 61(a) of the United States Code, not as what a taxpayer *reports* on its federal tax form." Eibeck 779 N.E.2d at 1214 n.6 (*Emphasis in original*). Taxpayer's erroneous failure to file federal returns does not excuse the failure to file state returns; taxpayer's second error merely compounds the first.

FINDING

Taxpayer's protest is denied.

III. Authority to Withhold Income Taxes.

Taxpayer claims that she is entitled to a refund of taxes withheld from her paychecks during 2000 because her employer was without authority to withhold the taxes.

IC 6-3-4-8(a) states that, "Except as provided in subsection (d), *every* employer making payments of wages subject to tax under IC 6-3, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department." (*Emphasis added*). IC 6-3-4-8(d) provides an exception for county employers which pay wages "to a precinct election officer... [or] or for the performance of the duties of the precinct election officers imposed by IC 3 that are performed on election day." The employer is without discretion in this matter; an "employer making payments of any wages[] *shall* be liable to the state of Indiana for the payment of the tax required to be deducted and withheld... and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section...." IC 6-3-4-8(a)(1) (*Emphasis added*).

Unless the employer can determine that a particular employee is not subject to Indiana adjusted gross income tax, that employer is required to withhold a portion of that employee's wages and forward that amount to the Department. There is no indication that taxpayer demonstrated to her employee that she was not required to pay Indiana income tax. Therefore, taxpayer's employer was required to withhold a portion of the taxpayer's wages from her paycheck. Once withheld, the employer held the taxes "in trust for the state of Indiana...." IC 6-3-4-8(f).

Taxpayer may not claim a refund of taxes based simply upon the mistaken notion that her employer was without authority to withhold her state income taxes.

FINDING

Taxpayer's protest is denied.

IV. Affidavit of Non-Liability.

At the time taxpayer submitted her challenge to the notice of "Proposed Assessment," she also submitted an "Affidavit of Non-Liability." In the affidavit, taxpayer disclaimed any liability for state income taxes stating that "For the Record, I am not in Receipt of any proper Commercial Paperwork that controverts the following true Facts." Among the "true facts" upon which taxpayer relies is the assertion that she "is not defined as a Taxpayer," and that she had "no 'income' for any years in question." Other "true facts" assert that taxpayer is not a corporation, that she did not volunteer to pay federal income tax, that she did not enter into a contract to pay federal income tax, and that she "incurred [no] liability for the federal income tax."

In order to assure the Department that the claims were correct, taxpayer swore – under her own "commercial liability and penalty of perjury" – that the claims were based upon true and not false facts. In addition, the affidavit specifies that if the arguments contained within "are not countered with proof within (14) fourteen day," that the arguments would be considered accurate.

By means of the affidavit, taxpayer seeks to establish that she is not liable for state income tax. An affidavit is defined as, "A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." Black's Law Dictionary 58 (7th ed. 1999).

Taxpayer's "affidavit" is simply a restatement of arguments challenging the legitimacy of the federal income tax. For example, taxpayer asserts that she is not a corporation and that she did not contract with the government to pay income taxes. However, taxpayer's legal arguments are meritless and do not comport with either the law or with ordinary, common sense. There is not one single federal or state court case with remotely supports taxpayer's ill-developed legal theories. To the contrary, federal and state court cases have consistently, repeatedly, and without exception concluded that an average citizen's wages – no matter in what form the taxpayers have attempted to characterize, define, or label those wages – are income subject to taxation. United States v. Connor, 898 F2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable.") (Emphasis in original); United States v. Romero, 640 F2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable.... [Taxpayers] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves."). As recently as 1991, the Supreme Court characterized as "frivolous" the notion that "the income tax law is unconstitutional." Cheek v. United States, 498 U.S. 192, 205 (1991).

In addressing taxpayer's argument, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United States Supreme Court and federal circuit courts, and this Court's opinion... all support the conclusion that wages

are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer's "affidavit" – "subscribed and sworn" by a notary public – is simply a clumsy device to clothe taxpayer's unfounded legal conclusions with an air of legitimacy. The device is no more factually or legally effective than an affidavit claiming ownership of Jupiter's moons.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220020030.SLOF

SUPPLEMENTAL LETTER OF FINDINGS: 02-0030
Indiana Corporate Income Tax
For the Years 1995, 1996, and 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Money Received From the Sale of Computers and Related Services to Indiana Remarketers – Gross Income Tax.

Authority: IC 6-2.1-2-2(a)(2); IC 6-2.1-3-3; IC 6-8.1-5-1(b); 45 IAC 1.1-2-5(a); 45 IAC 1.1-2-5(d); 45 IAC 1.1-3-3(c); 45 IAC 1.1-3-3(c)(5).

Taxpayer argued that the money it receives from selling computers and computer-related services to Indiana remarketers is not subject to gross income tax.

II. Investment Income – Adjusted Gross Income Tax.

Authority: IC 6-3-1-20; IC 6-3-1-21; IC 6-3-2-2(b); IC 6-3-2-2(g) to (k); May Department Store Co. v. Indiana Dept. of State Revenue, 749 N.E.2d 651 (Ind. Tax Ct. 2001); 45 IAC 3.1-1-29; 45 IAC 3.1-1-30.

Taxpayer maintains that money it earns from investing excess funds in an "investment portfolio" is entirely "non-business income" for purposes of determining taxpayer's adjusted gross income.

STATEMENT OF FACTS

Taxpayer manufactures and sells computers and computer software. Taxpayer has business locations and personnel within and outside the Indiana. During 1995, 1996, and 1997, Taxpayer filed consolidated tax returns. During 2001, the Department conducted an audit review of Taxpayer's tax returns and business records. The audit review resulted in the assessment of additional corporate income taxes. Taxpayer disagreed with some conclusions contained within the audit report—and submitted a protest. An administrative hearing was conducted during which Taxpayer explained the basis for its report. A Letter of Findings was written based on the information presented at the hearing, the supplemental information Taxpayer supplied, and the information contained within the original audit report. Taxpayer sought and was granted a rehearing to reconsider the disposition. This Supplemental Letter of Findings results.

DISCUSSION

I. Money Received From the Sale of Computers and Related Services to Remarketers – Gross Income Tax.

Taxpayer sells its computers, software, and related services using a variety of methods including sales to two out-of-state remarketers. Remarketer One is headquartered in California; Remarketer Two is headquartered in Florida.

According to Taxpayer, the sales to Remarketer One were arranged in California and the equipment shipped from the point of manufacturer to Remarketer One's warehouse in Indianapolis. According to Taxpayer, the sales to Remarketer Two occurred in Florida and the computers shipped to Remarketer Two's distribution center in South Bend. According to Taxpayer—Taxpayer's in-state personnel were not involved in the sale of the computers, services, or associated software; the in-state personnel were not involved in the initiation, negotiation, or servicing of the either of these sales contracts.

The audit review assessed gross income tax on the money taxpayer received from Remarketer One and from Remarketer Two at the "low" and "high" rates—differentiating between the money taxpayer received for the sales of the computers and the money received for the provision of services related to those computers.

Gross income tax is imposed upon the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana. IC 6-2.1-2-2(a)(2). However, gross income derived from business conducted in commerce between Indiana and either another state or a foreign country is exempt from gross income tax to

the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution. IC 6-2.1-3-3.

Taxpayer argues that the money received from the sale of computers and services to the two remarketers is not subject to gross income tax because the underlying sales transactions were unrelated to the taxpayer's Indiana sales personnel and Indiana sales locations. 45 IAC 1.1-3-3(c) states that "Gross income derived from the sale of tangible personal property in interstate commerce is not subject to the gross income tax if the sale is not completed in Indiana." The regulation provides an example relevant to the specific issue raised by taxpayer.

> A sale to an Indiana buyer by a nonresident with an in-state business situs or activities but the situs or activities are not significantly associated with the sale because [the sale] was initiated, negotiated, and serviced by out-of-state personnel, and the goods are shipped from out-of-state. The in-state business situs or activities will be considered significantly associated with the sale if the sale is initiated, negotiated, or serviced by in-state personnel.

45 IAC 1.1-3-3(c)(5). To establish that the sales of computers to the two remarketers were not associated with Taxpayer's Indiana sales location and Indiana sales personnel, Taxpayer provided eight current affidavits from key personnel located within and outside Indiana. These affidavits stated what business transactions were conducted where and by whom. The effect of the affidavits is to establish that Indiana merely is a warehousing and distribution outlet for the computers. Supplementing the affidavits are copies of the contracts between the Taxpayer and the remarketers. At the hearing, Taxpayer brought in their Indiana General Manager to testify that he and his personnel have no dealings with the remarketers. Taxpayer's tax attorney appeared at the hearing via telephone and provided additional testimony related to how the business divisions are structured, the functions of the business divisions, and the fact that Indiana sales and service personnel have no relationship with the remarketers. The testimony, documentation, and evidence presented are convincing to rebut the presumption of the audit concerning the sale of these computers to the remarketers.

Taxpayer also argues that the revenue received from Remarketer One and Remarketer Two—derived from the provision of computer services—is not subject to gross income tax because the services were related to the underlying interstate sales of computers. 45 IAC 1.1-2-5(a) states, "Gross income derived from the provision of a service of any character within Indiana is subject to the gross income tax. This is true even when a service contract calls for the furnishing of tangible personal property in the performance of the contract." The same regulation further states that, "Gross income derived from the provision of a service within Indiana... on goods belonging to another is subject to gross income tax even though such property is moved in interstate commerce before or after the performance of the service." 45 IAC 1.1-2-5(d).

Revenues received for services are subject to gross income tax. Taxpayer pre-loaded software onto the computers it sold to the remarketers. This pre-loading of software, done outside of Indiana, is the provision of tangible personal property. This software is placed into the computer during the manufacturing process to prepare the computer for sale. Taxpayer purchased the rights to third-party software packages—and is required to pay the third-parties for the software. These royalty amounts were separated out in the accounting breakdown of revenues. Taxpayer is providing tangible personal property; as such it is part of the intrinsic computer purchase. Since the computer itself is not subject to the gross income tax—for the reasons named above—neither is the included pre-loaded software—because it is not a service—but the sale of tangible personal property.

However, Taxpayer earned revenues for services it provided to Remarketers One and Two. Taxpayer provided the remarketers support documentation, advertising, and promotional materials. Taxpayer retained sales, warranty, and service records on behalf of the remarketers. Taxpayer conducted technical seminars and provided technical services for the remarketers. Despite the fact that the sales to the remarketers were conducted in interstate commerce, these support services were conducted in Indiana. In consideration, the remarketers compensated taxpayer. That compensation is subject to the gross income tax. Taxpayer did not present sufficient evidence to rebut the statutory presumption of IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is sustained—with the exception of the revenue for the services. Taxpayer is sustained on the sales of the computers and revenue from income allocated as royalty payments. Taxpayer is denied on the income it received from services provided to the remarketers.

II. Investment Income – Adjusted Gross Income Tax.

The discussion below is the same as was stated in the original Letter of Findings. Taxpayer conceded the issue at the rehearing. It is included in this Letter of Finding so as to provide a unified disposition of this case.

The audit review found that money taxpayer earned in the form of "short term interest" constituted "business income." Taxpayer disagrees concluding that what it calls "Portfolio income" arose from transactions outside taxpayer's regular business activities and that the money should be classified as "non-business income." Taxpayer maintains that the acquisition of the securities "did not arise out of or were not created in the regular course of [taxpayer's] trade or business operations and the purpose for acquiring the holding the securities was not related to or incidental to such trade or business operations." As a result, taxpayer maintains that the portfolio/security income should be allocated to the state in which taxpayer's headquarters is found.

Taxpayer states that it maintains a "substantial investment portfolio composed of various types of interest-bearing and discount securities and money-market investments." The investment portfolio was devised as a means of safely and profitably investing surplus cash with the goal of obtaining the most attractive return possible; taxpayer states that investment decisions are based strictly on

prevailing "economic and market conditions" and are unrelated to the needs of taxpayer's "regular trade or business." According to taxpayer, it maintains an investment department at its out-of-state headquarters and that all activities related to the management of the investment portfolio originate within this department. In order to manage its investment portfolio, taxpayer maintains a staff of personnel who have no duties or responsibilities within taxpayer's core business operation. Taxpayer describes that core business as the "development, manufacture, rental, sale and service of technical, commercial and scientific products, mainly data processing... and office equipment and a wide range of support and systems management services." In sum, taxpayer maintains a department and personnel, distinct from its core computer business, dedicated to investing taxpayer's surplus cash.

For purposes of determining a taxpayer's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three factor formula. IC 6-3-2-2(b). In contrast, non-business income is allocated to Indiana or it is allocated to another state. IC 6-3-2-2(g) to (k). Therefore, "whether income is deemed business income or non-business income determines whether it is allocated to a specific state or whether it is apportioned between Indiana and other states [in which] the taxpayer is conducting its trade or business." May Department Store Co. v. Indiana Dept. of State Revenue, 749 N.E.2d 651, 656 (Ind. Tax Ct. 2001).

Taxpayer's argument, that this income constitutes "non-business income," is significant because if taxpayer is correct, all this income is allocated elsewhere and is not relevant in calculating taxpayer's Indiana adjusted gross income tax.

The benchmark for determining whether income can be apportioned is the distinction between "business income" and "non-business income." That distinction is defined by the Indiana Code as follows:

> The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operation.
>
> IC 6-3-1-20.

"Non-business income," in turn, "means all income other than business income." IC 6-3-1-21. For purposes of calculating an Indiana corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while non-business income is allocated to Indiana or another state in which the taxpayer is doing business. May, 749 N.E.2d at 656. In that decision, the Tax Court determined that IC 6-3-1-20 incorporates two tests for determining whether the income is business or non-business: a transactional test and a functional test. Id. at 662-63. Under the transactional test, gains are classified as business income when they are derived from a transaction in which the taxpayer regularly engages. The particular transaction from which the income derives is measured against the frequency and regularity of similar transactions and practices of the taxpayer's business. Id. at 658-59.

Under the functional test, the gain arising from the sale of an asset will be classified as business income if the acquisition, management, and disposition of the property generating income constitutes an integral part of the taxpayer's regular trade or business operations. *See* IC 6-3-1-20.

Department regulations 45 IAC 3.1-1-29 and 45 IAC 3.1-1-30 provide guidance in determining whether income is business or non-business under the transactional test. 45 IAC 3.1-1-29 states in relevant part that, "Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is 'business income' or 'non-business income' is the identification of the transactions and activity which are the elements of a particular trade or business." 45 IAC 3.1-1-30 provides that, "[f]or purposes of determining whether income is derived from an activity which is in the regular course of the taxpayer's trade or business, the expression 'trade or business' is not limited to the taxpayer's corporate charter purpose of its principal business activity. A taxpayer may be in more than one trade or business, and derive business income therefrom depending upon but not limited to some or all of the following:

> (1) The nature of the taxpayer's trade or business.
>
> (2) The substantiality of the income derived from the activities and the percentage that income is of the taxpayer's total income for a given tax period.
>
> (3) The frequency, number of continuity of the activities and transactions involved.
>
> (4) The length of time the property producing income was owned by the taxpayer.
>
> (5) The taxpayer's purpose in acquiring and holding the property producing income.

The functional test focuses on the property being disposed of by the taxpayer. Id. Specifically, the functional test requires examining the relationship of the property at issue with the business operations of the taxpayer. May, 749 N.E.2d at 664. In order to satisfy the functional test, the property generating income must have been acquired, managed, and disposed by the taxpayer in a process integral to taxpayer's regular trade or business operations. Id. In May, the Tax Court defined "integral" as "part of or [a] constituent component necessary or integral to complete the whole." Id. at 664-65. The court concluded that petitioner retailer's sale of one of its retailing divisions was not "necessary or essential" to the petitioner's regular trade or business because the sale was executed pursuant to a court order that benefited a competitor and not the petitioner. Id. at 665. In effect, the court determined that because the petitioner was forced to sell the division in order to reduce its competitive advantage, the sale was not integral to the

petitioner's own business operations. Id. Therefore, the proceeds from the division's sale were not business income under the functional test. Id.

The audit correctly concluded that the money received from the portfolio investments was "business income." The information offered by taxpayer itself demonstrates that it regularly engages in the sale and purchase of securities in order to maximize the value of its surplus cash assets. The sales and purchase of securities is such an ordinary part of taxpayer's business that it maintains a separate business division and hires personnel specifically dedicated for that purpose. The investment proceeds are properly classified as "business income" pursuant to the transactional test.

In addition, the income is properly classified as business income under the functional test because the sale and purchase of securities constitutes an integral part of the taxpayer's business. Therefore, the income meets the "functional test." Although taxpayer may be correct in stating that it is in the computer business and not the investment business, that distinction is irrelevant. The issue is not whether or not taxpayer is in the investment business, the issue is whether the investment income is "business" or "non-business" income. In this instance, there is nothing extraordinary taxpayer's investment of excess cash in order to maximize the value of that cash. To the contrary, the practice appears to be a day-to-day part of taxpayer's overall business; the investment income is neither unusual nor unexpected and falls squarely within the definition of "business income."

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

02-20030347.SLOF

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 03-0347
CORPORATE INCOME TAX
For Years 1997, 1998, 1999, 2000, and 2001

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax – Advertising fees

Authority: 45 IAC 1.1-1-2

Taxpayer protests the imposition of income tax on advertising fees collected from an Indiana limited partnership under the control of taxpayer.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation with retail activities outside Indiana. Taxpayer is the sole parent corporation of two other out-of-state corporations, one of which is a 99% owner in an Indiana limited partnership("partnership"), the other is a 1% owner in the same partnership. All retail operations for all of the affiliated companies are outside Indiana except for the Indiana limited partnership.

Taxpayer filed consolidated Federal income tax returns with all affiliated entities during the audit period. All state returns, including Indiana, were filed on a separate basis.

The auditor claims that taxpayer has income from co-op advertising fees charged to subsidiary companies, including the Indiana limited partnership. These fees are at the center of this protest as they were picked up on audit as being income for the taxpayer.

At the original hearing, the Department ruled that the income was taxpayer's income prior to taxpayer paying advertisers. Taxpayer requested a rehearing, which the Department granted.

I. Gross Income Tax – Advertising fees

DISCUSSION

Taxpayer claims that it does not receive fees for advertising from the Indiana limited partnership. Rather, taxpayer claims that the partnership reimburses taxpayer for the partnership's own expenses that were previously paid for by taxpayer. Alternatively, taxpayer contends that the income was for services performed outside Indiana.

Taxpayer's position is that it contracts with third party vendors for advertising services for its various retail outlets. Some of these third parties are domiciled within Indiana, but most are outside Indiana. Taxpayer pays on said contract and subsequently receives a dollar-for-dollar reimbursement from the partnership along with a management fee that taxpayer claims and on which it pays income tax. Taxpayer claims that the only taxable income received in this situation is by the third party vendors who provide the advertising services.

Under 45 IAC 1.1-1-2(b), a taxpayer must meet a two-part test in order to qualify as an agent. Those parts are:

(1) The taxpayer must be under the control of another. An agency relationship is not established unless the taxpayer is under the control of another in transacting business on its behalf. The relationship must be intended by both parties and may be established by contract or implied from the conduct of the parties. The representation of one (1) party that it is the agent of another party without the manifestation of consent and control by the alleged principal is insufficient to establish an agency relationship.

(2) The taxpayer must not have any right, title, or interest in the money or property received from the transaction. The income must pass through, actually or substantially, to the principal or a third party, with the taxpayer being merely a conduit through which the funds pass between a third party and the principal.

Thus, taxpayer must indicate that it was under the control of the partnership in pursuing the advertising arrangements, that the taxpayer's arrangement was intended by the parties, and that taxpayer did not otherwise control the funds that it received for the claimed scope of the agency.

Here, if taxpayer's argument is as it indicates, then it is properly exempt as acting in an agency capacity. However, information sufficient to document its argument, such as a contract or other agreement demonstrating taxpayer's duties as an agent or lack of control over the advertising funds, is lacking. Taxpayer's alternative argument was previously addressed in a letter of findings and that finding will not be disturbed.

FINDING

The taxpayer is denied.

INDIANA DEPARTMENT OF STATE REVENUE
Revenue Ruling # 2005 – 04 ST
April 21, 2005

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 Tangible Personal Property Purchased for the Purpose of Leasing—Resale, Rental, and Leasing Exemption

Authority: IC 6-2.5-5-8

The taxpayer requests the Department to rule whether or not the taxpayer's purchase of an aircraft for the purpose of leasing is exempt from sales/use tax under I.C. 6-2.5-5-8, which exempts property acquired for resale, rental, or leasing in the course of one's business from sales/use tax.

2. Sales/Use Tax—Application of Sales/Use Tax to Use of Aircraft for Purpose of Providing Public Transportation—Public Transportation Exemption

Authority: IC 6-2.5-5-27, 45 IAC 2.2-5-61, 62, and 63

The taxpayer requests the Department to rule whether or not the taxpayer's use of an aircraft is exempt from sales/use tax under the public transportation exemption.

STATEMENT OF FACTS

There are two separate taxpayers to consider. The first taxpayer is a LLC with a principal place of business in Kentucky. This taxpayer is qualified to do business in Indiana and has filed Indiana Online Form BT-1 (the Business Tax Application), which registers the taxpayer for the Indiana gross retail sales tax. The second taxpayer, the lessee, is an Indiana corporation with a principal place of business in Indiana.

The LLC executed a contract with an Indiana helicopter dealer to purchase a new helicopter. The dealer delivered the helicopter to the LLC in Indiana. The LLC registered the helicopter in Indiana. Immediately after registering the helicopter, the LLC leased the helicopter to the lessee. The lessee based the helicopter at lessee's principal place of business in Indiana.

The terms of the lease agreement provide that the lessee has authorization to use the helicopter for charters, air taxi services, aerial tours, external load work, aerial photography, sightseeing and flight instruction so long as the lessee receives compensation from third parties for providing the helicopter and a licensed pilot for such named activities. Under the terms of the lease, the lessee could also use the helicopter for personal and business use. However, the lease agreement provides that the lessee's personal and business use of the helicopter should not exceed more than 10% of the total use of the helicopter during the term of the lease. The total use is based on hours used.

It is mandatory that all uses of the helicopter by the lessee comply with the applicable provisions of the regulations of the Federal Aviation Administration at all times. Thus, the lessee has to comply with Parts 91 and/or 135 of the Federal Aviation

Regulations (depending on the particular activity). In addition, it is mandatory that the lessee operate the helicopter pursuant to the authority issued under the regulations of the Federal Aviation Administration, which is a division of the U.S. Department of Transportation.

The lease agreement states that the amount of monthly rent owed is a function of the use of the helicopter. According to the agreement, the lessee owes $300 per hour for the first thirty hours per month of use. Thereafter, the lessee owes $275 per hour for all hours over thirty hours per month.

Under the terms of the agreement, the lessee holds itself out to the public as a provider of transportation services that are within the scope of the permissible uses stated under the lease agreement. It is the anticipation of the lessee that the primary use of the helicopter will be charters for the purposes of commercial photography, traffic watch and newsgathering by local news organizations, police patrol by local law enforcement, and power or pipeline patrol by local utility companies. The uses just mentioned involve the taking off of the helicopter, transporting of persons and property by air, and occasional landings at other locations. Despite occasional landings at other locations, the persons and property normally return to the location from which the charter began. Even though the lessee does anticipate some air taxi service (i.e., transporting persons and property from one location to another), it does not expect such service to be its primary use of the helicopter.

Issue #1—Discussion

The taxpayer requests the Department to rule whether or not the taxpayer's purchase of an aircraft for the purpose of leasing is exempt from sales/use tax under I.C. 6-2.5-5-8, which exempts property acquired for resale, rental, or leasing in the course of one's business from sales/use tax.

IC 6-2.5-5-8(b) states the following:

> Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

According to 45 IAC 2.2-5-15(c), which addresses the application of the general rule of IC 6-2.5-5-8, the sale of the tangible personal property must be to one who "intends" to resell, rent or lease the property. The regulation provides that the exemption is not applicable to purchasers who possess the intention to consume, use, or add value to the property through either the rendition of services or the performance of work with respect to such property. 45 IAC 2.2-5-15(c) further states there is a mandatory condition that the purchaser be occupationally engaged in reselling, renting or leasing the acquired tangible personal property in the regular course of its business. Lastly, 45 IAC 2.2-5-15(c) provides that it is compulsory that the property acquired be resold, rented or leased in the exact form that it was purchased.

Here, the taxpayer, the LLC, acquired the helicopter for the purpose of leasing it to a third party. Assuming the form of the property was not changed and the taxpayer leases the helicopters in the regular course of its business, the taxpayer's purchase of the helicopter falls within the ambit of the exemption statute stated above.

Issue #1 Ruling

The Department rules that the taxpayer's purchase of the helicopter for the purpose of leasing is exempt from sales/use tax under I.C. 6-2.5-5-8, which exempts property acquired for resale, rental, or leasing in the course of one's business, providing that such helicopter was purchased in the regular course of the taxpayer's business and the form of the helicopter was not altered.

Issue #2—Discussion

The taxpayer requests the Department to rule whether or not the taxpayer's use of an aircraft is exempt from sales/use tax under the public transportation exemption.

IC 6-2.5-5-27 states that:

> Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

45 IAC 2.2-5-61(b) defines "public transportation" to be the following:

> Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of,... the U.S. Department of Transportation; however, the fact that a company possesses a permit or authority…does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

45 IAC 2.2-6-61(c) states further that only tangible personal property, which is reasonably necessary to the rendering of public transportation, qualifies for the public transportation exemption. To meet the "reasonably necessary" test it must be shown that the tangible personal property is both indispensable and essential in the direct transportation of persons or property. According to 45 IAC 2.2-6-61(d), the Indiana Department of Revenue has determined that vehicles that are used for public transportation are necessary to the rendering of public transportation.

Ultimately, taking the stated provisions into consideration, the taxpayer will qualify for the public transportation exemption if it, the taxpayer, shows that it is predominately engaged in public transportation and that the tangible personal property acquired is to be predominately used in providing public transportation. *See* Panhandle Eastern Pipeline, 741 N.E.2d 816. It is important to highlight that consideration must be given in order for the public transportation exemption to apply. *See* Grand Victoria Casino & Resort, L.P. v. Ind. Dep't of State Revenue, 789 N.E.2d 1041. Also, in order to prove that the tangible personal property acquired is "predominately" used in providing public transportation, the taxpayer must show that the acquired tangible personal property is engaged in public transportation more than fifty percent of the time. If such can be shown, then the taxpayer qualifies for an exemption of the entire purchase price of the acquired tangible personal property.

Under the facts of the case presented, the terms of the lease agreement provide that the lessee is authorized to use the helicopter for "for hire" activities. The facts also state that the lessee operates under the authority of the Department of Transportation and that the lessee's use of the helicopter for personal and business uses is restricted to no more than ten percent of the total use of the helicopter. Ultimately, to the extent that it can be shown that the "for hire" activities constitute "moving, transporting, or carrying persons and/or property for consideration," the taxpayer will be entitled to the public transportation exemption. Further, the use of the helicopter for charters, air taxi services, aerial tours, external load work, aerial photography and sightseeing is considered to be use in public transportation. The use of the helicopter for flight instruction is not considered to be use in public transportation.

Issue #2 Ruling

The Department rules that the lessee's use of the helicopter for providing public transportation is exempt from sales/use tax under the public transportation exemption so long as the lessee can prove that it meets the first-prong of the test, which is that the lessee is predominantly engaged in providing public transportation, and the second-prong of the test, which is that the lessee uses the helicopter predominately for providing public transportation. The Department, further, rules that the use of the helicopter for charters, air taxi services, aerial tours, external load work, aerial photography and sightseeing is use in public transportation. The use of the helicopter for flight instruction is not use in public transportation.

Caveat

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's acts 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.

INDIANA DEPARTMENT OF STATE REVENUE
Revenue Ruling #2005-05ST
April 26, 2005

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

Sales and Use Tax- Application of Sales Tax to Foundations for Grave Markers

Authority: IC 6-2.5-4-9, 45 IAC 2.2-4-22 (d), (e).

The taxpayer requests that the department rule on how the sales tax applies to the installation of foundations for grave markers.

STATEMENT OF FACTS

The taxpayer is in the business of selling grave markers (tombstones). The taxpayer buys the stone and markets it along with the inscription to members of the general public and their families. The taxpayer treats the sale of such markers as tangible personal property and collects the appropriate sales tax.

Due to the substantial weight of the markers, a foundation must be installed prior to the placement of the markers. The foundation typically could be best described as a concrete slab that is installed in the ground upon which the marker is then placed. Sometimes the taxpayer will contract with a third party to install the foundation, pay such third party and pass along that charge to the purchaser of the marker. When the charge for the foundation is not contracted via a third party, the taxpayer themselves install the foundation and charge the buyer of the grave marker for the foundation along with the grave marker. The foundation, whether it is contracted through a third party or is installed by the taxpayer, is contracted for on a lump sum basis. In other words, it is for a flat charge in which materials and labor are included. The charge for the foundation is separately stated on the bill.

DISCUSSION

IC 6-2.5-4-9 provides as follows:

(a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:

(1) is to be added to a structure or facility by the purchaser; and

(2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property to be added to the structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

The Sales Tax Regulations clarify the liability of contractors for sales and use tax at 45 IAC 2.2-4-22 (d) and (e) as follows:

(d) Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

(1) Time and material contract. He converts the construction material into realty on land he does not own and states separately the cost for the construction materials and the cost for the labor and other charges (only the gross proceeds from the sale of the construction material are subject to tax); or

(2) Construction material sold over-the-counter. Over the counter sales of construction materials will be treated as exempt from the state gross retail tax only if the contractor receives a valid exemption certificate issued by the person for whom the construction is being performed or by the customer who purchases over-the-counter, or a direct pay permit issued by the customer who purchases over-the-counter.

(e) Disposition subject to the use tax. With respect to construction material a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner.

... (3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

The taxpayer's situation does not fit into any of the cited examples where the contractor would collect sales tax on the finished product. Rather, the taxpayer or third party contractor changes tangible personal property into an improvement that becomes part of the real estate. The taxpayer either installs the foundation for the monument or arranges for another contractor to install the foundation pursuant to a lump sum contract. This clearly falls within the category that is subject to the payment of use tax by the contractor or the taxpayer at time of sale to the purchaser of the installed monument if the sales tax was not paid when the taxpayer or third party contractor purchased the tangible personal property that was converted into the real estate.

RULING

The Department rules that the installation of the foundation for the grave markers pursuant to a lump sum contract is treated as an improvement to real estate. A contractor under a lump sum contract, is responsible for paying the sales tax at the time materials are purchased, or if not paid, use tax on the cost of the materials.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

WATER POLLUTION CONTROL BOARD

A non-rule policy document is a policy or statement that interprets, supplements or implements a statute or rule. It is not intended by the department to have the effect of law and is not related solely to internal department organization. Per Indiana Code 13-14-1-11.5, a non-rule policy document may not be put into effect until 30 days after the policy or statement is made available for public inspection and comments and presented to the Water Pollution Control Board.

Non-rule policy documents that are open for inspection and comment are denoted by "comment period deadline: date" in the 'ADOPTED' column of the table below. Comments on a non-rule policy document that is open for comment may be submitted by the comment period deadline to: Non-rule Policy Document #, Lawrence Wu, Chief, Rules Development Section, Office of Water Quality; Indiana Department of Environmental Management, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

Nonrule Policy Documents

If you have questions about any of the documents found on this page, please contact the IDEM staff person or section listed at the end of each non-rule policy document. All documents are in PDF format. Click on a highlighted ID# to view the document.

ID#	POLICY TITLE	POLICY DESCRIPTION	ADOPTED	LAST REVISED	CITATION	CONTACTS
Water-001-NRD	Constructed Wetland Wastewater Treatment Facilities Guidance	Policy and technical guidance for the design, construction and operation of constructed wetland type sanitary wastewater treatment facilities	May 1, 1997	N/A	327 IAC 2,3,5,8 410 IAC 6-10	Jay Hanko (317) 233-8283
Water-002-NRD	Antidegradation Requirements for Outstanding State Resource Waters Inside the Great Lakes Basin	Provides a definition of significant lowering of water quality applicable to Outstanding State Resource Waters Inside the Great Lakes Basin	March 23, 1998	N/A	327 IAC 5-2-11.7(a)(2)(B)	Lonnie Brumfield (317) 233-2547 Dennis Clark (317) 308-3235
Water-003-NRD	Combined Sewer Overflow (CSO) Long-Term Control Plan Use Attainability Analysis Guidance	This document fulfills the mandates of Senate Enrolled Act 431 by providing guidance to municipal National Pollutant Discharge Elimination System (NPDES) permittees with combined sewer collection systems.	December 14, 2001	N/A	327 IAC 2,5	Bruno Pigott (317) 232-8631
Water–005-NRD	Review of Sanitary Sewer Construction Permit Applications For Communities with Combined Sewer Overflow Outfalls	This document outlines IDEM's procedures for review of sewer construction permit applications for communities with combined sewer overflow outfalls	April 9, 2003	N/A	327 IAC 3-1-1 through 327 IAC 3-6-32	Ken Lee (317) 232-8660

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Page URL: http://www.in.gov/idem/rules/policies/index.html#water
Updated: May 10, 2005

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

25 IAC 5-3-2	A	05-25	28 IR 2761	
25 IAC 5-3-5	A	05-25	28 IR 2762	
25 IAC 5-3-6	A	05-25	28 IR 2764	
25 IAC 5-4-1	A	05-25	28 IR 2765	
25 IAC 5-4-2	A	05-25	28 IR 2766	
25 IAC 5-6-2	A	05-25	28 IR 2766	
25 IAC 6	N	04-172	27 IR 3595	*CPH (28 IR 234)

TITLE 28 STATE INFORMATION TECHNOLOGY OVERSIGHT COMMISSION

28 IAC	N	04-123	28 IR 986	*CPH (28 IR 1498)

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 40 STATE ETHICS COMMISSION

40 IAC 2-1-5.5	N	04-198	28 IR 987	
			28 IR 2160	
40 IAC 2-1-6	A	04-198	28 IR 987	
			28 IR 2160	
40 IAC 2-1-7	A	04-198	28 IR 988	
			28 IR 2161	

TITLE 45 DEPARTMENT OF STATE REVENUE

45 IAC 1.3	N	04-125	27 IR 3101	
45 IAC 18	R	04-292	28 IR 1518	
45 IAC 18-3-7	R	04-255	28 IR 624	*AWR (28 IR 971)
45 IAC 18-3-7.1	N	04-255	28 IR 623	*AWR (28 IR 971)
45 IAC 18-3-8	R	04-255	28 IR 624	*AWR (28 IR 971)
45 IAC 18-3-8.1	N	04-255	28 IR 623	*AWR (28 IR 971)
45 IAC 20	N	04-292	28 IR 1500	

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

50 IAC 20	N	04-174	27 IR 3603	*AROC (27 IR 3707)
				28 IR 1458
50 IAC 21	N	02-297	27 IR 4050	**28 IR 1452**

TITLE 65 STATE LOTTERY COMMISSION

65 IAC 1-4-5.5	A	04-237	*ER (28 IR 217)
65 IAC 4-2-6	A	05-36	*ER (28 IR 2153)
65 IAC 4-90	R	04-249	*ER (28 IR 227)
65 IAC 4-99	R	04-249	*ER (28 IR 227)
65 IAC 4-205	R	04-249	*ER (28 IR 227)
65 IAC 4-248	R	04-249	*ER (28 IR 227)
65 IAC 4-272	R	04-249	*ER (28 IR 227)
65 IAC 4-287	R	04-249	*ER (28 IR 227)
65 IAC 4-317	R	04-249	*ER (28 IR 227)
65 IAC 4-319	R	04-249	*ER (28 IR 227)
65 IAC 4-321	R	04-249	*ER (28 IR 227)
65 IAC 4-332	R	04-249	*ER (28 IR 227)
65 IAC 4-343	R	04-249	*ER (28 IR 227)
65 IAC 4-348	N	04-241	*ER (28 IR 221)
65 IAC 4-349	N	04-283	*ER (28 IR 975)
65 IAC 4-350	N	04-252	*ER (28 IR 229)
65 IAC 4-352	N	04-284	*ER (28 IR 978)
65 IAC 4-353	N	04-329	*ER (28 IR 1492)
65 IAC 4-354	R	04-249	*ER (28 IR 227)
65 IAC 4-355	N	05-32	*ER (28 IR 2147)
65 IAC 4-356	N	05-87	*ER (28 IR 2734)
65 IAC 4-359	R	04-249	*ER (28 IR 227)
65 IAC 4-367	R	04-249	*ER (28 IR 227)
65 IAC 4-383	R	04-249	*ER (28 IR 227)
65 IAC 4-390	R	04-249	*ER (28 IR 227)
65 IAC 4-401	R	04-249	*ER (28 IR 227)
65 IAC 4-402	R	04-249	*ER (28 IR 227)
65 IAC 4-403	R	04-249	*ER (28 IR 227)
65 IAC 4-404	R	04-249	*ER (28 IR 227)
65 IAC 4-405	R	04-249	*ER (28 IR 227)
65 IAC 4-406	R	04-249	*ER (28 IR 227)
65 IAC 4-408	R	04-249	*ER (28 IR 227)
65 IAC 4-437	R	04-249	*ER (28 IR 227)
65 IAC 4-439	R	04-249	*ER (28 IR 227)
65 IAC 4-440	R	04-249	*ER (28 IR 227)
65 IAC 4-441	R	04-249	*ER (28 IR 227)
65 IAC 4-442	R	04-249	*ER (28 IR 227)
65 IAC 4-443	R	04-249	*ER (28 IR 227)
65 IAC 4-445	R	04-249	*ER (28 IR 227)
65 IAC 4-446	R	04-249	*ER (28 IR 227)
65 IAC 4-447	R	04-249	*ER (28 IR 227)
65 IAC 4-448	R	04-249	*ER (28 IR 227)
65 IAC 4-450	R	04-249	*ER (28 IR 227)
65 IAC 4-453	R	04-249	*ER (28 IR 227)
65 IAC 5-2-6	A	05-36	*ER (28 IR 2153)
65 IAC 5-13	R	04-249	*ER (28 IR 227)
65 IAC 5-14	R	04-249	*ER (28 IR 227)
65 IAC 5-15	R	04-249	*ER (28 IR 227)
65 IAC 5-16	N	05-28	*ER (28 IR 2142)
65 IAC 5-17	N	05-83	*ER (28 IR 2731)
65 IAC 5-18	N	05-88	*ER (28 IR 2738)
65 IAC 6-2-6	A	05-36	*ER (28 IR 2154)

TITLE 68 INDIANA GAMING COMMISSION

68 IAC 1-5-1	A	04-103	27 IR 3115	**28 IR 532**
68 IAC 2-3-5	A	04-103	27 IR 3115	**28 IR 533**
68 IAC 2-3-6	A	04-103	27 IR 3117	**28 IR 535**
68 IAC 2-3-9	A	04-103	27 IR 3118	**28 IR 535**
68 IAC 2-6-49	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 2-7-12	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 5-3-2	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 5-3-7	A	04-102	27 IR 3109	**28 IR 527**
68 IAC 8-1-11	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 8-2-29	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 9-4-8	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 10-1-5	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 11-1-8	A	04-102	27 IR 3110	**28 IR 528**
68 IAC 11-3-1	A	04-102	27 IR 3110	**28 IR 528**
68 IAC 12-1-15	A	04-102	27 IR 3111	**28 IR 529**
68 IAC 14-4-8	A	04-102	27 IR 3112	**28 IR 529**
68 IAC 14-5-6	A	04-102	27 IR 3112	**28 IR 529**
68 IAC 15-1-8	A	04-102	27 IR 3112	**28 IR 530**
68 IAC 15-3-3	A	04-179	28 IR 237	**28 IR 2014**
68 IAC 15-5-2	A	04-179	28 IR 237	**28 IR 2014**
68 IAC 15-6-2	A	04-179	28 IR 238	**28 IR 2015**
68 IAC 15-6-3	A	04-179	28 IR 239	**28 IR 2016**
68 IAC 15-6-5	A	04-179	28 IR 240	**28 IR 2016**
68 IAC 15-9-4	A	04-102	27 IR 3112	**28 IR 530**
68 IAC 15-10-4.1	A	04-102	27 IR 3113	**28 IR 530**
68 IAC 15-13-2.5	N	04-102	27 IR 3113	**28 IR 531**
68 IAC 16-1-16	A	04-102	27 IR 3113	**28 IR 531**
68 IAC 17-1-5	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 17-2-6	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 18-1-2	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 18-1-6	A	04-102	27 IR 3114	**28 IR 532**

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 3-2-9	A	05-115	*ER (28 IR 2745)
71 IAC 3-3-11	A	05-115	*ER (28 IR 2746)
71 IAC 3-4-1	A	05-115	*ER (28 IR 2746)
71 IAC 3-7-3	R	05-115	*ER (28 IR 2751)
71 IAC 3-11-1	A	05-115	*ER (28 IR 2746)
71 IAC 5-3-1	A	05-115	*ER (28 IR 2746)
71 IAC 6-1-3	A	05-115	*ER (28 IR 2747)
71 IAC 6-1-4	N	05-115	*ER (28 IR 2748)
71 IAC 7-1-29	A	05-115	*ER (28 IR 2748)
71 IAC 7-3-7	A	05-115	*ER (28 IR 2749)
71 IAC 7-3-13	A	05-115	*ER (28 IR 2750)

71 IAC 7-3-18	A	05-115		*ER (28 IR 2750)
71 IAC 7-3-29	A	05-115		*ER (28 IR 2751)
71 IAC 7-3-36	N	05-115		*ER (28 IR 2751)
71 IAC 7-5-1	A	05-115		*ER (28 IR 2751)
71 IAC 7-5-2	A	05-115		*ER (28 IR 2751)
71 IAC 7.5-6-3	A	05-27		*ER (28 IR 2154)
71 IAC 13.5-3-3	A	05-115		*ER (28 IR 2751)

TITLE 140 BUREAU OF MOTOR VEHICLES

140 IAC 4-4	RA	04-162	28 IR 323	**28 IR 1315**
140 IAC 8-4	RA	04-162	28 IR 323	**28 IR 1315**

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

170 IAC 1-4	RA	04-163	27 IR 4140	*CPH (28 IR 620) **28 IR 1315**
170 IAC 1-5	RA	04-163	27 IR 4140	*CPH (28 IR 620) **28 IR 1315**
170 IAC 4-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-1-23	A	04-68	27 IR 2765	**28 IR 789**
170 IAC 4-1.2	N	04-144	27 IR 4057	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 4-4.2	N	03-305	27 IR 2312	**28 IR 786**
170 IAC 5-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 5-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 5-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 5-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 5-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 5-1.2	N	04-144	27 IR 4065	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 6-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 6-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 6-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 6-1.1	N	04-268	28 IR 1518	*CPH (28 IR 1710)
170 IAC 6-1.2	N	04-144	27 IR 4073	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 7-1.3-2	A	04-144	27 IR 4080	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 7-1.3-3	A	04-144	27 IR 4081	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 7-1.3-8	A	04-144	27 IR 4083	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 7-1.3-9	A	04-144	27 IR 4084	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 7-1.3-10	A	04-144	27 IR 4085	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 7-6	RA	05-22	28 IR 2458	
170 IAC 8.5-2-1	A	04-144	27 IR 4086	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 8.5-2-3	A	04-144	27 IR 4087	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 8.5-2-4	A	04-144	27 IR 4089	*CPH (28 IR 620) *AWR (28 IR 2730)
170 IAC 8.5-2-5	A	04-144	27 IR 4092	*CPH (28 IR 620) *AWR (28 IR 2730)

TITLE 203 VICTIM SERVICES DIVISION

203 IAC	N	04-63	27 IR 2526	**28 IR 6**

TITLE 207 CORONERS TRAINING BOARD

207 IAC 2	N	04-231	28 IR 624	*ARR (28 IR 2392)

TITLE 240 STATE POLICE DEPARTMENT

240 IAC 8	RA	04-164	27 IR 4140	**28 IR 677**

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2-6	A	03-212	27 IR 216	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-3-4	A	03-212	27 IR 216	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-4-1	A	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-4-2	A	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 13**
305 IAC 1-5	N	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 13**

TITLE 312 NATURAL RESOURCES COMMISSION

312 IAC 2-4-6	A	04-215	28 IR 626	**28 IR 2348**
312 IAC 2-4-12	A	04-67	27 IR 3604	**28 IR 1460**
312 IAC 2-4-14	N	04-215	28 IR 626	**28 IR 2348**
312 IAC 3-1-7	A	04-263	28 IR 1203	**28 IR 2660**
312 IAC 4-6-6	A	04-208	28 IR 625	*ARR (28 IR 2140)
312 IAC 5-6-5	A	04-84	28 IR 240	**28 IR 1680**
312 IAC 5-6-5.5	N	04-210	28 IR 989	
312 IAC 5-14-1	A	04-155	27 IR 4100	**28 IR 1461**
312 IAC 5-14-2	A	04-155	27 IR 4100	**28 IR 1461**
312 IAC 5-14-4	A	04-155	27 IR 4101	**28 IR 1462**
312 IAC 5-14-5	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-5.1	N	04-155	27 IR 4101	**28 IR 1462**
312 IAC 5-14-6	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-6.1	N	04-155	27 IR 4102	**28 IR 1463**
312 IAC 5-14-7	A	04-155	27 IR 4102	**28 IR 1463**
312 IAC 5-14-8	A	04-155	27 IR 4102	**28 IR 1464**
312 IAC 5-14-9	A	04-155	27 IR 4103	**28 IR 1464**
312 IAC 5-14-11	A	04-155	27 IR 4103	**28 IR 1464**
312 IAC 5-14-15	A	04-155	27 IR 4103	**28 IR 1465**
312 IAC 5-14-16	A	04-155	27 IR 4104	**28 IR 1465**
312 IAC 5-14-17	A	04-155	27 IR 4104	**28 IR 1465**
312 IAC 5-14-18	A	04-155	27 IR 4105	**28 IR 1466**
312 IAC 5-14-19	A	04-155	27 IR 4105	**28 IR 1467**
312 IAC 5-14-20	A	04-155	27 IR 4106	**28 IR 1467**
312 IAC 5-14-21	A	04-155	27 IR 4106	**28 IR 1467**
312 IAC 5-14-22	A	04-155	27 IR 4106	**28 IR 1468**
312 IAC 5-14-24	A	04-155	27 IR 4107	**28 IR 1468**
312 IAC 5-14-25	A	04-155	27 IR 4108	**28 IR 1469**
312 IAC 5-14-26	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-27	N	04-155	27 IR 4109	**28 IR 1470**
312 IAC 6.2	N	04-66	27 IR 3119	**28 IR 1459**
312 IAC 6.5	N	04-3	27 IR 2767	**28 IR 15**
312 IAC 8	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 8-1-4	A	05-18	28 IR 2412	
312 IAC 8-2-3	A	05-18	28 IR 2413	
312 IAC 8-2-8	A	05-18	28 IR 2414	
312 IAC 9-1-9.5	N	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-1-11.5	N	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-2-14	N	04-253	28 IR 1522	
312 IAC 9-2-15	N	04-253	28 IR 1522	
312 IAC 9-3-2	A	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-3-3	A	03-311	27 IR 1947	**28 IR 538**
312 IAC 9-3-4	A	03-311	27 IR 1948	**28 IR 538**
	A	04-253	28 IR 1523	
312 IAC 9-3-5	A	04-253	28 IR 1523	
312 IAC 9-3-10	A	03-311	27 IR 1949	**28 IR 539**

312 IAC 9-3-11	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-12	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-13	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-14	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-15	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-17	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-4-7	R	03-311	27 IR 1966	**28 IR 556**
312 IAC 9-4-10	A	03-311	27 IR 1951	
312 IAC 9-4-11	A	03-311	27 IR 1951	**28 IR 541**
	A	04-253	28 IR 1524	
312 IAC 9-4-14	A	03-311	27 IR 1952	**28 IR 542**
312 IAC 9-5-4	A	03-311	27 IR 1953	**28 IR 542**
	A	04-253	28 IR 1526	
312 IAC 9-5-6	A	03-311	27 IR 1953	**28 IR 543**
312 IAC 9-5-7	A	03-311	27 IR 1953	**28 IR 543**
	A	04-253	28 IR 1526	
312 IAC 9-5-9	A	03-311	27 IR 1955	**28 IR 545**
	A	04-253	28 IR 1528	
312 IAC 9-5-11	N	03-311	27 IR 1956	**28 IR 546**
312 IAC 9-6-9	A	03-311	27 IR 1957	**28 IR 547**
312 IAC 9-7-2	A	03-311	27 IR 1957	**28 IR 547**
312 IAC 9-7-6	A	03-311	27 IR 1959	**28 IR 549**
312 IAC 9-7-13	A	03-311	27 IR 1960	**28 IR 550**
312 IAC 9-10-9	A	03-311	27 IR 1960	**28 IR 550**
312 IAC 9-10-9.5	N	03-311	27 IR 1961	**28 IR 551**
312 IAC 9-10-10	A	03-311	27 IR 1962	**28 IR 552**
312 IAC 9-10-13.5	N	03-311	27 IR 1963	**28 IR 553**
312 IAC 9-10-17	A	03-311	27 IR 1964	**28 IR 554**
312 IAC 9-11-1	A	03-311	27 IR 1964	**28 IR 554**
312 IAC 9-11-2	A	03-311	27 IR 1965	**28 IR 555**
312 IAC 9-11-14	A	03-311	27 IR 1965	**28 IR 555**
312 IAC 11	RA	05-1	28 IR 2203	
312 IAC 11-2-2	A	05-38	28 IR 2767	
312 IAC 11-2-5	A	04-157	28 IR 1521	**28 IR 2660**
312 IAC 11-2-7	A	05-38	28 IR 2767	
312 IAC 11-2-11	A	05-38	28 IR 2768	
312 IAC 11-2-11.5	N	04-94	27 IR 4095	**28 IR 1681**
312 IAC 11-2-11.8	N	05-38	28 IR 2768	
312 IAC 11-2-14.5	N	05-38	28 IR 2768	
312 IAC 11-2-20	A	05-38	28 IR 2768	
312 IAC 11-2-24	A	05-38	28 IR 2768	
312 IAC 11-2-25.2	N	05-38	28 IR 2768	
312 IAC 11-2-27.5	N	05-38	28 IR 2769	
312 IAC 11-3-1	A	04-94	27 IR 4095	**28 IR 1681**
312 IAC 11-3-3	A	05-38	28 IR 2769	
312 IAC 11-4-2	A	05-38	28 IR 2770	
312 IAC 11-4-3	A	05-38	28 IR 2770	
312 IAC 11-4-4	A	05-38	28 IR 2771	
312 IAC 11-5-3	N	05-38	28 IR 2771	
312 IAC 12	RA	05-1	28 IR 2203	
312 IAC 13	RA	05-1	28 IR 2203	
312 IAC 16	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 16-3-2	A	04-121	27 IR 4097	**28 IR 1682**
312 IAC 16-3-8	A	04-121	27 IR 4099	**28 IR 1684**
312 IAC 16-5-14	A	04-23	27 IR 2532	**28 IR 556**
312 IAC 16-5-19	A	05-14	28 IR 2410	
312 IAC 17	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 17-3-1	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-2	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-3	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-4	A	04-23	27 IR 2533	**28 IR 558**
312 IAC 17-3-6	A	04-23	27 IR 2534	**28 IR 558**
312 IAC 17-3-8	A	04-23	27 IR 2534	**28 IR 558**
312 IAC 17-3-9	A	04-23	27 IR 2534	**28 IR 558**
312 IAC 18-3-12	A	04-270	28 IR 1203	
312 IAC 18-3-18	N	04-177	28 IR 1201	
312 IAC 18-3-19	N	04-127	28 IR 1521	
312 IAC 19	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 23	RA	05-1	28 IR 2203	
312 IAC 25-4-102				*ERR (28 IR 214)
312 IAC 25-4-114				*ERR (28 IR 214)
312 IAC 25-5-16				*ERR (28 IR 214)
312 IAC 25-6-20				*ERR (28 IR 214)
312 IAC 25-7-1				*ERR (28 IR 214)
312 IAC 26	RA	03-315	27 IR 2339	**28 IR 1315**
TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION				
315 IAC 1	RA	04-71	27 IR 2879	**28 IR 323**
315 IAC 1-2-1	A	04-70	28 IR 990	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2772	
315 IAC 1-3-1	A	04-70	28 IR 991	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2773	
315 IAC 1-3-2	A	04-70	28 IR 991	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2774	
315 IAC 1-3-2.1	N	04-70	28 IR 992	*CPH (28 IR 1498)
				*SPE
	N	05-73	28 IR 2775	
315 IAC 1-3-3	A	04-70	28 IR 992	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2775	
315 IAC 1-3-4	A	04-70	28 IR 993	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2776	
315 IAC 1-3-5	A	04-70	28 IR 994	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2776	
315 IAC 1-3-7	A	04-70	28 IR 994	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2777	
315 IAC 1-3-8	A	04-70	28 IR 994	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2777	
315 IAC 1-3-9	A	04-70	28 IR 995	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2778	
315 IAC 1-3-10	A	04-70	28 IR 995	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2778	
315 IAC 1-3-12	A	04-70	28 IR 996	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2778	
315 IAC 1-3-14	A	04-70	28 IR 996	*CPH (28 IR 1498)
				*SPE
	A	05-73	28 IR 2779	
315 IAC 1-3-15	N	04-70	28 IR 996	*CPH (28 IR 1498)
				*SPE
	N	05-73	28 IR 2779	
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)
				28 IR 17
	A	04-299	28 IR 1815	*CPH (28 IR 2406)
326 IAC 1-1-3.5	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18
	A	04-299	28 IR 1815	*CPH (28 IR 2406)
326 IAC 1-1-6	N	04-180	28 IR 248	*GRAT (28 IR 2205)
				28 IR 2046
326 IAC 1-2-52	A	03-228	27 IR 3120	**28 IR 1471**
326 IAC 1-2-52.2	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-52.4	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-65	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18

326 IAC 1-2-82.5	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-90	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18
326 IAC 1-3-4	A	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-4-1	A	04-148	27 IR 3606	**28 IR 1182**
326 IAC 2-2-13	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 19
326 IAC 2-2-16	A	02-337	26 IR 1999	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-5.1-1	RA	04-44	27 IR 3144	**28 IR 791**
326 IAC 2-5.1-2	RA	04-44	27 IR 3145	**28 IR 791**
326 IAC 2-5.5-1	RA	04-44	27 IR 3146	**28 IR 792**
326 IAC 2-5.5-2	RA	04-44	27 IR 3146	**28 IR 793**
326 IAC 2-5.5-3	RA	04-44	27 IR 3146	**28 IR 793**
326 IAC 2-5.5-4	RA	04-44	27 IR 3147	**28 IR 793**
326 IAC 2-5.5-5	RA	04-44	27 IR 3147	**28 IR 794**
326 IAC 2-5.5-6	RA	04-44	27 IR 3147	**28 IR 794**
326 IAC 2-6.1-1	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-2	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-3	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-4	RA	04-44	27 IR 3150	**28 IR 796**
326 IAC 2-6.1-5	RA	04-44	27 IR 3150	**28 IR 796**
326 IAC 2-6.1-6	RA	04-44	27 IR 3151	**28 IR 797**
326 IAC 2-6.1-7	RA	04-44	27 IR 3154	**28 IR 801**
326 IAC 2-7-3	A	02-337	26 IR 2006	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-7-8	A	02-337	26 IR 2006	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-7-18	A	02-337	26 IR 2007	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 21
326 IAC 2-8-3	A	02-337	26 IR 2008	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 22
326 IAC 2-9-1	RA	04-44	27 IR 3155	**28 IR 801**
326 IAC 2-9-2.5	RA	04-44	27 IR 3156	**28 IR 802**
326 IAC 2-9-3	RA	04-44	27 IR 3156	**28 IR 803**
326 IAC 2-9-4	RA	04-44	27 IR 3157	**28 IR 803**
326 IAC 2-9-5	RA	04-44	27 IR 3158	**28 IR 805**
326 IAC 2-9-6	RA	04-44	27 IR 3159	**28 IR 805**
326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 23
	RA	04-44	27 IR 3159	**28 IR 805**
326 IAC 2-9-8	A	02-337	26 IR 2010	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 25
	RA	04-44	27 IR 3160	**28 IR 806**
326 IAC 2-9-9	A	02-337	26 IR 2012	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 26
	RA	04-44	27 IR 3162	**28 IR 808**
326 IAC 2-9-10	A	02-337	26 IR 2013	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 27
	RA	04-44	27 IR 3163	**28 IR 809**
326 IAC 2-9-11	RA	04-44	27 IR 3164	**28 IR 810**
326 IAC 2-9-12	RA	04-44	27 IR 3165	**28 IR 811**
326 IAC 2-9-13	A	02-337	26 IR 2014	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 28
	RA	04-44	27 IR 3165	**28 IR 811**
326 IAC 2-9-14	RA	04-44	27 IR 3167	**28 IR 814**
326 IAC 3-4-1	A	02-337	26 IR 2016	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 30
326 IAC 3-4-3	A	02-337	26 IR 2016	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 31
326 IAC 3-5-2	A	02-337	26 IR 2017	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 32
326 IAC 3-5-3	A	02-337	26 IR 2019	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 33
326 IAC 3-5-4	A	02-337	26 IR 2019	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 34
326 IAC 3-5-5	A	02-337	26 IR 2020	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 34
326 IAC 3-6-1	A	02-337	26 IR 2022	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 36
326 IAC 3-6-3	A	02-337	26 IR 2022	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 37
326 IAC 3-6-5	A	02-337	26 IR 2023	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 37
326 IAC 3-7-2	A	02-337	26 IR 2024	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 38
326 IAC 3-7-4	A	02-337	26 IR 2025	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 40
326 IAC 5-1-2	A	02-337	26 IR 2026	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 40
326 IAC 5-1-4	A	02-337	26 IR 2026	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 41
326 IAC 5-1-5	A	02-337	26 IR 2027	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 41
326 IAC 6-1-1	R	02-335	28 IR 1813	
326 IAC 6-1-1.5	R	02-335	28 IR 1813	
326 IAC 6-1-2	R	02-335	28 IR 1813	
326 IAC 6-1-3	R	02-335	28 IR 1813	
326 IAC 6-1-4	R	02-335	28 IR 1813	
326 IAC 6-1-5	R	02-335	28 IR 1813	
326 IAC 6-1-6	R	02-335	28 IR 1813	
326 IAC 6-1-7	R	02-335	28 IR 1813	
326 IAC 6-1-8.1	R	02-335	28 IR 1813	
326 IAC 6-1-9	R	02-335	28 IR 1813	
326 IAC 6-1-10.1	R	02-335	28 IR 1813	
326 IAC 6-1-10.2	R	02-335	28 IR 1813	
326 IAC 6-1-11.1	R	02-335	28 IR 1813	
326 IAC 6-1-11.2	R	02-335	28 IR 1813	
326 IAC 6-1-12	A	04-43	28 IR 242	*GRAT (28 IR 2204)
				28 IR 2037
				*ERR (28 IR 2137)
	R	02-335	28 IR 1813	
326 IAC 6-1-13	A	03-195	27 IR 2318	**28 IR 115**
	R	02-335	28 IR 1813	
326 IAC 6-1-14	R	02-335	28 IR 1813	
326 IAC 6-1-15	R	02-335	28 IR 1813	
326 IAC 6-1-16	R	02-335	28 IR 1813	
326 IAC 6-1-17	R	02-335	28 IR 1813	
326 IAC 6-1-18	R	02-335	28 IR 1813	
326 IAC 6.5	N	02-335	28 IR 1714	
326 IAC 6.5-7-13	A	04-234	28 IR 1814	*CPH (28 IR 2406)
326 IAC 6.8	N	02-335	28 IR 1766	
326 IAC 7-1.1-1	A	00-236	28 IR 632	*CPH (28 IR 982)
				*CPH (28 IR 1710)

326 IAC 7-1.1-2	A	00-236	28 IR 632	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 7-2-1	A	02-337	26 IR 2028	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 42**
	A	00-236	28 IR 632	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 7-4-1.1	R	00-236	28 IR 644	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 7-4-3	A	03-195	27 IR 2319	**28 IR 117**
326 IAC 7-4-10	A	02-337	26 IR 2029	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 43**
326 IAC 7-4-13	A	03-282	27 IR 2768	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2021**
326 IAC 7-4.1	N	00-236	28 IR 633	*CPH (28 IR 982) *CPH (28 IR 1710)
326 IAC 8-1-4	A	02-337	26 IR 2030	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 44**
326 IAC 8-4-6	A	02-337	26 IR 2032	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 47**
326 IAC 8-4-9	A	02-337	26 IR 2035	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 49**
326 IAC 8-7-7	A	02-337	26 IR 2036	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 51**
326 IAC 8-9-2	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 51**
326 IAC 8-9-3	A	02-337	26 IR 2037	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 51**
326 IAC 8-9-4	A	02-337	26 IR 2038	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 52**
326 IAC 8-9-5	A	02-337	26 IR 2040	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 54**
326 IAC 8-9-6	A	02-337	26 IR 2042	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 56**
326 IAC 8-10-7	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 58**
326 IAC 8-11-2	A	02-337	26 IR 2044	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 59**
326 IAC 8-11-6	A	02-337	26 IR 2046	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 61**
326 IAC 8-11-7	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 64**
326 IAC 8-12-3	A	02-337	26 IR 2050	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 65**
326 IAC 8-12-5	A	02-337	26 IR 2052	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 67**
326 IAC 8-12-6	A	02-337	26 IR 2053	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 68**
326 IAC 8-12-7	A	02-337	26 IR 2054	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 68**
326 IAC 8-13-5	A	02-337	26 IR 2055	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 69**
326 IAC 10-1-2	A	02-337	26 IR 2056	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 70**
326 IAC 10-1-4	A	02-337	26 IR 2057	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 71**
326 IAC 10-1-5	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 73**
326 IAC 10-1-6	A	02-337	26 IR 2059	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 74**
326 IAC 10-3-3	A	04-200	28 IR 2781	
326 IAC 10-4-1	A	04-200	28 IR 2782	
326 IAC 10-4-2	A	04-200	28 IR 2783	
326 IAC 10-4-3	A	04-200	28 IR 2790	
326 IAC 10-4-9	A	04-200	28 IR 2791	
326 IAC 10-4-13	A	04-200	28 IR 2797	
326 IAC 10-4-14	A	04-200	28 IR 2801	
326 IAC 10-4-15	A	04-200	28 IR 2801	
326 IAC 10-5	N	04-200	28 IR 2803	
326 IAC 11-3-4	A	02-337	26 IR 2060	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 74**
326 IAC 11-7-1	A	02-337	26 IR 2061	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 75**
326 IAC 13-1.1-1	A	02-337	26 IR 2062	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 76**
326 IAC 13-1.1-8	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 77**
326 IAC 13-1.1-10	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 78**
326 IAC 13-1.1-13	A	02-337	26 IR 2064	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 79**
326 IAC 13-1.1-14	A	02-337	26 IR 2065	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 80**
326 IAC 13-1.1-16	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-1	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-2	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-4	R	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 114**
326 IAC 14-3-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-4-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-5-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-7-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**

326 IAC 14-8-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**
326 IAC 14-8-3	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**
326 IAC 14-8-4	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-8-5	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-9-5	A	02-337	26 IR 2070	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-9-8	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 85**
326 IAC 14-9-9	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 86**
326 IAC 14-10-1	A	02-337	26 IR 2072	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 87**
326 IAC 14-10-2	A	02-337	26 IR 2074	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 88**
326 IAC 14-10-3	A	02-337	26 IR 2076	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 91**
326 IAC 14-10-4	A	02-337	26 IR 2078	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 93**
326 IAC 15-1-2	A	02-337	26 IR 2080	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 95**
326 IAC 15-1-4	A	02-337	26 IR 2083	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 98**
326 IAC 16-3-1	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 98**
326 IAC 18-1-1	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2022**
326 IAC 18-1-2	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 99**
	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2022**
326 IAC 18-1-3	A	03-283	27 IR 3130	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2024**
326 IAC 18-1-4	A	03-283	27 IR 3131	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2025**
326 IAC 18-1-5	A	02-337	26 IR 2086	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 101**
	A	03-283	27 IR 3132	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2026**
326 IAC 18-1-6	A	03-283	27 IR 3133	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2027**
326 IAC 18-1-7	A	02-337	26 IR 2087	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 102**
326 IAC 18-1-8	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 103**
326 IAC 18-1-9	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2028**
326 IAC 18-2-2	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 103**
	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2028**
326 IAC 18-2-3	A	02-337	26 IR 2090	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 104**
	A	03-283	27 IR 3136	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2030**
326 IAC 18-2-6	A	02-337	26 IR 2096	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 111**
326 IAC 18-2-7	A	02-337	26 IR 2097	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 112**
326 IAC 20-25-1	A	03-264	27 IR 3123	*CPH (27 IR 3590) *GRAT (28 IR 2204) **28 IR 2017**
326 IAC 20-25-2	A	03-264	27 IR 3124	*CPH (27 IR 3590) *GRAT (28 IR 2204) **28 IR 2018**
326 IAC 20-56	N	03-264	27 IR 3126	*CPH (27 IR 3590) *GRAT (28 IR 2204) **28 IR 2020**
326 IAC 20-57	N	03-284	27 IR 1618	*CPH (27 IR 1937) **28 IR 119**
326 IAC 20-58	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 119**
326 IAC 20-59	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 119**
326 IAC 20-60	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 119**
326 IAC 20-61	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 120**
326 IAC 20-62	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 120**
326 IAC 20-63	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-64	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-65	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-66	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-67	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-68	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-69	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-70	N	03-284	27 IR 1620	*CPH (27 IR 1937) **28 IR 120**
326 IAC 20-71	N	04-107	27 IR 3168	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2043**
326 IAC 20-72	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2043**
326 IAC 20-73	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2044**
326 IAC 20-74	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2044**

326 IAC 20-75	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2044**
326 IAC 20-76	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2044**
326 IAC 20-77	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2045**
326 IAC 20-78	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2045**
326 IAC 20-79	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2045**
326 IAC 20-82	N	04-235	28 IR 997	
326 IAC 20-83	N	04-236	28 IR 998	
326 IAC 20-84	N	04-236	28 IR 998	
326 IAC 20-85	N	04-236	28 IR 999	
326 IAC 20-86	N	04-236	28 IR 999	
326 IAC 20-87	N	04-236	28 IR 999	
326 IAC 20-88	N	04-236	28 IR 999	
326 IAC 20-90	N	04-300	28 IR 1816	
326 IAC 20-91	N	04-300	28 IR 1816	
326 IAC 20-92	N	04-300	28 IR 1817	
326 IAC 20-93	N	04-300	28 IR 1817	
326 IAC 20-94	N	04-300	28 IR 1817	
326 IAC 22-1-1	A	02-337	26 IR 2098	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 113**
326 IAC 23-1-31	A	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 114**

TITLE 327 WATER POLLUTION CONTROL BOARD

327 IAC 1-1-1	A	03-129	27 IR 3608	*GRAT (28 IR 2205) **28 IR 2046**
327 IAC 1-1-2	A	03-129	27 IR 3608	*GRAT (28 IR 2205) **28 IR 2046**
327 IAC 1-1-3	A	03-129	27 IR 3608	*GRAT (28 IR 2205) **28 IR 2046**
327 IAC 2-1-5	A	03-129	27 IR 3608	*GRAT (28 IR 2205) **28 IR 2047**
327 IAC 2-1-6	A	03-129	27 IR 3609	*GRAT (28 IR 2205) **28 IR 2047**
327 IAC 2-1-8	A	03-129	27 IR 3617	*GRAT (28 IR 2205) **28 IR 2055**
327 IAC 2-1-8.1	A	03-129	27 IR 3617	*GRAT (28 IR 2205) **28 IR 2055**
327 IAC 2-1-8.2	A	03-129	27 IR 3618	*GRAT (28 IR 2205) **28 IR 2056**
327 IAC 2-1-8.3	A	03-129	27 IR 3620	*GRAT (28 IR 2205) **28 IR 2057**
327 IAC 2-1-8.9	N	03-129	27 IR 3621	*GRAT (28 IR 2205) **28 IR 2058**
327 IAC 2-1-9	A	03-129	27 IR 3622	*GRAT (28 IR 2205) **28 IR 2060**
327 IAC 2-1-12	A	03-129	27 IR 3627	*GRAT (28 IR 2205) **28 IR 2064**
327 IAC 2-1-13	N	03-129	27 IR 3627	*GRAT (28 IR 2205) **28 IR 2065**
327 IAC 2-1.5-2	A	03-129	27 IR 3631	*GRAT (28 IR 2205) **28 IR 2068**
327 IAC 2-1.5-6	A	03-129	27 IR 3637	*GRAT (28 IR 2205) **28 IR 2074**
327 IAC 2-1.5-8	A	03-129	27 IR 3638	*GRAT (28 IR 2205) **28 IR 2074**
327 IAC 2-1.5-10	A	03-129	27 IR 3650	*GRAT (28 IR 2205) **28 IR 2084**
327 IAC 2-1.5-11	A	03-129	27 IR 3651	*GRAT (28 IR 2205) **28 IR 2084**
327 IAC 2-1.5-16	A	03-129	27 IR 3660	*GRAT (28 IR 2205) **28 IR 2093**
327 IAC 2-1.5-20	A	03-129	27 IR 3662	*GRAT (28 IR 2205) **28 IR 2096**
327 IAC 2-4-3	A	03-129	27 IR 3663	*GRAT (28 IR 2205) **28 IR 2097**
327 IAC 3-2-1.5	N	04-320	28 IR 2192	
327 IAC 3-2-3.5	N	04-320	28 IR 2192	
327 IAC 3-2-5.5	N	04-320	28 IR 2193	
327 IAC 5-1.5-72	A	03-129	27 IR 3663	*GRAT (28 IR 2205) **28 IR 2097**
327 IAC 5-2-1.5	A	03-129	27 IR 3663	*GRAT (28 IR 2205) **28 IR 2097**
327 IAC 5-2-11.1	A	03-129	27 IR 3664	*GRAT (28 IR 2205) **28 IR 2097**
327 IAC 5-2-11.2	A	03-129	27 IR 3668	*GRAT (28 IR 2205) **28 IR 2101**
327 IAC 5-2-11.4	A	03-129	27 IR 3669	*GRAT (28 IR 2205) **28 IR 2102**
327 IAC 5-2-11.5	A	03-129	27 IR 3679	*GRAT (28 IR 2205) **28 IR 2112**
327 IAC 5-2-11.6	A	03-129	27 IR 3689	*GRAT (28 IR 2205) **28 IR 2120**
327 IAC 5-2-13	A	03-129	27 IR 3694	*GRAT (28 IR 2205) **28 IR 2125**
327 IAC 5-2-15	A	03-129	27 IR 3694	*GRAT (28 IR 2205) **28 IR 2126**
327 IAC 5-3.5	N	03-130	28 IR 650	*CPH (28 IR 1197) **28 IR 2349**
327 IAC 8-1-1	A	04-106	28 IR 2163	
327 IAC 8-1-2	A	04-106	28 IR 2164	
327 IAC 8-1-3	A	04-106	28 IR 2164	
327 IAC 8-1-4	A	04-106	28 IR 2165	
327 IAC 8-2-1	A	04-13	28 IR 1206	
327 IAC 8-2-4	A	04-13	28 IR 1210	
327 IAC 8-2-4.1	A	04-13	28 IR 1212	
327 IAC 8-2-4.2	A	04-13	28 IR 1217	
327 IAC 8-2-5.1	A	04-13	28 IR 1220	
327 IAC 8-2-5.2	A	04-13	28 IR 1222	
327 IAC 8-2-5.5	A	04-13	28 IR 1225	
327 IAC 8-2-8.5	A	04-13	28 IR 1228	
327 IAC 8-2-8.7	A	04-13	28 IR 1229	
327 IAC 8-2-9	A	04-13	28 IR 1230	
327 IAC 8-2-10.1	A	04-13	28 IR 1230	
327 IAC 8-2-10.2	A	04-13	28 IR 1233	
327 IAC 8-2-10.3	N	04-13	28 IR 1237	
327 IAC 8-2-13	A	04-13	28 IR 1239	
327 IAC 8-2-34	A	04-13	28 IR 1239	
327 IAC 8-2-34.1	N	04-13	28 IR 1240	
327 IAC 8-2-45	A	04-13	28 IR 1240	
327 IAC 8-2-46	A	04-13	28 IR 1242	
327 IAC 8-2.1-3	A	04-13	28 IR 1244	
327 IAC 8-2.1-4	A	04-13	28 IR 1247	
327 IAC 8-2.1-6	A	04-13	28 IR 1248	
327 IAC 8-2.1-8	A	04-13	28 IR 1255	
327 IAC 8-2.1-9	A	04-13	28 IR 1256	
327 IAC 8-2.1-14	A	04-13	28 IR 1257	
327 IAC 8-2.1-16	A	04-13	28 IR 1257	
327 IAC 8-2.1-17	A	04-13	28 IR 1261	
327 IAC 8-2.6-1	A	04-13	28 IR 1268	
327 IAC 8-2.6-2	A	04-13	28 IR 1269	
327 IAC 8-2.6-2.1	N	04-13	28 IR 1271	
327 IAC 8-2.6-3	A	04-13	28 IR 1273	

327 IAC 8-2.6-4	A	04-13	28 IR 1274	
327 IAC 8-2.6-5	A	04-13	28 IR 1274	
327 IAC 8-3-1	A	04-106	28 IR 2165	
327 IAC 8-3-1.1	A	04-106	28 IR 2166	
327 IAC 8-3-2	A	04-106	28 IR 2166	
327 IAC 8-3-2.1	N	04-106	28 IR 2167	
327 IAC 8-3-3	A	04-106	28 IR 2168	
327 IAC 8-3-8	A	04-106	28 IR 2168	
327 IAC 8-3.1-1	A	04-106	28 IR 2169	
327 IAC 8-3.1-2	A	04-106	28 IR 2169	
327 IAC 8-3.2-1	A	04-106	28 IR 2170	
327 IAC 8-3.2-2	A	04-106	28 IR 2170	
327 IAC 8-3.2-4	A	04-106	28 IR 2171	
327 IAC 8-3.2-8	A	04-106	28 IR 2171	
327 IAC 8-3.2-11	A	04-106	28 IR 2173	
327 IAC 8-3.2-17	A	04-106	28 IR 2173	
327 IAC 8-3.2-18	A	04-106	28 IR 2174	
327 IAC 8-3.2-20	A	04-106	28 IR 2175	
327 IAC 8-3.3-4	A	04-106	28 IR 2175	
327 IAC 8-3.3-5	A	04-106	28 IR 2176	
327 IAC 8-3.3-6	A	04-106	28 IR 2176	
327 IAC 8-3.4-1	A	04-106	28 IR 2176	
327 IAC 8-3.4-2	A	04-106	28 IR 2178	
327 IAC 8-3.4-3	A	04-106	28 IR 2178	
327 IAC 8-3.4-4	A	04-106	28 IR 2179	
327 IAC 8-3.4-8	A	04-106	28 IR 2180	
327 IAC 8-3.4-9	A	04-106	28 IR 2180	
327 IAC 8-3.4-9.1	N	04-106	28 IR 2182	
327 IAC 8-3.4-12	A	04-106	28 IR 2183	
327 IAC 8-3.4-13	A	04-106	28 IR 2183	
327 IAC 8-3.4-14	A	04-106	28 IR 2183	
327 IAC 8-3.4-16	A	04-106	28 IR 2184	
327 IAC 8-3.4-17	A	04-106	28 IR 2185	
327 IAC 8-3.4-23	A	04-106	28 IR 2185	
327 IAC 8-3.4-24	A	04-106	28 IR 2186	
327 IAC 8-3.4-25	A	04-106	28 IR 2187	
327 IAC 8-3.4-27	A	04-106	28 IR 2188	
327 IAC 8-3.5-1	A	04-106	28 IR 2188	
327 IAC 8-3.5-2	A	04-106	28 IR 2189	
327 IAC 8-3.5-5	A	04-106	28 IR 2189	
327 IAC 8-4-1	A	04-106	28 IR 2190	
327 IAC 8-4-2	N	04-106	28 IR 2191	
327 IAC 8-6-1	A	04-106	28 IR 2191	
327 IAC 15-14				*ERR (28 IR 214)
327 IAC 17	N	04-228	28 IR 1288	

TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

328 IAC 1-1-2	A	02-204	27 IR 2778	*CPH (27 IR 3095) **28 IR 123**
328 IAC 1-1-3	A	02-204	27 IR 2778	*CPH (27 IR 3095) **28 IR 123**
328 IAC 1-1-4	A	02-204	27 IR 2778	*CPH (27 IR 3095) **28 IR 124**
328 IAC 1-1-5.1	A	02-204	27 IR 2778	*CPH (27 IR 3095) **28 IR 124**
328 IAC 1-1-7.5	N	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 124**
328 IAC 1-1-8	R	02-204	27 IR 2797	*CPH (27 IR 3095) **28 IR 144**
328 IAC 1-1-8.3	N	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 124**
328 IAC 1-1-8.5	A	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-1-9	A	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-1-10	A	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-2-1	A	02-204	27 IR 2779	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-2-3	A	02-204	27 IR 2780	*CPH (27 IR 3095) **28 IR 125**
328 IAC 1-3-1	A	02-204	27 IR 2780	*CPH (27 IR 3095) **28 IR 126**
328 IAC 1-3-1.3	N	02-204	27 IR 2780	*CPH (27 IR 3095) **28 IR 126**
328 IAC 1-3-1.6	N	02-204	27 IR 2781	*CPH (27 IR 3095) **28 IR 127**
328 IAC 1-3-2	A	02-204	27 IR 2781	*CPH (27 IR 3095) **28 IR 127**
328 IAC 1-3-3	A	02-204	27 IR 2781	*CPH (27 IR 3095) **28 IR 127** *ERR (28 IR 608)
328 IAC 1-3-4	A	02-204	27 IR 2783	*CPH (27 IR 3095) **28 IR 129**
328 IAC 1-3-5	A	02-204	27 IR 2784	*CPH (27 IR 3095) **28 IR 129**
328 IAC 1-3-6	A	02-204	27 IR 2791	*CPH (27 IR 3095) **28 IR 137**
328 IAC 1-4-1	A	02-204	27 IR 2791	*CPH (27 IR 3095) **28 IR 137** *ERR (28 IR 608)
328 IAC 1-4-1.5	N	02-204		††**28 IR 140**
328 IAC 1-4-3	A	02-204	27 IR 2794	*CPH (27 IR 3095) **28 IR 141** *ERR (28 IR 608)
328 IAC 1-4-4	N	02-204	27 IR 2795	*CPH (27 IR 3095) **28 IR 141** *ERR (28 IR 608)
328 IAC 1-4-5	N	02-204		††**28 IR 141**
328 IAC 1-5-1	A	02-204	27 IR 2795	*CPH (27 IR 3095) **28 IR 142**
328 IAC 1-5-2	A	02-204	27 IR 2796	*CPH (27 IR 3095) **28 IR 142**
328 IAC 1-5-3	A	02-204	27 IR 2796	*CPH (27 IR 3095) **28 IR 143**
328 IAC 1-6-1	A	02-204	27 IR 2796	*CPH (27 IR 3095) **28 IR 143**
328 IAC 1-6-2	A	02-204	27 IR 2796	*CPH (27 IR 3095) **28 IR 143**
328 IAC 1-7-2	A	02-204	27 IR 2797	*CPH (27 IR 3095) **28 IR 144**
328 IAC 1-7-3	R	02-204	27 IR 2797	*CPH (27 IR 3095) **28 IR 144**

TITLE 329 SOLID WASTE MANAGEMENT BOARD

329 IAC 3.1-1-7	A	03-312	27 IR 4110	**28 IR 2661**
329 IAC 3.1-6-2	A	03-312	27 IR 4111	**28 IR 2662**
329 IAC 3.1-6-3	A	03-312	27 IR 4112	**28 IR 2663**
329 IAC 3.1-6-6	A	04-318	28 IR 2194	
329 IAC 3.1-7.5	N	03-312	27 IR 4112	**28 IR 2663**
329 IAC 3.1-12-2	A	03-312	27 IR 4113	**28 IR 2665**
329 IAC 3.1-13-2	A	03-312	27 IR 4114	**28 IR 2665**
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 **28 IR 145**
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	**28 IR 145**
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	**28 IR 177**
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	**28 IR 177**
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	**28 IR 146**
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	**28 IR 146**
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	**28 IR 146**
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	**28 IR 146**
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	**28 IR 177**
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	**28 IR 146**
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	**28 IR 146**
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	**28 IR 146**
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	**28 IR 146**
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	**28 IR 147**
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	**28 IR 177**
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 (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)

				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-36.5	N	01-161	27 IR 3179	**28 IR 147**
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	**28 IR 147**
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	**28 IR 177**
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	**28 IR 177**
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	**28 IR 147**
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	**28 IR 177**
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	**28 IR 147**
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	**28 IR 147**
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	**28 IR 148**
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	**28 IR 150**
				*ERR (28 IR 608)
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	**28 IR 151**
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	**28 IR 152**
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	**28 IR 155**
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	**28 IR 155**

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	**28 IR 155**
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	**28 IR 156**
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	**28 IR 156**
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	**28 IR 157**
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	**28 IR 158**
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	**28 IR 158**
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	**28 IR 160**
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	**28 IR 177**
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	**28 IR 160**
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	**28 IR 177**
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	**28 IR 160**
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	**28 IR 161**
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)
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			27 IR 3196	**28 IR 164**
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	**28 IR 165**

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	**28 IR 168**
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	**28 IR 177**
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	**28 IR 168**
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	**28 IR 172**
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	**28 IR 173**
				*ERR (28 IR 1184)
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	**28 IR 173**
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	**28 IR 173**
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	**28 IR 174**
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	**28 IR 175**
329 IAC 9-7-5	A	01-161	27 IR 3209	**28 IR 177**
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	**28 IR 177**
329 IAC 9-8-13				*ERR (28 IR 2391)
329 IAC 10-2-112	A	04-256	28 IR 1301	**28 IR 2670**
329 IAC 10-8.2				*ERR (28 IR 608)
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329 IAC 10-11-6.5	N	04-256	28 IR 1301	**28 IR 2670**
329 IAC 10-20-14.1				*ERR (28 IR 608)
329 IAC 10-36-19				*ERR (28 IR 608)
329 IAC 11-3-2				*ERR (28 IR 608)
329 IAC 11-8-2.5				*ERR (28 IR 608)
329 IAC 11-19-3				*ERR (28 IR 608)
329 IAC 11-20-1				*ERR (27 IR 4023)
329 IAC 12-8-4	A	03-286	27 IR 3696	*GRAT (28 IR 2204)
				28 IR 2127
329 IAC 12-8-5	A	03-286	27 IR 3697	*GRAT (28 IR 2204)
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329 IAC 12-9-2	A	03-286	27 IR 3698	*GRAT (28 IR 2204)
				28 IR 2128
329 IAC 13-3-1	A	03-312	27 IR 4115	**28 IR 2666**
329 IAC 13-3-4	N	03-312	27 IR 4116	**28 IR 2668**
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345 IAC 1-3-9	R	04-147	27 IR 4136	**28 IR 2687**
345 IAC 1-3-10	A	04-147	27 IR 4121	**28 IR 2672**
345 IAC 1-3-31	A	04-287	28 IR 1833	
345 IAC 2-4.1	R	04-147	27 IR 4136	**28 IR 2687**
345 IAC 2.5	N	04-147	27 IR 4121	**28 IR 2672**
345 IAC 4-4-1	A	04-135	27 IR 4118	**28 IR 1473**
345 IAC 6-2	N	04-158	28 IR 1000	**28 IR 2353**
345 IAC 7-4.5	N	04-248	28 IR 1820	
345 IAC 7-5-12	A	04-147	27 IR 4135	**28 IR 2687**
345 IAC 7-5-15.1	A	04-16	27 IR 2797	**28 IR 559**

345 IAC 7-5-22	A	04-16	27 IR 2798	**28 IR 559**
345 IAC 8-2-1.1	A	04-286	28 IR 1821	
345 IAC 8-2-1.5	A	04-286	28 IR 1823	
345 IAC 8-2-1.6	N	04-286	28 IR 1824	
345 IAC 8-2-1.7	A	04-286	28 IR 1824	
345 IAC 8-2-1.9	A	04-286	28 IR 1825	
345 IAC 8-2-4	A	04-286	28 IR 1826	
345 IAC 8-3-1	A	04-286	28 IR 1828	
345 IAC 8-3-2	A	04-286	28 IR 1829	
345 IAC 8-3-12	N	04-286	28 IR 1829	
345 IAC 8-4-1	A	04-286	28 IR 1830	
345 IAC 10-2-5	N	04-135	27 IR 4119	**28 IR 1473**
345 IAC 10-2.1-1	A	04-135	27 IR 4119	**28 IR 1474**

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

355 IAC 2-1-1	A	04-312	28 IR 1838	
355 IAC 2-1-6	A	04-312	28 IR 1838	
355 IAC 2-2-1	A	04-312	28 IR 1839	
355 IAC 2-2-1.5	N	04-312	28 IR 1839	
355 IAC 2-2-6	A	04-312	28 IR 1839	
355 IAC 2-2-9	A	04-312	28 IR 1839	
355 IAC 2-2-10	A	04-312	28 IR 1839	
355 IAC 2-2-13	A	04-312	28 IR 1840	
355 IAC 2-2-14	A	04-312	28 IR 1840	
355 IAC 2-2-15	A	04-312	28 IR 1840	
355 IAC 2-2-17	A	04-312	28 IR 1840	
355 IAC 2-3-4	A	04-312	28 IR 1840	
355 IAC 2-3-6	A	04-312	28 IR 1841	
355 IAC 2-3-8	A	04-312	28 IR 1841	
355 IAC 2-3-11	A	04-312	28 IR 1841	
355 IAC 2-3-12	A	04-312	28 IR 1841	
355 IAC 2-4-1	A	04-312	28 IR 1842	
355 IAC 2-4-4	R	04-312	28 IR 1846	
355 IAC 2-5-1	A	04-312	28 IR 1842	
355 IAC 2-5-2	A	04-312	28 IR 1843	
355 IAC 2-5-3	A	04-312	28 IR 1844	
355 IAC 2-5-4	A	04-312	28 IR 1844	
355 IAC 2-5-6	A	04-312	28 IR 1844	
355 IAC 2-5-8	A	04-312	28 IR 1844	
355 IAC 2-5-12	A	04-312	28 IR 1845	
355 IAC 2-5-12.5	A	04-312	28 IR 1845	
355 IAC 2-5-13	A	04-312	28 IR 1846	
355 IAC 2-5-14	R	04-312	28 IR 1846	
355 IAC 2-6-1.5	A	04-312	28 IR 1846	
355 IAC 2-6-2	R	04-312	28 IR 1846	
355 IAC 2-8	R	04-312	28 IR 1846	
355 IAC 2-9-1	A	04-312	28 IR 1846	
355 IAC 4-2-2	A	04-309	28 IR 1834	
355 IAC 4-2-8	A	04-309	28 IR 1834	
355 IAC 4-5-1	A	04-310	28 IR 1835	
355 IAC 4-5-2	A	04-310	28 IR 1836	
355 IAC 4-5-3	A	04-310	28 IR 1836	
355 IAC 4-5-4	R	04-310	28 IR 1836	
355 IAC 4-5-5	R	04-310	28 IR 1836	
355 IAC 4-5-6	R	04-310	28 IR 1836	
355 IAC 4-5-11	R	04-310	28 IR 1836	
355 IAC 4-6-1	A	04-311	28 IR 1837	
355 IAC 4-6-2	R	04-311	28 IR 1837	
355 IAC 4-6-3	A	04-311	28 IR 1837	
355 IAC 4-6-4	R	04-311	28 IR 1838	
355 IAC 4-6-6	R	04-311	28 IR 1838	
355 IAC 4-6-10	R	04-311	28 IR 1838	

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-6-1	A	04-160	28 IR 253	**28 IR 1689**
357 IAC 1-6-2	A	04-160	28 IR 254	**28 IR 1690**
357 IAC 1-6-3	R	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-6-4	A	04-160	28 IR 256	**28 IR 1692**
357 IAC 1-6-5	A	04-160	28 IR 256	**28 IR 1692**
357 IAC 1-6-6	A	04-160	28 IR 256	**28 IR 1693**
357 IAC 1-6-7	N	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-6-8	N	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-7-1	A	04-159	28 IR 249	**28 IR 1685**
357 IAC 1-7-2	A	04-159	28 IR 250	**28 IR 1686**
357 IAC 1-7-3	R	04-159	28 IR 252	**28 IR 1689**
357 IAC 1-7-4	A	04-159	28 IR 251	**28 IR 1687**
357 IAC 1-7-5	A	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-6	A	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-7	N	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-8	N	04-159	28 IR 252	**28 IR 1689**

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-1-3.1	N	04-321	28 IR 2196	
405 IAC 1-1-5	A	04-178	28 IR 258	*NRA (28 IR 1497)
				28 IR 2129
405 IAC 1-1.5-1	A	04-142	27 IR 3699	*NRA (28 IR 619)
				28 IR 815
				*ERR (28 IR 970)
405 IAC 1-1.5-2	A	04-178	28 IR 259	*NRA (28 IR 1497)
				28 IR 2131
405 IAC 1-1.6	N	04-142	27 IR 3699	*NRA (28 IR 619)
				28 IR 816
				*ERR (28 IR 970)
405 IAC 1-5-1	A	04-219	28 IR 655	*NRA (28 IR 1497)
				28 IR 2134
405 IAC 2-2-3	A	04-319	28 IR 1847	*NRA (28 IR 2752)
405 IAC 2-3-10	A	03-263	27 IR 1210	*ARR (27 IR 4024)
				*NRA (27 IR 4044)
				28 IR 178
	A	04-321	28 IR 2196	
405 IAC 2-9-5	A	04-319	28 IR 1848	*NRA (28 IR 2752)
405 IAC 5-1-5	A	04-178	28 IR 260	*NRA (28 IR 1497)
				28 IR 2131
405 IAC 5-3-13	A	04-178	28 IR 260	*NRA (28 IR 1497)
				28 IR 2132
405 IAC 5-9-1	A	04-178	28 IR 261	*NRA (28 IR 1497)
				28 IR 2132
405 IAC 5-19-1	A	04-178	28 IR 261	*NRA (28 IR 1497)
				28 IR 2133
405 IAC 5-19-3	A	03-207	27 IR 267	*AROC (27 IR 2342)
405 IAC 5-19-10	A	04-178	28 IR 262	*NRA (28 IR 1497)
				28 IR 2134
405 IAC 5-26-5	A	04-178	28 IR 262	*NRA (28 IR 1497)
				28 IR 2134
405 IAC 6-2-5	A	04-95	27 IR 3210	*NRA (27 IR 4044)
				28 IR 179
405 IAC 6-3-3	A	04-95	27 IR 3210	*NRA (27 IR 4044)
				28 IR 180
405 IAC 6-4-2	A	04-95	27 IR 3210	*NRA (27 IR 4044)
				28 IR 180
405 IAC 6-4-3	A	04-95	27 IR 3211	*NRA (27 IR 4044)
				28 IR 180
405 IAC 6-5-1	A	04-95	27 IR 3211	*NRA (27 IR 4044)
				28 IR 181
405 IAC 6-5-2	A	04-95	27 IR 3211	*NRA (27 IR 4044)
				28 IR 181
405 IAC 6-5-3	A	04-95	27 IR 3211	*NRA (27 IR 4044)
				28 IR 181
405 IAC 6-5-4	A	04-95	27 IR 3212	*NRA (27 IR 4044)
				28 IR 181
405 IAC 6-5-6	A	04-95	27 IR 3212	*NRA (27 IR 4044)
				28 IR 182

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 1-2.4	N	04-100	28 IR 2806	
410 IAC 1-6	RA	05-20	28 IR 2458	
410 IAC 6-7.2-28				*ERR (28 IR 1695)

410 IAC 6-7.2-29				*ERR (28 IR 2391)
410 IAC 6-9-3				*ERR (28 IR 1695)
410 IAC 6-12-0.5	N	03-276	27 IR 3212	**28 IR 818**
410 IAC 6-12-1	A	03-276	27 IR 3212	**28 IR 818**
410 IAC 6-12-2	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-3	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-3.1	N	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-3.2	N	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-4	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-5	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-6	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-7	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-8	A	03-276	27 IR 3213	**28 IR 819**
410 IAC 6-12-9	A	03-276	27 IR 3214	**28 IR 820**
410 IAC 6-12-10	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-11	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-12	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-13	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-14	A	03-276	27 IR 3215	**28 IR 821**
410 IAC 6-12-15	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-17	N	03-276	27 IR 3216	**28 IR 821**
410 IAC 7-20	R	04-60	27 IR 3301	**28 IR 906**
410 IAC 7-21-34				*ERR (28 IR 1695)
410 IAC 7-23-1	A	04-62	27 IR 3301	**28 IR 908**
410 IAC 7-24	N	04-60	27 IR 3216	**28 IR 822**
				*ERR (28 IR 1485)
410 IAC 15-2.1	RA	05-20	28 IR 2458	
410 IAC 15-2.2	RA	05-20	28 IR 2458	
410 IAC 15-2.3	RA	05-20	28 IR 2458	
410 IAC 15-2.4	RA	05-20	28 IR 2458	
410 IAC 15-2.5	RA	05-20	28 IR 2458	
410 IAC 15-2.6	RA	05-20	28 IR 2458	
410 IAC 15-2.6-1				*ERR (28 IR 1695)
410 IAC 15-2.7	RA	05-20	28 IR 2458	
410 IAC 16.2-1.1-19.3	N	04-7	27 IR 2542	**28 IR 189**
410 IAC 16.2-3.1-2	A	03-297	27 IR 2536	**28 IR 182**
	A	04-7	27 IR 2542	**28 IR 189**
410 IAC 16.2-3.1-21				*ERR (28 IR 1695)
410 IAC 16.2-3.1-53	N	04-7	27 IR 2545	**28 IR 192**
410 IAC 16.2-5-1.1	A	03-297	27 IR 2539	**28 IR 185**
410 IAC 16.2-5-1.4	A	04-7	27 IR 2547	**28 IR 193**
410 IAC 16.2-5-1.5				*ERR (28 IR 1695)
410 IAC 16.2-5-1.6				*ERR (28 IR 1695)
410 IAC 16.2-5-5.1				*ERR (28 IR 1695)
410 IAC 16.2-5-13	N	04-7	27 IR 2548	**28 IR 194**
410 IAC 21-3-6	R	04-161	28 IR 657	**28 IR 2356**
410 IAC 21-3-8	A	04-161	28 IR 656	**28 IR 2355**
410 IAC 21-3-9	A	04-161	28 IR 656	**28 IR 2355**

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

440 IAC 7.5-1-1	A	04-229	28 IR 657	*NRA (28 IR 1497)
				28 IR 2356
440 IAC 7.5-2-1	A	04-229	28 IR 660	*NRA (28 IR 1497)
				28 IR 2359
440 IAC 7.5-2-8	A	04-229	28 IR 661	*NRA (28 IR 1497)
				28 IR 2359
440 IAC 7.5-2-12	A	04-229	28 IR 661	*NRA (28 IR 1497)
				28 IR 2360
440 IAC 7.5-2-13	A	04-229	28 IR 662	*NRA (28 IR 1497)
				28 IR 2361
440 IAC 7.5-3-3	A	04-229	28 IR 663	*NRA (28 IR 1497)
				28 IR 2362
440 IAC 7.5-3-4	A	04-229	28 IR 664	*NRA (28 IR 1497)
				28 IR 2363
440 IAC 7.5-3-7	A	04-229	28 IR 664	*NRA (28 IR 1497)
				28 IR 2363
440 IAC 7.5-4-4	A	04-229		*NRA (28 IR 1497)
				††**28 IR 2363**
440 IAC 7.5-4-7	A	04-229	28 IR 664	*NRA (28 IR 1497)
				28 IR 2364
440 IAC 7.5-4-8	A	04-229	28 IR 665	*NRA (28 IR 1497)
				28 IR 2364
440 IAC 7.5-5-1	A	04-229	28 IR 665	*NRA (28 IR 1497)
				28 IR 2364
440 IAC 7.5-8-1	A	04-229	28 IR 666	*NRA (28 IR 1497)
				28 IR 2365
440 IAC 7.5-8-2	A	04-229	28 IR 666	*NRA (28 IR 1497)
				28 IR 2365
440 IAC 7.5-8-3	A	04-229	28 IR 666	*NRA (28 IR 1497)
				28 IR 2365
440 IAC 7.5-9-1	A	04-229	28 IR 666	*NRA (28 IR 1497)
				28 IR 2365
440 IAC 7.5-9-2	A	04-229	28 IR 666	*NRA (28 IR 1497)
				28 IR 2366
440 IAC 7.5-9-3	A	04-229	28 IR 667	*NRA (28 IR 1497)
				28 IR 2366
440 IAC 7.5-10-1	A	04-229	28 IR 667	*NRA (28 IR 1497)
				28 IR 2366
440 IAC 7.5-10-2	A	04-229	28 IR 667	*NRA (28 IR 1497)
				28 IR 2366
440 IAC 7.5-10-3	N	04-229	28 IR 667	*NRA (28 IR 1497)
				28 IR 2367
440 IAC 7.5-11	N	04-229	28 IR 667	*NRA (28 IR 1497)
				28 IR 2367

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 1-3.4	N	04-75	28 IR 1002	*NRA (28 IR 1497)
				*AROC (28 IR 2461)
460 IAC 1-8-3	A	04-199	28 IR 1007	*NRA (28 IR 1497)
				28 IR 2690
460 IAC 1-8-11	N	04-199	28 IR 1007	*NRA (28 IR 1497)
				28 IR 2691
460 IAC 1-8-12	N	04-199	28 IR 1008	*NRA (28 IR 1497)
				28 IR 2691
460 IAC 1-8-13	N	04-199	28 IR 1008	*NRA (28 IR 1497)
				28 IR 2691
460 IAC 1-10	N	03-231	27 IR 3303	*NRA (28 IR 233)
				28 IR 910
460 IAC 1-11	N	04-136	28 IR 1004	*NRA (28 IR 1497)
				28 IR 2687
460 IAC 1.1	N	03-245	27 IR 2799	*AROC (27 IR 3344)
				*NRA (28 IR 233)
				*GRAT (28 IR 2204)
				28 IR 912
460 IAC 2-2.1	N	04-76	27 IR 3701	*NRA (28 IR 233)
				28 IR 2368
460 IAC 3.5-2-3	N	04-269	28 IR 1303	*AWR (28 IR 1697)

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-1.1-0.5	A	04-77	27 IR 2837	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.1-1	A	04-77	27 IR 2838	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.1-2	A	04-77	27 IR 2838	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)
470 IAC 3-1.1-4	A	04-77	27 IR 2838	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
				*AWR (28 IR 2393)

470 IAC 3-1.1-6	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-7.2	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-7.4	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-8	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-9	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-10	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-12	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-12.5	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-13	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-14	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-15	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-16	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-20	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-20.1	N	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-22.5	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-24	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-28	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-28.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-29	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-29.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-32	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-32.1	N	04-77	27 IR 2843	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-33	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-33.5	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-34	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-35	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-36.5	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-36.6	N	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)

470 IAC 3-1.1-37	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-38	A	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-38.5	N	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-39	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-40	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-41	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-41.1	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-41.2	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-42	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-44	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-44.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-45	A	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-45.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-46	A	04-77	27 IR 2851	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-47	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-48	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-50	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.1-51	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-2	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-3	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-3.2	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-4	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-5	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-6	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-7	A	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.2-8	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.3-1	A	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.3-2	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)

470 IAC 3-1.3-3	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.3-4	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.3-5	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.3-6	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-1.3-7	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205) *AWR (28 IR 2393)
470 IAC 3-4.8	N	03-232	27 IR 1626	*AROC (27 IR 2882) *NRA (27 IR 4044) **28 IR 196**
470 IAC 3-18	N	03-233	27 IR 1627	*AROC (27 IR 3345) *NRA (28 IR 233) **28 IR 950**

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 1-3-1	A	04-101	27 IR 3305	**28 IR 965**
511 IAC 1-9	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 5-2-4.5	N	04-214	28 IR 668	**28 IR 2692**
511 IAC 6-7-1	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6-7-6	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6-7-6.5	A	04-36	27 IR 2552	**28 IR 959**
511 IAC 6-7.1	N	04-277	28 IR 1303	
511 IAC 6-7.1-4.5	N	04-276	28 IR 1849	
511 IAC 6-9.1	RA	05-15	28 IR 2459	
511 IAC 6.1-2-2.5	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6.1-5-4	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6.1-5.1-1	A	04-317	28 IR 2198	
511 IAC 6.1-5.1-2	A	04-36	27 IR 2553	**28 IR 960**
511 IAC 6.1-5.1-3	A	04-36	27 IR 2553	**28 IR 960**
511 IAC 6.1-5.1-4	A	04-36	27 IR 2554	**28 IR 961**
511 IAC 6.1-5.1-5	A	04-36	27 IR 2555	**28 IR 962**
511 IAC 6.1-5.1-6	A	04-36	27 IR 2555	**28 IR 962**
511 IAC 6.1-5.1-8	A	04-36	27 IR 2556	**28 IR 963**
511 IAC 6.1-5.1-9	A	04-36	27 IR 2557	**28 IR 964**
	A	04-317	28 IR 2199	
511 IAC 6.1-5.1-10.1	A	04-22	27 IR 2550	**28 IR 957**
	A	04-317	28 IR 2200	
511 IAC 6.1-5.1-11	A	04-317	28 IR 2202	
511 IAC 8	RA	04-47	27 IR 2879	**28 IR 323**

TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD

514 IAC	N	03-298	27 IR 1634	**28 IR 197**

TITLE 515 PROFESSIONAL STANDARDS BOARD

515 IAC 1-4-1	A	03-320	27 IR 2558	*ARR (28 IR 610) **28 IR 1475**
515 IAC 1-4-2	A	03-320	27 IR 2558	*ARR (28 IR 610) **28 IR 1475**
515 IAC 8-1-23	A	03-321	27 IR 2330	*ARR (28 IR 610) **28 IR 1477**
515 IAC 8-1-42	A	03-321	27 IR 2330	*ARR (28 IR 610) **28 IR 1478**
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	*ARR (28 IR 610) **28 IR 1479**
515 IAC 10	N	04-197	28 IR 263	
515 IAC 12	N	04-141	27 IR 3703	**28 IR 2135**

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

540 IAC 1-1-11	RA	04-54	27 IR 2880	*CPH (27 IR 3096) **28 IR 324**
540 IAC 1-1-17	RA	04-54	27 IR 2880	*CPH (27 IR 3096) **28 IR 324**

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

646 IAC 3-1-12	N	03-317	27 IR 2858	**28 IR 560**
646 IAC 3-1-13	N	03-317	27 IR 2858	**28 IR 561**
646 IAC 3-4-11	N	03-317	27 IR 2858	**28 IR 561**
646 IAC 3-5-1	A	03-317	27 IR 2859	**28 IR 561**

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1-5.1	A	04-138	28 IR 1009	*AROC (28 IR 1073) **28 IR 2693**
	A	04-297	28 IR 2415	
655 IAC 1-2.1-3	A	04-138	28 IR 1012	*AROC (28 IR 1073) **28 IR 2696**
655 IAC 1-2.1-4	A	04-138	28 IR 1012	*AROC (28 IR 1073) **28 IR 2696**
655 IAC 1-2.1-5	A	04-138	28 IR 1013	*AROC (28 IR 1073) **28 IR 2696**
655 IAC 1-2.1-6	A	04-138	28 IR 1013	*AROC (28 IR 1073) **28 IR 2697**
655 IAC 1-2.1-6.1	A	04-138	28 IR 1013	*AROC (28 IR 1073) **28 IR 2697**
655 IAC 1-2.1-6.2	A	04-138	28 IR 1013	*AROC (28 IR 1073) **28 IR 2697**
655 IAC 1-2.1-6.3	A	04-138	28 IR 1014	*AROC (28 IR 1073) **28 IR 2697**
655 IAC 1-2.1-6.4	A	04-138	28 IR 1014	*AROC (28 IR 1073) **28 IR 2698**
655 IAC 1-2.1-7.1	N	04-138	28 IR 1014	*AROC (28 IR 1073) **28 IR 2698**
655 IAC 1-2.1-8	A	04-138	28 IR 1016	*AROC (28 IR 1073) **28 IR 2700**
655 IAC 1-2.1-9	A	04-138	28 IR 1016	*AROC (28 IR 1073) **28 IR 2700**
655 IAC 1-2.1-10	A	04-138	28 IR 1016	*AROC (28 IR 1073) **28 IR 2700**
655 IAC 1-2.1-11	A	04-138	28 IR 1017	*AROC (28 IR 1073) **28 IR 2701**
655 IAC 1-2.1-12	A	04-138	28 IR 1017	*AROC (28 IR 1073) **28 IR 2701**
655 IAC 1-2.1-13	A	04-138	28 IR 1017	*AROC (28 IR 1073) **28 IR 2701**
655 IAC 1-2.1-14	A	04-138	28 IR 1017	*AROC (28 IR 1073) **28 IR 2701**
655 IAC 1-2.1-15	A	04-138	28 IR 1017	*AROC (28 IR 1073) **28 IR 2701**
655 IAC 1-2.1-20	A	04-138	28 IR 1018	*AROC (28 IR 1073) **28 IR 2702**
655 IAC 1-2.1-22	A	04-138	28 IR 1018	*AROC (28 IR 1073) **28 IR 2702**
655 IAC 1-2.1-23	A	04-138	28 IR 1018	*AROC (28 IR 1073) **28 IR 2702**
655 IAC 1-2.1-23.1	A	04-138	28 IR 1019	*AROC (28 IR 1073) **28 IR 2702**
655 IAC 1-2.1-24	A	04-138	28 IR 1019	*AROC (28 IR 1073) **28 IR 2703**
655 IAC 1-2.1-24.1	A	04-138	28 IR 1019	*AROC (28 IR 1073) **28 IR 2703**

655 IAC 1-2.1-24.2	A	04-138	28 IR 1019	*AROC (28 IR 1073) **28 IR 2703**
655 IAC 1-2.1-24.3	A	04-138	28 IR 1019	*AROC (28 IR 1073) **28 IR 2703**
655 IAC 1-2.1-75	A	04-138	28 IR 1020	*AROC (28 IR 1073) **28 IR 2704**
655 IAC 1-2.1-75.2	A	04-138	28 IR 1020	*AROC (28 IR 1073) **28 IR 2704**
655 IAC 1-2.1-75.3	A	04-138	28 IR 1020	*AROC (28 IR 1073) **28 IR 2704**
655 IAC 1-2.1-75.4	A	04-138	28 IR 1021	*AROC (28 IR 1073) **28 IR 2705**
655 IAC 1-2.1-75.5	A	04-138	28 IR 1021	*AROC (28 IR 1073) **28 IR 2705**
655 IAC 1-2.1-76.1	A	04-138	28 IR 1022	*AROC (28 IR 1073) **28 IR 2706**
655 IAC 1-2.1-76.2	R	04-138	28 IR 1029	*AROC (28 IR 1073) **28 IR 2712**
655 IAC 1-2.1-76.3	R	04-138	28 IR 1029	*AROC (28 IR 1073) **28 IR 2712**
655 IAC 1-2.1-96	N	04-138	28 IR 1022	*AROC (28 IR 1073) **28 IR 2706**
655 IAC 1-2.1-97	N	04-138	28 IR 1022	*AROC (28 IR 1073) **28 IR 2706**
655 IAC 1-2.1-98	N	04-138	28 IR 1023	*AROC (28 IR 1073) **28 IR 2706**
655 IAC 1-2.1-99	N	04-138	28 IR 1023	*AROC (28 IR 1073) **28 IR 2707**
655 IAC 1-2.1-100	N	04-138	28 IR 1023	*AROC (28 IR 1073) **28 IR 2707**
655 IAC 1-2.1-101	N	04-138	28 IR 1024	*AROC (28 IR 1073) **28 IR 2708**
655 IAC 1-2.1-102	N	04-138	28 IR 1024	*AROC (28 IR 1073) **28 IR 2708**
655 IAC 1-2.1-103	N	04-138	28 IR 1025	*AROC (28 IR 1073) **28 IR 2709**
655 IAC 1-2.1-104	N	04-138	28 IR 1025	*AROC (28 IR 1073) **28 IR 2709**
655 IAC 1-2.1-105	N	04-138	28 IR 1026	*AROC (28 IR 1073) **28 IR 2710**
655 IAC 1-2.1-106	N	04-138	28 IR 1026	*AROC (28 IR 1073) **28 IR 2710**
655 IAC 1-2.1-107	N	04-138	28 IR 1027	*AROC (28 IR 1073) **28 IR 2710**
655 IAC 1-2.1-108	N	04-138	28 IR 1027	*AROC (28 IR 1073) **28 IR 2711**
655 IAC 1-2.1-109	N	04-138	28 IR 1027	*AROC (28 IR 1073) **28 IR 2711**
655 IAC 1-2.1-110	N	04-138	28 IR 1027	*AROC (28 IR 1073) **28 IR 2711**
655 IAC 1-2.1-111	N	04-297	28 IR 2419	
655 IAC 1-2.1-112	N	04-297	28 IR 2423	
655 IAC 1-2.1-113	N	04-297	28 IR 2423	
655 IAC 1-2.1-114	N	04-297	28 IR 2424	
655 IAC 1-2.1-115	N	04-297	28 IR 2425	
655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)
655 IAC 1-4-2	A	04-138	28 IR 1028	*AROC (28 IR 1073) **28 IR 2712**

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

675 IAC 13-2.4-3		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-10	A	04-216	28 IR 1529	
675 IAC 13-2.4-15		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-19	A	04-216	28 IR 1529	
675 IAC 13-2.4-20	A	04-216	28 IR 1530	
675 IAC 13-2.4-22	A	04-216	28 IR 1530	
675 IAC 13-2.4-24.3	N	04-216	28 IR 1530	
675 IAC 13-2.4-32.5	N	04-216	28 IR 1530	
675 IAC 13-2.4-40.5	N	04-216	28 IR 1531	
675 IAC 13-2.4-40.6	N	04-216	28 IR 1531	
675 IAC 13-2.4-41.5	N	04-216	28 IR 1531	
675 IAC 13-2.4-42.7	N	04-216	28 IR 1531	
675 IAC 13-2.4-43.2	N	04-216	28 IR 1531	
675 IAC 13-2.4-43.6	N	04-216	28 IR 1531	
675 IAC 13-2.4-47	A	04-216	28 IR 1531	
675 IAC 13-2.4-55	A	04-216	28 IR 1533	
675 IAC 13-2.4-55.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-56.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-68		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-96.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-105.6	N	04-216	28 IR 1533	
675 IAC 13-2.4-107.3	N	04-216	28 IR 1534	
675 IAC 13-2.4-107.5	N	04-216	28 IR 1534	
675 IAC 13-2.4-107.6	N	04-216	28 IR 1534	
675 IAC 13-2.4-118	A	04-216	28 IR 1534	
675 IAC 13-2.4-118.4	N	04-216	28 IR 1534	
675 IAC 13-2.4-121.5	N	04-216	28 IR 1534	
675 IAC 13-2.4-122	A	04-216	28 IR 1534	
675 IAC 13-2.4-122.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-131		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-132	A	04-216	28 IR 1535	
675 IAC 13-2.4-132.3	N	04-216	28 IR 1535	
675 IAC 13-2.4-132.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-133.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-134.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-143	A	04-216	28 IR 1535	
675 IAC 13-2.4-174		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-180.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-201.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-201.7	N	04-216	28 IR 1536	
675 IAC 13-2.4-210.3	N	04-216	28 IR 1536	
675 IAC 13-2.4-210.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.3	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.7	N	04-216	28 IR 1536	
675 IAC 13-2.4-214.2	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.4	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.6	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.7	N	04-216	28 IR 1537	
675 IAC 13-2.4-222		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-228.5	N	04-216	28 IR 1538	
675 IAC 14-4.2	R	04-194	28 IR 312	
675 IAC 14-4.2-3				*ERR (28 IR 970)
675 IAC 14-4.2-19.5				*ERR (28 IR 970)
675 IAC 14-4.2-20.5				*ERR (28 IR 970)
675 IAC 14-4.2-21				*ERR (28 IR 970)
675 IAC 14-4.2-26.5				*ERR (28 IR 970)
675 IAC 14-4.2-29				*ERR (28 IR 970)
675 IAC 14-4.2-30	A	04-8	27 IR 2333	**28 IR 562**
675 IAC 14-4.2-53.7				*ERR (28 IR 970)
675 IAC 14-4.2-69.5				*ERR (28 IR 970)
675 IAC 14-4.2-69.6				*ERR (28 IR 970)
675 IAC 14-4.2-73.5				*ERR (28 IR 970)
675 IAC 14-4.2-81.2				*ERR (28 IR 970)
675 IAC 14-4.2-89.2	A	04-8	27 IR 2333	**28 IR 562**
675 IAC 14-4.2-89.6				*ERR (28 IR 970)
675 IAC 14-4.2-89.8				*ERR (28 IR 970)
675 IAC 14-4.2-107				*ERR (28 IR 970)
675 IAC 14-4.3	N	04-194	28 IR 268	
675 IAC 14-4.3-136.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-155.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-212	A	04-273	28 IR 1850	
675 IAC 14-4.3-213	R	04-273	28 IR 1859	
675 IAC 14-4.3-213.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-214	A	04-273	28 IR 1850	
675 IAC 14-4.3-215	A	04-273	28 IR 1851	
675 IAC 14-4.3-216	R	04-273	28 IR 1859	

675 IAC 14-4.3-219.3	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.5	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.6	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.7	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.8	N	04-273	28 IR 1852	
675 IAC 14-4.3-225.2	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.1	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.5	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.6	N	04-273	28 IR 1852	
675 IAC 14-4.3-227	A	04-273	28 IR 1852	
675 IAC 14-4.3-228.5	N	04-273	28 IR 1852	
675 IAC 14-4.3-230	A	04-273	28 IR 1853	
675 IAC 14-4.3-232	A	04-273	28 IR 1853	
675 IAC 14-4.3-232.5	N	04-273	28 IR 1853	
675 IAC 14-4.3-233	A	04-273	28 IR 1853	
675 IAC 14-4.3-234	A	04-273	28 IR 1854	
675 IAC 14-4.3-238.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-240	A	04-273	28 IR 1854	
675 IAC 14-4.3-240.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-241	A	04-273	28 IR 1854	
675 IAC 14-4.3-243.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-244	R	04-273	28 IR 1859	
675 IAC 14-4.3-246	A	04-273	28 IR 1855	
675 IAC 14-4.3-246.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-247.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-248.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-250	R	04-273	28 IR 1859	
675 IAC 14-4.3-251	R	04-273	28 IR 1859	
675 IAC 14-4.3-252	R	04-273	28 IR 1859	
675 IAC 14-4.3-253.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-253.7	N	04-273	28 IR 1855	
675 IAC 15-1-1	R	04-227	28 IR 1053	
675 IAC 15-1-2	R	04-227	28 IR 1053	
675 IAC 15-1-3	R	04-227	28 IR 1053	
675 IAC 15-1-5	R	04-227	28 IR 1053	
675 IAC 15-1-6	R	04-227	28 IR 1054	
675 IAC 15-1-7	R	04-227	28 IR 1054	
675 IAC 15-1-8.1	R	04-227	28 IR 1054	
675 IAC 15-1-10	R	04-227	28 IR 1054	
675 IAC 15-1-11	R	04-227	28 IR 1054	
675 IAC 15-1-12	R	04-227	28 IR 1054	
675 IAC 15-1-13	R	04-227	28 IR 1054	
675 IAC 15-1-14	R	04-227	28 IR 1054	
675 IAC 15-1-16	R	04-227	28 IR 1054	
675 IAC 15-1-17	R	04-227	28 IR 1054	
675 IAC 15-1-19	R	04-227	28 IR 1054	
675 IAC 15-1-20	R	04-227	28 IR 1054	
675 IAC 15-1-21	R	04-227	28 IR 1054	
675 IAC 15-1-22	R	04-227	28 IR 1054	
675 IAC 15-1.1	N	04-227	28 IR 1037	
675 IAC 15-1.2	N	04-227	28 IR 1039	
675 IAC 15-1.3	N	04-227	28 IR 1046	
675 IAC 15-1.4	N	04-227	28 IR 1048	
675 IAC 15-1.5	N	04-227	28 IR 1049	
675 IAC 15-1.6	N	04-227	28 IR 1051	
675 IAC 15-1.7	N	04-227	28 IR 1052	
675 IAC 17-1.6	R	04-273	28 IR 1859	
675 IAC 17-1.7	N	04-273	28 IR 1855	
675 IAC 18-1.4-3		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-10.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-11.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-12		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-27		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-32.3	N	04-217	28 IR 1309	
675 IAC 18-1.4-32.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-49.5	N	04-217	28 IR 1309	
675 IAC 22-2.2-3	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-4	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-5	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-6	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-7	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-8	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-9	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-10	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-11	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-12	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-13	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-15	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-16	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-17	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-18	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-21	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-22	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-23	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-24	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-25	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-26	N	04-196	28 IR 1029	*CPH (28 IR 1498) *AROC (28 IR 2461)
675 IAC 22-2.2-49.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-107.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-134.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-183	RA	04-19	27 IR 2340	**28 IR 324**
	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-221.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-240.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-241.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-243.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-245.2	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-245.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-365.2	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-365.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-368.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-369.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-378.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-412.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-437.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-437.7	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-443.5	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.2-511.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-515.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-540	R	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-29.5	N	04-56	27 IR 2860	*CPH (28 IR 982) **28 IR 2369**
675 IAC 22-2.3-35.5	N	04-56	27 IR 2860	*CPH (28 IR 982) **28 IR 2370**
675 IAC 22-2.3-36	A	04-56	27 IR 2860	*CPH (28 IR 982) **28 IR 2370**
675 IAC 22-2.3-36.3	N	04-56	27 IR 2861	*CPH (28 IR 982) **28 IR 2370**
675 IAC 22-2.3-36.4	N	04-56	27 IR 2861	*CPH (28 IR 982) **28 IR 2371**
675 IAC 22-2.3-36.6	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2372**

675 IAC 22-2.3-36.8	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2373**
675 IAC 22-2.3-140.5	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2373**
675 IAC 22-2.3-147.5	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2373**
675 IAC 22-2.3-147.6	N	04-56	27 IR 2863	*CPH (28 IR 982) **28 IR 2373**
675 IAC 22-2.3-148	A	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-148.5	N	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-237.5	N	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-298.5	N	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 22-2.3-304.5	N	04-56	27 IR 2864	*CPH (28 IR 982) **28 IR 2374**
675 IAC 25-1-3		02-118		*ERR (28 IR 1696)
675 IAC 25-1-7.2	N	04-218	28 IR 1310	
675 IAC 25-1-7.4	N	04-218	28 IR 1310	
675 IAC 25-1-7.6	N	04-218	28 IR 1310	
675 IAC 25-1-9.1	N	04-218	28 IR 1310	
675 IAC 25-1-9.3	N	04-218	28 IR 1310	
675 IAC 25-1-9.5	N	04-218	28 IR 1310	
675 IAC 25-1-9.7	N	04-218	28 IR 1310	
675 IAC 25-1-9.9	N	04-218	28 IR 1310	
675 IAC 26	N	04-196	28 IR 1031	*CPH (28 IR 1498) *AROC (28 IR 2461)
675 IAC 27	N	04-275	28 IR 1538	

TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD

685 IAC 1	RA	04-124	27 IR 3343	**28 IR 1072**

TITLE 760 DEPARTMENT OF INSURANCE

760 IAC 1-21-2	A	04-140	28 IR 1311	**28 IR 2375**
760 IAC 1-21-3	A	04-140	28 IR 1311	**28 IR 2375**
760 IAC 1-21-4	A	04-140	28 IR 1311	**28 IR 2375**
760 IAC 1-21-5	A	04-140	28 IR 1311	**28 IR 2375**
760 IAC 1-21-8	A	04-140	28 IR 1312	**28 IR 2376**
760 IAC 1-21-10	N	04-140	28 IR 1313	**28 IR 2376**
760 IAC 1-21-11	N	04-140	28 IR 1313	**28 IR 2376**
760 IAC 1-50-3	A	04-139	27 IR 4136	**28 IR 1482**
760 IAC 1-50-4	A	04-139	27 IR 4136	**28 IR 1482**
760 IAC 1-50-5	A	04-139	27 IR 4137	**28 IR 1483**
760 IAC 1-60-1	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-60-2	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-60-4	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-70	N	04-39	27 IR 2560	
			28 IR 314	**28 IR 1480**
760 IAC 1-71	N	05-26	28 IR 2456	*AROC (28 IR 2814)
760 IAC 2-1-1	A	03-303	27 IR 3306	**28 IR 563**
760 IAC 2-2-1.5	N	03-303	27 IR 3306	**28 IR 563**
760 IAC 2-2-3.1	N	03-303	27 IR 3307	**28 IR 563**
760 IAC 2-2-3.2	N	03-303	27 IR 3307	**28 IR 563**
760 IAC 2-2-3.3	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.4	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.5	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.6	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.7	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.8	N	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-2-8	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-1	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-2	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-4	A	03-303	27 IR 3309	**28 IR 566**
760 IAC 2-3-6	A	03-303	27 IR 3310	**28 IR 567**
760 IAC 2-3-7	N	03-303	27 IR 3310	**28 IR 567**
760 IAC 2-3-8	N	03-303	27 IR 3311	**28 IR 567**
760 IAC 2-4-1	A	03-303	27 IR 3311	**28 IR 568**
760 IAC 2-4-2	N	03-303	27 IR 3312	**28 IR 569** *ERR (28 IR 609)
760 IAC 2-7-1	A	03-303	27 IR 3313	**28 IR 570**
760 IAC 2-8-1	A	03-303	27 IR 3314	**28 IR 570**
760 IAC 2-8-2	A	03-303	27 IR 3314	**28 IR 571**
760 IAC 2-8-3	A	03-303	27 IR 3314	**28 IR 571**
760 IAC 2-8-4	A	03-303	27 IR 3315	**28 IR 572**
760 IAC 2-8-6	N	03-303	27 IR 3316	**28 IR 572**
760 IAC 2-9-1	A	03-303	27 IR 3316	**28 IR 572**
760 IAC 2-10-1	A	03-303	27 IR 3316	**28 IR 573**
760 IAC 2-13-1	A	03-303	27 IR 3317	**28 IR 573**
760 IAC 2-15-1	A	03-303	27 IR 3317	**28 IR 574** *ERR (28 IR 609)
760 IAC 2-15.5	N	03-303	27 IR 3319	**28 IR 575**
760 IAC 2-16-1	A	03-303	27 IR 3320	**28 IR 576**
760 IAC 2-16.1	N	03-303	27 IR 3320	**28 IR 576**
760 IAC 2-17-1	A	03-303	27 IR 3323	**28 IR 580**
760 IAC 2-18-1	A	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-19-2	A	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-19.5	N	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-20-10	A	03-303	27 IR 3329	**28 IR 585**
760 IAC 2-20-31.1	A	03-303	27 IR 3329	**28 IR 586**
760 IAC 2-20-34	A	03-303	27 IR 3329	**28 IR 586**
760 IAC 2-20-35	A	03-303	27 IR 3332	**28 IR 589**
760 IAC 2-20-36.1	A	03-303	27 IR 3332	**28 IR 589**
760 IAC 2-20-36.2	A	03-303	27 IR 3333	**28 IR 590**
760 IAC 2-20-37.2	A	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-37.3	N	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-38.1	A	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-42	A	03-303	27 IR 3335	**28 IR 591**
760 IAC 3-1-1	A	05-5	28 IR 2426	
760 IAC 3-2-2.5	A	05-5	28 IR 2426	
760 IAC 3-2-6.1	A	05-5	28 IR 2426	
760 IAC 3-2-6.2	A	05-5	28 IR 2426	
760 IAC 3-2-7	A	05-5	28 IR 2426	
760 IAC 3-4-1	A	05-5	28 IR 2427	
760 IAC 3-5-1	A	05-5	28 IR 2427	
760 IAC 3-6-1	A	05-5	28 IR 2428	
760 IAC 3-7-1	A	05-5	28 IR 2432	
760 IAC 3-8-1	A	05-5	28 IR 2434	
760 IAC 3-9-1	A	05-5	28 IR 2437	
760 IAC 3-9-2	A	05-5	28 IR 2437	
760 IAC 3-11-1	A	05-5	28 IR 2439	
760 IAC 3-12-1	A	05-5	28 IR 2444	
760 IAC 3-14-1	A	05-5	28 IR 2445	
760 IAC 3-15-1	A	05-5	28 IR 2453	
760 IAC 3-18-1	A	05-5	28 IR 2455	

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

804 IAC 1.1-1-1	A	04-156	28 IR 1054	**28 IR 2377**
804 IAC 1.1-8	N	04-156	28 IR 1055	**28 IR 2378**

TITLE 808 STATE BOXING COMMISSION

808 IAC 1-3-6	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 1-5-1	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 1-5-2	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 2-1-5	A	03-226	27 IR 2564	**28 IR 198**
808 IAC 2-1-12	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-7-14	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-8-7	R	03-226	27 IR 2566	**28 IR 200**
808 IAC 2-9-5	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-12-0.5	N	03-227	27 IR 2566	*ARR (28 IR 215) **28 IR 201**
808 IAC 2-12-2	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 201**
808 IAC 2-12-3	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 201**

808 IAC 2-12-4	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 202**
808 IAC 2-12-5	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 202**
808 IAC 2-12-6	N	03-227	27 IR 2567	*ARR (28 IR 215) **28 IR 202**
808 IAC 2-12-7	N	03-227	27 IR 2568	*ARR (28 IR 215) **28 IR 202**
808 IAC 2-12-8	N	03-227	27 IR 2568	*ARR (28 IR 215)
808 IAC 2-18-1	A	03-226	27 IR 2565	**28 IR 199**
808 IAC 2-22-1	A	03-226	27 IR 2565	**28 IR 199**

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-3-1	A	04-254	28 IR 1059	**28 IR 2382**

TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 0.5-2-3	A	04-233	28 IR 670	*AROC (28 IR 1073) **28 IR 2713**
828 IAC 1-5-6	N	04-189	28 IR 669	**28 IR 2383**
828 IAC 5	N	04-233	28 IR 671	*AROC (28 IR 1073) **28 IR 2713**

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-1	RA	04-6	27 IR 2340	**28 IR 325**
830 IAC 1-2-6	RA	05-11	28 IR 2813	

TITLE 840 INDIANA STATE BOARD OF HEALTH FACILITY ADMINISTRATORS

840 IAC 2-1	RA	05-12	28 IR 2459	

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

844 IAC 6-1-2	A	03-262	27 IR 1284	**28 IR 209**
844 IAC 6-1-4	A	03-261	27 IR 1635	*CPH (27 IR 2300) **28 IR 203**
844 IAC 6-3-1	A	03-261	27 IR 1636	*CPH (27 IR 2300) **28 IR 203**
844 IAC 6-3-2	A	03-261	27 IR 1636	*CPH (27 IR 2300) **28 IR 204**
844 IAC 6-3-4	A	03-261	27 IR 1637	*CPH (27 IR 2300) **28 IR 204**
844 IAC 6-3-5	A	03-261	27 IR 1637	*CPH (27 IR 2300) **28 IR 205**
844 IAC 6-3-6	N	03-261	27 IR 1638	*CPH (27 IR 2300) **28 IR 205**
844 IAC 6-4-3	A	03-261	27 IR 1638	*CPH (27 IR 2300) **28 IR 206**
844 IAC 6-6-1	R	03-261	27 IR 1642	*CPH (27 IR 2300) **28 IR 209**
844 IAC 6-6-2	R	03-261	27 IR 1642	*CPH (27 IR 2300) **28 IR 209**
844 IAC 6-6-3	A	03-261	27 IR 1638	*CPH (27 IR 2300) **28 IR 206**
844 IAC 6-6-4	A	03-261	27 IR 1639	*CPH (27 IR 2300) **28 IR 206**
844 IAC 6-7-2	A	03-261	27 IR 1639	*CPH (27 IR 2300) **28 IR 207**
844 IAC 10-4-1	A	03-329	27 IR 2568	**28 IR 211**
844 IAC 12-5-4	A	04-17	28 IR 316	**28 IR 1693**

TITLE 845 BOARD OF PODIATRIC MEDICINE

845 IAC 1-5-3	A	04-134	28 IR 317	**28 IR 2716**

TITLE 848 INDIANA STATE BOARD OF NURSING

848 IAC 1-1-6	A	04-97	28 IR 674	**28 IR 2383**
848 IAC 1-1-7	A	04-97	28 IR 675	**28 IR 2384**
848 IAC 1-1-2.1	A	04-65	27 IR 2865	**28 IR 593**
848 IAC 1-2-1	A	04-65	27 IR 2866	**28 IR 594**
848 IAC 1-2-5	A	04-65	27 IR 2866	**28 IR 594**
848 IAC 1-2-6	A	04-65	27 IR 2867	**28 IR 595**
848 IAC 1-2-7	A	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-8	A	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-8.5	N	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-9	A	04-65	27 IR 2869	**28 IR 597**
848 IAC 1-2-10	A	04-65	27 IR 2869	**28 IR 597**
848 IAC 1-2-12	A	04-65	27 IR 2870	**28 IR 598**
848 IAC 1-2-13	A	04-65	27 IR 2870	**28 IR 598**
848 IAC 1-2-14	A	04-65	27 IR 2870	**28 IR 599**
848 IAC 1-2-16	A	04-65	27 IR 2871	**28 IR 599**
848 IAC 1-2-17	A	04-65	27 IR 2872	**28 IR 600**
848 IAC 1-2-18	A	04-65	27 IR 2872	**28 IR 600**
848 IAC 1-2-19	A	04-65	27 IR 2873	**28 IR 601**
848 IAC 1-2-20	A	04-65	27 IR 2873	**28 IR 601**
848 IAC 1-2-21	A	04-65	27 IR 2873	**28 IR 602**
848 IAC 1-2-22	A	04-65	27 IR 2874	**28 IR 602**
848 IAC 1-2-23	A	04-65	27 IR 2874	**28 IR 602**
848 IAC 1-2-24	A	04-65	27 IR 2874	**28 IR 603**
848 IAC 6	R	04-97	28 IR 675	**28 IR 2385**

TITLE 856 INDIANA BOARD OF PHARMACY

856 IAC 1-30-2	A	04-173	28 IR 317	**28 IR 2385**
856 IAC 1-30-3	A	04-173	28 IR 318	**28 IR 2385**
856 IAC 1-30-4.1	N	04-173	28 IR 318	**28 IR 2385**
856 IAC 1-30-4.2	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-4.3	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-4.4	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-4.5	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-4.6	N	04-173	28 IR 318	**28 IR 2386**
856 IAC 1-30-6	A	04-173	28 IR 319	**28 IR 2386**
856 IAC 1-30-7	A	04-173	28 IR 319	**28 IR 2386**
856 IAC 1-30-8	A	04-173	28 IR 319	**28 IR 2387**
856 IAC 1-30-9	A	04-173	28 IR 320	**28 IR 2388**
856 IAC 1-30-14	A	04-173	28 IR 320	**28 IR 2388**
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856 IAC 1-30-18	A	04-173	28 IR 321	**28 IR 2389**
856 IAC 1-33-1	A	03-326	27 IR 2073	**27 IR 3073**

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864 IAC 1.1-2-4	A	03-301	27 IR 2569	**28 IR 603**
864 IAC 1.1-4.1-9	A	03-301		††**28 IR 603**
864 IAC 1.1-12-1	A	03-301	27 IR 2569	**28 IR 604**
864 IAC 1.1-12-2	N	03-301	27 IR 2570	**28 IR 604**

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872 IAC 1-3-3.3	A	04-98	27 IR 3336	**28 IR 605**
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872 IAC 1-6	N	03-270	27 IR 2571	*AROC (27 IR 4141) **28 IR 966**

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	N	04-330	*ETR (28 IR 1487)
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*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
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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