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Retain this issue as a supplement to the Indiana Administrative Code (See p. 2938)

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IN THIS ISSUE

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RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

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

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

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

RETENTION SCHEDULE

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

(1) 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:**
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
December 9, 2005	January 1, 2006	After July 1, 2006, publication dates will be determined on an individual document basis.	

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

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†Agency's rules are expired, repealed, transferred, or otherwise voided.

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†325.1 Air Pollution Control Board
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†Agency's rules are expired, repealed, transferred, or otherwise voided.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-127(F)

DIGEST

Adds 312 IAC 18-3-19 under the article pertaining to entomology and plant pathology to regulate the giant African land snail (Achatina achatina (L.), Achatina fulica Bowdich, Achatina marginata, and other species of the family Achatinidae (Gastropoda)) as a pest or pathogen and to prohibit the possession, sale, release, or other distribution of these snails in Indiana. Effective 30 days after filing with the secretary of state.

312 IAC 18-3-19

SECTION 1. 312 IAC 18-3-19 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-19 Control of the giant African land snail
Authority: IC 14-24-3
Affected: IC 14-24

Sec. 19. (a) The giant African land snail (Achatina achatina (L.), Achatina fulica Bowdich, Achatina marginata, and other species of the family Achatinidae (Gastropoda)) is a pest or pathogen and is regulated under this section.

(b) Except as provided in subsection (c), a person must not:
(1) possess;
(2) offer for sale;
(3) sell;
(4) give away;
(5) barter;
(6) exchange; or
(7) otherwise distribute or release;
a giant African land snail, in any life stage, in Indiana.

(c) The state entomologist may issue a permit to a qualified applicant to properly contain a species of giant African land snail for scientific research. *(Natural Resources Commission; 312 IAC 18-3-19; filed May 25, 2005, 10:10 a.m.: 28 IR 2942)*

LSA Document #04-127(F)
Notice of Intent Published: June 1, 2004; 27 IR 2762
Proposed Rule Published: February 1, 2005; 28 IR 1520
Hearing Held: February 24, 2005
Approved by Attorney General: May 5, 2005
Approved by Governor: May 17, 2005
Filed with Secretary of State: May 25, 2005, 10:10 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-177(F)

DIGEST

Adds 312 IAC 18-3-18 concerning entomology and plant pathology to regulate the emerald ash borer (Agrilus planipennis) as a pest or pathogen, to provide standards for quarantine in a county infested with the species, and to provide standards for quarantine of areas infested with the species. Effective 30 days after filing with the secretary of state.

312 IAC 18-3-18

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

312 IAC 18-3-18 Control of the emerald ash borer
Authority: IC 14-10-2-4; IC 14-24-3
Affected: IC 14-24

Sec. 18. (a) The emerald ash borer (Coleoptera: Buprestidae: Agrilus planipennis) is a pest or pathogen and is regulated under this section.

(b) The definitions in 312 IAC 1, 312 IAC 18-1, and as follows apply throughout this section:
(1) "Certificate of inspection" means a document issued or authorized to be issued by the state entomologist or the U.S. Department of Agriculture to allow the movement of a regulated article to any destination. A certificate may be in any form approved by the state entomologist or the U.S. Department of Agriculture for this purpose, including a phytosanitary document or multiple use quarantine certificate.
(2) "Compliance agreement" means a written agreement between the department or the U.S. Department of Agriculture and another person that authorizes the movement of regulated articles under this section and other stated conditions.
(3) "Eradication area" means the area including all plants infected by the emerald ash borer and any other ash species within one-half (½) mile radius of an infected plant.
(4) "Infested area" means a site where the emerald ash borer is present or where circumstances make it reasonable to believe that the ash borer is present.
(5) "Inspector" means a division inspector or a person authorized by the U.S. Department of Agriculture authorized to enforce this section.
(6) "Move" means to:
(A) ship;
(B) offer for shipment;
(C) receive for transportation;
(D) transport;
(E) carry; or
(F) allow to move or ship.

(c) The following counties include an infested area and are regulated under this section:

(1) Clay Township and Van Buren Township in LaGrange County.

(2) Jamestown Township and Millgrove Township in Steuben County.

(d) The following items are regulated articles:

(1) The emerald ash borer in any living stage of development.

(2) Any ash tree (Fraxinus spp.), including nursery stock.

(3) A limb, stump, branch, or debris of at least one (1) inch in diameter of an ash tree.

(4) An ash log, slab, or untreated ash lumber with bark attached.

(5) Composted and noncomposted ash chips and composted and noncomposted ash bark chips at least one (1) inch in diameter.

(6) An article, product, or means of conveyance reasonably determined by the state entomologist to present the risk of the spread of the emerald ash borer.

(7) Cut firewood of any nonconiferous species originating from a regulated area.

(e) A person must not move a regulated article outside an infested area except under the following conditions:

(1) An inspector issues a certificate of inspection following a thorough examination of the regulated article and any treatment method. The certificate must be properly supported by a determination by the inspector, or by a grower or shipper authorized to conduct an inspection under a compliance agreement, that no life stage of the emerald ash borer is present. A certificate may be conditioned upon the completion of treatments administered under methods approved by the state entomologist or by a United States federal officer authorized by the state entomologist.

(2) A certificate of inspection is attached to any regulated article or to a shipping document that adequately describes the regulated article. The certification must remain attached until the regulated article reaches its destination.

(f) A person must not move a regulated article originating outside an infested area, through a county regulated under subsection (c), without a certificate of inspection for the emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher if the article is:

(A) shipped in an enclosed vehicle; or

(B) completely enclosed by a covering adequate to prevent access by the emerald ash borer.

(3) The point of origin of the regulated article is indicated on the bill of lading or shipping document.

(4) The regulated article is moved within Indiana by approval of the state entomologist for scientific purposes.

(5) The article is not combined or commingled with other articles so as to lose its individual identity.

(g) A regulated article originating outside a regulated area that is moved into a county regulated under subsection (c) and exposed to potential infestation by the emerald ash borer is considered to have originated from a regulated area. A person must not move the regulated article from the regulated area except under subsection (e).

(h) A person must not move a regulated article from an infested area through any nonregulated area to a regulated destination without a certificate of inspection for emerald ash borer, except under the following conditions:

(1) From September 1 through April 30, or when the ambient air temperature is below forty (40) degrees Fahrenheit, if the person does not stop except to refuel or for traffic conditions.

(2) From May 1 through August 31 when the temperature is forty (40) degrees Fahrenheit or higher, if the article is:

(A) shipped in an enclosed vehicle; or

(B) completely enclosed by a covering adequate to prevent the escape of any emerald ash borer.

(3) The county and state of origin and the final destination of the regulated article is indicated on the bill of lading or shipping document.

(i) The bill of lading or shipping document accompanying any shipment of regulated articles in Indiana must indicate the county and state of origin of the regulated articles.

(j) A person who moves a regulated article in violation of this section must move or destroy the article, at the person's or owner's expense, as directed by the state entomologist.

(k) The state entomologist may issue a special permit for the movement of the emerald ash borer into or within Indiana for research purposes. The permit may, by express language, exempt the permit holder from conditions of this section.

(l) Uncomposted ash chips and uncomposted ash bark chips no larger than one (1) inch in diameter are exempted from the requirements of this section.

(m) Any ash species within the eradication area shall be removed and rendered incapable of supporting a life stage of the emerald ash borer.

(n) Regulated articles from another infested state or any part of a state infested with the emerald ash borer are prohibited entry into Indiana without an accompanying certificate of inspection or phytosanitary document issued

by the U.S. Department of Agriculture or the plant health regulatory agencies of the originating state.

(o) Harvest for timber or other use of the wood of any non-ash forest species within the eradication area is prohibited until after all ash has been removed and the site is released by the state entomologist or his or her designee.

(p) A person must not move ash, in any form, from the eradication area without a compliance agreement signed by the state entomologist or his or her designee. *(Natural Resources Commission; 312 IAC 18-3-18; filed May 25, 2005, 10:00 a.m.: 28 IR 2942)*

LSA Document #04-177(F)
Notice of Intent Published: July 1, 2004; 27 IR 3098
Proposed Rule Published: January 1, 2005; 28 IR 1201
Hearing Held: January 24, 2005
Approved by Attorney General: May 5, 2005
Approved by Governor: May 17, 2005
Filed with Secretary of State: May 25, 2005, 10:00 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-210(F)

DIGEST

Adds 312 IAC 5-6-5.5 concerning special watercraft restrictions on public freshwater Lake Manitou in Fulton County to establish a zone within a shallow area of the lake containing emergent vegetation and commonly known as "the Prairie", within which zone boats are limited to idle speed, their motors must be turned off, and anchoring is prohibited. Effective October 1, 2005.

312 IAC 5-6-5.5

SECTION 1. 312 IAC 5-6-5.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 5-6-5.5 Lake Manitou; special watercraft zones
Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14; IC 32-19-1-1

Sec. 5.5. (a) This section establishes restrictions on the operation of watercraft on Lake Manitou in Fulton County.

(b) Except as provided in subsection (c), a person must not operate a watercraft in an area, commonly known as the Prairie, which is enclosed by a line of buoys placed as follows:
(1) SPC 2114199 (UTM 4544799) north and SPC 185587 (UTM 568631) east.
(2) SPC 2114362 (UTM 4544844) north and SPC 184604 (UTM 568331) east.
(3) SPC 2114620 (UTM 4544921) north and SPC 184241 (UTM 568219) east.
(4) SPC 2115391 (UTM 4545156) north and SPC 184259 (UTM 568221) east.
(5) SPC 2115871 (UTM 4545305) north and SPC 184900 (UTM 568414) east.
(6) SPC 2115720 (UTM 4545262) north and SPC 185534 (UTM 568608) east.
(7) SPC 2114303 (UTM 4544831) north and SPC 185670 (UTM 568656) east.

(c) A person is exempted from subsection (b) if each of the following requirements is satisfied:
(1) The watercraft is not a motorboat or is a motorboat that has the motor turned off.
(2) The watercraft is not operated in excess of idle speed.
(3) The watercraft is not anchored.

(d) This section expires on April 30, 2008. *(Natural Resources Commission; 312 IAC 5-6-5.5; filed May 25, 2005, 10:20 a.m.: 28 IR 2944, eff Oct 1, 2005)*

SECTION 2. **SECTION 1 is effective October 1, 2005.**

LSA Document #04-210(F)
Notice of Intent Published: September 1, 2004; 27 IR 4045
Proposed Rule Published: December 1, 2004; 28 IR 989
Hearing Held: January 12, 2005
Approved by Attorney General: May 5, 2005
Approved by Governor: May 17, 2005
Filed with Secretary of State: May 25, 2005, 10:20 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-253(F)

DIGEST

Amends 312 IAC 9 concerning hunting deer by bow and arrows, hunting deer by bow and arrows under an extra deer license, the taking of wild turkeys, the addition of the mole salamander to the list of amphibians native to Indiana, and amendments to modernize the common and scientific names of several reptiles and amphibians. Effective 30 days after filing with the secretary of state.

312 IAC 9-3-4
312 IAC 9-3-5
312 IAC 9-4-11
312 IAC 9-5-4
312 IAC 9-5-7
312 IAC 9-5-9

SECTION 1. 312 IAC 9-3-4, AS AMENDED AT 28 IR 538, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-4 Hunting deer by bow and arrows

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 4. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to hunt deer ~~with~~ **by** bow and arrows under IC 14-22-12-1(14) or IC 14-22-12-1(17) and is supplemental to section 2 of this rule; or

(2) hunting by the use of **a** bow and arrows under IC 14-22-11-1.

(b) The season for hunting deer ~~with~~ **by** bow and arrows during the early bow season is from October 1 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(c) The urban deer season is from September 15 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(d) The seasonal limit for hunting under this section is one (1) deer of either sex. After August 31, 2007, a person must not take an antlered deer by means of a crossbow.

(e) A person must not hunt deer under this section except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(f) A person must not hunt deer under this section unless that person wears hunter orange. However, this subsection does not apply before the commencement of the firearms season set forth in section 3(b) of this rule and after the muzzle loading gun season set forth in section 3(c) of this rule.

(g) A person must not hunt under this section unless that person possesses only one (1) bow. A person must not possess a firearm while hunting under this section.

(h) The following requirements apply to the use of archery equipment under this section:

(1) No person shall use a long bow or compound bow of less than thirty-five (35) pounds pull.

(2) Arrows must be equipped with metal or metal-edged (or flint, chert, or obsidian napped) broadheads.

(3) Poisoned or explosive arrows are unlawful.

(4) Bows drawn, held, or released other than by hand or hand-held releases are unlawful.

(5) A long bow or compound bow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(6) No portion of the bow's riser (handle) or any:

(A) track;
(B) trough;
(C) channel;
(D) arrow rest; or
(E) other device;

that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

(i) Notwithstanding subsection (h), a person may use a crossbow to take ~~antlerless~~ **a** deer **of either sex** during the late bow season from the first Saturday after the firearms season through the first Sunday in January if the following restrictions are met:

(1) No person shall use a crossbow:

(A) of less than one hundred twenty-five (125) pounds pull; **or**

~~(2) No person shall use a crossbow~~ **(B)** that does not have a mechanical safety.

~~(3)~~ **(2)** A crossbow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(j) As used in this rule, "crossbow" means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device. *(Natural Resources Commission; 312 IAC 9-3-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 5, 1997, 3:25 p.m.: 21 IR 930; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 538; filed May 25, 2005, 10:15 a.m.: 28 IR 2945)*

SECTION 2. 312 IAC 9-3-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-5 Hunting deer by bow and arrows by authority of an extra deer license

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 5. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to take an extra deer under IC 14-22-12-1(18) or IC 14-22-12-1(19) by means of **a** bow and arrows; or

(2) hunting under IC 14-22-11-1 with an extra deer license by means of **a** bow and arrows.

(b) Except as specified in subsection (d), the statewide seasonal limit for hunting under this section is one (1) deer of either sex. **After August 31, 2007,** a person must not take an antlered deer by means of a crossbow.

(c) The restrictions contained in section 4(b) and 4(e) through 4(i) of this rule also apply to a license issued under this section.

(d) The seasonal limit for hunting deer in an urban deer zone

is four (4) deer of which only one (1) may be antlered. A person must possess a valid extra deer license for each deer taken. A deer taken under this subsection does not count against a bag limit for deer set elsewhere in this rule.

(e) The following areas have been designated as urban deer zones:

(1) The Indianapolis urban deer zone includes **the following:**

(A) All of Marion County.

(B) That portion of Hendricks County east of State Highway 267.

(C) The southeast portion of Boone County as bounded by **the following:**

(i) State Highway 267.

(ii) Interstate Highway 65.

(iii) State Highway 32. ~~and~~

(D) That portion of Hamilton County south of State Highway 32.

(2) The Fort Wayne urban deer zone includes that portion of Allen County lying within the bounds of Interstate Highway 69 and State Highway 469.

(3) The Evansville urban deer zone includes all of Vanderburgh County.

(4) The Lafayette urban deer zone includes the portion of Tippecanoe County north of State Highway 28.

(5) The Gary urban deer zone includes that portion of Lake County north of U.S. Highway 30.

(6) The Crown Point urban deer zone includes that portion of Lake County within the corporate limits of Crown Point.

(7) The Chesterton urban deer zone includes the portion of Porter County north of U.S. Highway 94.

(8) The Michigan City urban deer zone includes that portion of LaPorte County north of U.S. Highway 94.

(9) The Madison urban deer zone includes that portion of Jefferson County bounded on the **following:**

(A) East by U.S. Highway 421. ~~as well as bounded on the~~

(B) North and west by State Highway 62. ~~and on the~~

(C) South by State Highway 56.

(Natural Resources Commission; 312 IAC 9-3-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2704; filed Nov 5, 1997, 3:25 p.m.: 21 IR 931; filed May 28, 1998, 5:14 p.m.: 21 IR 3713; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1531; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed May 25, 2005, 10:15 a.m.: 28 IR 2945)

SECTION 3. 312 IAC 9-4-11, AS AMENDED AT 28 IR 541, SECTION 13, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-11 Wild turkeys

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 11. (a) Except as provided in subsection (c), the spring season for hunting and possessing wild turkeys is from the first Wednesday after April 20 and continuing for an additional eighteen (18) consecutive days.

(b) The fall season for hunting and possessing wild turkeys with ~~bows~~ **a bow** and arrows is from October 1 to the end of the fall turkey season with firearms, which begins on the first Wednesday after October 14 and continues for an additional four (4) consecutive days except as provided in subsection (c).

(c) The spring and fall seasons for hunting and possessing wild turkeys on Camp Atterbury and the Big Oaks National Wildlife Refuge shall be determined by the director on an annual basis.

(d) The limit for taking and possessing is one (1):

(1) bearded or male wild turkey during the spring season; and

(2) wild turkey of either sex during the fall season.

(e) A person must not hunt wild turkeys except between one-half (½) hour before sunrise and sunset.

(f) A person must not take a wild turkey except with the use of one (1) of the following:

(1) A shotgun not smaller than 20 gauge and not larger than 10 gauge loaded only with shot of size 4, 5, 6, 7, or 7½.

(2) A muzzle loading shotgun not smaller than 20 gauge and not larger than 10 gauge loaded only with shot of 4, 5, 6, 7, or 7½.

(3) **A** bow and arrows, including crossbows as defined in 312 IAC 9-3-4(j), with the following restrictions:

(A) A person must not use a long bow or compound bow of less than thirty-five (35) pounds pull.

(B) Arrows must be equipped with metal or metal-edged (or flint, chert, or obsidian napped) broadheads.

(C) A person must not use a:

(i) crossbow of less than one hundred twenty-five (125) pounds pull;

~~(D) A person must not use a~~ **(ii)** crossbow unless it has a mechanical safety; **or**

~~(E) A person must not use a~~ **(iii)** poisoned or explosive arrow.

~~(F)~~ **(D)** No portion of a bow's riser (handle) or:

(i) track;

(ii) trough;

(iii) channel;

(iv) arrow rest; or

(v) other device;

that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

~~(G)~~ **(E)** Before or after lawful shooting hours, a person must not possess a:

(i) long bow;

(ii) compound bow; or

(iii) crossbow;

in the field if the nock of the arrow is placed on the bow string.

(g) A person must not hunt wild turkeys in the fall season except in a county the director designates, on an annual basis, by

emergency rule **or in the spring season in the following counties:**

(1) Adams, south of State Road 124.
(2) Blackford.
(3) Delaware.
(4) Grant, east of Interstate 69.
(5) Hancock, east of State Road 9.
(6) Henry.
(7) Huntington, south of State Road 124 and east of Interstate 69.
(8) Jasper, south of State Highway 114 and west of Interstate 65.
(9) Jay.
(10) Newton, south of State Highway 114.
(11) Randolph, north of State Road 32.
(12) Rush, north of State Road 44.
(13) Shelby, east of State Road 9 and north of State Road 44.
(14) Wells, south of State Road 124.
(15) Whitley, south of U.S. 30.

(h) The use of a dog, another domesticated animal, a live decoy, a recorded call, an electronically powered or controlled decoy, or bait to take a wild turkey is prohibited. An area is considered baited for ten (10) days after the removal of the bait, but an area is not considered to be baited that is attractive to wild turkeys resulting from **either of the following:**

(1) Normal agricultural practices. ~~or~~
(2) The use of a:
(A) manufactured scent; ~~a~~
(B) lure; or ~~a~~
(C) chemical attractant.

(i) A person must not possess a handgun while hunting wild turkeys.

(j) Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt wild turkeys unless possessing a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a wild turkey license or tag issued to another person.

(k) The temporary transportation tag described in subsection (j) must, immediately after taking a wild turkey, be notched as to the month and day of the taking and attached to a leg of the turkey directly above the spur. A tag is void if notched more than twice. The temporary transportation tag must be attached to a leg of the wild turkey directly above the spur. A person who takes a turkey must cause delivery of the turkey to an official turkey checking station within forty-eight (48) hours of taking for registration. After the checking station operator records the permanent seal number on the log, the person is provided with that seal. The person must immediately and firmly affix the seal to the leg of the turkey directly above the temporary transportation tag. The seal must remain affixed until processing of the turkey begins. The official turkey checking station operator shall accurately and legibly complete all forms provided by the department and make those forms available to department personnel on request.

(l) Each of the following individuals must tag a turkey carcass immediately after taking with a paper that states the name and address of the individual and the date the turkey was taken:

(1) A lifetime license holder.
(2) A youth license holder.
(3) For a wild turkey taken on a landowner's land, each of the following:
(A) The resident landowner.
(B) The spouse of the resident landowner.
(C) A child of the resident landowner who is living with the landowner.
(4) For a wild turkey taken on land leased from another person, each of the following:
(A) The resident lessee who farms the land.
(B) The spouse of the resident lessee.
(C) A child of the resident lessee who is living with the lessee.
(5) An Indiana serviceman or servicewoman hunting under IC 14-22-11-11.

(m) The feathers and beard of a wild turkey must remain attached while the wild turkey is in transit from the site where taken. *(Natural Resources Commission; 312 IAC 9-4-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; filed May 28, 1998, 5:14 p.m.: 21 IR 3715; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1533; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 541; filed May 25, 2005, 10:15 a.m.: 28 IR 2946)*

SECTION 4. 312 IAC 9-5-4, AS AMENDED AT 28 IR 542, SECTION 15, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-4 Endangered and threatened species; reptiles and amphibians

Authority: IC 14-22-2-6; IC 14-22-34-17
Affected: IC 14-22-34-12

Sec. 4. The following species of reptiles and amphibians are threatened or endangered and are subject to the protections provided under IC 14-22-34-12:

(1) Hellbender (Cryptobranchus alleganiensis).
(2) ~~Northern~~ Red salamander (Pseudotriton ruber).
(3) Four-toed salamander (Hemidactylium scutatum).
(4) Green salamander (Aneides aeneus).
(5) Copperbelly water snake (Nerodia erythrogaster).
(6) Butler's garter snake (Thamnophis butleri).
(7) Kirtland's snake (Clonophis kirtlandii).
(8) Scarlet snake (Cemophora coccinea).
(9) Smooth green snake ~~(Lioclorophis~~ **(Liochlorophis** vernalis).

(10) **Southeastern** crowned snake (Tantilla coronata).
(11) Cottonmouth (Agkistrodon piscivorus).
(12) Massasauga (Sistrurus catenatus).
(13) Timber rattlesnake (Crotalus horridus).
(14) Eastern mud turtle (Kinosternon subrubrum).
(15) Spotted turtle (Clemmys guttata).
(16) ~~Heiroglyphic turtle~~ **Hieroglyphic river cooter** (Pseudemys concinna).
(17) Alligator snapping turtle ~~(Macroclemys~~ **(Macrochelys** temmincki).
(18) Blanding's turtle (Emydoidea blandingii).
(19) Crawfish frog (Rana areolata).
(20) Ornate box turtle (Terrapene ornata).

(Natural Resources Commission; 312 IAC 9-5-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed May 16, 2002, 12:25 p.m.: 25 IR 3047; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 542; filed May 25, 2005, 10:15 a.m.: 28 IR 2947)

SECTION 5. 312 IAC 9-5-7, AS AMENDED AT 28 IR 543, SECTION 17, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-7 Sale and transport for sale of reptiles and amphibians native to Indiana

Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17
Affected: IC 14-22; IC 20-19-2-8; IC 20-19-2-10

Sec. 7. (a) This section governs the sale, transport for sale, or offer for sale or transport for sale of any reptile or amphibian native to Indiana regardless of place of origin.

(b) Except as otherwise provided in this section and in section 6(g) of this rule, the sale, transport for sale, or offer to sell or transport for sale of a reptile or amphibian native to Indiana is prohibited. A person must not sell a turtle, regardless of species or origin, with a carapace less than four (4) inches long, except for a valid scientific or educational purpose that is associated with one (1) of the following:

(1) A federal, state, county, city, or similar governmental agency that is engaged in scientific study or research.
(2) A scientific research organization.
(3) An accredited museum or institution of higher learning.
(4) An individual working in cooperation with a college, university, or governmental agency.
(5) A private company under a contract for scientific or educational purposes.

(c) As used in this rule, "reptile or amphibian native to Indiana" means those reptiles and amphibians with the following scientific names, including common names for public convenience, but the scientific names control:

(1) Hellbender (Cryptobranchus alleganiensis).
(2) **Common** mudpuppy (Necturus maculosus).
(3) Streamside salamander (Ambystoma barbouri).
(4) ~~Jefferson's~~ **Jefferson** salamander (Ambystoma jeffersonianum).
(5) Blue-spotted salamander (Ambystoma laterale).
(6) Spotted salamander (Ambystoma maculatum).
(7) Marbled salamander (Ambystoma opacum).
(8) Mole salamander (Ambystoma talpoideum).
~~(8)~~ **(9)** Smallmouth salamander (Ambystoma texanum).
~~(9)~~ **(10)** Eastern tiger salamander (Ambystoma tigrinum tigrinum).
~~(10)~~ **(11)** Eastern newt (Notophthalmus viridescens).
~~(11)~~ **(12)** Green salamander (Aneides aeneus).
~~(12)~~ **(13)** Northern dusky salamander (Desmognathus fuscus).
~~(13)~~ **(14) Southern** two-lined salamander (Eurycea cirrigera).
~~(14)~~ **(15)** Longtailed salamander (Eurycea longicauda).
~~(15)~~ **(16)** Cave salamander (Eurycea lucifuga).
~~(16)~~ **(17)** Four-toed salamander (Hemidactylium scutatum).
~~(17)~~ ~~Redbacked~~ **(18) Northern redback** salamander (Plethodon cinereus).
~~(18)~~ **(19) Northern** zigzag salamander (Plethodon dorsalis).
(20) Northern ravine salamander (Plethodon electromorphus).
~~(19)~~ **(21) Northern** slimy salamander (Plethodon glutinosus).
~~(20) Ravine salamander (Plethodon richmondi).~~
~~(21)~~ **(22)** Red salamander (Pseudotriton ruber).
~~(22)~~ **(23)** Lesser siren (Siren intermedia).
~~(23)~~ **(24)** Eastern spadefoot toad (Scaphiopus holbrookii).
~~(24)~~ **(25)** American toad (Bufo americanus).
~~(25)~~ **(26)** Fowler's toad (Bufo fowleri).
~~(26)~~ **(27)** Cricket frog (Acris crepitans).
~~(27)~~ **(28)** Cope's gray treefrog (Hyla chrysoscelis).
~~(28)~~ **(29)** Green treefrog (Hyla cinerea).
~~(29)~~ **(30)** Eastern gray treefrog (Hyla versicolor).
~~(30)~~ **(31)** Spring peeper (Pseudacris crucifer).
~~(31)~~ ~~Striped~~ **(32) Western** chorus frog (Pseudacris triseriata).
~~(32)~~ **(33)** Crawfish frog (Rana areolata).
~~(33)~~ **(34)** Plains leopard frog (Rana blairi).
~~(34)~~ **(35)** Bullfrog (Rana catesbeiana).
~~(35)~~ **(36)** Green frog (Rana clamitans).
~~(36)~~ **(37)** Northern leopard frog (Rana pipiens).
~~(37)~~ **(38)** Pickerel frog (Rana palustris).
~~(38)~~ **(39)** Southern leopard frog (Rana utricularia).
~~(39)~~ **(40)** Wood frog (Rana sylvatica).
~~(40)~~ **(41)** Common snapping turtle (Chelydra serpentina serpentina).
~~(41)~~ **(42)** Smooth softshell turtle (Apalone mutica).
~~(42)~~ **(43)** Spiny softshell turtle (Apalone spinifera).
~~(43)~~ **(44)** Alligator snapping turtle ~~(Macroclemys~~ **(Macrochelys** temmincki).
~~(44)~~ **(45)** Eastern mud turtle (Kinosternon subrubrum).
~~(45)~~ **(46) Common** musk turtle (Sternotherus odoratus).
~~(46)~~ **(47)** Midland painted turtle (Chrysemys picta marginata).
~~(47)~~ **(48)** Western painted turtle (Chrysemys picta bellii).
~~(48)~~ **(49)** Spotted turtle (Clemmys guttata).
~~(49)~~ **(50)** Blanding's turtle (Emydoidea blandingii).
~~(50)~~ **(51) Common** map turtle (Graptemys geographica).
~~(51)~~ **(52)** False map turtle (Graptemys pseudogeographica).
~~(52)~~ **(53)** Ouachita map turtle (Graptemys ouachitensis).

~~(53) Heiroglyphic~~ **(54) Hieroglyphic** river cooter (Pseudemys concinna).
~~(54)~~ **(55)** Eastern box turtle (Terrapene carolina).
~~(55)~~ **(56)** Ornate box turtle (Terrapene ornata).
~~(56)~~ **(57)** Red-eared slider (Trachemys scripta elegans).
~~(57)~~ **(58)** Eastern fence lizard (Sceloporus undulatus).
~~(58)~~ **(59)** Slender glass lizard (Ophisaurus attenuatus).
~~(59)~~ **(60)** Six-lined racerunner (Cnemidophorus sexlineatus).
~~(60)~~ **(61)** Five-lined skink (Eumeces fasciatus).
~~(61) Broad-headed~~ **(62) Broadhead** skink (Eumeces laticeps).
~~(62)~~ **(63)** Ground skink (Scincella lateralis).
~~(63)~~ **(64) Eastern** worm snake (Carphophis amoenus).
~~(64)~~ **(65)** Scarlet snake (Cemophora coccinea).
~~(65)~~ **(66)** Racer (Coluber constrictor).
~~(66)~~ **(67)** Kirtland's snake (Clonophis kirtlandii).
~~(67) Northern~~ **(68)** Ringneck snake (Diadophis punctatus).
~~(68) Black~~ **(69) Midland** rat snake, **also known as the black rat snake** (Elaphe ~~obsoleta obsoleta).~~ **spiloides).**
~~(69) Gray~~ **(70) Western** rat snake (Elaphe ~~obsoleta spiloides).~~ **obsolete).**
~~(70)~~ **(71)** Western fox snake (Elaphe vulpina vulpina).
~~(71)~~ **(72)** Mud snake (Farancia abacura).
~~(72)~~ **(73)** Eastern hognose snake (Heterodon platirhinos).
~~(73)~~ **(74)** Prairie kingsnake (Lampropeltis calligaster calligaster).
~~(74)~~ **(75)** Black kingsnake (Lampropeltis getula nigra).
~~(75)~~ **(76)** Eastern milk snake (Lampropeltis triangulum triangulum).
~~(76)~~ **(77)** Red milk snake (Lampropeltis triangulum syspila).
~~(77) Northern~~ **(78)** Copperbelly **water snake** (Nerodia erythrogaster).
~~(78)~~ **(79)** Diamondback water snake (Nerodia rhombifer).
~~(79)~~ **(80)** Northern ~~banded~~ water snake (Nerodia sipedon).
~~(80)~~ **(81)** Rough green snake (Opheodrys aestivus).
~~(81)~~ **(82)** Smooth green snake ~~(Lioclorophis~~ **(Liochlorophis** vernalis).
~~(82)~~ **(83)** Bull snake (Pituophis catenifer sayi).
~~(83)~~ **(84)** Queen snake (Regina septemvittata).
~~(84)~~ **(85)** Brown snake (Storeria dekayi).
~~(85) Redbellied~~ **(86) Redbelly** snake (Storeria occipitomaculata).
~~(86)~~ **(87) Southeastern** crowned snake (Tantilla coronata).
~~(87)~~ **(88)** Butler's garter snake (Thamnophis butleri).
~~(88)~~ **(89)** Western ribbon snake (Thamnophis proximus).
~~(89)~~ **(90)** Plains garter snake (Thamnophis radix).
~~(90)~~ **(91)** Eastern ribbon snake (Thamnophis sauritus).
~~(91)~~ **(92)** Common garter snake (Thamnophis sirtalis).
~~(92) Western~~ **(93) Smooth** earthsnake (Virginia valeriae).
~~(93)~~ **(94)** Northern copperhead (Agkistrodon contortrix).
~~(94)~~ **(95)** Cottonmouth moccasin (Agkistrodon piscivorus).
~~(95)~~ **(96)** Timber rattlesnake (Crotalus horridus).
~~(96)~~ **(97)** Massasauga (Sistrurus catenatus).

(d) As used in this section, "sale" means **either of the following:**

(1) Barter, purchase, trade, or offer to sell, barter, purchase, or trade. ~~or~~

(2) Serving as part of a meal by a restaurant, a hotel, a boarding house, or the keeper of an eating house. However, a hotel, a boarding house, or the keeper of an eating house may prepare and serve during open season to:

(A) a guest, patron, or boarder; and

(B) the family of the guest, patron, or boarder;

a reptile or amphibian legally taken by the guest, patron, or boarder during the open season.

(e) As used in this section, "transport" means to move, carry, or ship a wild animal protected by law by any means and for any common or contract carrier knowingly to move, carry, or receive for shipment a wild animal protected by law.

(f) A reptile or amphibian that is not on a state or federal endangered or threatened species list and with a color morphology that is:

(1) albinistic (an animal lacking brown or black pigment);

(2) leucistic (a predominately white animal); or

(3) xanthic (a predominately yellow animal);

is exempted from this section if it was not collected from the wild.

(g) Exempted from this section is an institution governed by, and in compliance with, the Animal Welfare Act (7 U.S.C. 2131, et seq.) and 9 CFR 2.30 through 9 CFR 2.38 (January 1, 1998 edition). To qualify for the exemption, the institution must have an active Assurance of Compliance on file with the Office for the Protection of Risk, U.S. Department of Health and Human Services.

(h) Exempted from this section is a sale made under a reptile captive breeding license governed by section 9 of this rule.

(i) Exempted from this section is the sale to and purchase of reptiles or amphibians by a public school accredited under ~~IC 20-1-1.6(8)~~ **IC 20-1-1-6(a)(5)** *[IC 20-1 was repealed by P.L.1-2005, SECTION 240, effective July 1, 2005. See IC 20-19-2-8.]* or nonpublic school accredited under ~~IC 20-1-1.6(11)~~ **IC 20-1-1-6(a)(9)** *[IC 20-1 was repealed by P.L.1-2005, SECTION 240, effective July 1, 2005. See IC 20-19-2-8.]* and ~~IC 20-1-1.6-2.~~ **IC 20-1-1-6.2** *[IC 20-1 was repealed by P.L.1-2005, SECTION 240, effective July 1, 2005. See IC 20-19-2-10.]*. This exemption does not authorize the sale of reptiles or amphibians by a public school or a nonpublic school.

(j) Exempted from this section is the sale and purchase of a bullfrog (Rana catesbeiana) tadpole or green frog (Rana clamitans) tadpole produced by a resident holder of a hauler and supplier permit or an aquaculture permit if the tadpole is a byproduct of a fish production operation. As used in this subsection, ~~a~~ "tadpole" ~~is~~ **means** the larval life stage of a frog for the period in which the tail portion of the body is at least one (1) inch long.

(k) A person who is transporting native reptiles and amphibians in interstate commerce, to be sold outside Indiana, is exempted from this section. *(Natural Resources Commission; 312 IAC 9-5-7; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3673; errata filed Oct 26, 1999, 2:40 p.m.: 23 IR 589; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1535; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 543; filed May 25, 2005, 10:15 a.m.: 28 IR 2948)*

SECTION 6. 312 IAC 9-5-9, AS AMENDED AT 28 IR 545, SECTION 18, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-9 Reptile captive breeding license

Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17
Affected: IC 14-22

Sec. 9. (a) This section establishes the reptile captive breeding license and sets the requirements for a person who wishes to apply for and maintain the license.

(b) The application must be made on a department form.

(c) The annual fee for a license under this section is fifteen dollars ($15).

(d) An application for a license under this section must be made within thirty (30) days of the effective date of this section for a reptile described in subsection (e) and possessed by the applicant before the effective date of this section. Any subsequent license application must be made within five (5) days after the applicant took possession of the first reptile described in subsection (e) and taken for captive breeding purposes.

(e) A reptile captive breeding license authorizes a person who holds the license to possess, breed, and sell the snakes listed in this section. In the following list, where both scientific names and common names are provided, common names are for public convenience, but the scientific names control:

(1) ~~Black~~ **Midland** rat snake, **also known as the black rat snake** (Elaphe ~~obsolcta~~ ~~obsolcta).~~ **spiloides).**
(2) Western fox snake (Elaphe vulpina).
(3) Eastern hognose snake (Heterodon platirhinos).
(4) Prairie kingsnake (Lampropeltis calligaster calligaster).
(5) Black kingsnake (Lampropeltis getula nigra).
(6) Eastern milk snake (Lampropeltis triangulum triangulum).
(7) Red milk snake (Lampropeltis triangulum syspila).
(8) Bull snake (Pituophis catenifer sayi).
(9) A snake that is not on a state or federal endangered or threatened species list and with a color morphology that is:
(A) albinistic (an animal lacking brown or black pigment);
(B) leucistic (a predominately white animal); or
(C) xanthic (a predominately yellow animal);
if it was not collected from the wild.

(f) Captive breeding stock other than a reptile described in subsection (e)(9) must be identified with an individually unique passive integrated transponder. A transponder must be implanted in each specimen. The type of transponder shall be approved by the commission. The imbedded transponder's code and other required information concerning the general health and condition of the animal must be provided on a departmental form, and **be** verified by a supervising veterinarian, within fourteen (14) days after obtaining the animal.

(g) A reptile held under this section must be confined in a cage or other enclosure that makes escape of the animal unlikely. Each animal must be provided with ample space and kept in a sanitary and humane manner. Animals and cages must be made available for inspection upon request by a conservation officer.

(h) Each animal possessed under this section must be lawfully acquired. No more than four (4) animals of each species described in subsection (e) may be collected annually from the wild. A receipted invoice, bill of lading, or other satisfactory evidence of lawful acquisition for animals not taken from the wild shall be presented to a conservation officer upon request. A person licensed under this section who collects an animal from the wild must document, on a departmental form, when and where the animal was collected. The animal must be fitted with a passive integrated transponder within fourteen (14) days of taking possession.

(i) A person licensed under this section must not possess an animal larger than the maximum sale length described in this subsection unless the animal is fitted with a transponder as part of the breeding stock of the person. Captive-bred offspring may only be sold before an individual attains the following total length:

(1) Fifteen (15) inches for an eastern hognose snake.
(2) Eighteen (18) inches for ~~a~~ **any of the following:**
(A) A black rat snake.
(B) A western fox snake.
(C) A black kingsnake.
(D) A prairie kingsnake.
(E) An eastern milk snake. ~~or~~
(F) A red milk snake.
(3) Twenty-eight (28) inches for a bull snake.

(j) A person licensed under this section must maintain accurate records on a calendar year basis on the number and disposition of breeding stock and captive breed young. The records shall include the species and number of animals captured, received, or sold and the birth dates of captive born animals. In addition, the records shall include the complete name and complete address of the person from whom an animal was purchased or to whom an animal was sold. The records shall be maintained at the place of business of the license holder for at least two (2) years after the end of the license year. Upon request by a conservation officer, the license holder must make the records available for inspection.

(k) A person licensed under this section must not release to

the wild a captive breeder or the offspring of a captive breeder. *(Natural Resources Commission; 312 IAC 9-5-9; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3675; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 545; filed May 25, 2005, 10:15 a.m.: 28 IR 2950)*

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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 #04-270(F)

DIGEST

Amends 312 IAC 18-3-12, which governs standards for the control of larger pine shoot beetles, by adding Decatur County, Jennings County, Ripley County, Union County, and Vigo County to the quarantine area. Effective 30 days after filing with the secretary of state.

312 IAC 18-3-12

SECTION 1. 312 IAC 18-3-12 IS AMENDED TO READ AS FOLLOWS:

312 IAC 18-3-12 Control of larger pine shoot beetles

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

Sec. 12. (a) The larger pine shoot beetle (Tomicus piniperda) is a pest or pathogen. This section governs standards for the control of the larger pine shoot beetle in Indiana.

(b) Except as provided in subsection (c), the division has determined Indiana is an infested area where the larger pine shoot beetle is present.

(c) Exempted from subsection (b) are the following counties:
(1) Clark.
(2) Clay.
(3) Crawford.
(4) Daviess.
(5) Dearborn.
~~(6) Decatur.~~
~~(7)~~ **(6)** Dubois.
~~(8)~~ **(7)** Floyd.
~~(9)~~ **(8)** Gibson.
~~(10)~~ **(9)** Greene.
~~(11)~~ **(10)** Harrison.
~~(12)~~ **(11)** Jackson.
~~(13)~~ **(12)** Jefferson.
~~(14) Jennings.~~
~~(15)~~ **(13)** Knox.
~~(16)~~ **(14)** Lawrence.
~~(17)~~ **(15)** Martin.
~~(18)~~ **(16)** Ohio.
~~(19)~~ **(17)** Orange.
~~(20)~~ **(18)** Perry.
~~(21)~~ **(19)** Pike.
~~(22)~~ **(20)** Posey.
~~(23) Ripley.~~
~~(24)~~ **(21)** Scott.
~~(25)~~ **(22)** Spencer.
~~(26)~~ **(23)** Sullivan.
~~(27)~~ **(24)** Switzerland.
~~(28) Union.~~
~~(29)~~ **(25)** Vanderburgh.
~~(30) Vigo.~~
~~(31)~~ **(26)** Warrick.
~~(32)~~ **(27)** Washington.

(d) The following items are regulated articles:
(1) The larger pine shoot beetle in any life stage.
(2) Entire plants or parts of the genus pine (Pinus spp.). Exempted from this subdivision are plants that conform to each of the following:
(A) Are less than thirty-six (36) inches high.
(B) Are one (1) inch in basal diameter or less.
(3) Logs and lumber of pine with bark attached. Exempted from this subdivision are logs of pine and pine lumber with bark attached if:
(A) the source tree was felled during the period of July through October; and
(B) the logs and lumber are shipped from the quarantined area during the period of July through October.
(4) Any other article, product, or means of conveyance if determined by the division director to present the risk of spread of the larger pine shoot beetle.

(e) The following actions are ordered within the infested area:
(1) The movement by a person of a regulated article to a destination outside the infested area is prohibited, except under the following conditions:
(A) A thorough examination of all nursery stock takes place on a piece by piece basis.
(B) A statistically based examination of Christmas trees is made according to the following schedules:

TABLE 1. PAINTED (COLOR-ENHANCED) PINE CHRISTMAS TREES[1]

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 72	All	700 – 800	120
73 – 100	73	801 – 900	121
101 – 200	96	901 – 1,000	122
201 – 300	106	1,001 – 2,000	126
301 – 400	111	2,001 – 3,000	127
401 – 500	115	3,001 – 5,000	128
501 – 600	117	5,001 – 10,000	129
601 – 700	119	10,001 or more	130

[1]If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping or must be fumigated prior to January 1.".

TABLE 2. NATURAL (UNPAINTED) CHRISTMAS TREES[1]

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 57	All	501 – 600	80
58 – 100	58	601 – 700	81
101 – 200	69	701 – 1,000	82
201 – 300	75	1,001 – 3,000	84
301 – 400	77	3,001 – 10,000	85
401 – 500	79	10,001 or more	86

[1]If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping or must be fumigated prior to January 1.".

(C) Following the examination, a determination is made that no life stages of the larger pine shoot beetle are present. The determination must be accompanied by either of the following:

(i) A certificate of inspection approved by the division.

(ii) A certificate or similar authorization issued by the U.S. Department of Agriculture under a parallel federal quarantine.

(D) The certificate for the absence of the larger pine shoot beetle must be attached to and remain on the regulated articles until the articles reach their destinations. This requirement is, however, satisfied if the certificate is attached to the shipping document and the regulated article is adequately described on the shipping document of the certificate.

(2) A regulated article originating outside the infested area may move through the infested area without a certificate of inspection if the point of origin of the regulated article is indicated on the waybill or shipping documents and transportation conforms with this subdivision. Passage through the infested area must be made without stopping, except for refueling or traffic conditions, and shall be conducted within either of the following conditions:

(A) The ambient temperature is below fifty (50) degrees Fahrenheit.

(B) The regulated article is carried in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle. Examples of an adequate covering include canvas, plastic, or loosely woven cloth.

(3) A regulated article originating outside the infested area ~~which~~ **that** is moved into the infested area and exposed to potential infestation by the larger pine shoot beetle is considered to have originated from the infested area. Any regulated article under this subdivision is controlled by subdivision (1).

(4) The movement of a regulated article from an infested area through any noninfested area to another infested area is prohibited without a certificate for the absence of the larger pine shoot beetle except where both of the following conditions are met:

(A) Passage through a noninfested area is made without stopping, except for refueling or traffic conditions, if the ambient temperature is below fifty (50) degrees Fahrenheit or if in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle.

(B) The waybill or shipping documents accompanying any shipment of regulated articles within or through Indiana indicate the county and state of origin of the regulated articles.

(5) Any regulated article imported or moved within Indiana in violation of this section shall be immediately removed from any noninfested area or destroyed. The expense of compliance with this subdivision is the joint and several responsibility of any person possessing or owning the regulated article. Compliance with this subsection shall be performed under the direction of the division director.

(6) In addition to the penalty set forth in subdivision (5), a person who violates this section is subject to any administrative, civil, or criminal sanction set forth in IC 14-24 and this article.

(7) This section does not preclude the division director from issuing any permit under section 3 of this rule.

(Natural Resources Commission; 312 IAC 18-3-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; filed Dec 3, 1997, 3:30 p.m.:21 IR 1273; filed Feb 9, 1999, 4:16 p.m.: 22 IR 1945; filed Apr 4, 2001, 3:02 p.m.: 24 IR 2404; filed May 16, 2002, 12:28 p.m.:25 IR 3049; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 19, 2003, 8:50 a.m.: 26 IR 3313; filed May 25, 2005, 10:30 a.m.: 28 IR 2951)

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TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #00-236(F)

DIGEST

Amends 326 IAC 7-1.1-1 concerning applicability, 326 IAC 7-1.1-2 concerning sulfur dioxide limitations, and 326 IAC 7-2-1 concerning reporting requirements and methods to determine compliance. Adds 326 IAC 7-4.1 concerning Lake County sulfur dioxide emission limitations. Repeals 326 IAC 7-4-1.1. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 2000, Indiana Register (24 IR 554).

Second Notice of Comment Period: June 1, 2003, Indiana Register (26 IR 3151).

Notice of First Hearing: August 1, 2004 (27 IR 3590).

Date of First Hearing: October 6, 2004.

Proposed Rule and Notice of Third Comment Period and Second Hearing: November 1, 2004, Indiana Register (28 IR 627).

Change of Notice of Second Hearing: December 1, 2005, Indiana Register (28 IR 982).

Change in Notice of Second Hearing (Continuation): March 1, 2005, Indiana Register (28 IR 1710)

Date of Second Hearing: March 2, 2005.

326 IAC 7-1.1-1 **326 IAC 7-4-1.1**
326 IAC 7-1.1-2 **326 IAC 7-4.1**
326 IAC 7-2-1

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

326 IAC 7-1.1-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. All ~~facilities~~ **emissions units** with a potential to emit twenty-five (25) tons per year or ten (10) pounds per hour of sulfur dioxide shall comply with **the following:**

(1) The limitations in section 2 of this rule. ~~and~~

(2) The compliance test methods in 326 IAC 7-2. ~~The above facilities shall also comply with~~

(3) The sulfur dioxide emission limitations and other requirements ~~pursuant to~~ **under** 326 IAC 2, 326 IAC 7-4, **326 IAC 7-4.1,** and 326 IAC 12.

(Air Pollution Control Board; 326 IAC 7-1.1-1; filed Aug 28, 1990, 4:50 p.m.: 14 IR 52; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2368; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1600; filed May 25, 2005, 10:50 a.m.: 28 IR 2953)

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

326 IAC 7-1.1-2 Sulfur dioxide emission limitations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 2. (a) Sulfur dioxide emissions from fuel combustion ~~facilities~~ **emissions units** shall be limited as follows, unless specified otherwise in 326 IAC 7-4, **326 IAC 7-4.1,** or in a construction permit issued ~~pursuant to~~ **under** 326 IAC 2:

(1) Six and zero-tenths (6.0) pounds per million ~~(Btu)~~ **British thermal units (MMBtu)** for coal combustion.

(2) One and six-tenths (1.6) pounds per ~~million Btu~~ **MMBtu** for residual oil combustion.

(3) Five-tenths (0.5) pound per ~~million Btu~~ **MMBtu** for distillate oil combustion.

(b) For ~~facilities~~ **emissions units** combusting coal and oil simultaneously, the sulfur dioxide emission limitation shall be six and zero-tenths (6.0) pounds per ~~million Btu~~ **MMBtu.** For ~~facilities~~ **emissions units** combusting oil and any fuel other than coal simultaneously, the sulfur dioxide emission limitation shall be the limitation specified in subsection (a)(2) or (a)(3), depending on the type of oil combusted. For the purposes of this subsection, simultaneous combustion of coal and oil shall include those periods of startup, shutdown, and flame stabilization required under normal ~~facility~~ operations. *(Air Pollution Control Board; 326 IAC 7-1.1-2; filed Aug 28, 1990, 4:50 p.m.: 14 IR 52; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2369; filed Dec 20, 2001, 4:30 p.m.: 25 IR 1600; filed May 25, 2005, 10:50 a.m.: 28 IR 2953)*

SECTION 3. 326 IAC 7-2-1, AS AMENDED AT 28 IR 42, SECTION 30, IS AMENDED TO READ AS FOLLOWS:

326 IAC 7-2-1 Reporting requirements; methods to determine compliance

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

Sec. 1. (a) As used in this article, ~~"weighing~~ **"weighting** factor" means the daily quantity of coal bunkered or megawatt generation or other appropriate measure of the output of a combustion source.

(b) As used in this article, "rolling weighted average sulfur dioxide emission rate" means the summation of the average sulfur dioxide emission rate times the daily ~~weighing~~ **weighting** factor divided by the summation of the ~~weighing~~ **weighting** factors.

(c) Owners or operators of sources or ~~facilities~~ **emissions**

units subject to 326 IAC 7-1.1, ~~or~~ 326 IAC 7-4, **or 326 IAC 7-4.1** shall submit to the commissioner the following reports based on fuel sampling and analysis data obtained in accordance with procedures specified under 326 IAC 3-7:

(1) Fuel combustion sources with total coal-fired heat input capacity greater than or equal to one thousand five hundred (1,500) million British thermal units ~~(Btus)~~ **(MMBtu)** per hour shall submit quarterly reports of the thirty (30) day rolling weighted average sulfur dioxide emission rate in pounds per ~~million Btus.~~ **MMBtu.** Records of the daily average coal sulfur content, coal heat content, ~~weighing~~ **weighting** factor, and daily average sulfur dioxide emission rate in pounds per ~~million Btus~~ **MMBtu** shall be submitted to the department in the quarterly report and maintained by the source owner or operator for a period of at least two (2) years.

(2) Fuel combustion sources with total coal-fired heat input capacity greater than one hundred (100) and less than one thousand five hundred (1,500) ~~million Btus~~ **MMBtu** per hour shall submit quarterly reports of the calendar month average coal sulfur content, coal heat content, and sulfur dioxide emission rate in pounds per ~~million Btus~~ **MMBtu** and the total monthly coal consumption.

(3) All other fuel combustion sources shall submit reports of calendar month average sulfur content, heat content, fuel consumption, and sulfur dioxide emission rate in pounds per ~~million Btus~~ **MMBtu** upon request.

(d) Compliance or noncompliance with the emission limitations contained in 326 IAC 7-1.1, ~~or~~ 326 IAC 7-4, **or 326 IAC 7-4.1** may be determined by a stack test conducted in accordance with 326 IAC 3-6 utilizing procedures outlined in 40 CFR 60, Appendix A, Method 6*, 6A*, 6C*, or 8*.

(e) Fuel sampling and analysis data shall be collected pursuant to the procedures specified in 326 IAC 3-7-2 or 326 IAC 3-7-3 for coal combustion or 326 IAC 3-7-4 for oil combustion, and these data may be used to determine compliance or noncompliance with the emission limitations contained in 326 IAC 7-1.1, ~~or~~ 326 IAC 7-4, **or 326 IAC 7-4.1.** Computation of calculated sulfur dioxide emission rates from fuel sampling and analysis data shall be based on the emission factors contained in U.S. EPA publication AP-42* unless other emission factors based on site-specific sulfur dioxide measurements are approved by the commissioner and the U.S. EPA. Fuel sampling and analysis data shall be collected as follows:

(1) For coal-fired fuel combustion sources with heat input capacity greater than or equal to one thousand five hundred (1,500) ~~million Btus~~ **MMBtu** per hour, compliance or noncompliance shall be determined using a thirty (30) day rolling weighted average sulfur dioxide emission rate in pounds per ~~million Btus~~ **MMBtu** unless a shorter averaging time or alternate averaging methodology is specified for a source under this article.

(2) For all other combustion sources, compliance or noncompliance shall be determined using a calendar month average sulfur dioxide emission rate in pounds per ~~million Btus~~ **MMBtu** unless a shorter averaging time or alternate averaging methodology is specified for a source under this article.

(f) A determination of noncompliance ~~pursuant to~~ **under** either the method specified in subsection (d) or (e) shall not be refuted by evidence of compliance ~~pursuant to~~ **under** the other method.

(g) Upon written notification of ~~a facility~~ **an emissions unit** owner or operator to the department, continuous emission monitoring data collected and reported ~~pursuant to~~ **under** 326 IAC 3-5 may be used as the means for determining compliance with the emission limitations in this article. Upon such notification, the other requirements of this rule shall not apply.

*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 7-2-1; filed Aug 28, 1990, 4:50 p.m.: 14 IR 52; filed Jan 30, 1998, 4:00 p.m.: 21 IR 2078; errata filed Feb 9, 1999, 4:06 p.m.: 22 IR 2006; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; errata filed Nov 7, 2001, 3:00 p.m.: 25 IR 813; errata filed Dec 12, 2002, 3:30 p.m.: 26 IR 1565; filed Aug 26, 2004, 11:30 a.m.: 28 IR 42; filed May 25, 2005, 10:50 a.m.: 28 IR 2953)*

SECTION 4. 326 IAC 7-4.1 IS ADDED TO READ AS FOLLOWS:

Rule 4.1. Lake County Sulfur Dioxide Emission Limitations

326 IAC 7-4.1-1 Lake County sulfur dioxide emission limitations

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

Sec. 1. All new and existing fossil fuel-fired combustion sources and emissions units subject to 326 IAC 7-1.1 located in Lake County shall burn natural gas only unless an alternate sulfur dioxide emission limit is provided in this rule. An emissions unit subject to 326 IAC 7-1.1, but not located at a source specifically listed in this rule, may burn distillate oil with sulfur dioxide emissions limited to three-tenths (0.3) pound per million British thermal units (MMBtu) if the fuel combustion unit has a maximum capacity of less than twenty (20) MMBtu per hour actual heat input. *(Air Pollution Control Board; 326 IAC 7-4.1-1; filed May 25, 2005, 10:50 a.m.: 28 IR 2954)*

326 IAC 7-4.1-2 Sampling and analysis protocol

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

Sec. 2. (a) BP Products North America Inc., Cargill, Inc., Carmeuse Lime, Cokenergy, Inc., Indiana Harbor Coke Company, ISG Indiana Harbor Inc., Ispat Inland Inc., Safety-Kleen Oil Recovery Company, U.S. Steel-Gary Works, and Walsh and Kelly shall submit a sampling and analysis protocol to the department by July 1, 2006.

(b) The protocol shall:

(1) contain a description of planned procedures for:

(A) sampling of sulfur-bearing fuels and materials;

(B) analysis of the sulfur content; and

(C) any planned direct measurement of sulfur dioxide emissions vented to the atmosphere; and

(2) specify the frequency of sampling, analysis, and measurement for each fuel and material and for each emissions unit.

(c) The department shall incorporate the protocol into the source's Title V or other appropriate permit per procedures specified in 326 IAC 2. The protocol may be revised as necessary with approval by the department.

(d) The department may also require that a source listed in this section conduct a stack test at any emissions unit within sixty (60) days of written notification by the department. *(Air Pollution Control Board; 326 IAC 7-4.1-2; filed May 25, 2005, 10:50 a.m.: 28 IR 2954)*

326 IAC 7-4.1-3 BP Products North America Inc. sulfur dioxide emission limitations

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) BP Products North America Inc., Source Identification Number 00003, shall comply with the sulfur dioxide emission limits in pounds per million British thermal units (MMBtu), pounds per hour, and other requirements as follows:

Emissions Unit Description	Emission Limit lbs/MMBtu	Emission Limit lbs/hour
(1) No. 1 Power Station Boilers 3, 4, 5, 6, and 7:		
(A) Boilers 3 and 4	0.033 each	17.49 total
(B) Boilers 5, 6, and 7	0.033 each	26.24 total
(2) No. 3 Power Station Boilers 1, 2, 3, 4, and 6	0.033 each	18.98 each
(3) No. 11 Pipe Still:		
(A) H-1X Heater	0.033	8.25
(B) H-2 Vacuum Heater	0.033	1.49
(C) H-3 Vacuum Heater	0.033	1.82
(D) H-101, 102, 103, and 104 Coker Preheaters	0.033 each	6.60 total
(E) H-200 Crude Charge	0.033	8.23
(F) H-300 Furnace	0.033	5.94
(4) No. 12 Pipe Still:		
(A) H-1A, H-1B Preheaters, and H-2 Vacuum Heater	0.033 each	21.78 total
(B) H-1CN and H-1CS Crude Preheaters	0.033 each	7.92 total
(C) H-1CX	0.033	13.53
(5) No. 2 Isomerization H-1 Feed Heater Furnace	0.034	6.46
(6) No. 3 Ultraformer:		
(A) H-1 Feed Heater Furnace	0.033	7.92
(B) H-2 Feed Heater Furnace	0.034	6.29
(C) F-7 Furnace	0.035	0.81
(7) No. 4 Ultraformer:		
(A) F-1 Ultraformer Furnace, F-8A and F-8B Reboilers	0.033 each	13.00 total
(B) F-2 Preheat Furnace	0.033	9.44
(C) F-3 No. 1 Reheat Furnace	0.033	7.99
(D) F-4, F-5, and F-6 Reheat Furnaces	0.033 each	9.41 total
(E) F-7 Furnace	0.033	1.72
(8) Aromatic Recovery Unit F-200A and F-200B Furnace	0.035 each	17.47 total
(9) Blending Oil Desulfurization Furnace F-401	0.034	1.19
(10) Catalytic Refining Unit:		
(A) F-101 Feed Preheater	0.04	2.88
(B) F-102a Stripper Reboiler	0.04	2.40

(11) FCU 500		750.00
(12) FCU 600		437.50
(13) Wastewater Sludge Fluid Bed Incinerator		1.78
(14) Catalytic Feed Hydrotreating Unit:		
(A) F-801 A/B Preheater Furnace	0.035	2.33
(B) F-801 C Preheater Furnace	0.035	2.1
(15) Beavon-Stretford Tail Gas Unit		53.10 total reduced sulfur
(16) Sodium Bisulfite Tail Gas Unit		9.0
(17) Sulfur Recovery Unit Incinerator	0.033	1.25
(18) F-1 Asphalt Heater	0.033	0.43
(19) F-2 Steiglitz Park Residual Heater	0.033	0.90
(20) Distillate Desulfurization Unit Heaters WB-301 and WB-302	0.033 each	4.24 total
(21) Hydrogen Unit B-1	0.033	12.09

(b) BP Products North America Inc. shall:

(1) maintain daily records of:

(A) fuel type, average sulfur content, and average fuel gravity for each emissions unit specified in this section with sulfur dioxide emission limitations less than or equal to four-hundredths (0.04) pound per MMBtu;

(B) calculated coke burn and sulfur content of the coke for the FCU 500 and FCU 600;

(C) total reduced sulfur concentration, hydrogen sulfide concentration, and calculated stack gas flow rate for the Beavon-Stretford Tail Gas Unit; and

(D) sulfur dioxide concentration and stack gas flow rate for the Sodium Bisulfite Tail Gas Unit; and

(2) submit a report to the department within thirty (30) days after the end of each calendar quarter containing the average daily sulfur dioxide emission rate in pounds per hour sulfur dioxide for the emissions units specified in this section, except for the Beavon-Stretford Tail Gas Unit, that is to be reported as pounds per hour total reduced sulfur calculated as sulfur dioxide.

(Air Pollution Control Board; 326 IAC 7-4.1-3; filed May 25, 2005, 10:50 a.m.: 28 IR 2955)

326 IAC 7-4.1-4 Bucko Construction sulfur dioxide emission limitations

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

Sec. 4. Bucko Construction, Source Identification Number 00179, shall comply with the sulfur dioxide emission limits for the Rotary Dryer of four-hundredths (0.04) pound per ton asphalt and ten (10) pounds per hour. *(Air Pollution Control Board; 326 IAC 7-4.1-4; filed May 25, 2005, 10:50 a.m.: 28 IR 2956)*

326 IAC 7-4.1-5 Cargill, Inc. sulfur dioxide emission limitations

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) Cargill, Inc., Source Identification Number 00203, shall comply with the sulfur dioxide emission limits in pounds per million British thermal units (MMBtu) and pounds per hour as follows:

(1) Boilers 6, 7, 8, and 10 shall be limited to one and four thousand three hundred seventy-five ten-thousandths (1.4375) pounds per MMBtu and five hundred eighty-four (584) pounds per hour for all four (4) boilers.

(2) By one (1) year from the effective date of this rule, other emissions units shall be limited as follows:

Emissions Unit Description	Emissions Unit Identification	Emission Limit lbs/hour
(A) Gluten Dryer System	121-01-G	9.13
(B) Waxy Feed Drum Dryer	124-01	2.28
(C) Fiber Dryer and Drying Equipment	89-01-G	9.13
(D) Rotary Feed Dryer	89-03	6.85
(E) Germ Dryer 1st Stage	21-A-02	1.14
(F) Germ Dryer 2nd Stage	51-A-02	1.14
(G) Germ Dryer	124-A-01	9.13
(H) Carbon Regen Furnace	104-01-R	4.57
(I) Biogas Flare	800-04-E	9.13

(b) Cargill, Inc. shall:

(1) maintain records of average sulfur content, fuel oil usage, and boiler operating load for each hour in which any boiler operates on fuel oil;

(2) submit a report to the department within thirty (30) days after the end of each calendar quarter containing the records listed in subdivision (1) and a calculation of the total sulfur dioxide emissions from Boilers 6, 7, 8, and 10 for each hour; and

(3) submit a quarterly report of the twelve (12) month rolling total of all sulfur dioxide emissions in tons per year.

(Air Pollution Control Board; 326 IAC 7-4.1-5; filed May 25, 2005, 10:50 a.m.: 28 IR 2956)

326 IAC 7-4.1-6 Carmeuse Lime sulfur dioxide emission limitations

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

Sec. 6. (a) Carmeuse Lime, Source Identification Number 00112, shall comply with the sulfur dioxide emission limits for Rotary Kilns 1 through 5 as follows:

(1) When three (3) or fewer kilns are in operation at the same time, the sulfur dioxide emissions are not to exceed:

(A) two and ninety-four thousandths (2.094) pounds per ton of lime based on a one (1) hour average; and

(B) forty-eight (48) pounds per hour per operating kiln.

(2) When four (4) kilns are in operation at the same time, the sulfur dioxide emissions are not to exceed:

(A) one and seven hundred forty-five thousandths (1.745) pounds per ton of lime based on a one (1) hour average; and

(B) forty (40) pounds per hour per operating kiln.

(3) When five (5) kilns are in operation at the same time, the sulfur dioxide emissions are not to exceed:

(A) one and four hundred eighty-three thousandths (1.483) pounds per ton of lime based on a one (1) hour average; and

(B) thirty-four (34) pounds per hour per operating kiln.

(4) The production of lime is not to exceed five hundred fifty (550) tons per day for each rotary kiln.

(b) Sulfur dioxide emissions shall be vented from the kilns/kiln gas filter systems at the following heights above grade:

(1) For Kiln No. 1, a stack height of seventy-nine and one-tenth (79.1) feet.

(2) For Kiln No. 2, a stack height of eighty-five and nine-tenths (85.9) feet.

(3) For Kiln No. 3, a stack height of eighty-six and zero-tenths (86.0) feet.

(4) For Kiln No. 4, a stack height of ninety-four and four-tenths (94.4) feet.

(5) For Kiln No. 5, a stack height of eighty-seven and four-tenths (87.4) feet.

(Air Pollution Control Board; 326 IAC 7-4.1-6; filed May 25, 2005, 10:50 a.m.: 28 IR 2956)

326 IAC 7-4.1-7 Cokenergy Inc. sulfur dioxide emission limitations

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

Sec. 7. Cokenergy Inc., Source Identification Number 00383, shall comply with the sulfur dioxide emission limit in pounds per hour for the heat recovery coke carbonization waste gas stack, identified as Stack ID 201, combined with the sixteen (16) vents from the Indiana Harbor Coke Company of a twenty-four (24) hour average emission rate of one thousand six hundred fifty-six (1,656) pounds per hour. *(Air Pollution Control Board; 326 IAC 7-4.1-7; filed May 25, 2005, 10:50 a.m.: 28 IR 2957)*

326 IAC 7-4.1-8 Indiana Harbor Coke Company sulfur dioxide emission limitations

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

Sec. 8. (a) Indiana Harbor Coke Company (IHCC), Source Identification Number 00382, shall comply with the sulfur dioxide emission limits in pounds per ton, pounds per hour, and other requirements as follows:

Emissions Unit Description	Emission Limit lbs/ton	Emission Limit lbs/hour
(1) IHCC Coal Carbonization Charging	0.0068 each	1.57 total
(2) IHCC Coal Carbonization Pushing	0.0084	1.96
(3) IHCC Coal Carbonization Quenching	0.0053	1.232 total
(4) IHCC Coal Carbonization Thaw Shed	0.0006 lbs/1,000 cubic feet natural gas	0.015
(5) IHCC Vent Stacks (16 total) in combination with Cokenergy's heat recovery coke carbonization waste gas stack identified as Stack ID 201		1,656 total for a 24 hour average

(b) The coke ovens shall recycle the gases emitted during the coking process and utilize it as the only fuel source for the ovens during normal operations. The gases shall not be routed directly to the atmosphere unless they first pass through the common tunnel afterburner. A maximum of nineteen percent (19%) of the coke oven waste gases leaving the common tunnel shall be allowed to be vented to the atmosphere on a twenty-four (24) hour basis and fourteen percent (14%) on an annual basis. *(Air Pollution Control Board; 326 IAC 7-4.1-8; filed May 25, 2005, 10:50 a.m.: 28 IR 2957)*

326 IAC 7-4.1-9 Ironside Energy, LLC sulfur dioxide emission limitations

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) Ironside Energy, LLC, Source Identification Number 00448, shall comply with the sulfur dioxide emission limits for Utility Boiler No. 9 of two hundred ninety-thousandths (0.290) pound per million British thermal units (MMBtu) and one hundred ninety and fifty-three hundredths (190.53) pounds per hour. Utility Boiler No. 9 shall be fired on blast furnace gas and natural gas only.

(b) Utility Boiler No. 9 in combination with ISG Indiana Harbor Inc. Utility Boilers 5, 6, 7, and 8 are limited to an annual operating limit of five thousand eight hundred seventy-one and sixty-one hundredths (5,871.61) tons per year.

(c) For Utility Boiler No. 9, Ironside Energy, LLC shall:

(1) maintain records of the:

(A) total blast furnace gas and natural gas combusted for each day; and

(B) average sulfur content and heating value for each day for each fuel type combusted during the calendar quarter; and

(2) submit to the department within thirty (30) days of the end of each calendar quarter the calculated sulfur dioxide emission rate in pounds per MMBtu for each fuel type, the total fuel combusted for each day during the calendar quarter.

(Air Pollution Control Board; 326 IAC 7-4.1-9; filed May 25, 2005, 10:50 a.m.: 28 IR 2957)

326 IAC 7-4.1-10 ISG Indiana Harbor Inc. sulfur dioxide emission limitations

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

Sec. 10. (a) ISG Indiana Harbor Inc., Source Identification Number 00318, shall comply with the sulfur dioxide emission limits in pounds per million British thermal units (MMBtu), pounds per hour, and other requirements as follows:

Emissions Unit Description	Emission Limit lbs/MMBtu	Emission Limit lbs/hour
(1) Utility Boilers 5, 6, 7, and 8:	0.594 each	1456.5 total
(A) Total actual heat input from fuel oil usage at all boilers combined shall not exceed two thousand four hundred fifty-two (2,452) MMBtu per hour.		
(B) Boilers shall be fired on fuel oil, blast furnace gas, and natural gas only.		
(C) Fuel oil burned shall not exceed one and three-tenths percent (1.3%) sulfur and one and thirty-five hundredths (1.35) pounds per MMBtu.		
(D) Utility Boilers 5, 6, 7, and 8 in combination with the Ironside Energy, LLC Utility Boiler No. 9 are limited to an annual operating limit of five thousand eight hundred seventy-one and sixty-one hundredths (5,871.61) tons per year.		
(2) Hot Strip Mill Slab Heat Reheat Furnaces 1, 2, and 3	1.254 each	535.1 each
(3) Sinter Plant Windbox		240
(4) Blast Furnace Stoves:		
(A) No. 3 Blast Furnace Stove	0.290	127.89
(B) No. 4 Blast Furnace Stove	0.290	140.94
(5) Reladling and Desulfurization Baghouse	0.057 pounds per ton feed material	30.40
(6) Number 4 Blast Furnace EC Baghouse	0.18 pounds per ton feed material	69.9

(b) ISG Indiana Harbor Inc. shall:

(1) maintain records of the:

(A) total coke oven gas, blast furnace gas, fuel oil, and natural gas usage for each day at each emissions unit listed in subsection (a)(1) through (a)(4); and

(B) average sulfur content and heating value for each day for each fuel type used during the calendar quarter; and

(2) submit to the department within thirty (30) days of the end of each calendar quarter the calculated sulfur dioxide emission rate in pounds per MMBtu for each emissions unit for each day during the calendar quarter and the total fuel usage for each type at each emissions unit for each day.

(Air Pollution Control Board; 326 IAC 7-4.1-10; filed May 25, 2005, 10:50 a.m.: 28 IR 2958)

326 IAC 7-4.1-11 Ispat Inland Inc. sulfur dioxide emission limitations

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

Sec. 11. (a) Ispat Inland Inc., Source Identification Number 00316, shall comply with the sulfur dioxide emission limits in pounds per million British thermal units (MMBtu), pounds per ton, pounds per hour, and other requirements as follows:

Emissions Unit Description	Emission Limit lbs/MMBtu	Emission Limit lbs/hour
(1) No. 1 Blast Furnace Stoves	0.080 total	11.92 total
(2) No. 2 Blast Furnace Stoves	0.080 total	12.4 total
(3) No. 5 and 6 Blast Furnace Stoves	0.140 each	41.02 each
(4) No. 7 Blast Furnace Stoves	0.195 total	162 total
(5) No. 5 Boilerhouse	0.198	265.2
(6) No. 2AC Boilers 207, 208, 209, and 210		15.873 total

(7) No. 2AC Boilers 211, 212, and 213	**0.140 each**	**168.0 total**
(8) No. 4AC Boilers 401, 402, 403, 404, and 405:		**890.23 total**
(A) Stack 1 (Boilers 401 and 402) and Stack 2 (Boilers 403 and 404)	**1.5 per stack**	
(B) Stack 3 (Boiler 405)	**1.0**	

(C) Sulfur dioxide emissions from Stacks 1, 2, and 3 shall be limited in accordance with the following equation in units of pounds per MMBtu:

$$(\text{Stack 1} + \text{Stack 2})/2 + 0.425 \times \text{Stack 3} \leq 1.6$$

If any one (1) of Boilers 401 through 405 is not operating for a given calendar day, the pounds per MMBtu for Stack 3 for the purposes of the equation in this clause is twenty-four hundredths (0.24) pounds per MMBtu.

(D) Ispat Inland Inc. shall maintain and operate sulfur dioxide continuous emission monitoring systems (CEMS) in Stacks 1, 2, and 3. CEMS data shall be used to determine compliance and to determine the sulfur dioxide emission rate in pounds per MMBtu for the report required under subsection (b)(3) *[sic.]***. The CEMS shall be operated in accordance with the procedures specified in 326 IAC 3-5, and records of hourly emissions data shall be maintained and made available to the department upon request.**

(9) Lime Plant Kiln Baghouse Stacks	**0.460**	**32.08 total**
(10) Anneal 3, 4	**0.000**	**0.000**
	Emission Limit lbs/ton	**Emission Limit lbs/hour**
(11) EAF Shop Ladle Metal Baghouse	**0.125**	**13.90**
(12) Pigging Ladle Facility	**0.020**	**4.000**
(13) Sinter Plant Windbox		**180.000**
(14) No. 7 Blast Furnace Canopy	**0.220**	**50.400**
(15) No. 7 BF Casthouse Baghouse	**0.220**	**50.400**
(16) No. 2 BOF Secondary Vent Stack	**0.014**	**6.440**
(17) No. 2 BOF Charge Aisle and HMS Baghouse	**0.151**	**69.460**
(18) No. 2 BOF Ladle Metal Baghouse	**0.025**	**11.500**
(19) No. 4 BOF HMS Baghouse S and N	**0.151 each**	**36.391 each**
(20) No. 4 BOF Secondary Vent Stack	**0.001**	**0.535**

(b) Ispat Inland Inc. shall:

(1) maintain records of the:

(A) total blast furnace gas, fuel oil, and natural gas usage for each day at each emissions unit listed in this section; and

(B) average sulfur content and heating value for each day for each fuel type used during the calendar quarter and of the operational status of 2AC Station Boilers 207, 208, 209, 210, 211, 212, and 213, 4AC Station Boilers 401, 402, 403, 404, and 405; and

(2) submit to the department within thirty (30) days of the end of each calendar quarter the calculated sulfur dioxide emission rate in pounds per million Btu and pounds per hour for each emissions unit for each day during the calendar quarter, the total fuel usage for each type of fuel used at each emissions unit for each day.

(Air Pollution Control Board; 326 IAC 7-4.1-11; filed May 25, 2005, 10:50 a.m.: 28 IR 2958)

326 IAC 7-4.1-12 Methodist Hospital sulfur dioxide emission limitations

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

Sec. 12. Methodist Hospital, Source Identification Number 00114, shall comply with the sulfur dioxide emission limits for Boiler 1 of one hundred fifty-two thousandths (0.152) pound per million British thermal units and four and eight hundred sixty-four thousandths (4.864) pounds per hour. *(Air Pollution Control Board; 326 IAC 7-4.1-12; filed May 25, 2005, 10:50 a.m.: 28 IR 2959)*

326 IAC 7-4.1-13 National Recovery Systems sulfur dioxide emission limitations

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

Sec. 13. National Recovery Systems, Source Identification Number 00323, shall comply with the sulfur dioxide emission limits for the dryer of three-tenths (0.3) pound per million British thermal units and two and seven hundred-thousandths (2.700) pounds per hour. *(Air Pollution Control Board; 326 IAC 7-4.1-13; filed May 25, 2005, 10:50 a.m.: 28 IR 2959)*

326 IAC 7-4.1-14 NIPSCO Dean H. Mitchell Generating Station sulfur dioxide emission limitations

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) NIPSCO Dean H. Mitchell Generating Station, Source Identification Number 00117, shall comply with the sulfur dioxide emission limits for Boilers 4, 5, 6, and 11 in pounds per million British thermal units (MMBtu), pounds per hour, and other requirements as follows:

(1) Operation under either subdivision (2)(B) or (2)(C) shall only be allowed provided that a nozzle is in the stack serving Boilers 4 and 5 such that the stack diameter is restricted to eight and three-tenths (8.3) feet.

(2) Sulfur dioxide emissions for boilers operating under the scenarios listed in this subdivision shall be measured as a daily weighted average by the continuous emissions monitoring systems (CEMS) required in subsection (b)(2). NIPSCO Dean H. Mitchell Generating Station may operate under any one (1) of the following scenarios:

(A) Boilers 4, 5, 6, and 11 may operate simultaneously under the following conditions:

(i) One (1) of Boiler 4 or 5 may operate on coal if the other boiler is operated on natural gas or is not operating. Sulfur dioxide emissions from the stack serving Boilers 4 and 5 shall be limited to one and five-hundredths (1.05) pounds per MMBtu and one thousand three hundred thirteen (1,313.0) pounds per hour.

(ii) Boilers 6 and 11 may operate simultaneously on coal. Sulfur dioxide emissions from the stack serving Boilers 6 and 11 shall be limited to one and five-hundredths (1.05) pound per MMBtu and two thousand four hundred seventy-five (2,475.0) pounds per hour.

(B) Boilers 4, 5, 6, and 11 may operate simultaneously on coal subject to the following conditions:

(i) Sulfur dioxide emissions from the stack serving Boilers 4 and 5 shall be limited to seventy-seven hundredths (0.77) pound per MMBtu and one thousand nine hundred twenty-five (1,925.0) pounds per hour.

(ii) Sulfur dioxide emissions from the stack serving Boilers 6 and 11 shall be limited to seventy-seven hundredths (0.77) pound per MMBtu and one thousand eight hundred fifteen (1,815.0) pounds per hour.

(C) One (1) set of either Boilers 4 and 5 or 6 and 11 may operate on coal if the other set is not operating, subject to the following conditions:

(i) Sulfur dioxide emissions from the stack serving Boilers 4 and 5 shall be limited to one and five-hundredths (1.05) pounds per MMBtu and two thousand six hundred twenty-five (2,625.0) pounds per hour.

(ii) Sulfur dioxide emissions from the stack serving Boilers 6 and 11 shall be limited to one and five-hundredths (1.05) pounds per MMBtu and two thousand four hundred seventy-five (2,475.0) pounds per hour.

(3) NIPSCO Dean H. Mitchell Generating Station shall maintain a daily log of the following for Boilers 4, 5, 6, and 11:

(A) Fuel type.

(B) Transition time of changes between or within operating scenarios.

The log shall be maintained for a minimum of five (5) years and shall be made available to the department and U.S. EPA upon request.

(4) Emission limits shall be maintained during transition periods within or between operating scenarios.

(b) NIPSCO Dean H. Mitchell Generating Station shall comply with the following:

(1) The diameter of the stack serving Boilers 6 and 11 shall be restricted to eight and three-tenths (8.3) feet.

(2) Beginning May 31, 1992, NIPSCO Dean H. Mitchell Generating Station shall maintain and operate CEMS in the stacks serving Boilers 4, 5, 6, and 11. The CEMS shall be operated in accordance with the procedures specified in 326 IAC 3-4 and 326 IAC 3-5, with the exception of the three (3) hour block period reporting requirements under 326 IAC 3-5-7. Records of daily average emissions data shall be:

(A) maintained for a minimum of five (5) years; and

(B) made available to the department and U.S. EPA upon request.

(3) NIPSCO Dean H. Mitchell Generating Station shall submit a written report to the department within thirty (30) days after the end of each calendar quarter. The report shall contain the daily weighted average emission rate in units of pounds per MMBtu as measured by the CEMS for each stack venting emissions from those boilers specified in subdivision (2). The hourly gross megawatt power production from the units connected to each stack may be used as the weighting factor in determining the daily weighted average. Records of the hourly gross megawatt power production shall be:

(A) maintained for a minimum of five (5) years; and

(B) made available to the department and U.S. EPA upon request.

(Air Pollution Control Board; 326 IAC 7-4.1-14; filed May 25, 2005, 10:50 a.m.: 28 IR 2960)

326 IAC 7-4.1-15 Rhodia sulfur dioxide emission limitations

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) Rhodia, Source Identification Number 00242, shall comply with the sulfur dioxide emission limit for the Spent Acid Regeneration Unit 4 of seven hundred eighty-two (782) pounds per hour.

(b) Rhodia shall operate a continuous emission monitoring system (CEMS) in each stack serving Unit 4. Rhodia shall submit a report to the department within thirty (30) days after the end of each calendar quarter. The report shall contain the following information:

(1) Three (3) hour average sulfur dioxide emission rate in pounds per hour as measured by the CEMS from Unit 4 for each three (3) hour period during the calendar quarter in which the average emissions exceed the allowable rates specified in subsection (a).

(2) The daily average emission rate in units of pounds per ton as determined from CEMS and production data for Unit 4 for each day of the calendar quarter.

(Air Pollution Control Board; 326 IAC 7-4.1-15; filed May 25, 2005, 10:50 a.m.: 28 IR 2960)

326 IAC 7-4.1-16 Safety-Kleen Oil Recovery Company sulfur dioxide emission limitations

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

Sec. 16. Safety-Kleen Oil Recovery Company, Source Identification Number 00301, shall comply with the sulfur dioxide emission limits in pounds per hour and other requirements as follows:

(1) Boilers SB-801, SB-820, SB-821, and SB-823, and Process Heaters H-302 and H-404 shall use natural gas only.

(2) Process Heater H-201, with a capacity of twenty-seven and three-tenths (27.3) MMBtu per hour, shall use a combination of natural gas, No. 2 fuel oil equivalent, and off-gases. Process Heater H-301, with a capacity of twenty and zero-tenths (20.0) MMBtu per hour, shall use a combination of natural gas and No. 2 fuel oil equivalent. The combined sulfur dioxide emissions from these two (2) process heaters shall not exceed fourteen (14) pounds per hour and sixty (60) tons per year.

(3) Process Heater H-401, with a capacity of fifteen and three-tenths (15.3) MMBtu per hour, shall use a combination of natural gas, No. 2 fuel oil equivalent, and off-gases. Process Heater H-402, with a capacity of eleven and seven-tenths (11.7) MMBtu per hour, shall use a combination of natural gas and No. 2 fuel oil equivalent. The combined sulfur dioxide emissions from these two (2) process heaters shall not exceed ten and eight-tenths (10.8) pounds per hour and forty-seven and three-tenths (47.3) tons per year.

(4) Process Heater H-406, with a capacity of twenty (20.0) MMBtu per hour, shall use a combination of natural gas and off-gases. The sulfur dioxide emissions shall not exceed eight (8) pounds per hour.

(5) Within thirty (30) days after the effective date of this rule, Safety-Kleen shall choose one (1) of the following compliance options for Process Heaters H-201, H-301, H-401, H-402, and H-406 and submit a letter to the department identifying which option will be used to demonstrate compliance of these process heaters with this rule. With the letter, Safety-Kleen shall submit a fuel and sampling analysis protocol for the selected option for approval by the department. Safety-Kleen shall comply with the approved compliance method by December 31, 2005, and after that date shall use only the selected method to demonstrate compliance of the process heaters in accordance with the approved fuel and sampling analysis protocol. The department shall notify U.S. EPA of the approved option. The options are as follows:

(A) Safety-Kleen shall demonstrate compliance through monitoring as follows:

(i) Monitor sulfur content in the off-gas streams for Process Heaters H-201, H-401, and H-406.

(ii) Prior to sampling the fuel in the fuel tank, mix the contents of the tank to ensure consistent composition of the fuel throughout the tank.

(iii) Perform fuel sampling and analysis for the sulfur content of the fuel in each fuel tank:

(AA) prior to the first time the fuel is burned; and

(BB) subsequently, prior to burning the fuel whenever additional fuel has been added to the tank since the last sampling event.

(iv) Maintain records sufficient to demonstrate compliance for at least three (3) years.

(v) Submit an excess emissions report to the department within thirty (30) days after the end of each calendar quarter.

(B) Safety-Kleen shall demonstrate compliance through monitoring as follows:

(i) Install sulfur dioxide CEMS on the stacks for Process Heaters H-201, H-401, and H-406. The CEMS shall be installed, calibrated, operated, and maintained in accordance with 326 IAC 3-5.

(ii) Conduct fuel sampling for heat input and sulfur content and measure the quantity of fuel oil burned in the four (4) process heaters in order to calculate the heat input rate in MMBtu/hr for Process Heaters H-201 and H-401, as well as the SO2 emission rate in Process Heaters H-301 and H-402.

(iii) Prior to sampling the fuel in the fuel tank, mix the contents of the tank to ensure consistent composition of the fuel throughout the tank.

(iv) Perform fuel sampling and analysis for the sulfur content of the fuel in each fuel tank:

(AA) prior to the first time the fuel is burned; and

(BB) subsequently, prior to burning the fuel whenever additional fuel has been added to the tank since the last sampling event.

(v) Maintain records sufficient to demonstrate compliance for at least three (3) years.

(vi) Submit an excess emissions report to the department within thirty (30) days after the end of each calendar quarter.

(C) Safety-Kleen shall demonstrate compliance through monitoring as follows:

(i) Install sulfur dioxide CEMS on the stacks for Process Heaters H-201, H-301, H-401, H-402, and H-406. The CEMS shall be installed, calibrated, operated, and maintained in accordance with 326 IAC 3-5.
(ii) Maintain records sufficient to demonstrate compliance for at least three (3) years.
(iii) Submit an excess emissions report to the department within thirty (30) days after the end of each calendar quarter.

(Air Pollution Control Board; 326 IAC 7-4.1-16; filed May 25, 2005, 10:50 a.m.: 28 IR 2961)

326 IAC 7-4.1-17 SCA Tissue North America LLC sulfur dioxide emission limitations

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

Sec. 17. SCA Tissue North America LLC, Source Identification Number 00106, shall comply with the sulfur dioxide emission limits for Boiler 1 of one and two-tenths (1.2) pounds per million British thermal units and eighty-seven and twenty-four hundredths (87.24) pounds per hour. *(Air Pollution Control Board; 326 IAC 7-4.1-17; filed May 25, 2005, 10:50 a.m.: 28 IR 2962)*

326 IAC 7-4.1-18 State Line Energy, LLC sulfur dioxide emission limitations

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

Sec. 18. State Line Energy, LLC, Source Identification Number 00210, shall comply with the sulfur dioxide emission limits in pounds per million British thermal units (MMBtu) and pounds per hour as follows:

(1) The Auxiliary Emergency Generator shall be limited to three-tenths (0.3) pound per MMBtu and one and thirty-five hundredths (1.35) pounds per hour.
(2) Boiler 3 shall be limited to one and two-tenths (1.2) pounds per MMBtu and two thousand five hundred fifty-six (2,556) pounds per hour.
(3) Boiler 4 shall be limited to one and two-tenths (1.2) pounds per MMBtu and four thousand fifty-four and eight-tenths (4,054.8) pounds per hour.

(Air Pollution Control Board; 326 IAC 7-4.1-18; filed May 25, 2005, 10:50 a.m.: 28 IR 2962)

326 IAC 7-4.1-19 Unilever HPC USA sulfur dioxide emission limitations

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

Sec. 19. Unilever HPC USA, Source Identification Number 00229, shall comply with the sulfur dioxide emission limits in pounds per million British thermal units (MMBtu), hours per year, and pounds per hour as follows:

(1) Boiler 4 shall be limited to one and fifty-two hundredths (1.52) pounds per MMBtu and one hundred twenty-five and three-tenths (125.3) pounds per hour.
(2) Power House Boiler No. 1 shall be limited to five-tenths (0.5) pounds per MMBtu and sixty (60) pounds per hour for a total of six hundred ninety-five (695) hours per year at full capacity.
(3) American Hydrotherm Boiler No. 2 shall be limited to three-tenths (0.3) pound per MMBtu and three and sixty-six hundredths (3.66) pounds per hour.

(Air Pollution Control Board; 326 IAC 7-4.1-19; filed May 25, 2005, 10:50 a.m.: 28 IR 2962)

326 IAC 7-4.1-20 U. S. Steel-Gary Works sulfur dioxide emission limitations

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

Sec. 20. (a) U. S. Steel-Gary Works, Source Identification Number 00121, shall comply with the following sulfur dioxide emission limitations in pounds per million British thermal units (MMBtu) and pounds per hour when the coke oven gas desulfurization emissions unit is not operating during the following periods:

Emissions Unit Description	Emission Limit lbs/MMBtu	Emission Limit lbs/hour
(1) During January through December:		
(A) Turboblower Boiler House Boiler No. 6	0.115	81.7
(B) No. 4 Boiler House Boiler Nos. 1, 2, and 3:		
(i) During periods when Blast Furnace No. 13 Stoves are combusting blast furnace gas:		
(AA) When three (3) boilers are operating	0.115	172.5 total
(BB) When two (2) boilers are operating	0.173	172.5 total
(CC) When one (1) boiler is operating	0.345	172.5 total
(ii) During periods when Blast Furnace No. 13 Stoves are not combusting blast furnace gas and Hot Strip Mill Waste Heat Boiler Nos. 1 and 2 are combusting coke oven gas:		
(AA) When three (3) boilers are operating	0.200	300.0 total
(BB) When two (2) boilers are operating	0.300	300.0 total
(CC) When one (1) boiler is operating	0.600	300.0 total

(iii) During periods when Blast Furnace No. 13 Stoves are not combusting blast furnace gas and Hot Strip Mill Waste Heat Boiler Nos. 1 and 2 are not combusting coke oven gas:		
(AA) When three (3) boilers are operating	**0.195**	**293.0 total**
(BB) When two (2) boilers are operating	**0.293**	**293.0 total**
(CC) When one (1) boiler is operating	**0.586**	**293.0 total**
(C) Number 2 Coke Plant Boiler House:		
(i) Boiler No. 8	**1.270**	**316.2**
(ii) Boiler No. 9	**1.270**	**298.45**
(iii) Boiler No. 10	**1.270**	**298.45**
(D) Coke Oven Underfiring Stacks:		
(i) Nos. 2 and 3	**1.270**	**251.5 each**
(ii) Nos. 5 and 7	**1.270**	**158.75 each**
(E) During periods when the 84-inch Hot Strip Mill Continuous Reheat Furnaces Nos. 1, 2, 3, and 4 are not combusting coke oven gas:		
(i) Hot Strip Mill Waste Heat Boiler No. 1 or 2	**1.270**	**287.0**
(ii) Remaining Hot Strip Mill Waste Heat Boiler	**0.704**	**159.0**
(F) Hot Strip Mill Continuous Reheat Furnace Nos. 1, 2, 3, and 4 during periods when combusting coke oven gas:		
(i) When four (4) furnaces are operating	**0.256**	**615.0 total**
(ii) When three (3) furnaces are operating	**0.342**	**615.0 total**
(iii) When two (2) furnaces are operating	**0.513**	**615.0 total**
(iv) When one (1) furnace is operating	**1.025**	**615.0 total**
(G) Number 3 Sinter Plant Windbox Gas Cleaning Systems		**260.0 total**
(H) Coke Oven Gas Desulfurization Facility Tail Gas Incinerator		**22.0**
(I) Blast Furnace Stove Stacks:		
(i) No. 4	**0.115**	**40.25 total**
(ii) No. 6	**0.115**	**40.25 total**
(iii) No. 8	**0.115**	**37.38 total**
(J) Blast Furnace Stove Stack 13 during periods when combusting blast furnace gas	**0.134**	**93.50 total**
(K) No. 13 Blast Furnace Casthouse Baghouse during periods when Blast Furnace No. 13 Stoves are combusting blast furnace gas		**115.0**
(L) No. 2 Q-BOP Shop Hot Metal Desulf Baghouse	**0.05 pounds per ton hot metal**	**28.54**
(M) No. 1 BOP Shop Hot Metal Desulf Baghouse	**0.05 pounds per ton hot metal**	**28.54**
(2) During specified periods:		
(A) Turboblower Boiler House Boiler Nos. 1, 2, 3, and 5:		
(i) During periods when the Hot Strip Mill Waste Heat Boiler Nos. 1 and 2 are not combusting coke oven gas:		
(AA) January through April:		
(aa) When four (4) boilers are operating	**0.594**	**974.5 total**
(bb) When three (3) boilers are operating	**0.792**	**974.5 total**
(cc) When two (2) boilers or less are operating	**1.188**	**974.5 total**
(BB) May through October:		
(aa) When four (4) boilers are operating	**1.006**	**1,650.0 total**
(bb) When three (3) boilers are operating	**1.341**	**1,650.0 total**
(cc) When two (2) boilers or less are operating	**2.012**	**1,650.0 total**
(CC) November through December:		
(aa) When four (4) boilers are operating	**0.384**	**630.0 total**
(bb) When three (3) boilers are operating	**0.512**	**630.0 total**

(cc) When two (2) boilers or less are operating	0.768	630.0 total
(ii) During periods when the Hot Strip Mill Waste Heat Boiler Nos. 1 and 2 are combusting coke oven gas:		
(AA) January through April:		
(aa) When four (4) boilers are operating	0.625	1,025.0 total
(bb) When three (3) boilers are operating	0.833	1,025.0 total
(cc) When two (2) boilers or less are operating	1.250	1,025.0 total
(BB) May through October:		
(aa) When four (4) boilers are operating	0.994	1,630.0 total
(bb) When three (3) boilers are operating	1.325	1,630.0 total
(cc) When two (2) boilers or less are operating	1.988	1,630.0 total
(CC) November through December:		
(aa) When four (4) boilers are operating	0.351	575.0 total
(bb) When three (3) boilers are operating	0.467	575.0 total
(cc) When two (2) boilers or less are operating	0.701	575.0 total
(B) Number 2 Coke Plant Boiler House Boiler Nos. 4 and 5:		
(i) January through April	0.444	150.0 total
(ii) May through October	0.385	130.0 total
(iii) November through December	0.0006	0.203 total
(C) Number 2 Coke Plant Boiler House Boiler No. 6:		
(i) January through April	1.27	214.6
(ii) May through October	1.27	214.6
(iii) November through December	1.18	200.0

(b) U.S. Steel-Gary Works shall comply with the following sulfur dioxide emission limitations in pounds per MMBtu and pounds per hour when the coke oven gas desulfurization emissions unit is operating:

Emissions Unit Description	Emission Limit lbs/MMBtu	Emission Limit lbs/hour
(1) Turboblower Boiler House:		
(A) Boilers Nos. 1, 2, 3, and 5:		
(i) When four (4) boilers are operating	0.427	700.0 total
(ii) When three (3) boilers are operating	0.569	700.0 total
(iii) When two (2) boilers or less are operating	0.854	700.0 total
(B) Boiler No. 6	0.115	81.7
(2) Number 4 Boiler House Boiler Nos. 1, 2, and 3:		
(A) When three (3) boilers are operating	0.353	529.0 total
(B) When two (2) boilers are operating	0.529	529.0 total
(C) When one (1) boiler is operating	1.058	529.0 total
(3) Number 2 Coke Plant Boiler House:		
(A) Boiler No. 3	0.260	40.6
(B) Boiler Nos. 4 and 5	0.260	87.9 total
(C) Boiler No. 6	0.260	44.0
(D) Boiler No. 7	0.260	42.1
(E) Boiler No. 8	0.260	64.7
(F) Boiler No. 9	0.260	61.10
(G) Boiler No. 10	0.260	61.10
(4) Coke Battery Number 2, 3, 5, and 7 Underfiring:		
(A) Nos. 2 and 3	0.260	51.5 each

(B) No. 5	0.270	33.8
(C) No. 7	0.260	32.5
(5) Blast Furnace Stove Stacks:		
(A) No. 4	0.115	40.25 total
(B) No. 6	0.115	40.25 total
(C) No. 8	0.115	37.38 total
(D) No. 13	0.134	93.50 total
(6) 84-inch Hot Strip Mill:		
(A) Waste Heat Boiler Nos. 1 and 2	0.260	58.8 each
(B) Continuous Reheat Furnaces Nos. 1, 2, 3, and 4:		
(i) When four (4) furnaces are operating	0.182	436.5 total
(ii) When three (3) furnaces are operating	0.243	436.5 total
(iii) When two (2) furnaces are operating	0.354	436.5 total
(iv) When one (1) furnace is operating	0.728	436.5 total
(7) Number 3 Sinter Plant Windbox Gas Cleaning Systems		200 total
(8) Coke Oven Gas Desulfurization Facility Tail Gas Incinerator		295
(9) No. 13 Blast Furnace Casthouse Baghouse		115
(10) No. 2 Q-BOP Shop Hot Metal Desulf Baghouse	0.05 pounds per ton hot metal	28.54
(11) No. 1 BOP Shop Hot Metal Desulf Baghouse	0.05 pounds per ton hot metal	28.54

(c) U. S. Steel-Gary Works shall comply with additional sulfur dioxide emission requirements as follows:

(1) U. S. Steel shall record and make available to IDEM, upon request, process and fuel use information pertaining to each emissions unit, process, or combustion unit identified in this section, including the following:

(A) Identification of the applicable limit.

(B) The amount and type of each fuel used for each emissions unit for each calendar day of operation.

(C) The operating scenario chosen for the U. S. Steel-Gary Works.

(D) The hourly sulfur dioxide emission rate in pounds of sulfur dioxide per hour calculated by dividing the total daily sulfur dioxide emissions in pounds of sulfur dioxide per day by twenty-four (24) hours.

(E) The hourly sulfur dioxide emission rate in pounds of sulfur dioxide per MMBtu for those emissions units with a pounds of sulfur dioxide per MMBtu limit in this rule calculated by dividing the total daily sulfur dioxide emissions in pounds of sulfur dioxide per day by the total heat input per day in MMBtu.

(2) U. S. Steel-Gary Works shall submit an exception report to the department within thirty (30) days of an exceedance of the limitations in this section that includes the following:

(A) Identification of the applicable limit or limits being exceeded.

(B) Identification of any emissions unit exceeding the applicable limit and the dates when the limits were exceeded.

(C) The calculated sulfur dioxide emission rate in pounds per hour for each emissions unit exceeding the limitations for the days that the pounds per hour limitations were exceeded.

(D) The calculated sulfur dioxide emission rate in pounds per MMBtu for each combustion unit, furnace, boiler, or process operation for each emissions unit exceeding the pounds per MMBtu limitations for the days that the limitations were exceeded.

(E) The actual daily fuel usage for each combustion unit, furnace, boiler, or process operation for each emissions unit exceeding the limitations for the days that the limitations were exceeded.

(3) An emission unit shall burn natural gas only:

(A) if it is not listed in this rule; or

(B) under any operating condition not specifically listed in this rule.

(4) The desulfurization facility is restricted to no more than nine hundred fifty (950) hours of downtime in a calendar year.

(Air Pollution Control Board; 326 IAC 7-4.1-20; filed May 25, 2005, 10:50 a.m.: 28 IR 2962)

326 IAC 7-4.1-21 Walsh and Kelly sulfur dioxide emission limitations

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

Sec. 21. (a) Walsh and Kelly, Source Identification Number 03215, shall comply with the sulfur dioxide emission limits for the aggregate dryer of less than:

(1) twenty-five (25) tons per year; and

(2) forty-two (42) pounds per hour.

(b) The input of re-refined waste oil and re-refined waste

oil equivalents in the one hundred twenty (120) MMBtu per hour burner for the aggregate dryer shall be limited to less than seven hundred forty thousand seven hundred twenty-five (740,725) gallons per twelve (12) consecutive month period, rolled on a monthly basis, based on maximum sulfur content of forty-five hundredths percent (0.45%) for re-refined waste oil. *(Air Pollution Control Board; 326 IAC 7-4.1-21; filed May 25, 2005, 10:50 a.m.: 28 IR 2965)*

SECTION 5. 326 IAC 7-4-1.1 IS REPEALED.

LSA Document #00-236(F)
Proposed Rule Published: November 1, 2004; 28 IR 627
Hearing Held: March 2, 2005
Approved by Attorney General: May 18, 2005
Approved by Governor: May 24, 2005
Filed with Secretary of State: May 25, 2005, 10:50 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: None Received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-235(F)

DIGEST

Adds 326 IAC 20-82 to incorporate by reference the national emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines. Effective 30 days after filing with the secretary of state.

HISTORY

Notice of First Hearing: November 3, 2004, Indiana Register (27 IR 4146).

Date of First Hearing: November 3, 2004.

Notice of Second Hearing: December 1, 2004, Indiana Register (28 IR 997).

Date of Second Hearing: Opened on January 5, 2005 and continued to February 2, 2005.

326 IAC 20-82

SECTION 1. 326 IAC 20-82 IS ADDED TO READ AS FOLLOWS:

Rule 82. Stationary Reciprocating Internal Combustion Engines

326 IAC 20-82-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.6585* (69 FR 33506, June 15, 2004).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart ZZZZ* (69 FR 33506, June 15, 2004, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environment Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-82-1; filed May 25, 2005, 10:30 a.m.: 28 IR 2966)*

LSA Document #04-235(F)
Proposed Rule Published: December 1, 2004; 28 IR 997
Hearing Held: January 5, 2005
Approved by Attorney General: May 5, 2005
Approved by Governor: May 17, 2005
Filed with Secretary of State: May 25, 2005, 10:30 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: 69 FR 33506, June 15, 2004; 40 CFR 63, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-236(F)

DIGEST

Adds 326 IAC 20-83 through 326 IAC 20-88 to incorporate by reference the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for organic liquid distribution (non-gasoline); miscellaneous organic chemical manufacturing; surface coating of automobiles and light duty trucks; surface coating of metal cans; site remediation; and miscellaneous coating manufacturing. Effective 30 days after filing with the secretary of state.

HISTORY

IC 13-14-9-8 Notice and Notice of First Hearing: September 1, 2004, Indiana Register (27 IR 4146).

Change in Notice of Hearing: October 1, 2004, Indiana Register (28 IR 234).

Date of First Hearing: November 3, 2004.

Proposed Rule and Notice of Public Hearing: December 1, 2004, Indiana Register (28 IR 998).

Date of Second Hearing: January 5, 2005.

326 IAC 20-83
326 IAC 20-84
326 IAC 20-85
326 IAC 20-86
326 IAC 20-87
326 IAC 20-88

SECTION 1. 326 IAC 20-83 IS ADDED TO READ AS FOLLOWS:

Rule 83. Organic Liquid Distribution (Non-Gasoline)

326 IAC 20-83-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.2334* (69 FR 5064, February 3, 2004).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart EEEE* (69 FR 5063, February 3, 2004, National Emission Standards for Hazardous Air Pollutants: Organic Liquid Distribution (Non-Gasoline)).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-83-1; filed May 25, 2005, 11:00 a.m.: 28 IR 2967)*

SECTION 2. 326 IAC 20-84 IS ADDED TO READ AS FOLLOWS:

Rule 84. Miscellaneous Organic Chemical Manufacturing

326 IAC 20-84-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.2435* (68 FR 63888, November 10, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart FFFF* (68 FR 63888, November 10, 2003, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-84-1; filed May 25, 2005, 11:00 a.m.: 28 IR 2967)*

SECTION 3. 326 IAC 20-85 IS ADDED TO READ AS FOLLOWS:

Rule 85. Surface Coating of Automobiles and Light-Duty Trucks

326 IAC 20-85-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.3081* (69 FR 22624, April 26, 2004).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart IIII* (67 FR 22623, April 26, 2004, National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-85-1; filed May 25, 2005, 11:00 a.m.: 28 IR 2967)*

SECTION 4. 326 IAC 20-86 IS ADDED TO READ AS FOLLOWS:

Rule 86. Surface Coating of Metal Cans

326 IAC 20-86-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.3481* (68 FR 64447, November 13, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart KKKK* (67 FR 64446, November 13, 2003, National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-86-1; filed May 25, 2005, 11:00 a.m.: 28 IR 2967)*

SECTION 5. 326 IAC 20-87 IS ADDED TO READ AS FOLLOWS:

Rule 87. Site Remediation

326 IAC 20-87-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7881* (68 FR 58191, October 8, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart GGGGG* (68 FR 58190, October 8, 2003, National Emission Standards for Hazardous Air Pollutants: Site Remediation).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-87-1; filed May 25, 2005, 11:00 a.m.: 28 IR 2968)*

SECTION 6. 326 IAC 20-88 IS ADDED TO READ AS FOLLOWS:

Rule 88. Miscellaneous Coating Manufacturing

326 IAC 20-88-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7985* (68 FR 69185, December 11, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart HHHHH* (68 FR 69185, December 11, 2003, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-88-1; filed May 25, 2005, 11:00 a.m.: 28 IR 2968)*

LSA Document #04-236(F)
Proposed Rule Published: December 1, 2004; 28 IR 998
Hearing Held: January 5, 2005
Approved by Attorney General: May 12, 2005
Approved by Governor: May 17, 2005
Filed with Secretary of State: May 25, 2005, 11:00 a.m.
IC 4-22-7-5(c) Notice from Secretary of State Regarding Documents Incorporated by Reference: 40 CFR 63: National Emission Standards for Hazardous Air Pollutants: Organic Liquid Distribution (Non-Gasoline), 69 FR 5038-5087, February 3, 2004; Miscellaneous Organic Chemical Manufacturing, 68 FR 63851-63911, November 10, 2003; Surface Coating of Metal Cans, 68 FR 64431-64480, November 13, 2003; Site Remediation, 68 FR 58171-58224, October 8, 2003; Miscellaneous Coating Manufacturing, 68 FR 69164-69201, December 11, 2003; 40 CFR 63, 40 CFR 264, 40 CFR 265: National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, 69 FR 22601-22661, April 26, 2004

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #04-228(F)

DIGEST

Adds 327 IAC 17 concerning state regulated wetlands and wetland activity permits. Effective 30 days after filing with the secretary of state.

HISTORY

Second Notice of Comment Period and Notice of First Hearing: September 1, 2004, Indiana Register (27 IR 4209).
Date of First Hearing: November 10, 2004 (Continued).
Date of Continuation of First Hearing: November 23, 2004.
Proposed Rule, Third Comment Period, and Notice of Second Hearing: January 1, 2005, Indiana Register (28 IR 1277).
Date of Second Hearing: February 9, 2005.
Date of Continuation of Second Hearing: March 9, 2005.
Finally Adopted: March 9, 2005.

327 IAC 17

SECTION 1. 327 IAC 17 IS ADDED TO READ AS FOLLOWS:

ARTICLE 17. WETLAND ACTIVITY PERMITS

Rule 1. State Regulated Wetlands

327 IAC 17-1-1 Purpose

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. (a) This article governs the issuance of general and individual permits for wetland activities in SRWs.

(b) The purpose of this article is to:
(1) promote a net gain in high quality isolated wetlands; and

(2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program.

(Water Pollution Control Board; 327 IAC 17-1-1; filed May 25, 2005, 10:45 a.m.: 28 IR 2968)

327 IAC 17-1-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This article applies to persons proposing to undertake wetland activities in SRWs. *(Water Pollution Control Board; 327 IAC 17-1-2; filed May 25, 2005, 10:45 a.m.: 28 IR 2969)*

327 IAC 17-1-3 Definitions

Authority: IC 13-11-2; IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4; IC 13-18-22

Sec. 3. The following definitions apply throughout this article:

(1) "Class I wetland" means an isolated wetland described by one (1) or both of the following:

(A) At least fifty percent (50%) of the wetland has been disturbed or affected by human activity or development by one (1) or more of the following:

(i) Removal or replacement of the natural vegetation.

(ii) Modification of the natural hydrology.

(B) The wetland supports only minimal wildlife or aquatic habitat or hydrologic function because the wetland does not provide critical habitat for threatened or endangered species listed in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at least one (1) of the following:

(i) The wetland is typified by low species diversity.

(ii) The wetland contains greater than fifty percent (50%) areal coverage of nonnative invasive species of vegetation.

(iii) The wetland does not support significant wildlife or aquatic habitat.

(iv) The wetland does not possess significant hydrologic function.

(2) "Class II wetland" means either of the following:

(A) An isolated wetland that is not a Class I or Class III wetland.

(B) A type of wetland listed in subdivision (3)(B) that would meet the definition of Class I wetland if the wetland were not a rare or ecologically important type.

(3) "Class III wetland" means an isolated wetland:

(A) that:

(i) is located in a setting undisturbed or minimally disturbed by human activity or development; and

(ii) supports more than minimal wildlife or aquatic habitat or hydrologic function; or

(B) unless classified as a Class II wetland under subdivision (2)(B), that is of one (1) of the following rare and ecologically important types:

(i) Acid bog.
(ii) Acid seep.
(iii) Circumneutral bog.
(iv) Circumneutral seep.
(v) Cypress swamp.
(vi) Dune and swale.
(vii) Fen.
(viii) Forested fen.
(ix) Forested swamp.
(x) Marl beach.
(xi) Muck flat.
(xii) Panne.
(xiii) Sand flat.
(xiv) Sedge meadow.
(xv) Shrub swamp.
(xvi) Sinkhole pond.
(xvii) Sinkhole swamp.
(xviii) Wet floodplain forest.
(xix) Wet prairie.
(xx) Wet sand prairie.

(4) "Clean Water Act" refers to:

(A) 33 U.S.C. 1251 et seq.; and

(B) regulations adopted under 33 U.S.C. 1251 et seq.

(5) "Compensatory mitigation" means the:

(A) restoration; or

(B) creation;

of wetlands to offset or compensate for a loss of wetlands resulting from an authorized wetland activity. Wetlands enlargement, enhancement, and preservation may be considered compensatory mitigation on a case-by-case basis, particularly for Class III wetlands.

(6) "Dredged material" means material that is dredged or excavated from an isolated wetland.

(7) "Exempt isolated wetland" means the following:

(A) An isolated wetland that is a voluntarily created wetland unless:

(i) the wetland is:

(AA) approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act or IC 13-18-22; or

(BB) reclassified as an SRW under IC 13-18-22-6(c); or

(ii) the owner of the wetland declares, by a written instrument:

(AA) recorded in the office of the recorder of the county or counties in which the wetland is located; and

(BB) filed with the department;

that the wetland is to be considered in all respects to be an SRW.

(B) An isolated wetland that exists as an incidental feature in or on any of the following:

(i) A residential lawn.

(ii) A lawn or landscaped area of a commercial or governmental complex.

(iii) Agricultural land.
(iv) A roadside ditch.
(v) An irrigation ditch.
(vi) A manmade drainage control structure.

(C) An isolated wetland that is a fringe wetland associated with a private pond.

(D) An isolated wetland that is, or is associated with, a manmade body of surface water of any size created by:
(i) excavating;
(ii) diking; or
(iii) excavating and diking;
dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes.

(E) An isolated wetland that is a Class I wetland with an area, as delineated, of one-half (½) acre or less.

(F) An isolated wetland that is a Class II wetland with an area, as delineated, of one-fourth (¼) acre or less.

(G) An isolated wetland that is located on land:
(i) subject to regulation under the United States Department of Agriculture wetland conservation rules, also known as Swampbuster (16 U.S.C. 3801-3862), because of voluntary enrollment in a federal farm program; and
(ii) used for agricultural or associated purposes allowed under the rules referred to in this clause.

(H) For purposes of clause (B), an isolated wetland exists as an incidental feature:
(i) if:
(AA) the owner or operator of the property or facility described in clause (B) does not intend the isolated wetland to be a wetland;
(BB) the isolated wetland is not essential to the function or use of the property or facility; and
(CC) the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; and
(ii) if the isolated wetland satisfies any other factors or criteria established in rules that are:
(AA) adopted by the water pollution control board; and
(BB) not inconsistent with the factors and criteria described in this clause.

(I) The total acreage of Class I wetlands on a tract to which the exemption described in clause (E) may apply is limited to the larger of the following:
(i) The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (E).
(ii) Fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (E) but for the limitation of this subdivision.

(J) The total acreage of Class II wetlands on a tract to which the exemption described in clause (F) may apply is limited to the larger of the following:
(i) The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (F).
(ii) Thirty-three and one-third percent (33⅓%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (F) but for the limitation of this subdivision.

(K) An isolated wetland described in clause (E) or (F) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under clause (E) or (F) consistent with the applicable limitations described in clauses (I) and (J).

(8) "Isolated wetland" means a wetland that is not subject to regulation under Section 404(a) of the Clean Water Act.

(9) "Notice of intent" means a notice submitted by a person proposing the wetland activity as a prerequisite to applicability of a general permit under either 327 IAC 17-2 or 327 IAC 17-3. This notice must contain the following information:
(A) An identification of the wetlands to be affected by the wetland activity including the following:
(i) The location of the tract and location of the wetlands on the tract.
(ii) A delineation of all wetlands on the tract.
(iii) A classification of all SRWs on the tract.
(iv) A description of the proposed wetland activities and project at the site.
(v) For the purpose of making the determinations at subdivisions (7)(A) and (7)(K), section 4 of this rule, IC 13-18-22-2(c), IC 13-18-22-10, and IC 13-18-22-11, the person proposing the activity shall disclose dates for the following:
(AA) Actions that disturb or affect isolated wetlands under subdivision (1)(A) that occurred after January 1, 2004.
(BB) Wetland activities exempted by subdivision (7)(E) or (7)(F) that occurred after January 1, 2004.
(CC) Voluntary creations of isolated wetlands under subdivisions (7)(A) and (12).
(DD) Restoration of isolated wetlands under IC 13-18-22-2(c).
(EE) Filling, draining, or elimination by other means isolated wetlands not removed from the department's authority by IC 13-18-22-10.
(FF) Wetland activities that occurred on land previously exempted by subdivision (7)(G) if:
(aa) the land is no longer subject to; and
(bb) the wetland activities were not in compliance with;
the United States Department of Agriculture wetland conservation rules.

(B) A compensatory mitigation plan to reasonably offset the loss of wetlands allowed, unless an exception to mitigation has been granted by the department under section 6 of this rule.

(C) A statement signed by the applicant stating, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.".

(D) Correspondence from the United States Army Corps of Engineers (USACOE) that states that the wetland is not subject to regulation under Section 404(a) of the Clean Water Act.

(10) "State regulated wetland" or "SRW" means an isolated wetland located in Indiana that is not an exempt isolated wetland.

(11) "Tract" means any area of land that is:

(A) under common ownership; and

(B) contained within a continuous border.

(12) "Voluntarily created wetland", for purposes of this article, means an isolated wetland that:

(A) was restored or created in the absence of a governmental order, directive, or regulatory requirement concerning the restoration or creation of the wetland; and

(B) has not been applied for or used as compensatory mitigation or another regulatory purpose that would have the effect of subjecting the wetland to regulation as waters by:

(i) the department; or

(ii) another governmental entity.

(13) "Waters" means the accumulations of water, surface and underground, natural and artificial, public and private, or a part of the accumulations of water that are wholly or partially within, flow through, or border upon Indiana. The term does not include any of the following:

(A) An exempt isolated wetland.

(B) A private pond.

(C) An off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.

The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C. 1362(7)), that are located in Indiana.

(14) "Waters of the United States" means waters described by 33 CFR 328.3(a)(3).

(15) "Wetland activity" means the discharge of:

(A) dredged; or

(B) fill;

material into an isolated wetland.

(16) "Wetlands" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. The term generally includes the following:

(A) Swamps.

(B) Marshes.

(C) Bogs.

(D) Similar areas.

(17) "Wetlands delineation" or "delineation", for purposes of this rule, means a technical assessment of:

(A) whether a wetland exists on an area of land; and

(B) if so, the type and quality of the wetland based on the presence or absence of wetlands characteristics, as determined consistently with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers.

(Water Pollution Control Board; 327 IAC 17-1-3; filed May 25, 2005, 10:45 a.m.: 28 IR 2969)

327 IAC 17-1-4 Wetlands not considered disturbed or affected

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 4. For purposes of the definitions of Class I wetland, Class II wetland, and Class III wetland, a wetland or setting is not considered disturbed or affected as a result of an action taken after January 1, 2004, for which a permit is required under IC 13-18-22 but has not been obtained. *(Water Pollution Control Board; 327 IAC 17-1-4; filed May 25, 2005, 10:45 a.m.: 28 IR 2971)*

327 IAC 17-1-5 Compensatory mitigation for state regulated wetlands

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-6; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. (a) Except as otherwise specified in subsection (b), compensatory mitigation, where required under this article, shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-Site Ratio	Off-Site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1 Nonforested 2 to 1 Forested	2 to 1 Nonforested 2.5 to 1 Forested
Class III	Class III	2 to 1 Nonforested 2.5 to 1 Forested	2.5 to 1 Nonforested 3 to 1 Forested

(b) The compensatory mitigation ratio shall be lowered to

one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) The off-site location of compensatory mitigation must be within the same:

(1) eight (8) digit U.S. Geological Service hydrologic unit code; or

(2) county;

as the isolated wetlands subject to the authorized wetland activity.

(d) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in SRWs. An exempt isolated wetland that is used to provide compensatory mitigation becomes a SRW.

(e) Mitigation plans required under section 3(9)(B) of this rule and 327 IAC 17-4-3(7) shall contain monitoring provisions that are sufficient to monitor the performance of the compensatory mitigation wetland until it is demonstrated to successfully offset the loss of wetlands authorized by the permit.

(f) If, after a reasonable monitoring period, the department finds that the compensatory mitigation does not successfully offset the loss of wetlands authorized by the permit consistent with section 1(b)(2) of this rule, the department shall take actions as necessary to ensure compliance with this article. *(Water Pollution Control Board; 327 IAC 17-1-5; filed May 25, 2005, 10:45 a.m.: 28 IR 2971)*

327 IAC 17-1-6 Exceptions to mitigation

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. At the discretion of the commissioner, the department may allow exceptions to compensatory mitigation in specific, limited circumstances. *(Water Pollution Control Board; 327 IAC 17-1-6; filed May 25, 2005, 10:45 a.m.: 28 IR 2972)*

327 IAC 17-1-7 Exempt activities

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 7. The following wetland activities are exempt from permitting under this article:

(1) The discharge of any of the following in a de minimis amount:

(A) Dirt.
(B) Sand.
(C) Rock.
(D) Stone.
(E) Concrete.
(F) Other inert fill materials.

(2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:

(A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;
(B) otherwise effectuate environmental values; and
(C) enhance those values where practicable.

(3) Any activity listed under Section 404(f) of the Clean Water Act, including the following:

(A) Normal farming, silviculture, and ranching activities, such as any of the following:

(i) Plowing.
(ii) Seeding.
(iii) Cultivating.
(iv) Minor drainage.
(v) Harvesting for the production of food, fiber, and forest products.
(vi) Upland soil and water conservation practices.

(B) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures, such as the following:

(i) Dikes.
(ii) Dams.
(iii) Levees.
(iv) Groins.
(v) Riprap.
(vi) Breakwaters.
(vii) Causeways and bridge abutments or approaches.
(viii) Transportation structures.

(C) Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches.

(D) Construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters.

(E) Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices to assure the following:

(i) Flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired.
(ii) The reach of the navigable waters is not reduced.
(iii) Any adverse effect on the aquatic environment will be otherwise minimized.

(Water Pollution Control Board; 327 IAC 17-1-7; filed May 25, 2005, 10:45 a.m.: 28 IR 2972)

327 IAC 17-1-8 Denial of a permit

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 8. The department may deny a permit for cause. The department must support a denial by a written statement of reasons. *(Water Pollution Control Board; 327 IAC 17-1-8; filed May 25, 2005, 10:45 a.m.: 28 IR 2972)*

327 IAC 17-1-9 Notice of decision

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 4-21.5-3-5; IC 13-18-3; IC 13-18-4

Sec. 9. The department shall issue notices of decision in

accordance with IC 4-21.5-3-5(b). *(Water Pollution Control Board; 327 IAC 17-1-9; filed May 25, 2005, 10:45 a.m.: 28 IR 2972)*

Rule 2. General Permit for Minimal Impacts to State Regulated Wetlands

327 IAC 17-2-1 Purpose

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-4; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. This rule establishes the following:

(1) A general permit to authorize wetland activities with minimal impact to Class I and Class II wetlands that are SRWs.

(2) Procedures and criteria for the review of applications for wetland activity general permits for minimal impacts to SRWs.

(Water Pollution Control Board; 327 IAC 17-2-1; filed May 25, 2005, 10:45 a.m.: 28 IR 2973)

327 IAC 17-2-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4; IC 14-34

Sec. 2. (a) This rule applies to persons proposing to undertake wetland activities in Class I and Class II SRWs that will have minimal impacts, as described in this rule.

(b) Wetland activities covered by this rule include the following:

(1) Activities related to the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill or of any currently serviceable structure or fill authorized by this rule, 327 IAC 17-3, or 327 IAC 17-4, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from the repair, rehabilitation, or replacement are minimal. As used in this subdivision, "currently serviceable" means usable as is or with some maintenance, but not so degraded as to essentially require reconstruction. A permit issued under this subdivision authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two (2) years of the date of their destruction or damage. In cases of catastrophic events, such as tornadoes, this two-year limit may be waived by the commissioner, provided the permittee can demonstrate funding, contract, or other similar delays.

(2) Discharges of dredged or fill material, including excavation, into SRWs to remove accumulated sediments and debris in the vicinity of, and within, existing structures, for example, bridges, culverted road crossings, water intake structures, and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the wetland in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than two hundred (200) feet in any direction from the structure. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the commissioner under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the commissioner.

(3) Discharges of dredged or fill material, including excavation, into SRWs, for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a SRW. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without permit provided the uplands are restored to their original pre-event location. A permit issued under this subdivision is for the activities in SRWs associated with the replacement of the uplands.) The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The department retains the right to determine the extent of the preexisting conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent wetland is limited to:

(A) fifty (50) cubic yards below the plane of the ordinary high water mark; and

(B) to the amount necessary to restore the preexisting bottom contours of the wetland.

The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with subdivision (11) to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes. Any work authorized by this permit must not cause more than minimal degradation of water quality or increase flooding. A permit issued under this subdivision authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill

that does not qualify for the 327 IAC 17-1-7(3)(B) exemption for maintenance.

(4) Fish and wildlife harvesting devices and activities, such as duck blinds. A permit issued under this subdivision does not authorize impoundments and semi- impoundments of waters of the state for the culture or holding of motile species.

(5) The use of devices designed to measure and record scientific data, such as the following:

(A) Staff gauges.

(B) Water recording devices.

(C) Water quality testing and improvement devices.

(D) Similar structures.

(6) Survey activities including core sampling, seismic exploratory operations, plugging of seismic shotholes and other exploratory-type boreholes, soil survey, sampling, and historic resources. The following are not authorized under this subdivision:

(A) Discharges and structures associated with the recovery of historic resources.

(B) Drilling and the discharge of excavated material from test wells for oil and gas exploration. However, the plugging of such wells is authorized.

(C) Fill placed for roads, pads, and other similar activities.

(D) Permanent structures.

The discharge of drilling mud and cuttings may require a permit under 327 IAC 5.

(7) Activities required for the construction, maintenance, and repair of utility lines and associated facilities in SRWs as follows:

(A) The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all SRWs, provided there is no change in preconstruction contours. As used in this clause, a "utility line" means any:

(i) pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose; and

(ii) cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication.

Material resulting from trench excavation may be temporarily side cast (up to three (3) months) into SRWs, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The commissioner may extend the period of temporary side casting not to exceed a total of one hundred eighty (180) days, where appropriate. In wetlands, the top six (6) inches to twelve (12) inches of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain SRWs, for example, backfilling with extensive gravel layers, creating a french drain effect. For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the SRWs through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each SRW.

(B) The construction, maintenance, or expansion of a substation facility associated with a power line or utility line, provided that the activity does not result in the loss of greater than one-half (½) acre of SRWs.

(C) The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all SRWs, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(D) The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in SRWs, provided the discharges do not cause the loss of greater than one-half (½) acre of SRWs. Access roads shall be the minimum width necessary. Access roads must be constructed so that the length of the road minimizes the adverse effects on SRWs and as near as possible to preconstruction contours and elevations, for example, at grade corduroy roads or geotextile/gravel roads. Access roads constructed above preconstruction contours and elevations in SRWs must be properly bridged or culverted to maintain surface flows. As used in this clause, "utility line" does not include activities that drain a SRW, such as drainage tile or french drains; however, the term does include pipes conveying drainage from another area. For purposes of this clause, the loss of SRWs includes the filled area plus SRWs that are adversely affected by flooding, excavation, or drainage as a result of the project.

Activities authorized by clauses (A) through (C) may not exceed a total of one-half (½) acre loss of SRWs. SRWs temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, are not included in the calculation of permanent loss of SRWs. This includes temporary construction mats, for example, timber, steel, and geotextile, used during construction and removed upon completion of the work. Where certain functions and values of SRWs are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level. Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of SRWs that is filled, exca-

vated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this rule. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions.

(8) Return water from upland, contained dredged material disposal area. The dredging itself may require a permit under IC 13-18-22-1. The return water from a contained disposal area is administratively defined as a discharge of dredged material, even though the disposal itself occurs on the upland and does not require an IC 13-18-22-1 permit.

(9) Activities in SRWs associated with the restoration of former wetlands, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, and the restoration and enhancement of streams and open water areas as follows:

(A) The activity is conducted on any of the following:

(i) Nonfederal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS).

(ii) Reclaimed surface coal mine lands subsequent to reclamation bond release and termination of OSM/IDNR jurisdiction under the Surface Mining Control and Reclamation Act and IC 14-34. The future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, or naturally due to hydrologic or topographic features, or for a mitigation bank.

(iii) Other public or private lands.

(B) Planting of only native species shall occur on the site.

Activities authorized by this subdivision include, to the extent that a permit is required under IC 13-18-22-1, the removal of accumulated sediments; the installation, removal, and maintenance of dikes and berms; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove nonnative invasive, exotic, or nuisance vegetation; and other related activities. This subdivision does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this subdivision authorizes the relocation of wetlands on the project site provided there are net gains in aquatic resource functions and values. For example, this subdivision may authorize the creation of an open water impoundment in an emergent wetland provided the emergent wetland is replaced by creating that wetland type on the project site. For enhancement, restoration, and creation projects conducted under item (iii), this subdivision does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases, a separate permit would be required for any reversion if not otherwise exempt under this article. For restoration, enhancement, and creation projects conducted under items (i) and (ii), this subdivision also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use, that is, prior to the restoration, enhancement, or creation activities if a permit is otherwise required under this article for such reversion activities. The reversion must occur within five (5) years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after a permit issued under this subdivision expires. This subdivision also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require an IC 13-18-22-1 permit). The five-year reversion limit does not apply to agreements without time limits reached under item (i). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity, the permittee or the appropriate federal or state agency must notify the commissioner and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever regulatory requirements are applicable at that future date.

(10) Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on federally-owned or managed property, state-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include the following:

(A) The repair or maintenance of dikes.

(B) Plowing or discing to impede succession, prepare seed beds, or establish fire breaks.

Sufficient vegetated buffers must be maintained adjacent to all open waterbodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This subdivision does not authorize the construction of new dikes, roads, water control structures, etc., associated with the management areas. This subdivision does not

authorize converting wetlands to uplands, impoundments, or other open waterbodies.

(11) New construction, agriculture, and mining activities. The following activities are authorized:

(A) New construction activities associated with the construction or installation of new facilities or structures. Typically, these include residential, commercial, industrial, institutional, and recreational activities. These activities include:

(i) filling and grading;

(ii) dredging;

(iii) stormwater, sediment, and erosion control activities; and

(iv) roads, infrastructures, and utilities;

provided the individual and cumulative impacts are minimal.

(B) Agriculture and mining activities. These include work or discharges of dredged or fill material associated with the following:

(i) Buildings or work pads.

(ii) Stock piling of material.

(iii) Staging, loading, and unloading areas.

(iv) Roads.

(v) Land leveling.

(vi) Berms, dikes, dams, ditch construction.

(vii) Drainage facilities.

(viii) Erosion and water control activities.

This subdivision does not affect those agricultural and mining activities that are exempt in accordance with 327 IAC 17-1-7.

(C) Discharges of dredged or fill material authorized by this subdivision are limited to one-tenth (0.1) acre or less of SRWs.

(D) Authorization of activities under this rule does not substitute for any separate authorizations required by other local, state, or federal requirements.

(E) Activities that the department determines to have the potential to cause unacceptable adverse impacts on aquatic resources or other public interest factors are not authorized by this subdivision.

(F) The department may on a case-by-case basis require a 327 IAC 17-3 or 327 IAC 17-4 permit. The department will notify the applicant that the project does not qualify for a general permit under this rule and instruct the applicant on the procedures to seek authorization under the 327 IAC 17-3 or 327 IAC 17-4 permit. The department may also require a 327 IAC 17-3 or 327 IAC 17-4 permit for any:

(i) after-the-fact applications; or

(ii) unauthorized activity;

or both, regardless of whether or not the discharge meets the area limitation specified in clause (C).

(c) Wetland activities that would have more than minimal impacts to water quality, either viewed individually or collectively with other projects that may affect the same waterbody affected by the proposed project, are excluded. *(Water Pollution Control Board; 327 IAC 17-2-2; filed May 25, 2005, 10:45 a.m.: 28 IR 2973)*

327 IAC 17-2-3 Notice of intent requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. A person proposing a wetland activity must submit a notice of intent to the department as a prerequisite to applicability of the minimal impact general permit. *(Water Pollution Control Board; 327 IAC 17-2-3; filed May 25, 2005, 10:45 a.m.: 28 IR 2976)*

327 IAC 17-2-4 General conditions

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The recipient of the general permit shall comply with the following general conditions:

(1) Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

(2) Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date. The permittee shall deposit any dredged material in a contained upland disposal area to prevent sediment runoff to any water body. Sampling may be required to determine if the dredged sediment is contaminated.

(3) No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the wetland, including those species that normally migrate through the area.

(4) Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

(5) The permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality.

(6) No activity is authorized under this general permit where state endangered, threatened, or rare species are documented on a permanent or seasonal basis within a one-half (½) mile radius of the proposed project site by the Indiana Natural Heritage Data Center.

(7) Upon completion of the wetland activity and any required mitigation, the permittee shall submit a signed certification to the department. The certification will include the following:

(A) A statement that:

(i) the authorized work was done in accordance with the department authorization, including any conditions; and

(ii) any required mitigation was completed in accordance with the permit conditions.

(B) The signature of the permittee certifying the completion of the work and mitigation.

(8) More than one (1) general permit provision may be used for a single and complete project to the extent applicable, provided that the acreage loss of SRWs authorized by all general permit provisions utilized does not exceed the acreage limit of the general permit provision with the highest specified acreage limit.

(9) No activity may occur in the proximity of a public water supply intake, except where the activity is for repair of the public water supply intake structures.

(10) No activity, including structures and work in SRWs or discharges of dredged or fill material, may consist of unsuitable material, for example:

(A) trash;

(B) debris;

(C) car bodies; and

(D) asphalt;

and material used for construction or discharged must be free from toxic pollutants in toxic amounts.

(11) When determining compensatory mitigation to reasonably offset the loss of wetlands allowed by the general permit, the commissioner will consider the following factors:

(A) The commissioner will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(B) Permittees may propose the use of mitigation banks to meet the wetland mitigation requirements.

(C) In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing or complying, or both, with the mitigation plan.

(12) Activities in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

(13) Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

(14) Critical resource waters include critical habitat for federally listed threatened and endangered species, state natural heritage sites, outstanding national resource waters, water pollution control board designated waters, for example, outstanding state or national resource waters, or both, exceptional use waters, outstanding state protected wetland, or other waters officially designated by the state as having particular environmental or ecological significance and identified by the commissioner after notice and opportunity for public comment.

(A) Except as noted below, discharges of dredged or fill material into SRWs are not authorized by section 2(b)(7), 2(b)(8), or 2(b)(11) of this rule for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(B) For section 2(b)(1), 2(b)(9), 2(b)(10), and 2(b)(11) of this rule, the commissioner may authorize activities under these general permits only after it is determined that the impacts to the critical resource waters will be no more than minimal.

(15) For purposes of this general condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps. Discharges of dredged or fill material into SRWs within the mapped 100-year floodplain, resulting in permanent abovegrade fills, are not authorized by general permit.

(16) The permittee shall clearly mark the construction limits shown in the plans at the tract during construction.

(17) The permittee shall allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials to:

(A) enter upon the tract;

(B) have access to and copy at reasonable times any records that must be kept under the conditions of the permit;

(C) inspect, at reasonable times any:

(i) monitoring or operational equipment or method;

(ii) collection, treatment, pollution management, or discharge facility or device;

(iii) practices required by the permit; and

(iv) wetland mitigation site; and

(D) sample or monitor any discharge of pollutants or any mitigation site.

(18) Any activity involving fill that is associated with additional impacts to waters of the state, such as dredging, excavation, or damming, is not authorized by a general permit unless the total area of wetland affected is less than or equal to the area allowed by the general permit.

(19) Execute the project as proposed in the notice of intent.

(20) Implement the mitigation plan submitted with the notice of intent.

(21) Complete all activities necessary to construct the mitigation wetland within one (1) year of the effective date of this general permit, unless the department grants a written extension upon request.

(22) Clearly identify, on the tract, all mitigation wetlands after construction of the mitigation wetlands. Install survey markers to identify the boundaries of the wetlands. If the mitigation wetlands being constructed are adjacent to or near existing wetlands, then the survey markers must distinguish the constructed wetland from the existing wetland.

(23) An applicant establishing a Class I, Class II, or Class III mitigation wetland must file a signed and recorded environmental notice, which describes the compensatory mitigation contained in the mitigation plan, with the department within sixty (60) days of the applicant's release from monitoring requirements.

(Water Pollution Control Board; 327 IAC 17-2-4; filed May 25, 2005, 10:45 a.m.: 28 IR 2976)

327 IAC 17-2-5 Review requirements
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department shall review the notice of intent to determine whether the proposed activity is within the scope of the minimal impact general permit. If the department finds that the proposed activity is not within the scope of the minimal impact general permit, the department shall notify the person proposing the wetland activity that a permit is required under 327 IAC 17-3 or 327 IAC 17-4, as applicable. *(Water Pollution Control Board; 327 IAC 17-2-5; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)*

327 IAC 17-2-6 Review deadlines
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. A permit to undertake a wetland activity under this rule is considered to have been issued to any applicant on the thirty-first day after the department receives a notice of intent submitted under section 3 of this rule if the department has not:

(1) previously authorized the wetland activity; or

(2) notified the applicant per the review requirements in section 5 of this rule.

(Water Pollution Control Board; 327 IAC 17-2-6; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)

Rule 3. Permit for Impacts in Class I State Regulated Wetlands

327 IAC 17-3-1 Purpose
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. This rule establishes procedures and criteria for the review of applications for wetland activity permits for significant impacts to Class I SRWs. *(Water Pollution Control Board; 327 IAC 17-3-1; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)*

327 IAC 17-3-2 Applicability
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This rule applies to persons proposing to undertake wetland activities in Class I SRWs that will have significant impacts. *(Water Pollution Control Board; 327 IAC 17-3-2; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)*

327 IAC 17-3-3 Notice of intent requirements
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. A person proposing a wetland activity must submit a notice of intent to the department as a prerequisite to applicability of the Class I general permit. *(Water Pollution Control Board; 327 IAC 17-3-3; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)*

327 IAC 17-3-4 General conditions
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The recipient of this Class I general permit shall comply with the general conditions at 327 IAC 17-2-4. *(Water Pollution Control Board; 327 IAC 17-3-4; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)*

327 IAC 17-3-5 Review requirements
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department shall review the notice of intent and notify the applicant if the proposed activity is outside the scope of the applicability of the Class I general permit. *(Water Pollution Control Board; 327 IAC 17-3-5; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)*

327 IAC 17-3-6 Review deadlines
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. A permit to undertake a wetland activity in a Class I wetland under this rule is considered to have been issued to any applicant on the thirty-first day after the department receives a notice of intent submitted under section 3 of this rule if the department has not:

(1) previously authorized the wetland activity; or

(2) notified the applicant per the review requirements in section 5 of this rule.

(Water Pollution Control Board; 327 IAC 17-3-6; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)

Rule 4. Individual Permit for Wetland Activities in Class II and Class III State Regulated Wetlands

327 IAC 17-4-1 Purpose
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. This rule governs the issuance of wetland activity individual permits and establishes procedures and criteria for the review of applications for wetland activity individual permits in Class III and certain Class II wetlands. *(Water Pollution Control Board; 327 IAC 17-4-1; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)*

327 IAC 17-4-2 Applicability
Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 2. This rule applies to persons who propose to undertake wetland activities in a:

(1) Class III wetland; and

(2) Class II wetland, except wetland activities that are regulated by a minimal impact general permit under 327 IAC 17-2.

(Water Pollution Control Board; 327 IAC 17-4-2; filed May 25, 2005, 10:45 a.m.: 28 IR 2978)

327 IAC 17-4-3 Permit application requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-5; IC 13-18-22-7
Affected: IC 13-18-22

Sec. 3. A person proposing a wetland activity is required to submit to the department an application that includes the following:

(1) Applicant information.

(2) Agent information if applicable.

(3) Purpose and description of activity.

(4) Current and proposed use of the tract.

(5) Correspondence from the USACOE that states that the wetland is not subject to regulation under Section 404(a) of the Clean Water Act.

(6) Identification of the wetlands to be affected by the wetland activity including the following:

(A) The location of the tract and location of the wetlands on the tract.

(B) A delineation of all wetlands on the tract.

(C) A classification of all SRWs on the tract.

(D) For the purpose of making the determinations at 327 IAC 17-1-4, 327 IAC 17-1-3(7)(A), 327 IAC 17-1-3(7)(K), IC 13-18-22-2(c), IC 13-18-22-10, and IC 13-18-22-11, the person proposing the activity shall disclose dates for the following:

(i) Actions that disturb or affect isolated wetlands under 327 IAC 17-1-3(1)(A) that occurred after January 1, 2004.

(ii) Wetland activities exempted by 327 IAC 17-1-3(7)(E) or 327 IAC 17-1-3(7)(F) that occurred after January 1, 2004.

(iii) Voluntary creation of isolated wetlands under 327 IAC 17-1-3(7)(A) and 327 IAC 17-1-3(12).

(iv) Restoration of isolated wetlands under IC 13-18-22-2(c).

(v) Filling, draining, or elimination by other means isolated wetlands not removed from the department's authority by IC 13-18-22-10.

(vi) Wetland activities that occurred after January 1, 2004, on land previously exempted by 327 IAC 17-1-3(7)(G) if the land is no longer subject to United States Department of Agriculture wetland conservation rules under IC 13-18-22-11.

(7) A compensatory mitigation plan to reasonably offset the loss of wetlands allowed, unless an exception to mitigation has been granted by the department under 327 IAC 17-1-6.

(8) The applicant shall demonstrate, as a prerequisite to the issuance of the permit, that the wetland activity is as follows:

(A) Without a reasonable alternative under section 8 of this rule.

(B) Reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located under section 9 of this rule.

(C) For a Class III wetland, as follows:

(i) Without a practical alternative.

(ii) Will be accompanied by taking steps that are practicable and appropriate to minimize potential adverse impacts of the discharge on the aquatic ecosystem of the wetland.

(D) For a Class III wetland, an applicant's demonstration in clause C(i) and C(ii) is not satisfied by the demonstrations in section 8 or 9 of this rule.

(9) A statement signed by the applicant stating, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.".

(Water Pollution Control Board; 327 IAC 17-4-3; filed May 25, 2005, 10:45 a.m.: 28 IR 2979)

327 IAC 17-4-4 Conditions

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-3; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 4. The department shall condition an approval as necessary to do the following:

(1) Achieve the goals of the permitting program under 327 IAC 17-1-1.

(2) Provide compensatory mitigation to reasonably offset the loss of wetlands allowed by the permits except as provided in 327 IAC 17-1-6.

(Water Pollution Control Board; 327 IAC 17-4-4; filed May 25, 2005, 10:45 a.m.: 28 IR 2979)

327 IAC 17-4-5 Review requirements

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 5. The department may notify the applicant that the completed application is deficient. If the department fails to give notice to the applicant under this section not later than fifteen (15) days after the department's receipt of the completed application, the application is considered not to have been deficient. After receipt of a notice under this section, the applicant may submit an amended application that corrects the deficiency. The department shall make a decision to issue or deny an individual permit under the amended application within a period that ends a number of days after the date the department receives the amended application equal to the remainder of:

(1) one hundred twenty (120) days; minus

(2) the number of days the department held the initial application before giving a notice of deficiency under this section.

(Water Pollution Control Board; 327 IAC 17-4-5; filed May 25, 2005, 10:45 a.m.: 28 IR 2979)

327 IAC 17-4-6 Review deadlines

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 6. Subject to section 5 of this rule, the department shall make a decision to issue or deny an individual permit not later than one hundred twenty (120) days after receipt of the completed application. If the department fails to make a decision on a permit application by the deadline under this section or section 5 of this rule, a permit is considered to have been issued by the department in accordance with the application. *(Water Pollution Control Board; 327 IAC 17-4-6; filed May 25, 2005, 10:45 a.m.: 28 IR 2980)*

327 IAC 17-4-7 Denial of a permit

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7; IC 13-18-22-8
Affected: IC 13-18-3; IC 13-18-4

Sec. 7. The department may deny an application for a permit for cause before the period in section 5 or 6 of this rule expires. The department must support a denial by a written statement of reasons. *(Water Pollution Control Board; 327 IAC 17-4-7; filed May 25, 2005, 10:45 a.m.: 28 IR 2980)*

327 IAC 17-4-8 Reasonable alternative demonstration

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 8. A wetland activity is considered to be without reasonable alternative if:

(1) an executive of the county or municipality in which the wetland is located issues a resolution stating that the wetland activity is without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located;

(2) a local government entity that has authority over the proposed use of the property on which the wetland is located issues a permit or other approval stating that the wetland activity is without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; or

(3) the department, in the absence of a local determination under this section, determines the wetland activity is without reasonable alternative to achieve a legitimate use proposed by the applicant on the property on which the wetland is located.

(Water Pollution Control Board; 327 IAC 17-4-8; filed May 25, 2005, 10:45 a.m.: 28 IR 2980)

327 IAC 17-4-9 Reasonably necessary or appropriate demonstration

Authority: IC 13-18-3-1; IC 13-18-22-1; IC 13-18-22-7
Affected: IC 13-18-3; IC 13-18-4

Sec. 9. A wetland activity is considered to be reasonably necessary or appropriate if:

(1) an executive of the county or municipality in which the wetland is located issues a resolution stating that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located;

(2) a local government entity, having authority over the proposed use of the property on which the wetland is located, issues a permit or other approval stating that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located; or

(3) the department, in the absence of a local determination under this section, makes a determination that the wetland activity is reasonably necessary or appropriate to achieve a legitimate use proposed by the applicant on the property on which the wetland is located.

(Water Pollution Control Board; 327 IAC 17-4-9; filed May 25, 2005, 10:45 a.m.: 28 IR 2980)

327 IAC 17-4-10 Public notice of applications for individual permits for wetland activities in Class II and Class III state regulated wetlands

Authority: IC 13-18-22-3; IC 13-18-22-8
Affected: IC 4-21.5-3-5

Sec. 10. (a) Except as provided in subsection (f) *[sic.]***, the commissioner shall provide public notice of and an opportunity to comment on complete applications submitted to the department under this rule.**

(b) The public notice must contain the following information:

(1) The applicable statutory and regulatory authority.

(2) The name and address of the applicant and, if any, the applicant's agent.

(3) The name, address, and telephone number of the department's employee who may be contacted concerning the application.

(4) The location of the tract.

(5) A brief description of the proposed project, including the following:

(A) The purpose and a description of the wetland activity.

(B) The current and proposed use of the tract.

(C) A summary of the number, size, and class of the SRW on the tract.

(D) A description of the compensatory mitigation proposed by the applicant.

(6) A statement telling where the public may view or obtain a copy of the application.

(7) A statement that the comment period deadline is thirty (30) calendar days from the date of mailing of the public notice unless otherwise specified.

(8) A statement that any person may request in writing that a public hearing or meeting be held to consider the application.

(c) The department shall provide notice of a complete application to the following:

(1) The applicant.

(2) Adjacent property owners and other potentially affected persons, as provided by the applicant.

(3) The following agencies:

(A) The department of natural resources.

(B) The United States Fish and Wildlife Service.

(C) Affected county and local plan commissions.

(4) Any person who requests copies of public notices of applications.

(d) The department shall consider comments received during any public comment period under this section in making a determination under this rule. The department may hold a public hearing in response to a request for a public hearing under subsection (b). *(Water Pollution Control Board; 327 IAC 17-4-10; filed May 25, 2005, 10:45 a.m.: 28 IR 2980)*

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TITLE 879 MANUFACTURED HOME INSTALLER LICENSING BOARD

LSA Document #04-272(F)

DIGEST

Adds 879 IAC to establish definitions, educational and licensing requirements, license renewal requirements, fees, continuing education requirements, standards for the competent performance of home installers, and a code of ethics. Effective 30 days after filing with the secretary of state.

879 IAC

SECTION 1. 879 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 879 MANUFACTURED HOME INSTALLER LICENSING BOARD

ARTICLE 1. GENERAL PROVISIONS

Rule 1. Definitions

879 IAC 1-1-1 Applicability
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 1. The definitions in this rule apply throughout this article. *(Manufactured Home Installer Licensing Board; 879 IAC 1-1-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2981)*

879 IAC 1-1-2 "Board" defined
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7-3-1

Sec. 2. "Board" means the manufactured home installer licensing board established by IC 25-23.7-3-1. *(Manufactured Home Installer Licensing Board; 879 IAC 1-1-2; filed May 11, 2005, 2:00 p.m.: 28 IR 2981)*

879 IAC 1-1-3 "Installation" or "install" defined
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 3. "Installation" or "install" means the following:

(1) The construction, whether temporary or permanent, of a structural support system for a manufactured home.

(2) The placement or erection of a manufactured home or manufactured home components on a structural support system.

(3) Supporting, blocking, leveling, securing, anchoring, or adjusting any structural component of a manufactured home.

(4) The connection of multiple or expandable sections or components of a manufactured home.

(Manufactured Home Installer Licensing Board; 879 IAC 1-1-3; filed May 11, 2005, 2:00 p.m.: 28 IR 2981)

879 IAC 1-1-4 "Installer" defined
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 4. "Installer" means an individual who contracts to install or installs a manufactured home. *(Manufactured Home Installer Licensing Board; 879 IAC 1-1-4; filed May 11, 2005, 2:00 p.m.: 28 IR 2981)*

879 IAC 1-1-5 "Licensee" defined
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 5. "Licensee" means an individual who installs manufactured homes and is licensed under this article. *(Manufactured Home Installer Licensing Board; 879 IAC 1-1-5; filed May 11, 2005, 2:00 p.m.: 28 IR 2981)*

879 IAC 1-1-6 "Manufactured home" defined
Authority: IC 25-23.7-3-8
Affected: IC 22-12-1-14; IC 25-23.7

Sec. 6. "Manufactured home" means a structure, transportable in one (1) or more sections, that:

(1) in the traveling mode, is:

(A) eight (8) body feet or more in width; or

(B) forty (40) body feet or more in length; or

(2) when erected on site, is:

(A) three hundred twenty (320) or more square feet; and
(B) built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities;

and includes the plumbing, heating, and electrical systems contained therein. The term does not include industrialized building systems as defined in IC 22-12-1-14. *(Manufactured Home Installer Licensing Board; 879 IAC 1-1-6; filed May 11, 2005, 2:00 p.m.: 28 IR 2981)*

Rule 2. Minimum Standards of Competent Practice

879 IAC 1-2-1 Manufactured home installers
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 1. (a) A manufactured home installer's license entitles its holder to install manufactured homes on a contract or subcontract basis for manufacturers, dealers, or home purchasers. All work must be in compliance with all applicable federal and state statutes, regulations, and standards. Work authorized by the manufactured home installer's license is limited to the following:

(1) Site preparation.
(2) Physical placement of the manufactured home on the site.
(3) Physical connection of sections and structural and nonstructural and mechanical components of the manufactured home.
(4) Installation of the following:
(A) Foundation system.
(B) Piers.
(C) Blocking work.
(D) Ground anchors.
(E) Tiedown straps.
(F) Leveling.
(G) Vapor barriers.
(H) Prefabricated steps.

(b) Electric, water, sewer, and gas utilities must not be connected until the manufactured home is properly blocked and leveled.

(c) Installation will not be considered complete until all systems are functioning. *(Manufactured Home Installer Licensing Board; 879 IAC 1-2-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2982)*

879 IAC 1-2-2 Manufactured home installation requirements
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 2. Manufactured home installers shall do manufactured home installation in compliance with the following:

(1) 410 IAC 6-6, mobile home park sanitation and safety, as adopted by the Indiana state department of health.
(2) 675 IAC 14, Indiana residential code, as adopted by the fire prevention and building safety commission.

(Manufactured Home Installer Licensing Board; 879 IAC 1-2-2; filed May 11, 2005, 2:00 p.m.: 28 IR 2982)

879 IAC 1-2-3 Advertising
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 3. Advertising by a manufactured home installer shall not misrepresent facts. *(Manufactured Home Installer Licensing Board; 879 IAC 1-2-3; filed May 11, 2005, 2:00 p.m.: 28 IR 2982)*

Rule 3. Code of Ethics

879 IAC 1-3-1 Code of ethics
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 1. (a) This rule establishes requirements concerning ethical principles and unprofessional conduct in the practice of installation of manufactured homes.

(b) The ethics to be observed by licensed manufactured home installers shall be as follows:

(1) Maintain a high standard of professional ethics.
(2) Maintain a position of truth and integrity in dealing with customers and the public.
(3) Maintain a policy of civic responsibility and cooperation in the community.
(4) Maintain an attitude of constant cooperation with an interest in local, state, and federal laws.
(5) Maintain a policy of prompt and efficient service of all legitimate complaints.
(6) Maintain a policy of complete compliance with all existing laws and regulations governing the business operation.
(7) Maintain a program of constant improvement of the products and the business interests.
(8) Maintain the present and promote the future welfare and best interests of the citizens of Indiana.

(Manufactured Home Installer Licensing Board; 879 IAC 1-3-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2982)

Rule 4. Fees and Licensing Requirements

879 IAC 1-4-1 Fees
Authority: IC 25-1-8-2; IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 1. The board shall charge and collect the following fees, which shall all be nonrefundable and nontransferable:

(1) For review of an application for licensure and issuance of a license as a manufactured home installer, one hundred fifty dollars ($150).
(2) For the quadrennial renewal of the license to practice as a manufactured home installer, fifty dollars ($50) payable before December 31 of every fourth year.

(3) For renewal of an expired license to practice as a manufactured home installer, fifty dollars ($50), plus the unpaid renewal.

(4) For a duplicate or replacement wall certificate, twenty-five dollars ($25).

(5) For a replacement pocket card to practice as a manufactured home installer, ten dollars ($10).

(6) For verification of licensure to another state or jurisdiction, ten dollars ($10).

(Manufactured Home Installer Licensing Board; 879 IAC 1-4-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2982)

879 IAC 1-4-2 Licensing educational requirements; hours of classroom instruction

Authority: IC 25-23.7-3-8
Affected: IC 25-1-11; IC 25-23.7

Sec. 2. (a) A manufactured home installer course shall consist of at least eight (8) hours of classroom instruction in the following:

(1) A minimum of two (2) hours in Indiana law in the following subject areas:

(A) IC 25-23.7, Indiana manufactured home installer's act.

(B) IC 25-1-11, professional licensing standards of practice.

(C) 675 IAC 14, Indiana residential code, as adopted by the fire prevention and building safety commission.

(D) 410 IAC 6-6, mobile home park sanitation and safety, as adopted by the Indiana state department of health.

(E) Applicable federal and Indiana statutes, rules, and regulations governing manufactured home installation.

(2) A minimum of one-half (½) hour in professional ethics.

(3) A minimum of two (2) hours in installation manual in the following subject areas:

(A) Manufacturer's installation manuals and requirements.

(B) Preparation of manufactured housing sites.

(C) Installation of foundation systems.

(4) A minimum of two (2) hours in safety in the following subject areas:

(A) Blocking, perimeter support, and leveling of manufactured homes.

(B) Structural connections of sections and major components.

(C) Installation of anchoring systems and components.

(D) Installation of vapor barriers, curtain walls, access, and ventilation for crawlspace areas.

(5) A minimum of one-half (½) hour in utility connections between sections in the following subject areas:

(A) Electrical connections between sections.

(B) Plumbing connections between sections.

(C) Mechanical equipment connections between sections.

(D) Gas equipment and appliance connections within the home.

(E) Connections of vents, ducts, carpet, and other nonstructural components.

The educational topics listed are minimums for each topic. Additional classroom time, over and above those listed above, shall be detailed within the educational outline information and is to be in areas relating to the installation of manufactured homes.

(b) One (1) hour of licensing education must contain sixty (60) minutes of actual instruction.

(c) All attendance shall be in the same course.

(d) A makeup class must be:

(1) completed during a regular class session; and

(2) sponsored by the provider in which the student was enrolled.

(Manufactured Home Installer Licensing Board; 879 IAC 1-4-2; filed May 11, 2005, 2:00 p.m.: 28 IR 2983)

Rule 5. Insurance and Surety Bond

879 IAC 1-5-1 Insurance and surety bond

Authority: IC 25-23.7-3-8
Affected: IC 25-23.7-5

Sec. 1. (a) In addition to meeting the requirements in IC 25-23.7-5 and 879 IAC 1-4, at the time of making application, an applicant for a manufactured home installer license must submit either of the following:

(1) Proof of insurance issued by an insurance company authorized to transact business in Indiana showing that the applicant, either directly or through the applicant's employer, is covered by a policy of general liability insurance with products/completed operations coverage in the minimum amount of one hundred thousand dollars ($100,000) per occurrence, one million dollars ($1,000,000) aggregate.

(2) Post with the board a surety bond that:

(A) names the applicant as the principal;

(B) obligates the surety in the amount of one hundred thousand dollars ($100,000) to the board in favor of the state;

(C) requires the principal, if granted a license, to install manufactured homes in conformance with the manufacturer's installation manual and to observe all applicable federal, state, and local statutes and regulations; and

(D) authorizes the board to declare the bond in default and to levy against the surety and the principal under the bond for the payment of actual damages to any person who is harmed as a result of the principal's violation of the requirements described in clause (C).

(b) The applicant shall immediately notify the board of any change in, or termination of, the insurance coverage or surety bond coverage submitted with the application and provide the board with evidence of substitute coverage.

Upon a licensee's failure to comply with this section, the license of the licensee shall be suspended. A license suspended under this subsection may not be reinstated until the applicant has provided proper proof of insurance to the board. *(Manufactured Home Installer Licensing Board; 879 IAC 1-5-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2983)*

Rule 6. Licensing Education and Continuing Education Course Providers; General Requirements

879 IAC 1-6-1 Application for licensing education and continuing education course provider approval; content

Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 1. (a) Any manufactured home installer licensing education or continuing education course provider seeking approval as a course provider shall:

(1) make written application for approval, on a form provided by the board; and

(2) submit such documents, statements, and forms as:

(A) required by the board; and

(B) may be reasonably necessary to establish whether the course complies with the requirements of this article.

(b) The application shall include the following:

(1) The name and address of the licensing education or continuing education course provider.

(2) A list of each course offered.

(3) The name, address, and telephone number of the contact person for the licensing education or continuing education course provider.

(c) To receive approval of a course, licensing education or continuing education course provider applicants must submit the following:

(1) A course content outline meeting the requirements of:

(A) 879 IAC 1-4-2 for licensing education requirements; or

(B) 879 IAC 1-8-3 for continuing education requirements;

describing each subject to be offered during the approval period.

(2) A clearly expressed course objective.

(3) The name and professional biography of the instructors that shows that the instructors possess special skills or knowledge of the subject being presented and have at least one (1) of the following minimum qualifications:

(A) An instructor of manufactured home installation teaching at:

(i) an accredited institution of higher education in the United States; or

(ii) a comparable school of a foreign country.

(B) Have a college degree related to the material that the person is to teach.

(C) Five (5) years full-time experience in a profession, trade, or technical occupation related to the material being taught.

(4) The number of hours of licensing education or continuing education to be granted for each course.

(5) A sample course:

(A) evaluation form; and

(B) completion certificate.

(Manufactured Home Installer Licensing Board; 879 IAC 1-6-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2984)

879 IAC 1-6-2 Certifications of completion

Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 2. Licensing education or continuing education course providers shall provide the student who successfully completes an approved licensing education or continuing education course a certification of course completion that must include the following information:

(1) The name, telephone number, and address of the licensing education or continuing education provider.

(2) The name and the Indiana license number, if applicable, of the participant.

(3) The title of the course, date of course, and number of hours completed.

(Manufactured Home Installer Licensing Board; 879 IAC 1-6-2; filed May 11, 2005, 2:00 p.m.: 28 IR 2984)

879 IAC 1-6-3 Course records

Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 3. Each approved licensing education or continuing education course provider must maintain records of students who successfully complete the course of study for a minimum of seven (7) years. The records must include the following:

(1) Attendance records.

(2) Course material evaluations.

(3) Instructor and course evaluations.

(4) Duplicate copies of completion certificates or the ability to reproduce duplicate completion certificates.

(Manufactured Home Installer Licensing Board; 879 IAC 1-6-3; filed May 11, 2005, 2:00 p.m.: 28 IR 2984)

879 IAC 1-6-4 Course and instructor evaluations

Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 4. (a) Each manufactured home installer licensing education course or continuing education course shall have a written course evaluation consisting of questions to appropriately evaluate the overall course.

(b) Licensing education or continuing education course providers are required to survey their students at the end of each course. The survey shall include information regarding the following:

(1) The quality of instruction.
(2) The appropriateness of materials.
(3) Other information that will properly evaluate the course.

(c) Evaluations must be made available for inspection by the board upon request. *(Manufactured Home Installer Licensing Board; 879 IAC 1-6-4; filed May 11, 2005, 2:00 p.m.: 28 IR 2984)*

879 IAC 1-6-5 Facilities
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 5. (a) The premises, equipment, and facilities of the approved licensing education or continuing education course provider shall comply with all local, city, county, and state regulations, such as fire, building, and sanitation codes. The premises must also accommodate Americans with disabilities.

(b) Licensing education or continuing education courses shall be taught in a facility with adequate space, seating, equipment, and instructional material to accommodate the number of students enrolled.

(c) Approved licensing education or continuing education course providers shall prohibit the serving or obtaining of alcoholic beverages in the classroom and any other area that the student would have access to during the time class is in session, including breaks, such as the restroom and hallways.

(d) Subsection (c) shall not be interpreted to prohibit the use of facilities, such as hotels, motels, and convention centers, where alcoholic beverages are sold in separate rooms. *(Manufactured Home Installer Licensing Board; 879 IAC 1-6-5; filed May 11, 2005, 2:00 p.m.: 28 IR 2985)*

879 IAC 1-6-6 Student fees; cancellation of course sessions
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 6. (a) The cost of textbooks, supplemental texts, and required materials shall be included in the course fee. Disclosure of the full cost of the course, including tuition, books, and required materials, must be made to the student before enrollment.

(b) Each approved licensing education or continuing education course provider shall establish a refund policy, which is included in all printed material related to the offering of the course. The refund policy shall be available for review and acceptance by the student at the time of enrollment. *(Manufactured Home Installer Licensing Board; 879 IAC 1-6-6; filed May 11, 2005, 2:00 p.m.: 28 IR 2985)*

879 IAC 1-6-7 Advertising
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 7. No licensing education or continuing education course provider conducting a course of study shall advertise or make any reference in its advertising, promotional material, brochures, and/or registration forms that it is:
(1) endorsed by;
(2) recommended by;
(3) accredited by; or
(4) affiliated with;
the board. However, the licensing education or continuing education course provider may state that the course being presented has been approved by the board. *(Manufactured Home Installer Licensing Board; 879 IAC 1-6-7; filed May 11, 2005, 2:00 p.m.: 28 IR 2985)*

879 IAC 1-6-8 Licensing education and continuing education course provider prohibitions
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 8. Licensing education or continuing education course providers are prohibited from the following:
(1) Giving materially inaccurate or misleading information in an application for licensing education or continuing education course provider approval or an annual report.
(2) Deliberately falsifying or misrepresenting any information supplied to the board or the public.
(3) Having substantially failed to comply with the provisions of any contract or agreement entered into with a student.
(4) Failing to allow the board or its designee to inspect the licensing education or continuing education course or its records or failing to make available such information as required by this article.
(5) Violating IC 25-23.7 or this title.
(6) Failing to notify the board within thirty (30) days of the termination of its relationship with an instructor.
(Manufactured Home Installer Licensing Board; 879 IAC 1-6-8; filed May 11, 2005, 2:00 p.m.: 28 IR 2985)

879 IAC 1-6-9 Instructors prohibitions
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 9. (a) An approved manufactured home installer licensing education or continuing education course provider is prohibited from hiring, or retaining in its employ, an instructor who has:
(1) had a manufactured home installer license revoked or suspended by any state or federal manufactured home installer licensing agency;
(2) been convicted of a crime that has a direct bearing on the individual's ability to competently instruct, including, but not necessarily limited to, violations of manufactured home

installer laws and abuse of fiduciary responsibilities; or
(3) falsely certified hours of attendance for any student.

(b) Any instructor whose professional license or certification is under sanction by any state or federal manufactured home installer licensing agency may not instruct in an approved licensing education or continuing education program while the disciplinary sanction is in effect. *(Manufactured Home Installer Licensing Board; 879 IAC 1-6-9; filed May 11, 2005, 2:00 p.m.: 28 IR 2985)*

879 IAC 1-6-10 Notification of changes
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 10. All approved licensing education or continuing education course providers shall advise the board within thirty (30) days after any significant changes in their operation. Significant changes include, but are not limited to, the following:
(1) Going out of business.
(2) A change in the address or phone number of the licensing education or continuing education course provider.
(3) A change in the name, address, or telephone number of the contact person.
(4) Adding a new instructor.
(5) Changes in course outline.
(6) Any course addition or deletion.
(Manufactured Home Installer Licensing Board; 879 IAC 1-6-10; filed May 11, 2005, 2:00 p.m.: 28 IR 2986)

879 IAC 1-6-11 Review and investigation of approved licensing education or continuing education course providers
Authority: IC 25-23.7-3-8
Affected: IC 25-1-11; IC 25-23.7

Sec. 11. (a) An approved licensing education or continuing education course provider may be asked to:
(1) provide specific information;
(2) answer questions; or
(3) appear before the board or its designee;
for the purpose of determining compliance with this article.

(b) The board or its designee may, at any time, review or investigate, or both, any matter concerning any course or applicant for licensing education or continuing education course provider approval to determine compliance with this article.

(c) The method of review shall be determined by the board in each case and will generally consist of the following:
(1) Consideration of information available from applicable:
(A) federal, state, or local agencies;
(B) private organizations or agencies; or
(C) interested persons.
(2) Conferences with:
(A) the licensing education or continuing education course provider director and other representatives of the licensing education or continuing education course provider involved; or
(B) former students of the licensing education or continuing education course provider.

(d) The board may require a background check on the licensing education or continuing education provider's personnel, including a criminal history check. *(Manufactured Home Installer Licensing Board; 879 IAC 1-6-11; filed May 11, 2005, 2:00 p.m.: 28 IR 2986)*

879 IAC 1-6-12 Discipline for noncompliance
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-1-11; IC 25-23.7

Sec. 12. Licensing education or continuing education course providers who are found not to be in compliance with this rule are subject to being disciplined under IC 25-1-11. *(Manufactured Home Installer Licensing Board; 879 IAC 1-6-12; filed May 11, 2005, 2:00 p.m.: 28 IR 2986)*

Rule 7. Renewal

879 IAC 1-7-1 Renewal of a manufactured home installer license
Authority: IC 25-23.7-3-8
Affected: IC 25-23.7

Sec. 1. (a) A manufactured home installer license issued under this article shall expire January 1 of every fourth year.

(b) To renew a license, an individual must do the following:
(1) Pay the fee required by 879 IAC 1-4-1.
(2) Complete an application for renewal on a form provided by the board.
(3) Satisfactorily complete the continuing education required by 879 IAC 1-8.
(4) Submit a certification or proof of continuation of the insurance coverage or surety bond required by 879 IAC 1-5.
(5) Sign a statement under penalty of perjury that:
(A) the hours submitted are correct;
(B) the licensee attended and completed the courses taken; and
(C) to the best of the licensee's knowledge, the courses completed meet the requirements of 879 IAC 1-8.
(Manufactured Home Installer Licensing Board; 879 IAC 1-7-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2986)

879 IAC 1-7-2 Renewal of licensing education or continuing education course providers
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 2. Licensing education or continuing education course provider approval will expire on December 31 of every year. To obtain renewal of the licensing education or continuing education course provider approval, the provider must submit a letter to the board requesting such renewal by October 31. This letter must detail any changes made in the:

(1) course topics;

(2) materials;

(3) instructors; or

(4) other information required by 879 IAC 1-6.

(Manufactured Home Installer Licensing Board; 879 IAC 1-7-2; filed May 11, 2005, 2:00 p.m.: 28 IR 2986)

Rule 8. Continuing Education

879 IAC 1-8-1 Continuing education requirements

Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 1. (a) Manufactured home installers must complete twelve (12) hours of continuing education in order to qualify for renewal of an active license.

(b) The number of continuing education hours that a licensee must obtain for the renewal period at the time of issuance of a new license shall be established by section 11 of this rule. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2987)*

879 IAC 1-8-2 Courses from approved continuing education providers

Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 2. Hours of continuing education will be granted to manufactured home installers who have successfully completed courses offered by manufactured home installer continuing education course providers approved under 879 IAC 1-6. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-2; filed May 11, 2005, 2:00 p.m.: 28 IR 2987)*

879 IAC 1-8-3 Continuing education topics

Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-1-11; IC 25-23.7

Sec. 3. (a) To qualify for renewal, a manufactured home installer must complete twelve (12) hours of continuing education in any of the following topics:

(1) IC 25-23.7, Indiana manufactured home installer licensing act.

(2) IC 25-1-11, professional licensing standards of practice.

(3) 879 IAC 1-2, competent practice of manufactured home installation.

(4) 879 IAC 1-3, code of ethics.

(5) 675 IAC 14, Indiana residential code, as adopted by the fire prevention and building safety commission.

(6) 410 IAC 6-6, mobile home park sanitation and safety, as adopted by the Indiana state department of health.

(7) Applicable federal and Indiana statutes, rules, and regulations governing manufactured home installation.

(8) Manufacturer's installation manuals and requirements.

(9) Preparation of manufactured housing sites.

(10) Installation of foundation systems.

(11) Blocking, perimeter support, and leveling of manufactured homes.

(12) Structural connections of section and major components.

(13) Installation of anchoring systems and components.

(14) Installation of vapor barriers, curtain walls, access, and ventilation for crawlspace areas.

(15) Electrical connections between sections.

(16) Plumbing connections between sections.

(17) Mechanical equipment connections between sections.

(18) Gas equipment and appliance connections within the home.

(19) Connections of vents, ducts, carpet, and other nonstructural components.

(b) The twelve (12) hours of continuing education must include the following:

(1) Professional ethics.

(2) Indiana statutes, rules, and regulations governing manufactured home installers.

(Manufactured Home Installer Licensing Board; 879 IAC 1-8-3; filed May 11, 2005, 2:00 p.m.: 28 IR 2987)

879 IAC 1-8-4 Continuing education credit not given

Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 4. Continuing education credit will not be given for any of the following:

(1) Any education obtained prior to licensure.

(2) Approved licensing education courses under 879 IAC 1-4-2.

(3) Courses taken for a second or subsequent time during a renewal period.

(4) Courses or seminars not completed. Partial credit may not be given.

(5) Courses not completed due to dismissal by the continuing education provider for disruption of the course, such as the following:

(A) Reading newspapers.

(B) Talking on mobile telephones.

(C) Anything other than paying attention during the course.

(6) Meetings of the manufactured home installer licensing board.

(7) Training conducted during eating periods.

(8) Motivational classes or seminars.

(9) Business, social, or other noneducational meetings of professional groups or subgroups.

(Manufactured Home Installer Licensing Board; 879 IAC 1-8-4; filed May 11, 2005, 2:00 p.m.: 28 IR 2987)

879 IAC 1-8-5 Retention of certificates of completion
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 5. Manufactured home installers shall retain course completion certificates for not less than five (5) years from the date of the course. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-5; filed May 11, 2005, 2:00 p.m.: 28 IR 2988)*

879 IAC 1-8-6 Continuing education hours
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 6. (a) Hours of continuing education earned in one (1) renewal period may not be used in a subsequent renewal period.

(b) Any continuing education credit accumulated above the minimum requirement for a four (4) year licensure period may not be carried forward to the next four (4) year licensure period. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-6; filed May 11, 2005, 2:00 p.m.: 28 IR 2988)*

879 IAC 1-8-7 Credit for instructors
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 7. A continuing education instructor shall be entitled to continuing education credit for courses the instructor teaches. However, an instructor may not:
(1) be credited for more than four (4) hours of credit for instructing in any four (4) year licensure period; or
(2) receive credit for repeated courses.
(Manufactured Home Installer Licensing Board; 879 IAC 1-8-7; filed May 11, 2005, 2:00 p.m.: 28 IR 2988)

879 IAC 1-8-8 Inactive status
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 8. Manufactured home installers may apply to the board to renew their licenses in an inactive status. No continuing education is required to renew inactive. An inactive manufactured home installer may not practice manufactured home installation while in inactive status. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-8; filed May 11, 2005, 2:00 p.m.: 28 IR 2988)*

879 IAC 1-8-9 Reactivation of an inactive license
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 9. (a) To reactivate an inactive license, a manufactured home installer must apply to the board for the reactivation on the application form supplied by the board.

(b) Manufactured home installers who have been inactive at the date the reactivation application is filed must submit proof of completion of twelve (12) hours of continuing education within the four (4) year period immediately before the date the reactivation application is filed.

(c) Continuing education hours obtained by a licensee to reactivate an inactive license cannot be double counted by also using them for credit in the renewal period in progress. The continuing education requirements for the renewal period in progress are stated in section 11 of this rule. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-9; filed May 11, 2005, 2:00 p.m.: 28 IR 2988)*

879 IAC 1-8-10 Reinstatement of an expired or lapsed license
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 10. (a) An individual whose license has expired or lapsed and wishes to reenter the practice of manufactured home installation must file an application to renew the expired or lapsed license. The application shall be accompanied by the following:
(1) The payment of the fee required to renew the quadrennial license specified in 879 IAC 1-4-1.
(2) Evidence of completion of the twelve (12) hours of continuing education hours prior to filing the application.

(b) The continuing education hours required under subdivision (a)(2) *[subsection (a)(2)]* **must:**
(1) have been obtained no earlier than four (4) years prior to the date the application for reentry is filed; and
(2) meet the requirements established in this rule.

(c) Continuing education obtained by a licensee to renew an expired or lapsed license under this section cannot be double counted by also using them for credit in the renewal period in progress. The continuing education requirements for the renewal period in progress at the time of reinstatement are stated in section 11 of this rule. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-10; filed May 11, 2005, 2:00 p.m.: 28 IR 2988)*

879 IAC 1-8-11 Continuing education required after reactivation or reinstatement
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 11. The following table establishes the number of continuing education hours that a licensee must obtain for the four (4) year licensure period in progress at the time of the issuance, reactivation, or reinstatement of a license under sections 1, 9, and 10 of this rule:

Date of Issuance of License	Hours Required to Renew
January 1 – June 30 of the first year	12
July 1 – December 31 of the first year	10
January 1 – June 30 of the second year	8

July 1 – December 31 of the second year	**6**
January 1 – June 30 of the third year	**4**
July 1 – December 31 of the third year	**2**
January 1 – June 30 of the fourth year	**2**
July 1 – December 31 of the fourth year	**0**

(Manufactured Home Installer Licensing Board; 879 IAC 1-8-11; filed May 11, 2005, 2:00 p.m.: 28 IR 2988)

879 IAC 1-8-12 Waiver of continuing education
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 12. (a) Manufactured home installers who are unable to meet the continuing education requirements because they:
(1) serve in the armed forces of the United States;
(2) have an incapacitating illness or injury that prevented either part-time or full-time employment; or
(3) reside outside of the United States of America;
may petition the board, in writing, to have a reduction or waiver of the continuing education requirements.

(b) Manufactured home installers who receive a reduction in the continuing education hours under subsection (a) must make up those hours in the next licensure period. Those hours will be in addition to the hours otherwise required for the next licensure period. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-12; filed May 11, 2005, 2:00 p.m.: 28 IR 2989)*

879 IAC 1-8-13 Audit of continuing education compliance
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-1-11; IC 25-23.7

Sec. 13. (a) The board may conduct audits of manufactured home installers and providers for continuing education compliance. For any purpose of this section, the board may designate a board member or staff member to act on behalf of or in the name of the board.

(b) If, as a result of an audit or other review, the board determines that hours of continuing education a manufactured home installer has claimed do not meet the requirements of IC 25-23.7-6-5 and this article, the board shall notify the manufactured home installer of that determination.

(c) A manufactured home installer, who has been notified under subsection (b), may, within thirty (30) days, submit information to the board giving all the substantive reasons in support of the manufactured home installer's position that an adequate number of hours of continuing education have been completed.

(d) A manufactured home installer who submits false information shall be subject to the sanctions provided for under IC 25-1-11.

(e) Manufactured home installers who are found not to be in compliance will be subject to discipline under IC 25-1-11. *(Manufactured Home Installer Licensing Board; 879 IAC 1-8-13; filed May 11, 2005, 2:00 p.m.: 28 IR 2989)*

Rule 9. Distance Learning Continuing Education

879 IAC 1-9-1 "Distance education" defined
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 1. (a) As used in this rule, "distance education" means a course in which instruction does not take place in a traditional classroom setting but rather through other media where the educator and student are separated by distance and sometimes by time.

(b) Methods of distance learning education include, but are not limited to, the following:
(1) Education by correspondence.
(2) Video instruction.
(3) Internet education.

(c) "Provider" means an individual or company that creates and delivers continuing education by distance learning methods. *(Manufactured Home Installer Licensing Board; 879 IAC 1-9-1; filed May 11, 2005, 2:00 p.m.: 28 IR 2989)*

879 IAC 1-9-2 Distance education courses and providers
Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 2. (a) The board must approve continuing education courses offered by a distance learning method and the provider of the distance learning method.

(b) A licensee must complete the distance education course within one (1) year of the date of enrollment.

(c) Course subjects allowed under 879 IAC 1-8-3 may be taken through distance learning. However, a maximum of fifty percent (50%) (six (6)) of continuing education courses will be credited toward the twelve (12) hour requirement.

(d) The board must approve a distance education course if the board determines to its satisfaction the following:
(1) The distance education course serves to protect the public by contributing to the maintenance and improvement of the quality of the services provided by the manufactured home installer continuing education provider to the public.
(2) An appropriate and complete application has been filed and approved by the board.
(3) The distance education course meets the content requirements as prescribed in 879 IAC 1-8-3.
(4) The distance education course or courses meets all other requirements as prescribed in the statutes and rules that govern the operation of approved courses.

(Manufactured Home Installer Licensing Board; 879 IAC 1-9-2; filed May 11, 2005, 2:00 p.m.: 28 IR 2989)

879 IAC 1-9-3 Approval of distance education course and provider

Authority: IC 25-23.7-3-8; IC 25-23.7-6-5
Affected: IC 25-23.7

Sec. 3. In order for a distance education course to be approved for credit, the continuing education course provider shall submit the following information:

(1) For course design, the following:

(A) A plan for submitting substantial changes in the course to the board. 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 redirect learning objectives.

(iv) A change of instructor.

(v) Changes in the course delivery method.

(B) A course may provide a test, and the participant must score at least seventy-five percent (75%) to pass and receive credit for the class. Tests may have any combination of multiple choice, true or false, fill-in, or essay questions with at least twenty (20) questions per two (2) hours of instruction. If a test is not used, an alternate method of timing the licensee's participation must be provided to verify completion of the course.

(2) For course delivery, the following:

(A) The names and qualifications for each continuing education provider and instructor of the course offered by distance learning methods and submit their credentials, including any specific training for teaching via the specified delivery method as well as a plan for their continued professional development.

(B) An identity affirmation statement is required. The licensee is required to sign the statement before any certificate of completion for distance learning is issued.

(C) A plan for sufficient security to:

(i) ensure against fraudulent practices;

(ii) protect the licensee's identification information; and

(iii) verify that the student enrolled in the course is the one who completes the course and any required tests.

(3) For licensee support services, information about the course, if applicable, including the following:

(A) Broadcasts and distance site locations.

(B) Faculty contact information.

(C) Course outline and learning objectives.

(D) Testing and grading information.

(E) Guidelines regarding what constitutes successful completion of the course.

(F) Homework assignments and deadlines.

(G) Fees and refunds.

(H) Prerequisites for the course.

(I) A list of required student materials.

(J) A list of other support services made available to the students.

(4) For evaluation and assessment, an evaluation form, which solicits licensee feedback on the following:

(A) The delivery approach.

(B) The equipment.

(C) Suggestions for class improvement.

(D) Their overall satisfaction with the course.

It is required that every licensee in a distance education course be provided an evaluation form at the conclusion of the course. *(Manufactured Home Installer Licensing Board; 879 IAC 1-9-3; filed May 11, 2005, 2:00 p.m.: 28 IR 2990)*

LSA Document #04-272(F)
Notice of Intent Published: November 1, 2004; 28 IR 622
Proposed Rule Published: February 1, 2005; 28 IR 1549
Hearing Held: February 22, 2005
Approved by Attorney General: April 27, 2005
Approved by Governor: May 11, 2005
Filed with Secretary of State: May 11, 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 515 ADVISORY BOARD OF THE DIVISION OF PROFESSIONAL STANDARDS

NOTE: Under P.L.246-2005, SECTION 234, the name of the Professional Standards Board is changed to the Advisory Board of the Division of Professional Standards, effective July 1, 2005.

LSA Document #04-197

Under IC 4-22-2-40, LSA Document #04-197, printed at 28 IR 263, is recalled.

TITLE 327 WATER POLLUTION CONTROL BOARD

#01-180(WPCB)

Under IC 4-22-2-41, #01-180(WPCB), printed at 24 IR 2898, is withdrawn.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

LSA Document #04-276

Under IC 4-22-2-41, LSA Document #04-276, printed at 28 IR 1849, is withdrawn.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-106

Under IC 4-22-2-41, LSA Document #05-106, printed at 28 IR 2759, is withdrawn.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-136(E)

DIGEST

Amends 65 IAC 5-18-5 concerning prizes in the draw game Indy Racing Experience 2-Seater Raffle. Effective May 26, 2005.

65 IAC 5-18-5

SECTION 1. 65 IAC 5-18-5, AS ADDED AT 28 IR 2739, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

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 *[sic.]* 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 *[sic., Racing]* 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; emergency rule filed May 26, 2005, 1:30 p.m.: 28 IR 2993)

LSA Document #05-136(E)
Filed with Secretary of State: May 26, 2005, 1:30 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-131(E)

DIGEST

Temporarily amends 312 IAC 5-10-7, which governs the operation of watercraft on Mississinewa Lake in Miami and Wabash counties. An "idle speed" limit is established on the portion of the lake adjacent to the Mississinewa Road Bridge (also known as the "Red Bridge") where it crosses Mississinewa Lake. The Indiana Department of Transportation is repairing the bridge, and the purpose of the watercraft restriction is to help protect persons and property passing beneath the bridge as those repairs progress. Effective May 17, 2005.

SECTION 1. **(a) This SECTION is supplemental to 312 IAC 5-10-7.**

(b) A person must not operate a watercraft in excess of idle speed on Mississinewa Lake, Wabash County, between two hundred (200) feet east and two hundred (200) feet west of the Mississinewa Road Bridge (also known as the "Red Bridge") in any area that is designated by navigational buoys.

SECTION 2. **SECTION 1 of this document expires on November 1, 2005.**

LSA Document #05-131(E)
Filed with Secretary of State: May 17, 2005, 2:20 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-132(E)

DIGEST

Temporarily amends 312 IAC 9-4-2 and 312 IAC 9-10-11 to govern the taking of mute swans. Authorizes a person to take mute swans in Indiana without registering with the Harvest Information Program. Authorizes the department to issue a nuisance wild animal control permit to take a mute swan. Effective May 18, 2005.

SECTION 1. **(a) This SECTION is supplemental to 312 IAC 9-4-2.**

(b) A person is exempt from registration under the Harvest Information Program when taking a mute swan under the authority of 312 IAC 9-10-11.

SECTION 2. **Notwithstanding 312 IAC 9-10-11(n), the department of natural resources may issue a nuisance wild animal control permit to take a mute swan.**

LSA Document #05-132(E)
Filed with Secretary of State: May 18, 2005, 1:24 p.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-135(E)

DIGEST

Temporarily modifies the size and bag limits for sport fishing on Grouse Ridge Lake in Bartholomew County. Effective June 3, 2005.

SECTION 1. **Effective June 3, 2005, this document modifies the size and bag limits under 312 IAC 9-7 for fish that are taken from Grouse Ridge Lake in Bartholomew County:**

(1) Size limits are eliminated.

(2) Bag limits are set at two (2) times the bag limits established by 312 IAC 9-7.

SECTION 2. **SECTION 1 of this document expires December 31, 2005.**

LSA Document #05-135(E)
Filed with Secretary of State: May 26, 2005, 10:30 a.m.

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-148(E)

DIGEST

Temporarily amends 312 IAC 18-3-12, which governs the control of larger pine shoot beetles, by adding Dearborn County to the quarantine area. Effective June 9, 2005.

SECTION 1. **Dearborn County is declared to be generally infested with larger pine shoot beetles and is made subject to quarantine under 312 IAC 18-3-12. Dearborn County is removed from the exempted counties listed at 312 IAC 18-3-12(c).**

LSA Document #05-148(E)
Filed with Secretary of State: June 9, 2005, 9:30 a.m.

TITLE 326 AIR POLLUTION CONTROL BOARD

#04-181(APCB)

The Air Pollution Control Board hereby gives notice that the date of the public hearing for consideration of preliminary adoption of #04-181(APCB), printed at 28 IR 413, has been changed. The changed Notice of Public Hearing appears below:

Notice of Public Hearing

These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register.

Additional information regarding this action may be obtained from Gayl Killough, Rule Development Section, Office of Air Quality, (317) 233-8628, or (800) 451-6027 (in Indiana).

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 329 SOLID WASTE MANAGEMENT BOARD

#05-85(SWMB)

The Solid Waste Management Board (board) gives notice that the public hearing for preliminary adoption of #05-85(SWMB), printed at 28 IR 2821, has been scheduled. This hearing will consider preliminary adoption of new rules for exclusion of a hazardous waste from regulation under 329 IAC 3.1-5-2 (delisting). The Notice of Public Hearing appears below:

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on ***July 19, 2005,*** *at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Solid Waste Management Board will hold a public hearing on proposed new rules at 329 IAC 3.1-6-7.*

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-0855 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 Land Quality, Indiana Government Center-North, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Assistant Commissioner
Office of Land Quality

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #05-141

Under IC 4-22-2-23, the Department of Local Government Finance intends to adopt a rule concerning the following:

OVERVIEW: To amend 50 IAC 8 to add provisions for the annual adjustment of the base assessed value in tax increment finance allocation areas and to establish rules for implementation of certified technology park allocation areas under IC 36-7-32. Written comments should be addressed to Michael Dart, General Counsel, Department of Local Government Finance, Indiana Government Center-North, 100 North Senate Avenue, Room N1058(B), Indianapolis, IN 46204. Statutory authority: IC 6-1.1-31-1; IC 36-7-14-39(h); IC 36-7-32-19.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Michael Dart
General Counsel
Department of Local Government Finance
Indiana Government Center-North
100 North Senate Avenue, Room N1058(B)
Indianapolis, IN 46204
(317) 233-0166
mdart@dlgf.IN.gov

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #05-142

Under IC 4-22-2-23, the Department of Local Government Finance intends to adopt a rule concerning the following:

OVERVIEW: Amends the annual adjustment rules, 50 IAC 21, in conformance with IC 6-1.1-4-4.5 (SEA 327-2005). Written comments should be addressed to Michael Dart, General Counsel, Department of Local Government Finance, Indiana Government Center-North, 100 North Senate Avenue, Room N1058(B), Indianapolis, IN 46204. Statutory authority: IC 6-1.1-4-4.5 (P.L.228-2005, SECTION 4 (SEA 327-2005, SECTION 4)); IC 6-1.1-31-1.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Michael Dart
General Counsel
Department of Local Government Finance
Indiana Government Center-North
100 North Senate Avenue, Room N1058(B)
Indianapolis, IN 46204
(317) 233-0166
mdart@dlgf.IN.gov

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #05-143

Under IC 4-22-2-23, the Department of Local Government Finance intends to adopt a rule concerning the following:

OVERVIEW: To adopt rules for the establishment of a uniform and common property tax management system among all counties as prescribed by IC 6-1.1-31.5-3.5(e). Written comments should be addressed to Michael Dart, General Counsel, Department of Local Government Finance, Indiana Government Center-North, 100 North Senate Avenue, Room N1058(B), Indianapolis, IN 46204. Statutory authority: IC 6-1.1-31-1; IC 6-1.1-31.5-3.5(e) (P.L.228-2005, SECTION 26 (SEA 327-2005, SECTION 26)).

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Michael Dart
General Counsel
Department of Local Government Finance
Indiana Government Center-North
100 North Senate Avenue, Room N1058(B)
Indianapolis, IN 46204
(317) 233-0166
mdart@dlgf.IN.gov

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

LSA Document #05-144

Under IC 4-22-2-23, the Department of Local Government Finance intends to adopt a rule concerning the following:

OVERVIEW: To adopt rules to implement the investment deduction established in IC 6-1.1-12.4. Written comments should be addressed to Michael Dart, General Counsel, Department of Local Government Finance, Indiana Government Center-North, 100 North Senate Avenue, Room N1058(B), Indianapolis, IN 46204. Statutory authority: IC 6-1.1-31-1; IC 6-1.1-12.4-13 (P.L.193-2005, SECTION 8 (SEA 1-2005, SECTION 8)).

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Michael Dart
General Counsel
Department of Local Government Finance
Indiana Government Center-North
100 North Senate Avenue, Room N1058(B)
Indianapolis, IN 46204
(317) 233-0166
mdart@dlgf.IN.gov

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

LSA Document #05-161

Under IC 4-22-2-23, the Indiana Department of Transportation intends to adopt a rule concerning the following:

OVERVIEW: Adds 105 IAC 13 to establish a formal procedure for highway improvement projects that involve the relocation of utility facilities in order to reasonably and cost effectively manage the right-of-way of the state highway system by providing for an exchange of timely information and reasonable scheduling. Comments or questions may be directed by mail to Jack A. Riggs, Indiana Department of Transportation, Legal Division, Indiana Government Center-North, 100 North Senate Avenue, Room N730, Indianapolis, IN 46204, by phone at (317) 232-5324, or by electronic mail to jriggs@indot.state.in.us. Statutory authority: IC 8-23-2-5(a)(9); IC 8-23-2-6(a)(10).

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Jack A. Riggs
Indiana Department of Transportation
Indiana Government Center-North
100 North Senate Avenue
Room N730
Indianapolis, IN 46204
(317) 232-5324
jriggs@indot.state.in.us

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

LSA Document #05-155

Under IC 4-22-2-23, the Office of the Children's Health Insurance Program intends to adopt a rule concerning the following:

OVERVIEW: Amends 407 IAC 2-2-3 to eliminate the two-year time limit on the collection of past due premiums. Questions or comments concerning the proposed rule may be directed to the Small Business Regulatory Coordinator for the rule. Statutory authority: IC 12-17.6-2-11.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Ann Alley
Director
Office of the Children's Health Insurance Program
Indiana Government Center-South
402 W. Washington Street, Room W382
Indianapolis, IN 46204
(317) 232-4390
ann.alley@fssa.IN.gov

TITLE 407 OFFICE OF THE CHILDREN'S HEALTH INSURANCE PROGRAM

LSA Document #05-156

Under IC 4-22-2-23, the Office of the Children's Health Insurance Program intends to adopt a rule concerning the following:

OVERVIEW: Amends 407 IAC 2-3-1 to increase the monthly premium amount an individual's family must pay to receive benefits under the program. Questions or comments concerning the proposed rule may be directed to the Small Business Regulatory Coordinator for the rule. Statutory authority: IC 12-17.6-2-11.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Ann Alley
Director
Office of the Children's Health Insurance Program
Indiana Government Center-South
402 W. Washington Street, Room W382
Indianapolis, IN 46204
(317) 232-4390
ann.alley@fssa.IN.gov

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-133

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: The Department intends to amend 760 IAC 1-6.2 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 e-mail to astrati@doi.state.in.us. Statutory authority: IC 27-10-3-21 (as added by P.L.102-2005, SECTION 8).

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Amy Strati
311 West Washington Street, Suite 300
Indianapolis, IN 46204
(317) 232-0243
astrati@doi.state.in.us

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-134

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 determining whether a purchase or exchange of an annuity is suitable for a senior consumer and to otherwise implement IC 27-4-9. Written comments may be submitted to the Indiana Department of Insurance, Attn: Amy Strati, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204 or e-mail to astrati@doi.state.in.us. Statutory authority: IC 27-4-9-4 (as added by P.L.138-2005, SECTION 2).

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Amy Strati
311 West Washington Street, Suite 300
Indianapolis, IN 46204
(317) 232-0243
astrati@doi.state.in.us

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

LSA Document #05-145

Under IC 4-22-2-23, the Board of Registration for Architects and Landscape Architects intends to adopt a rule concerning the following:

OVERVIEW: Amends 804 IAC 1.1-3-1 concerning fees for examination, application, issuance, renewal, reinstatement, replacement or duplicate certificates, temporary certificates, verification of certification to another state or jurisdiction, or proctoring. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, Board of Registration for Architects and Landscape Architects, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla10@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-4-1-3; IC 25-4-2-8.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Angela Smith Jones
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
317-234-3048
ajones@pla.IN.gov

TITLE 808 STATE BOXING COMMISSION

LSA Document #05-151

Under IC 4-22-2-23, the State Boxing Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 808 IAC 2-6-1 concerning fees. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, State Boxing Commission, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla11@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-9-1-2.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Deborah Widemon
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3050
dwidemon@pla.IN.gov

TITLE 816 BOARD OF BARBER EXAMINERS

LSA Document #05-146

Under IC 4-22-2-23, the Board of Barber Examiners intends to adopt a rule concerning the following:

OVERVIEW: Amends 816 IAC 1-2-11 concerning the use of instructors. Amends 816 IAC 1-3-4 concerning reexamination requirements. Amends 816 IAC 1-3-6 concerning the barber examination. Amends 816 IAC 1-4-1 concerning barber instructors. Adds 816 IAC 1-5 to establish fees for application, issuance, or renewal of barber licenses, barber school licenses, barber instructor licenses, or barber shop licenses; to establish fees for examinations for licensure to practice as a barber instructor or barber; to establish fees for temporary permits; to establish fees for temporary work permits; to establish fees for verification of license status to another state or jurisdiction; and to establish fees for duplicate licenses. Repeals 816 IAC 1-3-1. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, Board of Barber Examiners, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla12@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-7-5-14; IC 25-7-5-15.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Tracy Hicks
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072

Indianapolis, Indiana 46204
(317) 234-3052
thicks@pla.IN.gov

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

LSA Document #05-137

Under IC 4-22-2-23, the State Board of Cosmetology Examiners intends to adopt a rule concerning the following:

OVERVIEW: Amends 820 IAC 5-1-17 concerning the license period for tanning facilities. Amends 820 IAC 5-1-20 concerning license application requirements for tanning facilities. Amends 820 IAC 6-1-2 and 820 IAC 6-1-5 concerning approved cosmetology educators. Adds 820 IAC 7 to establish fees for issuance or renewal of cosmetology school licenses, cosmetology instructor licenses, esthetics instructor licenses, electrology instructor licenses, cosmetology salon licenses, electrology salon licenses, esthetic salon licenses, manicurist salon licenses, cosmetologist licenses, master cosmetologist licenses, electrologist licenses, esthetician licenses, manicurist licenses, and shampoo operator licenses; to establish fees for examinations for licensure to practice as a cosmetology instructor, esthetics instructor, electrology instructor, cosmetologist, master cosmetologist, electrologist, esthetician, manicurist, or shampoo operator; to establish fees for temporary permits; to establish fees for verification of license status to another state or jurisdiction; and to establish fees for issuance and renewal of approval as a cosmetology educator. Repeals 820 IAC 2-2-2. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, State Board of Cosmetology Examiners, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla12@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-8-3-22; IC 25-8-3-23; IC 25-8-15-3; IC 25-8-15-11; IC 25-8-15.4-23; IC 25-8-16-4.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Tracy Hicks
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3052
thicks@pla.IN.gov

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-138

Under IC 4-22-2-23, the Indiana Board of Pharmacy intends to adopt a rule concerning the following:

OVERVIEW: Adds 856 IAC 1-38 to implement rules based on House Enrolled Act 1098 (P.L.212-2005) to establish standards and procedures to ensure that a pharmacist has entered into a contract that accepts the return of expired drugs with or is subject to a policy that accepts the return of expired drugs of a wholesaler, manufacturer, or agent of a wholesaler or manufacturer. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Joshua M. Bolin, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, Indiana 46204 or by electronic mail at jbolin@hpb.IN.gov. Statutory authority: IC 25-26-13-4 (as amended by P.L.212-2005, SECTION 22 (HEA 1098-2005, SECTION 22)).

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Joshua Bolin
Indiana Board of Pharmacy
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-2020
jbolin@hpb.IN.gov

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-139

Under IC 4-22-2-23, the Indiana Board of Pharmacy intends to adopt a rule concerning the following:

OVERVIEW: Adds 856 IAC 1-39 to implement rules based on Senate Enrolled Act 206 (P.L.122-2005) to establish the definitions, requirements for the licensure of home medical equipment services providers, license renewal requirements, fees including fees for the application, issuance, and renewal of license, and standards regarding the safety and quality of home medical equipment services. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Joshua M. Bolin, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, Indiana 46204 or by electronic mail at jbolin@hpb.IN.gov. Statutory authority: IC 25-1-8-2; IC 25-26-21-7 (as added by P.L.122-2005, SECTION 1 (SEA 206-2005, SECTION 1)).

For purposes of IC 4-22-2-28.1, the Small Business Regula-

tory Coordinator for this rule is:
Joshua Bolin
Indiana Board of Pharmacy
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-2020
jbolin@hpb.IN.gov

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-140

Under IC 4-22-2-23, the Indiana Board of Pharmacy intends to adopt a rule concerning the following:

OVERVIEW: Adds 856 IAC 1-40 to implement rules based on Senate Enrolled Act 590 (P.L.204-2005) to establish definitions, standards, and requirements for electronic transmissions of prescriptions, including addressing the privacy protection for the practitioner and the practitioner's patient, the security of the electronic transmission, a process for approving electronic data intermediaries for the electronic transmission of prescriptions, use of the practitioner's United States Drug Enforcement Administration registration number, and protection of the practitioner from identity theft or fraudulent use of the practitioner's prescribing authority. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, 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 25-26-13-4 (as amended by P.L.204-2005, SECTION 15 (SEA 590-2005, SECTION 15)).

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:
Joshua Bolin
Indiana Board of Pharmacy
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W066
Indianapolis, Indiana 46204
(317) 234-2020
jbolin@hpb.IN.gov

TITLE 860 INDIANA PLUMBING COMMISSION

LSA Document #05-154

Under IC 4-22-2-23, the Indiana Plumbing Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 860 IAC 1-1-2.1 concerning the fee schedule based upon SEA 139 (P.L.194-2005). Amends 860 IAC 1-1-8 concerning the temporary plumbing contractor license. Amends 860 IAC 1-5-9 concerning compliance with other rules and standards by licensees who do plumbing work. Amends 876 IAC 2-1-6 concerning fees for registration as an apprentice plumber based on SEA 139 (P.L.194-2005). Amends 860 IAC 2-1-7 and 860 IAC 2-1-8 concerning the approval and renewal of plumbing apprenticeship programs. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Commission Director, Indiana Plumbing Commission, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla10@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-28.5-1-8; IC 25-28.5-1-23; IC 25-28.5-1-38; IC 25-28.5-2-2.1.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:
Angela Smith Jones
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3048
ajones@pla.IN.gov

TITLE 862 PRIVATE DETECTIVES LICENSING BOARD

LSA Document #05-157

Under IC 4-22-2-23, the Private Detectives Licensing Board intends to adopt a rule concerning the following:

OVERVIEW: Adds 862 IAC 1-1-11 concerning the fee schedule based upon SEA 139 (P.L.194-2005). Adds 862 IAC 1-1-12 concerning license renewal. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, Private Detectives Licensing Board, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla11@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-30-1-5.5; IC 25-30-1-16; IC 25-30-1-17.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:
Deborah Widemon
Indiana Professional Licensing Agency

Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3050
dwidemon@pla.IN.gov

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

LSA Document #05-162

Under IC 4-22-2-23, the State Board of Registration for Professional Engineers intends to adopt a rule concerning the following:

OVERVIEW: Amends 864 IAC 1.1-12-1 concerning fees charged and collected by the board based on SEA 139 (P.L.194-2005). Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, State Board of Registration for Professional Engineers, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla10@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-31-1-7; IC 25-31-1-8.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Angela Smith Jones
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3048
ajones@pla.IN.gov

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

LSA Document #05-163

Under IC 4-22-2-23, the State Board of Registration for Land Surveyors intends to adopt a rule concerning the following:

OVERVIEW: Amends 865 IAC 1-11-1 concerning fees charged and collected by the board based on SEA 139 (P.L.194-2005). Amends 865 IAC 1-14-5 and 865 IAC 1-14-6 concerning the expiration and renewal of continuing education course provider approval. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, State Board of Registration for Land Surveyors, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla10@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-21.5-2-14; IC 25-21.5-8-7.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Angela Smith Jones
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3048
ajones@pla.IN.gov

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

LSA Document #05-164

Under IC 4-22-2-23, the Indiana Board of Accountancy intends to adopt a rule concerning the following:

OVERVIEW: Amends 872 IAC 1-1-10 concerning application and fees based on SEA 139 (P.L.194-2005). Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, Indiana Board of Accountancy, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla11@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-2.1-2-15.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Deborah Widemon
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3050
dwidemon@pla.IN.gov

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #05-149

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 876 IAC 2-1-8 and 876 IAC 2-2-9 concerning application and content for prelicensing real estate school approval and renewal of a broker or salesperson course as required by IC 25-34.1-5. Amends 876 IAC 2-18-1 concerning the fee schedule based on SEA 139 (P.L.194-2005). Amends 876 IAC 4-1-1, 876 IAC 4-1-2, and 876 IAC 4-1-5 concerning the application and content for real estate continuing education course sponsors approval and renewal. Questions or comments concerning

the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Commission Director, Indiana Real Estate Commission, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla9@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-34.1-2-5; IC 25-34.1-9-21.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Nicholas Rhoad
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3046
nrhoad@pla.IN.gov

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #05-150

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: This rule makes changes regarding licensure of appraisers. Amends 876 IAC 3-2-5 concerning reinstatement of an expired license based on SEA 139 (P.L.194-2005). Amends 876 IAC 3-2-7 concerning the fee schedule based on SEA 139 (P.L.194-2005). Amends 876 IAC 3-4-2 and 876 IAC 3-4-4 concerning application and content for prelicensing real estate appraiser course provider approval and renewal as required by IC 25-34.1-8-13 and IC 25-34.1-8-14. Amends 876 IAC 3-5-2 and 876 IAC 3-5-4 concerning application and content for real estate appraiser continuing education course provider approval and renewal. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, Attn.: Board Director, Indiana Real Estate Commission, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at pla9@pla.state.in.us. Statutory authority: IC 25-1-8-2; IC 25-1-8-7 (as added by P.L.194-2005, SECTION 6 (SEA 139-2005, SECTION 6)); IC 25-34.1-3-8; IC 25-34.1-3-9.

For purposes of IC 4-22-2-28.1, the Small Business Regulatory Coordinator for this rule is:

Nicholas Rhoad
Indiana Professional Licensing Agency
Indiana Government Center-South
402 West Washington Street, Room W072
Indianapolis, Indiana 46204
(317) 234-3046
nrhoad@pla.IN.gov

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #05-57

DIGEST

Amends 312 IAC 3-1-9, which governs defaults, dismissals, and uncontested orders, to authorize the administrative law judge to issue a final order where the parties have tendered an agreed order or where the administrative law judge has issued a nonfinal order, which was subject to written objections, but for which no party filed objections, and allows the secretary of the commission to serve written notice of the intent to review any nonfinal order. Effective 30 days after filing with the secretary of state.

312 IAC 3-1-9

SECTION 1. 312 IAC 3-1-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-9 Defaults, dismissals, and uncontested orders

Authority: IC 4-21.5-3-34; IC 14-10-2-4
Affected: IC 4-21.5-3; IC 4-21.5-5; IC 14; IC 25

Sec. 9. (a) An administrative law judge may enter a final order of dismissal if the party who initiated administrative review requests **that** the proceeding be dismissed.

(b) An administrative law judge may, on the motion of the administrative law judge or the motion of a party, enter 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 attend or participate in a prehearing conference, hearing, or other stage of the proceeding.

(2) The party responsible for taking action does not take action on a matter for a period of at least sixty (60) days.

(3) The person seeking administrative review does not qualify for review under IC 4-21.5-3-7.

(4) A default or dismissal could be entered in a civil action.

(c) Within seven (7) days after service of a proposed order of default or dismissal, or within a longer period prescribed by the proposed order, a party may file a written motion requesting the order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may:

(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.

(d) If the party fails to file a written motion under subsection (c), the administrative law judge shall issue an order of default or dismissal. If the party has filed a written motion under subsection (c), the administrative law judge may either enter or refuse to enter an order of default or dismissal.

(e) After issuing an order of default, but before issuing a final order or disposition, the administrative law judge 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 defaulting party.

The administrative law judge may conduct proceedings under IC 4-21.5-3-23 to resolve any issue of fact.

(f) An administrative law judge shall approve an agreed order entered by the parties, **as a final order of the agency,** if ~~it~~ **the agreed order** is:

(1) clear and concise; and

(2) lawful.

(g) ~~The secretary of the commission, as its designee under IC 4-21.5-3-28(b), may affirm the entry of an agreed order approved by the~~ **If an** administrative law judge ~~under subsection (f).~~ **issues a nonfinal order that is subject to a party filing an objection under IC 4-21.5-3-29(d), but no party files a timely objection, the administrative law judge shall issue a final order. Notwithstanding this subsection, however, the secretary of the commission may serve written notice under IC 4-21.5-3-29(e) of the intent to review any issue relating to the order. If the secretary serves notice under this subsection, the committee established under section 12(d) of this rule shall review the issue.**

(h) A final order entered under this section is made with prejudice unless otherwise specified in the order. A person may seek judicial review of the order as provided in IC 4-21.5-5. *(Natural Resources Commission; 312 IAC 3-1-9; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1320; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 25, 2005 at 11:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on a proposed amendment to 312 IAC 3-1-9, which governs defaults, dismissals, and uncontested orders, to authorize the administrative law judge to issue a final order where the parties have tendered an agreed order or where the administrative law judge has issued a nonfinal order, which was subject to written objections, but for which no party filed objections, and allows the secretary of the commission to serve written notice of the intent to review any nonfinal order.

The proposed amendments would improve efficiency and would not result in an additional requirement or cost under IC 4-22-2-24(d)(3).

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #04-278

DIGEST

Amends 326 IAC 6.8-2-4 (formerly 326 IAC 6-1-10.1) concerning particulate matter emission limitations (PM10) for coil manufacturing processes at ASF-Keystone, Inc., located in Hammond, Indiana. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 2004, Indiana Register (28 IR 678).

Second Notice of Comment Period and Notice of First Hearing: January 1, 2005, Indiana Register (28 IR 1342).

Change in Notice of First Hearing: March 1, 2005, Indiana Register (28 IR 1711).

Change in Notice of First Hearing: April 1, 2005, Indiana Register (28 IR 2156).

Date of First Hearing: June 1, 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 1342, 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.

No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 1, 2005, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 6.8-2-4.

No comments were made at the first hearing.

326 IAC 6.8-2-4

SECTION 1. 326 IAC 6.8-2-4, PROPOSED TO BE ADDED AT 28 IR 1770, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

326 IAC 6.8-2-4 ASF-Keystone, Inc.-Hammond

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

Sec. 4. **ASF-Keystone, Inc.**-Hammond in Lake County shall meet the following emission limits:

Source	Emission Limits (Units)	Emission Limits (lbs/hr)
Stack serving coil spring grinder numbers 3-0386 and 3-0389	1.083 lbs/ton	0.045
Stack serving coil spring grinder number 3-0244	0.021 lbs/ton	0.040
Tub grinder number 3-0388	0.015 lbs/ton	2.00
Coil spring grinder number 3-0247	0.019 lbs/ton	0.03
Coil spring grinder number 3-0249	3.792 lbs/ton	1.82
Coil spring grinders numbers 3-0385, 3-295, and 3-0233	0.019 lbs/ton	0.05
Shot blast peener number 3-1804	0.011 lbs/ton	0.06
Shot blast peener number 3-1811	0.018 lbs/ton	0.06
Shot blast peener number 3-1821	0.016 lbs/ton	0.06
Shot blast peener number 3-1823	0.016 lbs/ton	0.06
Small coil manufacturing (ESP number 3-3024)	~~0.014 lbs/ton~~	~~0.02~~ **1.05**
Medium coil manufacturing (ESP number 3-3027)	~~0.700 lbs/ton~~	~~2.10~~ **1.05**
Large coil manufacturing (ESP number 3-3028)	~~0.700 lbs/ton~~	~~3.50~~ **1.75**
~~Miscellaneous coil manufacturing (ESP number 3-3026)~~	~~0.700 lbs/ton~~	~~1.05~~

(Air Pollution Control Board; 326 IAC 6.8-2-4)

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 6.8-2-4 (formerly 326 IAC 6-1-10.1).

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Susan Bem, Rule Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
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 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #05-79

DIGEST

Amends 326 IAC 1-2-33.5, 326 IAC 1-2-48, and 326 IAC 1-2-90 for the purpose of incorporating by reference federal exclusions of volatile organic compounds (VOCs) and federally delisted hazardous air pollutants (HAPs) from their current corresponding definitions. Effective 30 days after filing with the secretary of state.

HISTORY

IC 13-14-9-8 Notice and Notice of First Hearing: May 1, 2005, Indiana Register (28 IR 2465).

Date of First Hearing: June 1, 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 May 1, 2005, at 28 IR 2465, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 1, 2005, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 1-2-33.5, 326 IAC 1-2-48, and 326 IAC 1-2-90. No comments were made at the first hearing.

326 IAC 1-2-33.5
326 IAC 1-2-48
326 IAC 1-2-90

SECTION 1. 326 IAC 1-2-33.5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-33.5 "Hazardous air pollutant" or "HAP" defined

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

Sec. 33.5. "Hazardous air pollutant" **or "HAP"** means any air pollutant listed pursuant to Section 112(b) of the Clean Air Act **and not delisted from that list or redefined under 40 CFR Part 63, Subpart C, as amended at 69 FR 69325, November 29, 2004*.**

***This document is incorporated by reference. Copies referenced in this section may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 1-2-33.5; filed May 25, 1994, 11:00 a.m.: 17 IR 2238)*

SECTION 2. 326 IAC 1-2-48 IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-48 "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" defined

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

Sec. 48. (a) "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" refers to the list of organic compounds that have been determined to have negligible photochemical reactivity and are thereby excluded from the definition of volatile organic compounds (VOC) ~~in~~ **as follows:**

(1) 40 CFR 51.100(s)(1)*, ~~The air pollution control board incorporates by reference 40 CFR 51.100(s)(1)*.~~ **as amended at 69 FR 69298, November 29, 2004*.**

(2) 40 CFR 51.100(s)(5)*, as added at 69 FR 69304, November 29, 2004*.
(3) 40 CFR 51.100(s)(2)*, as measured by 326 IAC 8-1-4 and approved by the commissioner, subject to conditions under 40 CFR 51.100(s)(3) through 40 CFR 51.100(s)(4)*.

(b) Compliance calculations for coatings expressed as pounds VOC/gallon coating (less water) should treat nonphotochemically reactive compounds or negligibly photochemically reactive compounds as water for purposes of calculating the less water portion of the coating composition.

~~*This document is~~ ***These documents are** incorporated by reference. Copies referenced in this section may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-2-48; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2373; filed Sep 23, 1988, 11:59 a.m.: 12 IR 255; filed Jan 16, 1990, 4:00 p.m.: 13 IR 1016; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2827; filed Sep 5, 1995, 12:00 p.m.: 19 IR 29; filed May 13, 1996, 5:00 p.m.: 19 IR 2855; errata filed Mar 21, 1997, 9:50 a.m.: 20 IR 2116; filed Jun 9, 2000, 10:01 a.m.: 23 IR 2704; filed May 21, 2002, 10:20 a.m.: 25 IR 3055)*

SECTION 3. 326 IAC 1-2-90, AS AMENDED AT 28 IR 18, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-2-90 "Volatile organic compound" or "VOC" defined

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

Sec. 90. ~~(a)~~ "Volatile organic compound" or "VOC" ~~means any compound of carbon excluding the following:~~ **has the meaning set forth in 40 CFR 51.100(s)*, as amended at 69 FR 69298, November 29, 2004*, and 69 FR 69304, November 29, 2004*.**

~~(1) Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.~~

~~(2) Any organic compound which has been determined to have negligible photochemical reactivity listed in section 48 of this rule. VOC content shall be measured in accordance with 326 IAC 8-1-4.~~

~~(b) For purposes of determining compliance with emission limits, volatile organic compounds will be measured by the test methods in this title or 40 CFR 60, Appendix A*, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as volatile organic compounds if the amount of such compounds is accurately quantified and such exclusion is approved by the commissioner.~~

~~(c) As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the commissioner may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the commissioner, the amount of negligibly-reactive compounds in the source's emissions.~~

~~(d) For purposes of federal enforcement for a specific source, the U.S. EPA shall use the test methods specified in Indiana's approved state implementation plan, in a permit issued pursuant to a program approved or promulgated under:~~

~~(1) Title V of the Clean Air Act;~~
~~(2) 40 CFR 51, Subpart I*;~~
~~(3) 40 CFR 51, Appendix S*;~~
~~(4) 40 CFR 52*; or~~
~~(5) 40 CFR 60*.~~

~~The U.S. EPA shall not be bound by any state determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the provisions listed in this subsection.~~

*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, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 1-2-90; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2377; filed Sep 23, 1988, 11:59 a.m.: 12 IR 256; filed May 9, 1990, 5:00 p.m.: 13 IR 1847; filed Aug 9, 1993, 5:00 p.m.: 16 IR 2828; filed Sep 5, 1995, 12:00 p.m.: 19 IR 30; filed Aug 26, 2004, 11:30 a.m.: 28 IR 18)*

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 1-2-33.5, 326 IAC 1-2-48, and 326 IAC 1-2-90.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Gayl Killough, Rule Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
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 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #05-80

DIGEST

Amends 326 IAC 19-2-1 by incorporating by reference 69 FR 40072 for the purpose of updating the transportation conformity rules. Effective 30 days after filing with the secretary of state.

HISTORY

IC 13-14-9-8 Notice and Notice of First Hearing: May 1, 2005, Indiana Register (28 IR 2467).

Date of First Hearing: June 1, 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 May 1, 2005, at 28 IR 2467, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 1, 2005, the Air Pollution Control Board conducted the first public hearing concerning the development of amendments to 326 IAC 19-2-1. No comments were made at the first hearing.

326 IAC 19-2-1

SECTION 1. 326 IAC 19-2-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 19-2-1 Applicability; incorporation by reference of federal standards

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

Sec. 1. (a) This rule, unless specifically exempted in the applicability section of 40 CFR 93, Subpart A*, applies to transportation plans, programs, and projects in nonattainment or maintenance areas for transportation-related criteria pollutants that are developed, funded, or approved by the United States Department of Transportation (DOT) and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 United States Code (U.S.C.) or the Federal Transit Laws.

(b) This rule applies to regionally significant projects, regardless of funding source, located in nonattainment or maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(c) The air pollution control board incorporates by reference the following:

(1) 40 CFR 51, Subpart T*. ~~"Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Laws"*.~~

(2) 40 CFR 93, Subpart A*, ~~"Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Laws"*, with the exception of Section 93.102(d)*.~~ **as amended by 69 FR 40072, July 1, 2004*.**

*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 also 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 19-2-1; filed Apr 28, 1997, 4:00 p.m.: 20 IR 2298; filed Oct 20, 1998, 4:45 p.m.: 22 IR 751; filed May 21, 2002, 10:20 a.m.: 25 IR 3085)*

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 19-2-1.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed 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 Sky Schelle, Rule Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
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 710 SECURITIES DIVISION

Proposed Rule
LSA Document #05-46

DIGEST

Amends 710 IAC 1-14-6 to remove the requirement that a branch office must be located no more than 40 miles from an office of supervisory jurisdiction and to establish new procedures for regulating these branch offices. Effective 30 days after filing with the secretary of state.

710 IAC 1-14-6

SECTION 1. 710 IAC 1-14-6 IS AMENDED TO READ AS FOLLOWS:

710 IAC 1-14-6 Branch offices

Authority: IC 23-2-1-15
Affected: IC 23-2-1

Sec. 6. (a) Any broker-dealer ~~maintaining its principal~~ **that maintains an** office ~~or one (1) or more branch offices~~ in Indiana ~~shall~~ **must** designate ~~one (1) or more of such offices~~ **another office to act** as ~~offices~~ **the office** of supervisory jurisdiction **for that office.** Each ~~branch~~ office in Indiana shall be supervised by a person ~~maintaining his principal place of business~~ at ~~an~~ **the** office of supervisory jurisdiction ~~in Indiana.~~ **for that office.**

(b) The manager of an office of supervisory jurisdiction shall be:

(1) responsible for supervision of the ~~branch~~ offices designated by the broker-dealer; ~~The manager of an office of supervisory jurisdiction shall be~~ **and**

(2) qualified by examination as a broker-dealer under ~~710 IAC 1-14-2.~~ **section 2 of this rule.**

(c) The broker-dealer shall notify the division in writing ~~prior to~~ **before** the opening, relocation, or closing of a branch office. ~~Such~~ **Notice via the central registration depository is sufficient to meet this requirement. The** notification shall include the following information:

(1) The address of the branch office.

(2) The anticipated date of opening, relocation, or closing.

(3) The address of the office of supervisory jurisdiction designated for that branch office. ~~and~~

(4) The name of the manager of the office of supervisory jurisdiction.

~~(d) Every branch office shall be designated as an office of supervisory jurisdiction unless:~~

~~(1) no more than two (2) agents are employed at the branch office, and no customer recordkeeping or clearing functions are performed there; or~~

~~(2) the branch office is located no more than forty (40) miles from an office of supervisory jurisdiction.~~

(d) The broker-dealer must implement the following:

(1) The firm must establish and implement procedures and systems for supervision over the activities of agents, employees, and Indiana office operations that are reasonably designed to achieve compliance with applicable state and federal securities laws and regulations.

(2) The firm must provide appropriate initial and periodic refresher training to supervisors, employees, and representatives regarding the firm's procedures and systems.

(3) The firm must provide additional specialized training to supervisors in the procedures and systems referred to in subdivision (1).

(4) The firm must take action to correct misconduct. Misconduct may be indicated by, but is not limited to, the following:

(A) Activities of unauthorized personnel.
(B) Churning.
(C) Unauthorized trading.
(D) Low level of production by high expenses.
(E) Garnishment of wages.
(F) Regulatory actions.
(G) Prior disciplinary history of one (1) or more customer complaints.
(H) Recent customer complaints.

(5) The firm must have an adequate system to track and monitor the status of customer complaints as required by NASD rules. Compliance with these rules includes, but is not limited to, the following:

(A) Compliance audits with documentation and corrective action.

(B) Prompt review, investigation, and disclosure of customer complaints.

(6) The firm must establish a policy for disciplinary action.

(7) The firm must designate a properly qualified supervisor for each employee at an office.

(8) The designated supervisor must effectively execute any supervisory duties. To that end, the firm must limit the number of employees that a designated supervisor is responsible for at any time in order to ensure that the supervisor can effectively execute the supervisory duties.

(9) The firm must conduct annual compliance examinations, announced and unannounced, of offices with documentation and corrective action.

(10) The firm must establish and implement procedures and systems for reasonable oversight of supervisors.

(e) When a firm designates an office of supervisory jurisdiction, the office of supervisory jurisdiction shall be responsible for the day to day implementation of subsection (d)(1) through (d)(10).

~~(c)~~ **(f)** Every branch office located in Indiana shall be open for inspection and examination by the division. *(Securities Division; 710 IAC 1-14-6; filed Mar 24, 1986, 3:27 p.m.: 9 IR 2045, eff Jun 1, 1986; filed May 14, 1987, 2:10 p.m.: 10 IR 2297; readopted filed Aug 17, 2001, 2:20 p.m.: 25 IR 204)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 26, 2005 at 1:00 p.m., at the Indiana Government Center-South, 302 West Washington Street, Room E111, Indianapolis, Indiana the Securities Division will hold a public hearing on a proposed amendment of 710 IAC 1-14-6 to remove the requirement that the branch office of a broker-dealer be located within 40 miles of a supervisory office and to establish new procedures for regulating branch offices.

Although this rule imposes new requirements on the broker-dealer to regulate branches and employees, the net effect of the rule will be a significant reduction in costs to the broker-dealer because of no longer having to maintain a supervisory office within 40 miles of every branch office.

Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E111 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

James Joven, Commissioner
Securities Division
Secretary of State

TITLE 710 SECURITIES DIVISION

Proposed Rule
LSA Document #05-81

DIGEST

Adds 710 IAC 1-22 to establish definitions, phrases, and standards for loan brokers. Effective 30 days after filing with the secretary of state.

710 IAC 1-22

SECTION 1. 710 IAC 1-22 IS ADDED TO READ AS FOLLOWS:

Rule 22. Loan Broker Regulations

710 IAC 1-22-1 Originators

Authority: IC 23-2-1-15
Affected: IC 23-2

Sec. 1. (a) As used in this rule, "loan broker" includes a company that:

(1) utilizes the Internet to collect information from potential borrowers; and

(2) submits that information to lenders for the purpose of considering whether the lender wishes to make a loan to the potential borrower or borrowers.

(b) As used in this rule, "originator" means any person with access to the information described in subsection (a).

(c) Origination activities do not include the following:

(1) Filing or collation of paperwork, including loan paperwork.

(2) Receptionist duties in which no loan terms or conditions are communicated either to or with borrowers or prospective borrowers.

(d) An originator must be an employee of a loan broker as the term "employee" is defined in 26 U.S.C. 3121(d). Originators may not be independent contractors of a loan broker license holder.

(e) A loan broker may not pay, either directly or indirectly, any:

(1) compensation;

(2) commission;

(3) fee;

(4) points; or

(5) other remuneration or benefits;

to an originator other than an employee, as defined by this rule, of the loan broker. This prohibition does not include arrangements in which the compensation of a branch manager is based upon the net profit of the branch.

(f) Upon submittal of an initial license application, and

with each subsequent license renewal application, a loan broker must submit a separate registration form for each originator employed by that loan broker. An originator may not be registered by more than one (1) loan broker licensee. A loan broker must maintain, at its principal office, the original registration document issued to each of that loan broker's originators.

(g) If the employment of an originator is terminated, the loan broker must return the originator's original registration document to the securities division within five (5) business days after the termination. *(Securities Division; 710 IAC 1-22-1)*

710 IAC 1-22-2 Loan broker licensing and originator licensing

Authority: IC 23-2-1-15
Affected: IC 23-2

Sec. 2. The loan broker must conduct an investigation of each applicant for origination registration. The investigation must include a criminal records check based on the fingerprints of the applicant and a civil records check. The securities division must require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the Department of Justice for state processing and with the Federal Bureau of Investigation for federal processing. All costs associated with the criminal history check are the responsibility of the employing loan broker, and the employing loan broker must have a copy of the background check report sent directly from the vendor chosen to perform the check. Criminal history records provided to the securities division under this section are confidential, and the securities division may use the records to determine whether the applicant is eligible for registration. If an investigation outside Indiana is necessary, the securities division may require the employing loan broker to advance sufficient funds to pay the actual expenses of the investigation. The securities division may deny the application if the:

(1) applicant's criminal history shows any convictions within ten (10) years before the date of the application or any renewal thereof of any crime involving fraud or deceit; or

(2) applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.

As used in this rule, "conviction" means a judgment, or conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty, rendered either by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. *(Securities Division; 710 IAC 1-22-2)*

710 IAC 1-22-3 Branches and exemptions

Authority: IC 23-2-1-15
Affected: IC 23-2-5-19

Sec. 3. (a) If an exempt branch of a nonexempt loan broker loses its exemption, that branch must apply for a loan broker license.

(b) A loan broker or a branch of a loan broker that no longer qualifies for an exemption under IC 23-2-5-19 must obtain a license to conduct loan broker business in Indiana. *(Securities Division; 710 IAC 1-22-3)*

710 IAC 1-22-4 Educational requirements

Authority: IC 23-2-1-15
Affected: IC 23-2-5-21

Sec. 4. (a) Only live instruction courses shall be acceptable for the purposes of loan broker licensing and originator registration.

(b) The following topics shall be addressed during the academic instruction courses completed by each applicant for an initial or renewal license or certificate of registration:

(1) Indiana loan broker law, including, but not limited to, the following:
(A) Licensing procedures.
(B) Bona fide third party fees.
(C) Advance fees.
(D) The Loan Broker Act.
(E) Loan broker regulations.
(2) The Real Estate Settlement Procedures Act (RESPA).
(3) The Equal Credit Opportunity Act (ECOA).
(4) The Truth in Lending Act.

Each topic must be covered within the instructional hours required.

(c) As part of the education requirement set forth at IC 23-2-5-21, each person applying for either a license or a certificate of registration, or a renewal thereof, must provide to the commissioner evidence that during each licensing or registration period the applicant has completed at least:

(1) two (2) hours of federal law academic instruction; and
(2) one (1) hour of Indiana law academic instruction;

acceptable to the commissioner. Each applicant must complete a portion of either federal or Indiana law academic instruction requirements in each of the years covered by the licensing or registration period.

(d) Credit time for academic instruction shall be:
(1) based upon a fifty (50) minute hour; and
(2) awarded only for actual time of instruction.

No credit shall be given for testing time or meal or break time.

(e) Each person applying for a license or certificate of registration must successfully pass all tests required by the academic instruction courses submitted by the applicant to the commissioner for the purposes of license application or registration.

(f) A particular loan broker education course may not be taken more than once in any twelve (12) month period. This prohibition shall not apply to courses meant to refresh previous academic instruction by presenting changes in the following:

(1) Rules.

(2) Laws.

(3) Regulations.

(4) Other similar areas.

(g) To be given credit for academic instruction time for a course not currently approved by the commissioner, the license or registration applicant must request approval from the commissioner by submitting a detailed:

(1) syllabus;

(2) table of contents; or

(3) course outline;

including a time line for the course.

(h) Prospective vendors who wish to have their academic instruction courses approved must submit to the commissioner the following:

(1) A completed application form.

(2) The instructor's edition, bound and paginated, of the materials used for the course.

(3) A course time line.

(i) Prospective vendors who wish to have their academic instruction courses approved must submit for approval a list of any and all instructors who will be teaching the courses.

(j) Any academic instruction course approval issued by the commissioner shall remain valid for one (1) year from the date of the commissioner's approval letter. In order to obtain a renewal of course approval, the vendor shall submit:

(1) a renewal application; and

(2) any updated course materials;

to the commissioner. The course materials must be bound and paginated.

(k) Approved academic instruction course vendors shall maintain records of attendees for two (2) years after completion of the course. *(Securities Division; 710 IAC 1-22-4)*

710 IAC 1-22-5 Forms

Authority: IC 23-2-1-15
Affected: IC 23-2-5-18

Sec. 5. At or before the time an application for a loan is made to a loan broker, the loan broker shall enter into a separate, signed, and written loan broker agreement with the potential borrower. A copy of the agreement shall be given to the potential borrower, and the original shall be placed in the file of the borrower or proposed borrower under IC 23-2-5-18(a)(1)(B). The agreement shall contain, at a minimum, the following:

(1) The name of the loan broker.

(2) The Indiana loan broker license number of the loan broker.

(3) The name of the prospective borrower.

(4) The date of the agreement and the period for which it shall remain in effect.

(5) A statement that the loan broker is not the credit provider.

(6) A complete description of the services the loan broker undertakes to perform for the prospective borrower.

(7) A specific statement of the circumstances under which the loan broker will be entitled to obtain or retain consideration from the party with whom the loan broker contracts.

(8) An estimate of the costs of the broker's services, which may be expressed as a dollar amount or range together with the maximum cost of services, along with a statement that the amounts are not due unless and until the loan closes. The maximum cost shall be expressed as follows: "In no event shall the cost of these services exceed ___.". The amounts shall include all compensation paid to the loan broker whether paid directly or indirectly, including any applicable yield-spread premium.

(9) The following disclosure in clear and legible print:

"(Name of loan broker) IS LICENSED UNDER THE LAWS OF THE STATE OF INDIANA AND BY STATE LAW IS SUBJECT TO THE REGULATORY OVERSIGHT BY THE INDIANA SECRETARY OF STATE'S SECURITIES DIVISION. ANY CONSUMER WISHING TO FILE A COMPLAINT AGAINST OR INQUIRY REGARDING THE REGISTRATION STATUS OF (Name of loan broker) SHOULD CONTACT THE SECURITIES DIVISION THROUGH ONE OF THE MEANS LISTED BELOW:

IN PERSON OR BY U.S. MAIL:
302 W. WASHINGTON ST.
ROOM E-111
INDIANAPOLIS, IN 46204

BY TELEPHONE:
1-800-223-8791

FOR INDEPENDENT ADVICE OR COUNSEL REGARDING MORTGAGE LOAN PRODUCTS AND TERMS, CONTACT THE INDIANA MORTGAGE AND FORECLOSURE HELPLINE AT 1-866-722-9248".

(Securities Division; 710 IAC 1-22-5)

710 IAC 1-22-6 Fees

Authority: IC 23-2-1-15
Affected: IC 23-2

Sec. 6. In connection with the application for credit and on behalf of the borrower, the following fees, subject to the limitations enumerated in this section, may be collected before the closing of the loan:

(1) Property appraisal fees, if applicable, shall be limited to the following:

(A) The amount paid to a licensed appraiser for the appraisal.

(B) Those amounts that are customary and reasonable.

(2) Credit report fees, if applicable, shall be limited to the actual cost of the report, the amount of which was paid to a third party. The amounts shall be customary and reasonable.

(3) Title examination fees or title insurance, or both, if applicable, shall be limited to those amounts actually expended for such purposes. The amounts shall be customary and reasonable.

(4) Returned check charges, if applicable, may be assessed to consumers, provided the amounts of the charges are customary and reasonable for checks that are returned unpaid.

(5) Other bona fide third party fees actually and reasonably paid or incurred on behalf of the borrower. Such other fees shall:

(A) not be incurred without the express permission of the borrower; and

(B) be limited to amounts actually paid or incurred.

The amounts shall be customary and reasonable.

(6) Fees associated with the commitment of a specific interest rate, to be held for a specified period of time, may be collected in accordance with a signed rate lock agreement, provided the fees are payable to the lender.

(Securities Division; 710 IAC 1-22-6)

710 IAC 1-22-7 Deceitful practices

Authority: IC 23-2-1-15
Affected: IC 23-2-5-20

Sec. 7. The following conduct, without limitation because of enumeration, constitutes a deceitful practice upon a person by a loan broker prohibited by IC 23-2-5-20(3):

(1) Using or permitting the use of any document that a registrant knows contains erroneous or false information concerning a prospective borrower's eligibility for a loan.

(2) Making or causing to be made any false, deceptive, or misleading statement or representation in regard to services being offered by the registrant.

(Securities Division; 710 IAC 1-22-7)

710 IAC 1-22-8 Material facts

Authority: IC 23-2-1-15
Affected: IC 23-2-5-21

Sec. 8. As used in IC 23-2-5, "material fact" includes, but is not limited to, the following:

(1) The address of the following:

(A) A principal place of business.

(B) Any branch office.

(2) The type of business entity the loan broker is registered with the securities division.

(3) Criminal convictions of the principal or originators of the loan broker business.

(4) Information pertaining to education courses to fulfill the necessary academic instruction requirement of IC 23-2-5-21.

(Securities Division; 710 IAC 1-22-8)

710 IAC 1-22-9 Record maintenance

Authority: IC 23-2-1-15
Affected: IC 23-2-5-18

Sec. 9. Any loan broker who procures a residential mortgage loan shall include in the file of the borrower or potential borrower, in addition to the requirements set forth in IC 23-2-5-18(a)(1), the following:

(1) The initial loan application, signed and dated by the loan originator.

(2) The initial and subsequent good faith estimate or estimates provided by the loan broker.

(3) The required provider list.

(4) A credit report, if obtained.

(5) Verification of the borrower's income and employment as required by the initial lender.

(6) Any Truth in Lending Act disclosure.

(7) All written and electronic correspondence, including fax transmissions, between the broker and the lender.

(8) A HUD-1 or HUD 1A Settlement Statement signed by the borrower or borrowers and the initial lender or settlement agent, if applicable.

(9) Affiliated business arrangement disclosure statements provided to the borrower.

(10) A servicing transfer disclosure statement.

(11) A right to receive appraisal disclosure, if applicable.

(12) A right of rescission notice, if applicable.

(13) A tangible net benefit worksheet, if applicable.

(14) An appraisal or appraisals of the property obtained by the broker.

(15) A written justification for using a nonlocal appraiser, if applicable.

(16) Any commitment or rate lock-in agreements, if applicable.

(17) Copies of all notes or electronic correspondence, including facsimile transmissions, with the following:

(A) Borrowers.

(B) Third party settlement service providers, including the following:

(i) Appraisers.

(ii) Title agents.

(iii) Credit reporting agencies.

(18) A record of all charges or fees assessed to the borrower's account reflecting the following:

(A) Amount of the charge or fee.

(B) Purpose.
(C) Date imposed.
(Securities Division; 710 IAC 1-22-9)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 27, 2005 at 1:00 p.m., at the Indiana Government Center-South, 302 West Washington Street, Room E111, Indianapolis, Indiana the Securities Division will hold a public hearing on a proposed new rule to establish definitions, phrases, and standards for loan brokers.

Although this rule creates new requirements for loan brokers, the standards are necessary to address regulatory concerns.

Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E111 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

James Joven, Commissioner
Securities Division
Secretary of State

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #05-5

DIGEST

Amends 760 IAC 3-1, 760 IAC 3-2, 760 IAC 3-4 through 760 IAC 3-9, 760 IAC 3-11, 760 IAC 3-12, 760 IAC 3-14, 760 IAC 3-15, and 760 IAC 3-18 to implement updates to the National Association of Insurance Commissioner model Medicare supplement insurance minimum standards model act. *NOTE: LSA Document #05-5, printed at 28 IR 2425, was resubmitted for publication.* Effective 30 days after filing with the secretary of state.

760 IAC 3-1-1
760 IAC 3-2-2.5
760 IAC 3-2-6.1
760 IAC 3-2-6.2
760 IAC 3-2-7
760 IAC 3-4-1
760 IAC 3-5-1
760 IAC 3-6-1
760 IAC 3-7-1
760 IAC 3-8-1
760 IAC 3-9-1
760 IAC 3-9-2
760 IAC 3-11-1
760 IAC 3-12-1
760 IAC 3-14-1
760 IAC 3-15-1
760 IAC 3-18-1

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

760 IAC 3-1-1 Applicability and scope
Authority: IC 27-8-13-10
Affected: IC 27-8-13-1

Sec. 1. (a) Except as otherwise specifically provided in 760 IAC 3-5, **760 IAC 3-10,** 760 IAC 3-11, 760 IAC 3-14, **760 IAC 3-18,** and 760 IAC 3-19, this article shall apply to the following:

(1) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation.

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

(b) This article shall not apply to a policy or contract of:

(1) one (1) or more employers or labor organizations; or ~~of~~

(2) the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof;

for employees or former employees, or a combination thereof, or ~~for~~ members or former members, or a combination thereof, of the labor organizations. *(Department of Insurance; 760 IAC 3-1-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2563; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3412; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 2. 760 IAC 3-2-2.5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-2-2.5 "Bankruptcy" defined
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 2.5. As used in this rule, "bankruptcy" means when a ~~Medicare+Choice~~ **Medicare Advantage** organization that is not an issuer has:

(1) filed, or has had filed against it, a petition for declaration of bankruptcy; and ~~has~~

(2) ceased doing business in Indiana.

(Department of Insurance; 760 IAC 3-2-2.5; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1972; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 3. 760 IAC 3-2-6.1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-2-6.1 "Medicare Advantage" defined
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 6.1. As used in this rule, ~~"Medicare+Choice organization"~~ **"Medicare Advantage"** has the meaning ~~as~~ set forth in 42 U.S.C. 1395w-28. *(Department of Insurance; 760 IAC 3-2-6.1; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1973; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 4. 760 IAC 3-2-6.2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-2-6.2 "Medicare Advantage plan" defined
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 6.2. As used in this rule, ~~"Medicare+Choice~~ **"Medicare Advantage** plan" has the meaning ~~as~~ set forth in 42 U.S.C. 1395w-28. *(Department of Insurance; 760 IAC 3-2-6.2; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1973; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 5. 760 IAC 3-2-7 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-2-7 "Medicare supplement policy" defined
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 7. "Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than:

(1) a policy issued pursuant to a contract under Section 1876 of the Social Security Act (42 U.S.C. 1395 et seq.); or

(2) an issued policy under a demonstration project specified in 42 U.S.C. 1395ss(g)(1); ~~which~~

that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. **The term does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any health care prepayment plan that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act.** *(Department of Insurance; 760 IAC 3-2-7; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2564; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3413; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 6. 760 IAC 3-4-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-4-1 Policy provisions
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) Except for permitted preexisting condition clauses as described in ~~760 IAC 3-5-1(b)(1)~~ **760 IAC 3-5-1(b)(1)(A), 760 IAC 3-5-1(b)(1)(B),** and 760 IAC 3-6-1(b), no policy or certificate shall be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if ~~such~~ **the** policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(b) No Medicare supplement policy or certificate may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(c) No Medicare supplement policy or certificate in force in the state shall contain benefits ~~which~~ **that** duplicate benefits provided by Medicare.

(d) Subject to 760 IAC 3-5-1(b)(3) through 760 IAC 3-5-1(b)(7), 760 IAC 3-5-1(b)(9), 760 IAC 3-6-1(b)(3), and 760 IAC 3-6-1(b)(4), a Medicare supplement policy with benefits for outpatient prescription drugs in existence before January 1, 2006, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(e) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(f) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(1) the policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

(2) premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

(Department of Insurance; 760 IAC 3-4-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2565; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 7. 760 IAC 3-5-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-5-1 Minimum benefit standards for policies or certificates issued for delivery before January 1, 1992
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) No policy or certificate may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate ~~prior to~~ **before** January 1, 1992, unless it meets or exceeds the minimum standards in this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits ~~which~~ **that** are not inconsistent with these standards.

(b) The following standards apply to Medicare supplement policies and certificates issued ~~prior to~~ **before** January 1, 1992, and are in addition to all other requirements of this article:

(1) A Medicare supplement policy or certificate shall not:

(A) exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition; ~~The policy or certificate shall not~~

(B) define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage; **or**

~~(2) A Medicare supplement policy or certificate shall not~~ **(C)** indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

~~(3)~~ **(2)** A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with ~~such~~ **the** changes.

~~(4)~~ **(3)** A "noncancellable", "guaranteed renewable", or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(A) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(B) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

~~(5)~~ **(4)** Except as authorized by the commissioner of the department of insurance in this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

~~(6)~~ **(5)** If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subdivision ~~(8),~~ **(7),** the issuer shall offer certificate holders **at least** an individual Medicare supplement policy: ~~The issuer shall offer the certificate holder at least the following choices:~~

(A) ~~An individual Medicare supplement policy~~ currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; **or**

(B) ~~An individual Medicare supplement policy which~~ **that** provides only such benefits as are required to meet the minimum standards as defined in 760 IAC 3-6-1(c).

~~(7)~~ **(6)** If membership in a group is terminated, the issuer shall **offer the certificate holder:**

(A) ~~offer the certificate holder such~~ **the** conversion opportunities ~~as are~~ described in subdivision ~~(6);~~ **(5);** or

(B) at the option of the group policyholder, ~~offer the certificate holder~~ continuation of coverage under the group policy.

~~(8)~~ **(7)** If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

~~(9)~~ **(8)** Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss ~~which~~ **that** commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to:

(A) the duration of the policy benefit period, if any; or ~~to~~

(B) payment of the maximum benefits.

Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(9) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

(c) Minimum benefit standards are as follows:

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period.

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount.

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during **the** use of Medicare's lifetime hospital inpatient reserve days.

(4) Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days.

(5) Coverage under Medicare Part A for the reasonable cost of:

(A) the first three (3) pints of blood; or

(B) equivalent quantities of packed red blood cells, as defined under federal regulations;

unless replaced in accordance with federal regulations or already paid for under Part B.

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B, regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible (one hundred dollars ($100)).

(d) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of:

(1) the first three (3) pints of blood; or

(2) equivalent quantities of packed red blood cells, as defined under federal regulations;

unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount. *(Department of Insurance; 760 IAC 3-5-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2565; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3413; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 8. 760 IAC 3-6-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-6-1 Benefit standards for policies or certificates issued or delivered after December 31, 1991

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state ~~on or~~ after ~~January 1, 1992.~~ **December 31, 1991.** No policy or certificate may be:

(1) advertised;

(2) solicited;

(3) delivered; or

(4) issued for delivery;

in this state as a Medicare supplement policy or certificate unless ~~it~~ **the policy or certificate** complies with **the** benefit standards in this section.

(b) The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this article:

(1) A Medicare supplement policy or certificate:

(A) shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition; ~~The policy or certificate~~

(B) may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage; **and**

~~(2) A Medicare supplement policy or certificate~~ **(C)** shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

~~(3)~~ **(2)** A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

~~(4)~~ **(3)** No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

~~(5)~~ **(4)** Each Medicare supplement policy shall be guaranteed renewable and shall meet the following requirements:

(A) The issuer shall not cancel or nonrenew the policy:

(i) solely on the ground of health status of the individual; **or**

~~(B) The issuer shall not cancel or nonrenew the policy~~ **(ii)** for any reason other than nonpayment of premium or material misrepresentation.

~~(C)~~ **(B)** If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under clause ~~(E),~~ **(D),** the issuer shall offer certificate holders an individual Medicare supplement policy ~~which~~ **that,** at the option of the certificate holder, **provides for:**

(i) ~~provides for~~ continuation of the benefits contained in the group policy; or

(ii) ~~provides for~~ such benefits as otherwise ~~meets~~ **meet** the requirements of this subsection.

~~(D)~~ **(C)** If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall **offer the certificate holder:**

(i) ~~offer the certificate holder~~ the conversion opportunity described in clause ~~(C);~~ **(B);** or

(ii) at the option of the group policyholder, ~~offer the certificate holder~~ continuation of coverage under the group policy.

~~(E)~~ **(D)** If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(E) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

~~(6)~~ **(5)** Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss ~~which~~ **that** commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to:

(A) the duration of the policy benefit period, if any; or

(B) payment of the maximum benefits.

Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

~~(7)~~ **(6)** Each Medicare supplement policy shall do the following:

(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of ~~such~~ **the** policy or certificate within ninety (90) days after the date the individual becomes entitled to ~~such~~ **the** assistance.

(B) If ~~such~~ **the** suspension occurs and if the policyholder or certificate holder loses entitlement to ~~such~~ **the** medical assistance, ~~such~~ **the** policy or certificate shall be automatically reinstituted (effective as of the date of termination of ~~such~~ **the** entitlement) as of the termination of ~~such~~ **the** entitlement if the policyholder or certificate holder:

(i) provides notice of loss of ~~such~~ **the** entitlement within ninety (90) days after the date of ~~such~~ **the** loss; and

(ii) pays the premium attributable to the period, effective as of the date of termination of ~~such~~ **the** entitlement.

(C) Reinstitution of ~~such~~ **the** coverages **shall do all of the following:**

(i) ~~shall~~ Not provide for any waiting period with respect to treatment of preexisting conditions.

(ii) ~~shall~~ Provide for **resumption of** coverage ~~which~~ **that** is substantially equivalent to coverage in effect before the date of ~~such~~ **the** suspension. **If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs** and **shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension.**

(iii) ~~shall~~ Provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(c) Every issuer shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu thereof. The standards for basic core benefits common to all benefit plans are as follows:

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of **one hundred percent (100%) of** the Medicare Part A eligible expenses for hospitalization paid at the ~~diagnostic related group (DRG) day outlier per diem~~ **applicable prospective payment system (PPS) rate,** or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days.

(4) Coverage under Medicare Parts A and B for the reasonable cost of:

(A) the first three (3) pints of blood; or

(B) equivalent quantities of packed red blood cells, as defined under federal regulations;

unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount of Medicare eligible expenses under Part B, regardless of hospital confinement, subject to the Medicare Part B deductible.

(d) The additional benefits shall be included in Medicare supplement benefit Plans B through J only as provided by 760 IAC 3-7. The standards for additional benefits are as follows:

(1) Medicare Part A deductible, coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled nursing facility care, coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B deductible, coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty percent (80%) of the Medicare Part B excess charges, coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law and the Medicare approved Part B charge.

(5) One hundred percent (100%) of the Medicare Part B excess charges, coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law and the Medicare approved Part B charge.

(6) Basic outpatient prescription drug benefit, coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars ($1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare. **The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.**

(7) Extended outpatient prescription drug benefit, coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible to a maximum of three thousand dollars ($3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare. **The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.**

(8) Medically necessary emergency care in a foreign country, coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care:

(A) would have been covered by Medicare if provided in the United States; and ~~which care~~

(B) began during the first sixty (60) consecutive days of each trip outside the United States;

subject to a calendar year deductible of two hundred fifty dollars ($250) and a lifetime maximum benefit of fifty thousand dollars ($50,000). For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive medical care benefit, coverage for the following preventive health services **not covered by Medicare:**

(A) An annual clinical preventive medical history and physical examination that may include tests and services from clause (B) and patient education to address preventive health care measures.

(B) Any one (1) or a combination of the following preventive screening tests or preventive services, the **selection and** frequency of which is ~~considered~~ **determined to be** medically appropriate **by the attending physician:**

(i) Fecal occult blood test ~~and/or~~ **or** digital rectal examination, **or both.**

(ii) Mammogram.

(iii) Dipstick urinalysis for hematuria, bacteriuria, and proteinuria.

(iv) Pure tone (air only) hearing screening test, administered or ordered by a physician.

(v) Serum cholesterol screening (every five (5) years).

(vi) Thyroid function test.

(vii) Diabetes screening.

~~(C) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster (every ten (10) years).~~

~~(D) Any other tests or preventive measures determined appropriate by the attending physician.~~

Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars ($120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-home recovery benefit, coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery, including the following requirements:

(A) For purposes of this subdivision, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to, **the following:**

(AA) Bathing.

(BB) Dressing.

(CC) Personal hygiene.

(DD) Transferring.

(EE) Eating.

(FF) Ambulating.

(GG) Assistance with drugs that are normally self-administered. ~~and~~

(HH) Changing bandages or other dressings.

(ii) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.

~~(ii)~~ **(iii)** "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide, or nurse:

(AA) provided through a licensed home health care agency; or

(BB) referred by a licensed referral agency or licensed nurses registry.

~~(iii)~~ **(iv)** "Home" ~~shall mean~~ **means** any place used by the insured as a place of residence, provided that ~~such~~ **the** place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

~~(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit.~~

(B) Coverage requirements and limitations are as follows:

(i) At-home recovery services provided must be primarily services ~~which~~ **that** assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to the following:

(AA) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment.

(BB) The actual charges for each visit up to a maximum reimbursement of forty dollars ($40) per visit.

(CC) One thousand six hundred dollars ($1,600) per calendar year.

(DD) Seven (7) visits in any one (1) week.

(EE) Care furnished on a visiting basis in the insured's home.

(FF) Services provided by a care provider as defined in clause ~~(A)(ii).~~ **(A)(iii).**

(GG) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(HH) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(iv) Coverage is excluded for the following:

(AA) Home care visits paid for by Medicare or other government programs.

(BB) Care provided by family members, unpaid volunteers, or providers who are not care providers.

~~(11) An issuer may, with the prior approval of the commissioner of the department of insurance, offer a policy or certificate with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.~~

(e) Standardized Medicare supplement benefit plan "K" shall consist of the following:

(1) Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first day through the ninetieth day in any Medicare benefit period.

(2) Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first day through the one hundred fiftieth day in any Medicare benefit period.

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or the appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subdivision (10).

(5) Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subdivision (10).

(6) Coverage for fifty percent (50%) of the cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subdivision (10).

(7) Coverage for fifty percent (50%) under Medicare Part A or B of the reasonable cost of:

(A) the first three (3) pints of blood; or

(B) equivalent quantities of packed red blood cells, as defined under federal regulations;

unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in subdivision (10).

(8) Except for coverage provided in subdivision (9), coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subdivision (10).

(9) Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible.

(10) Coverage for one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars ($4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(f) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(1) The benefits described in subsection (e)(1) through (e)(3) and (e)(9).

(2) The benefits described in subsection (e)(4) through (e)(8), but substituting seventy-five percent (75%) for fifty percent (50%).

(3) The benefit described in subsection (e)(10), but substituting two thousand dollars ($2,000) for four thousand dollars ($4,000).

(Department of Insurance; 760 IAC 3-6-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2566; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3414; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 9. 760 IAC 3-7-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-7-1 Standard Medicare supplement benefit plans

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits as defined in 760 IAC 3-6-1(c).

(b) No groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in ~~760 IAC 3-6-1(d)(11) and~~ 760 IAC 3-8.

(c) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit Plans A through J listed in this section and conform to the definitions in 760 IAC 3-2 and 760 IAC 3-3. Each benefit shall:

(1) be structured in accordance with the format provided in 760 IAC 3-6-1(c) through 760 IAC 3-6-1(d); and

(2) list the benefits in the order shown in subsection (e).

As used in this section, "structure, language, and format" means style, arrangement, and overall content of a benefit.

(d) An issuer may use, in addition to the benefit plan designations required in subsection (c), other designations to the extent permitted by law.

(e) **The** makeup of benefit plans shall be as follows:

(1) Standardized Medicare supplement benefit Plan A shall be limited to the basic (core) benefits common to all benefit plans as defined in 760 IAC 3-6-1(c).

(2) Standardized Medicare supplement benefit Plan B shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus the Medicare Part A deductible as defined in 760 IAC 3-6-1(d)(1).

(3) Standardized Medicare supplement benefit Plan C shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:

(A) **the** Medicare Part A deductible;

(B) skilled nursing facility care;

(C) **the** Medicare Part B deductible; and

(D) medically necessary emergency care in a foreign country;

as defined in 760 IAC 3-6-1(d)(1) through 760 IAC 3-6-1(d)(3) and 760 IAC 3-6-1(d)(8), respectively.

(4) Standardized Medicare supplement benefit Plan D shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:

(A) **the** Medicare Part A deductible;

(B) skilled nursing facility care;

(C) medically necessary emergency care in a foreign country; and

(D) **the** at-home recovery benefit;

as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), 760 IAC 3-6-1(d)(8), and 760 IAC 3-6-1(d)(10), respectively.

(5) Standardized Medicare supplement benefit Plan E shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:

(A) **the** Medicare Part A deductible;

(B) skilled nursing facility care;

(C) medically necessary emergency care in a foreign country; and

(D) preventive medical care;

as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), ~~and~~ 760 IAC 3-6-1(d)(8), ~~through~~ **and** 760 IAC 3-6-1(d)(9), respectively.

(6) Standardized Medicare supplement benefit Plan F shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:

(A) **the** Medicare Part A deductible;

(B) skilled nursing facility care;

(C) **the Medicare** Part B deductible;

(D) one hundred percent (100%) of the Medicare Part B excess charges; and

(E) medically necessary emergency care in a foreign country;

as defined in 760 IAC 3-6-1(d)(1) through 760 IAC 3-6-1(d)(3), 760 IAC 3-6-1(d)(5), and 760 IAC 3-6-1(d)(8), respectively.

(7) Standardized Medicare supplement benefit high deductible Plan F shall include one hundred percent (100%) of covered expenses following the payment of the annual high deductible Plan F deductible. The covered expenses include the core benefit as defined in 760 IAC 3-6-1(c), plus:

(A) **the** Medicare Part A deductible;

(B) skilled nursing facility care;

(C) **the** Medicare Part B deductible;

(D) one hundred percent (100%) of the Medicare Part B excess charges; and

(E) medically necessary emergency care in a foreign country;

as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), ~~and~~ 760 IAC 3-6-1(d)(8), ~~through~~ **and** 760 IAC 3-6-1(d)(9), respectively. The annual high deductible Plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan F policy and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan F deductible shall be one thousand five hundred dollars ($1,500) for 1999 and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars ($10).

(8) Standardized Medicare supplement benefit Plan G shall include only the core benefit as defined in 760 IAC 3-6-1(c), plus:

(A) **the** Medicare Part A deductible;

(B) skilled nursing facility care;

(C) eighty percent (80%) of the Medicare Part B excess charges;

(D) medically necessary emergency care in a foreign country; and

(E) **the** at-home recovery benefit;

as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), 760 IAC 3-6-1(d)(4), 760 IAC 3-6-1(d)(8), and 760 IAC 3-6-1(d)(10), respectively.

(9) Standardized Medicare supplement benefit Plan H shall consist of only the core benefit as defined in 760 IAC 3-6-1(c), plus:

(A) **the** Medicare Part A deductible;

(B) skilled nursing facility care;
(C) **the** basic prescription drug benefit; and
(D) medically necessary emergency care in a foreign country;

as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), 760 IAC 3-6-1(d)(6), and 760 IAC 3-6-1(d)(8), respectively. **The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.**

(10) Standardized Medicare supplement benefit Plan I shall consist of only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) one hundred percent (100%) of the Medicare Part B excess charges;
(D) **the** basic prescription drug benefit;
(E) medically necessary emergency care in a foreign country; and
(F) **the** at-home recovery benefit;

as defined in 760 IAC 3-6-1(d)(1), ~~through~~ 760 IAC 3-6-1(d)(2), ~~760 IAC 03-6-1(d)(5) through~~ **760 IAC 3-6-1(d)(5),** 760 IAC 3-6-1(d)(6), 760 IAC 3-6-1(d)(8), and 760 IAC 3-6-1(d)(10), respectively. **The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.**

(11) Standardized Medicare supplement benefit Plan J shall consist of only the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) **the** Medicare Part B deductible;
(D) one hundred percent (100%) of the Medicare Part B excess charges;
(E) **the** extended prescription drug benefit;
(F) medically necessary emergency care in a foreign country;
(G) preventive medical care; and
(H) **the** at-home recovery benefit;

as defined in 760 IAC 3-6-1(d)(1) through 760 IAC 3-6-1(d)(3), 760 IAC 3-6-1(d)(5), and 760 IAC 3-6-1(d)(7) through 760 IAC 3-6-1(d)(10), respectively.

(12) Standardized Medicare supplement benefit high deductible Plan J shall consist of one hundred percent (100%) of covered expenses following the payment of the annual high deductible Plan J deductible. The covered expenses include the core benefit as defined in 760 IAC 3-6-1(c), plus:
(A) **the** Medicare Part A deductible;
(B) skilled nursing facility care;
(C) **the** Medicare Part B deductible;
(D) one hundred percent (100%) of the Medicare Part B excess charges;
(E) **the** extended outpatient prescription drug benefit;
(F) medically necessary emergency care in a foreign country;
(G) preventive medical care benefit; and
(H) **the** at-home recovery benefit;

as defined in 760 IAC 3-6-1(d)(1) through 760 IAC 3-6-1(d)(3), 760 IAC 3-6-1(d)(5), and 760 IAC 3-6-1(d)(7) through 760 IAC 3-6-1(d)(10), respectively. **The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.** The annual high deductible Plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan J policy and shall be in addition to any other specific benefit deductibles. The annual high deductible shall be one thousand five hundred dollars ($1,500) for 1999 and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year and rounded to the nearest multiple of ten dollars ($10). **The outpatient prescription drug benefit shall not be included in a Medicare Supplement policy sold after December 31, 2005.**

(f) The makeup of the two (2) Medicare supplement plans mandated by the Medicare Prescription Drug Improvement and Modernization Act of 2003 are as follows:
(1) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in 760 IAC 3-6-1(e).
(2) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in 760 IAC 3-6-1(f).

(g) An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are as follows:
(1) Appropriate to Medicare supplement insurance.
(2) New or innovative.
(3) Not otherwise available.
(4) Cost-effective.
(5) Offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.

After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit. *(Department of Insurance; 760 IAC 3-7-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2569; errata filed Sep 20, 1993, 5:00 p.m.: 17 IR 200; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1974; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 10. 760 IAC 3-8-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-8-1 Medicare select policies and certificates
Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) This section shall apply to Medicare select policies and certificates as defined in this section.

(b) No policy or certificate may be advertised as a Medicare select policy or certificate unless it meets the requirements of this section.

(c) The following definitions apply throughout this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare select policy or certificate with the:

(A) administration;

(B) claims practices; or

(C) provision of services;

concerning a Medicare select issuer or its network providers.

(3) "Medicare select issuer" means an issuer offering, or seeking to offer, a Medicare select policy or certificate.

(4) "Medicare select policy" or "Medicare select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care, ~~which~~ **that** has entered into a written agreement with the issuer to provide benefits insured under a Medicare select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the commissioner of the department of insurance within which an issuer is authorized to offer a Medicare select policy.

(d) The commissioner may authorize an issuer to offer a Medicare select policy or certificate, under this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, if the commissioner of the department of insurance finds that the issuer has satisfied all of the requirements of this article.

(e) A Medicare select issuer shall not issue a Medicare select policy or certificate in this state until its plan of operation has been approved by the commissioner of the department of insurance.

(f) A Medicare select issuer shall file a proposed plan of operation with the commissioner of the department of insurance in a format prescribed by the commissioner of the department of insurance. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration of the following:

(A) ~~Such~~ **The** services can be provided by network providers with reasonable promptness with respect to **the following:**

(i) Geographic location.

(ii) Hours of operation. ~~and~~

(iii) After-hour care.

The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(B) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either **to:**

(i) ~~to~~ deliver adequately all services that are subject to a restricted network provision; or

(ii) ~~to~~ make appropriate referrals.

(C) There are written agreements with network providers describing specific responsibilities.

(D) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(E) In the case of covered services that are:

(i) subject to a restricted network provision; and ~~are~~

(ii) provided on a prepaid basis;

there are written agreements with network providers prohibiting ~~such~~ **the** providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare select policy or certificate. This clause shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the **following:**

(A) The grievance procedure to be utilized.

~~(4) A description of~~ **(B)** The quality assurance program, including the following:

~~(A)~~ **(i)** The formal organizational structure.

~~(B)~~ **(ii)** The written criteria for selection, retention, and removal of network providers.

~~(C)~~ **(iii)** The procedures for evaluating quality of care provided by network providers. ~~and~~

(iv) The process to initiate corrective action when warranted.

~~(5)~~ **(4)** A list and description, by specialty, of the network providers.

~~(6)~~ **(5)** Copies of the written information proposed to be used by the issuer to comply with subsection (k).

~~(7)~~ **(6)** Any other information requested by the commissioner of the department of insurance.

(g) A Medicare select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner of the department of insurance ~~prior to~~ **before** implementing ~~such~~ **the** changes. ~~Such~~

The changes shall be considered approved by the commissioner of the department of insurance after thirty (30) days unless specifically disapproved.

(h) An updated list of network providers shall be filed with the commissioner of the department of insurance at least quarterly.

(i) A Medicare select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(1) the services are:

(A) for symptoms requiring emergency care; or ~~are~~

(B) immediately required for an unforeseen:

(i) illness;

(ii) injury; or ~~a~~

(iii) condition; and

(2) it is not reasonable to obtain ~~such~~ **the** services through a network provider.

(j) A Medicare select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(k) A Medicare select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare select policy or certificate with the following:

(A) Other Medicare supplement policies or certificates offered by the issuer.

(B) Other Medicare select policies or certificates.

(2) A description, including address, phone number, and hours of operation of the network providers, including **the following:**

(A) Primary care physicians.

(B) Specialty physicians.

(C) Hospitals. ~~and~~

(D) Other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. **Except to the extent specified in the policy or certificate, expenses incurred when using out of network providers do not count toward the out-of-pocket annual limit contained in plans K and L.**

(4) A description of coverage for **the following:**

(A) Emergency and urgently needed care. ~~and~~

(B) Other out-of-service area coverage.

(5) A description of limitations on referrals to **the following:**

(A) Restricted network providers. ~~and to~~

(B) Other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare select issuer's:

(A) quality assurance program; and

(B) grievance procedure.

(l) ~~Prior to~~ **Before** the sale of a Medicare select policy or certificate, a Medicare select issuer shall obtain from the applicant a signed and dated form stating that the applicant:

(1) has received the information provided under subsection (k); and ~~that the applicant~~

(2) understands the restrictions of the Medicare select policy or certificate.

(m) A Medicare select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. ~~Such~~ **The** procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures as follows:

(1) The grievance procedure shall be described in the:

(A) policies and certificates; and ~~in the~~

(B) outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be:

(A) considered in a timely manner; and ~~shall be~~

(B) transmitted to appropriate decision makers who have authority to:

(i) fully investigate the issue; and

(ii) take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report ~~no~~ **not** later than each March 31 to the commissioner of the department of insurance regarding its grievance procedure. The report shall:

(A) be in a format prescribed by the commissioner of the department of insurance; and ~~shall~~

(B) contain:

(i) the number of grievances filed in the past year; and

(ii) a summary of the subject, nature, and resolution of ~~such~~ **the** grievances.

(n) At the time of initial purchase, a Medicare select issuer shall make available to each applicant for a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(o) At the request of an individual insured under a Medicare select policy or certificate, a Medicare select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer that:

(1) has comparable or lesser benefits; and

(2) does not contain a restricted network provision.

The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare select policy or certificate has been in force for six (6) months.

(p) For purposes of subsection (o), a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. As used in this subsection, "significant benefit" means coverage for:

(1) the Medicare Part A deductible;

~~(2) prescription drugs;~~

~~(3)~~ **(2)** at-home recovery services; or

~~(4)~~ **(3) Medicare** Part B excess charges.

(q) Medicare select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare select policies and certificates issued under this section should be discontinued due to either the failure of the Medicare select program to be reauthorized under law or its substantial amendment and as follows:

(1) Each Medicare select issuer shall make available to each individual insured under a Medicare select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer that:

(A) has comparable or lesser benefits; and

(B) does not contain a restricted network provision.

The issuer shall make ~~such~~ **the** policies and certificates available without requiring evidence of insurability.

(2) For purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare select policy or certificate being replaced. As used in this subdivision, "significant benefit" means coverage for:

(A) the Medicare Part A deductible;

~~(B) prescription drugs;~~

~~(C)~~ **(B)** at-home recovery services; or

~~(D)~~ **(C) Medicare** Part B excess charges.

(r) A Medicare select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare select program. *(Department of Insurance; 760 IAC 3-8-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2570; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3417; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 11. 760 IAC 3-9-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-9-1 Open enrollment

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 1. (a) No issuer shall:

(1) deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state; ~~nor~~ **or**

(2) discriminate in the pricing of ~~such a~~ **the** policy or certificate;

because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted ~~prior to~~ **before** or during the six (6) month period beginning with the first day of the first month in which an individual is both **at least** sixty-five (65) years of age ~~or older~~ and ~~is~~ enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(b) If an applicant:

(1) qualifies under subsection (a); ~~and~~

(2) submits an application during the time period referenced in subsection (a); and

(3) as of the date of application, has had a continuous period of creditable coverage of at least six (6) months;

the issuer shall not exclude benefits based on a preexisting condition.

(c) If an applicant:

(1) qualifies under subsection (a); ~~and~~

(2) submits an application during the time period referenced in subsection (a); and

(3) as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months;

the issuer shall reduce the period of any preexisting condition exclusion by the sum of the period of creditable coverage applicable to the applicant as of the enrollment date.

(d) Except as provided in this section, **section 2 of this rule,** and 760 IAC 3-19-1, subsection (a) shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective. *(Department of Insurance; 760 IAC 3-9-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2573; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3419; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1975; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 12. 760 IAC 3-9-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-9-2 Guaranteed issue for eligible persons

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1
Affected: IC 27-8-13-1

Sec. 2. (a) As used in this section, "eligible person" means an individual described in any of the following:

(1) An individual enrolled under an employee welfare benefit plan that:

(A) provides health benefits that supplement the benefits under Medicare and the plan:

(i) terminates; or ~~the plan~~

(ii) implements a material reduction of supplemental health benefits to the individual; or ~~the individual is enrolled under an employee welfare benefit plan that~~

(B) is primary to Medicare and the plan:

(i) terminates; or ~~the plan~~

(ii) ceases to provide health benefits to the individual because the individual leaves the plan.

(2) An individual enrolled with a ~~Medicare+Choice~~ **Medicare Advantage** organization under a ~~Medicare+Choice~~ **Medicare Advantage** plan and any of the following circumstances apply:

(A) The organization's or plan's certification has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides.

(B) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, where the individual has:

(i) not paid premiums on a timely basis; or ~~has~~

(ii) engaged in disruptive behavior as specified in standards under Section 1856;

or the plan is terminated for all individuals within a residence area.

(C) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide:

(AA) an enrollee on a timely basis medically necessary care for which benefits are available under the plan; or ~~the failure to provide such~~

(BB) covered care in accordance with applicable quality standards; or

(ii) the organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual. ~~or~~

(D) The individual meets ~~such~~ other exceptional conditions as the Secretary may provide.

(3) An individual enrolled in: ~~one (1) of the following:~~

(A) an eligible organization under a contract under Section 1876 (Medicare risk or cost);

(B) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999; **or**

(C) an organization under:

(i) an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

~~(D) an organization under~~ **(ii)** a Medicare Select policy;

and the enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under ~~subsection (a)(2) of this section.~~ **subdivision (2).**

(4) An individual enrolled under a Medicare supplement policy and the enrollment ceases due to one (1) of the following:

(A) Insolvency of the issuer.

(B) Bankruptcy of the organization. ~~or~~

(C) Other involuntary termination of coverage or enrollment under the policy.

~~(B)~~ **(D)** The issuer of the policy substantially violated a material provision of the policy. ~~or~~

~~(C)~~ **(E)** The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(5) An individual enrolled under a Medicare supplement policy who:

(A) terminates enrollment and subsequently enrolls with:

(i) any ~~Medicare+Choice~~ **Medicare Advantage** organization under ~~Medicare+Choice~~ **Medicare Advantage** plans;

(ii) any:

(AA) eligible organization under a contract under Section 1876 (Medicare risk or cost); or ~~any~~

(BB) similar organization operating under demonstration project authority;

(iii) an organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(iv) a Medicare Select policy; and

(B) during the first twelve (12) months after the initial termination of enrollment from the Medicare supplement policy under clause (A), the individual:

(i) terminates any subsequent enrollments in **any** plans or organizations described in clause ~~(A)(i), (A)(ii), (A)(iii), or (A)(iv);~~ **(A);** and

(ii) applies to enroll with a Medicare supplement policy.

(6) An individual who, upon first enrolling in Medicare Part B:

(A) enrolls in any ~~Medicare+Choice~~ **Medicare Advantage** plans; and

(B) disenrolls from the plans not later than twelve (12) months after the effective date of the individual's first enrollment.

(7) An individual who:

(A) enrolls in a Medicare Part D plan during the initial enrollment period;

(B) at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs;

(C) terminates enrollment in the Medicare supplement policy; and

(D) submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (d).

(b) With respect to eligible persons who apply to enroll under the policy not later than sixty-three (63) days after the date of the termination of enrollment described in subsection (a) and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy, an issuer shall not:

(1) deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (c) that is offered and is available for issuance to new enrollees by the issuer;

(2) discriminate in the pricing of such a Medicare supplement policy because of:

(A) health status;

(B) claims experience;

(C) receipt of health care; or

(D) medical condition; and

(3) impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(c) An eligible person as defined by subsection (a)(1), (a)(2), (a)(3), or (a)(4) is guaranteed issuance of a standardized Medicare supplement benefit:

(1) Plan A;

(2) Plan B;

(3) Plan C; ~~or~~

(4) Plan F **(including Plan F with a high deductible);**

(5) Plan K; or

(6) Plan L;

offered by any issuer.

(d) An eligible person as defined by subsection (a)(5) is guaranteed issuance of the same standardized Medicare supplement policy in which the individual was most recently ~~previously~~ enrolled, if available from the same issuer, or, if not ~~so~~ available, a policy described in subsection (c). **After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy referenced above is:**

(1) the policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(2) at the election of the policyholder, a:

(A) Plan A;

(B) Plan B;

(C) Plan C;

(D) Plan F (including Plan with a high deductible);

(E) Plan K; or

(F) Plan L;

policy that is offered by any issuer.

(e) In the case of an individual described in subsection (a)(7), the guaranteed issue period:

(1) begins on the date the individual receives notice under Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty (60) day period immediately preceding the initial Part D enrollment period; and

(2) ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D.

~~(e)~~ **(f)** An eligible person as defined by subsection (a)(6) is guaranteed issuance of any standardized Medicare supplement policy offered by any issuer.

~~(f)~~ **(g)** At the time of an event described in subsection (a), either the:

(1) organization that terminates the contract or agreement; ~~the~~

(2) employee welfare benefit plan; ~~the~~

(3) issuer of the policy; or ~~the~~

(4) administrator of the plan being terminated;

shall notify the individual of his or her rights under this section.

~~(g)~~ **(h)** At the time of an event described in subsection (a), because of which an individual ceases enrollment under a contract or agreement, policy, or plan, either the:

(1) organization that offers the contract or agreement; ~~the~~

(2) issuer offering the policy; or ~~the~~

(3) administrator of the plan;

shall notify the individual of his or her rights under this section. ~~Such~~ **The** notice shall be communicated to the individual within ten (10) working days of the issuer receiving notification of disenrollment. *(Department of Insurance; 760 IAC 3-9-2; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1976; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 13. 760 IAC 3-11-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-11-1 Loss ratio standards and refund or credit of premium

Authority: IC 27-8-13-10; IC 27-8-13-12
Affected: IC 27-8-13-1

Sec. 1. (a) Loss ratio standards are as follows:

(1) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form **at least either of the following:**

(A) ~~at least~~ Seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies.

~~or~~

(B) ~~at least~~ Sixty-five percent (65%) of the aggregate

amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for ~~such~~ **the** period and in accordance with accepted actuarial principles and practices. **Incurred health care expenses where coverage is provided by a health maintenance organization shall not include the following:**

(i) Home office and overhead costs.

(ii) Advertising costs.

(iii) Commissions and other acquisition costs.

(iv) Taxes.

(v) Capital costs.

(vi) Administrative costs.

(vii) Claims processing costs.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For policies issued any time ~~prior to~~ **before** January 1, 1992, expected claims in relation to premiums shall meet the following:

(A) The originally filed anticipated loss ratio when combined with the actual experience since inception.

(B) The appropriate loss ratio ~~requirement~~ **requirements** from subdivision (1):

(i) when combined with actual experience beginning with April 1, 1996, to date; **and**

~~(C) The appropriate loss ratio requirements from subdivision (1)~~ **(ii)** over the entire future period for which the rates are computed to provide coverage.

~~(D)~~ **(C)** In meeting the tests in clauses (A) ~~through (C)~~ **and (B)** and for purposes of attaining credibility, an issuer may combine experience under policy forms that provide substantially similar coverage. Once a combined form is adopted, the issuer may not separate the experience except with the approval of the commissioner.

(b) Refund or credit calculation is as follows:

(1) An issuer shall collect and file with the commissioner of the department of insurance by May 31 of each year the data contained in the applicable reporting form contained in this section for each type in a standard Medicare supplement benefit plan.

(2) If, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For purposes of this section, the issuer of policies or certificates issued ~~prior to~~ **before** January 1, 1992, shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after April 1, 1996. The first ~~such~~ report shall be due by May 31, 1998.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(c) An issuer of Medicare supplement policies and certificates issued before or after the effective date of this article in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner of the department of insurance in accordance with the filing requirements and procedures prescribed by the commissioner of the department of insurance. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. ~~Such~~ **The** demonstration shall exclude active life reserves. An expected third-year loss ratio, which is greater than or equal to the applicable percentage, shall be demonstrated for policies or certificates in force less than three (3) years.

(d) As soon as practicable, but ~~prior to~~ **before** the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner of the department of insurance, in accordance with the applicable filing procedures of this state, the following:

(1) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. ~~Such~~ Supporting documents as necessary to justify the adjustment shall accompany the filing.

(2) An issuer shall make ~~such~~ premium adjustments as are:

(A) necessary to produce an expected loss ratio under ~~such~~ **the** policy or certificate as will conform with minimum loss ratio standards for Medicare supplement policies; and ~~which are~~

(B) expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current

premiums by the issuer for ~~such~~ **the** Medicare supplement policies or certificates.

No premium adjustment, which would modify the loss ratio experience under the policy other than the adjustments described in this subdivision, shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(3) If an issuer fails to make premium adjustments acceptable to the commissioner of the department of insurance, the commissioner of the department of insurance may order:

(A) premium adjustments;

(B) refunds; or

(C) premium credits;

deemed necessary to achieve the loss ratio required by this section.

(4) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. ~~Such~~ **The** riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(e) The commissioner of the department of insurance may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of this article if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for ~~such~~ **the** reporting period. Public notice of ~~such~~ **the** hearing shall be furnished in a manner deemed appropriate by the commissioner of the department of insurance.

(f) The following forms shall be used for the calculations and reporting requirements of this rule:

MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

Line	(a) Earned Premium[3]	(b) Incurred Claims[4]
1. Current Year's Experience		
a. Total (all policy years)		
b. Current year's issues[5]		
c. Net (for reporting purposes = 1a - 1b)	_____	_____
2. Past Years' Experience (All Policy Years)	_____	_____
3. Total Experience (Net Current Year + Past Year's Experience)	_____	_____

4. Refunds Last Year (Excluding Interest) _____
5. Previous Since Inception (Excluding Interest) _____
6. Refunds Since Inception (Excluding Interest) _____
7. Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1) _____
8. Experienced Ratio Since Inception _____

$$\frac{\text{Total Actual Incurred Claims (line 3, col. b)}}{\text{Total Earned Prem. (line 3, col. a) - Refunds Since Inception (line 6)}} = \text{Ratio 2}$$

9. Life Years Exposed Since Inception _____

If the Experience Ratio is less than the Benchmark Ratio, and there are more than five hundred (500) life years exposure, then proceed to calculation of refund.

10. Tolerance Permitted (obtained from credibility table)_____

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000 +	0.0%
5,000–9,999	5.0%

2,500–4,999	7.5%
1,000–2,499	10.0%
500–999	15.0%

If less than 500, no credibility.

MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

11. Adjustment to Incurred Claims for Credibility _____

Ratio 3 = Ratio 2 + Tolerance

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required.

If Ratio 3 is less than the Benchmark Ratio, then proceed.

12. Adjusted Incurred Claims _____

[Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6)] × Ratio 3 (line 11)

13. Refund = Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6).

$$\frac{\text{Adjusted Incurred Claims (line 12)}}{\text{Benchmark Ratio (Ratio 1)}}$$

If the amount on line 13 is less than.005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

[1]Individual, group, individual Medicare Select, or group Medicare Select only.

[2]"SMSBP" = Standardized Medicare Supplement Benefit Plan.

[3]Includes Modal Loadings and Fees Charged.

[4]Excluded Active Life Reserves.

[5]This is to be used as "Issue Year Earned Premium" for Year 1 of the next year's "Worksheet for Calculation of Benchmark Ratios".

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

_____
Signature

_____
Name–Please Type

_____
Title

_____
Date

REPORTING FORM FOR THE CALCULATION OF BENCHMARK
RATIO SINCE INCEPTION FOR GROUP POLICIES
FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code _____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)×(c)	Cumulative Loss Ratio	(d)×(e)	Factor	(b)×(g)	Cumulative Loss Ratio	(h)×(i)	Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): _____

[1]Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2]"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans.

[3]Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4]For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5]These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK
RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES
FOR CALENDAR YEAR_____

TYPE[1] _____ SMSBP[2] _____
For the State of _____ Company Name _____
NAIC Group Code _____ NAIC Company Code_____
Address _____ Person Completing Exhibit _____
Title _____ Telephone Number _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)×(c)	Cumulative Loss Ratio	(d)×(e)	Factor	(b)×(g)	Cumulative Loss Ratio	(h)×(i)	Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76

11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): _____

[1]Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2]"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans.

[3]Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4]For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5]These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(Department of Insurance; 760 IAC 3-11-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2573; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3419; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 14. 760 IAC 3-12-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-12-1 Filing and approval of policies and certificates and premium rates

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1; IC 27-8-13-12
Affected: IC 27-8-13-1

Sec. 1. (a) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner of the department of insurance in accordance with filing requirements and procedures prescribed by the commissioner of the department of insurance.

(b) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

~~(b)~~ **(c)** An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner of the department of insurance in accordance with the filing requirements and procedures prescribed by the commissioner of the department of insurance.

~~(c)~~ **(d)** Except as provided in subsection ~~(d),~~ **(e),** an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

~~(d)~~ **(e)** An issuer may offer, with the approval of the commissioner of the department of insurance, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

(1) The inclusion of new or innovative benefits.

(2) The addition of either:

(A) direct response or agent marketing methods; **or**

~~(3) The addition of either~~ **(B)** guaranteed issue or underwritten coverage.

~~(4)~~ **(3)** The offering of coverage to individuals eligible for Medicare by reason of disability.

~~(e)~~ **(f)** As used in this section, "type" means:

(1) an individual policy;

(2) a group policy;

(3) an individual Medicare select policy; or

(4) a group Medicare select policy.

~~(f)~~ **(g)** Except as provided in subdivision (1), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this article that has been approved by the commissioner of the department of insurance. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months and as follows:

(1) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner of the department of insurance in writing its decision at least thirty (30) days ~~prior to~~ **before** discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner of the department of insurance, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(2) An issuer that discontinues the availability of a policy

form or certificate form under subdivision (1) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the department of insurance of the discontinuance. The period of discontinuance may be reduced if the commissioner of the department of insurance determines that a shorter period is appropriate.

~~(g)~~ **(h)** For purposes of subsection ~~(f),~~ **(g),** this subsection, and subsection ~~(h),~~ **(i),** the sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance.

~~(h)~~ **(i)** A change in the rating structure or methodology shall be considered a discontinuance under subsection ~~(f)~~ **(g)** unless the issuer: ~~complies with the following requirements:~~

(1) ~~The issuer~~ provides an actuarial memorandum, in a form and manner prescribed by the commissioner of the department of insurance, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; **and**

(2) ~~The issuer~~ does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner of the department of insurance may approve a change to the differential ~~which~~ **that** is in the public interest.

~~(i)~~ **(j)** Except as provided in subsection ~~(j),~~ **(k),** the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 760 IAC 3-11.

~~(j)~~ **(k)** Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation. *(Department of Insurance; 760 IAC 3-12-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2580; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3430; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

SECTION 15. 760 IAC 3-14-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-14-1 Required disclosure provisions

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1; IC 27-8-13-12; IC 27-8-13-14; IC 27-8-13-15; IC 27-8-13-16
Affected: IC 27-8-13-1

Sec. 1. (a) General provisions are as follows:

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of ~~such~~ **the** provision shall be consistent with the type of contract issued. ~~Such~~ **The** provision shall:

(A) be appropriately captioned;

(B) appear on the first page of the policy; and

(C) include any:

(i) reservation by the issuer of the right to change premiums; and ~~any~~

(ii) automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer:

(A) effectuates a request made in writing by the insured;

(B) exercises a specifically reserved right under a Medicare supplement policy; or

(C) is required to reduce or eliminate benefits to avoid duplication of Medicare benefits;

all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, ~~such~~ **the** premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as:

(A) "usual and customary";

(B) "reasonable and customary"; or

(C) words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, ~~such~~ **the** limitations shall:

(A) appear as a separate paragraph of the policy; and

(B) be labeled as "Preexisting Condition Limitations".

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to:

(A) return the policy or certificate within thirty (30) days of its delivery; and ~~to~~

(B) have the premium refunded;

if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) Issuers of accident and sickness policies or certificates that provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare (Guide) in:

(A) the form developed jointly by the National Association of Insurance Commissioners and the ~~Health Care Financing Administration~~ **Center for Medicare Services;** and ~~in~~

(B) a type size no smaller than 12-point type.

Delivery of the Guide shall be made whether or not ~~such~~ **the** policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this article. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request, but not later than at the time the policy is delivered.

As used in this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

(b) Notice requirements are as follows:

(1) As soon as practicable, but ~~no~~ **not** later than thirty (30) days ~~prior to~~ **before** the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner of the department of insurance. ~~Such~~ **The** notice shall do the following:

(A) Include a description of **the following:**

(i) Revisions to the Medicare program. ~~and a description of~~

(ii) Each modification made to the coverage provided under the Medicare supplement policy or certificate.

(B) Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in:

(A) outline form; and ~~in~~

(B) clear and simple terms;

so as to facilitate comprehension.

(3) ~~Such~~ **The** notices shall not:

(A) contain; or

(B) be accompanied by;

any solicitation.

(c) Issuers shall comply with any notice requirements of the Medicare Prescription Drug Improvement and Modernization Act of 2003.

~~(c)~~ **(d)** The outline of coverage requirements for Medicare supplement policies are as follows:

(1) Issuers shall:

(A) provide an outline of coverage to all applicants at the time application is presented to the prospective applicant; and

(B) except for direct response policies, ~~shall~~ obtain an acknowledgement of receipt of ~~such~~ **the** outline from the applicant.

(2) If:

(A) an outline of coverage is provided at the time of application; and

(B) the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline;

a substitute outline of coverage properly describing the policy or certificate shall accompany ~~such~~ **the** policy or certificate when it is delivered and contain the following statement, in ~~no less~~ **not smaller** than 12-point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued.".

(3) The outline of coverage provided to applicants under this section consists of the following:

(A) The cover page described in subsection ~~(c).~~ **(f).**

(B) Premium information on or immediately following the cover page.

(C) Disclosure pages described in subsection ~~(f).~~ **(g).**

(D) Charts displaying the features of each benefit plan offered by the issuer described in subsection ~~(g).~~ **(h).**

The outline of coverage shall be in the language and format prescribed in subsections ~~(c)~~ **(f)** through ~~(g)~~ **(h)** in ~~no less~~ **not smaller** than 12-point type. Plans A through J, described in 760 IAC 3-7, shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

~~(d)~~ **(e)** The following are notices regarding policies or certificates that are not Medicare supplement policies:

(1) Any:

(A) accident and sickness insurance policy or certificate, other than a Medicare supplement policy;

(B) policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. 1395 et seq.);

(C) disability income policy; or

(D) other policy identified in 760 IAC 3-1-1(b);

issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or, if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice shall be in ~~no less~~ **not smaller** than 12-point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company.".

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subdivision (1) shall disclose, using the applicable statement in this subdivision, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as part of, or together with, the application for the policy or certificate. The following instructions and forms shall be used for the disclosure statement regarding duplication of Medicare:

DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare

1. Section 1882(d) of the federal Social Security Act, 42 U.S.C. 1395ss, prohibits the sale of a health insurance policy (the term "policy" or "policies" includes certificates) that duplicates Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.

2. All types of health insurance policies that duplicate Medicare shall include one (1) of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.

4. Property/casualty and life insurance policies are not considered health insurance.

5. Disability income policies are not considered to provide benefits that duplicate Medicare.

6. Long term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.

7. The federal law does not preempt state laws that are more stringent than the federal requirements.

8. The federal law does not preempt existing state form filing requirements.

9. Section 1882 of the federal Social Security Act was amended to allow for alternative disclosure statements. Carriers may use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

*****

[Original disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease, and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one (1) of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance

counseling program.

*****

[Original disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one (1) of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for policies that provide benefits for both expenses incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductible or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Original disclosure statement for other health insurance policies not specifically identified in the previous statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization

• physician services
• other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.
✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense incurred cancer, specified disease, and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one (1) of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

• hospitalization
• physician services
• hospice
• other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.
✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one (1) of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

• hospitalization
• physician services
• hospice
• other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.
✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

• hospitalization
• physician services
• hospice

• other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for policies that provide benefits upon both an expense incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

• hospitalization
• physician services
• hospice care
• other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE. THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

• hospitalization
• physician services
• hospice
• other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

BEFORE YOU BUY THIS INSURANCE

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

*****

~~(c)~~ **(f)** The cover page of the outline described in subsection ~~(c)~~ **(d)** shall be in the format as follows:

(COMPANY NAME)

Outline of Medicare Supplement Coverage-Cover Page:

Benefit Plan(s) _____(insert letter(s) of plan(s) being offered)

~~Medicare supplement insurance can be sold in only ten standard plans, plus two high deductible plans. This chart shows~~ **These charts show** the benefits included in each ~~plan.~~ **of the standard Medicare supplement plans.** Every company must make available Plan "A". Some of the other plans may not be available from every company.

Basic Benefits: ~~Included in All~~ **For** Plans **A – J.**

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (generally 20% of Medicare approved expenses).

Blood: First three pints of blood each year.

A	B	C	D	E	F / F*	G	H	I	J / J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance	Skilled Nursing **Facility** Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency At-Home Recovery	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency At-Home Recovery	Foreign Travel Emergency	Foreign Travel Emergency At-Home Recovery	Foreign Travel Emergency At-Home Recovery
							~~Basic Drugs (~~$1,250 ~~Limit)~~	~~Basic Drugs (~~$1,250 ~~Limit)~~	~~Basic Drugs (~~$3,000 ~~Limit)~~
				Preventive Care **NOT covered by Medicare**					Preventive Care **NOT covered by Medicare**

*Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year [$1,500] deductible. Benefits from high deductible Plans F and J will not begin until out-of-pocket expenses are [$1,500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include ~~in Plan J,~~ the plan's separate ~~prescription drug deductible or, in Plans F and J, the plans' separate~~ foreign travel emergency deductible.

Basic Benefits for Plans K and L include similar services as Plans A-J, but cost-sharing for the basic benefits is at different levels.

J	K**	L**
Basic Benefits	**100% of Part A Hospitalization coinsurance plus coverage for 365 days after Medicare benefits end** **50% hospice cost-sharing** **50% of Medicare-eligible expenses for the first three pints of blood** **50% Part B coinsurance, except 100% coinsurance for Part B Preventive Services**	**100% of Part A Hospitalization coinsurance plus coverage for 365 days after Medicare benefits** **75% hospice cost-sharing** **75% of Medicare-eligible expenses for the first three pints of blood** **75% Part B coinsurance, except 100% coinsurance for Part B Preventive Services**
Skilled Nursing Coinsurance	**50% Skilled Nursing Facility Coinsurance**	**75% Skilled Nursing Facility Coinsurance**
Part A Deductible	**100% Part A Deductible**	**75% Part A Deductible**
Part B Deductible		
Part B Excess (100%)		
Foreign Travel Emergency		
At-Home Recovery		
Preventive Care NOT covered by Medicare		
	$[4000] Out-of-Pocket Annual Limit* **	**$[2000] Out-of-Pocket Annual Limit*** **

****Plans K and L provide for different cost-sharing for items and services than Plans A-J.**
Once you reach the annual limit, the plan pays 100% of the Medicare copayments, coinsurance, and deductibles for the rest of the calendar year. The out-of-pocket annual limit does NOT include charges from your provider that exceed Medicare approved amounts, called "Excess Charges". You will be responsible for paying excess charges.
*****The out-of-pocket annual limit will increase each year for inflation.**

~~(f)~~ **(g)** The following items shall be included in the outline of coverage in the order prescribed:
PREMIUM INFORMATION [Boldface Type]
We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this state. [If the premium is based on the increasing age of the insured, include information specifying when the premiums will change.]
DISCLOSURES [Boldface Type]
Use this outline to compare benefits and premiums among policies.
READ YOUR POLICY VERY CAREFULLY [Boldface Type]
This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.
RIGHT TO RETURN POLICY [Boldface Type]
If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.
POLICY REPLACEMENT [Boldface Type]
If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.
NOTICE [Boldface Type]
The policy may not fully cover all of your medical costs.
[for agents:]
Neither [insert company's name] nor its agents are connected with Medicare.
[for direct response:]
[insert company's name] is not connected with Medicare.
This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult "The Medicare Handbook" for more details.
COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]
When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]
Review the application carefully before you sign it. Be certain that all information has been properly recorded.

~~(g)~~ **(h)** The NAIC Model Laws, Regulations and Guidelines, Vol. IV, pages ~~651-40~~ **651-54** through ~~651-67,~~ **651-87.** Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act ~~(April 1998)~~ **(September 2004)** are hereby incorporated by reference as if fully set out herein as the format for the charts described in subsection ~~(c),~~ ~~except that on page 651-59, the Part B excess charges benefits for Plan "H" medical expenses is changed from eighty percent (80%) to zero (0) in the "Plan Pays" column.~~ **(d).**

(Department of Insurance; 760 IAC 3-14-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2581; errata filed Sep 20, 1993, 5:00 p.m.: 17 IR 200; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3431; errata filed Sep 24, 1996, 10:30 a.m.: 20 IR 332; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1978; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 16. 760 IAC 3-15-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-15-1 Application forms and replacement coverage

Authority: IC 27-8-13-10; IC 27-8-13-16
Affected: IC 27-8-13-1

Sec. 1. (a) Application forms shall include statements and questions as established in this subsection designed to elicit information as to whether, as of the date of the application, the applicant **currently** has another Medicare supplement, **Medicare Advantage, or Medicaid coverage** or ~~other~~ **another** health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing questions and statements may be used, such as the following:

(1) The following statements:

(A) You do not need more than one (1) Medicare supplement policy.

(B) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(C) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(D) **If, after purchasing this policy, you become eligible for Medicaid,** the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your **suspended Medicare supplement** policy **(or, if that is no longer available, a substantially equivalent policy)** will be reinstituted if requested within ninety (90) days of losing Medicaid eligibility. **If the Medicare supplement policy**

provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(E) If you are eligible for and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage but will otherwise be substantially equivalent to your coverage before the date of the suspension.

~~(E)~~ **(F)** Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

(2) ~~The following~~ **If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one (1) or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. Please answer all** questions:

~~(A)~~ To the best of your knowledge,

~~(i) Do you have another Medicare supplement policy or certificate in force?~~

~~(AA) If so, with which company?~~

~~(BB) If so, do you intend to replace your current Medicare supplement policy with this policy [certificate].~~

~~(ii) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?~~

~~(AA) If so, with which company?~~

~~(BB) What kind of policy?~~

~~(iii) Are you covered for medical assistance through the state Medicaid program:~~

~~(AA) As a Specified Low-Income Medicare Beneficiary (SLMB)?~~

~~(BB) As a Qualified Medicare Beneficiary (QMB)?~~

~~(CC) For other Medicaid medical benefits?~~

(A) Did you turn age sixty-five (65) in the last six (6) months?

Yes _____ No _____

(B) Did you enroll in Medicare Part B in the last six (6) months?

Yes _____ No _____

(C) If yes, what is the effective date? _____

(D) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes _____ No _____

(i) If yes, will Medicaid pay your premiums for this Medicare supplement policy?

Yes _____ No _____

(ii) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes _____ No _____

(E) If you had coverage from any Medicare plan other than original Medicare within the past sixty-three (63) days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

Start ___/___/____ END ___/___/___

(F) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes _____ No _____

(G) Was this your first time in this type of Medicare plan?

Yes _____ No _____

(H) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes _____ No _____

(I) Do you have another Medicare supplement policy in force?

Yes _____ No _____

(i) If so, with what company, and what plan do you have [optional for Direct Mailers]?

(ii) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes _____ No _____

(J) Have you had coverage under any other health insurance within the past sixty-three (63) days? (For example, an employer, union, or individual plan)

Yes _____ No _____

(i) If so, with what company and what kind of policy?

(ii) What are your dates of coverage under the other policy?

START ___/___/___ END ___/___/___

If you are still covered under the other policy, leave "END" blank.

(b) Agents shall list any other health insurance policies they have sold to the applicant. List policies sold **that:**

(1) ~~that~~ are still in force; and

(2) in the past five (5) years, ~~that~~ are no longer in force.

(c) In the case of a direct response issuer, a copy of the application or supplemental form:

(1) signed by the applicant; and

(2) acknowledged by the insurer;

shall be returned to the applicant by the insurer upon delivery of the policy.

(d) Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer or its agent, shall furnish the applicant, ~~prior to~~ **before** issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

(e) The notice required by subsection (d) for an issuer shall be provided in substantially the following form in ~~no less~~ **not smaller** than 12-point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE **OR MEDICARE ADVANTAGE**

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement **or Medicare Advantage** insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement **or Medicare Advantage** coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage **or, if applicable, Medicare Advantage** because you intend to terminate your existing Medicare supplemental coverage **or leave your Medicare Advantage plan.** The replacement policy is being purchased for the following reasons (check one):

____ Additional benefits.

____ No change in benefits, but lower premiums.

____ Fewer benefits and lower premiums.

____ My plan has outpatient prescription drug coverage and I am enrolling in Part D.

____ Disenrollment from a Medicare Advantage plan. Please explain the reason for disenrollment [optional only for Direct Mailers]_____

_____

_____

____ Other (please specify).

_____

_____

_____

(1) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) to the extent such time was spent (depleted) under the original policy.

(2) If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

(Signature of Agent, Broker or Other Representative)*

[Typed Name and Address of Issuer, Agent or Broker]

(Applicant's Signature)

(Date)

*Signature not required for direct response sales.

(f) Subsection (e)(1) and (e)(2) of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation. *(Department of Insurance; 760 IAC 3-15-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2615; filed Jul 18, 1996, 1:00 p.m.: 19 IR 3464; errata filed Sep 24, 1996,*

10:30 a.m.: 20 IR 332; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 17. 760 IAC 3-18-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 3-18-1 Appropriateness of recommended purchase and excessive insurance; reporting of multiple policies

Authority: IC 27-8-13-9; IC 27-8-13-10; IC 27-8-13-10.1; IC 27-8-13-12
Affected: IC 27-8-13

Sec. 1. (a) In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(b) Any sale of **a** Medicare supplement ~~coverage~~ **policy or certificate** that will provide an individual more than one (1) Medicare supplement policy or certificate is prohibited, except that an agent may sell a replacement policy or certificate in accordance with ~~760 IAC 3-1-15~~ **760 IAC 3-15-1** provided that the replacement policy or certificate is not made effective any sooner than is necessary to provide continuous benefits for preexisting conditions.

(c) An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

~~(c)~~ **(d)** An insurer ~~which~~ **that** issues a Medicare supplement policy or certificate to any individual who has one (1) policy or certificate then in effect, except as permitted by subsection (b), shall, at the request of the insured, either:

(1) refund the premiums; or

(2) pay any claims on the policy or certificate;

whichever is greater.

~~(d) On or~~ **(e)** Before March ~~1~~ **2** of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one (1) Medicare supplement policy or certificate:

(1) **The** policy and certificate number.

(2) **The** date of issuance.

~~(e)~~ **(f)** The items set forth in subsection ~~(d)~~ **(e)** must be grouped by individual policyholder.

~~(f)~~ **(g)** The form for reporting the information required by subsection ~~(d)~~ **(e)** is as follows:

FORM FOR REPORTING
MEDICARE SUPPLEMENT MULTIPLE POLICIES

Company Name: _____

Address: _____

_____

Phone Number: _____

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one (1) Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

_____
Signature

_____
Name and Title (please type)

_____
Date

(Department of Insurance; 760 IAC 3-18-1; filed Jul 8, 1993, 10:00 a.m.: 16 IR 2617; errata filed Sep 20, 1993, 5:00 p.m.: 17 IR 200; filed Feb 1, 1999, 10:45 a.m.: 22 IR 1987; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 22, 2005 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on proposed amendments to 760 IAC 3 regarding Medicare supplement policies to conform the rule to the revised model regulation adopted by the National Association of Insurance Commissioners in 2004. Copies are available on the Department of Insurance's Web site at www.state.in.us/idoi.

The proposed amendment conforms state regulations to federal Medicare Laws and does not result in any additional requirements or costs under IC 4-22-2-24(d)(3).

Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jim Atterholt
Commissioner
Department of Insurance

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #05-26

DIGEST

Adds 760 IAC 1-71 regarding the costs that can be charged

for providing copies of medical records. *NOTE: LSA Document #05-26, printed at 28 IR 2456, was resubmitted for publication.* Effective 30 days after filing with the secretary of state.

760 IAC 1-71

SECTION 1. 760 IAC 1-71 IS ADDED TO READ AS FOLLOWS:

Rule 71. Copies of Medical Records

760 IAC 1-71-1 Applicability and scope
Authority: IC 16-39-9-4
Affected: IC 16-39

Sec. 1. This rule applies to all providers and medical records companies. *(Department of Insurance; 760 IAC 1-71-1)*

760 IAC 1-71-2 Definitions
Authority: IC 16-39-9-4
Affected: IC 16-18-2-295; IC 16-39

Sec. 2. The following definitions apply throughout this rule:
(1) "Medical records company" means a company that contracts with providers to make copies of patient medical records.
(2) "Provider" has the meaning set forth in IC 16-18-2-295.
(Department of Insurance; 760 IAC 1-71-2)

760 IAC 1-71-3 General requirements
Authority: IC 27-15-13-2
Affected: IC 27-15-13

Sec. 3. (a) A provider or medical records company that receives a request for a copy of a patient's medical record shall charge not more than the following:
(1) One dollar ($1) per page for the first ten (10) pages.
(2) Fifty cents ($.50) per page for pages eleven (11) through fifty (50).
(3) Twenty-five cents ($.25) per page for pages fifty-one (51) and higher.

(b) The provider or the medical records company may collect a labor fee not to exceed twenty dollars ($20). If the provider or medical records company collects a labor fee, the provider or medical records company may not charge for making and providing copies of the first ten (10) pages of a medical record.

(c) The provider or medical records company may charge the actual costs of mailing the medical record.

(d) The provider or the medical records company may collect an additional ten dollars ($10) if the request is for copies to be provided within two (2) working days.

(e) The provider or medical records company may collect a charge not to exceed twenty dollars ($20) for certifying a patient's medical record. *(Department of Insurance; 760 IAC 1-71-3)*

760 IAC 1-71-4 Waiver of charges
Authority: IC 16-39-9-4
Affected: IC 16-39

Sec. 4. A provider or a medical records company shall consider waiving or reducing the charges for copies of a patient's medical record under the following situations:
(1) A request from a provider:
(A) to whom the patient was referred for treatment; or
(B) from whom the patient is seeking a second opinion.
(2) The patient requested the records for his or her own use, and the charges will cause an undue financial hardship upon the patient.
(Department of Insurance; 760 IAC 1-71-4)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 22, 2005 at 11:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed new rule regarding the costs that may be charged for copying medical records. Copies are available on the Department of Insurance's Web site at www.state.in.us/idoi.

The proposed amendment will address the rising business expenses for entities that make copies of medical records and does not result in any additional requirements or costs under IC 4-22-2-24(d)(3).

Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Jim Atterholt
Commissioner
Department of Insurance

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

Proposed Rule
LSA Document #05-68

DIGEST

Amends 820 IAC 4-1-7 to require cosmetology schools to retain records that include the final practical demonstration examination grades. Amends 820 IAC 4-1-9 to require cosmetology schools to include in student records each student's final practical demonstration examination grades. Amends 820 IAC 4-1-11 to revise the definition of graduation from a cosmetology

school to require that students must take and pass a final practical demonstration examination that addresses the acts that are permitted by license. Amends 820 IAC 4-1-12 to require cosmetology schools to provide the final practical demonstration examination grades on a student's application for licensure. Amends 820 IAC 4-4-8 to establish the requirements and procedures for cosmetology schools to administer the final practical demonstration examination for students. Adds 820 IAC 4-4-8.1 to establish the content of the final practical demonstration examinations administered by cosmetology schools. Effective January 1, 2006.

820 IAC 4-1-7 **820 IAC 4-1-12**
820 IAC 4-1-9 **820 IAC 4-4-8**
820 IAC 4-1-11 **820 IAC 4-4-8.1**

SECTION 1. 820 IAC 4-1-7 IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-1-7 Records
Authority: IC 25-8-3-23
Affected: IC 25-8-5; IC 25-8-14

Sec. 7. Cosmetology schools shall retain records for each student, which must include the following:

(1) Hours of school attendance.
(2) Grades awarded.
(3) Time records.
(4) **The** progress book.
(5) The final practical demonstration examination record.

(State Board of Cosmetology Examiners; 820 IAC 4-1-7; filed Feb 23, 1990, 5:00 p.m.: 13 IR 1405, eff Apr 1, 1990; filed Dec 3, 1991, 11:00 a.m.: 15 IR 570; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236)

SECTION 2. 820 IAC 4-1-9 IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-1-9 Record retention
Authority: IC 25-8-3-23
Affected: IC 25-8-5; IC 25-8-14

Sec. 9. Cosmetology schools shall retain student records for no fewer than seven (7) years, which shall include the following:

(1) Hours of school attendance.
(2) Grades awarded.
(3) **The** progress book.
(4) The final practical demonstration examination record, including a copy of the final examination administered and each student's examination grade.

(State Board of Cosmetology Examiners; 820 IAC 4-1-9; filed Feb 23, 1990, 5:00 p.m.: 13 IR 1405, eff Apr 1, 1990; filed Dec 3, 1991, 11:00 a.m.: 15 IR 570; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236)

SECTION 3. 820 IAC 4-1-11 IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-1-11 Graduation defined
Authority: IC 25-8-3-23
Affected: IC 25-8-5-4; IC 25-8-9-3

Sec. 11. A student shall be deemed to have graduated from a cosmetology school ~~(having completed the educational requirements established by IC 25-8-9-3(3))~~ when all of the following have occurred:

(1) When one (1) of the following education requirements ~~have~~ **has** been completed:
(A) At least the one thousand five hundred (1,500) hours as required by 820 IAC 4-4-4 **for cosmetologists.**
(B) At least the four hundred fifty (450) hours as required by 820 IAC 4-4-5 **for manicurists.**
(C) At least the three hundred (300) hours as required by 820 IAC 4-4-6 **for shampoo operators.**
(D) At least the three hundred (300) hours as required by 820 IAC 4-4-7 **for electrologists.**
(E) At least the seven hundred (700) hours as required by 820 IAC 4-4-7.1 **for estheticians.**
(F) At least the one thousand (1,000) hours as required by 820 IAC 4-4-7.2 **for instructors.**
(2) The student has passed all required examinations.
(3) All money owed by the student to the school has been paid.
(4) The student has passed the final practical demonstration examination administered by the cosmetology school that addresses the acts that are permitted by the license.

(State Board of Cosmetology Examiners; 820 IAC 4-1-11; filed Feb 23, 1990, 5:00 p.m.: 13 IR 1406, eff Apr 1, 1990; filed Dec 3, 1991, 11:00 a.m.: 15 IR 570; filed Dec 29, 1998, 10:54 a.m.: 22 IR 1489; filed May 4, 2001, 11:16 a.m.: 24 IR 2685; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236; filed Sep 30, 2003, 11:30 a.m.: 27 IR 515)

SECTION 4. 820 IAC 4-1-12 IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-1-12 Completion of application by cosmetology school; cosmetology student required to attend cosmetology school after graduation prohibited
Authority: IC 25-8-3-23
Affected: IC 25-8-5; IC 25-8-14

Sec. 12. A cosmetology school shall fill out its portion of its students' applications for a license no later than ten (10) days after the student graduates under section 11 of this rule. **A cosmetology school shall also provide the final practical demonstration examination grade on the student's application for licensure.** *(State Board of Cosmetology Examiners; 820 IAC 4-1-12; filed Feb 23, 1990, 5:00 p.m.: 13 IR 1406, eff Apr 1, 1990; filed Dec 3, 1991, 11:00 a.m.: 15 IR 571; filed May 4, 2001, 11:16 a.m.: 24 IR 2685; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236)*

SECTION 5. 820 IAC 4-4-8 IS AMENDED TO READ AS FOLLOWS:

820 IAC 4-4-8 School examinations
Authority: IC 25-8-3-23
Affected: IC 25-8-5; IC 25-8-14

Sec. 8. (a) Cosmetology schools shall give their students examinations in each of the subjects required in a particular course as listed in sections 4 through 7.2 of this rule. Discretionary hours shall not be considered a subject.

(b) Cosmetology schools may cover more than one (1) subject per examination.

(c) The passing score for each of these examinations shall be seventy-five percent (75%).

(d) A school shall require each student for graduation to pass a final examination that shall test the student's practical knowledge of the curriculum studied.

(e) The board shall consider an applicant for cosmetology professional examination as fulfilling the practical examination requirement established in IC 25-8-4-8(1) upon successfully completing the final practical demonstration examination as indicated in this section.

(f) A passing score of at least seventy-five percent (75%) shall be required on final practical demonstration examination.

(g) The cosmetology school shall allow each student for graduation at least three (3) attempts to pass the final practical demonstration examination.

(h) The board may monitor the administration of the final practical demonstration examination:
(1) as a result of a complaint received;
(2) for random sampling; or
(3) to collect data.
(State Board of Cosmetology Examiners; 820 IAC 4-4-8; filed Feb 23, 1990, 5:00 p.m.: 13 IR 1410, eff Apr 1, 1990; filed Dec 3, 1991, 11:00 a.m.: 15 IR 579; filed Dec 29, 1998, 10:54 a.m.: 22 IR 1492; readopted filed May 22, 2001, 9:56 a.m.: 24 IR 3236)

SECTION 6. 820 IAC 4-4-8.1 IS ADDED TO READ AS FOLLOWS:

820 IAC 4-4-8.1 Content of final practical demonstration examination
Authority: IC 25-8-3-23; IC 25-8-5-4
Affected: IC 25-8-5; IC 25-8-14

Sec. 8.1. The final practical demonstration examination as set forth in section 8 of this rule shall test the student's skills in the following areas:
(1) For cosmetologists, the examination shall include the following:
(A) Hair cutting.
(B) Thermal curl and blow drying.
(C) Chemical permanent waving and relaxing.
(D) Hair coloring and lightening.
(E) Esthetics.
(F) Manicure and pedicure.
(2) For manicurists, the examination shall include the following:
(A) Acrylic freeform and overlay procedures.
(B) Manicure.
(C) Pedicure.
(D) Gel.
(E) Wrap procedures.
(F) Safety and sanitation procedures.
(3) For shampoo operators, the examination shall include the following:
(A) Sanitation.
(B) Shampoo procedures.
(C) Hair analysis.
(D) Scalp manipulations.
(4) For electrologists, the examination shall include the following:
(A) Thermolysis procedure.
(B) Galvanic procedure.
(C) Growth cycle explanation.
(D) Skin conditions and preventative treatment.
(E) Patron preparation and post-treatment.
(5) For estheticians, the examination shall include the following:
(A) Nontherapeutic massage.
(B) Electrical facial treatments.
(C) Other kinds of facial treatments.
(D) Makeup application.
(E) Hair removal.
(6) For instructors, the examination shall include the following:
(A) Lesson planning.
(B) Teaching techniques.
(C) Record keeping.
(State Board of Cosmetology Examiners; 820 IAC 4-4-8.1)

SECTION 7. **SECTIONS 1 through 6 of this document take effect January 1, 2006.**

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 15, 2005 at 1:15 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the State Board of Cosmetology Examiners will hold a public hearing on proposed amendments to require cosmetology schools to retain records that include the final practical demonstration examination grades, to require cosmetology schools to include in student records each student's final practical demonstration examination grades, to revise the definition of graduation from a cosmetology school to require that students must take and pass a final practical

demonstration examination that addresses the acts that are permitted by license, to require cosmetology schools to provide the final practical demonstration examination grades on a student's application for licensure, to establish the requirements and procedures for cosmetology schools to administer the final practical demonstration examination for students, and to establish the content of the final practical demonstration examinations administered by cosmetology schools.

The State Board of Cosmetology Examiners has the authority to adopt rules to establish the curriculum, examination, and record keeping requirements for students in cosmetology schools. This proposed rule requires cosmetology schools to administer to students a final practical demonstration examination in order to graduate and to certify on the licensing application the student's graduation. The proposed rule will reduce the amount of time it takes for an applicant to become licensed in Indiana because the state will be able to increase the number of applicants that can be administered the examination at one time. This rule will have no costs on the regulated entities because the cosmetology schools already offer a practical examination for their students.

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
Executive Director
Indiana Professional Licensing Agency

TITLE 856 INDIANA BOARD OF PHARMACY

Proposed Rule
LSA Document #05-42

DIGEST

Adds 856 IAC 1-37 to establish the definitions, standards, and requirements for centralized processing services of prescriptions and drug orders. Effective 30 days after filing with the secretary of state.

856 IAC 1-37

SECTION 1. 856 IAC 1-37 IS ADDED TO READ AS FOLLOWS:

Rule 37. Centralized Processing of Prescription Drug Orders

856 IAC 1-37-1 "Centralized prescription drug order processing" defined
Authority: IC 25-26-13-4
Affected: IC 25-26

Sec. 1. "Centralized prescription drug order processing" means the processing by a pharmacy of a request from another pharmacy to do the following:
(1) Fill or refill a prescription drug order.
(2) Perform processing functions, including the following:
(A) Dispensing.
(B) Drug utilization review.
(C) Claims adjudication.
(D) Refill authorizations.
(E) Therapeutic interventions.
(Indiana Board of Pharmacy; 856 IAC 1-37-1)

856 IAC 1-37-2 Centralized prescription processing
Authority: IC 25-26-13-4
Affected: IC 25-26

Sec. 2. A pharmacy, licensed or registered by the board, may perform or outsource centralized prescription processing services provided the parties have:
(1) the same owner; or
(2) a written contract outlining the:
(A) services to be provided; and
(B) responsibilities and accountabilities of each party in fulfilling the terms of the contract in compliance with federal and state laws and regulations;
and share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.
(Indiana Board of Pharmacy; 856 IAC 1-37-2)

856 IAC 1-37-3 Policy and procedures manual
Authority: IC 25-26-13-4
Affected: IC 25-26

Sec. 3. The parties performing or contracting for centralized prescription processing services shall maintain a policy and procedures manual and documentation that implementation is occurring in a manner that shall be made available to the board for review, upon request, and that includes, but is not limited to, the following:
(1) A description of how the parties will comply with federal and state laws and regulations.
(2) The maintenance of the following:
(A) Appropriate records to identify the responsible pharmacist or pharmacists in the dispensing and counseling processes.
(B) A mechanism for tracking the prescription drug order during each step in the dispensing process.
(C) A mechanism to identify on the prescription label all pharmacies involved in dispensing the prescription drug order.
(3) The provision of adequate security to:
(A) protect the product integrity; and
(B) prevent the illegal use or disclosure of protected health information.
(4) The maintenance of a continuous quality improvement program for centralized prescription processing

pharmacy services.
(Indiana Board of Pharmacy; 856 IAC 1-37-3)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 8, 2005 at 9:30 a.m., at the Indiana Professional Licensing Agency, Indiana Government Center-South, 402 West Washington Street, Conference Room W064, Indianapolis, Indiana the Indiana Board of Pharmacy will hold a public hearing on a proposed new rule to establish the definitions, standards, and requirements for centralized processing services of prescription drug orders.

The Indiana Board of Pharmacy has the authority to promulgate rules for pharmacies and pharmacists. This proposed rule establishes the requirements for a pharmacy's use of a centralized processing system. The proposed rule provides pharmacies with the ability to utilize a central processing system for prescription drug orders. The use of the centralized processing system allows pharmacies to provide better patient care and quality. This rule will have no costs on the regulated entities.

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
Executive Director
Indiana Professional Licensing Agency

TITLE 857 INDIANA OPTOMETRIC LEGEND DRUG PRESCRIPTION ADVISORY COMMITTEE

Proposed Rule
LSA Document #05-43

DIGEST

Amends 857 IAC 1-2-3 to revise the requirements for sponsoring organizations to obtain continuing education course approval. Amends 857 IAC 1-3-2 and 857 IAC 1-3-3 to revise the continuing education requirements to obtain an Indiana optometric legend drug certificate under IC 25-26-15-16(2) and to renew a certificate under IC 25-26-15-18. Effective 30 days after filing with the secretary of state.

857 IAC 1-2-3
857 IAC 1-3-2
857 IAC 1-3-3

SECTION 1. 857 IAC 1-2-3 IS AMENDED TO READ AS FOLLOWS:

857 IAC 1-2-3 Standards for approval; length of approval time

Authority: IC 25-26-15-13
Affected: IC 25-26-15-16; IC 25-26-15-18

Sec. 3. **(a) The committee approves the following courses:**
(1) Courses that meet all the requirements of this rule.
(2) Courses for which the sponsoring organization provides satisfactory documentation that the Council on Optometric Practitioner Education (COPE) has approved the course in the areas of ocular pharmacology or ocular therapeutics. Any committee approval based on such COPE approval will cease immediately upon notice from COPE that approval of the course has been discontinued for any reason.

~~(a)~~ **(b)** The committee will approve a course if it determines that the course will make a significant contribution to the professional knowledge of optometrists in their understanding of ocular pharmacology **or ocular therapeutics.** In determining if a course meets this section, the committee will consider the following:

(1) The course has substantial content.
(2) The course content directly relates to ocular pharmacology or ocular therapeutics.
(3) Each faculty member who has teaching responsibility in the course is qualified by academic work or practical experience to teach the assigned subject.
(4) The physical setting for the course is suitable.
(5) High quality written materials, including notes and outlines, are available to all optometrists who enroll at or ~~prior to,~~ **before** the time the course is offered.
(6) The course is of sufficient length to provide a substantial educational experience. Courses of less than one (1) hour will be reviewed carefully to determine if they furnish a substantial educational experience.
(7) Appropriate educational methodology is used, including, but not limited to, the following:
(A) Prepared library packages.
(B) Courses of programmed instruction.
(C) Active participation and demonstration.
(D) Audio-visual materials.
(E) Workshops with live presentations of clinical cases.
(8) An adequate number of instructors is provided for the course. If audio-visual tapes are used as teaching materials, live presentations or discussion leaders must accompany the replaying of the tapes.

~~(b)~~ **(c)** Once a course is approved under this section, the course is approved for four (4) years from the date of initial approval if the:

(1) instructor remains the same; and ~~the~~
(2) course content remains essentially the same in substance.

(Indiana Optometric Legend Drug Prescription Advisory Committee; 857 IAC 1-2-3; filed May 15, 1992, 5:00 p.m.: 15 IR 2250; filed Jan 27, 1994, 5:00 p.m.: 17 IR 1098; readopted filed Apr 24, 2001, 10:21 a.m.: 24 IR 2896)

SECTION 2. 857 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

857 IAC 1-3-2 Original certification
Authority: IC 25-26-15-13
Affected: IC 25-26-15

Sec. 2. To obtain an original certificate, an optometrist must do all of the following:

(1) Complete an Indiana optometric legend drug certificate application, which shall include the following information:

(A) Name.

(B) Business name (if applicable).

(C) Primary practice address.

(D) Indiana optometrist's license number.

(E) Signature and date.

(F) Answer whether or not any previous license or certificate held by the applicant has been surrendered, revoked, **or** denied or is pending action.

~~(2) Either:~~

~~(A) do both of the following:~~

~~(i)~~ **(2)** Provide proof of education in ocular pharmacology from a school or college of optometry or medicine by providing a transcript of the course work taken by the applicant from the school or college. ~~and~~

~~(ii)~~ **(3)** Provide a score report certifying successful completion of the Treatment and Management of Ocular Disease (TMOD) examination that is sponsored by the International Association of Boards of Examiners in Optometry (IAB) and administered by the National Board of Examiners in Optometry. ~~or~~

~~(B) provide proof that the applicant has obtained twenty (20) hours of continuing education course work in ocular pharmacology after January 1, 1991, in courses approved by the committee by providing copies of certificates proving attendance.~~

(Indiana Optometric Legend Drug Prescription Advisory Committee; 857 IAC 1-3-2; filed May 15, 1992, 5:00 p.m.: 15 IR 2250; readopted filed Apr 24, 2001, 10:21 a.m.: 24 IR 2896)

SECTION 3. 857 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

857 IAC 1-3-3 Renewal of the certificate
Authority: IC 25-26-15-13
Affected: IC 25-26-15

Sec. 3. (a) A certificate issued to an optometrist under IC 25-26-15 and this title expires on April 1 of each even-numbered year. The board shall renew a certificate under this section concurrently with the license of an optometrist to practice in Indiana.

(b) To renew a certificate, the optometrist must provide proof of ~~thirty (30)~~ **twenty (20)** hours of continuing education course work obtained since April 1 of the previous even-numbered year in courses approved by **either of the following:**

(1) The committee under 857 IAC 1-2.

(2) The Council on Optometric Practitioner Education, specifically in the areas of ocular pharmacology or ocular therapeutics.

(c) For purposes of certification renewal, courses in ocular pharmacology or ocular therapeutics are acceptable to meet the continuing education requirement.

(d) An optometrist initially certified between April 1 of even-numbered years and March 31 of the succeeding odd-numbered year shall only be required to obtain ~~fifteen (15)~~ **ten (10)** hours of continuing education for the initial renewal of the certificate.

(e) An optometrist initially certified between April ~~1st~~ **1** of odd-numbered years and March ~~31st~~ **31** of the succeeding even-numbered year shall not be required to obtain continuing education for the initial renewal of the certificate.

(f) Continuing education credits obtained:

(1) for the original issuance of a certificate; or

(2) to complete the continuing education requirements of a previous biennium;

may not be counted toward meeting the continuing education requirements under subsection (b). *(Indiana Optometric Legend Drug Prescription Advisory Committee; 857 IAC 1-3-3; filed May 15, 1992, 5:00 p.m.: 15 IR 2250; errata filed Jul 10, 1992, 9:00 a.m.: 15 IR 2465; filed Jan 27, 1994, 5:00 p.m.: 17 IR 1098; readopted filed Apr 24, 2001, 10:21 a.m.: 24 IR 2896)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 31, 2005 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room D, Indianapolis, Indiana the Indiana Optometric Legend Drug Prescription Advisory Committee will hold a public hearing on proposed amendments to revise the requirements for sponsoring organizations to obtain continuing education course approval and to revise the continuing education requirements to obtain an Indiana optometric legend drug certificate under IC 25-26-15-16(2) and to renew a certificate under IC 25-26-15-18.

The Indiana Optometric Legend Drug Prescription Advisory Committee has the authority to establish the continuing education requirements for the certificate renewal. This proposed rule revises the requirements for continuing education course approval and the continuing education requirements to obtain and renew a certificate. The revisions to the continuing education course approval requirements expand the scope of the Committee's approval of continuing education courses. The proposed rule will provide licensees with more courses that the Committee will accept to meet the licensing and renewal requirements. The revision to continuing educa-

tion requirements to obtain and renew a certificate reduces the number of hours applicants or licensees have to obtain. This rule will have no costs on the regulated entities.

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 Kelly
Executive Director
Indiana Professional Licensing Agency

Notices of Intent to Readopt

TITLE 20 STATE BOARD OF ACCOUNTS

Notice of Intent
LSA Document #05-147

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:

20 IAC 3 DIGITAL SIGNATURES

Questions or comments on the readoption may be directed to Philip R. McGovern, General Counsel, Indiana State Board of Accounts, at (317) 232-2532. Statutory authority: IC 5-24-3-4.

TITLE 260 STATE DEPARTMENT OF TOXICOLOGY

Notice of Intent
LSA Document #05-152

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:

260 IAC 1.1-1-1 Training applicants' screening examination
260 IAC 1.1-2-2 Certification of equipment and chemicals

Questions or comments on the readoption may be directed to Dr. Peter Method, Acting Director, State Department of Toxicology, at (317) 274-7825. Statutory authority: IC 9-30-6-5.

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

Notice of Intent
LSA Document #05-171

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:

357 IAC 1-8 Indiana Pesticide Law Violators; Public Listing

Questions or comments on the readoption may be directed to David Scott, Secretary, Indiana Pesticide Review Board, at (765) 494-1593. Statutory authority: IC 15-3-3.5-11; IC 15-3-3.5-18.3; IC 15-3-3.6-4; IC 15-3-3.6-14.

TITLE 910 CIVIL RIGHTS COMMISSION

Notice of Intent
LSA Document #05-153

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:

910 IAC 3 ENTITLED EMPLOYMENT DISCRIMINATION AGAINST DISABLED PERSONS

Questions or comments on the readoption may be directed to Gregory Kellam Scott, Executive Director, Indiana Civil Rights Commission, at (317) 232-2600. Statutory authority: IC 22-9-1-6(c).

Proposed Readopted Rules

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

Proposed Rule
LSA Document #05-60

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.

305 IAC 1-2

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

305 IAC 1-2Definitions

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on July 22, 2005 at 2:00 p.m., at the Indiana Geological Survey, 611 North Walnut Grove, Room S-102, Bloomington, Indiana the Indiana Board of Licensure for Professional Geologists will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Indiana Board of Licensure for Professional Geologists
Indiana Geological Survey
611 North Walnut Grove
Bloomington, IN 47405

Copies of these rules are now on file at the Indiana Geological Survey, 611 North Walnut Grove, Room S-109, Bloomington, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Amanda Wilson
Licensing Coordinator
Indiana Board of Licensure for Professional Geologists

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Proposed Rule
LSA Document #05-3

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.

675 IAC 16-1.3
675 IAC 16-2

SECTION 1. UNDER IC 4-22-2.5-4 THE FOLLOWING ARE READOPTED:

675 IAC 16-1.3 Indiana Plumbing Code, 1999 Edition
675 IAC 16-2 American Society of Sanitary Engineers Standard 1051-1998

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on October 4, 2005, at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana; ***AND*** *on December 6, 2005 at 10:00 a.m, at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Fire Prevention and Building Safety Commission will hold a public hearing 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:

Mara Snyder
Indiana Department of Homeland Security, Code Services
Indiana Government Center-South
302 West Washington Street, Room E243
Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Department of Homeland Security, Indiana Government Center-South, 402 West Washington Street, Room W246 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Secretary
Fire Prevention and Building Safety Commission

Final Readopted Rules

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Final Rule
LSA Document #05-15(F)

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

511 IAC 6-9.1

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

511 IAC 6-9.1 Waiver of Curriculum and Graduation Rules for Programs for High Ability Students

LSA Document #05-15(F)
Intent to Readopt Rules Published: March 1, 2005; 28 IR 1861
Proposed Readopted Rules Published: May 1, 2005; 28 IR 2459
Hearing Held: June 2, 2005
Filed with Secretary of State: June 10, 2005, 3:00 p.m.

EXTENSION OF TIME REQUEST

May 13, 2005

The Honorable Todd Rokita
Secretary of State of Indiana
Room 201, Statehouse
Indianapolis, IN 46204

Dear Todd:

Pursuant to Indiana Code 4-22-2-34(b), this statement is being filed with your office to inform you that I intend to take an additional fifteen (15) days to approve or disapprove the following rules, which were submitted to me on April 30, 2005:

Natural Resources Commission:

LSA #04-270(F) Natural Resources Commission: Control of Pine Shoot Beetles

We would be grateful if you would file and date stamp the attached copy of this letter and return it to my office via our courier. Please call Steve Schultz, General Counsel, at 233-5764 with any questions concerning this matter.

Sincerely,
Mitchell E. Daniels, Jr.
Governor

cc: Gordon White, Deputy Attorney General

TITLE 326 AIR POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-165(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING VOLATILE ORGANIC COMPOUNDS IN ORGANIC SOLVENT DEGREASERS IN CENTRAL INDIANA

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 326 IAC 8-3 concerning organic solvent degreasers in nine (9) ozone nonattainment counties in Central Indiana. 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 8-3-1; 326 IAC 8-3-8.

AUTHORITY: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

In the April 30, 2004, Federal Register (69 FR 23858), the United States Environmental Protection Agency (U.S. EPA) designated nine (9) counties in the central Indiana region as nonattainment for the 8-hour ozone National Ambient Air Quality Standard (8-hour standard). The affected counties are: Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby.

Ozone is not emitted directly into the air, but is created by a chemical reaction between oxides of nitrogen (NO_x) and volatile organic compounds (VOC) in the presence of heat and sunlight. While ozone that occurs naturally in the stratosphere approximately ten (10) to thirty (30) miles above the earth's surface forms a layer that protects life on earth from the sun's harmful rays, ground-level ozone contributes to a variety of health problems. Ozone is a lung irritant and can be harmful, especially for people with asthma or other respiratory problems. Ozone also damages plants and ecosystems and reduces visibility.

Ozone and the pollutants that form ozone, NO_x and VOC, can be transported hundreds of miles from the pollution sources. Motor vehicle exhaust, industrial emissions, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC that help to form ozone. Sunlight and hot weather cause ground-level ozone to form in harmful concentrations in the air. As a result, ozone is known as a summertime air pollutant. Indiana's ozone season is May 1 to September 30.

In the July 18, 1997 Federal Register (62 FR 38856), U.S. EPA published a revised 8-hour ozone standard. This standard is more protective of public health and more stringent than the previous 1-hour standard. U.S. EPA published nonattainment designations for the 8-hour standard on April 30, 2004 (69 FR 23858) that became effective on June 15, 2004. Each state must put control measures into place to bring these areas into attainment by June 15, 2009. The 1-hour ozone standard was revoked on June 15, 2005.

A nonattainment designation means that ozone levels, measured by air monitors in the area, have exceeded federal health standards on at least some days during the summer ozone season in recent years. The ozone designations are based on monitoring data collected from 2001 to 2003. The 8-hour ozone standard is eight-hundredths (.08) parts per million (ppm) and is based on an average 4th high 8-hour ozone value over a three (3) year period. Counties with values exceeding this standard are considered to be in violation of the standard.

A nonattainment designation triggers planning requirements for existing sources of air pollution, stricter requirements for certain types of new and expanding facilities that emit air pollution, and certain changes in transportation planning and funding and, potentially, additional clean air measures. Indiana must develop a plan detailing the steps necessary to comply with the standard by the attainment date. Although new national and regional controls, including the nitrogen oxides control rule for power plants, new diesel engine standards, and new diesel fuel standards, will help Central Indiana attain the standard, additional local controls will be necessary.

IDEM is working with local government, businesses, and citizens and other interested groups to develop a strategy that will achieve attainment in Central Indiana with feasible and cost-effective programs. IDEM established the Central Indiana Air Quality Advisory Group (CIAQAG) in September 2003 to study alternatives for inclusion in the Central Indiana state implementation plan (SIP). The CIAQAG met sixteen (16) times between September 2003 and May 2005, and heard numerous presentations on options to reduce ozone to meet the new air quality standard. Discussions focused on alternatives for the control of volatile organic compounds (VOCs) locally because of the importance of VOCs in the creation of ozone. Adoption of multiple regulatory strategies will likely be required in Central Indiana to achieve the necessary emissions reductions. The strategies will have different costs and will affect different constituencies. One of the regulatory measures recommended by the CIAQAG, and the subject of this rulemaking, is VOC controls on degreasing operations at commercial and industrial sources. IDEM has estimated that implementation of degreasing requirements in Central Indiana will provide a two and seven-tenths percent (2.7%) total annualized reduction of VOCs or a reduction of six (6) tons per summer day.

In order to demonstrate attainment in Central Indiana by June 15, 2009, controls would need to be implemented by the summer of 2006 to provide three (3) years of ozone season data prior to the attainment date. This rule is being initiated now to provide sufficient time to complete it by the summer of 2006. IDEM seeks comments from potentially affected sources in the nine (9) county region regarding the timing of implementation of this rule and other control measures to demonstrate attainment in Central Indiana by June 15, 2009.

The Clean Air Act requires that states develop measures to bring nonattainment areas into attainment. This rule is one of those measures. These requirements already apply to degreasing operations in other ozone nonattainment and maintenance areas in Indiana. The rule will be submitted to U.S. EPA for approval into the state implementation plan (SIP) for Central Indiana.

Alternatives To Be Considered Within the Rulemaking

Degreasing operations refers to a process that uses a solvent to remove grease, oil, or dirt from the surface of a part usually prior to surface coating or welding. Cold cleaning is a form of degreasing where the part is dipped into or sprayed with a heated solvent. Sources that commonly have cold cleaning degreasers include auto repair shops, auto body shops, and industrial sources. Vapor degreasing operations heat the solvent to the boiling point. More vapor becomes fugitive but can also be captured and reused.

Alternative 1. Amending existing applicability section for degreasers under 326 IAC 8-3-1 and 326 IAC 8-3-8 to add nine (9) additional counties in Central Indiana.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No, it is not an incorporation by reference of a federal standard.
- Is this alternative imposed by federal law or is there a comparable

federal law? No, this alternative is not imposed by federal law, but U.S. EPA gives Indiana the flexibility to select appropriate alternatives in order to meet the requirements of the federal law in a timely manner. This alternative controls volatile organic compounds as defined at 40 CFR 50. Amendments to existing degreasing rules that are already approved into the SIP is one such method of control.

- If it is a federal requirement, is it different from federal law? No, it is not different from federal law.
- If it is different, describe the differences. Not applicable.

Alternative 2. No rulemaking.

- 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
- 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

40 CFR 50 (National Primary and Secondary Ambient Air Quality Standards) and 40 CFR 81 (Designation of Areas for Air Quality Planning Purposes) are both applicable federal laws impacting this rulemaking. 40 CFR 50 (amended on July 18, 1997 (62 FR 38856)) contains the standards for criteria pollutants. Ozone is considered a criteria pollutant and air pollution controls reduce emissions of volatile organic compounds (VOC) to reduce ozone formation. 40 CFR 81 (amended on April 30, 2004 (69 FR 23858)) lists the areas of the United States, specific to each state that U.S. EPA considers are not attaining the standards (nonattainment) for criteria pollutants such as ozone.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. No estimate of fiscal impact. A previous rulemaking in 1998 that added the degreasing compliance requirements at 326 IAC 8-3-8 for four (4) counties, estimated a low fiscal impact. That rule making action would have been more costly to suppliers and sources who use the solvents because the required solvents were not readily available in this state. This rule action is adding nine (9) additional counties to the list of affected sources in that rule. Sources will have to purchase different solvents as required by the rule and provide record keeping and reporting of new solvent use and purchase. It is not known what additional costs the sources will incur because the solvents will have lower vapor pressure limits and lower emissions. Sources may save money by having less evaporation of solvents. Those solvents should be available in the state now because they are required in four (4) other counties. No capital costs for equipment is anticipated.

Potential Fiscal Impact of Alternative 2. No fiscal impact.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 North Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.IN.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 North Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.IN.gov

Public Participation and Workgroup Information

The Central Indiana Air Quality Advisory Group (CIAQAG) was established September 2003, to study alternatives for reducing ozone in Central Indiana to demonstrate attainment. This group is comprised of business, government officials, and citizens and has met fourteen (14) times between September 2003 and February 2005 to hear presentations, discuss regulatory and voluntary alternatives to reduce ozone, and make recommendations on alternatives appropriate in Central Indiana. These meetings are open to the public.

At this time, no additional workgroup is planned for this rulemaking, but the department is planning outreach efforts to affected sources during the course of the rulemaking and to provide compliance assistance. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Suzanne Whitmer, Rules Section, Office of Air Quality at (317) 232-8229 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:

#05-165(APCB) Central Indiana VOC-Degreasers
Suzanne Whitmer 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-East Wing 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 August 1, 2005.

Additional information regarding this action may be obtained from Suzanne Whitmer, Rules Section, Office of Air Quality, (317) 232-8229 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
#05-166(APCB)

DEVELOPMENT OF NEW RULES CONCERNING FIBER REINFORCED PLASTIC MANUFACTURERS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rule 326 IAC 8-5-6 concerning volatile organic compound (VOC) emissions from fiber reinforced plastic manufacturers. 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 8-1-6; 326 IAC 8-5-1; 326 IAC 8-5-6.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The purpose of this rulemaking is to increase the clarity, predictability, and timeliness of air permits for certain new sources of VOC emissions. Currently, new facilities not regulated by a provision in 326 IAC 8 and which have potential emissions of 25 tons or more per year of VOC are required to reduce VOC emissions using best available control technology (BACT). Establishing BACT is a case-by-case determination based on the maximum reduction in emissions that is technically feasible, while taking into account energy, environmental, and economic impact. Uncertainty is inherent in most of these analyses. Establishing specific standards in place of case-by-case analyses improves the clarity, predictability, and timeliness of permit decisions involving emissions units that are currently subject to 326 IAC 8-1-6.

This rulemaking will establish that fiber reinforced plastic manufacturing sources that must comply with either of the existing National Emission Standards for Hazardous Air Pollutants (NESHAP) are no longer subject to 326 IAC 8-1-6. These NESHAPs, 40 CFR 63, Subpart WWWW and 40 CFR 63, Subpart VVVV regulate styrene emissions from Reinforced Plastic Composite (RPC) Producers and boat manufactures respectively. Styrene is classified as both a Hazardous Air Pollutant (HAP) and a Volatile Organic Compound (VOC) and is the predominantly regulated air pollutant from these facilities.

Numerous case-by-case analyses have been submitted to, and approved by, IDEM that establish that the emission limitations in the applicable NESHAP does in fact satisfy the requirement for BACT for VOC. However, under the current rule, the applicant must compile the analyses of the energy, environmental, and economic analyses of alternative controls; and IDEM staff must review and approve those analyses. This rulemaking will reduce the administrative burden on both the applicant and IDEM.

All fiber reinforced plastic manufacturers meeting the applicability of 326 IAC 8-1-6 will comply with the applicable NESHAP in lieu of 326 IAC 8-1-6. The Boat Manufacturing NESHAP's compliance date was August 22, 2004. The RPC NESHAP does not apply to HAP emitters until April 21, 2006, and this rulemaking will not take effect until that date.

Alternatives To Be Considered Within the Rulemaking

Specify emission standards for RPC manufacturers in lieu of the case-by-case BACT analysis required by 326 IAC 8-1-6.

Alternative 1.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No. Both NESHAPs have already been incorporated by reference. However, this rulemaking would have RPC manufacturers meet the requirements of 326 IAC 8-1-6 by following the incorporated NESHAPs.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? N/A
- If it is different, describe the difference. N/A

Continue to have RPC manufacturers comply with 326 IAC 8-1-6.

Alternative 2.

- 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.
- If it is a federal requirement, is it different from federal law? N/A
- If it is different, describe the difference. N/A

Applicable Federal Law

This rulemaking will require new (as of January 1, 1980) fiber reinforced plastic manufacturers with potential emissions of 25 tons or more per year of VOC to comply with 40 CFR Part 63, Subpart WWWW and 40 CFR Part 63, Subpart VVVV in lieu of doing a BACT analysis. 40 CFR Part 63, Subpart WWWW is a federal NESHAP covering HAP emissions for RPC production. 40 CFR Part 63, Subpart VVVV is a federal NESHAP covering HAP emissions for boat manufacturing. The HAP covered in 40 CFR Part 63, Subpart WWWW and 40 CFR Part 63, Subpart VVVV, is styrene, which is also classified as a VOC.

Potential Fiscal Impact

The potential fiscal impact of complying with the RPC NESHAP and the boat manufacturing NESHAP is outlined at 40 CFR Part 63, Subpart WWWW and 40 CFR Part 63, Subpart VVVV and would be incurred by RPC and boat manufactures irrespective of the state rulemakings that incorporate the federal NESHAPs or the rulemaking that is the subject of this first notice. There will be a cost savings to affected sources because they will not have to do a BACT analysis. The permitting process will be faster and more efficient, reducing the burden on affected sources and IDEM's resources.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.IN.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.IN.gov

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 Sky Schelle, Rules Section, Office of Air Quality at (317) 234-3533 or (800) 451-6021 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality 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:

#05-166(APCB) RPC BACT Rule
Sky Schelle
c/o Rules Section Administrative Assistant
Rules Section
Office of Air Quality
Indiana Department of Environmental Management
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 August 1, 2005.

Additional information regarding this action may be obtained from Sky Schelle, Rules Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

Kathryn Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
#04-182(APCB)

DEVELOPMENT OF NEW RULES CONCERNING COMPLIANCE ASSURANCE MONITORING

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule 326 IAC 3-8 concerning compliance assurance monitoring. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: July 1, 2004, Indiana Register (27 IR 3349).

CITATIONS AFFECTED: 326 IAC 3.

AUTHORITY: IC 13-14-8; IC 13-17-3; IC 13-17-3-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The purpose of this rulemaking is to incorporate by reference federal compliance assurance monitoring (CAM) requirements under 40 CFR Part 64 into the state rules so that the compliance monitoring requirements are contained in one primary state rule. The final rule (62 FR 54899 October 22, 1997) for the federal CAM requirements also includes language from 40 CFR 70.6. This language outlines compliance certification requirements for Title V sources. In order to give those sources reasonable opportunity to examine the language and comment on it, 40 CFR 70.6 will be incorporated into the state rules

during a future rulemaking. This rulemaking will only incorporate by reference 40 CFR Part 64 and will add definitions to clarify certain internal references.

Section 114(a)(3) of the Clean Air Act (CAA) required the U.S. EPA to develop regulations for monitoring of certain units at major sources that are required to obtain permits pursuant to 40 CFR Part 70 (Title V). U.S. EPA issued its final rule, Compliance Assurance Monitoring, 40 CFR Part 64, on October 22, 1997 (62 FR 54940). This federal regulation applies to Title V sources and contains a compliance schedule for compliance monitoring under 40 CFR Part 64. The federal CAM rule was challenged legally regarding enhanced monitoring, the phase-in time of the rule, and credible evidence in National Resource Defense Council vs. U.S. EPA, 194 F.3d 130 (1999). The court held that the requirements of enhanced monitoring comply with the CAA, the phase-in time is reasonable, and that the credible evidence was not reviewable. The court ruling cleared the way for states to incorporate these federal requirements into state rules.

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.

Potential Fiscal Impact

The federal CAM requirements must already be met by sources to which the federal rules apply. Incorporation by reference of the federal CAM rule into state rules will not have a fiscal impact beyond that already imposed by the federal rules.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Mr. Sky Schelle, Rules Section, Office of Air Quality at (317) 234-3533 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from July 1, 2004, through August 2, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

American Electric Power (AEP)
Citizens Gas & Coke Utility (CGC)
Dominion State Line Energy, LLC (DSL)
Eli Lilly and Company (ELC)
Indiana Electric Utility Air Work Group (IEU)
Indiana Manufacturers Association (IMA)
NiSource (NIS)
NUCOR Steel (NS)

Following is a summary of the comments received and IDEM's responses thereto:

Incorporation by reference

Comment: IDEM should adopt the federal Compliance Assurance Monitoring (CAM) rules, 40 CFR Part 64, into the state rules with no additional modifications. (ELC)

Comment: If IDEM chooses to go beyond the federal requirements, IDEM should convene a workgroup to discuss the issues prior to proceeding with a preferred approach or development of proposed rule language. The workgroup could develop proposed rule language and a workable approach, including implementation procedures, that address the concerns of all parties. (NIS, IMA, DSL, IEU)

Comment: IDEM should adopt the federal requirements either as an incorporation by reference or full text into the Indiana Administrative Code. The plan already required under the federal CAM rule is sufficient and maximizes the flexibility for both IDEM and the regulated community to enact the appropriate CAM requirements. IDEM should not adopt changes to the federal requirements as described in the First Notice and the alternative of taking no action is not a reasonable approach for IDEM to pursue. Some of IDEM's claims in the Potential Fiscal Impact Analysis may not be accurate for some alternatives mentioned. (AEP)

Comment: IDEM should either choose to incorporate the federal requirements by reference, or take no action to adopt the federal rules since CAM is already an applicable requirement. Adoption by reference is preferred because it makes the requirements clearer. Adoption with changes to the federal requirements should not be selected by IDEM because it is not necessary to add a compliance response plan to ensure proper monitoring. The federal CAM rule already contains Quality Improvement Plan (QIP) requirements. (NS)

Comment: There are no circumstances that are unique in Indiana that would justify developing a program that is separate from the federal program. Indiana-specific requirements, such as additional requirements for compliance response plans should not be included. Different requirements in different states cause confusion and difficulty. Including Indiana-specific requirements would put Indiana at a competitive disadvantage with other states that simply adopt the federal standards. It has not been demonstrated that any substantial environmental benefit would be gained by going beyond the federal CAM rule. (IEU)

Response: IDEM has taken the comments under consideration and proposes to incorporate by reference 40 CFR 64, Compliance Assurance Monitoring.

Adding additional reporting requirements

Comment: The language currently found in 40 CFR 64.9(a)(1) should be adopted or modified to require the owner or operator to submit monitoring reports at least every 6 months to the permitting authority. This additional language would make the CAM rule consistent with state permitting rules found in 326 IAC 2-7-5(3)(C)(i). It would also provide flexibility for quarterly reporting as well as less frequent, semiannual reporting for low risk sources that have demonstrated good performance of the emission unit and associated control device. In the future, IDEM could offer a reduction in reporting frequency incentive for maintaining a high degree of compliance or a high margin of compliance. (ELC)

Comment: The addition of a requirement for quarterly reports is unnecessary since the federal CAM rule requires that reports be submitted in accordance with Part 70, which then requires the owner or operator to follow the approved state plan. IDEM can specify quarterly monitoring reports if necessary in a source's permit. (NS, CGC)

Response: IDEM will not add draft language that mandates quarterly reporting. Rather, IDEM will incorporate the language under 40 CFR 64.9(a)(1) that references the Part 70 reporting requirements under 326 IAC 2-7-5(3)(C)(i). The Part 70 language requires reports "at least every six (6) months" and allows the agency to require quarterly reporting where appropriate.

Compliance response plans (CRP)

Comment: The federal CAM rule should be administered in Indiana as is with no addition of a CRP. Preparing a CRP is a resource burden requiring sources to identify all likely causes of potential failure, identify appropriate response steps for each of the likely causes of failure, and then document whenever something varies from the scenario contemplated by the CRP. The critical question is "was the deviation corrected," not how the deviation was corrected.

For a deviation, the source is required to engage in an extensive paperwork exercise notifying IDEM of the deviation, that the deviation

was not in the CRP plan, and that a variant procedure was used. While it is perhaps helpful for IDEM to know that the source had a problem and addressed it, this information should already be in the semiannual reporting required by Part 70. Resources devoted to developing the plan, preparing the reports, and trying to determine whether a deviation "deviated" from the CRP are resources that are not available for preventative or corrective maintenance and hence the CRP is counter-productive on a practical level.

The CRP is redundant, it switches the focus from compliance with standards to compliance with administrative steps. The CRP proposal should be dropped and existing CRP provisions removed from permits in due course. (NS, CGC, ELC)

Comment: The justification for adopting the federal rule with changes suggests that the federal CAM rule does not clarify whether inaction is a violation, and thus justifies the need for the CRP provision. This argument reveals that IDEM is actually seeking a fundamental change in the Indiana air regulations and not merely seeking to fine tune a monitoring program. Under the CRP proposal, compliance is no longer based on whether the source is protecting the environment, but instead on whether the source has met certain IDEM procedural requirements. Under this proposal, much time will be wasted in determining whether a deviation occurred, whether the source's response conformed to the CRP plan, and, if not, whether the source has adequately accounted for the deviation from the CRP. The CRP plan requirement is counterproductive because it substitutes "did the source follow its plan" for the more important inquiry "did the source solve the problem".

The QIP provision of the CAM rule does allow IDEM to require that a QIP be changed if it fails to address the cause of a problem or fails to correct a problem.

Adoption of the federal rule with changes suggests that the federal CAM rule does not require the source to "return the control equipment to normal and usual operation." Yet, the QIP provision requires that the QIP threshold be developed so that the "emissions unit is being maintained and operated in a manner consistent with good air pollution control practices." For an emissions unit to operate in a manner consistent with good air pollution control practices, it would have to be returned to normal and usual operation. IDEM can also require the QIP to be changed if the QIP procedures fail to correct the control device performance "with good air pollution control practices," which can include returning the equipment to normal and usual operation. The QIP provision allows IDEM to require the necessary response steps to any monitoring exceedances or excursions without requiring an additional response with a CRP. A CRP and QIP requirement will only be confusing to the permittee and burdensome if the owner or operator must develop and implement both plans. (NS, ELC)

Response: As stated, IDEM proposes to incorporate by reference the federal CAM rule. The federal CAM rule does not require a CRP. It should be noted that 40 CFR 64.7(d)(1) requires that the owner or operator must take necessary steps, including corrective action, to return the operation of the emissions unit and associated control equipment to normal or usual operation in the event of an excursion or exceedance. IDEM will have the opportunity to determine whether the owner or operator used acceptable procedures under 40 CFR 64.7(d)(2) and based on this determination assess the need for a quality improvement plan as provided at 40 CFR 64.8.

Placement within Title 326

Comment: Although IDEM has not stated where the Part 64 CAM rules would be incorporated into the Title 326 regulations, it should be pointed out that Article 3 currently contains General Provisions which would not be appropriate for or consistent with the CAM provisions. The definitions, certification requirements, and conversion factors included in 326 IAC 3-4 currently apply to all rules under Article 3. If IDEM's intention is to include the CAM rules in Article 3, IDEM is urged to clarify that the definitions and other general provisions in Article 3 do not apply to the CAM Rule. (ELC)

Response: Article 3 is titled 'Monitoring Requirements'. IDEM has reviewed the general provisions under 326 IAC 3-4 and does not believe that those provisions would be inconsistent or inappropriate with the CAM rule. New rule 326 IAC 3-8 will be titled 'Compliance Assurance Monitoring Requirements'. IDEM will work to address any specific issues with locating the CAM rule in Article 3 that commentors can identify.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#04-182(APCB) CAM Rule
Sky Schelle 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 receptionist on duty at the Tenth Floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 1, 2005.

Additional information regarding this action may be obtained from Mr. Sky Schelle, Rules Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 3-8 IS ADDED TO READ AS FOLLOWS:

Rule 8. Compliance Assurance Monitoring Requirements

326 IAC 3-8-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-11; IC 13-17

Sec. 1. (a) This rule applies to Title V sources unless specifically exempted in the applicability section of 40 CFR 64.2.

(b) References to:
(1) "section 70.6(a)(i) of this chapter" shall mean 326 IAC 2-7-5(3)(A);
(2) "section 70.6(a)(3)(i)(B) of this chapter" shall mean 326 IAC 2-7-5(3)(A)(ii);
(3) "section 70.6(a)(3)(ii) of this chapter" shall mean 326 IAC 2-7-5(3)(B);
(4) "section 70.6(a)(3)(iii) of this chapter" shall mean 326 IAC 2-7-5(3)(C);
(5) "section 70.7(f)(1)(i) of this chapter" shall mean 326 IAC 2-7-

9(a)(1);
(6) "section 70.7(f)(1)(iii) of this chapter" shall mean 326 IAC 2-7-9(a)(3)(A) and 326 IAC 2-7-9(a)(3)(B); and
(7) "section 70.7(f)(1)(iv) of this chapter" shall mean 326 IAC 2-7-9(a)(3)(C).

(c) The air pollution control board incorporates by reference 40 CFR 64, "Compliance Assurance Monitoring; Final 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 also 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 3-8-1)*

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on October 5, 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 rule 326 IAC 3-8.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule 326 IAC 3-8. 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 Mr. Sky Schelle, Rules Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
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 Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-167(SWMB)

AMENDMENTS TO 329 IAC 10-39 CONCERNING SOLID WASTE LAND DISPOSAL FACILITIES; FINANCIAL RESPONSIBILITY

PURPOSE OF NOTICE

Amends 329 IAC 10-39 on financial assurance mechanisms to clarify that only a trust fund can be funded annually and that the annual payments can only be for the duration of the initial permit or over the remaining life of the facility, whichever is shorter. The trust fund must be fully funded at the time of permit renewal. Amends 329 IAC 10-39-2(c) to change the date the annual financial review is submitted from the anniversary of the permit to a set date of February 15 each year. This is the date the annual flyover results must be submitted.

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 10-39.

AUTHORITY: IC 4-22-2; IC 13-14-8-1; IC 13-14-8-2; IC 13-14-9; IC 13-15-2; IC 13-19-3-1; IC 13-30-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This rulemaking involves changes to the trust fund rule language to only allow annual payments for trust funds and to require the trust fund to be fully funded within the term of the initial permit or the life of the permitted unit, whichever is shorter. In addition, the annual review and the annual flyover results both are to be submitted on the same date, February 15, each year.

The changes regarding the trust fund are being proposed to protect the state of Indiana financially. If a landfill goes bankrupt before the closure and post-closure is fully funded, the State could be left with closure and post-closure costs. The proposed changes to submit an annual financial review are for the convenience of the regulated community. The rule is also unclear and conflicting.

Alternatives to be Considered Within the Rulemaking

Alternative 1. Two changes to the trust fund rule language to only allow annual payments for trust funds and to require the trust fund to be fully funded within the term of the initial permit or the life of the permitted unit, whichever is shorter. One change to require the annual review and the annual flyover results both be submitted on the same date, February 15, each year.

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, partially, the two changes to the trust fund rule language are an incorporation of the federal language for trust fund financial mechanism use.

If it is a federal requirement, is it different from federal law? It is the same as the federal requirements.

If it is different, describe the differences.

Alternative 2. Make no changes.

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

If it is a federal requirement, is it different from federal law? Yes, to leave the rule as it currently is could open both the regulated community and IDEM to litigation under the federal rules. The current rule does not provide the degree of financial assurance that the federal rule mandate.

If it is different, describe the differences.

Alternative 3. Apply as a policy.

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, the federal rule doesn't allow for an implementation

by policy alone.
If it is a federal requirement, is it different from federal law? Yes, to leave the rule as it currently is could open both the regulated community and IDEM to litigation under the federal rules. The policy would conflict with current state rules.
If it is different, describe the differences.
Applicable Federal Law 40 CFR 258.70-258.74 prescribes the requirements for the financial assurance and financial responsibility required under the federal regulations. This regulation sets the standards for financial assurance for closure, post-closure and corrective action for municipal solid waste landfills. It also provides the allowable mechanisms for financial assurance. The requirement to fully fund a trust fund over the term of the initial permit or over the remaining life of the landfill unit, whichever is shorter, is a federal requirement at 40 CFR 258.74(a)(2). Also, annual payments are only allowed in the federal rules for trust funds under 40 CFR 258.74(a)(3).
Potential Fiscal Impact
Potential Fiscal Impact of Alternative 1. Regarding the changes to the trust fund mechanism, there would be a minimal cost to the regulated community as these changes are already required by federal rules. The regulated community is not required to choose a trust fund as their financial assurance mechanism but have a choice of several mechanisms. Regarding the changes to the submittal date of the annual review, there should be no additional costs as this is already required to be submitted and this rule change merely changes the date for submittal.
Potential Fiscal Impact of Alternative 2. Without changes, the State program would not have the degree of financial security mandated under the federal rules. Regarding the changes to the submittal date of the annual review, there should be no additional costs as this is already required to be submitted and this rule change merely changes the date for submittal.
Potential Fiscal Impact of Alternative 3. Regarding the changes to the trust fund mechanism, there would be a minimal cost to the regulated community because as this is already required by federal rules. The regulated community is not required to choose a trust fund as their financial assurance mechanism but have a choice of several mechanisms. Regarding the changes to the submittal date of the annual review, there should be no additional costs as this is already required to be submitted and this rule change merely changes the date for submittal.
Small Business Assistance Information
IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.
Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:
Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.IN.gov
The Small Business Assistance Program Ombudsman is:
Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.IN.gov
Public Participation and Workgroup Information
A workgroup is planned for this rulemaking. If you are interest in being a member of this workgroup, please contact Lynn West, Rules, Outreach and Planning Section, Office of Land Quality at (317) 232-3593 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:
#05-167(SWMB) [FA Change Rule]
Marjorie Samuel
Rules, Outreach, and Planning Section
Office of Land Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.
Hand delivered comments will be accepted by the IDEM receptionist on duty at the eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.
Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Marjorie Samuel in the Rules, Outreach and Planning Section at (317) 232-7995.

COMMENT PERIOD DEADLINE
Comments must be postmarked, faxed, or hand delivered by August 1, 2005.
Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).
Bruce H. Palin

Deputy Assistant Commissioner
Office of Land Quality

TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-168(SWMB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING WASTE TIRE MANAGEMENT AT 329 IAC 15

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in 329 IAC 15 concerning the following:

- Repeal the definition of "passenger tire equivalent" in 329 IAC 15-2-8 and allow regulated entities to use common industry units of measurement for waste tire reports and calculations.
- Add a requirement in 329 IAC 15-3-3 for waste tire storage sites and in 329 IAC 15-3-6 for waste tire processing operations that the applicant must provide evidence that all required zoning approvals have been obtained before the registration is issued.
- Add a new 329 IAC 15-3-7.5 to clarify that a waste tire processing operation that also meets the definition of a waste tire storage site because it accumulates one thousand (1,000) or more waste tires outdoors (or two thousand (2,000) or more waste tires in a completely enclosed structure) must register as a waste tire storage site and provide financial assurance as required by Indiana law.
- Simplify the Annual Tire Summary form in 329 IAC 15-3-20 to require less information and allow use of common industry units of measurement. Revise the form so it meets State Board of Accounts forms standards and add a certification of accuracy under penalty of perjury.
- Update the Waste Tire Manifest form in 329 IAC 15-4-13 to meet State Board of Accounts forms standards.
- Add a new Annual Tire Report form in 329 IAC 15-4-14 to simplify annual reporting by waste tire transporters.
- Clarify 329 IAC 15-5-1 to clearly set out what activities must be covered by a waste tire storage site's financial assurance.
- Clarify when the closure cost estimate must be revised by moving that requirement from 329 IAC 15-5-3(b) to a new 329 IAC 15-3-3.5.
- Amend 329 IAC 15 to eliminate confusing or inconsistent language, to clarify terms, or to make the rules consistent with the governing statutes.
- Make other appropriate changes recommended in public comments.
- Readopt 329 IAC 15 in accordance with IC 13-14-9.5.

IDEM seeks comment on the affected citations listed and any other provisions of 329 IAC 15 or other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 15.

AUTHORITY: IC 13-20-13; IC 13-20-14.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The rules for waste tire management at 329 IAC 15 were effective on November 9, 2000. Since their implementation, IDEM has identified several areas where the rules are confusing or incorrect. IDEM has also identified several areas where the rules can be streamlined and made easier and potentially less costly to comply with.

Proposed Changes and Their Potential Fiscal Impact

To improve the waste tire management rules, IDEM is proposing to amend 329 IAC 15 as described below. As required by IC 13-14-9-3(2)(B), added by P.L. 240-2003, SECTION 4, these changes are not imposed under federal law and may potentially have some fiscal impact on regulated entities affected by this rule as follows:

- Repeal 329 IAC 15-2-8 to remove the definition of "passenger tire equivalent." Regulated entities would use common industry units of measurement in reports and calculations instead of converting amounts to the passenger tire equivalent. *Potential fiscal impact:* This change would not impose any additional costs on regulated entities in Indiana. It would allow regulated entities to use common industry units of measurement in reports and calculations, and eliminate the requirement for regulated entities to convert these units to a common passenger tire equivalent.
- Add a requirement in 329 IAC 15-3-3 for waste tire storage sites and 329 IAC 15-3-6 for waste tire processing operations that the applicant must provide evidence that all required zoning approvals have been obtained before the registration is issued. This requirement would be similar to the current requirement for solid waste landfills at 329 IAC 10-11-2.5(a)(6). This is a document request so that IDEM will not register a waste tire storage site or waste tire processing operation that is not in compliance with local zoning ordinances. *Potential fiscal impact:* This change will not impose any additional costs on regulated entities. If zoning is required, that requirement is imposed by local ordinances and not imposed by this rule. This provision would merely make it clear that IDEM will not register a site that does not comply with local zoning ordinances, where they exist.
- Add a new 329 IAC 15-3-7.5 to clarify that a waste tire processing operation that meets the definition of a waste tire storage site because it accumulates one thousand (1,000) or more waste tires outdoors (or two thousand (2,000) or more waste tires in a completely enclosed structure) must register as a waste tire storage site and provide financial assurance as required by Indiana law. *Potential fiscal impact:* While this change does not add any new requirements, enforcement of those requirements may result in additional costs to entities that are currently accumulating more than one thousand (1,000) waste tires without being registered as waste tire storage sites. These entities may incur additional costs as they come into compliance with IC 13-20-13. Our records indicate that up to fourteen (14) facilities currently registered as waste tire processing operations may accumulate more than one thousand (1,000) waste tires without being registered as waste tire storage sites. This would potentially result in additional registration fees of about four thousand two hundred dollars ($4,200) if all these facilities registered as required by IC 13-20-13.

In addition, these facilities accumulate up to an estimated one million (1,000,000) waste tires that are not covered by financial assurance, based on inspection reports from 2004. The additional cost of the annual premiums to obtain the required financial assurance could range from forty thousand dollars ($40,000) to fifty thousand dollars ($50,000) annually, based on the current cost for performance bonds of two percent (2%) to two and one-half percent (2.5%) per year, and the current cost to remove waste tires of approximately two dollars ($2.00) per waste tire. These estimates are approximate. While IDEM has extensive experience with waste tire removal, our experience with financial assurance premiums at the three (3) currently registered waste tire storage sites is limited.

It must be emphasized that these costs are not additional costs imposed by this rule, but are the costs imposed by rigorous enforce-

ment of the waste tire storage site registration requirements of IC 13-20-13. The amount of financial assurance that these facilities are avoiding by not registering and obtaining financial assurance as required by law represents the potential exposure of Indiana taxpayers to the unsecured costs of cleaning up these illegal sites.

As a result, these potential costs must be balanced against the estimated two million dollars ($2,000,000) of potential waste tire cleanup costs that are not covered by financial assurance. These costs will potentially be borne by Indiana taxpayers if these unregistered sites are not brought into compliance with Indiana law.

At this time, there is no way to quantify the actual costs to regulated entities of bringing these sites into compliance. There is no way to determine how many facilities would choose to register as waste tire storage sites and obtain financial assurance for their tires, how many would simply dispose of their tires, and how many would go into enforcement or abandon their sites and transfer the burden to Indiana taxpayers.

In addition, the actual number of unregistered waste tire storage sites and waste tires accumulated at those sites is continually being reduced due to the efforts of the Office of Land Quality and the Office of Compliance and Enforcement to either bring these sites into compliance or close the sites and properly dispose of the waste tires. As a result, the actual number of unregistered storage sites and quantity of illegally accumulated waste tires will be significantly less when this rule becomes effective than it is now.

• Simplify the Annual Tire Summary form in 329 IAC 15-3-20 to require only essential information, allow use of common industry units of measurement, and meet State Board of Accounts forms standards, as well as adding a certificate of accuracy under penalty of perjury. IC 13-20-13-5(1) requires a waste tire storage site or waste tire processing operation registrant to report annually to the department on the number of waste tires received at the site or operation and the number and manner of disposal of the waste tires. IC 13-20-13-10 requires the department to annually report on the status of Indiana's waste tire management program. This change would reconcile these two (2) requirements by requiring registrants to report only the information needed for IDEM's annual report. This change would also remove the requirement to convert common units of measurement to the passenger tire equivalent. *Potential fiscal impact:* This change clarifies an existing requirement. It would not impose any new requirements. While use of the new form would simplify reporting, IDEM estimates that it will not result in any significantly increased cost or savings to regulated entities.

• Update the Waste Tire Manifest form in 329 IAC 15-4-13 to meet State Board of Accounts forms standards. *Potential fiscal impact:* The information required on the form is not changed. This change will not result in any increased cost or savings to regulated entities. This change is intended to make the manifest forms easier to use.

• Add a new annual tire report form in 329 IAC 15-4-14 to simplify annual reporting by waste tire transporters. Waste tire transporters currently use the Annual Tire Summary form in 329 IAC 15-3-20(b), which requires more information than transporters are required to report under the waste tire statute. This new form would require only the information required by 329 IAC 15-4-14. *Potential fiscal impact:* Use of the new form could result in a small savings to the approximately eighty-five transporters currently registered, however, that savings cannot be quantified at this time.

• Clarify 329 IAC 15-5-1 to clearly explain what activities must be covered by a waste tire storage site's financial assurance mechanism. The current rule refers to both removal of waste tires and final closure under 329 IAC 15-3-21. This change would clarify that financial assurance must cover all final closure activities. *Potential fiscal impact:* This change would not establish any new requirements and would not result in any increased cost or savings to regulated entities.

• Amend 329 IAC 15-5-3 and add a new 329 IAC 15-5-3.5 to clarify when the closure cost estimate must be revised. This requirement is currently included as 329 IAC 15-5-3(b) and is commonly overlooked. Few waste tires storage sites actually update their closure cost estimates regularly, even though the real costs of waste tire removal and site closure regularly increase. Moving this requirement to a separate section will emphasize it. *Potential fiscal impact:* This change would not establish any new requirements and would not result in any increased cost or savings to regulated entities.

• Amend 329 IAC 15 to eliminate confusing or inconsistent language, to clarify terms, or to make the rules consistent with the governing statutes. *Potential fiscal impact:* This change would not establish any new requirements and would not result in any increased cost or savings to regulated entities.

• Readopt 329 IAC 15 in accordance with IC 13-14-9.5. IDEM intends to readopt this article in anticipation of its expiration as provided for in IC 13-14-9.5-3. This article will expire on January 1, 2007 and must be readopted before that date to comply with IC 13-20-13 and IC 13-20-14. Beginning the readoption process now will ensure that it is completed by the expiration date. Under IC 13-14-9.5-4, a person may submit a written request, including the basis for that request, that a particular rule be readopted separately from this rulemaking under the provisions of IC 13-14-9, including full public notice and comment. It must be noted that IDEM intends to readopt the entire article under the full notice and comment provisions of IC 13-14-9 and IC 4-22-2. *Potential fiscal impact:* This change would extend the waste tire rules beyond the currently scheduled expiration date, as required by Indiana law. It would impose only those new requirements adopted in this rulemaking and would not expected to result in any significantly increased cost or savings to regulated entities.

IDEM is specifically asking for comment on the costs and savings that would be experienced if any or all of these changes are adopted.

This notice specifically solicits comment on the proposed changes listed above and any other changes that would accomplish the purpose of this rule. Based on the comments received on this notice, additional changes may be considered.

Alternatives to be Considered in this Rulemaking

The following alternatives are being considered in this rulemaking:

Alternative 1. Adopt any or all of the proposed changes described above, and readopt 329 IAC 15 under IC 13-14-9.5. This alternative would make each of the changes described above that are adopted by the Solid Waste Management Board and would make the amended waste tire rules effective beyond the January 1, 2007, expiration date.

Alternative 2. Do not adopt any of the proposed changes described above, but readopt 329 IAC as it exists today under IC 13-14-9.5. This alternative would not make any of the changes described above, but would make the existing waste tire rules effective until January 1, 2014, or until they are amended in another rulemaking.

Alternative 3. Do not readopt 329 IAC 15 under IC 13-14-9.5, allowing the article to expire on January 1, 2007. This alternative would result in no rules for waste tire management after the expiration date and would conflict with the waste tire statutes that require such rules.

Applicable Federal Law

There is no applicable federal law related to management of waste tires.

Justification Required by IC 4-22-2-24

In accordance with IC 4-22-2-24, as amended by P.L.239-2005, SECTION 1, this rule does not impose any requirements or costs that are not expressly authorized by IC 13-20-13 and IC 13-20-14 or by any

other Indiana or federal law.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.IN.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC50-01
100 N. Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.IN.gov

Public Participation and Workgroup Information

IDEM may establish an external workgroup to discuss issues involved in this rulemaking. The workgroup, if established, would be made up of department staff and a cross-section of stakeholders. If you believe a workgroup would further the purposes of this rule and result in better rulemaking, and you wish to participate in the workgroup, please submit your name, mailing address, telephone number, e-mail address, and the area(s) of interest you wish to represent to:

Marjorie Samuel (#05-168; Waste Tires)
Indiana Department of Environmental Management
Office of Land Quality
100 N. Senate Ave., Room 1101
Indianapolis, Indiana 46204-2241

If too many applications are received to form a functional workgroup, the department will select a representative group from the applications on file.

The formation of a workgroup, if it occurs, will be announced on IDEM's rulemaking website: http://www.in.gov/idem/rules/. If a workgroup is formed and you wish to provide comments to the workgroup on the rulemaking, attend meetings, or submit suggestions related to the workgroup process, please contact Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality at (317) 233-1655 or (800) 451-6027 (in Indiana). Please provide your name, phone number and e-mail address, if applicable, where you can be contacted.

The public is also encouraged to submit comments and questions directly to members of the workgroup who represent their particular interests in the rulemaking. If a workgroup is established, a list of workgroup members and the interests they represent will be provided on request.

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.

(3) The submission of information on the fiscal impact of each change identified in this notice.

Mailed comments should be addressed to:

Marjorie Samuel (#05-168; Waste Tires)
Indiana Department of Environmental Management
Office of Land Quality
100 N. Senate Ave., Room 1101
Indianapolis, Indiana 46204-2241

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Eleventh Floor East, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules, Planning and Outreach Section at (317) 232-1655 or (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 31, 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 call (800) 451-6027 (in Indiana), press zero (0), and ask for extension 3-1655. Additional information on this rule may also be found on IDEM's rulemaking Web site at http://www.in.gov/idem/rules/.

Bruce H. Palin
Assistant Commissioner
Office of Land Quality

DEPARTMENT OF INSURANCE
May 26, 2005
Bulletin 130
The Use of Credit Information in Underwriting and Rating Insurance Policies

This Bulletin is directed to all insurance companies, as defined by IC 27-1-2-3, that write personal lines property and casualty products in this state. The Department issued Bulletin 123 on December 5, 2003, regarding the use of credit information. In May 2004, the Attorney General's office reviewed the Department's Bulletin 123 and opined that the interpretation of the word "solely" therein placed restrictions on insurers that were not intended by the Indiana General Assembly. On February 9, 2005, the Attorney General affirmed this opinion as a formal opinion. *See; AG Op 2004-8*. The Commissioner has reviewed the statute, supporting information, and the opinion of the Attorney General. The Commissioner believes that the Indiana General Assembly through its duly elected members is responsible for setting the public policy for the state of Indiana. When the General Assembly passes a statute that is clear and unambiguous the Department of Insurance, as an agency of state government, is charged with implementing the clear meaning of that statute. The Attorney General has stated that IC 27-2-21 is not ambiguous in its use of the term "solely". Therefore, the Commissioner hereby issues this Bulletin 130 and withdraws Bulletin 123.

IC 27-2-21 prescribes the use of credit information by insurance companies. An insurer may use credit information in underwriting or rating a consumer. If an insurer chooses to use credit information the insurer must disclose its intention to use credit information to the consumer. The insurance scoring model must be filed with the Department of Insurance. This filing is confidential under IC 5-14-3-4(a)(1) and IC 27-2-21-20(d) and not available for public inspection. Companies should identify their filings as made pursuant to IC 27-2-21 and should separate all confidential documents and clearly identify them as confidential as described in Bulletin 111. Pursuant to IC 27-2-21-20 the scoring model and other scoring processes are confidential.

As outlined in IC 27-2-21-22, a consumer reporting agency, as defined at IC 27-2-21-6, may not provide or sell data or lists that include information submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. This includes the expiration dates of an insurance policy. The restrictions contained in IC 27-2-21-22 do not apply to data or lists that a consumer reporting agency supplies to: (1) an insurance producer from whom the information was received; or (2) an insurer (including any affiliates and/or parent company) on behalf of which the insurance producer acted.

The insurer shall not deny, cancel, decline to renew an insurance policy, or base a renewal rate solely on the basis of credit information. The absence of credit information or the inability to calculate an insurance score may not be considered unless the insurer either treats the consumer as having neutral credit information or persuades the Department that the absence or the inability to calculate relates to the risk for the insurer. In such an event the insurer shall treat the consumer in a manner approved by the Commissioner. Any adverse action by an insurer must be based upon a credit report or score that was obtained no longer than ninety (90) days from the date the insurance policy is first written or a renewal is issued. The insurance score or credit report must be updated as outlined in IC 27-2-21-16(7).

An insurer shall not use an insurance score that is calculated using income, gender, address, ZIP code, ethnic group, religion, marital status, or nationality of the consumer as a factor. A credit inquiry not initiated by the consumer or a credit inquiry requested by the consumer for the consumer's own credit information can not be used as a negative factor in the insurance score. A credit inquiry related to insurance coverage may not be used as a negative factor. Multiple lender inquiries, made within thirty (30) days of one another, related to a home mortgage or multiple lender inquiries, made within thirty (30) days of one another, related to the automobile lending industry may not be used as a negative factor. A collection account with a medical industry code may not be used as a negative factor in a credit score.

In addition to specific guidance on credit scoring the insurance laws provide other protections that insurers should be aware of when developing and using insurance scores. IC 27-1-22-25 states that a motor vehicle insurance rating plan or the premium rate charged may not establish a higher rate for a policyholder based on the fact that the policyholder has filed a voluntary petition under the federal bankruptcy law. Therefore, an insurer that writes motor vehicle insurance may not use an insurance score that uses bankruptcy as a factor. Pursuant to IC 27-2-17, an insurer may not may not cancel or refuse to issue or renew a policy of property or casualty insurance based solely on the geographical location of the risk within Indiana. And under IC 27-1-22-3(a)(4), property and casualty premium rates shall not be unfairly discriminatory. An insurer that violates any of these provisions is subject to administrative proceedings under IC 27-4-1-4 as an unfair and deceptive act or practice in the business of insurance and subject to penalties including monetary fines and suspension or revocation of the insurer's certificate of authority.

DEPARTMENT OF INSURANCE
James Atterholt, Commissioner

DEPARTMENT OF INSURANCE
May 26, 2005
Bulletin 131
INDIANA COMPREHENSIVE HEALTH INSURANCE ASSOCIATION
ASSESSMENTS AND TAX CREDITS AS OF JANUARY 1, 2005

In previous years insurers who were members of, and paid an assessment to, the Indiana Comprehensive Health Insurance Association (ICHIA) were entitled to take a credit against taxes owed, including premium tax under IC 27-1-18-2. A company could carry forward the unused credits. In 2004, the Indiana General Assembly significantly changed this practice. Pursuant to IC 27-8-10-2.4, no additional tax credits will be earned for assessments paid by members on or after January 1, 2005. Any member of ICHIA that before January 1, 2005 paid an assessment and had not taken a credit against the premium taxes is not entitled to claim any unused tax credit for the taxable years beginning after December 31, 2004 and ending before January 1, 2007. Thereafter, a member that has unused credits on January 1, 2007, may take an annual credit of ten percent (10%) of the amount of the assessments paid before January 1, 2005, against which the credit has not been taken. The amount of the annual credit may not exceed the amount of premium tax that is due for the taxable year. If the amount of the tax credit available exceeds the member's liability for the taxable year, the member may carry forward the amount of the unused annual credit to subsequent taxable years. The unused annual tax credits carried forward are not subject to the ten percent (10%) limit. The tax credits available may be carried forward indefinitely, but the total amount of credits taken may not exceed the total amount of tax credits that were available on January 1, 2005.

Insurance companies paid estimated quarterly payments on April 15, June 15, September 15, and December 15, 2004 for taxable year 2005. The final return for taxable year 2004 was due March 1, 2005. ICHIA members may use available tax credits as of January 1, 2005 for the 2004 taxable year liability.

ICHIA traditionally has a "true up" assessment several months after the close of the calendar year. This "true up" assessment is computed after claims are submitted and processed allowing ICHIA to determine the true losses for the previous calendar year. This "true up" assessment may require an additional payment if the actual plan losses exceeded 2004 assessments or if the previous years assessments were higher than actual plan losses then the members would receive a credit for their 2005 assessments. For taxable year 2004 insurers should calculate their assessment credits as of December 31, 2004. If the "true up" for calendar year 2004 results in an additional payment, IC 27-8-10-2.4 does not permit tax credits to be accrued for assessments paid on or after January 1, 2005. If the "true up" for the calendar year 2004 results in a credit to the insurer the insurer should reduce their accumulated unused tax credits as of December 31, 2004, in accordance with the "true up" credit. This event should be reflected in the report required by IC 27-8-10-2.3. If the insurer has used the tax credit on their 2004 premium tax filing then the insurer should file an amended return to reflect the reduction in the assessment and thus the tax credit to which they were entitled.

INDIANA DEPARTMENT OF INSURANCE
James Atterholt, Commissioner

DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #4
Revised July 2005
(replaces Directive #4 dated November 2000)

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

Subject: Collection of Tax From Transient Merchants

References: IC 6-2.5-2; IC 6-2.5-8; IC 6-3-2; IC 6-3-4; IC 6-3-5; IC 6-8.1-5; IC 6-8.1-8; IC 6-8.1-9; IC 25-37-1

Introduction: The purpose of this directive is to outline the Department's position on the collection of sales tax and adjusted gross income tax from transient merchants.

Sales Tax: Under IC 6-2.5-2-2, the sales tax is imposed on a retail merchant's transactions which constitute selling at retail. The tax also applies to transient merchants, defined in IC 25-37-1 as one who engages in temporary business in Indiana. Before selling at retail in Indiana, a merchant is required to obtain a Registered Retail Merchant Certificate under IC 6-2.5-8 from the Department. A Retail Merchant Certificate application (BT-1) can be obtained either from the Department's website, www.in.gov/dor, from the Department's Tax order line: (317) 615-2581, or a district office.

A Retail Merchant Certificate, however, is not related to a Transient Merchant License. A Transient Merchant License must be obtained from the county auditor of the county in which the merchant intends to do business (IC 25-37-1-4), if the county so

requires. As of the issuance date of this Commissioner's Directive, Parke County was the only county with such a requirement.

Retail merchants who have no certificate (or an invalid one) are subject to imprisonment and a fine (Class B misdemeanor). Failure to remit any taxes collected by any retail merchant to the Department or a Department representative upon demand may, also, subject the merchant to a longer prison term and a higher fine (Class D felony). These criminal penalties are in addition to civil sanctions prescribed by IC 6-8.1-8. In particular, if a retail merchant fails to remit the tax collected, a notice of tax due will be issued, based on the best information available. Failure to pay the tax due could result in a levy against the merchant's property.

Individual Income Tax: Under IC 6-3-2-1, a tax is imposed on a nonresident's adjusted gross income derived from sources within Indiana. While IC 6-3-5-1 provides that nonresidents from states having reciprocal agreements with Indiana are not subject to Indiana adjusted gross income tax, such reciprocal agreements only apply to salaries, wages, tips and commissions. Therefore, reciprocity is not applicable to proceeds from a transient merchant's sales.

Under IC 6-3-4-4.1, a taxpayer is required to make a declaration of estimated tax if the taxpayer expects to owe $400 or more in income tax. IC 6-8.1-5-3 allows the Department to make an immediate assessment of tax, interest and penalties if it is determined that a taxpayer intends to: depart the state, remove his property, conceal his person or property, or to do any thing to jeopardize, prejudice, or render ineffective, proceedings to collect the tax. If the tax is not paid upon demand, a warrant will be issued. Refusal to pay the warrant can result in a levy against the taxpayer's property.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #16
July 2005
(Replaces Commissioner's Directive #16 dated December 2004)

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: New or Replacement Tires on Vehicles

REFERENCES: IC 13-11-2-231; IC 13-11-2-245; and IC 13-20-13-7

I. INTRODUCTION

The purpose of this Directive is to outline the procedures to be followed in collecting and remitting the tire fee. The statute does not apply to the sale of used or retreaded tires.

II. IMPOSITION OF FEE

There is a $0.25 fee imposed on each new tire sold in Indiana for use on a motor vehicle, and types of equipment, machinery, implements or other devices used in transportation, manufacturing, agriculture, construction or mining. Effective July 1, 2005, the fee includes tires mounted on farm tractors, implements of husbandry and semi trailers. "New tire" means a tire that has never been mounted on the wheel of a vehicle.

The fee is also imposed on each new tire mounted on a vehicle at the time the vehicle is sold, and any spare tire that is included with the vehicle. Purchases by governmental units and nonprofit organizations **are not** exempt from the tire fee. The fee imposed shall be collected by the person selling the new tire to the ultimate consumer of the tire or vehicle. If an out-of-state seller is registered to collect and remit the sales and use tax, then the out-of-state seller is required to collect and remit the tire fee.

III. EXEMPTIONS

The fee is not imposed on tires used on lawn mowers and garden tractors that are propelled by motors with less than twenty (20) horsepower. The fee is not imposed on new tires mounted on a non self- propelled vehicle for personal use such as a boat trailer or a camper trailer. Tires purchased for resale without being mounted on a motor vehicle are exempt from the tire fee.

IV. REMITTANCE OF THE FEE

The law requires the tire fee to be remitted at the same time as the sales tax. If a taxpayer is required to file by the 20th of the month through electronic funds transfer, the taxpayer is also required to remit the tire fee by the 20th of the month through electronic funds transfer.

The taxpayer that is remitting the tire fee is entitled to retain one percent (1%) of the amount collected as compensation for filing and remitting the fee.

The tire fee is to be remitted using Form TF-103. This form is required to be filed with the remittance of the tire fee unless the payment is remitted through electronic funds transfer and then only a quarterly recap is required to be filed.

V. USAGE OF THE FEES COLLECTED

Revenue from the tire fee is deposited in the waste tire management fund. All money deposited in the fund may be used by the Department of Environmental Management for waste reduction, recycling, removal, or remediation projects.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #26
July 2005

DISCLAIMER: Commissioner's Directives are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Confidentiality of Taxpayer Information

REFERENCES: IC 6-8.1-7-1; IC 6-8.1-7-3

I. INTRODUCTION

The Indiana Department of State Revenue ("Department") is committed to protecting the confidentiality of taxpayer information and privacy rights of Indiana taxpayers. These rights are ensured in the Indiana Code, the Indiana Administrative Code, and the Department's policies and practices. This Commissioner's Directive is intended to provide public notification to taxpayers of the Department's practices relating to the collection, use, and retention of confidential taxpayer information.

II. DISCLOSURE OF CONFIDENTIAL TAXPAYER INFORMATION

Disclosure of confidential taxpayer information by the Department is strictly prohibited except as provided by the laws of this State. The Department's disclosure of confidential taxpayer information is governed by guidelines provided by the Indiana General Assembly. These guidelines have been codified at IC 6-8.1-7-1 and IC 6-8.1-7-3. With limited exceptions, the disclosure of confidential taxpayer information is forbidden. IC 6-8.1-7-1(a) states:

> Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:
>
> (1) members and employees of the department;
>
> (2) the governor;
>
> (3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or
>
> (4) any authorized officers of the United States;
>
> when it is agreed that the information is to be confidential and to be used solely for official purposes.

The General Assembly has also provided Indiana taxpayers with additional protections to prevent the unauthorized disclosure of confidential taxpayer information. Specifically, IC 6-8.1-7-3 states:

> A person who violates the provisions of this chapter commits a Class C misdemeanor. In addition, if the person is an officer or employee of the state, he shall be immediately dismissed from his office or employment.

The Department has promulgated rules reinforcing these statutory proscriptions against the unauthorized disclosure of confidential taxpayer information. *See* 45 IAC 15-7-1 and 45 IAC 15-7-2.

III. STREAMLINED SALES TAX PROJECT

In March 2000, a collection of states joined forces to sponsor a national sales tax initiative—the Streamlined Sales Tax Project ("SSTP"). The SSTP represents an effort on the part of its member states to "simplify and modernize sales and use tax collection and administration." To that end, the Streamlined Sales Tax Implementing States ("SSTIS") crafted model legislation—i.e., the Streamlined Sales and Use Tax Agreement ("Agreement"). Member states were encouraged to adopt legislation conforming to this model.

In 2001, the General Assembly enacted legislation to guide the Department's participation in the Streamlined Sales Tax Project. IC 6-2.5-11-7 established specific disclosure and confidentiality requirements:

> The department shall not enter into the [Streamlined] agreement unless the agreement requires each state to abide by the following requirements:

* * *

(8) CONSUMER PRIVACY. The agreement must require each state to adopt a uniform policy *for certified service providers* that protects the privacy of consumers and maintains the confidentiality of tax information.

IC 6-2.5-11-7(8).

The "certified service provider" referenced in IC 6-2.5-11-7(8) is an "agent of a seller … [employed by the seller to assist in] the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller…." *See* IC 6-2.5-11-10(a).

The mandate provided by IC 6-2.5-11-7(8) reflects the Department and General Assembly's concerns about the importance of safeguarding confidential information collected from consumers by certified service providers. Section 321 of the Agreement addresses these privacy and confidentiality concerns. Specifically:

- Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use and retention of personally identifiable information.
- When any personally identifiable information that has been collected and retained is no longer required to ensure the validity of exemptions claimed by reason of a consumer's status or the consumer's intended use of the goods or services purchased, such information shall no longer be retained by the member states.
- When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.
- If anyone other than a member state, or a person authorized by that state's law or the Agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.
- This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.

Streamlined Sales and Use Tax Agreement, "Confidentiality and Privacy Protections under Model 1," Section 321(e) – (i).

Notwithstanding Indiana's participation in the Streamlined Sales Tax Project, Indiana laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Indiana confidentiality provisions are more restrictive with regard to the disclosure of confidential taxpayer information than those mandated by Section 321 of the Agreement. Additionally, the Department will not recognize certified service providers that fail to adopt the Agreement's confidentiality and privacy provisions or engage in business practices that violate state confidentiality and disclosure laws.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #27
July 2005

DISCLAIMER: Commissioner's Directives are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Seller Registration, Methods of Remittance, Certified Service Providers, and the Taxability Matrix

REFERENCES: IC 6-2.5-1; IC 6-2.5-6-9; IC 6-2.5-11; IC 6-2.5-12; IC 6-2.5-13

I. INTRODUCTION

In March 2000, a collection of states joined forces to sponsor a national sales tax initiative—the Streamlined Sales Tax Project ("SSTP"). The SSTP represents an effort on the part of its member states to "simplify and modernize sales and use tax collection and administration." To that end, the Streamlined Sales Tax Implementing States ("SSTIS") developed the Streamlined Sales and Use Tax Agreement ("Agreement"). Member states were encouraged to adopt legislation conforming to the Agreement.

II. SELLER REGISTRATION

Once the Agreement is implemented, Indiana will participate in a centralized online sales and use tax registration system in cooperation with the other member states. Under this centralized registration system:

A. A seller registering under the Agreement is registered in each of the member states.

B. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.

C. A written signature from the seller is not required.

D. An agent (CSP) may register a seller under uniform procedures adopted by the member states.

E. A seller may cancel its registration under the system at any time under uniform procedures adopted by the Governing Board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

Additionally, Indiana provides its own online registration system that allows sellers to register for collection of Indiana sales and use taxes. Indiana's online registration form (BT-1 Business Tax Application) may be accessed at the Indiana Department of Revenue's website— http://www.state.in.us/dor/business/register.html.

Regardless of method used to register with the state of Indiana, the seller agrees to collect Indiana sales and use taxes for all taxable sales made into Indiana. ***However, registration and collection of Indiana sales and use taxes does not create nexus with Indiana for state income tax purposes.***

Note: A seller may be registered by an agent. (See IC 6-2.5-11-10(a) regarding certified service providers). ***This agency appointment must be disclosed to the Department in writing at the time of registration.***

III. CERTIFIED SERVICE PROVIDERS

CERTIFIED SERVICE PROVIDER ("CSP") is an **agent** certified under the Agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

CERTIFIED AUTOMATED SYSTEM ("CAS") is software certified under the Agreement used to (1) calculate the tax imposed by each jurisdiction on a transaction, (2) determine the amount of tax to remit to the appropriate state, and (3) maintain a record of the transaction.

IV. METHODS of REMITTANCE

When registering, the seller may select one of the following technology models (i.e., methods of remittance) to remit the Indiana sales and use taxes collected:

A. MODEL 1, wherein a seller selects a CSP as an agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases. A seller that has selected a CSP as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases, is a MODEL 1 SELLER.

B. MODEL 2, wherein a seller selects a CAS to use to calculate the amount of tax due on a transaction. A seller that has selected a CAS to perform all of its sales and use tax functions, but retains responsibility for remitting the tax, is a MODEL 2 SELLER.

C. MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS. A seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller is a MODEL 3 SELLER.

V. DEFINED TERMS and the TAXABILITY MATRIX

The Agreement provides definitions of terms referenced within the Agreement. These standardized definitions and terms have been incorporated in each member state's conforming legislation. To ensure uniform application by the states of these defined terms, each member state is required to complete a taxability matrix adopted by the project's Governing Board. Each member state's entries in this matrix will be maintained in a downloadable database in a format approved by the Governing Board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the Governing Board. Indiana will complete its taxability matrix once an approved format has been adopted by the Governing Board.

Upon implementation, Indiana will relieve CSPs from liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on data contained in Indiana's taxability matrix.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
COMMISSIONER'S DIRECTIVE #28
July 2005

DISCLAIMER: Commissioner's Directives are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Amnesty Provisions for Sellers Registering to Collect Indiana Sales Tax under the Streamlined Sales Tax Program

I. INTRODUCTION

In March 2000, a collection of states joined forces to sponsor a national sales tax initiative—the Streamlined Sales Tax Project ("SSTP"). The SSTP represents an effort on the part of its member states to "simplify and modernize sales and use tax collection

and administration." To that end, the Streamlined Sales Tax Implementing States ("SSTIS") developed the Streamlined Sales and Use Tax Agreement ("Agreement"). Member states were encouraged to adopt legislation conforming to the Agreement.

II. AMNESTY

It is the policy of the Indiana Department of Revenue to provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the Streamlined Sales Tax Agreement, provided that the seller was not so registered in Indiana in the twelve-month period preceding the effective date of Indiana's participation in the Agreement.

The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in Indiana, provided registration occurs within twelve (12) months of the effective date of Indiana's participation in the Agreement.

The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

The amnesty is not available for sales or use taxes already paid or remitted to the Indiana Department of Revenue or to taxes collected by the seller.

The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. ***(Each member state shall toll its statute of limitations applicable to asserting a tax liability during the thirty-six month period.)***

The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use tax due from a seller in its capacity as a buyer.

If you have further questions concerning registration under the amnesty provisions of the Agreement, contact the Department at (317) 232-8054.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #29
SALES TAX
JULY 2005
(Replaces Information Bulletin #29 dated January 2004)

DISCLAIMER: Information bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the statutes, rules or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current statute and procedures related to the subject matter covered herein.

SUBJECT: Sales of Food

REFERENCES: IC 6-2.5-1-11, IC 6-2.5-1-12, IC 6-2.5-1-16, IC 6-2.5-1-20, IC 6-2.5-1-26, IC 6-2.5-1-28, IC 6-2.5-5-20, IC 6-2.5-5-21, IC 6-2.5-5-21.5, IC 6-2.5-5-22, IC 6-2.5-5-35

INTRODUCTION:

Generally, the sale of food and food ingredients for human consumption is exempt from Indiana sales tax. Primarily, the exemption is limited to the sale of food and food ingredients commonly referred to as "grocery" food. The purpose of this bulletin is to assist Indiana retailers in the proper application of this exemption.

A number of items sold by grocery stores, supermarkets, and similar type businesses are classified in this bulletin under the headings "Non-taxable Food Items" and "Taxable Grocery Items". These examples are for illustrative purposes and are not intended to be all-inclusive.

I. Non-taxable Food Items:

Food is defined as substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste or nutritional value. The term does not include tobacco, alcoholic beverages, candy, dietary supplements or soft drinks.

The Indiana sales tax does not apply to the sale of food and food ingredients listed below if sold unheated and without eating utensils provided by the seller.

Baby food

Bakery items (including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas)

Baking chocolate (whether liquid, powder, or solid)
Baking soda or other forms of leavening agents
Beverages containing 50% fruit or vegetable juice or containing milk, milk products or milk substitutes
Broths and bouillons (whether liquid, instant, freeze dried, or cubes)
Cereal and cereal products
Cocoa
Coconut (whether whole, shredded, sweetened, processed or raw)
Coffee and coffee substitutes (beans, grounds, freeze dried, bags and instant only)
Condiments
Deli items when sold unheated by weight or volume as a single item
Deli trays that only contain otherwise exempt items
Eggs and egg products or substitutes
Extracts and flavorings intended as a cooking ingredient
Fish and fish products (including all other forms of seafood)
Flour (including wheat, whole wheat, rye, corn, rice, barley, buckwheat, soy or other forms of milled grains or nuts)
Food coloring
Food sold by a seller whose primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries)
Food sold by weight or volume as a single item
Fruit and fruit products (whether fresh, frozen, canned or dehydrated, excludes items on salad bars)
Gelatins (whether powdered or prepared)
Honey
Ice
Ice cream (including toppings and novelties)
Jams and jellies (including marmalades and preserves)
Ketchup
Lard
Marshmallows (including marshmallow crème)
Meat and meat products (whether fresh, frozen, cured, canned, or dehydrated)
Milk and milk products
Mustard
Nuts (including salted, but not chocolate or candy coated nuts)
Oleomargarine
Olive oil
Peanut butter
Pepper
Pickles
Powdered drink mixes (including sweetened)
Relishes
Salad dressings and mixes
Salt
Sauces
Sherbets and sorbets
Shortenings
Soups
Snack chips and pieces (includes potato chips, corn chips, pig skins, pretzels and trail mixes.)
Spices
Sandwich spreads
Sugar, sugar products and sugar substitutes
Syrups (including molasses and dietetic syrups and similar products)
Tea (bags, leaves, or instant only)
Vegetables and vegetable products (whether fresh, frozen, canned or dehydrated, excludes items on salad bars)
Vegetable oils
Water

II. Taxable Grocery Items:

The following grocery items are subject to Indiana sales tax:

Alcoholic beverages
Candy and confections
Chewing gum
Chocolate covered nuts
Cocktail mixes (dry or liquid)
Cooking utensils
Dietary supplements
Liver oils
Lozenges
Over the counter medicines
Paper products
Pet food and supplies
Soap and soap products
Soft drinks
Tobacco and tobacco products
Tonics
Toothpaste and mouthwash
Vending machine sales
Vitamins

Food sold in a heated state or heated by the seller is taxable.

Two (2) or more food ingredients mixed or combined by the seller for sale as a single item are taxable (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer so as to prevent food borne illness).

Food that is sold with eating utensils, provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws is taxable.

A. Candy

Candy is defined as preparations of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. The fact that these preparations contain ingredients, which if purchased separately, are considered exempt, does not exempt these preparations. The term does not include any preparation that contains flour listed on the label or any preparation that requires refrigeration.

Baking chocolate and similar products, which are intended for use in cooking, will be considered exempt food within the meaning of this information bulletin. The method used in packaging, distributing and displaying the product, including the kind and size of container used, will be considered in determining the primary use for which it is sold.

B. Soft Drinks

Soft drinks are defined as nonalcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) vegetable or fruit juice by volume.

C. Dietary Supplements

Sales of dietary supplements are subject to Indiana sales tax. The term "dietary supplements" means any product other than tobacco that:

(1) is intended to supplement the diet;

(2) contains one or more of the following ingredients:

(a) vitamins,
(b) minerals,
(c) herbs or other botanicals,
(d) amino acids,
(e) a dietary substance for use by humans to increase the total dietary intake,
(f) concentrates, metabolites, constituents, extracts or a combination of any of the above ingredients;

(3) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in the above form, is not represented as a conventional food and is not represented for use as a sole item of a meal or of the diet;

(4) is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required under 21CFR 101.36.

Dietary supplements include products such as Figurines, Carnation Diet Drinks, Slimfast, Slender, and Ensure.

Sales of food prescribed as medically necessary by a physician licensed to practice medicine in Indiana are exempt from the sales tax if dispensed by a registered pharmacist or sold by a licensed physician.

D. Prepared Food

(1) All food sold through a vending machine is subject to sales tax regardless of the type of food sold. The fact that the item qualifies as exempt food if sold in another manner does not make the purchase exempt if sold through a vending machine.

(2) All food items sold with eating utensils provided by the seller are taxable. Food shall be considered to be sold with eating utensils provided by the seller when the food is intended for consumption with the utensils provided. Taxable food therefore includes all food sold by an eating establishment that sells meals, sandwiches, or other food for consumption on or off the premises. Additionally, taxable food includes self-service food such as salad bars or drink islands. The presence of self-service utensils in a facility does not make otherwise exempt food taxable unless it is intended that the food be consumed with those utensils. Further, items provided solely pursuant to sanitary statutes or regulations and not for purposes of consumption do not qualify as utensils.

(3) All food items sold in a heated state are taxable. Food is also taxable if it was heated by the seller and is ready to eat without further cooking by the purchaser.

(4) Where 2 or more food ingredients are mixed or combined by the seller and then sold as a single food item, this item is taxable unless:

(a) the item is both sold in an unheated state by weight or volume as a single item and is sold without eating utensils, e.g., potato salad; or

(b) the item sold represents food that is only cut, repackaged, or pasteurized by the seller, e.g., vegetable trays; or

(c) the item sold contains raw animal foods that require cooking.

(5) Bakery items are not taxable unless they are:

(a) sold through a vending machine; or

(b) sold with eating utensils provided by the seller; or

(c) sold in a heated state.

(6) Food items sold by a seller whose proper primary NAICS classification is 311 food manufacturing (except subsector 3118, bakeries) are not taxable unless they are:

(a) sold through a vending machine; or

(b) sold with eating utensils provided by the seller; or

(d) sold in a heated state.

E. Unitary Transactions

When a taxable item is sold with a non-taxable item for a single price the entire purchase amount is subject to sales tax. If such items are separately priced and charged on the receipt, then only the amount charged for the taxable item is subject to sales tax.

III. Coupons, Redemption Certificates, and Bottle Deposits

Coupons or redemption certificates received by the seller as payment or partial payment of merchandise are considered as cash if such coupons are redeemable to the seller and were not extended by the seller.

Charges for bottle deposits are not subject to sales tax and should be removed from the total on which sales tax is computed. The refund of bottle deposits are not deductible when computing taxable receipts.

IV. Purchases by Retailers

Purchases by the retailer of merchandise for resale and material for non-returnable packaging of merchandise sold is exempt from sales tax.

Gifts and premiums given by a retailer are not purchases for resale and such items are subject to the sales tax when purchased by the retailers. The retailer cannot purchase cash registers, equipment cleaning supplies, cash register tapes, sales tickets and other similar items exempt since the retailer is the final consumer of these items. The retail merchant must pay sales tax on all such items. Sales of merchandise to employees are subject to sales tax on the full final sales price.

V. Registration and Record Keeping Requirements

All grocers and other general merchandise retailers are required to file an application for a registered retail merchant's certificate for each location. Upon application with the Department of Revenue and the payment of a twenty-five dollar ($25.00) fee, a permanent certificate will be issued which must be displayed on the premises at all times.

Indiana retail merchants are required to keep adequate books and records for both taxable and non-taxable sales for a period of three (3) years, plus the current year.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #47
SALES TAX
JULY 2005
(Replaces Information Bulletin #47 dated January 2003)

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SUBJECT: Auto Rental Excise Tax and Marion County Supplemental Auto Rental Excise Tax

REFERENCES: IC 6-6-9; IC 6-6-9.7

I. Auto Rental Excise Tax

An excise tax known as the auto rental excise tax, is imposed on rentals of passenger motor vehicles and trucks for periods of less than 30 days. The rental of a trailer is not subject to this tax. The tax is equal to 4% of the gross retail income received by the retail merchant. The person renting the vehicle is liable for the tax. The retail merchant is required to collect the tax and remit it to the Department of Revenue. The tax must be separately stated from the amount paid for the rental. Trucks which have a declared gross weight of over 11,000 pounds are exempt. The rental of a passenger motor vehicle or truck by a funeral director is exempt from the auto rental excise tax if the rental is part of the services provided by the director for a funeral.

Example: Mr. X rents a passenger motor vehicle (auto) for 10 days in August and returns the auto; then rents the same auto or another auto for 20 days in September. Both transactions are separate and each is taxable. The rental must be for 30 consecutive days, not 30 total days, in order to be exempt.

A separate return must be filed for each business location. Consolidated reporting is not allowed as each location's tax collections are to be credited to the location's taxing district. A monthly return must be filed even though no tax is due.

II. Marion County Supplemental Auto Rental Excise Tax

Marion County is authorized to impose a supplemental auto rental excise tax on the rental of passenger motor vehicles and trucks in the county for periods of less than thirty (30) days. The tax is imposed at four percent (4%) of the gross retail income derived from the rental.

Trucks exceeding a gross weight of eleven thousand (11,000) pounds are exempt from the tax. The rental of a passenger motor vehicle or truck by a funeral director is exempt from tax if the rental is part of the services provided by the director for a funeral. The temporary rental of a passenger vehicle or truck is exempt if the rental is made or reimbursed under a contract for mechanical breakdown insurance, automobile collision insurance, or provided while repair work is completed.

The original supplemental auto rental excise tax imposed at two percent (2%) expires on December 31, 2027. The additional two percent (2%) rate expires on December 31, 2040. All revenue collected from the tax shall be distributed monthly to the capital improvement board of managers operating in Indianapolis.

The return filed by the retail merchant must separate the amount of taxes collected at each location.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #67
SALES TAX
JULY 2005
(Replaces Bulletin #67 dated January 2003)

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SUBJECT: Professional Racing Team Engines and Chassis

REFERENCES: IC 6-2.5-5-37

INTRODUCTION:

Transactions involving the purchase, lease or operation of any part of a racing vehicle by professional racing teams in Indiana

are exempt from Indiana sales and use tax. This includes replacement and rebuilding parts or components for, and part of, a racing vehicle. Tires and accessories are not eligible for the sales and use tax exemption.

DEFINITIONS:

For purposes of IC 6-2.5-5-37:

Professional Racing Teams are those racing operations qualified to file under the Internal Revenue Code as a for-profit business. To qualify as a trade or business under IRS regulations, a taxpayer must be involved in the activity with continuity and regularity, and the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity, a hobby, or an amusement diversion does not qualify.

Engines are engines of vehicles intended for use in competition by the professional racing teams which purchase, lease, or operate the engines.

Chassis are chassis of vehicles intended for use in competition by the professional racing teams which purchase, lease, or operate the chassis. For purposes of this exemption, chassis does not include tires or accessories.

Tires are tires of vehicles intended for use in competition by the professional racing teams which purchase, lease, or operate the tires. Tires include tubes and exclude wheels.

Accessories includes instrumentation, telemetry, consumables and paint.

Chassis, engines, and their components combined are a complete racing vehicle minus the tires and accessories. Therefore, a racing vehicle purchased by a professional racing team is exempt from Indiana sales and use except for the tires and accessories. Tires and accessories purchased by professional racing teams for any purpose are subject to Indiana sales and use tax.

Exemption Procedure

Indiana based racing teams wishing to purchase items exempt pursuant to this exemption must register as a retail merchant with the Department by completing a business tax application (BT-1). A Taxpayer Identification Number (TID#) will be issued which the race team may use on a ST-105 exemption certificate.

A race team not located (based) in Indiana, which is already registered in its home state, may issue an Indiana exemption ST-105 by using its home state business tax identification number.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #91
INCOME TAX
JULY 2005
(Replaces Bulletin #91, dated August 2004)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Biodiesel Tax Credits

REFERENCES: IC 6-3.1-27

INTRODUCTION

SEA 378-2005, amended provisions concerning the biodiesel tax credits. These changes are effective retroactive to January 1, 2005. There are three separate tax credits related to biodiesel. The first is a credit for producing biodiesel; the second credit is for producing blended biodiesel; and the third is for the retail sale of blended biodiesel to an end user. The credits can be applied against the sales tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax.

I. BIODIESEL PRODUCTION TAX CREDIT

Biodiesel is defined as a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specification D6751-02 for biodiesel fuel (B100) blend stock distillate fuels.

A taxpayer that has been certified by the Indiana Economic Development Corporation (IEDC), and produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of one dollar ($1.00) multiplied by the number of gallons of biodiesel produced by the taxpayer during the taxable year and used to produce blended biodiesel.

The total amount of credits allowed may not exceed three million dollars ($3,000,000) for a taxpayer for all taxable years. This

amount may be increased to five million dollars ($5,000,000) with the prior approval of the IEDC.

II. BLENDED BIODIESEL TAX CREDIT

Blended biodiesel is defined as a blend of biodiesel with petroleum diesel, so that the percentage of biodiesel in the blend is at least two percent (2%) (B2 or greater). The term does not include biodiesel (B100).

A taxpayer that has been certified by the IEDC, and produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of two cents ($.02) multiplied by the number of gallons of blended biodiesel produced at the Indiana facility and blended with Indiana produced biodiesel.

The total amount of credits allowed may not exceed three million dollars ($3,000,000) for all taxpayers and all taxable years.

III. RETAIL SALE OF BLENDED BIODIESEL TAX CREDIT

A taxpayer that is a dealer and distributes at retail blended biodiesel is entitled to a credit against the taxpayer's state tax liability.

The credit allowed is one cent ($.01) multiplied by the number of gallons of blended biodiesel distributed at retail by the taxpayer in a taxable year.

The total amount of credits allowed may not exceed one million dollars ($1,000,000) for all taxpayers and all taxable years. A credit may not be taken for blended biodiesel distributed at retail after December 31, 2006.

IV. APPLICATION FORM AND APPROVAL OF THE TAX CREDIT

Taxpayers desiring to claim one of the three credits must file a claim for credit on Form BD-100 Biodiesel Credit Application which is available at the Department's web site (www.in.gov/dor/taxforms/f&eforms).

Taxpayers desiring to claim the credit for biodiesel production or for blending biodiesel must attach a copy of the certification from the IEDC. Retailers selling to end users are not required to be certified by the IEDC. The claim for credit must be completed by the taxpayer and filed with the Department for approval. The approved claim will be returned to the applicant. A copy of the approved claim and certification from the IEDC must be attached to any tax return on which the credit is taken. The application and claim can be filed on a monthly, quarterly, semi-annual or annual basis depending on which tax type the taxpayer is claiming the credit for and the filing frequency of the return for the type of tax. Failure to submit the approved BD-100 with the tax return will result in the claim being denied by the Department.

V. ADMINISTRATION OF THE TAX CREDITS

Qualifying taxpayers include pass through entities such as S Corporations, partnerships, limited liability companies, and limited liability partnerships. If the pass through entity is entitled to a credit but does not have state tax liability to which the credit can be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit in the same percentage as the person's distributive income to which the person is entitled.

If the credit is applied against the taxpayer's adjusted gross income tax, financial institutions tax, or insurance premiums tax, the credit shall be taken on the annual return filed by the taxpayer. If the credit is to be applied against a taxpayer's sales tax liability, the credit can be taken on a monthly basis. A taxpayer may not take a credit against sales tax collected as a retail merchant, but may take a credit against the use tax due on the taxpayer's taxable purchases.

If the credit claimed exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry over the excess credit to the following taxable years. A credit may be carried forward for up to six (6) taxable years following the taxable year in which the taxpayer was first entitled to claim the credit. The taxpayer is not entitled to a refund or carryback of any unused credits.

The total amount of credits allowed for biodiesel production, biodiesel blending, and ethanol production may not exceed twenty million dollars ($20,000,000) for all taxpayers and all taxable years. The IEDC shall determine the maximum amount for each type of credit, but the amount must be at least four million ($4,000,000) for each credit.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN # 92
INCOME TAX
JULY 2005
(Replaces Bulletin #92 dated August 2004)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Individual Earned Income Tax Credit (EITC) Procedures
REFERENCES: IC 6-3-4-8; IC 6-3.1-21
INTRODUCTION:

The Indiana earned income tax credit is effective until December 31, 2011. The statute requires the Department to allow an advance payment of the earned income tax credit through reduced income tax withholdings.

I. CALCULATION OF THE EARNED INCOME CREDIT

An individual is eligible for the Indiana earned income tax credit if the person is eligible for the federal earned income tax credit under Section 32 of the Internal Revenue Code. The Indiana credit amount is equal to six percent (6%) of the amount of federal earned income tax credit that the individual is eligible to receive and claim for the taxable year.

If the credit amount exceeds the taxpayer's actual tax liability for the taxable year, the excess credit shall be refunded to the taxpayer.

II. CALCULATION OF ADVANCE EARNED INCOME CREDIT PAYMENTS

An employee subject to withholding of Indiana adjusted gross income tax may request his/her employer to reduce the amount of adjusted gross income tax withheld as an advance payment of the Indiana earned income tax credit.

To qualify for the advance earned income tax credit payment, the individual must be an Indiana resident, have a federal Form W-5 on file with the employer, and receive federal advance earned income tax credit payments from his/her employer.

To request an Indiana advance earned income tax credit payment, the employee must complete and sign Form WH-5, which the employer is required to maintain for three (3) years after the year that the form is completed by the employee.

The employer shall advance to the employee six percent (6%) of the federal advance earned income tax credit payment, but is not required to advance the credit payment if the amount is less than one dollar ($1) per pay period.

III. REPORTING OF ADVANCE EARNED INCOME TAX PAYMENT AMOUNTS BY THE EMPLOYER

The total amount that the employer advances to all employees shall be reported when the employer remits the Indiana adjusted gross income tax withheld. The advance shall be deducted from the total tax withheld for all employees when calculating the net remittance that the employer is required to remit to the Department.

The total annual amount that the employer advances for the earned income tax credit payments will be reported on the Form WH-3, Annual Withholding Tax Reconciliation Return.

The total amount advanced to individual employees will be shown on the Form W-2 Wage and Tax Statement in the box directly beneath box 19, with 'INADV' directly beneath box 20.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE
INFORMATION BULLETIN #93
INCOME TAX
JULY 2005
(Replaces Bulletin #93, dated August 2004)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Ethanol Production Tax Credit
REFERENCES: IC 6-3.1-28
INTRODUCTION

There is a tax credit for ethanol production. The credit can be applied against the sales tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax.

I. ETHANOL PRODUCTION TAX CREDIT

Ethanol is defined as agriculturally derived ethyl alcohol. A taxpayer that produces ethanol at a facility located in Indiana that has the capacity to produce at least forty million (40,000,000) gallons of ethanol a year or which after December 31, 2003 increased its ethanol production capacity by at least forty million (40,000,000) gallons per year, may qualify for the credit.

A taxpayer that produces ethanol is entitled to a credit against the taxpayer's state tax liability equal to the product of twelve and one-half cents ($.125) multiplied by the number of gallons of ethanol produced at the Indiana facility.

The total amount of credits allowed per taxpayer may not exceed a total of three million dollars ($3,000,000) for all taxable

years. This total can be increased to five million dollars ($5,000,000) for all taxable years with the prior approval of the Indiana Economic Development Corporation. The total credits awarded for biodiesel production, blended biodiesel production and ethanol production may not exceed twenty million dollars ($20,000,000).

II. ADMINISTRATION OF THE TAX CREDIT

Taxpayers desiring to claim the ethanol production tax credit must file a copy of the Indiana Economic Development Corporation's certificate finding that the taxpayer is eligible for the credit.

III. PASS THROUGH ENTITIES

Qualifying taxpayers include pass through entities such as S Corporations, partnerships, limited liability companies, and limited liability partnerships. If the pass through entity is entitled to a credit, but does not have state tax liability to which the credit can be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit in the same percentage as the person's distributive income to which the person is entitled.

IV. CLAIMING THE CREDIT

If the credit is applied against the taxpayer's adjusted gross income tax, financial institutions tax, or insurance premiums tax, the credit shall be taken on the annual return filed by the taxpayer. If the credit is applied against a taxpayer's sales tax liability, the taxpayer is required to obtain a direct pay permit in accordance with IC 6-2.5-8-9. A taxpayer may not take a credit against sales tax collected as a retail merchant, but may take a credit against use tax due on its taxable purchases.

If the credit claimed exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry over the excess to the succeeding taxable years. The taxpayer is not entitled to a refund or carryback of any unused credits.

John Eckart
Commissioner

DEPARTMENT OF STATE REVENUE

04990062.LOF

LETTER OF FINDINGS NUMBER: 99-0062
Sales and Use Tax
For the Tax Period 1995-1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Sales and Use Tax- Imposition of Use Tax on Grating

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-3-2 (a), IC 6-2.5-5-2-IC 6-2.5-5-3 (b), 45 IAC 2.2-5-10(c),*Gross IncomeTax Division v.National Bank and Trust Co.,* 79 N.E. 2d 651(Ind. 1948), *Indiana Department of Revenue v. American Dairy of Evansville, Inc.*, 338 N.E. 2d 698, (Ind. App. 1975), *Indiana Department of Revenue v. Cave Stone*, 457 N.E. 2d 520, (Ind. 1983).

The taxpayer protests the assessment of use tax on grating**.**

2. Sales and Use Tax-Imposition of Use Tax on Applied Air System

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-3 (b), 45 IAC 2.2-5-8(c), 45 IAC 2.2-5-8(g).

The taxpayer protests the imposition of use tax on an applied air system.

3. Sales and Use Tax-Imposition of Use Tax on Scale

Authority: IC 6-2.5-5-3 (b), 45 IAC 2.2-5-10(d),

The taxpayer protests the imposition of use tax on a scale.

4. Sales and Use Tax-Refund Items

Authority: IC 6-2.5-3-2(a), IC 6-8.1-9-1(a), IC 6-8.1-5-4.

The taxpayer protests the disallowance of certain refund claims.

5. Sales and Use Tax-Imposition of Use Tax on Decals

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-27,

The taxpayer protests the assessment of use tax on decals.

6. Sales and Use Tax-Imposition of Use Tax on Exhaust and Wall Fans.

Authority: IC 6-2.5-3-2(a), IC 6-2.5-5-3(b), 45 IAC 2.2-5-8(c)(4)(B).

The taxpayer protests the imposition of use tax on exhaust and wall fans.

7. Sales and Use Tax-Imposition of Use Tax on Equipment Purchased from Reeder Heating

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-3 (b).

The taxpayer protests the assessment of use tax on an item purchased from Reeder Heating.

8. Tax Administration-Imposition of 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 that processes food products. After an audit for the tax period 1995-1997, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest, and penalty. The taxpayer agreed with some of the assessed items and protested the remainder of the assessment. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax- Imposition of Use Tax on Grating

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes an excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana if sales tax was not paid at the time of purchase. IC 6-2.5-3-2 (a). In *Indiana Department of Revenue v. Cave Stone*, 457 N.E. 2d 520, (Ind. 1983) the Indiana Supreme Court found that a piece of equipment qualifies for the manufacturing exemption if it is essential and integral to the production process. 45 IAC 2.2-5-10 (c) further describes manufacturing machinery and tools as exempt if they have an immediate effect on the property in production.

There are a number of exemptions from the use tax pursuant to the statute. All exemptions must be strictly construed against the party claiming the exemption. *Gross Income Tax Division v. National Bank and Trust Co.,* 79 N.E. 2d 651 (Ind. 1948).

The taxpayer contends that many items, including the bar grating, qualify for exemption pursuant to one of two statutory provisions. First, the items qualify pursuant to the following provisions of IC 6-2.5-5-2 (a):

> Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

The taxpayer argues that the items could also qualify for exemption pursuant to the following provisions of IC 6-2.5-5-3 (b):

> Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining; or finishing of other tangible personal property.

Both exemptions share the basic elements that the item must be "directly used in direct production". Therefore, the Indiana Court of Appeals found in *Indiana Department of Revenue v. American Dairy of Evansville, Inc.*, 338 N.E. 2d 698, (Ind. App. 1975) that the court cases and interpretations of the manufacturing exemption also apply to the agricultural production exemption.

The taxpayer's first protest concern's the department's assessment of use tax on bar grating that is part of the foundation of the tomato dock. The taxpayer contends that this bar grating is part of the exempt equipment used to unload and clean the fresh tomatoes. The bar grating does not, however, have an immediate effect upon the processing of the tomatoes. It would be possible to clean the tomatoes without the bar grating. Rather, the bar grating allows superfluous water, dirt, and cleaning agents to leave the cleaning area. This use does not qualify the bar grating for exemption from the use tax.

FINDING

The taxpayer's protest to the assessment of use tax on the bar grating is denied.

2. Sales and Use Tax-Imposition of Use Tax on Applied Air System

DISCUSSION

The taxpayer also protests the imposition of use tax on an applied air system pursuant to IC 6-2.5-3-2 (a). The taxpayer contends that this system is directly used in the direct production of its product and qualifies for exemption found at IC 6-2.5-5-3 (b).

This air system is used to maintain the temperature in a storage area where cans of product are stored. The taxpayer contends that the air system is necessary to preserve the integrity of the product. Approximately sixty per cent (60%) of the cans stored in the area with the subject air system are unlabeled. If the temperature were to drop too low in the storage area, water would condense on the unlabeled cans, causing the cans to rust. The taxpayer claims that it can not sell rusted cans.

The taxpayer's product is tomatoes and tomato products. The taxpayer packages those products in cans. For the air system to qualify for exemption it must be directly used in the direct production of the tomato products. Pursuant to 45 IAC 2.2-5-8(c) it must have "an immediate effect on the article being produced." This requirement is further described at 45 IAC 2.2-5-8(g), which states:

> "Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax.... The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not in itself mean that the property "has an immediate effect upon the article being produced:. Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

The air system is not functionally interrelated with the processing of tomatoes and tomato products. The air system affects the cans, the packaging of the taxpayer's product rather than the product itself. Anything done to affect the cans is done outside the direct production process of producing tomato products. Since the air system affects the cans rather than the tomato products, it is not directly used in the direct production of tomato products. The air system does not qualify for exemption.

FINDING

The taxpayer's protest is denied.

3. Sales and Use Tax-Imposition of Use Tax on Scale

DISCUSSION

The taxpayer also protests the assessment of use tax pursuant to IC 6-2.5-3-2 (a) on a scale that weighs the produce prior to the cleaning of the tomatoes. Immediately after arriving at the processing facility, the truck loaded with tomatoes drives onto this scale to be weighed. Then the weight of the truck is deducted from the total weight to determine the weight of tomatoes in that delivery. The taxpayer argues that the scale is directly used in the direct production of tomato products and therefore qualifies for exemption from the use tax pursuant to the directly used in direct production manufacturing exemption found at IC 6-2.5-5-3 (b)

To qualify for this exemption, the scale must be used during the production process. The standard for determining the parameters of the direct production process are found at 45 IAC 2.2-5-10(d), which states:

> Pre-processing and post-processing activities. "Direct use" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the processing or refining has altered the item to its completed form, including packaging, if required.
>
> (1) The production of pharmaceutical items is accomplished by a process which begins with weighing and measuring out appropriate ingredients, continues with combining and otherwise treating the ingredients, and ends with packaging the items. Equipment used to transport raw materials to the manufacturing plant is employed prior to the first operation or activity constituting part of the integrated production process and is taxable. Weighing and measuring equipment and all equipment used as essential and integral part of the subsequent manufacturing steps, through packaging, qualify for exemption.

The taxpayer contends that it uses the subject scale in the same exempt manner as the scale in the example. The department disagrees with the taxpayer's comparison of the subject scale and the scale in the example. The scale in the example combines weighing and measuring in one step, the first step of the production process. Therefore, the use of the scale in the example is integral and essential to the process of manufacturing pharmaceuticals. The taxpayer's scale is not used for specific and precise measurements of ingredients in the taxpayer's production process. It is not an integrated system to weigh and measure. Rather, the subject scale is used to weigh all the tomatoes in the truck prior to the first step in the production process, the cleaning of the tomatoes. The scale does not measure the tomatoes other than determining the gross weight. The taxpayer's use of the scale is more analogous to a scale to weigh the total amount of a chemical raw material at the time of its delivery to the plant prior to the precise weighing and measuring which starts the process of producing pharmaceuticals. A scale used at a pharmaceutical company in the same manner as the taxpayer's scale is used would also be taxable.

FINDING

The taxpayer's protest to the tax assessed on the scale is denied.

4. Sales and Use Tax-Refund Items

DISCUSSION

Pursuant to IC 6-8.1-9-1(a), the taxpayer claimed refunds of use taxes paid on several items. The taxpayer also contended that it presented several items such as pest control and boiler parts to the department for exemption that were not found to be exempt in the final assessment.

The taxpayer filed two separate and frequently overlapping refund claims for the same years as the audit. The taxpayer also had one employee make the original use tax accrual decision and then, in the numerous cases where the deciding employee's supervisor disagreed with the decision, the supervisor would claim a credit against the use tax accrual for a later month. Review of the taxpayer's records indicated that there were numerous items that were claimed more than once and several items where credit was claimed three times.

The taxpayer has the responsibility to keep adequate records to substantiate its claims pursuant to IC 6-8.1-5-4. The taxpayer was unable to offer adequate documentation to sustain its burden of proving that the refunds were improperly denied.

FINDING

The taxpayer's protest is denied.

5. Sales and Use Tax-Imposition of Use Tax on Decals

DISCUSSION

The taxpayer also protests the assessment of use tax on decals applied to trucks owned by a related transportation company.

The decals are placed on the bodies of tractor-trailers belonging to the taxpayer's dedicated common carrier. The decals are colorful, conspicuous, and expensive. They contain pictures, the taxpayer's name and the required common carrier number.

Pursuant to IC 6-2.5-3-2 (a), the use of the decals is subject to use tax unless the use qualifies for a statutory exemption. The taxpayer contends that the use of these decals qualifies for exemption pursuant to the following provisions of IC 6-2.5-5-27:

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.

The taxpayer ordered these decals. The invoices indicate that the decals were billed to the taxpayer. The taxpayer's books and records indicate that the taxpayer paid for the decals and charged them to advertising expense. The journal entry indicating that the related transportation corporation later reimbursed the taxpayer for the purchase of the decals does not change the reality that the actual transaction was between the taxpayer and seller of the decals. The taxpayer purchased the decals without paying sales tax on the transaction. The taxpayer used the decals by placing them on the related corporation's trucks and benefited from the advertising and deliveries. The taxpayer did not use or consume the decals in the providing of public transportation for its products. Whether or not the related corporation could purchase the decals exempt is irrelevant. The taxpayer and the related corporation enjoy many benefits by being separate corporations. They must also assume the liabilities associated with being separate corporations. The taxpayer's use of the decals does not qualify for the public transportation exemption.

FINDING

The taxpayer's protest is denied.

6. Sales and Use Tax-Imposition of Use Tax on Exhaust and Wall Fans.

DISCUSSION

The taxpayer also protests the department's assessment of use tax on exhaust and wall fans pursuant to IC 6-2.5-3-2(a). The taxpayer contends that these exhaust and wall fans qualify for the directly used in direct production exemption pursuant to IC 6-2.5-5-3(b).

The exhaust and wall fans are used in various areas where the processing of the product causes significant heat. The taxpayer contends that OSHA requires the fans and the employees could not work without them. Therefore, they qualify for exemption as essential and integral to the production process.

The department disagrees. Pursuant to 45 IAC 2.2-5-8(c)(4)(B), the department has consistently denied the exemption of exhaust and wall fans since they are used for the employees' comfort and well being. They are not integral and essential to the production process.

The taxpayer also protests that one imposition of use tax was actually on a service fee paid to the installer of the fan. Pursuant to the provisions of IC 6-2.5-3-2(a) the use tax is only imposed on the use of tangible personal property, not services except in certain specifically defined instances. The invoice stated that the cost was for "mark-up" on the cost of the equipment. That "mark-up" is part of the fan's price. The use tax is computed on the price of the tangible personal property sold. The taxpayer failed to prove that the imposition was actually on a service associated with installing the fan rather than the cost of the fan. Therefore, the disputed amount of the "mark-up" is taxable.

FINDING

The taxpayer's protest is denied.

7. Sales and Use Tax-Imposition of Use Tax on Air Conditioning System

DISCUSSION

Pursuant to IC 6-2.5-3-2(a), the department assessed use tax on an air conditioning system. The taxpayer contends that this equipment acted as an air filtration system that qualified for the directly used in direct production equipment exemption pursuant to IC 6-2.5-5-3(b).

The equipment was installed in the area where catsup is put into clear plastic bottles. The temperature in this area is not high enough to kill germs. Therefore, the taxpayer argued that it needed to install the air conditioning system to create a clean, aseptic environment to filter out contaminating particles and bacteria.

The taxpayer did not provide sufficient documentation to substantiate its claim that the catsup bottling area was a clean room with all air flowing in and out through the subject air system. Although the system may retard the growth of bacteria, there was no evidence that it meets the standards of an air filtration system for a clean room. The air conditioning system provides for the comfort and well being of the employees. It is subject to the use tax.

FINDING

The taxpayer's protest is denied.

8. Tax Administration-Imposition of 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.

During the tax period, the taxpayer purchased without paying the sales or use tax on many clearly taxable items such as magazine subscriptions, filing cabinets, books, business cards, and office supplies. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04990183.LOF

LETTER OF FINDINGS NUMBER: 99-0183
Withholding Tax and Sales Tax
Responsible Officer
For the Tax Period August 1, 1992-December 31, 1994

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 Use and Withholding Tax-Responsible Officer Liability

Authority: IC 6-3-4-8(f), 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 and withholding taxes.

STATEMENT OF FACTS

The taxpayer was an incorporator, shareholder, and officer of a corporation that did not remit the proper amount of sales and withholding taxes to Indiana for the tax period August 1, 1992-December 31, 1994. The taxpayer was personally assessed for the taxes, penalties and interest. The taxpayer protested these assessments and a hearing was scheduled. The taxpayer did not appear for the hearing. This Letter of Findings was based upon the information in the file.

1. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes 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."

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that assessment is incorrect. IC 6-8.1-5-1 (b).

The issue to be determined in this case is whether or not the taxpayer was a person who was responsible for remitting the corporate trust taxes to the Indiana Department of Revenue. The taxpayer failed to appear at the scheduled hearing or send in any documentation other than a personal letter indicating that he did not think he was personally responsible for remitting the corporate trust tax liabilities to the state. This letter is inadequate to overcome the presumption that the tax assessment is correct. Therefore, the taxpayer failed to sustain his burden of proving that the trust taxes were incorrectly assessed against him personally.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

01990467.LOF

LETTER OF FINDINGS NUMBER: 99-0467
INDIVIDUAL INCOME TAX
For the years 1996, 1997, and 1998

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Individual Income Tax—Assessment of Unreported Indiana Income

Authority: IC 6-8.1-5-1(b); IC 6-3-2-1(a); IC 6-3-2-2(a).

Taxpayer protests the assessment of income tax on income earned in Indiana.

STATEMENT OF FACTS

Taxpayer, a nonresident, is the sole shareholder of an S-corporation that does landscape architecture and installs plants and construction materials. The business did contract landscaping in Indiana. Taxpayer did not file Indiana income tax returns for the income earned in Indiana during the years at issue. The Department conducted an audit of the business and issued income tax assessments against Taxpayer. Taxpayer filed a protest and a hearing was scheduled for April 12, 2005. Taxpayer was sent a letter by first class United States mail notifying her of the hearing date. Taxpayer did not appear before the Department at the hearing. This letter of findings is written based upon the information contained within the case file.

I. Individual Income Tax—Assessment of Unreported Indiana Income

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 6-3-2-1(a) imposes an income tax on nonresidents on the adjusted gross income derived from sources within Indiana. IC 6-3-2-2(a) defines "adjusted gross income derived from sources within Indiana" to mean and include income from doing business in Indiana as well as income from a trade or profession conducted in Indiana. It also includes compensation for labor or services rendered within Indiana, and income from intangible personal property if the receipt from the intangible is attributable to Indiana. The business in which Taxpayer is a sole shareholder did business in Indiana and earned income in Indiana; it did contract landscaping in Indiana. Taxpayer is required to declare and pay income tax on that Indiana income that passed through to her.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-990468.LOF

LETTER OF FINDINGS NUMBER: 99-0468
Corporate Income Tax
For the Years 1990-1995

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.

ISSUE

I. Gross Income Tax—Calculation of Sales Receipts

Authority: IC 6-8.1-5-1(b); IC 6-8.1-5-1(a); IC 6-2.1-1-2; IC 6-2.1-1-11; IC 6-2.1-1-13; IC 6-2.1-2-2; IC 6-2.1-3-3.

Taxpayer protests the calculation of Indiana sales receipts.

STATEMENT OF FACTS

Taxpayer is a wholly-owned domestic subsidiary of a foreign parent company located outside the United States. Taxpayer is a general trading company whose business is to import and export goods and services among countries around the world. One enterprise operated by Taxpayer is the sale of consumer batteries in the United States and Canada. To facilitate the sale of its batteries, Taxpayer has entered into a consignment agreement with Consignee. Consignee is responsible for the distribution and marketing of the consumer batteries.

Taxpayer purchases batteries from manufacturers in Hong Kong, Korea, and Taiwan; pays the manufacturers; arranges for export, transit, customs clearance, and initial delivery to Consignee. Taxpayer owns warehouses in the United States and Canada.

One of the warehouses is located in Indiana. Consignee uses Taxpayer's warehouses to store and distribute the batteries. Batteries purchased in Hong Kong are delivered to the Indiana warehouse. Batteries purchased in Korea and Taiwan are delivered to Taxpayer's facility in California for packaging.

All delivered batteries are received into Consignee's Inventory Control System for tracking. Consignee is required to submit to Taxpayer various reports tracking inventory, sales, and returns of product. Taxpayer retains title to the batteries until Consignee disposes the inventory—through sales, returns, damage, or loss. Taxpayer records all deliveries of inventory to Consignee as having occurred in Indiana—despite the fact that inventories were delivered to various warehouses throughout the United States and Canada. Consignee is responsible for tracking the ultimate disposal of inventory; all Taxpayer tracks is the delivery of the inventories into the hands of Consignee for marketing and sale.

The Department did an assessment based on the best information available—a BIA assessment. The parties dispute the amount of sales subject to Indiana Gross Income tax. Taxpayer believes that the Department has overstated Taxpayer's Indiana sales. The Department had assessed gross income tax on a proportion of the inventory actually held by the Consignee in the Indiana warehouse. Taxpayer contended that despite the fact that it records all inventories as passing into Consignee's control in Indiana, only a portion of the inventory is disposed in Indiana—making the Gross Income Tax calculation less than all the inventory held by Consignee.

I. Gross Income Tax—Calculation of Sales Receipts

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 6-8.1-5-1(a) permits the Department to make an assessment of taxes based on the best information available. Taxpayer stated at the hearing that documents from nearly 10 years ago related to the sales from it to Consignee have been difficult to obtain, explaining that for its purposes, Taxpayer does not track the domestic movement of the goods; the recording of all inventory passing into the control of Consignee in Indiana is convenient because it allows Taxpayer to record the gross transfer of inventory. The details of distribution are the concern of Consignee. Taxpayer further explained that because title to the goods does not pass from Taxpayer to the customer until sold, the breakout report of sales is the most indicative of its gross income in Indiana.

The gross income tax, which has been repealed, defined gross income as all gross receipts a taxpayer receives. *See* IC 6-2.1-1-2 [repealed]. IC 6-2.1-1-11 [repealed] defined "receives" to mean the possession of income and the payment of a taxpayer's expense. IC 6-2.1-1-13 [repealed], defined "taxable gross income" as the remainder of income after exemptions and deductions. IC 6-2.1-2-2 [repealed] imposed the gross income tax on the entire gross income of a taxpayer who is a resident or domiciliary of Indiana and the taxable gross income derived from activities, businesses, or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana.

Taxpayer does not contend it owes no gross income tax; the issue is how much it owes. IC 6-2.1-3-3 [repealed] exempted from taxation, income derived from business conducted in interstate commerce. Given that Taxpayer owned warehouses across the United States and Canada, and given that Taxpayer held title of the goods until it was sold to the end consumer, Taxpayer is liable for sales made in Indiana. The issue arises as to the reliability of Taxpayer's documentation of those sales.

Taxpayer conceded that Consignee maintained the documentation of transfers of inventory between the warehouses and the documentation of sales. Because IC 6-8.1-5-1(b) presumes that the Department's assessment is accurate, Taxpayer has the burden to show the inaccuracies of that assessment. Taxpayer stated at the hearing that Consignee maintained a breakout report of the sales made in the different states. At the hearing, Taxpayer presented to the Department a listing of states in which income tax returns were filed and next to the state name was a percent—representing the percentage of national sales made in that state. The worksheet did not list all states in the United States. Only a percentage of sales for each of those states was listed; no supporting documentation to demonstrate how the percentages were calculated was provided to the Department. The worksheet stated that the average percentage of overall sales made to Indiana customers for 1993, 1994, 1995, and 1996 was 3.178%. That average was calculated by Taxpayer from these yearly representations of sales in Indiana: 1993, 3.265%; 1994, 3.394%; 1995, 3.092%; and 1996, 2.959%. Taxpayer states that it had problems receiving records from Consignee to document 1990, 1991, and 1992. The information presented by Taxpayer to the Department has been considered but the Department does not find the evidence to be reliable and credible—because the percentages are mere statements not supported by documents to substantiate the calculations.

The Department did an assessment based on best information available. The audit report calculated an estimated annual turnover of inventory of 3.5 times. Taxpayer agreed at the hearing to the calculation. The audit report calculated estimated sales subject to gross income tax of $7,733,313 for 1993; $6,466,194 for 1994; and $6,058,574 for 1995. Taxpayer agreed at the hearing to those calculations. The assessments were based on the total sales made to Consignee and the breakout percentage of sales made to Indiana customers; the assessment amounts are supported. Taxpayer has not provided credible evidence to rebut the assessment amounts.

FINDING

For the reasons discussed above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20020450.LOF

LETTER OF FINDINGS NUMBER: 02-0450
ADJUSTED GROSS INCOME TAX PENALTY
For Year 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 – Penalty Waiver

Authority: IC 6-8.1-10-2.1; 45 IAC15-11-2

Taxpayer protests the assessment of penalty related to an audit assessment.

STATEMENT OF FACTS

Taxpayer was assessed adjusted gross income tax as a result of a department audit. The audit was hindered by taxpayer's poor records and taxpayer's refusal to sign for an extension of time for the auditor to complete the audit. As a result of these factors, the auditor prepared a best information available estimate of taxpayer's liability. Taxpayer then requested and cooperated on a supplemental audit that reduced the original assessment, but included a penalty based on taxpayer's poor records and errors in its preparation of its Indiana return. Taxpayer paid the assessment but protested the penalty assessment.

I. Adjusted Gross Income Tax – Penalty Waiver

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;
(2) judicial precedents set by Indiana courts;
(3) judicial precedents established in jurisdictions outside Indiana;
(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case. 45 IAC 15-11-2.

Taxpayer argues that the penalty should be waived because the company's deficiency was due to reasonable cause and not due to willful neglect. The original audit resulted in a best information available estimate of taxes due because of taxpayer's poor records. The supplemental audit concluded that most of the remaining assessment arose from poor records and errors in taxpayer's preparation of their original returns. Taxpayer has not demonstrated ordinary business care and prudence in carrying out its duties.

FINDINGS

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

04-20030201.LOF

LETTER OF FINDINGS: 03-0201
Indiana Gross Retail Tax
For Tax Period July 2002 – September 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of

publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail Tax—Uncollectible Receivables Deduction

Authority: IC 6-2.5-6-9

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 6-8-10-2.1; 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."

A simplified example: Taxpayer sells a used car on credit for $15,000. At the time of sale, taxpayer includes $15,000 in its reportable tax base. After making $3,000 in payments, the customer defaults. Taxpayer repossesses the used car and "writes off" the remaining account receivable as a bad debt. Assuming the used car (at the time of repossession) has a fair market value of $10,000, taxpayer has "realized" an uncollectible receivable (bad debt) of $2,000. Pursuant to IC 6-2.5-6-9, taxpayer may deduct the $2,000 from its reportable tax base.

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.* 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 provides:

> (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.

Analysis

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 assure 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). 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.

FINDING

Taxpayer's protest is denied.

II. Tax Administration: Negligence Penalty

The Department may impose a ten percent (10%) negligence penalty. IC 6-8-10-2.1 and 45 IAC 15-11-2. Taxpayer's failure to timely file income tax returns, generally, will result in penalty assessment. IC 6-8.1-10-2.1(a)(1). The Department, however, may waive 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

02-20030254.LOF

LETTER OF FINDINGS NUMBER: 03-0254
Adjusted Gross Income Tax
For the Year 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Business / Non-business Classification – Adjusted Gross Income Tax.

Authority: Ind. Code § 6-3-2-2; Ind. Code § 6-3-1-20; Ind. Code § 6-3-1-21; 45 IAC 3.1-1-29; 45 IAC 3.1-1-30; *May Department Store Co. v. Indiana Dept. of State Revenue*, 749 N.E.2d 651, 656 (Ind. Tax 2001); *Hoechst Celanese Corp. v. Franchise Tax Board,* 22 P.3d 324 (Cal. 2001).

Taxpayer protests the Department's assessment of adjusted gross income tax with respect to taxpayer's sales of several businesses.

II. Tax Administration-Limitations on refunds and protests

Authority: Ind. Code § 6-8.1-5-2; Ind. Code § 6-8.1-9-1

Taxpayer's protest was filed within the statutory protest period for federal audit adjustments that taxpayer received, but not within three years of its initial tax return.

STATEMENT OF FACTS

Taxpayer, an out-of-state company, is a business engaged in various media operations. For several years prior to the merger, taxpayer had also owned several Industry A entities, but had been phasing itself out of that business. During Year X, taxpayer

acquired another media company, which was engaged in five lines of business, including Industries B and C. Taxpayer had only wished to acquire these lines of business from the media company; however, due to adverse federal tax consequences, taxpayer and media company agreed to allow taxpayer to acquire the stock of the media company. As a result, taxpayer now owned both properties in its two normal lines of business, Industry A in which taxpayer was phasing out its operations, and three lines in which it had no prior experience in management. Thereafter, taxpayer sold its interest in various properties. In the year in question, the properties sold included taxpayer's entire interest in taxpayer's Industry D, in which taxpayer had not previously engaged prior to merger. Taxpayer also disposed of its Industry E operations in two states in which the taxpayer had limited operations, though it kept Industry E operations in a third state. Taxpayer also sold various Industry B operations and sold its remaining Industry A operations. Taxpayer retained the proceeds from all sales or dispositions and did not distribute such proceeds to shareholders.

Initially, taxpayer filed a 1998 return claiming that all of its income was in fact business income. However, taxpayer went through a federal audit which resulted in an increase in income. The Department assessed tax based on these adjustments. However, taxpayer filed a protest to the assessment, and subsequently an amended return. In its protest, taxpayer claimed that the proceeds from the sale of the various properties were non-business income, and therefore allocable to other states for Indiana adjusted gross income tax purposes. This protest was filed within the allowable time for a protest based on federal adjustments, but not for returns generally.

I. Business / Non-business Classification – Adjusted Gross Income Tax

DISCUSSION

In reviewing taxpayer's amended adjusted gross income tax returns, the audit reclassified certain of taxpayer's income. The audit concluded that taxpayer incorrectly classified gains from the sale of several businesses as "non-business income." The audit reclassified all four of these income categories as "business income."

For purposes of determining a taxpayer's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three factor formula. Ind. Code § 6-3-2-2(b). In contrast, non-business income is allocated to Indiana or it is allocated to another state. Ind. Code § 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 2001).

Taxpayer's argument, that all four of these income categories are "non-business income," is significant because if taxpayer is correct, all this income is allocated elsewhere and is not relevant in calculating taxpayer's Indiana adjusted gross income tax.

The benchmark for determining whether income can be apportioned is the distinction between "business income" and "non-business income." That distinction is defined by the Indiana Code as follows:

> The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operation. Ind. Code § 6-3-1-20.

"Non-business income," in turn, "means all income other than business income." Ind. Code § 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 Ind. Code § 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* Ind. Code § 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 and 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 of by the taxpayer in a process integral to taxpayer's regular trade or business operations. *Id*. In *May*, the Tax Court defined "integral" as "part of or [a] constituent component necessary or integral to complete the whole." *Id*. at 664-65. The court concluded that petitioner retailer's sale of one of its retailing divisions was not "necessary or essential" to the petitioner's regular trade or business because the sale was executed pursuant to a court order that benefited a competitor and not the petitioner. *Id*. at 665. In effect, the court determined that because the petitioner was forced to sell the division in order to reduce its competitive advantage, the sale was not integral to the petitioner's own business operations. *Id*. Therefore, the proceeds from the division's sale were not business income under the functional test. *Id*.

A. Industry D

Taxpayer argues that its income from the sale of one of its acquired businesses, a company engaged in Industry D, is considered non-business income and therefore should be subject to allocation rather than apportionment.

With respect to the transactional test, taxpayer's income was not sufficiently recurring to constitute business income within the transactional test stated above. Further, under the functional test, the sale was not of assets which were integral parts of the taxpayer's regular trade or business operations. Taxpayer had only acquired the business as a necessary part of an acquisition of other desired assets.

While the fact that taxpayer did retain the earnings from the sale for its own overall business purposes gives rise to an inference that the income derived from the disposition is actually business income, taxpayer's overall operations did not include Industry D. Accordingly, the income derived from the sale is not business income.

Taxpayer has acknowledged that at least some portion of the gain with respect to the sale was properly allocable to Indiana, as opposed to taxpayer's original return which listed all of the income as allocable to non-Indiana sources. The exact amount is subject to further audit review.

B. Industry A

Taxpayer also argues that the sale of Industry A operations in three large urban markets was non-business income under both the transactional and functional tests. In effect, taxpayer argues that the sale of the Industry A operations does not meet the transactional test because taxpayer's business does not normally consist of the sale of entire lines of business. Further, taxpayer argues that the transaction does not meet the functional test because the Industry A operations were not an integral part of the company's overall enterprise.

With respect to the transactional test, it is unclear whether taxpayer's income was sufficiently recurring to constitute business income within the transactional test stated above. With respect to the functional test, taxpayer voluntarily left Industry A to concentrate on Industries B and C. As such, the sale was a voluntary business decision on the part of the corporation, a refocusing of its overall operations, unlike the forced sale of the division in *May* that the court noted was done to reduce its market concentration in its line of business. Further, the ownership, management and operation of Industry A operations were part of taxpayer's overall enterprise for decades.

Also, taxpayer retained the earnings from the sale of the Industry A operations. The retention of earnings by taxpayer allowed the business to further focus on its main enterprises-Industries B and C. Combined with the other factors above, taxpayer's Industry A operations constituted an integral part of taxpayer's overall business for several years, and accordingly the disposition of that business resulted in business income.

Finally, it its worth noting that in Indiana, as in other states, taxpayer had claimed expenses and depreciation related to these businesses as business expenses, reducing its income apportionable to Indiana. In *Hoechst Celanese Corp. v. Franchise Tax Board,* 22 P.3d 324, (Cal. 2001), a company had established a retirement pension plan for its employees. The company had no rights to the surplus assets until the termination of the pension plan and satisfaction of benefits. *Id.* at 328-329. In 1983, the company had decided to recapture the surplus in order to prevent its use in a potential takeover bid, and accordingly divided the original pension plan and trust into two separate pension plans and trusts, one for active employees and one for retirees. *Id.* at 329. Then, the company purchased annuities to cover the pensions for retired employees, and terminated the trusts. This triggered the reversion of a sizable surplus to the company, which the company maintained in its general fund. *Id.* at 329-330. In deciding that the income in question was business income, the court noted that the pension plan was part of the company's overall strategy in finding and maintaining employees for its business operations. Further, with respect to the income, the court noted that the taxpayer had received a deduction for its pension contributions for all the years. Accordingly, the court noted, the recapture of income resulting from that deduction was equitable in light of the circumstances. *Id.* at 343.

In noting taxpayer's business operations, taxpayer had received the benefit of its Industry A operations to its overall corporate

operations for several years, and during those years had received tax deductions apportionable to Indiana for its expenses and depreciation. Accordingly, just as the court in *Hoechst Celanese* had noted that taxpayer's prior treatment of expenses effectively dictated a recapture of those benefits on the same theory when taxpayer realized income, here taxpayer has realized business income on the sale of the assets from which it had derived business deductions.

C. Smaller Industry B Operations

Taxpayer argues that the sales of five smaller Industry B operations in another state, as part of what can best be described as a concentration of its Industry B operations into larger areas, was non-business income within the meaning of Indiana's adjusted gross income statute. Taxpayer argues that the sales of Industry B operations do not meet the transactional test because taxpayer's sales of Industry B operations are unusual events. Further, taxpayer argues that the income is non-business income under the functional test because smaller Industry B operations were not integral to its main business

With respect to the transactional test, it is unclear whether taxpayer's income was sufficiently recurring to constitute business income within the transactional test stated above. Under the functional test, taxpayer's primary line of business is Industry B. Though taxpayer's operations are generally concentrated in larger urban areas, taxpayer has supplied and continues to supply a number of Industry B operations covering smaller population bases. As such, the Industry B operations constituted an integral part of taxpayer's business, and thus their sale constituted business income. Further, the sales were part a voluntary business decision on the part of the corporation, unlike the forced sale of the division in *May* that the court noted was done to reduce its market concentration in its line of business.

Also, taxpayer retained the earnings from the sales of the Industry B operations. The retention of earnings by taxpayer allowed the business to further focus on its main enterprises. Combined with the other factors above, taxpayer's sales of Industry B operations, assets related to its main line of business, is business income.

Further, as with Industry A, taxpayer had claimed expenses and depreciation related to its Industry B operations as business expenses, reducing its income apportionable to Indiana. Accordingly, the sale of those Industry B operations, taxpayer's business assets for which it had apportionable business income and expense treatment under Indiana's tax statutes for many years, is also business income when those assets are sold. *Id.*

D. Industry E

Taxpayer argues that the gain from the disposal of its Industry E operations in two states, acquired in its merger is also non-business income and therefore subject to allocation rather than apportionment. In particular, taxpayer argues that the transactional test was not met because the disposal of the Industry E operations was an extraordinary event Further, taxpayer argues that the disposal of its Industry E operations did not result in business income because the Industry E operations were not essential to taxpayer's main Industry E operations in a third state, and that it was also not part of its main enterprise of Industries B and C.

With respect to the transactional test, taxpayer's income was not sufficiently recurring to constitute business income within the transactional test stated above. Under the functional test, taxpayer's primary businesses were Industries B and C operations. However, in the period from 1995 until its ultimate disposition of its Industry E operations, taxpayer represented that this was part of its regular operations. Further, taxpayer used the proceeds from its various Industry E operations sales to maintain the overall day-to-day operations of the larger corporate whole. To state that the income produced by the sale of a business operated by taxpayer is non-business income, while the deductions for the expenses paid by that same income is business income is an incongruity that the *Hoechst Celanese* court disallowed, and which is properly disallowable here. Accordingly, the gain realized by the taxpayer on this line of business is business income.

FINDING

Taxpayer's protest is sustained with respect to its sale of its Industry D business, subject to audit determination of the amount allocable to Indiana, subject to the discussion in Part II. Taxpayer's protest is denied with respect to its sales of Industry B, A, and E operations.

II. Tax Administration-Limitations on refunds and protests

DISCUSSION

Taxpayer was assessed additional tax based on its federal audit adjustments. When taxpayer received the assessment, it filed a protest and amended return based on a portion of its overall income being non-business income. While the protest and amended return were timely *vis-à-vis* the federal adjustments per Ind. Code § 6-8.1-5-2, they were late with respect to the normal three-year period. *Id.*; Ind. Code § 6-8.1-9-1. In this type of situation, taxpayer cannot claim a refund or offset with respect to its previously-reported income. However, with respect to the additional income that was determined to be due, taxpayer is entitled to treat the items that constituted the additional income as resulting in business or non-business income, and then apportion or allocate the additional income appropriately. For instance, a taxpayer claimed originally that it had $10,000,000 of business income, ten percent (10%) of which actually constituted non-business income. This business/non-business character of this income may not be revisited if the statute of limitations (including extensions) for that year has passed, and the amount of tax due and payable with respect to that return and that income stands as filed. However, if an additional $1,000,000 of income is reportable as the result of federal audit adjustments, $200,000 of which resulted from items that had been treated originally as business income but which actually constituted

non-business income, and $800,000 of which resulted from items that constituted business income, the taxpayer or the Department, as appropriate to the fact situation, can treat the $200,000 as non-business income and allocate it to an appropriate jurisdiction, while the $800,000 of business income is apportioned by statute.

FINDING

Taxpayer's protest is further sustained only to the extent that such income in controversy arose from the federal audit adjustments and reportable only there, and denied with respect to the extent that the income was reported on the initial return.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS: 03-0312
Indiana Corporate Income Tax
For Taxpayer's First Short Tax Period of 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.

ISSUE

I. Applicability of the Adjusted Gross Income Tax and Gross Income Tax –Royalty Income from Licensing Taxpayer's Trademarks and Trade Names.

Authority: IC 6-2.1-2-2; IC 6-3-2-2(a); IC 6-3-1-1 et seq.; Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994); Ind. Dept. of State Revenue v. Convenient Industries, 299 N.E.2d 641 (Ind. Ct. App. 1973); Thomas v. Indiana Dep't of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); 45 IAC 1-1-51; 45 IAC 3.1-1-55.

Taxpayer argues that the Department erred when it assessed taxpayer for Indiana corporate income taxes based upon money received from licensing trademarks, trade names, and similar types of intangible assets.

STATEMENT OF FACTS

Taxpayer is an out-state-company which is the holder of trademarks, trade names, and similar intangible assets which are used by taxpayer's parent company and other affiliates. Taxpayer asserts that it has no office, no tangible personal property, and no employees within the state.

During 2003, the Department of Revenue (Department) conducted an audit review of taxpayer's business records. The Department concluded that taxpayer was receiving income from licensing its intellectual property within the state and that taxpayer should have been filing Indiana corporate income tax returns. Accordingly, the Department assessed taxpayer for the unpaid income tax attributable to taxpayer's first short tax period of 1997.

Taxpayer disagreed with the audit report's conclusions on the ground that the intellectual property had not acquired an Indiana business situs. Taxpayer submitted a protest to that effect on July 30, 2003. An administrative hearing was conducted during which taxpayer further explained the basis for its protest. This letter of Findings results.

DISCUSSION

I. Applicability of the Adjusted Gross Income Tax and Gross Income Tax – Royalty Income from Licensing Taxpayer's Trademarks and Trade Names.

Taxpayer owns the rights to certain trade names, trademarks, and other protected identifying features (intellectual property) used to distinguish and market the parent company's fast food restaurants. During the tax period here at issue, taxpayer received royalty income from Indiana restaurants. Taxpayer maintains that the royalty income is not subject to Indiana's corporate income tax scheme because the intellectual property never acquired an Indiana business situs. Instead, taxpayer argues that its only business activity was related to the maintenance, administration, and protection of the intellectual property and that all of this business activity took place at taxpayer's out-of-state location.

Taxpayer does not own or operate fast food restaurants. Instead, taxpayer – by means of its parent corporation – enters into franchise agreements entitling local restaurateurs to operate a local fast food business and to identify that business with taxpayer's intellectual property. The local restaurateurs and taxpayer's parent company (franchisor) enter into a franchise agreement which defines the rights and responsibilities of both parties. Included within the agreement, is a provision granting the franchisee the right to make use of taxpayer's intellectual property.

The franchisor describes itself as the owner of a "system" of restaurant operations marked by "distinctive building designs, advertising signs, specially designed equipment, equipment layout plans, food presentations and formulae, certain business techniques, systems and procedure, and a [franchisor's] operations manual." The franchise agreement provides to the individual franchisee the right to the limited use of taxpayer's intellectual property. That intellectual property is described as consisting of

"trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs and other identifying characteristics...." However, the franchisee is required to "use the trademarks only in a manner expressly approved by Company." The franchisee's rights are "non exclusive, and the Company, in its sole and absolute discretion, [retains] the right to grant other licenses in, to and under the trademarks in addition to those licenses already granted...." The franchisor reserves for itself the right "to develop and license other names and marks on any such terms and conditions as the Company deems appropriate."

The parties' agreement limits the way in which the franchisee may employ the intellectual property. For example, "The franchisee [may] not use the Trademarks in connection with any statement or material which may... be in bad taste or inconsistent with the Company's public image...." The franchisee is precluded from adopting or using a mark, name, or design which "includes or is similar to any of the Company's trademarks, service marks, trade names, logos, insignia, slogans, emblems, symbols, designs, or other identifying characteristics." The franchisee is precluded from making any "additions to, deletions from [or] changes in the Trademarks...."

Upon termination or expiration of the parties' agreement, the franchisee is required to "immediately discontinue the use of the System and Trademarks." In addition, the former franchisee is required to "remove the Trademarks from all buildings, signs, fixtures and furnishings, and alter and paint all buildings and other improvements... a design and color which is basically different from the Company's authorized building design and painting schedule." The former franchisee is required to "change the color of the building," alter the appearance of the building's exterior windows, and replace the building's distinctive "roof with one made of another good quality material and design."

If the former franchisee fails to remove the identifying marks and distinguishing features, the franchisor reserves for itself the "right to enter upon the Restaurant premises... and make or cause such removal, alterations and repainting...."

Upon termination of the agreement, the former franchisee agrees to discontinue using the franchisor's marks and agrees to not thereafter employ any competing mark which might "tend to give the public the impression that the [former] franchisee is or was a licensee or franchisee of, or otherwise associated with, the Company."

It is apparent from the terms of the franchise agreement, that taxpayer zealously guards its intellectual property, is prepared to defend that property from unlicensed interlopers, and that it attaches substantial value to the property. In returns for the rights to make use of the intellectual property, the franchisee agrees to pay the taxpayer a royalty fee based upon a percentage of the franchisee's gross revenues.

The issue is whether the money taxpayer receives from licensing its intellectual property to Indiana franchisees is subject to the state's corporate income tax scheme.

A. Adjusted Gross Income Tax.

Indiana imposes an adjusted gross income tax on income derived from sources within the state. The adjusted gross income tax, IC 6-3-1-1 et seq., is an apportioned tax specifically designed to reach income derived from interstate transactions. Thomas v. Indiana Dep't of State Revenue, 675 N.E.2d 362, 367-68 (Ind. Tax. Ct. 1997); *See also* Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264, 266 n. 4 (Ind. 1994). The legislature has defined "adjusted gross income" as follows:

> (1) income from real or tangible property located in this state; (2) income from doing business in this state; (3) income from a trade or profession conducted in this state; (4) compensation for labor or services rendered within this state; and (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter. IC 6-3-2-2(a).

In order for Indiana to tax the income derived from an intangible, the intangible – such as taxpayer's intellectual property – must have acquired a "business situs" within the state. 45 IAC 3.1-1-55 states that "[t]he situs of intangible personal property is the commercial domicile of the taxpayer... unless the property has acquired a 'business situs' elsewhere. 'Business situs' is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property." 45 IAC 3.1-1-55.

For purposes of Indiana's adjusted gross income tax, it is apparent that taxpayer's intellectual property has acquired a "business situs" within the state. Taxpayer derives income from Indiana franchisees which pay taxpayer for the right to make use of taxpayer's trademarks and trade names in order to sell fast food to Indiana customers at Indiana business locations. Taxpayer may be entirely correct in its assertion that activities associated with the initial development and ongoing administration of the intellectual property take place outside Indiana. However, issues concerning the administration, maintenance, and protection of the intellectual property are finally irrelevant to the tax question here at issue. What is relevant are the royalties taxpayer receives by placing that intellectual property within the state because it is these royalties which represent the "value" of this property. The value attached to the intellectual property does not derive from – however necessary – activities surrounding the administration of the intellectual property outside this state but results from taxpayer's ability to exploit the value of the property within the stream of Indiana commerce and to derive income from its ability to do so. The intellectual property – consisting of words, symbols, color-combinations, decorative elements, and the like – is, standing alone, of no value unless taxpayer takes steps to associate that property with the conduct of a specific business operation. Taxpayer is not paid royalties because it successfully administers the intellectual property at an out-of-

state location; taxpayer receives income because it licenses Indiana franchisees to associate that intellectual property with the Indiana franchisees' fast food business.

The terms of the parties' franchise agreement clearly indicate that taxpayer has placed a substantial value on these particular properties. It is, therefore, quite proper that taxpayer take steps to protect the property when it licenses Indiana franchisees to make use of the property within the state. However, the assertion that the intellectual property has not acquired an Indiana business situs is simply without foundation in law or common sense. Indeed, taxpayer's trademarks and trade names have become a ubiquitous part of the Indiana landscape. Taxpayer, having taken calculated steps to "dip its net" into the stream of Indiana commerce and derive Indiana income directly attributable to exploiting its intellectual capital within the state, should not be surprised that the income is subject to Indiana income tax. As the regulation itself states, "'Business situs' is the place at which [the] intangible personal property is employed as capital...." 45 IAC 3.1-1-55. The place at which "value attaches to the [intellectual] property" is within the state of Indiana. Id.

B. Gross Income Tax.

In addition to the adjusted gross income tax, Indiana imposes a tax known as the "gross income tax" on the "taxable gross income" of a taxpayer which is a resident or domiciliary of Indiana and on the taxable gross income from Indiana sources by a taxpayer who is not a resident or domiciliary of Indiana. IC 6-2.1-2-2.

Under the regulation governing the gross income tax, "taxable gross income" includes income that is derived from "intangibles." 45 IAC 1-1-51. The term "intangibles" includes:

> notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts, bills of sale, conditional sales contracts, chattel mortgages, "trading stamps," final judgments, leases, royalties, certificates of sale, choses in action *and any and all other evidences of similar rights capable of being transferred, acquired or sold.* (*Emphasis added*). Id.

In order for Indiana to impose the gross income tax on income derived from taxpayer's intangibles, the Department must determine that the income is derived from a "business situs" within the state. Id. The regulation states that a taxpayer has established a "business situs" within the state "[i]f the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana...." Id. Once the taxpayer has established a "business situs" within the state, "and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes." Id.

The income derived from the taxpayer's licensing of its intellectual property within the state, is income derived from a "business situs" within Indiana and is properly subject to the state's gross income tax scheme. The intellectual property is "localized" within the state because the intellectual is integrally related to the fast food restaurants which sell food items labeled, promoted, and marketed using taxpayer's proprietary trademarks and trade names. The income at issue is not derivative of taxpayer's out-of-state activity in developing, managing, and protecting the intellectual property; the value of this intellectual property lies in taxpayer's ability to license the property for use within Indiana, to maintain rigorous control over the use of the property by its franchisees, and to derive the economic benefits attributable to the intangible property's Indiana business situs.

Taxpayer points to court of appeals decision in Ind. Dept. of State Revenue v. Convenient Industries, 299 N.E.2d 641 (Ind. Ct. App. 1973) as supporting the proposition that franchise income, received by out-of-state franchisor/taxpayer, is not subject to the state's gross income tax. However, in Convenient Industries, the plaintiff taxpayer was receiving money because it performed services for its individual franchisees at plaintiff taxpayer's out-of-state location. For example, plaintiff taxpayer performed management and bookkeeping services for the Indiana franchisees. Id. at 643. The plaintiff taxpayer received cash register receipt information, statements for supplies and other documents in each franchisee's 'daily report.'" Id. Having received this information, plaintiff taxpayer "computed and issued checks for the payroll and other obligations of the franchisee, prepared [franchisee's] tax returns, and maintained profit and loss statements and balance sheets for each store." Id. Based upon the information received and analyzed at plaintiff taxpayer's out-of-state location, plaintiff taxpayer thereafter "utilized computer analysis to offer advice to each franchisee regarding ways in which an operation might be made more efficient." Id. The court found that the "bulk of the labor in performances of their contracts with franchisees occurred in Kentucky." Id. at 646. Therefore, the court found that the money plaintiff taxpayer received in the form of "service fee[s]" and "advertising fee[s]" was "not properly the subject of the Indiana Gross Income Tax." Id. at 646.

Taxpayer's circumstances are not analogous to those of plaintiff taxpayer in Convenient Industries. In Convenient Industries, plaintiff taxpayer was receiving money because it was performing management and advertising services, on behalf of its Indiana franchisees, at plaintiff taxpayer's Kentucky location. The court found that the money was not subject to gross income tax because the services were not performed in Indiana. However, what is at issue in taxpayer's own protest is the income specifically derived from licensing intellectual property for use within the state. Certainly, there are particular activities associated with the development, management, and protection of taxpayer's intellectual which are conducted outside Indiana; however, the taxpayer's Indiana restaurant franchisees did not send royalty checks to taxpayer because taxpayer managed intellectual property outside the state. Taxpayer received royalty checks because it licensed Indiana businesses to attract Indiana customers to purchase food consumed in

Indiana. Taxpayer received royalties based upon the franchisees' gross income received in Indiana. The amount of that gross income is directly attributable to taxpayer's success in marketing and labeling itself in distinctive manner readily identifiable by taxpayer's familiar trademarks and trade names. The franchisees' gross income is a measure of the franchisees' success; that success is attributable –in large part – because of the franchisees' identification with the trade names and trademarks; taxpayer's portion of the gross income – in the form of royalties – is subject to Indiana's gross income tax.

Because the intangible intellectual property has acquired a business situs within the state and because the income at issue is "connected with that business, either actually or constructively," the income is subject to the state's gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS: 03-0322
Indiana Gross Income Tax
For the Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Money Received from the Sale and Installation of Material Handling Equipment – Gross Income Tax.

Authority: U.S. Const. art. I, § 8; IC 6-2.1-2-2; IC 6-2.1-3-3; Indiana Dept. of Revenue v. Brown Boveri Corp., 439 N.E.2d 561 (Ind. 1982); Mueller Brass Co. v. Gross Income Tax Division, Indiana Dept. of Revenue, 265 N.E.2d 704 (Ind. 1971); Indiana Dept. of Revenue v. Surface Combustion Corp., 111 N.E.2d 50 (Ind. 1953); Gross Income Tax Division, State of Indiana v. Fort Pitt Bridge Works, 86 N.E.2d 685 (Ind. 1949); 45 IAC 1-1-120; 45 IAC 1-1-120(1)(c); 45 IAC 1-1-121(b); 45 IAC 1-1-121(d); 45 IAC 1.1-3-3(a); 45 IAC 1.1-3-3(c)(6); 45 IAC 1.1-3-3(d).

Taxpayer argues that it does not owe gross income tax on money received from the sale and installation of material handling equipment sold to Indiana customers because the transactions took place within interstate commerce.

II. Abatement of 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 claims that its failure to pay Indiana gross income tax was attributable to the complexity of the tax issues and that taxpayer exercised reasonable care, caution, and diligence in determining that it did not owe gross income tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of manufacturing conveyor systems or "material handling" equipment used by manufacturing companies including companies located in Indiana. The conveyor systems include accumulating conveyors, gravity roller conveyors, belt conveyors, automated storage devices, retrieval systems, and skid systems. Taxpayer states that it manufacturers the conveyors systems at one of its out-of-state locations. Due to the size of the systems, they are shipped to the customer in pieces by means of common carrier where the components are assembled and installed at the customer's location. Taxpayer generally sends one of its "project teams" to the customer's location to supervise the installation pursuant to the parties' sales contract. The project team typically consists of a project manager, field supervisor, and one or more engineers. The project teams are assisted by local union workers.

The Indiana Department of Revenue (Department) conducted an audit review of taxpayer's tax returns and business records. The audit found that taxpayer did not report gross income on the money it received from its Indiana customers. Taxpayer failed to report gross income tax at either the high rate or the low rate. The audit concluded that taxpayer had established an Indiana "business situs" by virtue of the "services provided to their customers" and that taxpayer should have been paying gross income tax on the money it earned from the initial sale and installation of the conveyor systems and the money it earned from the performance of post-installation service and repair work. Following completion of the audit report, the Department sent notices of "Proposed Assessment" for 1998, 1999, and 2000 taxes. The taxpayer disagreed with the audit's conclusions and the proposed assessments. Taxpayer submitted a protest to that effect, an administrative hearing was conducted during which taxpayer further explained the basis for its position, and this Letter of Findings results.

DISCUSSION

I. Money Received from the Sale and Installation of Material Handling Equipment – Gross Income Tax.

Taxpayer is a "material handling specialist" which sells conveyor systems. Taxpayer states the conveyor systems are made of

"interchangeable standard stock." The standard stock is manufactured outside of Indiana, delivered by means of common carrier, and assembled and installed at Indiana locations by a team of its own employees who oversee the project and by local union workers. However, there is no indication that a material handling system is ever entirely pre-assembled at taxpayer's out-of-state location. After the conveyor system is installed at the Indiana site, taxpayer provides maintenance, product support, and service.

The conveyor systems are designed to move a variety of items such as newsprint, airline luggage, partially assembled automobiles, and bulk coal. Some of the conveyor systems are designed to move parts and materials before manufacturing occurs. Some of the conveyor systems are designed to transport partially assembled items while manufacturing actually occurs. The conveyor systems vary in design, function, and complexity.

The conveyor system can be as simple as an overhead track on which the load is pushed and maneuvered by hand.

The conveyor system can be an automatic monorail system consisting of switches, overhead sections, and accumulators on which the load is automatically identified and routed along complex paths to different track levels.

The conveyor system can consist of independent tow cars which are computer controlled and automatically routed along tracks embedded in the factory or warehouse floor.

The conveyor system can consist of track-less "automatic guided vehicles" which uses a "sophisticated network of encoded electronic signals" to transport product from one point in the customer's facility to another. Taxpayer states that these particular devices "can be designed to meet the demands of a broad scope of industries including health care, discrete manufacturing, primary metals, and aerospace."

Taxpayer's conveyor systems can be as sophisticated as an entirely integrated storage and retrieval system in which an automatic retrieval device moves through and within a complex, multi-level, densely structured storage facility. The automatic retrieval system locates, identifies, and retrieves a specific item of the customer's inventory and delivers that item to a designated point. The automatic retrievers "utilize state-of-the art software, infrared distance measuring devices and incremental encoders to operate quickly and precisely."

The audit assessed high rate gross income tax on taxpayer's service and installation income. The audit assessed low rate gross income tax on material sales. Taxpayer claims that the sales of the conveyor systems are not subject to gross income tax because the sales occurred in interstate commerce and because the related services are part and parcel of the interstate sales.

Indiana Gross Income Tax (IC 6-2.1-0.6 to 6-2.1-8-7) "is imposed upon the receipt of: (1) the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana; and (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident of Indiana." IC 6-2.1-2-2 To assure that only income properly subject to a state tax is assessed Gross Income Tax, IC 6-2.1-3-3 provides that "[g]ross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign county 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 was passed in recognition of the fact that the Commerce Clause requires that Indiana not unduly burden commerce between the states. Therefore, Indiana may not impose a tax that discriminates against interstate commerce in favor of intrastate commerce. "While a state may impose a tax burden that is reasonable in light of the incidence of commercial contact by the taxpayer with [the state], a tax system which may produce a multiple taxation burden is proscribed." Mueller Brass Co. v. Gross Income Tax Division, Indiana Dept. of Revenue, 265 N.E.2d 704, 717 (Ind. 1971).

Taxpayer argues that the Indiana sales in question fell within the protection afforded by the Interstate Commerce Clause which reserves to the federal government the power to "regulate Commerce... among the several states...." U.S. Const. art. I, § 8. More specifically, taxpayer – for the first of the three years at issue – cites to 45 IAC 1-1-120(1)(c) which exempts from the Gross Income Tax certain sales made by non-residents to Indiana customers in which the out-of-state sellers perform installation services intrinsically related to the original sale. In regard to "Nontaxable in-shipments," the regulation states that, "As a general rule, income derived from sales made by nonresident sellers to Indiana buyers is not subject to gross income tax unless the seller was engaged in business activity within the state and such activity was connected with or facilitated the sales." 45 IAC 1-1-120. Specifically, the regulation exempts those sales "made by a nonresident where the product sold is, because of its size or weight, shipped in parts; and the seller, because of his special skill or expertise, assembles or installs the product at the buyer's place of business with no additional services rendered." 45 IAC 1-1-120(1)(c). Taxpayer maintains that Indiana may not tax the money it received during 1998 because that Indiana source income is protected by the Interstate Commerce Clause and falls within the definition of 45 IAC 1-1-120.

The Department promulgated new regulations governing the state's Gross Income Tax. Those new regulations became effective January 1, 1999, and govern taxpayer's 1999 and 2000 Indiana income. Taxpayer maintains that the state may not tax its 1999 and 2000 Indiana income because that money falls within the definition of "Gross income derived from business conducted in interstate commerce...." 45 IAC 1.1-3-3(a). Taxpayer cites to 45 IAC 1.1-3-3(c)(6) in support of its position. That portion of the regulation requires, in part, as follows:

> 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 following examples are situations where a sale is not completed in Indiana prior to or after shipment in interstate commerce... (6) A sale, not otherwise taxable, to an Indiana buyer by a nonresident where the

seller, because of its special skill or expertise, assembles or installs the product at the buyer's place of business without any additional services being rendered. In other words, the services performed are part of the sale and the sale is exempt because it is in interstate commerce.

Taxpayer also cites to Indiana Dept. of Revenue v. Surface Combustion Corp., 111 N.E.2d 50 (Ind. 1953) for support of its contention that the sale of the material handling equipment to its Indiana customers took place within interstate commerce and the proceeds are exempt from the Gross Income Tax. In Surface Combustion, appellee taxpayer was an Ohio based furnace manufacturer. It sold furnaces to an Indiana customer, was assessed Gross Income Tax on the income derived from the sales, and brought an action seeking a refund of those taxes. The court determined that appellee taxpayer had constructed the furnaces at its Ohio facility. Thereafter, appellee taxpayer transported the smaller furnaces to the Indiana customer's site. The larger furnaces were assembled at the Ohio facility, disassembled, and shipped to the Indiana site; alternatively, the larger furnaces were only partially assembled at the Ohio facility before being "knocked down," transported and reassembled at the Indiana customer's site. In all cases, the court found that the "parties contemplated and intended that the furnace... should be shipped and transported from appellee's plant at Toledo, Ohio to the customer's plant in Indiana...." Id. 53.

In Surface Combustion, it was the Indiana customer's responsibility to provide a foundation, plumbing, and electric wiring in preparation for the installation of the furnaces. Id. It was appellee taxpayer's own responsibility to provide the "specially trained factory engineers, supervisors, and workmen to assemble... install, align, and adjust all of [the furnaces] at the customer's plant in order to assure a proper functioning furnace which was necessary to consummate and complete the sale." Id.

In Surface Combustion, the court rejected the Department's contention that it was entitled to levy the Gross Income Tax against appellee taxpayer's income derived from the sale of the furnaces. The court found that, "the tax sought to be recovered was levied upon the gross receipts of appellee from interstate commerce transactions within and without the State of Indiana." Id. at 69. The court concluded that imposition of the tax "directly burdens, and interferes with, the free flow of such commerce between the State of Ohio and the State of Indiana and is invalid as being in conflict with Article I, of § 8 of the Constitution of the United States." Id.

The court found that the "thing" which the Indiana customer purchased from appellee in Ohio, was a "heat treating furnace complete in one functional unit." Id. at 62. In support of that conclusion, the court noted that, "There is no evidence that the furnaces were made, built, fabricated, created or brought into existence in Indiana." Id. The Indiana installation work performed by appellee taxpayer consisted "only in the reassembling and installing the furnaces which had been purchased in the State of Ohio and taken apart for the convenience of shipment." Id. Appellee taxpayer's in-state activity was "intrinsically related to and inherently a part of the sale; and because of their complexity their installation and testing was essential to the making of the sale." Id. The sales of the furnaces were "clearly sales of personal chattels in interstate commerce and the installation and reassembling where required, were inherently a part of, and a necessary incident to, the sale." Id.

Taxpayer also cites to Indiana Dept. of Revenue v. Brown Boveri Corp., 439 N.E.2d 561 (Ind. 1982) in support of the proposition that sales of material handling equipment is not subject to the Gross Income Tax. In Brown Boveri, plaintiff taxpayer was an out-of-state company which had entered into a contract with an Indiana manufacturer for the sale of an induction melting system. The parties' sales agreement was for the "turn-key" delivery of a system that would produce molten iron. "The system was pre-fabricated at [plaintiff taxpayer's] plant, broken down for shipment and reassembled at the [Indiana customer's] plant." Id. at 563. Plaintiff taxpayer conducted certain activities at the Indiana site because it "was necessary for [plaintiff taxpayer] to engage in various activities to guarantee proper planning and coordination of the project." Id. Plaintiff taxpayer's in-state activities "included reassembly of the equipment, removing obsolete equipment, pouring foundations, trenching, and reinforcement of existing structures." Id.

The court disagreed with the Department's argument that plaintiff taxpayer's performance of activities within Indiana removed the transaction from the protection afforded interstate commerce. Id. at 564. The court found that the transaction between plaintiff taxpayer and the Indiana customer was "indeed interstate commerce such that taxation of gross income resulting therefrom [was] prohibited." Id. The transaction was for the "sale of a functioning system for a lump sum," in which "all of the component parts were pre-fabricated outside Indiana, disassembled for shipment, and then reassembled on the job site." Id. Plaintiff taxpayer's local activities did not take the sale of the melting system outside interstate commerce protection because "the local activities of [plaintiff taxpayer] were intrinsically related to and inherently part of the sale in interstate commerce." Id.

In both Brown Boveri and Surface Combustion, the out-of-state taxpayer constructed equipment and then shipped that equipment – either piece-meal or as a complete unit – to the Indiana customer. The court found, in both instances, that the sale of the equipment was interstate in character while taxpayers' in-state activities – installing and testing the equipment – were inherently related to the original out-of-state sale.

Taxpayer's sale of its material handling equipment is not analogous to the transactions described in Brown Boveri and Surface Combustion. In Surface Combustion, the court stated that there was "no evidence that the furnaces were made, built, fabricated, created, or brought into existence in Indiana." Surface Combustion, 111 N.E.2d at 62. While the numerous individual components may have existed outside of Indiana, there is every indication that taxpayer's material handling devices were "made, built, created, [and] brought into existence in Indiana." Brown Boveri, 439 N.E.2d at 563. In Brown Boveri, the court found that, "The system was

pre-fabricated at [taxpayer's] plant, broken down for shipment and reassembled at the [Indiana] plant." Id. The taxpayer's own material handling devices were not pre-fabricated outside the state, broken down for shipment, and reassembled at the Indiana customers' steel plant. Instead, the material handling equipment was not brought into existence until taxpayer transported the components to the site and then assembled those components into the device which taxpayer sold to the Indiana customers. Taxpayer's sales of material handling equipment were not interstate transactions with the taxpayer's performance of Indiana installation activities merely incidental to the sale of the material handling equipment. Taxpayer's customers did not buy out-of-state material handling equipment, arrange to have the equipment disassembled and shipped to Indiana, and then reassembled at the customers' site. Taxpayer entered into contracts to perform construction and assembly work in Indiana and thereby subjected itself to Indiana's taxing jurisdiction. Taxpayer's initial construction and completion of the material handling devices occurred in Indiana, and the proceeds are properly subject to the state's Gross Income Tax.

Taxpayer's sales of the material handling equipment are analogous to the activities of appellee manufacturer in Gross Income Tax Division, State of Indiana v. Fort Pitt Bridge Works, 86 N.E.2d 685 (Ind. 1949). In that case, the manufacturer – a Pennsylvania based corporation – arranged for the construction, fabrication, and assembly of certain buildings within the state. The manufacturer "furnished and fabricated the steel and shipped it from its plants in Ohio or Pennsylvania" to the customer's location within Indiana. Id. at 687. Thereafter, a subcontractor received the material and performed all the work necessary for the "construction of the buildings for which the steel was furnished." Id. The manufacturer treated the receipts as not subject to Indiana's Gross Income Tax because, according to the manufacturer, "it had nothing to do with the activity and business conducted in Indiana by [the subcontractor] and that it [was] not liable for tax upon the price paid for the steel and fabrication... because the fabrication occurred outside the state and furnishing the steel was an interstate transaction." Id. at 688. The court disagreed with the manufacturer's contention on the ground that, "A corporation which contracts in the state of its residence to do work in a foreign state subjects itself to the jurisdiction of such foreign state, notwithstanding it employs independent contractors to do the actual work and does no part of the actual work itself." Id. at 689. The manufacturer's income was subject to Indiana's Gross Income Tax because "[the income] was derived from an activity for which it was responsible. It came from its business in Indiana, carried on through the medium of a subcontractor acting independently as to the manner and method, but acting for [the manufacturer] in the accomplishment of the result which it contracted to bring about." Id.

The court rejected the manufacturer's argument that the transaction was interstate in nature because the court did not believe the contract "was a contract of sale with construction work in Indiana as a mere incident." Id. at 691. Even though the component parts were initially manufactured at an out-of-state location, "the transaction as a whole was local in nature and subject to local tax and regulation." Id. The court stated that it had "no hesitance in saying that the State of Indiana [had] the right to apply its gross income tax to business actually transacted within its borders, notwithstanding that interstate commerce, as an incident, may have intervened in at some point in the transaction...." Id. at 692.

Taxpayer manufactured and pre-assembled certain, individual components at its out-of-state location. Other components were purchased from third-party vendors predominantly located outside of Indiana. These components were then delivered by common carrier to the Indiana customer's location. The various component parts were finally assembled and incorporated into the completed material handling device. Taxpayer hired local workmen to perform much of the on-site work. However, "Taxpayer's skill and expertise were required to assemble and install the equipment/systems." To that end, taxpayer sent a project manager, field supervisor, and one or more engineers to oversee the fabrication and installation process. As taxpayer explained, "Taxpayer's engineer(s) were the only person(s) that possessed the knowledge and expertise to supervise the assembly of the component parts into the completed material handling lines."

The taxpayer's 1999 and 2000 transactions fall within the purview of the state's Gross Income Tax scheme as set out in 45 IAC 1-1-121(b) which states that:

> Gross receipts from the performance of construction projects in Indiana are subject to gross income tax. This is true even when the contractor is a nonresident and even when he subcontracts all Indiana work to local businesses and has no other contact with the state except to ship goods manufactured elsewhere into the state for installation by local workmen.

Taxpayer's Indiana activities are not merely "incidental services taking place within the State, which may be tax-exempt as a transaction in interstate commerce." 45 IAC 1-1-121(d). Taxpayer is not merely setting the equipment "on bases or connecting to pipes, supports, etc., provided by the customer." Id. Rather, taxpayer clearly "performs additional services, such as installation, testing, construction, etc." thereby entitling the Department to treat the transaction as an Indiana "construction project" the proceeds of which are properly subject to the state's Gross Income Tax. Id. *See also* 45 IAC 1.1-3-3(d).

Taxpayer designs and builds sophisticated, complex material handling devices. Taxpayer enters into contract with Indiana customers to install the devices at Indiana locations. The devices do not exist until the components and subcomponents are assembled at the Indiana location. The money received from the sale and installation of the devices is subject to the state's gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

II. Abatement of Ten-Percent Negligence Penalty.

Taxpayer asks that the "Department waive the imposition of the negligence penalty relating to the Department's audit

assessment." Taxpayer does so because it believes that its "failure to pay [Gross Income Tax] does not stem from negligence, but rather from the complexity of the tax issues raised in the audit."

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...."

While the contracts for the sale and installation of the material handling equipment arguably implicated activities related to interstate commerce, taxpayer's determination that it had zero gross income tax liability during the three years falls outside a reasonable definition of "ordinary business care and prudence" and does not warrant abatement of the associated penalties.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220030331.LOF

LETTER OF FINDINGS: 03-0331
Indiana Corporate Income Tax
For Taxpayer's First Short Tax Period of 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.

ISSUE

I. Applicability of the Adjusted Gross Income Tax and Gross Income Tax – Royalty Income from Licensing Taxpayer's Trademarks and Trade Names.

Authority: IC 6-2.1-2-2; IC 6-3-2-2(a); IC 6-3-1-1 et seq.; Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994); Ind. Dept. of State Revenue v. Convenient Industries, 299 N.E.2d 641 (Ind. Ct. App. 1973); Thomas v. Indiana Dep't of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); 45 IAC 1-1-51; 45 IAC 3.1-1-55.

Taxpayer maintains that the money it received from licensing its trademarks and trade names for use within the state is not subject to state income tax. Taxpayer states that the trademarks and trade names (intellectual property) never acquired a business situs within Indiana.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of licensing, operating, and managing fast-food restaurants. It conducts this business by means of various subsidiaries and through local franchisees.

During 2003, the Department of Revenue (Department) conducted an audit review of taxpayer's business records. The Department concluded that taxpayer was receiving income from licensing its intellectual property within the state and that taxpayer should have been filing Indiana corporate income tax returns. Accordingly, the Department assessed taxpayer for the unpaid income tax attributable to the taxpayer's first short tax period of 1997.

Taxpayer disagreed with the audit report's conclusions on the ground that the intellectual property had not acquired an Indiana business situs. Taxpayer submitted a protest to that effect on July 30, 2003. An administrative hearing was conducted during which taxpayer further explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Applicability of the Adjusted Gross Income Tax and Gross Income Tax – Royalty Income from Licensing Taxpayer's Trademarks and Trade Names.

In the audit of taxpayer's business records, the Department concluded that taxpayer was subject to the state's gross income tax and adjusted gross income tax on the ground that taxpayer was licensing the use of intangibles within Indiana. Taxpayer disagrees maintaining that the intangibles – intellectual property consisting of trademarks and trade names – did not have a business situs within Indiana and that the income derived was not subject to the state's corporate income tax scheme. Taxpayer states that it did not own any of the Indiana restaurants and that it had no employees permanently located in Indiana.

Rather than owning the branded restaurants, taxpayer licenses individual franchisees to sell fast food within the state. The

parties' agreement grants the individual franchisee the right to use "certain trade names, trademarks and service marks owned by [taxpayer] and to prepare and market the Required Products at the Outlet (and only at the Outlet) in connection with products and services meeting [taxpayer's] quality standards through the use of processes and trade secrets communicated by [taxpayer]." By the terms of the agreement, the parties acknowledge that the taxpayer's "unique system" of preparing fast food is associated with the "trade secrets, standards and specifications designed to maintain a uniform high quality of product, service and national reputation."

The franchisee is required to "strictly comply with the requirements and instructions of [taxpayer] regarding the use of the trademarks, trade names and service marks in connection with the Approved Products and the [franchisee's location]." The Franchisee is granted the right to make use of the intellectual properties but acknowledges that the "goodwill associated with the [taxpayer's] trademarks, service marks and trade names is and will remain the exclusive property of [taxpayer] and that the Franchisee will derive no benefit from such goodwill...."

Upon termination or expiration of the parties' agreement, the franchisee agrees to "immediately discontinue use of all [taxpayer] trademarks, service marks, trade names, trade secrets, and knowhow...." The discontinued franchisee is required to remove "signs, menuboard inserts, point-of-sale material, [colored] stripes, and characteristically designed roof from the Outlet and otherwise change its exterior and interior appearance so that it is no longer confusingly similar to a [licensed restaurant] and no longer bears any of [taxpayer] trademarks, service marks or trade names or designations or marks similar thereto." If – upon termination of the franchisee agreement – the franchisee delays removing the identifying marks, taxpayer reserves the option to do so itself by "entering the premises of the Outlet"

The parties' franchise agreement specifies the food items the franchisee may and may not sell; the agreement gives taxpayer the right to require the franchisee to introduce new food items, specifies the exterior and interior of the restaurant building, and specifies which days of the year the restaurant will be open and which days it will be closed.

In short, taxpayer licenses individual franchisees to operate restaurants subject to the taxpayer's right to control the way in which the restaurants are operated. The franchisee obtains the right to make use of the trademarks and trade names and to enjoy the national reputation which has attached to those intellectual properties. In return, the franchisee pays the taxpayer a royalty fee based upon a percentage of the franchisee's gross revenues.

The issue is whether the income attributable to the licensing of taxpayer's intellectual property is subject to Indiana's corporate income tax scheme. Taxpayer concludes that the income is not subject to the tax because the intellectual property never acquired an Indiana situs. Instead, taxpayer maintains that the only business activity associated with the property is "the maintenance, administration and protection of the trademarks and trade names." Taxpayer states that all of this particular business activity takes place at an out-of-state location.

A. Adjusted Gross Income Tax.

Indiana imposes an adjusted gross income tax on income derived from sources within the state. The adjusted gross income tax, IC 6-3-1-1 et seq., is an apportioned tax specifically designed to reach income derived from interstate transactions. Thomas v. Indiana Dep't of State Revenue, 675 N.E.2d 362, 367-68 (Ind. Tax. Ct. 1997); *See also* Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264, 266 n. 4 (Ind. 1994). The legislature has defined "adjusted gross income" as follows:

> (1) income from real or tangible property located in this state; (2) income from doing business in this state; (3) income from a trade or profession conducted in this state; (4) compensation for labor or services rendered within this state; and (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter. IC 6-3-2-2(a).

In order for Indiana to tax the income derived from an intangible, the intangible – such as taxpayer's intellectual property – must have acquired a "business situs" within the state. 45 IAC 3.1-1-55 states that "[t]he situs of intangible personal property is the commercial domicile of the taxpayer... unless the property has acquired a 'business situs' elsewhere. 'Business situs' is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property." 45 IAC 3.1-1-55.

For purposes of Indiana's adjusted gross income tax, taxpayer's intellectual property has acquired a "business situs" within the state. Taxpayer derives income from Indiana franchisees which pay taxpayer for the right to make use of taxpayer's trademarks and trade names in order to sell fast food to Indiana customers at Indiana business locations. Taxpayer may be entirely correct in its assertion that activities associated with the initial development and ongoing administration of the intellectual property take place outside Indiana. However, issues concerning the administration, maintenance, and protection of the intellectual property are finally irrelevant to the tax question here at issue. What is relevant are the royalties taxpayer receives by placing that intellectual property within the state because it is these royalties which represent the "value" of this property. The value attached to the intellectual property does not derive from – however necessary – activities surrounding the administration of the intellectual property outside this state but results from taxpayer's ability to exploit the value of the property within the stream of Indiana commerce and to derive income from its ability to do so. The intellectual property – consisting of words, symbols, decorative elements, and the like – is, standing alone, of no value unless taxpayer takes steps to associate that property with the conduct of a specific business operation.

Taxpayer is not paid royalties because it successfully administers the intellectual property at an out-of-state location; taxpayer receives income because it licenses Indiana franchisees to associate that intellectual property with the Indiana franchisees' fast food business.

The terms of the parties' franchise agreement clearly indicate that taxpayer has placed a substantial value on these particular properties. It is, therefore, quite proper that taxpayer take steps to protect the property when it licenses Indiana franchisees to make use of the property within the state. However, the assertion that the intellectual property has not acquired an Indiana business situs is simply without foundation in law or common sense. Indeed, taxpayer's trademarks and trade names have become a ubiquitous part of the Indiana landscape. Taxpayer, having taken calculated steps to "dip its net" into the stream of Indiana commerce and derive Indiana income directly attributable to exploiting its intellectual capital within the state, should not be surprised that the income is subject to Indiana income tax. As the regulation itself states, "'Business situs' is the place at which [the] intangible personal property is employed as capital...." 45 IAC 3.1-1-55. The place at which "value attaches to the [intellectual] property" is within the state of Indiana. Id.

B. Gross Income Tax.

In addition to the adjusted gross income tax, Indiana imposes a tax known as the "gross income tax" on the "taxable gross income" of a taxpayer which is a resident or domiciliary of Indiana and on the taxable gross income from Indiana sources by a taxpayer who is not a resident or domiciliary of Indiana. IC 6-2.1-2-2.

Under the regulation governing the gross income tax, "taxable gross income" includes income that is derived from "intangibles." 45 IAC 1-1-51. The term "intangibles" includes:

> notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts, bills of sale, conditional sales contracts, chattel mortgages, "trading stamps," final judgments, leases, royalties, certificates of sale, choses in action *and any and all other evidences of similar rights capable of being transferred, acquired or sold.* (*Emphasis added*). Id.

In order for Indiana to impose the gross income tax on income derived from taxpayer's intangibles, the Department must determine that the income is derived from a "business situs" within the state. Id. The regulation states that a taxpayer has established a "business situs" within the state "[i]f the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana...." Id. Once the taxpayer has established a "business situs" within the state, "and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes." Id.

The income derived from the taxpayer's licensing of its intellectual property within the state, is income derived from a "business situs" within Indiana and is properly subject to the state's gross income tax scheme. The intellectual property is "localized" within the state because the intellectual property is integrally related to the fast food restaurants which sell food items labeled, promoted, and marketed using taxpayer's proprietary trademarks and trade names. The income at issue is not derivative of taxpayer's out-of-state activity in developing, managing, and protecting the intellectual property; the value of this intellectual property lies in taxpayer's ability to license the property for use within Indiana, to maintain rigorous control over the use of the property by its franchisees, and to derive the economic benefits attributable to the intangible property's Indiana business situs.

Taxpayer points to the court of appeals decision in Ind. Dept. of State Revenue v. Convenient Industries, 299 N.E.2d 641 (Ind. Ct. App. 1973) as supporting the proposition that franchise income, received by out-of-state franchisor/taxpayer, is not subject to the state's gross income tax. However, in Convenient Industries, the plaintiff taxpayer was receiving money because it performed services for its individual franchisees at plaintiff taxpayer's out-of-state location. For example, plaintiff taxpayer performed management and bookkeeping services for the Indiana franchisees. Id. at 643. The plaintiff taxpayer received cash register receipt information, statements for supplies and other documents in each franchisee's 'daily report.'" Id. Having received this information, plaintiff taxpayer "computed and issued checks for the payroll and other obligations of the franchisee, prepared [franchisee's] tax returns, and maintained profit and loss statements and balance sheets for each store." Id. Based upon the information received and analyzed at plaintiff taxpayer's out-of-state location, plaintiff taxpayer thereafter "utilized computer analysis to offer advice to each franchisee regarding ways in which an operation might be made more efficient." Id. The court found that the "bulk of the labor in performances of their contracts with franchisees occurred in Kentucky." Id. at 646. Therefore, the court found that the money plaintiff taxpayer received in the form of "service fee[s]" and "advertising fee[s]" was "not properly the subject of the Indiana Gross Income Tax." Id. at 646.

Taxpayer's circumstances are not analogous to those of plaintiff taxpayer in Convenient Industries. In Convenient Industries, plaintiff taxpayer was receiving money because it was performing management and advertising services, on behalf of its Indiana franchisees, at plaintiff taxpayer's Kentucky location. The court found that the money was not subject to gross income tax because the services were not performed in Indiana. However, what is at issue in taxpayer's own protest is the income specifically derived from licensing intellectual property for use within the state. Certainly, there are particular activities associated with the development, management, and protection of taxpayer's intellectual which are conducted outside Indiana; however, the taxpayer's Indiana restaurant franchisees did not send royalty checks to taxpayer because taxpayer managed intellectual property outside the state.

Taxpayer received royalty checks because it licensed Indiana businesses to attract Indiana customers to purchase food consumed in Indiana. Taxpayer received royalties based upon the franchisees' gross income received in Indiana. The amount of that gross income is directly attributable to taxpayer's success in marketing and labeling itself in distinctive manner readily identifiable by taxpayer's familiar trademarks and trade names. The franchisees' gross income is a measure of the franchisees' success; that success is attributable –in large part – because of the franchisees' identification with the trade names and trademarks; taxpayer's portion of the gross income – in the form of royalties – is subject to Indiana's gross income tax.

Because the intangible intellectual property has acquired a business situs within the state and because the income at issue is "connected with that business, either actually or constructively," the income is subject to the state's gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS: 03-0332
Indiana Corporate Income Tax
For Taxpayer's First Short Tax Period of 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Applicability of the Adjusted Gross Income Tax and Gross Income – Taxpayer's Income from Licensing Trademarks and Trade Names.

Authority: IC 6-2.1-2-2; IC 6-3-2-2(a); IC 6-3-1-1 et seq.; Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994); Thomas v. Indiana Dep't of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); 45 IAC 1-1-51; 45 IAC 3.1-1-55.

Taxpayer argues that money it received from licensing its trademarks and trade names for use within the state is not subject to state income tax because these intellectual properties do not have an Indiana business situs.

II. Computational Errors.

Authority: IC 6-8.1-5-1(b).

Taxpayer maintains that even if the money received from licensing intellectual property is found to be subject to the state's income tax, the audit report contained computational errors which now require correction.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of operating and managing fast-food restaurants. It conducts this business by means of various subsidiaries and through local franchisees.

During 2003, the Department of Revenue (Department) conducted an audit review of taxpayer's business records. The Department concluded that taxpayer was receiving income from licensing its intellectual property within the state and that taxpayer should have been filing Indiana corporate income tax returns. Accordingly, the Department assessed taxpayer for unpaid income tax attributable to taxpayer's first short tax period of 1997.

Taxpayer disagreed with the conclusions contained within the audit report on the ground that the intellectual property had not acquired an Indiana business situs. Taxpayer submitted a protest to that effect on May 11, 2004. An administrative hearing was conducted during which taxpayer further explained the basis for its protest. This Letter of Findings results.

DISCUSSION

I. Applicability of the Adjusted Gross Income Tax and Gross Income – Taxpayer's Income from Licensing Trademarks and Trade Names.

Following the audit of taxpayer's business records, the Department concluded that taxpayer was subject to the state's gross income tax and adjusted gross income tax on the ground that taxpayer was licensing the use of intangibles within Indiana. Taxpayer disagrees maintaining that the intangibles – intellectual property consisting of trademarks and trade names – did not have a business situs within Indiana and that the income derived was not subject to the state's corporate income tax scheme.

Taxpayer licenses franchisees to sell fast food within the state. As part of the agreement with the individual franchisee, the franchisee is granted the right to use what taxpayer calls its fast food "system." The system includes "distinctive signs, food recipes, uniforms, and various trade secrets and other confidential information...." Taxpayer's "system" is identifiable to Indiana consumers by "certain trademarks, trade names, service marks, symbols, emblems, logos, designs, and other indicia of origin." The parties' franchise agreement collectively describes this identifying property as the "Company's Marks." Although the agreement stipulates

that taxpayer continues to retain complete ownership of the "company's marks," the agreement grants the franchisee the right to use the marks in order "to identify for the public the source of the services rendered in accordance with the System and the high standards of quality attendant thereto[.]"

After entering into an agreement with a local franchisee restaurant, taxpayer retains the right to exercise control over the operation of the franchisee's business. Taxpayer retains the right to both prescribe and proscribe the food items sold at the franchise location, requires the franchisee to identify its business as part of the taxpayer's "system" of restaurants," and requires the franchisee adopt a particular, unified menu format. In addition, the taxpayer retains the right to have its "authorized representative... enter upon the premises of Operator's System Restaurants at any reasonable time for the purpose of examining same, conferring with Operator's employees, inspecting and checking operations, food, beverages, furnishings, interior and exterior décor, supplies, fixtures, and equipment, and determining whether the business is being conducted in accordance with [taxpayer's] standards and the terms of [the franchise] agreement."

The parties' franchise agreement circumscribes the individual franchisee's right to use taxpayer's intellectual property. The local franchisee is given the right to use the intellectual property for purposes of identifying the local franchise business as part of taxpayer's "system" of restaurants, but the right to use the identifying intellectual property is limited to the individual franchisee's restaurant and defined territory. The franchisee is not entitled to "license or attempt to license any other person or firm to use [taxpayer's] marks." By the terms of the agreement, the franchisee agrees that "all goodwill arising from operator's use of [taxpayer's] Marks and System inures to [taxpayer]." In addition, the local franchisee agrees to "indemnify [taxpayer] for any damage or expense occasioned by Operator's improper use of said Marks."

In the event that the franchise agreement terminates or is terminated, the local franchisee is required to "remove all identifying architectural superstructure and characteristics from the [franchisee's] building as [taxpayer] may direct in order to effectively distinguish the same from [taxpayer's] building design." In the event that the agreement is terminated, taxpayer retains "the right to enter upon the premises to make or cause to be made such changes at the expense of Operator... which expense Operator agrees to pay on demand."

The terms of the parties' agreement evidence the fact that taxpayer attaches great value to its intellectual property. The agreement expressly states that the elements comprising taxpayer's restaurant system "are unique and distinctive and have been developed at great effort, time, and expense."

In return for the right to make use of taxpayer's "system" and identifying intellectual property, the local franchisee pays taxpayer an initial franchise fee and agrees to pay a monthly service fee ranging between four and four and one-half percent of the franchisee's gross sales.

The issue is whether the income attributable to the licensing of taxpayer's intellectual property is subject to Indiana's corporate income tax scheme. Taxpayer concludes that the income is not subject to the tax because the intellectual property never acquired an Indiana situs. Instead taxpayer maintains that all activity associated with "the maintenance, administration, and protection of the trademarks and trade names... occurred outside the state of Indiana...."

A. Adjusted Gross Income Tax.

Indiana imposes an adjusted gross income tax on income derived from sources within the state. The adjusted gross income tax, IC 6-3-1-1 et seq., is an apportioned tax specifically designed to reach income derived from interstate transactions. Thomas v. Indiana Dep't of State Revenue, 675 N.E.2d 362, 367-68 (Ind. Tax. Ct. 1997); Indiana Dept. of State; *See also* Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264, 266 n. 4 (Ind. 1994). The legislature has defined "adjusted gross income" as follows:

> (1) income from real or tangible property located in this state; (2) income from doing business in this state; (3) income from a trade or profession conducted in this state; (4) compensation for labor or services rendered within this state; and (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter. IC 6-3-2-2(a).

In order for Indiana to tax the income derived from an intangible, the intangible – such as taxpayer's intellectual property – must have acquired a "business situs" within the state. 45 IAC 3.1-1-55 states that "[t]he situs of intangible personal property is the commercial domicile of the taxpayer... unless the property has acquired a 'business situs' elsewhere. 'Business situs' is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property." 45 IAC 3.1-1-55.

For purposes of Indiana's adjusted gross income tax, it is apparent that taxpayer's intellectual property has acquired a "business situs" within the state. Taxpayer derives income from Indiana franchisees which pay taxpayer for the right to make use of taxpayer's trademarks and trade names in order to sell fast food to Indiana customers at Indiana business locations. Taxpayer may be entirely correct in its assertion that activities associated with the initial development and ongoing administration of the intellectual property take place outside Indiana. However, issues concerning the administration, maintenance, and protection of the intellectual property are finally irrelevant to the tax question here at issue. What is relevant are the royalties taxpayer receives by placing that intellectual property within the state because it is these royalties which represent the "value" of this property. The value attached to the

intellectual property does not derive from – however necessary – activities surrounding the administration of the intellectual property outside this state but results from taxpayer's ability to exploit the value of the property within the stream of Indiana commerce and to derive income from its ability to do so. The intellectual property – consisting of words, symbols, color-combinations, and the like – is, standing alone, of no value unless taxpayer takes steps to associate that property with the conduct of a specific business operation. Taxpayer is not paid royalties because it successfully administers the intellectual property at an out-of-state location; taxpayer receives income because it licenses Indiana franchisees to associate that intellectual property with the Indiana franchisees' fast food business.

The terms of the parties' franchise agreement clearly indicate that taxpayer has placed a substantial value on these particular properties. It is, therefore, quite proper that taxpayer take steps to protect the property when it licenses Indiana franchisees to make use of the property within the state. However, the assertion that the intellectual property has not acquired an Indiana business situs is simply without foundation in law or common sense. Indeed, taxpayer's trademarks and trade names have become a ubiquitous part of the Indiana landscape. Taxpayer, having taken calculated steps to "dip its net" into the stream of Indiana commerce and derive Indiana income directly attributable to exploiting its intellectual capital within the state, should not be surprised that the income is subject to Indiana income tax. As the regulation itself states, "'Business situs' is the place at which [the] intangible personal property is employed as capital...." 45 IAC 3.1-1-55. The place at which "value attaches to the [intellectual] property" is within the state of Indiana. Id.

B. Gross Income Tax.

In addition to the adjusted gross income tax, Indiana imposes a tax known as the "gross income tax" on the "taxable gross income" of a taxpayer which is a resident or domiciliary of Indiana and on the taxable gross income from Indiana sources by a taxpayer who is not a resident or domiciliary of Indiana. IC 6-2.1-2-2.

Under the regulation governing the gross income tax, "taxable gross income" includes income that is derived from "intangibles." 45 IAC 1-1-51. The term "intangibles" includes:

> notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts, bills of sale, conditional sales contracts, chattel mortgages, "trading stamps," final judgments, leases, royalties, certificates of sale, choses in action *and any and all other evidences of similar rights capable of being transferred, acquired or sold.* (*Emphasis added*). Id.

In order for Indiana to impose the gross income tax on income derived from taxpayer's intangibles, the Department must determine that the income is derived from a "business situs" within the state. Id. The regulation states that a taxpayer has established a "business situs" within the state "[i]f the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana...." Id. Once the taxpayer has established a "business situs" within the state, "and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes." Id.

The income derived from the taxpayer's licensing of its intellectual property within the state, is income derived from a "business situs" within Indiana and is properly subject to the state's gross income tax scheme. The intellectual property is "localized" within the state because the intellectual property is integrally related to the fast food restaurants which sell food items labeled, promoted, and marketed using taxpayer's proprietary trademarks and trade names. The income at issue is not derivative of taxpayer's out-of-state activity in developing, managing, and protecting the intellectual property; the value of this intellectual property lies in taxpayer's ability to license the property for use within Indiana, to maintain rigorous control over the use of the property by its franchisees, and to derive the economic benefits attributable to the intangible property's Indiana business situs.

Accordingly, because the intangible intellectual property has acquired a business situs within the state and because the income at issue is "connected with that business, either actually or constructively," the income is subject to the state's gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

II. Computational Errors.

Taxpayer argues that the audit report contains computational errors. For example, taxpayer states that the report's listing of "royalties received from Indiana" sources" represents income received during a 12-month period but that the report itself was intended to cover less than a 12-month period. In addition, taxpayer states that the proposed assessment "includes an adjustment to reverse the net capital loss included in Federal taxable income." Taxpayer states that, in making this adjustment, the audit failed to distinguish properly between "business" and "non-business" income.

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."

The administrative hearing process is not the means by which the purported computational errors may be analyzed, corrected, or refuted. Nonetheless, taxpayer has met its burden under IC 6-8.1-5-1(b) of demonstrating that its numerous assertions are neither frivolous nor groundless. Accordingly, the audit division is requested to undertake a supplemental review of the specific claimed

errors and make whatever corrections it deems appropriate.

FINDING

Subject to the results of the supplemental audit review, taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220030408.LOF

LETTER OF FINDINGS: 03-0408
Indiana Corporate Income Tax
For Taxpayer's First Short Tax Period of 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.

ISSUE

I. Combined Income Tax Return – Adjusted Gross Income Tax.

Authority: IC 6-3-2-2(l); IC 6-3-2-2(m); IC 6-8.1-5-1(b).

Taxpayer argues that the Department of Revenue erred in requiring taxpayer – as parent company – to submit a combined income tax return reporting its own income and the income of five related business entities.

STATEMENT OF FACTS

Taxpayer is the out-of-state parent company of a group of subsidiaries which operate fast food restaurants throughout the United States including locations within Indiana. During 2003, the Department of Revenue (Department) conducted an audit review of taxpayer's business records.

Taxpayer owned and managed restaurants located in Indiana and filed income tax returns for the period at issue. However, after conducting the audit review, the Department determined that taxpayer should have been filing a combined return reporting taxpayer's own Indiana income along with the income of five of taxpayer's subsidiaries.

The Department's adjustment resulted in an assessment of additional corporate income tax. Taxpayer disagreed with the Department's reporting methodology and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer further explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. Combined Income Tax Return – Adjusted Gross Income Tax.

During the audit review of taxpayer's state income tax returns, the Department concluded that taxpayer should have been filing a combined return reflecting taxpayer's own income and that of its subsidiaries. The audit report indicated that the combined reporting method was necessary "due to the substantial intercompany activities between the group" and "to fairly reflect the income earned from Indiana sources." Specifically, the audit determined that taxpayer should have been filing a combined return reporting its own income along with that of five different related entities. One of these five entities is a "royalty" company which holds title to the intellectual property used to identify and market the group's numerous fast food restaurants. The remaining four entities own restaurants or groups of restaurants in states other than Indiana. In all cases, taxpayer maintains that the five entities do not have nexus with the state.

Taxpayer disagrees with the decision requiring the combined reporting. Specifically, taxpayer argues that taxpayer's original "Indiana corporate income tax return as filed fairly represents [taxpayer's] Indiana income." In addition, taxpayer argues that the filing of the combined return "would lead to a greater distortion of income."

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 concludes that it correctly filed a state tax return reporting only its own Indiana income; the audit concluded that a combined return was the only accurate way to report taxpayer's Indiana income. Taxpayer states that the original return "fairly represents [taxpayer's] Indiana income; the audit report states that only a combined return "fairly reflect[s] the income earned from Indiana sources."

Taxpayer and its various subsidiaries own and operate restaurant chains throughout the United States and Indiana. A certain amount of the income produced by the Indiana restaurants is paid directly one of taxpayer's subsidiaries because the subsidiary purportedly holds title to the intellectual property associated with the Indiana restaurants. That intellectual property was licensed for use within the state. In a separate Letter of Findings, the Department concluded the royalty subsidiary had established an Indiana nexus because licensing the royalty subsidiary's intellectual property to Indiana franchisees produced royalty income subject to the Indiana corporate income tax.

IC 6-8.1-5-1(b) provides 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 assessment is wrong." Given the relationship between taxpayer and the various subsidiaries, the diversion of royalty income obtained from operating the Indiana restaurant chains, and the "substantial intercompany activities between the group," the Department agrees with the audit's conclusion that taxpayer and its subsidiaries should have been filing a combined return in effort to "more fairly" reflect the group's Indiana income.

Pursuant to IC 6-8.1-5-1(b), taxpayer has failed to meet its burden of rebutting the presumption that the original audit decision was correct. Taxpayer has failed to demonstrate that combined filing requirement would distort the amount of income taxpayer received from conducting business within this state.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0320030447P.LOF

LETTER OF FINDINGS NUMBER: 03-0447P
Withholding and Sales Taxes
For the Month of April 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalties assessed for failure to file its withholding tax and sales tax returns in a timely manner.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the assessment of interest.

STATEMENT OF FACTS

The taxpayer filed its withholding tax and sales tax returns after their respective due dates for the month of April 2003. Accordingly, the Department assessed a penalty and interest on each of these returns for the taxpayer's failure to timely remit these Indiana trust taxes. In its letter of protest, the taxpayer requested that the penalties and interest be abated due to reasonable cause.

I. Tax Administration – Penalty

The taxpayer protests the imposition of penalty because changes in its computer system made it difficult to issue checks and also hindered the taxpayer from keeping track of due dates. The taxpayer asserts that its payment history prior to April 2003 shows that trust taxes were remitted in a timely manner.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

"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 acknowledges that problems can occur whenever data processing systems are updated. However, the possibility of such problems should have been anticipated by the taxpayer; procedures should have been in place to assure that tax obligations were timely paid.

The taxpayer has not established that its failure to timely pay the full amount of tax due was due to reasonable cause and not due to negligence.

FINDING

The taxpayer's protest is denied.

II. Tax Administration – Interest

The Department does not have the authority to waive interest.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220040001.LOF

LETTER OF FINDINGS NUMBER: 04-0001
Corporate Income Tax
For the Tax Year Ended January 29, 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. Gross Income Tax- Combined Return

Authority: IC 6-8.1-5-1 (b), IC 6-2.1-2-2, IC 6-2.1-5-2, IC 6-2.1-5-5(b) and (d). The taxpayer protests the department's combination of its income tax returns with the income tax returns of related corporations.

STATEMENT OF FACTS

The taxpayer is a corporation with several related and subsidiary corporations that are engaged in retail sales primarily of clothing. The Indiana Department of Revenue (department) audited the taxpayer and its related corporations for the tax year ended January 29, 2000. During the course of the audit, the department determined that the taxpayer and its related corporations' individual corporate tax returns did not properly reflect the entities' income. Therefore, the department combined the returns for gross income tax purposes. The combination of the returns resulted in a gross income tax liability for the taxpayer. The department issued an assessment for the gross income tax, interest, and penalty. The taxpayer protested the assessment. A hearing was held and this Letter of Findings results.

1. Gross Income Tax-Combined Return

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes a gross income tax on Indiana gross income of nonresident businesses. IC 6-2.1-2-2. All taxpayers are required to file annual returns pursuant to IC 6-2.1-5-2. Taxpayers are allowed to elect to file a consolidated return pursuant to the provisions of IC 6-2.1-5-5(b) and (d) as follows:

(b) Corporate members of an affiliated group that are incorporated in the state of Indiana or are authorized to do business in the state of Indiana may file a consolidated gross income tax return.

(d) An affiliated group must elect at the time it files its first annual return whether or not it will file a consolidated gross income tax return or whether each corporate member of the group will file a separate gross income tax return. After this election is made, the group must file gross income tax returns in the same manner as the group's first annual return is filed, unless the department allows the group to change the manner in which it files gross income tax returns.

Affiliated corporations are allowed to choose to file gross income tax returns on a consolidated basis. Indiana law does not allow corporations to report their Indiana gross income on a combined basis. Similarly, the department may not require corporations to report their Indiana gross income on a combined basis.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0220040002.LOF

LETTER OF FINDINGS NUMBER: 04-0002
Corporate Income Tax
For the Tax Year Ended January 29, 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. Gross Income Tax - Combined Return

Authority: IC 6-8.1-5-1 (b), IC 6-2.1-2-2, IC 6-2.1-5-2, IC 6-2.1-5-5(b) and (d). The taxpayer protests the department's combination of its income tax returns with the income tax returns of related corporations.

STATEMENT OF FACTS

The taxpayer is a holding corporation. The Indiana Department of Revenue (department) audited the taxpayer and its related corporations for the tax year ended January 29, 2000. During the course of the audit, the department determined that the taxpayer and its related corporations' individual corporate tax returns did not properly reflect the entities' income. Therefore, the department combined the returns for gross income tax purposes. The combination of the returns resulted in a gross income tax liability for the taxpayer. The department issued an assessment for the gross income tax, interest, and penalty. The taxpayer protested the assessment. A hearing was held and this Letter of Findings results.

1. Gross Income Tax - Combined Return

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes a gross income tax on Indiana gross income of nonresident businesses. IC 6-2.1-2-2. All taxpayers are required to file annual returns pursuant to IC 6-2.1-5-2. Taxpayers are allowed to elect to file a consolidated return pursuant to the provisions of IC 6-2.1-5-5(b) and (d) as follows:

(b) Corporate members of an affiliated group that are incorporated in the state of Indiana or are authorized to do business in the state of Indiana may file a consolidated gross income tax return.

(d) An affiliated group must elect at the time it files its first annual return whether or not it will file a consolidated gross income tax return or whether each corporate member of the group will file a separate gross income tax return. After this election is made, the group must file gross income tax returns in the same manner as the group's first annual return is filed, unless the department allows the group to change the manner in which it files gross income tax returns.

Affiliated corporations are allowed to choose to file gross income tax returns on a consolidated basis. Indiana law does not allow corporations to report their Indiana gross income on a combined basis. Similarly, the department may not require corporations to report their Indiana gross income on a combined basis.

FINDING

The taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0420040037.LOF

LETTER OF FINDINGS NUMBER: 04-0037
Sales Tax
For the 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.

ISSUE

I. Sales Tax—Assessment; Rental of Ceremonial Caskets

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-4-10(a); 45 IAC 2.2-4-27(d)(3)(B); Mason Metals v. Dept of State Revenue, 590 N.E.2d 672 (Ind. Tax 1992); **Sales Tax Information Bulletin #49**, December 1997.

Taxpayer protests the assessment of sales tax on the rental of ceremonial caskets to clients who desired public viewing of the deceased before the cremation of the body.

II. Sales Tax—Assessment; Calculation of the deficiency amount

Taxpayer protests the calculation of sales tax due on one particular contract used in a 19 contract sample employed to calculate the sales tax assessment.

III. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-2.1(a)(3); IC 6-8.1-10-2.1(b); IC 6-8.1-10-1(a); IC 6-8.1-10-1(e); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer protests the imposition of a 10% negligence penalty and the assessment of interest on the sales tax deficiency.

STATEMENT OF FACTS

Taxpayer owns and operates funeral homes in Indiana. Taxpayer was examined by the Department for calendar years 2000, 2001, and 2002. An assessment for sales tax deficiencies was issued as a result of the audit examination. Taxpayer protested the assessment for sales tax due on the rental of ceremonial caskets rented to clients who desired public viewing of the deceased before the cremation of the body. Additional facts will be discussed below.

I. Sales Tax—Assessment; Rental of Ceremonial Caskets

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). Indiana retail transactions are subject to the imposition of an excise tax—known as the state gross retail tax. IC 6-2.5-2-1. Under IC 6-2.5-4-10(a), a person is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person.

A ceremonial casket is used in funeral services where the client desires a viewing prior to the cremation of the deceased. A viewing is not required prior to cremation; a direct cremation can occur—in which the deceased is cremated without a public viewing of the body. Viewings are the prerogative of a client. State law does require that a cremated body be placed in an alternative container for cremation. An alternative container can be a cardboard box or a pine box. The box merely is a container that allows the body to be handled and transported. For viewings, clients choose to have the deceased presented in a ceremonial casket, which is rented for the services and then is returned to the funeral home.

Taxpayer forwards 45 IAC 2.2-4-27(d)(3)(B) to support its argument that the rental of a ceremonial casket is a sales tax exempt transaction. The regulation states:

> The rental of tangible personal property together with an operator as part of a contract to perform a specific job in a manner to be determined by the owner of the property or the operator shall be considered the performance of a service rather than a rental or lease provided the lessee cannot exercise control over such property and operator.

Taxpayer argues that because Indiana law allows only a licensed funeral director to perform a funeral service, the funeral director acts as the operator of the ceremonial casket—precluding the lessee from exercising control over the property and operator. While a novel argument, it is not persuasive. The regulation is written to address the rental of heavy equipment that is used by the operator of the equipment in a manner determined by the operator—not by the person paying for the rental. An example would be where a person hires a contractor for a project and in order for the contractor to complete the project, the contractor rents a piece of heavy equipment. The person does not control the property and the operator; the contractor controls the equipment and the operator in the fulfillment of the project.

Taxpayer compares itself to a contractor hired for a project. A ceremonial casket is not a piece of heavy equipment that requires an operator in order for the function and the use of the ceremonial casket to be fulfilled. Understandably, the alternative container with the body of the deceased will need to be placed inside the ceremonial casket, and this is done by the funeral home providing the services. There are no mechanisms, buttons, knobs, controls, wheels, or the like of a ceremonial casket that need to be controlled by an operator. A ceremonial casket is a decorative container with a lid. Taxpayer places the body into the casket and removes the body from the casket. Taxpayer moves the casket into place for services, and opens and closes the lid as needed. All this is done at the request and direction of the client. While the client does not stand over Taxpayer as the tasks are done, the client does tell Taxpayer which body to place into the casket, where to place the casket, and when to remove the body from the casket. While Taxpayer facilitates the accomplishing of all this—suggesting the best method of execution—the client controls the use of the ceremonial casket. Taxpayer fulfills providing services and disposition of the body in the manner directed by the client. The client is the one who chooses whether to have a viewing. And to accomplish this, the client rents a ceremonial casket and then tells Taxpayer

how to fulfill the client's viewing expectations. The client rents and controls the casket; Taxpayer is the agent who fulfills the requests.

Taxpayer cites Mason Metals v. Dept of State Revenue, 590 N.E.2d 672 (Ind. Tax 1992), to support its position that it is an operator who controls the ceremonial casket. In Mason Metals, a corporation engaged in the recycling and manufacturing of tin products entered into agreements in which a company provided a semi-tractor and a driver to haul the corporation's semi-trailers. The Tax Court held that the corporation's transactions with the company were not leases subject to sales and use tax. The decision noted that—in general—sales and use tax does not apply to the provision of transportation services. Taxpayer is not providing transportation services by way of the ceremonial casket. The casket is a container. Transportation services are provided by other means. The Tax Court determined in Mason Metals that the corporation did not have possession and control of the semi-tractor; the corporation had no control over the routes taken by the drivers in getting to their destinations and semi-tractor was not used exclusively to haul the corporation's products. The clients of Taxpayer control where the ceremonial casket is to be taken and placed. As well, during the rental period, the casket is exclusively used to contain the body of the deceased. But the most striking distinction between the facts of the Mason Metals case and the facts of this tax protest is the disparity between a semi-tractor, which provides locomotion, and a casket, which is a container. If a comparison is to be made, the ceremonial caskets are more akin to the semi-trailer—which hold the contents.

Finally, **Sales Tax Information Bulletin #49**, December 1997, lists on page 2 sales taxable items and exempt items. The exempt items include transportation services, such as: funeral cars, family cars, and flower cars. Applying this to Mason Metals, the car used to transport the ceremonial casket is the analog to the semi-tractor. It is what provides the locomotion to transport the casket. Taxable items listed in the Bulletin include: caskets and cremation caskets. The Department has placed Taxpayer on notice—by way of the Bulletin—that ceremonial caskets are a taxable product supplied in a funeral service.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

II. Sales Tax—Assessment; Calculation of the deficiency amount

DISCUSSION

At the hearing, Taxpayer presented the hearing officer with a copy of a contract used by the Department in a 19 contract, 2 month sample used in the audit to determine the sales tax due. Taxpayer stated that the Department incorrectly calculated the sales tax due on the contract. Taxpayer explained that the contract listed the prices of the services and products supplied to that client—but that a discount was taken off the total cost. Taxpayer presented the hearing officer with a copy of the contract and the billing statement. Neither the contract nor the billing statement indicated to which items of the billing the discount was applied. Taxpayer presented an analysis sheet that separated out what Taxpayer wished to represent as to the items to which the discount was applied. But this analysis was produced after the fact for the purposes of the hearing. It does not have indicia of reliability because nothing on the original contract or billing supports the breakout of the charges as to which the discount was applied.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

III. Tax Administration—Negligence Penalty and Interest

DISCUSSION

When the Department issued the assessments of sales tax, it imposed a 10% negligence penalty, as well as interest, for the tax years in question. Taxpayer protests the imposition of the penalty and the assessment of interest. IC 6-8.1-10-2.1(a)(3) states that if a person is examined by the Department and incurs a deficiency that is due to negligence, the person is subject to a penalty. In general, the penalty is 10%. *See* IC 6-8.1-10-2.1(b). 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 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 thus was subject to a penalty under IC 6-8.1-10-2.1(a). In its protest letter, Taxpayer requested a waiver of penalties and interest—but provided no documentation of reasonable cause. No affirmative explanation was provided to the Department in the

letter. At the hearing, Taxpayer provided no affirmative explanation of reasonable cause. 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).

IC 6-8.1-10-1(a) states that a taxpayer is liable for interest on unpaid taxes. IC 6-8.1-10-1(e) states that the statutorily imposed interest may not be waived by the Department.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320040220P.LOF

LETTER OF FINDINGS NUMBER: 04-0220P
Withholding Tax
For the Calendar Year 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. 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 calendar year withholding tax return for the year 2003.

The taxpayer is an out-of-state company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer did not have the information needed to pay the tax by the due date.

The taxpayer sold an Indiana property during the 2003 year. The taxpayer completed an IRS Section 1031 Exchange in early March 2004 for the property sold in 2003. The 1031 computation resulted in the taxpayer not having the information available to compute the annual withholding until late March 2004, where upon, the taxpayer filed and paid the 2003 withholding three weeks past the due date.

The Department points out the taxpayer could have paid an estimate at the March 15th due date and then applied for a refund when the withholding 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

0420040279.LOF

LETTER OF FINDINGS NUMBER: 04-0279
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

1. Sales and Use Tax- Imposition of Use Tax on Sanitation Supplies and Equipment

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-3-2 (a), IC 6-2.5-3-2 (b), IC 6-2.5-5-2 (a), IC 6-2.5-5-3, 45 IAC 2.2-5-10(c), *Indiana Department of Revenue v. Cave Stone*, 457 N.E. 2d 520, (Ind.1983), *Gross Income Tax Division v. National Bank and Trust Co.,* 79 N.E. 2d 651 (Ind. 1948), *Indiana Department of Revenue v. American Dairy of Evansville, Inc.*, 338 N.E.2d 698, (Ind. App. 1975).

The taxpayer protests the assessment of use tax on certain items of tangible personal property.

2. Sales and Use Tax-Imposition of Use Tax on Floor Coating

Authority: IC 6-2.5-3-2 (b), IC 6-2.5-3-2 (a), IC 6-2.5-5-3.

The taxpayer protests the imposition of use tax on floor coating.

3. Sales and Use Tax-Imposition of Use Tax on Vinegar Holding Tanks

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-3-2 (b), 45 IAC 2.2-5-8(c), 45 IAC 2.2-5-8(g), IC 6-2.5-5-3, 45 IAC 2.2-5-10(d).

The taxpayer protests the imposition of tax on vinegar holding tanks.

4. Tax Administration-Imposition of 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 that processes food products. After an audit for the tax period 1999-2001, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest, and penalty. The taxpayer agreed with some of the assessed items and protested the remainder of the assessment. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax-Imposition of Use Tax on Sanitation Supplies and Equipment.

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 an 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). In *Indiana Department of Revenue v. Cave Stone*, 457 N.E. 2d 520, (Ind. 1983) the Indiana Supreme Court found that a piece of equipment qualifies for the manufacturing exemption if it is essential and integral to the production process. 45 IAC 2.2-5-10 (c) further describes manufacturing machinery and tools as exempt if they have an immediate effect on the property in production.

There are a number of exemptions from the use tax pursuant to the statute. All exemptions must be strictly construed against the party claiming the exemption. *Gross Income Tax Division v. National Bank and Trust Co.,* 79 N.E. 2d 651 (Ind. 1948).

The taxpayer contends that many items, including the sanitation supplies and equipment, qualify for exemption pursuant to one of two statutory provisions. First, the taxpayer argues that the items qualify pursuant to the following provisions of IC 6-2.5-5-2 (a):

> Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

The taxpayer argues that the items could also qualify for exemption pursuant to the following provisions of IC 6-2.5-5-3 (b):

> Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining; or finishing of other tangible personal property.

Both exemptions share the basic elements that the item must be "directly used in direct production". Therefore, the Indiana Court of Appeals found in *Indiana Department of Revenue v. American Dairy of Evansville, Inc.*, 338 N.E. 2d 698, (Ind. App. 1975) that the court cases and interpretations of the manufacturing exemption also apply to the agricultural production exemption.

The taxpayer protests the assessment of use tax on raincoats, aprons, overalls, sleeves, gloves, boots, and helmets. The taxpayer closes down the processing line for cleaning. While the processing line is closed down, the taxpayer's employees wear the protested items to protect themselves from the caustic cleaning solutions.

American Dairy of Evansville, Inc. (supra) dealt specifically with the taxability of cleaning compounds and supplies at a facility producing food products for human consumption. The Court found that the cleaning compounds used to maintain a clean processing area as required by the Indiana State Board of Health were directly used in direct production and therefore qualified for exemption. However, the Court reached a different conclusion on the taxability of cleaning equipment such as sponges, scouring pads, towels, and mops. The Court found that these items were too far removed from the production process to satisfy the double direct requirement of the exemption.

The sanitation items involved in this protest are even further removed from the production process than American Dairy's

sponges, scouring pads, towels, and mops. Therefore, they do not qualify for exemption.

FINDING

The taxpayer's protest is denied.

2. Sales and Use Tax-Imposition of Use Tax on Floor Coating

DISCUSSION

The taxpayer also protests the assessment pursuant to IC 6-2.5-3-2 (a) of use tax on a floor coating. The taxpayer contends that this floor coating qualifies for the manufacturing exemption pursuant to IC 6-2.5-5-3 (b). This is a special urethane slurry coating used in the filler room where product is placed into jars and cans. The coating is designed to keep food particles from penetrating into any floor cracks where bacteria could grow.

The floor coating producer's sales brochure indicates that the floor coating is designed "to increase abrasion and chemical resistance while improving cleanability" and protect against moisture penetration. These functions do not directly affect the direct production of the taxpayer's product. Rather, the flooring is removed from the process in much the same way as the taxable cleaning supplies such as mops and scouring pads.

FINDING

The taxpayer's protest is denied.

3. Sales and Use Tax-Imposition of Use Tax on Vinegar Holding Tanks

DISCUSSION

The taxpayer also protests the assessment of use tax pursuant to IC 6-2.5-3-2 (a) on vinegar holding tanks. The taxpayer argues that the vinegar tanks qualify for exemption from the use tax pursuant to IC 6-2.5-5-3 (b), which states:

> Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining; or finishing of other tangible personal property.

Pursuant to 45 IAC 2.2-5-8(c) equipment must have "an immediate effect on the article being produced" to qualify for the exemption. This requirement is defined at 45 IAC 2.2-5-8(g) as follows:

> "Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax.... The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not in itself mean that the property "has an immediate effect upon the article being produced:. Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

To qualify for this exemption, the vinegar tanks must be used during the production process. The standard for determining the parameters of the direct production process are found at 45 IAC 2.2-5-10(d) as follows:

> Pre-processing and post-processing activities. "Direct use" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the processing or refining has altered the item to its completed form, including packaging, if required.

The vinegar storage tanks hold enough vinegar for about eighteen (18) hours of production. They are constantly being refilled. They are located immediately outside the cook room and are connected to the cooking kettles with piping. The flow meters on the tanks control the number of gallons introduced to each cooking kettle.

The vinegar storage tanks store vinegar, a raw material for the processing of tomatoes. They do not have an immediate effect on the product. Although it is essential that there be tanks to hold the vinegar prior to the production process, they are not part of the taxpayer's integrated production process. Therefore, they do not qualify for the exemption.

FINDING

The taxpayer's protest is denied.

4. Tax Administration-Imposition of 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.

During the tax period, the taxpayer purchased without paying the sales or use tax on many clearly taxable items such as first aid supplies, file cabinets, oil dri, polo shirts, and office supplies. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420050001.LOF

LETTER OF FINDINGS NUMBER: 05-0001
SALES TAX
For 2003

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax—Like Kind Exchange; Trade in Allowance on the Purchase of an Aircraft

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-6-6.5-2; IC 6-2.5-3-6(d)(2); IC 6-2.5-5-24(a)(6); IC 6-2.5-1-6; *Black's Law Dictionary*, Seventh Edition.

Taxpayer protests the denial of the trade in allowance on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased New Aircraft and sold Old Aircraft using a qualified intermediary to facilitate an IRC § 1031 like-kind exchange. Taxpayer sought to avoid the triggering of capital gain. Taxpayer purchased New Aircraft for $1.4 million from New Seller using Intermediary and sold Old Aircraft to Old Buyer for $997,975 using Intermediary. Intermediary was paid $1,000 to handle the transaction and $402,025 to cover the difference in price between the selling price of Old Aircraft and the purchase price of New Aircraft. Intermediary is not an aircraft dealer—but specializes in structuring transactions to facilitate an IRC § 1031 like kind exchange so as to avoid the triggering of the capital gains tax—which is an income tax. The title to New Aircraft was not transferred from Intermediary to Taxpayer, but was transferred from New Seller to Taxpayer. The title to Old Aircraft was not transferred from Taxpayer to Intermediary, but was transferred from Taxpayer to Old Buyer.

Taxpayer registered New Aircraft with the Department and paid the sales and use tax on $402,025—the difference between what Taxpayer claims is the purchase price of $1.4 million and the "trade in" value of $975,975. The Department billed Taxpayer for the whole purchase price of New Aircraft—stating there was no like kind exchange and thus no application of a trade in allowance.

Taxpayer filed a protest; a hearing was held; this letter of findings is issued.

I. Sales and Use Tax—Like Kind Exchange; Trade in Allowance on the Purchase of an Aircraft

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). Indiana imposes an excise tax, known as the use tax on the storage, use, or consumption of an aircraft if the aircraft:

(1) is acquired in a transaction that is an isolated or occasional sale; and

(2) is required to be titled, licensed, or registered by this state for use in Indiana.

See IC 6-2.5-3-2. Taxpayer acquired New Aircraft in an isolated sale and the aircraft is required to be registering in Indiana for use. IC 6-6-6.5-2 requires an Indiana resident who owns an aircraft to register the aircraft with the Department within 31 days after the purchase date. IC 6-2.5-3-6(d)(2) requires a taxpayer to pay the use tax due on aircraft to the Department at the time the taxpayer registers the aircraft—if the sales tax was not paid at the time of purchase. Because Taxpayer purchased New Aircraft in an isolated sale, Indiana sales tax was not collected—and thus use tax is due. IC 6-2.5-5-24(a)(6) grants an exemption to the sales and use tax due for those amounts representing a reciprocal exchange for tangible personal property of like kind. A "like kind exchange" is defined in IC 6-2.5-1-6.

(a) "Like kind exchange" means the reciprocal exchange of personal property between two (2) persons, when:

(1) the property exchanged is of the same kind or character, regardless of grade or quality; and

(2) the persons exchanging the property both own the property prior to the exchange.

(b) A "like kind exchange" may be a part of a transaction involving additional consideration other than the exchanged property.

(c) Notwithstanding subsection (a), a "like kind exchange" does not occur when:

(1) the transaction involves more than two (2) persons; or

(2) one (1) party to the transaction, through agreement or negotiation with the second party, acquires personal property for the primary purpose of exchanging that property for like kind property held by the second party.

To be a like kind exchange, several requirements must be met. The exchange must not involve more than two parties. In this

case, these are the parties involved: Taxpayer, Intermediary, New Seller, and Old Buyer. There are four parties. Taxpayer exchanged consideration with Intermediary, but exchanged titles with New Seller and Old Buyer. The word *reciprocal* is defined in *Black's Law Dictionary*, Seventh Edition as *mutual* and *bilateral*. IC 6-2.5-1-6(c)(1) excludes Taxpayer's transaction as a like kind exchange. Additionally, Taxpayer admitted both at the hearing and in documentation submitted to the Department that the transactions were executed through an intermediary so as to secure a qualified IRC § 1031 like kind exchange for income tax purposes. Indiana sales and use tax code does not reference back to IRC § 1031. What is defined and qualifies as a like kind exchange in IRC § 1031 for federal income tax purposes and what is defined and qualifies for a like kind exchange in IC 6-2.5-1-6 for Indiana sales and use tax purposes are not the same. Income tax and sales & use tax are two different types of taxes—each with their own statutes, regulations, and definitions.

Taxpayer did not engage in a reciprocal like kind exchange for sales and use tax purposes. No offset for a "trade in" exists. Use tax is to be paid on the whole purchase price of New Aircraft.

FINDING

For the reasons stated above, Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0120050046.LOF

LETTER OF FINDINGS: 05-0046
Individual Adjusted Gross Income Tax
For 1999 and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Imposition of the State's Individual Income Tax by Reference to Taxpayers' Federal Adjusted Gross Income.

Authority: Ind. Const. art. I, § 25; Ind. Const. art. IV, § 1; Ind. Const. art. X, § 8; IC 6-3-1-3.5; Ind. Dept. of Envtl. Management v. Chemical Waste Management, Inc., 643 N.E.2d 331 (Ind. 1994); Campbell v. Heiss, 53 N.E.2d 634 (Ind. 1944); Bissell Carpet Sweeper Co. v. Shane Co., 143 N.E.2d 415 (Ind. 1957).

Taxpayers argue that imposition of the Indiana income tax by reference to the federal income tax law is a violation of the Indiana constitution.

II. Sufficiency of Taxpayers' Indiana Tax Return.

Authority: IC 6-3-1-3.5; United States v. Kimball, 896 F.2d 1218 (9th Cir. 1990); United States v. Long, 618 F.2d 74 (9th Cir. 1980); Cooper Industries, Inc. v. Indiana Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-1.

Taxpayers maintain that their Indiana tax returns were not "frivolous."

III. Definition of "Income" for Purposes of Imposing the State's Individual Income Tax.

Authority: U.S. Const. amend. XVI; Ind. Const. art X, § 8; IC 6-3-1-3.5 et seq.; IC 6-3-1-9; IC 6-3-1-12; IC 6-3-1-15; I.R.C. § 61; New York v. Graves, 300 U.S. 308 (1937); Burnet v. Harmel, 287 U.S. 103 (1932); Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926); Merchants' Loan Trust Company v. Smietanka, 255 U.S. 509 (1921); Eisner v. Macomber, 252 U.S. 189 (1920); United States v. Connor, 898 F.2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F.2d 1328 (7th Cir. 1984); United States v. Romero, 640 F.2d 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)

Taxpayers claim that any money they received during 1999 and 2000 was not subject to the state's adjusted gross income tax. Taxpayers argue that only corporate income is subject to income tax.

STATEMENT OF FACTS

Taxpayers are Indiana residents who filed state income tax returns for 1999 and 2000. The Department of Revenue (Department) adjusted the taxpayers' returns based on income information contained on the taxpayers' W-2 forms. As a result, the Department sent taxpayers notices of "Proposed Assessment."

Taxpayers disagreed with the Department's conclusion and assessments. Taxpayers submitted a protest letter to that effect. The protest letter challenged the Department's conclusions. The taxpayers also challenged adjustments made for 1996, 1997, 1998, and 2001; however, the taxpayers' challenges of those latter adjustments had been addressed in three Letters of Finding previously issued by the Department.

Upon assignment to the Hearing Officer, taxpayers were notified of their opportunity to take part in an administrative hearing and to further explain the basis for their protest. Taxpayers chose not to respond. Taxpayers were notified a second time and provided a second opportunity to schedule the hearing. Taxpayers again chose not to respond despite their own initial written "demand" for just such a hearing. Consequently, this Letter of Findings was written based entirely upon taxpayers' original protest letter.

DISCUSSION

I. Imposition of the State's Individual Income Tax by Reference to Taxpayers' Federal Adjusted Gross Income.

Taxpayers argue that the proposed assessments represent a "blatant violation of the Indiana Constitution...." because "[n]owhere in the Indiana Constitution did the people of this State give any power or authority to the federal government to make laws exclusively for those living in Indiana." According to taxpayers, the Department's attempt to hold them accountable to a state law based upon a federal statute (whose specific provisions had never been incorporated into the laws of Indiana) "obviously represents an illegal and unconstitutional delegation of legislative authority by the Indiana legislature to the U.S. Congress which is specially barred by the Indiana Constitution."

Taxpayers states that if the Department attempts to enforce against them a federal law, they will seek punitive damages from the Department and will take the matter up with the Indiana Supreme Court.

In effect, taxpayers argue that the Indiana Constitution does not permit references to another taxing jurisdiction's own laws; because taxpayers are now faced with just such an improper reference to federal law – such as that found within IC 6-3-1-3.5 – the taxpayers' compliance with the state tax law is not required.

Because taxpayers did not take part in an administrative hearing and because taxpayers did not provide a more detailed explanation of their state constitutional argument, the Department must assume that taxpayers' based their argument on Ind. Const. art. I, § 25 which states that, "No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution." This section of the state constitution is intended to place a limit on "the legislative activity of the General Assembly." Ind. Dept. of Envtl. Management v. Chemical Waste Management, Inc., 643 N.E.2d 331, 341 (Ind. 1994).

The Indiana Constitution vests legislative authority in the Indiana General Assembly. "The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: 'Be it enacted by the General Assembly of the State of Indiana': and no law shall be enacted, except by bill." Ind. Const. art. IV, § 1. Taxpayers are correct in their assertion that, under Ind. Const. art. I, § 25 and Ind. Const. art. IV, § 1, the Indiana General Assembly may not delegate either its authority or its exclusive responsibility for performing legislative functions. "The power to legislate or to exercise a legislative function cannot be delegated to a non-governmental agency or person. Nor can the Legislature delegate its law-making power to a governmental officer, board, bureau or commission." Bissell Carpet Sweeper Co. v. Shane Co., 143 N.E.2d 415, 419 (Ind. 1957) (Internal citations omitted).

On its face, taxpayers' contention appears to have merit. The Indiana General Assembly may not delegate to the federal government the Assembly's own responsibility for defining or enforcing the state's adjusted gross income tax scheme. Neither may the Assembly's authority to implement such a scheme be obtained under federal law. However, the cross-references to the Internal Revenue Code – such as I.R.C. § 62 cited within IC 6-3-1-3.5 – do not delegate the Assembly's taxing authority to the federal government. The Assembly did not turn over its taxing authority to the federal government. The Assembly did not obtain its taxing authority from the federal government. Ind. Const. art. X, § 8 unambiguously states that, "The general assembly may levy and collect a tax upon income from whatever source derived, at such rates, *in such manner*, and with such exemptions as may be prescribed by law." (*Emphasis added*). The Indiana Code provisions containing references to the I.R.C. reflect merely the legislature's independent decision to employ the federal tax calculation as the starting point for determining Indiana's adjusted gross income tax. "It is well settled that a legislative body may enact a law, the operation of which depends upon the existence of a stipulated condition." Campbell v. Heiss, 53 N.E.2d 634, 636 (Ind. 1944). The state legislature has retained its independent authority to define and enforce the state's own income tax plan. That the Indiana General Assembly has retained exclusive authority to stake out the parameters of the state's adjusted gross income tax scheme, is evidenced by the Assembly's regular decisions to periodically reenact IC 6-3-1-3.5 the latest of which occurred in 2004. Whether the General Assembly should have avoided references to the Internal Revenue Code, drafted original statutory provisions mirroring the Internal Revenue Code, and then require every Indiana taxpayer to recalculate his or her taxable income, is an issue beyond the scope of this Letter of Findings and is irrelevant to determining taxpayer's existing tax liability. It is enough to say that the General Assembly acted entirely within its authority in employing the federal adjusted gross income as the jumping off point for calculating the individual taxpayer's Indiana adjusted gross income. It is no different than if the General Assembly simply adopted federal guidelines for state road construction or if the General Assembly adopted Illinois procedures for removing underground fuel tanks. The federal government did not decide that Indiana residents should pay a state income tax; the General Assembly did.

FINDING

Taxpayers' protest is denied.

II. Sufficiency of Taxpayers' Indiana Tax Return.

Taxpayers have set out various arguments in support of their belief that they were not liable for Indiana income tax for income

received during 1999 and 2000. One of their arguments is based upon the undisputed fact that they reported "0" income on their corresponding federal returns. According to taxpayers, they were thereafter – under penalty of law – obliged to report the identical amount ("0") on their state return. In support of their argument taxpayers have reported a copy of their 2000 federal return and, indeed, it is apparent that taxpayers reported "0" on their federal return.

It is also not disputed that the Indiana tax return for the tax year 2000 employs federal adjusted gross income as the starting point for determining a taxpayer's state individual income tax liability. Line one of the IT-40 state form requires the taxpayer to "Enter your Federal adjusted gross income from your Federal return (see page 9)."

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 statute specifies addbacks and deductions, peculiar to Indiana, which modify the federal adjusted gross income amount. The Department's regulation concisely restates the same formulary principal. 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 employ the federal adjusted gross income calculation, as determined under I.R.C. § 62, as the starting point for determining the taxpayer's Indiana adjusted gross income.

Taxpayers' contention – that they were compelled by force of law to declare "0" as Indiana adjusted gross income because they declared "0" on his federal return – is meritless. The Indiana statute is unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62, not 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. The Indiana tax form simply instructs a taxpayer to put which number inside of which box. Those directions notwithstanding, a taxpayer is nonetheless required to actually perform the calculations necessary to determine his Indiana adjusted gross income tax liability.

Taxpayers have cited to various cases in support of the proposition that they are in full compliance with the tax laws simply by placing a "0" on their tax return. Taxpayers cite to United States v. Long, 618 F.2d 74 (9th Cir. 1980) and United States V. Kimball, 896 F.2d 1218 (9th Cir. 1990). However, neither case supports the fanciful notion that a taxpayer has fulfilled his obligations by merely placing a "0" on the form. Rather, in the cited cases, the defendants were being criminally prosecuted for *failing to file* an income tax return. *See* 26 U.S.C.S. § 7203. In the Long case, the court found that "A return containing false of misleading figures is still a return." Long, 618 F.2d at 76. The cases cited by the taxpayers are entirely irrelevant to taxpayers' underlying argument that they do not have to pay income tax. Taxpayers are not being criminally prosecuted for failure to file a return because it is clear that taxpayers *did* file an Indiana tax return for 1999 and 2000. Rather, the issue is whether the taxpayers owe adjusted gross income tax because the numbers written on the returns were the wrong numbers.

Taxpayers reported receiving zero income for 1999 and 2000. Fanciful semantics aside, they reported their income incorrectly, and they now owe income tax for those years.

FINDING

Taxpayers' protest is denied.

III. Definition of "Income" for Purposes of Imposing the State's Individual Income Tax.

Taxpayers argue that "wages" for services do not constitute taxable income. Taxpayers believe that only corporate profits are subject to federal or state income tax. Since taxpayer's did not obtain "corporate profits" during 1999 and 2000, they maintain that they do not owe state income tax.

Taxpayers' argument is that – for purposes of determining income tax liability – "income" can only be derivative of corporate activity. Therefore, as individual Indiana residents who by definition did not receive "corporate" income, taxpayers are not subject to the adjusted gross income tax because the ordinary income received by individuals is not "taxable income."

Taxpayers have offered a number of Supreme Court cases which purportedly support taxpayers' basic contention. Taxpayers cites to Merchants' Loan Trust Company v. Smietanka, 255 U.S. 509 (1921) for the proposition that income tax can only be levied against corporate gains. In that case, the Court held that the when a provision in a will created a trust, the increase of the value of the trust resulted in taxable "income" under the provisions of the U.S. Const. amend. XVI. Id. In arriving at that decision, the Court stated that "the word [income] must be given the same meaning and content in the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and that what that meaning is has now become definitely settled by decisions of [the] court." Id. 519.

Taxpayers also cite to Eisner v. Macomber, 252 U.S. 189 (1920), a case in which the Court addressed the issue of whether the U.S. Const. amend. XVI permitted the government to tax a taxpayer's stock dividends resulting from a corporation's accumulated profits. The Court found that the stock dividend did not involve the realization of a taxable gain but that the corporation's

accumulated profits were simply capitalized or retained as surplus. Id. at 211. In effect, the taxpayer in Eisner had not yet realized a gain severed from and independent of the corporations' assets. Id. at 211-12. In reaching that decision, the Court stated that income is the "gain derived from capital, from labor, or from both combined." Id. at 201.

Taxpayers read Merchant's Loan and Eisner together with certain other cases – Burnet v. Harmel, 287 U.S. 103 (1932); Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926) – as supporting their contention that the individual income tax can only be assessed against corporate gain. Taxpayers base their conclusion on selected case citations which, when taken together, purportedly limits the definition of "taxable income" to the definition originally established under the Corporation Excise Tax Act of 1909 and the Revenue Act of 1924. The conclusion that only a "corporation" can earn "corporate income" is not particularly startling. However, even setting aside questions concerning the soundness of taxpayers' legal analysis, taxpayers' review of corporate income tax cases is entirely irrelevant.

Taxpayers' legal argument stands for nothing more than that a legal argument can be advanced which will support any legal conclusion no matter how far-fetched. Taxpayers cite cases in which the Court was asked to determine what constituted *corporate income* under the corporate income and excise taxes in effect at the time the Court reached its conclusion. In each of the cases cited by taxpayers, the Court was asked to determine if certain income was subject to the federal corporate income tax law. Not one of the cases cited by taxpayers addresses the issue of whether the wages received by an individual are subject to federal income tax. It is sufficient to say that the cases simply do not get the taxpayers where they want to go.

The United States Supreme has clearly stated that the wages of individual citizens may be subjected to an adjusted gross income tax. In New York v. Graves, 300 U.S. 308 (1937), Justice Stone stated "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized." Id. at 312.

Since that 1937 decision, the federal courts have consistently, repeatedly, and without exception, determined that individual wages are income. United States v. Connor, 898 F.2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F.2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F.2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable") (Emphasis in original); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable.... [Taxpayer] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves.").

In addressing the identical issue, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and federal circuit courts, and this Court's opinion... all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

As set out in the Indiana Constitution, "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const. art X, § 8. The Indiana General Assembly exercised its constitutional prerogative by imposing an adjusted gross income tax on individuals and corporations. IC 6-3-1-3.5 et seq. In doing so, the General Assembly defined an individual subject to the adjusted gross income tax as a "natural born person, whether married or unmarried, adult or minor." IC 6-3-1-9.

Taxpayers are of the opinion that with the right combination of "legal arguments," they can render themselves immune from federal and state tax liability. There is not one single federal or state court case which supports such a notion. Wishful thinking aside, given that taxpayers received gross income (I.R.C. § 61) during 1999 and 2000, are "individual[s]" under IC 6-3-1-9, were residents of Indiana for the years 1999 and 2000 (IC 6-3-1-12), and are "taxpayer[s]" as defined within (IC 6-3-1-15), the statutes imposing the Indiana individual income tax apply with full force to taxpayers' 1999 and 2000 income.

FINDING

Taxpayers' protest is denied.

DEPARTMENT OF STATE REVENUE

0120050054P.LOF

LETTER OF FINDINGS NUMBER: 05-0054P
Income Tax
For the Calendar Year 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of

publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. 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 calendar year individual income tax return for the year 2003.

The taxpayer is an individual residing in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the error was the fault of the taxpayer's accountant.

The Department points out the accountant is an agent of the taxpayer, and therefore the taxpayer is liable for the actions of the accountant. "Generally, a principal who controls or has the right to control the physical conduct of his agent in the performance of a service is an employer upon whom liability for the torts of the agent may be imposed." Dague v. Fort Wayne Newspapers, 647 NE 2nd 1138 (Ind. Ct. App.) (1995).

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

0120050055.LOF

LETTER OF FINDINGS: 05-0055
Indiana Individual Income Tax
For 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sufficiency of Proposed Assessment Notice.

Authority: IC 6-8.1-5-1; IC 6-8.1-5-1(a); IC 6-8.1-5-1(b).

Taxpayer argues that the notice of proposed tax assessment was insufficient and that he requires a "verified bill" before he will consider paying the assessment.

II. Administrative Due Process.

Authority: U.S. Const. amend. V; U.S. Const. amend. XIV; JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW (5th ed. 1995).

Taxpayer claims that issuance of the proposed assessment constituted a denial of administrative due process.

III. Unapportioned State Income Tax.

Authority: U.S. Const. art. I, § 2, cl. 3; U.S. Const. art. I, § 8, cl. 1; U.S. Const. amend. XVI; Ind. Const. art. X, § 8; IC 6-3-1-3.5 et seq.; United States v. Collins, 920 F.2d 619 (10th Cir. 1990); Lovell v. United States, 755 F.2d 517 (7th Cir. 1984).

Taxpayer maintains that Indiana is not entitled to impose or collect an unapportioned state income.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who did not file state income tax returns for several tax periods. Based upon information forwarded by the IRS, the Department of Revenue (Department) determined that taxpayer should have paid state income tax for 2001.

Therefore, the Department sent taxpayer a notice of "Proposed Assessment" dated September 13, 2004. Taxpayer disagreed with the Department's decision and sent the Department a protest to that effect. Taxpayer was offered the opportunity to further explain the basis for his protest during an administrative hearing. Taxpayer declined the opportunity to do so. As a result, this Letter of Findings is based on taxpayer's original protest letter and upon the supplemental correspondence directed to the Hearing Officer.

DISCUSSION

I. Sufficiency of Proposed Assessment Notice.

Taxpayer objects to the notice of "Proposed Assessment." In place of the notice the Department first sent to the taxpayer, taxpayer claims that he is entitled to a "verified bill" signed under penalty of perjury.

IC 6-8.1-5-1(a) in part 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 taxes on the basis of the best information available to the department." (*Emphasis added*). IC 6-8.1-5-1(b) in part states that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid."

The Department sent taxpayer the notice of "Proposed Assessment" because it had obtained information indicating that taxpayer received taxable income during 2001. The notice was based upon information received from the IRS. That information constituted "the best information available to the department." IC 6-8.1-5-1(a).

There is no indication that the Department did anything less than was required under the law when it sent taxpayer the notice of "Proposed Assessment" in which the Department indicated that taxpayer owed 2001 income taxes. There is nothing in IC 6-8.1-5-1 which requires the Department to send taxpayer a "verified bill" or that the notice be signed under penalty of perjury. Taxpayer has unilaterally imposed upon the Department a procedural and substantive requirement that is not required under the law.

FINDING

Taxpayer's protest is denied.

II. Administrative Due Process.

Taxpayer believes that his constitutional guarantee of due process was given short shrift by the Department. Taxpayer suggests that this denial of "meaningful due process of law and notification of my Administrative Due Process Rights...." would potentially subject the Department to a "Federal Civil Rights and other Tort Actions for violation of Constitutional Rights."

Both the Fifth and Fourteenth Amendments prohibit governmental actions which would deprive "any person of life, liberty or property without due process of law." U.S. Const. amend. V; U.S. Const. amend. XIV. "The essential guarantee of the due process clause is that of fairness. The procedure must be fundamentally fair to the individual in the resolution of the factual and legal basis for government actions which deprive him of life, liberty or property." JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW p. 561 (5th ed. 1995).

After taxpayer sent his initial protest letter dated September 28, 2004, taxpayer was sent a letter from the Department dated February 4, 2005, indicating that it had received taxpayer's letter and that the "Department [would] review the protest as soon as possible and [would] contact him." Taxpayer responded with a letter dated February 18 indicating that he was not "arguing anything," that he was not "objecting to the law," and that he was "willing to pay any debt [he] lawfully owe[d]." Nonetheless, taxpayer's challenge of the assessment was assigned to a Hearing Officer. The Hearing Officer sent taxpayer a letter dated February 23 offering taxpayer the opportunity to further explain his position at an administrative hearing. Taxpayer was offered the choice of conducting the hearing by telephone or in person. Taxpayer was offered the opportunity to choose a date and time for the hearing. Taxpayer responded with a letter dated February 26 stating the he was currently involved in unrelated litigation and again offered to pay "any debit [he] lawfully owed" as soon as he was sent a "certified bill and also a jury or bench judgment...." The hearing officer responded in a letter dated March 1 stating that the litigation in which taxpayer was then involved was "irrelevant to the notice of proposed assessment originally issued on September 13, 2004." Taxpayer was asked to schedule and take part in an administrative hearing. Taxpayer responded with a letter dated March 3, 2004 in which taxpayer again objected to the proposed assessment, raised additional objections, but failed to respond to the offer to take part in an administrative hearing. The Hearing Officer answered in a letter dated March 9. In this letter, the offer to schedule an administrative hearing was repeated. However, taxpayer was cautioned that if he waived the right to an administrative hearing, the Letter of Findings would be prepared and would be "based upon the written information currently before [the Hearing Officer]." Taxpayer failed to respond, and the Letter of Findings was drafted on April 8, 2005.

The taxpayer has failed to demonstrate that he was in any way denied his right to due process. To the contrary, taxpayer declined to take part in an administrative hearing in which he would have been provided the opportunity to explain the basis for his challenge of the proposed assessment. Contrary to the taxpayer's unfounded assertion, taxpayer was provided a full and fair opportunity to air his grievances; taxpayer received all the administrative due process that he was owed.

FINDING

III. Unapportioned State Income Tax.

Taxpayer maintains that the Indiana is without authority to levy an unapportioned state income tax.

Taxpayer apparently refers to the provisions of the Constitution granting powers of taxation to the Congress. U.S. Const. art.

I, § 2, cl. 3 states that, "Representatives and direct Taxes shall be apportioned among the several states which may be included within this Union, according to their respective Numbers...." U.S. Const. art. I, § 8, cl. 1, states that, "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States." However, the Sixteenth Amendment permitted imposition of a federal income tax without apportionment among the states. "The Congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." U.S. Const. amend. XVI.

Since the Sixteenth Amendment was ratified in 1913, the courts have implicitly and explicitly recognized that the Amendment authorizes a non-apportioned direct income tax on United States citizens and that federal tax laws are valid. In United States v. Collins, 920 F.2d 619 (10th Cir. 1990), *cert denied*, 500 U.S. 920 (1991), the court cited to Brushaber v. Union Pacific R.R., 240 U.S. 1 (1916) and noted that the United States Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation." Collins, 920 F.2d at 629.

In Lovell v. United States, 755 F.2d 517 (7th Cir. 1984), the court rejected the plaintiffs' argument that the Constitution prohibited the imposition of a direct, unapportioned income tax and concluded that "there is absolutely no doubt that the legal contentions advanced by the plaintiffs are frivolous; indeed, plaintiffs' arguments are patently absurd." Id. at 519.

However, taxpayer's argument touches on Indiana's right to levy a state income tax, but it is somewhat difficult to understand taxpayer's argument that a state tax must be "apportioned" among the residents of that state. The Indiana Constitution simply states that, "The general assembly may levy and collect a tax upon income from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const. art. X, § 8. The Indiana General Assembly has exercised its constitutional prerogative by imposing a state adjusted gross income tax on individuals and corporations. IC 6-3-1-3.5 et seq.

Taxpayer has advanced a number of other legal arguments including the assertion that Indiana taxes are founded in contract and that he did not sign a contract with the state, that Indiana does not possess the authority to collect federal reserve notes, and that the Department has not satisfactorily proved taxpayer's identity. These and taxpayer's remaining arguments are frivolous and the Department will not expend further resources addressing them.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0320050056P.LOF

LETTER OF FINDINGS NUMBER: 05-0056P
Withholding Tax
For the Calendar Year 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. 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 withholding tax return for the calendar year 2003.

The taxpayer is an in-state company.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer paid the liability in good faith before the Department contacted the taxpayer concerning the liability.

The taxpayer reorganized from a sole proprietorship to a Professional Corporation (P.C.) in 2003. The taxpayer registered for a new withholding account on December 29, 2003. The taxpayer's payroll provider told the taxpayer to send the 2003 withholding payment to the bank and the bank would send the payment to the Department of Revenue. The taxpayer did so and sent a check for $40,831.16 to the bank. However, the bank sent the $40,831.16 check to the IRS. As it turns out, the bank does not procedurally send withholding payments to the Department of Revenue. The taxpayer had received erroneous information from the taxpayer's payroll provider concerning the remittance of the withholding payment.

In May 2004, the taxpayer received a $41,167.09 check from the IRS where the IRS stated the check was an overpayment of the federal withholding account. At the time, the taxpayer did not understand the $41,167.09 check. The taxpayer did not figure out that the Department of Revenue had not received its withholding payment until October 2004. In October 2004, the taxpayer sent the $41,167.09 IRS check to the Department for payment of the 2003 withholding liability.

With regard to the Department contacting the taxpayer, the Department is not obliged to contact the taxpayer for an unfilled tax period. When the taxpayer files a return, the Department has three years in which to contact the taxpayer.

With regard to timeliness, the Department did not receive payment until October 2004. This payment is seven months after the due date, and, five months after the IRS informed the taxpayer of a payment problem.

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

0320050077.LOF

LETTER OF FINDINGS NUMBER: 05-0077
Withholding Tax
Responsible Officer
For the Tax Period September, 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 the president of a corporation that did not remit the proper amount of withholding taxes for the tax period September, 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. A hearing was scheduled. The taxpayer did not appear.

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 was the president of the corporation. She had the ultimate responsibility for all of the corporation's financial affairs. Therefore, she is personally responsible for the payment of the corporate withholding taxes.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

01980577.LOF

SUPPLEMENTAL LETTER OF FINDINGS: 98-0577
Indiana Adjusted Gross Income Tax
For 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 the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Net Operating Losses – Adjusted Gross Income Tax.

Authority: IC 6-8.1-5-1(b).

Taxpayer repeats her argument that she did not owe Indiana adjusted gross income tax for 1995 because she was entitled to carry forward a net operating loss from previous years.

STATEMENT OF FACTS

The Department of Revenue (Department) determined that taxpayer owed a delinquent state income tax liability for 1995, offset a year 2000 refund otherwise owed taxpayer, and sent taxpayer a notice to that effect. Taxpayer challenged the decision. Taxpayer did so on the ground that a net operating loss (NOL) – carried forward from 1987 – more than compensated for any 1995 tax liability.

Following taxpayer's initial protest, the Department issued a Letter of Findings (LOF) denying taxpayer's claim. Taxpayer again protested and supplied additional information purporting to verify the net operating loss. This Supplemental Letter of Findings results.

DISCUSSION

I. Net Operating Losses – Adjusted Gross Income Tax.

According to taxpayer, her farm business incurred a net operating loss of approximately $200,000 in 1987. Taxpayer then carried forward the 1987 loss to 1988 entirely offsetting taxpayer's income received during that year. Taxpayer carried forward the "unused" portion of the loss to 1989 thereby offsetting the 1989 income. Because the original loss was substantial and the personal income received during each following year was comparatively small, the original net operating loss was carried forward again and again offsetting each subsequent year's income. Taxpayer repeated this process through 1995 after which nothing remained of the original $200,000 loss.

The Department's only challenge was to taxpayer's 1995 calculation. The Department requested documentation substantiating the source and nature of the 1987 loss. Taxpayer's representative supplied copies of the underlying federal return and copies of the taxpayer's state returns. The Department remained unsatisfied with the documentation supplied and the explanations offered.

The original LOF agreed with the Department's original decision. As stated in the original LOF, "What is missing is any sort of explanation as to the manner in which the $200,000 was originally incurred or how that loss was calculated."

After the LOF was issued, taxpayer supplied information indicating that the original losses were attributable to periodic crop losses caused by flooding. Taxpayer explained that crop insurance paid for some but not all of the losses.

IC 6-8.1-5-1(b) states that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has met her burden of establishing the factual predicate upon which the original NOL was claimed.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2005-02IT
May 16, 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 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

Corporate Adjusted Gross Income Tax—Sourcing Business Receipts

Authority: IC 6-3-2-1; IC 6-3-2-2; 45 IAC 3.1-1-37; 45 IAC 3.1-1-55.

Taxpayer requests the Department to rule on the sourcing of business receipts.

1. For purposes of computing the sales factor and sourcing the receipts of Taxpayer's commissions received in the sale of

insurance coverage policies, is Taxpayer able to apportion based on the location of where the insurance policies are executed, hand delivered, and loss prevention services are rendered?

2. For purposes of computing the sales factor and sourcing all the receipts of Taxpayer's claim management fees, is Taxpayer able to apportion based on the location where the claim report is rendered to the insured?

STATEMENT OF FACTS

Taxpayer is an Indiana corporation that specializes in marketing and writing property and casualty insurance. Taxpayer does business and files income tax returns in Indiana and other states. Taxpayer's subsidiaries both are Indiana domiciled; they are licensed and sell insurance policies in all fifty states and all Canadian provinces.

DISCUSSION

IC 6-3-2-1 imposes on every corporation an income tax upon the adjusted gross income derived from sources within Indiana. For adjusted gross income tax purposes, a corporation must apportion its business income derived from sources within and without Indiana. *See*, IC 6-3-2-2. 45 IAC 3.1-1-37 states that business income is apportioned to Indiana based on the 3-factor formula named in IC 6-3-2-2(b). Business income derived from sources within Indiana is determined by multiplying all business income by a fraction; the numerator of the fraction is the property factor plus the payroll factor plus twice the sales factor; the denominator of the fraction is four. *Id.*

45 IAC 3.1-1-55, **Attribution of sales to state**, interprets IC 6-3-2-2. The regulation states that gross receipts from transactions other than sales of tangible personal property are included in the numerator of the sales factor if the income-producing activity which gave rise to the receipts is performed wholly within Indiana. If the income producing activity is performed within and without Indiana, those receipts are attributed to Indiana based on whether or not the receipts constitute a principal source of income. *Id*. Income producing activity is deemed performed at the situs of real, tangible, and intangible personal property or the place where personal services are rendered. *Id*. The situs of intangible personal property is the commercial domicile of the taxpayer (i.e., the principal place from which trade or business of the taxpayer is directed or managed). *Id*.

Commission Revenue on Sale of Insurance Policies

Taxpayer states that the performance of services for customers across the United States are split between Indiana and the resident state of the insured. Taxpayer's employees travel into the various states and execute an insurance coverage application in the resident state of the insured. Prior to a quote being provided, Taxpayer's employees perform loss prevention services, which occurs in the home office located in the state of the prospective customer. Subsequent to the execution of the sale and loss prevention services, the insurance policy is underwritten in Taxpayer's Indiana office. Once the policy is underwritten, it is delivered to the insured in their home state. Taxpayer receives a commission for the solicitation and execution of the sale.

Taxpayer's commission revenue constitutes a principal source of business income, therefore Taxpayer's commission revenue is sourced in this manner. Services are rendered both within and without Indiana, 45 IAC 3.1-1-55(e) states that the gross business income receipts shall be attributed to Indiana based upon the ratio which the total property and payroll factors in Indiana bears to the total of the property and payroll factors everywhere for the tax period.

Management Fee Revenue

Taxpayer serves as a third-party administrator for many customers of self-insurance policies sold by one of its subsidiaries. Using its employees located in Indiana, Taxpayer provides services to process insurance claims for self-insurance customers. Taxpayer's employees supervise the handling and settlement of these claims, including hiring outside adjustors and attorneys. As well, Taxpayer's employees conduct many claim processing services, such as inspection, interviews, and documentation of insurance claims in the resident state of the insured or in the state where the accident occurred. Following the services rendered by the adjustors and attorneys, Taxpayer issues a claim report to the self-insured to the policy holder's resident state. A claims management fee is charged to each policyholder selecting Taxpayer as its third-party administrator. The fee is paid directly to taxpayer by the policyholder.

Taxpayer's management fee revenue constitutes a principal source of business income, therefore Taxpayer's management fee revenue is sourced in this manner. Services are rendered both within and without Indiana. 45 IAC 3.1-1-55(e) states that the gross business income receipts shall be attributed to Indiana based upon the ratio which the total property and payroll factors in Indiana bears to the total of the property and payroll factors everywhere for the tax period.

RULING

The Department rules that the commission revenue and the management fee revenue is earned for services rendered both within and without Indiana. The gross business income receipts shall be attributed to Indiana based upon the ratio which the total property and payroll factors in Indiana bears to the total of the property and payroll factors everywhere for the tax period as the receipts constitute a principal source of business income.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes

in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection

Indiana Department of State Revenue

Cumulative Table of Nonrule Policy Documents

For Cumulative Tables of Nonrule Policy Documents printed in the Indiana Register in previous years, consult the following table:

1982	See 5 IR 2586	(December 1982)
1983	See 7 IR 252	(December 1983)
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1989	See 13 IR 791	(January 1990)
1990	See 14 IR 956	(January 1991)
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04-18	Clemency for Darnell Williams, Doc No. 872037-ISP	28 IR 1564
04-19	Declaring a disaster emergency in the state of Indiana due to severe storms, flooding and tornadoes	28 IR 1565
04-20	Michael A. McKinney #995375, medical clemency	28 IR 1566
04-21	Roger Good, pardon	28 IR 1567
04-22	Jodi L. Gillman, pardon	28 IR 1567
04-23	Ralph D. Hague, pardon	28 IR 1568
04-24	Michelle L. Miller, pardon	28 IR 1569
04-25	Phillip Horst, pardon	28 IR 1570
04-26	Charles D. Stoner, pardon	28 IR 1570
04-27	The Hoosiers Helping Hoosiers food drive	28 IR 1571
04-28	David Grant Pursell, pardon	28 IR 1572
04-29	Christopher W. Vernon, pardon	28 IR 1572
04-30	Declaring a disaster emergency in the state of Indiana due to severe winter weather	28 IR 1573
04-31	Postponement of the date of expiration of rule until one year after date specified in Indiana Code 4-22-2.5	28 IR 1574
04-32	Declaring a utility service emergency in the state of Indiana during severe weather	28 IR 1882
04-33	Declaring a disaster emergency in the state of Indiana due to severe winter weather	28 IR 1882
04-34	James Lincoln, pardon	28 IR 1883
04-34	Extending a utility service emergency in the state of Indiana during severe weather	28 IR 1884
04-35	Charles I. Thurman, pardon	28 IR 1885
04-37	Clemency for Michael Daniels, no. 13135	28 IR 1886
05-1	Creation of the office of secretary of commerce and coordination of the state's economic development and job training efforts	28 IR 1886
05-2	Creation of the office of management and budget	28 IR 1888
05-3	Creation of the office of inspector general	28 IR 1889
05-4	Continuing the office of public finance	28 IR 1891
05-5	Establishment of the "Buy Indiana" presumption	28 IR 1892
05-6	Directive to account for all state assets and to divest of unused or underutilized assets	28 IR 1893
05-7	Directive to the department of administration to log written state contracts on the Internet	28 IR 1894
05-8	Creation of the office of federal grants and procurements	28 IR 1895
05-9	Establishing and clarifying duties of state agencies for all matters relating to emergency management	28 IR 1896
05-10	Directive to establish medical error reporting and quality system	28 IR 1900
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05-13	Extending a utility service emergency in the state of Indiana during severe weather	28 IR 1903
05-14	Providing a complaint procedure to state employees and rescinding certain prior executive orders	28 IR 1904
05-15	Creation of the Indiana department of child services	28 IR 1905
05-16	Creation of the office of faith-based and community initiatives	28 IR 1907
05-17	Creation of the office of technology	28 IR 1908
05-18	Maintenance of salary and health coverage for active duty military personnel employed by state government	28 IR 1910
05-19	Directive to department of local government finance regarding school building project financings	28 IR 1911
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04-7	Gambling tax revenues and historic preservation	28 IR 1916
04-8	Department of insurance bulletin 123	28 IR 1917
04-9	Compensation for elected city officer	28 IR 1919
04-10	Distribution of wagering tax under Indiana Code section 4-33-13-5	28 IR 1920

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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)

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40 IAC 2-1-6	A	04-198	28 IR 987	
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45 IAC 18-3-7	R	04-255	28 IR 624	*AWR (28 IR 971)
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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)
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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)
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65 IAC 4-350	N	04-252	*ER (28 IR 229)
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65 IAC 4-353	N	04-329	*ER (28 IR 1492)
65 IAC 4-354	R	04-249	*ER (28 IR 227)
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65 IAC 4-359	R	04-249	*ER (28 IR 227)
65 IAC 4-367	R	04-249	*ER (28 IR 227)
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65 IAC 5-18-5	A	05-136	*ER (28 IR 2993)
65 IAC 6-2-6	A	05-36	*ER (28 IR 2154)

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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**
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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**
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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**
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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**
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71 IAC 3-11-1	A	05-115	*ER (28 IR 2746)
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170 IAC 4-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620) *AWR (28 IR 2730)
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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)
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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)
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170 IAC 8.5-2-3	A	04-144	27 IR 4087	*CPH (28 IR 620) *AWR (28 IR 2730)
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312 IAC 5-14-9	A	04-155	27 IR 4103	**28 IR 1464**
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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	**28 IR 2948**
312 IAC 9-5-9	A	03-311	27 IR 1955	**28 IR 545**
	A	04-253	28 IR 1528	**28 IR 2950**
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	*GRAT (28 IR 3053)
				28 IR 2951
312 IAC 18-3-18	N	04-177	28 IR 1201	**28 IR 2942**
312 IAC 18-3-19	N	04-127	28 IR 1521	**28 IR 2942**
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 1-2-33.5	A	05-79	28 IR 3005	
326 IAC 1-2-48	A	05-79	28 IR 3005	
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**
	A	05-79	28 IR 3006	
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 6.8-2-4	A	04-278	28 IR 3004	
326 IAC 7-1.1-1	A	00-236	28 IR 632	*CPH (28 IR 982)
				*CPH (28 IR 1710)
				28 IR 2953
326 IAC 7-1.1-2	A	00-236	28 IR 632	*CPH (28 IR 982)
				*CPH (28 IR 1710)
				28 IR 2953
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)
				28 IR 2953
326 IAC 7-4-1.1	R	00-236	28 IR 644	*CPH (28 IR 982)
				*CPH (28 IR 1710)
				28 IR 2966
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)
				28 IR 2954
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 19-2-1	A	05-80	28 IR 3007	
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	**28 IR 2966**
326 IAC 20-83	N	04-236	28 IR 998	**28 IR 2967**
326 IAC 20-84	N	04-236	28 IR 998	**28 IR 2967**
326 IAC 20-85	N	04-236	28 IR 999	**28 IR 2967**
326 IAC 20-86	N	04-236	28 IR 999	**28 IR 2967**
326 IAC 20-87	N	04-236	28 IR 999	**28 IR 2968**
326 IAC 20-88	N	04-236	28 IR 999	**28 IR 2968**
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	**28 IR 2968**

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 (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 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 (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)
				*CPH (27 IR 2521)
			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)
329 IAC 10-9-2				*ERR (28 IR 608)
329 IAC 10-9-4				*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)
				28 IR 2128
329 IAC 12-9-2	A	03-286	27 IR 3698	*GRAT (28 IR 2204)
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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**
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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 RESOURCES

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	*AWR (28 IR 2992)
511 IAC 6-9.1	RA	05-15	28 IR 2459	**28 IR 3052**
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, ADVISORY BOARD OF THE DIVISION OF

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	*ARR (28 IR 2991)
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 16-1.3	RA	05-3	28 IR 3052	
675 IAC 16-2	RA	05-3	28 IR 3052	
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 710 SECURITIES DIVISION

710 IAC 1-14-6	A	05-46	28 IR 3008	
710 IAC 1-22	N	05-81	28 IR 3009	

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)
			28 IR 3044	
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	
			28 IR 3013	
760 IAC 3-2-2.5	A	05-5	28 IR 2426	
			28 IR 3013	
760 IAC 3-2-6.1	A	05-5	28 IR 2426	
			28 IR 3013	
760 IAC 3-2-6.2	A	05-5	28 IR 2426	
			28 IR 3013	
760 IAC 3-2-7	A	05-5	28 IR 2426	
			28 IR 3014	
760 IAC 3-4-1	A	05-5	28 IR 2427	
			28 IR 3014	
760 IAC 3-5-1	A	05-5	28 IR 2427	
			28 IR 3014	
760 IAC 3-6-1	A	05-5	28 IR 2428	
			28 IR 3016	

760 IAC 3-7-1	A	05-5	28 IR 2432	
			28 IR 3019	
760 IAC 3-8-1	A	05-5	28 IR 2434	
			28 IR 3021	
760 IAC 3-9-1	A	05-5	28 IR 2437	
			28 IR 3024	
760 IAC 3-9-2	A	05-5	28 IR 2437	
			28 IR 3024	
760 IAC 3-11-1	A	05-5	28 IR 2439	
			28 IR 3026	
760 IAC 3-12-1	A	05-5	28 IR 2444	
			28 IR 3031	
760 IAC 3-14-1	A	05-5	28 IR 2445	
			28 IR 3032	
760 IAC 3-15-1	A	05-5	28 IR 2453	
			28 IR 3040	
760 IAC 3-18-1	A	05-5	28 IR 2455	
			28 IR 3043	

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 4-1-7	A	05-68	28 IR 3045	
820 IAC 4-1-9	A	05-68	28 IR 3045	
820 IAC 4-1-11	A	05-68	28 IR 3045	
820 IAC 4-1-12	A	05-68	28 IR 3045	
820 IAC 4-3-1	A	04-254	28 IR 1059	**28 IR 2382**
820 IAC 4-4-8	A	05-68	28 IR 3046	
820 IAC 4-4-8.1	N	05-68	28 IR 3046	

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**
856 IAC 1-30-17	A	04-173	28 IR 321	**28 IR 2389**
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**
856 IAC 1-37	N	05-42	28 IR 3047	

TITLE 857 INDIANA OPTOMETRIC LEGEND DRUG PRESCRIPTION ADVISORY COMMITTEE

857 IAC 1-2-3	A	05-43	28 IR 3048	
857 IAC 1-3-2	A	05-43	28 IR 3049	
857 IAC 1-3-3	A	05-43	28 IR 3049	

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

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**

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

865 IAC 1-11-1	A	03-300	27 IR 2570	**28 IR 605**
	A	04-175	28 IR 1059	**28 IR 2390**

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

872 IAC 1-1-6.1	A	04-41	27 IR 2574	**28 IR 212**
	A	04-171	27 IR 4138	**28 IR 1182**
872 IAC 1-3-3.3	A	04-98	27 IR 3336	**28 IR 605**
872 IAC 1-3-16	A	04-5	27 IR 2335	**28 IR 211**
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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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